

1 XAVIER BECERRA
 Attorney General of California
 2 STEPAN A. HAYTAYAN
 Supervising Deputy Attorney General
 3 JENNIFER E. ROSENBERG
 Deputy Attorney General
 4 State Bar No. 275496
 300 South Spring Street, Suite 1702
 5 Los Angeles, CA 90013
 Telephone: (213) 269-6617
 6 Fax: (916) 731-2124
 E-mail: Jennifer.Rosenberg@doj.ca.gov
 7 *Attorneys for Defendants Xavier Becerra, in*
his official capacity as Attorney General of
 8 *the State of California, and Brent E. Orick,*
in his official capacity as Acting Director of
 9 *the Department of Justice Bureau of*
Firearms

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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 13
 14
 15 **MATTHEW JONES; et al.,**
 16 Plaintiffs,
 17 v.
 18 **XAVIER BECERRA, in his official**
 19 **capacity as Attorney General of the**
 20 **State of California, et al.,**
 21 Defendants.

3:19-cv-01226-L-AHG

**DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

Judge: Hon. M. James Lorenz and
 Magistrate Judge Barbara
 Lynn Major

Action
 Filed: July 1, 2019

Second Amended Complaint
 Filed and
 Served: November 8, 2019

No hearing set for this motion pursuant
 to Dkt. 23.

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INTRODUCTION

1
2 The Legislature enacted SB 1100 and SB 61 to serve public safety goals.
3 These reasonable public safety laws should not be enjoined while this lawsuit
4 proceeds. The new limitation in California Penal Code § 27510, as amended by SB
5 1100, promotes safety and responsible firearm ownership and use by restricting
6 firearm transfers by licensed firearms dealers to young adults aged 18-20 (“Young
7 Adults”). The law imposes only modest restrictions; it is not an outright ban as
8 Plaintiffs contend. Rather, SB 1100 permits the sale, rental, delivery, or transfer of
9 long guns to those with valid, unexpired hunting licenses (with prerequisite
10 training), young people currently serving in law enforcement or the armed forces,
11 and young people who have been honorably discharged from the armed forces or
12 reserves. Cal. Pen. Code § 27510(b)(1) & (2). Those Young Adults who wish to
13 purchase long guns who do not currently or have not previously served in law
14 enforcement, the armed forces, or the reserves thus may become eligible to
15 purchase long guns by simply taking a hunter education course and paying a
16 modest fee for a hunting license.

17 The narrow additional limitation related to semi-automatic centerfire rifles
18 imposed by SB 61 is a common sense measure that ensures that only those Young
19 Adults with adequate training are able to purchase from FFLs semi-automatic
20 centerfire rifles capable of inflicting serious injury. And neither SB 1100 nor SB
21 61 foreclosed firearms transfers to Young Adults through immediate family.

22 Plaintiffs are not entitled to the broad relief they seek—a court order enjoining
23 enforcement of the age-based restrictions of Section 27510 in all applications.
24 Plaintiffs cannot show that they are likely to succeed on the merits of their claims,
25 as every court to have considered similar restrictions on commercial transactions
26 through federally licensed dealers has upheld them under intermediate scrutiny.

27 Plaintiffs also cannot meet their burden to establish the other preliminary
28 injunction factors. Their claimed irreparable harm relies solely on their arguments

1 on the merits, and fails for the same reasons. The balance of the equities and public
2 interest both weigh against enjoining enforcement of laws that promote firearm
3 safety education and limited access to dangerous semi-automatic centerfire rifles
4 for those in an age group the social science shows is disproportionately disposed to
5 violence and irresponsible, impulsive, or reckless behavior. This Court should
6 therefore deny Plaintiffs’ motion.

7 **BACKGROUND**

8 **I. CHALLENGED LAWS**

9 **A. SB 1100 Imposed Modest Restrictions on FFL sales and**
10 **Transfers to Young Adults Aged 18-20**

11 On September 28, 2018, then-Governor Edmund G. Brown, Jr. signed into law
12 Senate Bill 1100 (“SB 1100”, 2017-2018 Reg. Sess.). As relevant here, SB 1100
13 amended California Penal Code Section 27510 to add age-based restrictions for the
14 sale or transfer of long guns by a federally licensed firearms dealer in California
15 (“FFL”). More specifically, SB 1100 amended Section 27510 to prohibit licensed
16 firearms dealers from selling or otherwise transferring any firearm to any person
17 under the age of 21, but permits otherwise lawful transfers to Young Adults in
18 certain circumstances described below. SB 1100’s amendments to Section 27510
19 became effective January 1, 2019.

20 Regarding long guns in particular, Section 27510’s restriction on sales or
21 transfers of long guns from FFLs to Young Adults does not apply to several
22 categories of persons older than 18 years of age who are subject to firearm safety
23 education and training, including: a person who “possesses a valid, unexpired
24 hunting license issued by the Department of Fish and Wildlife” (Cal. Pen. Code §
25 27510(b)(1)); an active peace officer authorized to carry a firearm (*id.* §
26 27510(b)(2)(A)); “[a]n active federal officer or law enforcement agent” (*id.* §
27 27510(b)(2)(B)); “[a] reserve peace officer” (*id.* § 27510(b)(2)(C)); an active
28 member of “the United States Armed Forces, the National Guard, the Air National

1 Guard, or active reserve components of the United States” (*id.* § 27510(b)(2)(D));
2 or “an honorably discharged member of the United States Armed Forces, the
3 National Guard, the Air National Guard, or the active reserve components of the
4 United States” (*id.* § 27510(b)(2)(E)).

5 Section 27510 regulates *only* conduct of the *dealer*—Section 27510 does not
6 expressly regulate anyone else of *any* age.

7 **B. SB 61 Will Impose a Narrow Further Restriction on FFL Sales**
8 **and Transfers of a Subset of Semi-Automatic Long Guns**

9 Under SB 61, an FFL may not transfer semi-automatic centerfire rifles to any
10 person under the age of 21. While exemptions are available for law enforcement
11 officers and active and reserve members of the Armed Forces described in the
12 current version of Section 27510, subdivision (b)(3), under SB 61, neither the
13 hunting license exemption nor the exemption for retired members of the Armed
14 Forces in Section 27510 will extend to transfers of semi-automatic centerfire rifles.
15 SB 61’s amendments to Section 27510 will become effective January 1, 2020.

16 **C. Section 27510 Imposes Only Modest Restrictions and Preserves**
17 **for Young Adults the Rights to Possess, Use, and Acquire**
18 **Handguns and Long Guns, Including Semi-Automatic**
19 **Centerfire Rifles**

20 In addition to the express exemptions set forth in the text of Section 27510, SB
21 1100’s and SB 61’s amendments preserve several avenues for Young Adults to
22 own, inherit, borrow, possess, and use both handguns and long guns (including
23 semi-automatic centerfire rifles). Although most sales and transfers of firearms in
24 California must be made through a FFL (*see* Cal. Pen. Code § 27545), there are
25 several provisions permitting Young Adults to receive firearms without having to
26 effect any transfer or loan through a FFL. Because these transfers may occur
27 without the FFL as intermediary, the limitations of Section 27510 do not apply:

- 28 • Young Adults may receive transfers of handguns and long guns from an immediate family member—defined as a parent or grandparent—“by gift, bequest, intestate succession, or other means from one individual to another[.]” Cal. Pen. Code § 27585; Cal. Pen. Code § 16720.

- 1 • Young Adults may also receive a handgun or long gun from a spouse. Cal.
2 Pen. Code § 27585 (providing that transfer need not be through licensed dealer
3 where the recipient “takes title or possession of a firearm by operation of
4 law”); Cal. Pen. Code §16960(g) (“operation of law” includes transfer by
5 “transmutation of property between spouses”).
- 6 • Young Adults not otherwise prohibited by state or federal law from
7 possessing, receiving, owning, or purchasing a firearm also may be loaned
8 firearms by parents, siblings, grandparents, spouses, registered domestic
9 partners, and others for up to 30 days, Cal. Pen. Code § 27880, and they may
10 be loaned firearms by other people for up to three days at a time if the Young
11 Adult handles and uses the firearm in the presence of the person loaning the
12 firearm, Cal. Pen. Code § 27885.
- 13 • And Young Adults may be loaned firearms
14 for the purposes of shooting at targets if the loan occurs on the
15 premises of a target facility that holds a business or regulatory license
16 or on the premises of any club or organization organized for the
17 purposes of practicing shooting at targets upon established ranges,
18 whether public or private, if the firearm is at all times kept within the
19 premises of the target range or on the premises of the club or
20 organization.
21 Cal. Pen. Code § 27910; Cal. Pen. Code § 26545 (providing that no federal or
22 state dealer license is required to loan firearms for target shooting). Even
23 Young Adults without valid hunting licenses may have lawful opportunities to
24 practice shooting with loaned firearms.

19 **II. RELEVANT PROCEDURAL HISTORY**

20 Plaintiffs filed their initial complaint challenging SB 1100’s amendments to
21 Section 27510 on July 1, 2019 (ECF No. 1), but never served the initial complaint
22 or any summons thereon (ECF No. 5 at 1, n.2). Instead, Plaintiffs filed a First
23 Amended Complaint for Declaratory and Injunctive Relief a full month later on
24 July 30, 2019, and served the FAC and summons on August 1, 2019. (ECF No. 3;
25 ECF No. 5 at 1, n.2.) Plaintiffs waited until October 4, 2019 to file their first
26 preliminary injunction motion—*more than nine months* after SB 1100 took effect,
27 and more than a year after SB 1100 was signed into law. (ECF Nos. 12, 12-1.)

28 Following Governor Newsom’s signing of SB 61, Plaintiffs withdrew their

1 initial motion for preliminary injunction regarding SB 1100’s amendments to
2 Section 27510 on October 18, 2019 in light of their desire to file an amended
3 complaint addressing SB 61’s further amendments. (ECF No. 16.) Plaintiffs filed
4 their Second Amended Complaint (SAC) three weeks later, on November 8, 2019
5 (ECF No. 20), and did not file the instant motion for preliminary injunction until
6 November 12, 2019 (ECF No. 21.)

7 **LEGAL STANDARD**

8 “A preliminary injunction is an extraordinary remedy never awarded as of
9 right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Plaintiffs
10 seeking an injunction bear the burden of establishing that: (1) their claims are
11 likely to succeed on the merits; (2) they will likely suffer irreparable harm in the
12 absence of preliminary relief; (3) the balance of equities tips in their favor; *and*
13 (4) an injunction is in the public interest. *Id.* at 20. Alternatively, “[a] preliminary
14 injunction is appropriate when a plaintiff demonstrates that serious questions going
15 to the merits were raised and the balance of hardships tips sharply in the plaintiff’s
16 favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir.
17 2011) (internal citation omitted). Plaintiffs carry the burden to establish that all
18 four *Winter* factors tip in their favor. *Id.* at 1135.

19 **ARGUMENT**

20 **I. PLAINTIFFS CANNOT ESTABLISH A LIKELIHOOD OF SUCCESS ON THE** 21 **MERITS OF THEIR SECOND AMENDMENT CHALLENGE.**

22 **A. The Second Amendment Framework**

23 In *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008), the Supreme
24 Court held that “the Second Amendment protects the right to possess a handgun in
25 the home for the purpose of self-defense.” *McDonald v. Chicago*, 561 U.S. 742,
26 791 (2010). “*Heller* indicated that the Second Amendment does not preclude
27 certain ‘longstanding prohibitions’ and ‘presumptively lawful regulatory measures,’
28 such as . . . ‘laws imposing conditions and qualifications on the commercial sale of

1 arms[.]” *Jackson v. City & County of San Francisco*, 746 F.3d 953, 959 (9th Cir.
2 2014) (quoting *Heller*, 554 U.S. at 626-27 & n.26).

3 To analyze a Second Amendment challenge, courts engage in a two-step
4 inquiry: first, they ask whether a law burdens the Second Amendment at all; and
5 second, if it does, they determine the appropriate level of scrutiny. *Teixeira v.*
6 *County of Alameda*, 873 F.3d 670, 682 (9th Cir. 2017) (en banc).¹

7 “[C]ourts determine the appropriate level by considering (1) how close the
8 challenged law comes to the core of the Second Amendment right, and (2) the
9 severity of the law’s burden on that right.” *Bauer v. Becerra*, 858 F.3d 1216, 1221-
10 22 (9th Cir. 2017) (quotation marks omitted), *cert. denied*, 138 S. Ct. 982 (2018).
11 This test “amounts to a sliding scale.” *Id.* at 1222 (quotation marks omitted). “A
12 law that imposes such a severe restriction on the fundamental right of self defense
13 of the home that it amounts to a destruction of the Second Amendment right is
14 unconstitutional under any level of scrutiny.” *Id.* (quotation marks omitted).
15 “Further down the scale, a law that implicates the core of the Second Amendment
16 right and severely burdens that right warrants strict scrutiny.” *Id.* “Otherwise,
17 intermediate scrutiny is appropriate.” *Id.*

18 Section 27510’s narrow age limitations on FFL sales and transfers are the kind
19 of presumptively lawful statutory provisions that the Supreme Court has said do not
20 implicate the Second Amendment. *See Jackson*, 746 F.3d at 959. But even if they
21 did implicate the Second Amendment, these laws would be subject only to, and

22 _____
23 ¹ Incorrectly casting Section 27510 as a categorical ban on lawful *possession*
24 of all firearms for *all* people under 21, Plaintiffs suggest that this Court should
25 “select[]” a framework rooted *solely* in “history and tradition” and eschew any form
26 of means-end scrutiny rather than conducting the two-step inquiry mandated by
27 Ninth Circuit precedent and every Circuit Court to have addressed what form of
28 analysis to apply post-*Heller*. (ECF No. 21-1 (“Mot.”) at 17 [advocating for
adopting a framework rejected by the majority of the D.C. Circuit in *Heller v.*
District of Columbia (Heller II), 670 F.3d 1244 (D.C. Cir. 2011), and set forth in a
dissenting opinion]; *see also* Mot. at 4-5.) As other district courts have noted when
asked to adopt such an alternative approach, that framework is not “persuasive,”
and in any case, “the Court is bound by the Ninth Circuit’s two-step inquiry.” *Rupp*
v. Becerra, 401 F. Supp. 3d 978, 985 (C.D. Cal. 2019).

1 satisfy, intermediate scrutiny.

2 **B. Section 27510’s Age-Based Restrictions on FFL Sales and**
3 **Transfers Are Consistent with Historical Prohibitions and Are**
4 **Presumptively Lawful Regulations That Do Not Implicate the**
5 **Second Amendment**

6 Where text, history, and tradition show that a challenged law is consistent with
7 the Second Amendment, the restriction “‘passes constitutional muster’” and this
8 Court’s inquiry “‘is complete.’” *Teixeira*, 873 F.3d at 682; *see Heller*, 554 U.S. at
9 626, 627 n.26. Here, California’s modest restrictions on the sale or transfer of long
10 guns through licensed dealers to a narrow category of Young Adults aged 18-20 are
11 consistent with the “historical understanding” of the right to keep and bear arms.
12 *Heller*, 554 U.S. at 625. Thus, Plaintiffs’ challenge to Section 27510 will likely fail
13 on the merits at step one of the relevant framework because Section 27510’s age-
14 based restriction on sale of long guns to Young Adults does not affect conduct
15 within the ambit of the Second Amendment.

16 Indeed, courts addressing similar age-based restrictions on the rights of 18-20
17 year-olds to purchase or carry firearms have reasoned that such

18 statutes enacted to safeguard the public using age-based restrictions on
19 access to and use of firearms are part of a succession of “longstanding
20 prohibitions,” *Heller*, 554 U.S. at 626, 128 S.Ct. 2783, that are likely
21 outside the scope of the Second Amendment, because such restrictions
22 are “consistent with” both the “longstanding tradition of targeting
23 select groups’ ability to access and to use arms for the sake of public
24 safety” and the “longstanding tradition of age-and safety-based
25 restrictions on the ability to access arms.”

26 *Nat’l Rifle Ass’n of Am., Inc. v. McCraw*, 719 F.3d 338, 347 (5th Cir. 2013)
27 (quoting *Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, &*
28 *Explosives*, 700 F.3d 185, 203 (5th Cir. 2012) (*BATF*), *cert. denied*, 571 U.S. 1196
(2014)).

29 In *BATF*, the Fifth Circuit conducted an exhaustive review of the historical
30 context of limitations on the rights of those under the age of 21 in determining

1 whether the federal government’s ban on the sale of handguns to those under the
2 age of 21 through FFLs violated the Second Amendment. The Court concluded
3 that “[m]odern restrictions on the ability of persons under 21 to purchase
4 handguns—and the ability of persons under 18 to possess handguns—seem, to us,
5 to be firmly historically rooted.” *BATF*, 700 F.3d at 204. The Court’s conviction
6 in this respect was based on an analysis of legal commentary regarding founding-
7 era attitudes, nineteenth-century legislators, courts, and commentators, nineteenth-
8 century case law evidencing the criminalization of providing firearms and other
9 dangerous weapons to minors under the age of 21, and historical evidence showing
10 that the age of majority at the founding and through the first half of the 20th century
11 was 21, even though younger individuals could serve in militias. *Id.* at 200-04.

12 In evaluating another challenge to the federal ban on handgun sales to those
13 under 21 by FFL, a district court in the Western District of Virginia also recently
14 stated that “evidence suggests that full adulthood, at the time of the Founding, was
15 not reached until age 21.” *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms &*
16 *Explosives*, No. 3:18-CV-00103, 2019 WL 4923955, at *4 (W.D. Va. Oct. 4, 2019)
17 (citing William Blackstone, 1 Commentaries On The Laws Of England 463 (1st ed.
18 1765) (“So that full age in male or female, is twenty one years . . . who till that time
19 is an infant, and so styled in law.”); *Infant*, Black’s Law Dictionary 847 (11th ed.
20 2019) (legal infancy lasts until age 21) (citing sources from 1878, 1899, and 1974));
21 *see also id.* (noting that “legal scholars of the time accepted that ‘the State may
22 prohibit the sale of arms to minors’” (quoting Thomas M. Cooley, *Treatise on*
23 *Constitutional Limitations* 740 n.4 (5th ed. 1883))). And the First Circuit recently
24 concluded that limitations on the ability of Young Adults aged 18-20 to carry
25 firearms in public were presumptively lawful in light of the relevant historical
26 record, including because “[c]ase law from jurisdictions across the country
27 confirms that during the late nineteenth and early twentieth centuries”—when
28 “minors” included those under 21—“minors’ capacity to purchase and own

1 firearms was significantly curtailed.” *Powell v. Tompkins*, 926 F. Supp. 2d 367,
2 387 (D. Mass. 2013), *aff’d*, 783 F.3d 332 (1st Cir. 2015) (citing *United States v.*
3 *Rene E.*, 583 F.3d 8, 14-15 (1st Cir. 2009), *cert. denied*, 558 U.S. 1133 (2010)
4 (compiling cases); Larry D. Barnett, *The Roots of Law*, 15 Am. U.J. Gender Soc.
5 Pol’y & L. 613, 681–86 app. (2007)).

6 These authorities demonstrate that limitations on the ability of those under the
7 age of 21 to procure firearms from dealers are consistent with the “historical
8 understanding” of the right to keep and bear arms, *Heller*, 554 U.S. at 625, and
9 therefore pass constitutional muster without the need for applying any level of
10 means-end scrutiny. *See Powell*, 926 F. Supp. 2d at 388 (holding as a matter of law
11 at step one that the historical record established that age-based restrictions on
12 licenses to carry enacted for purposes of public safety “comport[] with the Second
13 Amendment and impose[] no burden on the rights of eighteen- to twenty-year-olds
14 to keep and bear arms”).

15 Because section 27510’s age restrictions on FFL sales and transfers impact
16 only persons under 21, they are the kind of presumptively lawful statutory
17 provisions that the Supreme Court has said do not implicate the Second
18 Amendment. Plaintiff’s Second Amendment challenge fails on that basis alone.

19 **C. Assuming the Second Amendment is Implicated at All,**
20 **Intermediate Scrutiny Is the Appropriate Standard.**

21 Neither *BATF* nor *Hirschfeld* ended the analysis at step one; while each court
22 enunciated a view that the Second Amendment was not implicated by age-based
23 restrictions on the sale or purchase of firearms through FFLs, each court proceeded
24 to uphold the federal handgun ban after applying intermediate scrutiny. *BATF*, 700
25 F.3d at 204; *Hirschfeld*, 2019 WL 4923955, at *7.

26 “Unquestionably, the challenged [state] laws trigger nothing more than
27 ‘intermediate’ scrutiny.” *BATF*, 700 F.3d at 205 (applying intermediate scrutiny to
28 federal ban on handgun sales to those under age 21 by FFLs, and upholding the law

1 under that level of scrutiny). The Ninth Circuit’s recent cases have repeatedly held
2 that, for purposes of determining an appropriate level of scrutiny, the “core” of the
3 Second Amendment right is limited to what *Heller* identified: the right to keep and
4 carry “in defense of hearth and home.” *Heller*, 554 U.S. at 635; see *United States v.*
5 *Chovan*, 735 F.3d 1127, 1139 (9th Cir. 2013), *cert. denied*, 574 U.S. 878 (2014);
6 *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016), *cert. denied sub nom.*
7 *Silvester v. Becerra*, 138 S.Ct. 945 (2018); *Bauer*, 858 F.3d at 1222; *Pena v.*
8 *Lindley*, 898 F.3d 969, 977 (9th Cir. 2018). “[F]irearm regulations which leave
9 open alternative channels for self-defense are less likely to place a severe burden on
10 the Second Amendment right than those which do not.” *Jackson*, 746 F.3d at 961
11 (applying intermediate scrutiny to a regulation imposing conditions on how
12 handguns must be stored, because such regulation regulated only the *manner* of
13 exercise of the right, and therefore did not substantially burden the core right to use
14 a handgun in the home for purposes of self-defense).

15 In keeping with these principles, federal courts have consistently applied
16 intermediate scrutiny in the context of Second Amendment challenges to statutory
17 limitations on Second Amendment conduct where—as here—such limitations
18 affect only the “discrete category” of 18 to 20-year olds, impose only temporary
19 limitations, and do not amount to a total ban having the effect of “disarm[ing] an
20 entire community.” *BATF*, 700 F.3d at 205; *accord Powell*, 926 F. Supp. 2d at 393.
21 Courts consistently reason that where the challenged limitations “only implicate
22 commercial transactions: ‘conduct occurring outside the home,’” they do not
23 “implicate a core Second Amendment right.” *Hirschfeld*, 2019 WL 4923955, at *7.
24 Courts have repeatedly determined that the federal ban on handgun sales through
25 FFLs to Young Adults aged 18-20 warrants—at the most—intermediate scrutiny,
26 because such a prohibition involves merely commercial transactions, and because
27 “18-to-20-year-olds may possess and use handguns for self-defense, hunting, or
28 any other lawful purpose; they may acquire handguns from responsible parents or

1 guardians; and they may possess, use, and purchase long-guns.” *BATF*, 700 F.3d at
2 206-07; *Hirschfeld*, 2019 WL 4923955, at *7. And Courts emphasize that the
3 “temporary nature of the burden reduces its severity.” *BATF*, 700 F.3d at 207.

4 **D. Section 27510’s Age-Based Restrictions on FFL Sales and**
5 **Transfers Satisfy Intermediate Scrutiny.**

6 The intermediate scrutiny “test is not a strict one.” *Silvester*, 843 F.3d at 827.
7 “Intermediate scrutiny requires (1) a significant, substantial, or important
8 government objective, and (2) a ‘reasonable fit’ between the challenged law and the
9 asserted objective.” *Pena*, 898 F.3d at 979. It does not require the fit between the
10 challenged regulation and the stated objective to be perfect, nor does it require that
11 the regulation be the least restrictive means of serving the interest. *Jackson*, 746
12 F.3d at 969. Rather, the government “must be allowed a reasonable opportunity to
13 experiment with solutions to admittedly serious problems.” *Id.* at 969-70 (quoting
14 *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 52 (1986)). And in
15 determining whether a law survives intermediate scrutiny, courts “accord
16 substantial deference to the predictive judgments of the legislature.” *Turner Broad.*
17 *Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997).

18 Courts do not look to evidence “in the technical sense” because “legislatures
19 are not obligated, when enacting their statutes, to make a record of the type that an
20 administrative agency or court does to accommodate judicial review[.]” *Pena*, 898
21 F.3d at 979 (quotation marks omitted). Rather, the State may “rely on any evidence
22 ‘reasonably believed to be relevant’ to substantiate its important interests,” and the
23 Court “may consider ‘the legislative history of the enactment as well as studies in
24 the record or cited in pertinent case law.’” *Fyock v. Sunnyvale*, 779 F.3d 991, 1000
25 (9th Cir. 2015) (citations omitted).

26 California has a substantial interest in increasing public safety and preventing
27 gun violence, including but not solely in the context of mass shootings. Section
28 27510’s narrow limitations on FFL sales and transfers to Young Adults, except as

1 expressly permitted, further those interests by ensuring that those Young Adults
2 with access to long guns have had firearm safety training—either because they have
3 had training and supervision as a member of law enforcement, the Armed Forces or
4 the reserves, or because they have received training by way of a hunter education
5 course. The further limitation on commercial sales and transfers by FFLs of semi-
6 automatic centerfire rifles also reasonably fit the Legislature’s interest in ensuring
7 that weapons capable of quickly inflicting violence on large numbers of people
8 remain in the hands of those with proper training.

9 Every challenge to modest restrictions on the ability of Young Adults to
10 procure firearms through a FFL has survived intermediate scrutiny, based in large
11 part on the fact that—like here—the laws limited access through a dealer, but
12 imposed no restriction on the ability of a Young Adult to possess or use a firearm
13 for self-defense purposes, and on social science evidence showing that Young
14 Adults are both disproportionately linked to crime and also less likely to have
15 completely developed those portions of the brain responsible for controlling
16 impulsivity, regulating responsible decision-making, and exercising good judgment.
17 *See BATF*, 700 F.3d at 211; *Hirschfeld*, 2019 WL 4923955, at *8; *cf. Horsley v.*
18 *Trame*, 808 F.3d 1126, 1133-34 (7th Cir. 2015) (upholding Illinois Firearm Owner's
19 Identification Card licensing scheme, which required parental consent for those
20 aged 18-20, or approval by the Director of State Police, where the scheme did not
21 prohibit possession or use of firearms, but merely required limited burden of
22 applying for card.) Section 27510’s modest age restrictions on sale or transfer
23 through FFLs likewise strikes a reasonable fit that comports with the Second
24 Amendment.

25 **1. Section 27510’s Age-Based Restrictions on FFL Sales and**
26 **Transfers Serve California’s Substantial Interest in Public**
Safety and Crime Prevention.

27 “It is beyond question that promoting public safety and reducing incidents of
28 gun violence are legitimate government objectives, as the Ninth Circuit, like many

1 other circuits, has found these interests not merely legitimate but substantial or
2 compelling.” *Rupp v. Becerra*, No. 8:17-CV-00746-JLS-JDE, 2018 WL 2138452,
3 at *5 (C.D. Cal. May 9, 2018) (citing *Fyock*, 779 F.3d at 1000; *Silvester*, 843 F.3d
4 at 827; *Kolbe v. Hogan*, 849 F.3d 114, 139 (4th Cir. 2017)); *see also, e.g., Pena*,
5 898 F.3d at 981-82 (“public safety and crime prevention . . . are substantial
6 government interests”). And as the Ninth Circuit has recognized, “public safety is
7 advanced by keeping guns out of the hands of people who are most likely to misuse
8 them[.]” *Bauer*, 858 F.3d at 1223.

9 Plaintiffs do not appear to contest the legitimacy of the Legislature’s interest
10 in promoting public safety and the reduction of gun violence in California,
11 including the goal of reducing instances of mass shootings in California. (*See Mot.*
12 *at 19, 22.*) Nor do Plaintiffs contest that Young Adults aged 18-20 are
13 disproportionately linked to violent crime, including committing homicides at a
14 “higher rate comparatively.” (*Mot. at 23.*) Rather than disputing that California
15 has substantial and compelling interests in promoting public safety and reducing
16 gun violence committed by Young Adults, Plaintiffs appear to direct their
17 arguments to the “fit” prong of the intermediate scrutiny test. Accordingly,
18 Defendants address Plaintiffs’ arguments regarding fit.

19 **2. Section 27510’s Age-Based Restrictions on FFL Sales and**
20 **Transfers Reasonably Fit the Public’s Interest in**
21 **Protecting Public Safety and Reducing Gun Violence.**

22 This “‘legislative history of the enactment as well as studies in the record’”
23 demonstrates “a ‘reasonable fit between the government’s stated objective[s] and
24 the regulation’ considered.” *See Pena*, 898 F.3d at 979 (quoting *Fyock*, 779 F.3d at
25 1000). “The State is required to show only that the regulation ‘promotes a
26 substantial government interest that would be achieved less effectively absent the
27 regulation.’” *Silvester*, 843 F.3d at 829 (quoting *Fyock*, 779 F.3d at 1000).
28

1 **a. There is Substantial Evidence that Young Adults Are**
 2 **Disproportionately Disposed to Harm Themselves or**
 3 **Others, Including Because of Their Incomplete Brain**
 4 **Development**

5 As the legislative history of SB 1100 confirms, the Legislature intended to
 6 bring parity to California restrictions on access to handguns and long guns by
 7 Young Adults aged 18-20 by raising the minimum age for sale or transfer of long
 8 guns through FFLs. (ECF No. 21-8, Combs Decl., Ex. 2 at 0012.) In doing so, the
 9 Legislature aimed to take an important step toward ensuring public safety (ECF No.
 10 21-9, Combs Decl., Ex. 3 at 0015), particularly in light of the propensity of Young
 11 Adults aged 18-20 to engage in violent crime, and the developing nature of their
 12 brains (ECF No. 21-8, Combs Decl., Ex. 2 at 0011-12.)

13 Although the author’s statement regarding SB 1100 did not reference social
 14 science, the legislative history shows that the California Chapters of the Brady
 15 Campaign offered the following statistics in support of the age restrictions:

- 16 • 11,500 of the 26,682 crime guns entered into the California Department of
 17 Justice’s Firearms Systems database since 2009 were long guns, demonstrating
 18 that long guns are often used in the commission of crimes in California;
- 19 • The FBI’s 2015 report on Crime in the United States showed that in 2015,
 20 “23.4 percent of those arrested for murder and non-negligent manslaughter in
 21 the U.S. were under 21 and 26.5 percent of those arrested for ‘weapons
 22 carrying, possession, etc.’ were under age 21” (citing FBI 2015 Crime in the
 23 United States, [https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-](https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-41)
 24 2015/tables/table-41);
- 25 • Despite making up a large portion of the arrests for violent crimes and
 26 weapons crimes and committing 17 percent of gun homicides in the U.S., those
 27 aged 18-20 comprised just 4 percent of the U.S. population (citing Uniform
 28 Crime Reporting Program Data: Supplementary Homicide Reports, 2015,” US
 Department of Justice, Federal Bureau of Investigation,
<https://ucr.fbi.gov/nibrs/addendumfor-submitting-cargo-theft-data/shr>).

(ECF No. 21-8, Combs Decl., Ex. 2 at 0011-12.) The Brady Campaign also
 emphasized that “[m]aturity, impulsive or reckless behavior, and responsibility vary
 greatly among 18-20 year olds.” (*Id.*)

1 Updated statistics show that in recent years in which offenses were broken
2 down into individual years, Young Adults aged 18-20 continued to commit a
3 disproportionately large number of violent crimes, and that indeed the ages of 18-20
4 were the years in which arrests for homicide, rape, and robbery were their highest.
5 (See Rosenberg Decl., Ex. 1, U.S. Department of Justice, *Crime in the United*
6 *States, Arrests, by Age, 2017*, at Table 38, [https://ucr.fbi.gov/crime-in-the-](https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-38)
7 [u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-38.](https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-38)) In 2017, although 18-
8 20 year-olds comprised less than 5 percent of the U.S. population, they accounted
9 for more than 15 percent of the homicide and manslaughter arrests reported. (*Id.*;
10 *see also* U.S. Census Bureau, *2017 National Population Projections Datasets* (last
11 revised Sept. 6, 2018), *datasets available at* [https://bit.ly/2JKictP.](https://bit.ly/2JKictP)) And arrests in
12 California specifically show that Young Adults commit a disproportionately large
13 portion of the homicides here, too; 18-19 year-olds alone accounted for 11.8
14 percent of the homicide arrests in the entire State. (Rosenberg Decl., Ex. 2,
15 CRIMINAL JUSTICE STATISTICS CENTER, CAL. DEP'T OF JUSTICE, *Crime in California*,
16 at 39 (Table 32) (2018), [https://data-openjustice.doj.ca.gov/sites/default/files/2019-](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf)
17 [07/Crime%20In%20CA%202018%2020190701.pdf.](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf))

18 Moreover, social science has long established that the human brain continues
19 to develop into the early or mid-20s, and that Young Adults under the age of 21 are
20 less likely to have developed the maturity necessary to make responsible decisions
21 than older counterparts, that they are more reactive and take more risks. (*See, e.g.*,
22 Rosenberg Decl., Ex. 3, Mariam Arain et al., *Maturation of the Adolescent Brain*, 9
23 *NEUROPSYCHIATRIC DISEASE & TREATMENT* 449, 453-54, 458 (2013) [“the
24 adolescent brain is structurally and functionally vulnerable to environmental stress”
25 and thus this age group is predisposed to “quickness to anger, intense mood swings,
26 and making decisions on the basis of ‘gut’ feelings”]; Rosenberg Decl., Ex. 4, Leah
27 H. Somerville et al., *A Time of Change: Behavioral and Neural Correlates of*
28 *Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 *BRAIN &*

1 COGNITION 124, 125 (2010) [minors are uniquely prone to “negative emotional
2 states”].) Indeed, science shows that young adults have weaker impulse control and
3 “demonstrate poorer emotional regulation in the context of threat than other age
4 groups,” which makes them uniquely disposed to use firearms “in the very
5 situations in which adolescents are most developmentally vulnerable: in the context
6 of high emotional arousal, situations that require rapid, complex social information
7 processing, those that involve reinforcing or establishing peer relationships (i.e.,
8 showing off), or in conditions of perceived threat.” (Rosenberg Decl., Ex. 5, Daniel
9 W. Webster et al., Johns Hopkins Ctr. For Gun Policy and Research, *Firearms on
10 College Campuses: Research Evidence and Policy Implications*, 3, 18-19 (Oct.
11 2016), <https://bit.ly/2QfZJHN>; *see also id.* at 3 [“Risky decision-making in
12 adolescence and early adulthood is due, in part, to on-going brain development
13 during that stage of life that can compromise emotional and behavioral regulation,
14 impulse control, and judgment – all of which are essential for avoiding the
15 circumstances in which firearm access leads to tragedy.”].)²

16 Such evidence of the prevalence of violent crime committed by Young Adults
17 aged 18-20, coupled with social science evidence definitely establishing that brain
18 maturation in that age group is not complete, is precisely the social science support
19 that the Fifth Circuit in *BATF*, the Seventh Circuit in *Horsley*, and the Western
20 District of Virginia in *Hirschfeld* determined established support for adopting
21 restrictions on the means for Young Adults to purchase firearms from FFLs and to
22 establish entitlement to a FOID card (in Illinois). *See BATF*, 700 F.3d at 207-11;
23 *Horsley*, 808 F.3d at 1132-34; *Hirschfeld*, 2019 WL 4923955, at *2-3 (noting, that
24 in developing the federal handgun ban, “Congress . . . found a ‘causal relationship
25 between the easy availability’ of handguns ‘and juvenile and youthful criminal

26 ² Webster, et al., also note the enhanced suicide risk in Young Adults as a
27 reason for limiting firearm carry and access. (*Id.* at 19 [noting that “suicide was the
28 second leading cause of death in the U.S. among college age youth 17-24 years in
2014, that 49 percent of males aged 17-24 who committed suicide used firearms,
and that suicide attempts by firearm result in death 90 percent of the time].)

1 behavior, and that such firearms have been widely sold by federally licensed
2 importers and dealers to emotionally immature, or thrill-bent juveniles and minors
3 prone to criminal behavior.’ Pub. L. No. 90–351, § 901(a)(6), 82 Stat. 197, 225–
4 226.”). Here, too, evidence regarding Young Adult-perpetrated crime, coupled with
5 the social science showing that Young Adults may not yet be capable of making
6 responsible decisions about the use of firearms, demonstrated much more than a
7 reasonable fit between the Legislature’s desire to curb gun violence and its
8 promulgation of limited restrictions on the manner in which Young Adults may
9 procure firearms.

10 Plaintiffs argue that there is no evidence that age-based limitations on access
11 to firearms will prevent crime, promote public safety, or prevent any mass
12 shootings. (Mot. at 19, 22 [citing, e.g., ECF No. 21-15, Marvell Decl. ¶¶ 5-9 & Ex.
13 2.] But even evidence they cite contradicts this contention: A 2014 study
14 confirmed that federal minimum-age restrictions contributed to a “very significant
15 decline” in youth suicide and unintentional death rates. (See ECF No. 21-15,
16 Marvell Decl., Ex. 4 at 0055, Mark Gius, *The Impact of Minimum Age and Child
17 Access Prevention Laws on Firearm-Related Youth Suicides and Unintentional
18 Deaths*, 52 THE SOC. SCI. J. 168, 173 (2015); see also ECF No. 21-15, Marvell
19 Decl. ¶ 14 & Ex. 7, Daniel W. Webster et al., *Association between Youth-focused
20 Firearm Laws and Youth Suicides*, 292 JAMA 594 (2004) [finding significant
21 decline in suicides in the 18-20 year old group following implementation of some
22 age restriction statutes].) Reduction in suicide and unintentional death rates among
23 young persons alone would serve as a substantial public interest.

24 Regarding crime rates, The RAND Corporation analysis cited by Plaintiffs in
25 their favor (ECF No. 21-15 and 21-16, Ex. 10), does not actually contradict crime
26 reducing effects. Instead The RAND Corporation analysis concludes that there is
27 insufficient evidence in the universe of social science commentary to determine
28 whether minimum age laws reduce crime in particular. (*Id.* at 0170, 0222-0235

1 [surveying conflicting studies and available research], 0257-0259.) But even if that
 2 analysis constituted conflicting evidence, uncertainty counsels strongly *against*
 3 issuing a preliminary injunction. *See Dymo Indus., Inc. v. Tapeprinter, Inc.*, 326
 4 F.2d 141, 143 (9th Cir. 1964) (“[O]n application for preliminary injunction the
 5 court is not bound to decide doubtful and difficult questions of law or disputed
 6 questions of fact.”).

7 Further, Plaintiffs demand that the State comport with a standard not required
 8 by law. If states were required to show evidence that a particular approach to
 9 curtailing violence had *already* proved effective, or to *guarantee* that it would
 10 prove effective, states would be prevented from innovating and experimenting with
 11 new ways to address, for example, “the problem of handgun violence in this
 12 country[.]” *See Heller I*, 554 U.S. at 636. But this is not the proper standard, as the
 13 Ninth Circuit’s decision in *Pena* shows. Applying intermediate scrutiny, the court
 14 upheld California’s “microstamping requirement,” a law that was “the first of its
 15 kind,” and “an experimental solution to admittedly serious problems.” *Pena*, 898
 16 F.3d at 984 (“[A] single courageous state may, if its citizens choose, *serve as a*
 17 laboratory, and try novel legislative experiments.” (internal alterations and
 18 quotation marks omitted)); *accord McDonald*, 561 U.S. at 785 (plurality op.)
 19 (Second Amendment “by no means eliminates” a state’s “ability to devise solutions
 20 to social problems that suit local needs and values”). California, like other states,
 21 may experiment with placing targeted limitations on the manner in which
 22 commercial sales and transfers are made to Young Adults by FFLs in an attempt to
 23 reduce the incidence of gun violence, suicide, accidental death or injury, and other
 24 harms without offending the core Second Amendment right.

25 **b. Requiring Young Adults Without Military or Law**
 26 **Enforcement Training to Purchase Long Guns Via the**
 27 **Hunting License Exemption Is a Modest Requirement**
 28 **that Reasonably Fits California’s Public Safety Goal**

Plaintiffs argue that a “vast array of firearms regulations already in place” are

1 sufficient to protect the public safety, including the firearm safety certificate
2 requirement generally applicable to firearms purchases. (*See Mot.* at 29).
3 Plaintiffs’ views should not override the predictive judgments of the Legislature
4 about what education courses will best protect Young Adults and the general public
5 from the risk of accidental or intentional firearm injury or death. In developing the
6 hunting license exemption to the firearm safety certificate requirement of California
7 Penal Code § 31615 now contained in Penal Code § 31700(c), the Legislature
8 clearly compared the scope and components of the firearm safety certificate
9 educational program with that of the hunter education program. Legislative
10 analysis from the 2013 legislative session demonstrates that the Legislature
11 considered that “[t]he amount of firearm safety information included in the hunting
12 education course is more extensive than that in the safety certificate education
13 component,” and the broader scope of the hunter education course’s firearm safety
14 information “prompt[ed] the exemption in [SB 683] from the safety certificate
15 requirement for those in possession of a hunting license.” (Rosenberg Decl., Ex. 6,
16 Cal. Leg., Assemb. Comm. On Public Safety, Bill Analysis, SB 683 (2013-14 Reg.
17 Sess.), at 4 (Aug. 13, 2013).) And, of course, the firearm safety certificate program
18 does not include any in-person training component; it merely requires passage of a
19 multiple-choice test and a safe handling demonstration, all of which can be
20 accomplished at a firearms dealer location at the point of sale of the firearm. (*See*
21 ECF No. 21-19, Bogan Decl., Ex. 4 at 0138.) The Legislature certainly could have
22 reasonably determined that a more intensive firearms training program involving
23 an-in person instructive component—whether through the rigors of military or law
24 enforcement training, or a hunter education course—would better prepare Young
25 Adults in light of science regarding the immaturity and impulsivity of that age
26 group.

27 Hunter education and licensing is a modest requirement, not nearly of
28 constitutional import. Neither any small delay occasioned by the availability of

1 follow-up hunter education classes (notably not subject to State control) nor the
2 imposition of minor fees is so onerous as to substantially impinge Young Adults’
3 Second Amendment rights. *See, e.g., Silvester*, 843 F.3d at 831 (Thomas, C.J.,
4 concurring) (concurring in upholding California’s 10-day waiting period statute for
5 pick-up of purchased firearms under intermediate scrutiny, and noting that “delay
6 has not always been associated with government regulation,” and “the ability to
7 immediately exercise Second Amendment rights has no foundation in history”);
8 *Bauer*, 858 F.3d at 1222, 1226 (upholding \$19 dealer record of sale fee under
9 intermediate scrutiny). Indeed, the Second Circuit has upheld even a \$340
10 licensing fee for a firearm under intermediate scrutiny, noting that even a fee of that
11 scale might be only a “marginal” restraint on the core Second Amendment right to
12 possess and use firearms in the home—especially where, as here, not a single
13 plaintiff alleged that the fee was actually prohibitive. *Kwong v. Bloomberg*, 723
14 F.3d 160, 167 (2d Cir. 2013). The standard fee for the online portion of the hunter
15 education course is \$28.95; this fee is virtually identical to the \$25 fee imposed for
16 the procurement of a firearm safety certificate. (*See* ECF No. 21-8, Combs Decl.,
17 Ex. 6 at 0156; *see also* Rosenberg Decl., Ex. 7, Cal. Dept. of Justice, Firearm
18 Safety Certificate Program FAQs, <https://oag.ca.gov/firearms/fscpfafs>).³ Further,
19 despite Plaintiffs’ attempt to show otherwise, hunter education courses are widely
20 available and merely require signing up in advance. (Rosenberg Decl., Ex. 8 [as of
21 December 13, 2019, there were 130 open seats in hunter education courses across
22 California through January 11, 2020, including courses available in mid-
23 December]; Rosenberg Decl., Ex. 9 [as of December 10, 2019, 221 seats were
24 available in hunter education courses located within 75 miles of San Diego County
25 zip code 92101 through September 7, 2020].)

26
27
28 ³ Available follow-up course locations and sign-up are readily accessible
online at <https://register-ed.com/programs/california/161>.

1 Moreover, substantial evidence in the record shows that Young Adults across
2 the State have made ample use of the exemptions set forth in Section 27510 in order
3 to purchase or receive transfer of long guns since SB 1100’s amendments took
4 effect on January 1, 2019. Department of Justice data regarding long gun sales and
5 transfer transactions from January 1, 2019 through December 23, 2019 show that
6 Young Adults aged 18-20 purchased or otherwise received transfer of 3,789 long
7 guns. (Declaration of Maricela Leyva Chavez (“Leyva Decl.”) ¶ 11.)⁴

8 Nor does it appear that Section 27510’s restrictions have had any significant
9 impact on the ability of Californians generally or Young Adults specifically to
10 obtain the requisite hunter education to secure a valid hunting license. The
11 California Department of Fish and Wildlife reported that, as of October 31, 2019,
12 with two months of 2019 left to go, it had sold 193,771 annual resident hunting
13 licenses and 5,814 lifetime hunting licenses—numbers consistent with the reported
14 full-year numbers for each of the prior nine years. (*See* Rosenberg Decl., Ex. 10,
15 Cal. Dept. Fish & Wildlife, Hunting License: Number Issued (2010s),
16 <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59821&inline.>)

17 Because Plaintiffs assert a facial challenge to SB 1100 and SB 61’s
18 amendments to Section 27510, they “must establish that no set of circumstances
19 exists under which the [regulation or statute] would be valid.” *See United States v.*
20 *Salerno*, 481 U.S. 739, 745 (1987); *see also Chem. Specialties Mfrs. Ass’n, Inc. v.*
21 *Allenby*, 958 F.2d 941, 943 (9th Cir. 1992). In other words, they must show that the
22 law is unconstitutional in *all* of its applications. *See Wash. State Grange v. Wash.*
23 *State Republican Party*, 552 U.S. 442, 450 (2008). Where, as here, laws have a
24 “plainly legitimate sweep,” a facial challenge must fail. *See id.* at 449 (citation and
25 internal quotations omitted). Given the continued prevalence of both firearm sales
26 pursuant to available exemptions to Young Adults aged 18-20 and the unwavering

27 _____
28 ⁴ These long gun transactions through FFLs included sales, private party transfers, pawn or consignment redemptions, and long gun loans.

1 rate of hunting license issuance following the enactment of SB 1100’s limitations
2 on FFL sales and transfers, Plaintiffs cannot meet this demanding standard.

3 **c. Limiting Sales and Transfers of Long Guns Through**
4 **FFLs Appropriately Serves the Legislature’s Desire to**
5 **Limit Gun Violence Occasioned by Mass Shootings**

6 The Legislature’s decision to limit access to firearms obtained from licensed
7 dealers in order to serve the interest of limiting gun violence effected through mass
8 shootings⁵ is supported by evidence regarding the manner in which mass shooters
9 procure their weapons, the proliferation of mass shootings more generally, and—
10 despite Plaintiffs’ contentions otherwise—the incidence of mass shootings by
11 Young Adults. (*Contra* Mot. at 19-20.)

12 The Legislature’s concern with instances of mass shootings was justified. By
13 the end of July 2019, media reported that California had experienced 32 shootings
14 in which 4 or more people were injured or killed. (Rosenberg Decl., Ex. 11, Eric
15 Escalante, *Nonprofit Marks El Paso Shooting as 250th Mass Shooting in the U.S. for*
16 *2019*, ABC10 (Aug. 3, 2019),
17 [https://www.abc10.com/article/news/crime/nonprofit-marks-el-paso-shooting-as-
18 250th-mass-shooting-in-the-us-for-2019/103-128c6c17-89e5-4da6-8a1c-
19 7dcdde7df1d2](https://www.abc10.com/article/news/crime/nonprofit-marks-el-paso-shooting-as-250th-mass-shooting-in-the-us-for-2019/103-128c6c17-89e5-4da6-8a1c-7dcdde7df1d2).) The San Francisco Chronicle reported on July 31, 2019, that
20 California had experienced 67 mass shootings in the last 2 decades, and that they
21 have become increasingly deadly, with all but two of the deadliest having occurred
22 between the years of 2011 and 2018. (Rosenberg Decl., Ex. 12, Joaquin Palomino,
23 *Mass Shootings in California: Rare But Increasingly Deadly*, San Francisco
24 Chronicle (July 31, 2019), [https://www.sfchronicle.com/crime/article/Mass-
25 shootings-in-California-Rare-but-14268411.php](https://www.sfchronicle.com/crime/article/Mass-shootings-in-California-Rare-but-14268411.php).) And in 2014, both a study from
26 the Harvard School of Public Health and an FBI report confirmed that the incidence

27 ⁵ Plaintiffs attempt to limit the scope of the Legislature’s focus to “mass
28 school shootings,” but the Legislature’s amendments to Section 27510 through SB
61 following the Poway synagogue shooting in April 2019 demonstrate that the
Legislature aimed to curtail incidences of mass shootings more generally.

1 of mass shootings in the United States *tripled* between 2011 and 2014. (Rosenberg
2 Decl., Ex. 13, Mark Follman, *Yes, Mass Shootings Are Occurring More Often*,
3 Mother Jones (October 21, 2014),

4 <https://www.motherjones.com/politics/2014/10/mass-shootings-rising-harvard/>.)

5 Further, the vast majority of the guns used in mass shootings are procured
6 from dealers or other legal sources. Mother Jones, a news organization that
7 maintains a database cataloguing mass shootings in the United States since 1982,
8 reports that of the 114 mass shootings in the United States from 1982 through
9 August 5, 2019, 74 percent involved firearms the shooter procured legally. (*See*
10 Rosenberg Decl., Ex. 14, Luis Melgar and Lisa Dunn, *Since 1982, 74 Percent of*
11 *Mass Shooters Obtained Their Guns Legally*, Guns & America (Nov. 2, 2018),
12 [https://gunsandamerica.org/story/18/11/02/since-1982-74-percent-of-mass-](https://gunsandamerica.org/story/18/11/02/since-1982-74-percent-of-mass-shooters-obtained-their-guns-legally/)
13 [shooters-obtained-their-guns-legally/](https://gunsandamerica.org/story/18/11/02/since-1982-74-percent-of-mass-shooters-obtained-their-guns-legally/) [citing Mark Follman, Gavin Aronsen, and
14 Deanna Pan, *US Mass Shootings, 1982-2019: Data From Mother Jones’*
15 *Investigation*, Mother Jones (updated Dec. 11, 2019, 9:15 AM), *Open Source*
16 *database available at* [https://www.motherjones.com/politics/2012/12/mass-](https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/)
17 [shootings-mother-jones-full-data/](https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/)]; *see also* Rosenberg Decl., Ex. 15, Larry
18 Buchanan et al., *How They Got Their Guns*, N.Y. Times (updated Feb. 16, 2018),
19 [https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-](https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html)
20 [guns.html](https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html) [*New York Times* reported in February 2018 that “A vast majority of
21 guns used in 19 recent mass shootings were bought legally and with a federal
22 background check,” including the AR-15 style rifle used by 19-year-old Nikolas
23 Cruz in the Parkland, Florida shooting that killed 17 people) (cited with approval
24 as evidence lending “support to [a] legislature’s conclusion that a law proscribing
25 semiautomatic assault weapons . . . will help curtail outbreaks of mass violence” in
26 *Worman v. Healey*, 922 F.3d 26, 40 (1st Cir. 2019))].

27 And although Plaintiffs contend that age is not a significant factor in the
28 prevalence of mass shootings, their own evidence states that *14 percent* of mass

1 shootings were committed by youth aged 16-20. (See ECF No. 21-17, Lott Decl. ¶
2 10, at 6.) The Legislature rightfully could have determined that this number,
3 coupled with both the disproportionate propensity to commit homicide of 18-20
4 year-olds and the lack of emotional and impulse control of Young Adults in that
5 age group, supported a recalibration of access to firearms ensuring both more
6 limited access to deadly weapons, and a focus on firearm safety education.

7 **d. SB 61's Further Limitations on Access to Semi-**
8 **Automatic Centerfire Rifles Are Justified**

9 Limiting access to semi-automatic centerfire rifles for Young Adults who the
10 social science establishes are generally more prone to impulsive or reckless
11 behavior as their brains continue to develop is one rooted in common sense. There
12 can be no debate but that “[s]emiautomatic [] weapons permit a shooter to fire
13 multiple rounds very quickly, allowing him to hit more victims in a shorter period
14 of time,” and that AR-15-style semi-automatic weapons (used with large capacity
15 magazines) “have been the weapons of choice in many of the deadliest mass
16 shootings in recent history, including horrific events in Pittsburgh (2018), Parkland
17 (2018), Las Vegas (2017), Sutherland Springs (2017), Orlando (2016), Newtown
18 (2012), and Aurora (2012).” *Worman*, 922 F.3d at 39.

19 Indeed, Plaintiffs’ own exhibit touting “the practical benefits of being able to
20 engage [shoot] a lot of pigs at a time,” to “take multiple shots without losing sight
21 of an animal” with a semi-automatic rifle (unlike with a bolt action rifle), and to
22 “take a quick follow-up shot” with an AR-15 style rifle “if you’ve got multiple
23 animals or you miss” underscores the inherently dangerous nature of semi-
24 automatic weapons when such weapons are placed in the hands of an untrained or
25 immature shooter: faster shooting, less opportunity for victims to escape, and the
26 ability to effect violence on multiple targets simultaneously. (ECF No. 21-9,
27 Combs Decl., Ex. 18, at 0550-0551.) And the social science and medical
28 community commentary overwhelmingly shows that the damage caused by the

1 higher caliber, higher speed bullets used in “modern sporting rifles” akin to the AR-
2 15 and other semi-automatic centerfire rifles cause more traumatic injuries and
3 result in a significantly higher incidence of persons wounded or killed. (Rosenberg
4 Decl., Ex. 16, Tim Craig et al., *As the Wounded Kept Coming, Hospitals Dealt with*
5 *Injuries Rarely Seen in U.S.*, Wash. Post (Oct. 3, 2017),
6 [https://www.washingtonpost.com/national/health-science/as-the-wounded-kept-](https://www.washingtonpost.com/national/health-science/as-the-wounded-kept-coming-hospitals-dealt-with-injuries-rarely-seen-in-the-us/2017/10/03/06210b86-a883-11e7-b3aa-c0e2e1d41e38_story.html?utm_term=.5a659eec267b)
7 [coming-hospitals-dealt-with-injuries-rarely-seen-in-the-us/2017/10/03/06210b86-](https://www.washingtonpost.com/national/health-science/as-the-wounded-kept-coming-hospitals-dealt-with-injuries-rarely-seen-in-the-us/2017/10/03/06210b86-a883-11e7-b3aa-c0e2e1d41e38_story.html?utm_term=.5a659eec267b)
8 [a883-11e7-b3aa-c0e2e1d41e38_story.html?utm_term=.5a659eec267b](https://www.washingtonpost.com/national/health-science/as-the-wounded-kept-coming-hospitals-dealt-with-injuries-rarely-seen-in-the-us/2017/10/03/06210b86-a883-11e7-b3aa-c0e2e1d41e38_story.html?utm_term=.5a659eec267b) [“If a 9mm
9 bullet strikes someone in the liver . . . that person might suffer a wound perhaps an
10 inch wide, . . . [b]ut if you’re struck in the liver with an AR-15, it would be like
11 dropping a watermelon onto the cement. It just is disintegrated.” (internal quotation
12 marks omitted)]; Rosenberg Decl., Ex.17, Elzerie de Jager, et al., *Lethality of*
13 *Civilian Active Shooter Incidents With and Without Semiautomatic Rifles in the*
14 *United States*, 320 JAMA 10, at 1034-1035 (2018),
15 <https://doi.org/10.1001/jama.2018.11009> [“Semiautomatic rifles are designed for
16 easy use . . . and fire high velocity bullets, enabling active shooters to wound and
17 kill more people per incident.”].⁶ By limiting commercial sales or transfers to
18 Young Adults of these destructive weapons to those with extensive safety and
19 firearms training, the Legislature made reasonable judgments well-suited to protect
20 the public’s inarguable interest in public safety.

21 Further, the limitation on access to semi-automatic centerfire rifles will not
22 substantially burden Young Adults who wish to purchase firearms for self-defense
23 or other lawful uses. *Cf. Pena*, 898 F.3d at 978 (“[B]eing unable to purchase a
24 subset of semiautomatic weapons, without more, does not significantly burden the
25 right to self-defense in the home.” (citing *Heller*, 554 U.S. at 626)). Although semi-
26 automatic rifles and shotguns *have* been popular in the past with Young Adults in
27 California (Department of Justice data shows that between 2014 and December 23,

28 ⁶ *Accord Worman*, 922 F.3d at 39-40 (collecting authorities).

1 2019, Young Adults aged 18-20 completed 31,107 and 3,879 sale or transfer
2 transactions of those firearms, respectively, and 20 transactions involving a
3 combination of semi-automatic rifles and shotguns), Young Adults *also* purchased
4 or received transfer of many other types of long guns in that same period, including
5 pump-action shotguns (21,940 transactions), bolt action rifles (15,740 transactions),
6 pump action rifles (197 transactions), lever action rifles (2,703 transactions), lever
7 action shotguns (45 transactions), single shot shotguns (436 transactions), single
8 shot rifles (223 transactions), and many others. (Leyva Decl. ¶ 10.) There are
9 ample other options—popular options—available for those Young Adults who are
10 (temporarily) unable to procure semi-automatic centerfire rifles by immediate
11 family transfer. (*See* ECF No. 21-9, Combs Decl., Ex. 18 at 00510 [“Bolt action
12 rifles are the most common hunting rifles . . . today.”].)

13 By contrast, the Legislature’s intention to limit access to certain powerful and
14 injurious firearms for those most likely to misuse them certainly “would be
15 achieved less effectively absent” SB 61’s limitation. *Silvester*, 843 F.3d at 829.

16 **II. PLAINTIFFS HAVE NOT ESTABLISHED THAT THEY WILL SUFFER ANY**
17 **IRREPARABLE HARM ABSENT PRELIMINARY INJUNCTIVE RELIEF.**

18 Plaintiffs have not and cannot establish that they will suffer any irreparable
19 harm in the absence of preliminary injunctive relief, because they have not shown
20 that they are likely to succeed on their Second Amendment claim. *See Preminger*
21 *v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Moreover, even if they could
22 establish a likelihood of success on the merits, Plaintiffs’ mere assertion of
23 constitutional claims would not be dispositive on this factor. *See Hohe v. Casey*,
24 868 F.2d 69, 73 (3d Cir. 1989) (“Constitutional harm is not necessarily
25 synonymous with the irreparable harm necessary for issuance of a preliminary
26 injunction,” even in the First Amendment context (citing *City of Los Angeles v.*
27 *Lyons*, 461 U.S. 95, 112-13 (1983)); *Constructors Ass’n of W. Penna. v. Kreps*, 573
28 F.2d 811, 820 n. 33 (3d Cir. 1978) (“[U]nlike First Amendment rights whose

1 deprivation even from minimal periods of time constitutes irreparable injury,”
2 denial of other rights “may be more or less serious depending on the other injuries
3 which accompany such deprivation.”).

4 Here, as discussed above, the Young Adults still retain the ability to possess
5 and use handguns and long guns—including semi-automatic centerfire rifles—for
6 the purposes of self-defense in the home and other lawful purposes. Unless
7 otherwise prohibited by law, they may still receive transfers from parents,
8 grandparents, and spouses, practice at shooting ranges, receive loans of firearms for
9 limited periods of time under supervision or at a range, and purchase non-semi-
10 automatic centerfire long guns if they complete the requisite training and secure a
11 valid hunting license. *See supra* [redacted]. And any inconvenience they experience is
12 inherently only temporary, as they will be free of Section 27510’s age limitations
13 on sales and transfers as soon as they turn 21. *BATF*, 700 F.3d at 207; *Hirschfeld*,
14 2019 WL 4923955, at *6. The harm Young Adults purportedly will suffer by the
15 imposition of this “mere condition or qualification” on commercial transactions
16 with FFLs is not substantial, even it imposes a modest inconvenience. *Hirschfeld*,
17 2019 WL 4923955, at *6 (quotation marks and internal punctuation omitted).

18 Tellingly, *none* of the individual Plaintiffs alleged in the SAC or in their
19 declarations any desire to acquire a semi-automatic centerfire rifle, or even any
20 *particular* firearm. None stated that he could not acquire a firearm of his choosing
21 through a parent, grandparent, or spouse (or that he had tried do so). And none
22 stated that he even attempted to *seek out* firearm training or target practice
23 opportunities at a shooting range or gun club, where he could be loaned a firearm
24 for purposes of target and safe handling practice. *Cf.* Cal. Pen. Code § 27910. The
25 dealer Plaintiffs allege vaguely that they have ceased providing firearm safety and
26 hunting classes, but none alleges that any law enforcement authority has threatened
27 action for violation of Section 27510 based on the provision of any such
28 educational classes, or that such classes are generally unavailable to Young Adults.

1 Plaintiffs also cannot establish irreparable harm because the law they are
2 challenging has been in effect for nearly a year (with the exception of the restriction
3 relating to semi-automatic centerfire rifles imposed by SB 61, which will take effect
4 January 1, 2020). “A preliminary injunction is sought upon the theory that there is
5 an urgent need for speedy action to protect the plaintiff’s rights. By sleeping on its
6 rights a plaintiff demonstrates the lack of need for speedy action,” even in cases
7 alleging deprivation of fundamental rights. *Lydo Enters. v. Las Vegas*, 745 F.2d
8 1211, 1213-14 (9th Cir. 1984) (considering First Amendment claim); *see also*
9 *Oakland Tribune, Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985)
10 (“Plaintiff’s long delay before seeking a preliminary injunction implies a lack of
11 urgency and irreparable harm.”); 11A Charles Alan Wright et al., *Federal Practice*
12 *and Procedure* § 2948.1 (3d ed.) (“A long delay by plaintiff after learning of the
13 threatened harm also may be taken as an indication that the harm would not be
14 serious enough to justify a preliminary injunction.”). Indeed, a delay of eight
15 months—even *less* than Plaintiffs’ delay here—is enough for a district court to
16 “legitimately think it suspicious that the party who asks to preserve the status quo
17 through interim relief has allowed the status quo to change through unexplained
18 delay.” *Miller for & on Behalf of N.L.R.B. v. California Pac. Med. Ctr.*, 991 F.2d
19 536, 544 (9th Cir. 1993) (citation omitted).

20 Moreover, Plaintiffs waited three months after filing their initial complaint and
21 two months after filing their FAC to file their initial preliminary injunction motion,
22 belying any contention that they believed they were experience grave and
23 irreparable harm. “There is no reason why plaintiffs could not have immediately
24 moved for a preliminary injunction upon filing their suit, even assuming they were
25 justified in waiting . . . to bring the action in the first place.” *Wiese v. Becerra*, No.
26 2:17-cv-903-WBS-KJN, 2017 WL 2619110, at *2 (E.D. Cal. June 16, 2017).

27 In short, Plaintiffs here do not seek to preserve the status quo that has existed
28 for the past 12 months; instead, they ask the Court to roll back the clock despite

1 their own failure to move quickly to challenge the implementation of SB 1100,
2 even though at least some subset of the Plaintiffs had knowledge of the effect SB
3 1100 would have on the transfer of long guns through licensed dealers months
4 before SB 1100 was enacted. (*See, e.g.*, ECF No. 21-8, Combs Decl. ¶ 4 [stating
5 “FPC strongly opposed the legislation, Senate Bill 1100, (2017-2018 Reg. Sess.)
6 (“SB 1100”) that led to enactment of the challenged law”]; *id.*, Ex. 4 at 0021.)

7 **III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WEIGH**
8 **AGAINST PRELIMINARY INJUNCTIVE RELIEF.**

9 In exercising sound discretion, a district court “must balance the competing
10 claims of injury and consider the effect of granting or withholding the requested
11 relief,” paying “particular regard for the public consequences in employing the
12 extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24 (quotation marks and
13 citation omitted). Importantly, the balance of the equities and the public interest
14 “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S.
15 418, 435 (2009). Indeed, “[t]he Ninth Circuit instructs that when balancing the
16 hardships ‘of the public interest against a private interest, the public interest should
17 receive greater weight.’” *Rupp*, 2018 WL 2138452, at *13 (denying preliminary
18 injunction regarding provisions of California’s Assault Weapons Control Act).
19 These factors tip decidedly against granting Plaintiffs’ motion.

20 Plaintiffs cannot demonstrate that it is in the public interest to enjoin a duly-
21 enacted law designed to protect the public safety and reduce gun violence; with
22 human lives on the line, the stakes for public safety are just too high. *See United*
23 *States v. Masciandaro*, 638 F.3d 458, 475-76 (4th Cir. 2011) (Wilkinson, J.)
24 (“miscalculat[ion] as to Second Amendment rights” could lead to “unspeakably
25 tragic act[s] of mayhem”); *accord Tracy Rifle & Pistol LLC v. Harris*, 118 F. Supp.
26 3d 1182, 1193-94 (E.D. Cal. 2015), *aff’d* 637 F. App’x 401 (9th Cir. 2016).

27 The modest inconveniences any individual Young Adult may experience in
28 procuring a hunting license in order to purchase a long gun, or lawfully securing a

1 firearm through a non-FFL transfer, do not outweigh the public safety interests
 2 discussed above. *See Burford v. Sun Oil Co.*, 319 U.S. 315, 318 (1943) (“[I]t is in
 3 the public interest that federal courts of equity should exercise their discretionary
 4 power with proper regard for the rightful independence of state governments in
 5 carrying out their domestic policy.” (internal quotation marks omitted)); *Maryland*
 6 *v. King*, 133 S. Ct. 1, 2 (2012) (Roberts, C.J., in chambers) (“Any time a State is
 7 enjoined by a court from effectuating statutes enacted by representatives of its
 8 people, it suffers a form of irreparable injury.” (quotation marks omitted)); *see also*
 9 *Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“[I]t is clear
 10 that a state suffers irreparable injury whenever an enactment of its people or their
 11 representatives is enjoined.”). Accordingly, the law, the balance of harms, and the
 12 public interest all weigh decisively against entry of a preliminary injunction here.

13 **CONCLUSION**

14 Plaintiffs’ motion for preliminary injunction should be denied.

15 Dated: December 27, 2019

16 Respectfully Submitted,

17 XAVIER BECERRA
 18 Attorney General of California
 19 STEPAN A. HAYTAYAN
 20 Supervising Deputy Attorney General

21 /s/ Jennifer E. Rosenberg
 22 JENNIFER E. ROSENBERG
 23 Deputy Attorney General
 24 *Attorneys for Defendants Xavier*
 25 *Becerra, in his official capacity as*
 26 *Attorney General of the State of*
 27 *California, and Brent E. Orick, in his*
 28 *official capacity as Acting Director of*
the Department of Justice Bureau of
Firearms
 Jennifer.Rosenberg@doj.ca.gov