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JANE ROE #1, et al.

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13
14 Jane Roe #1, Jane Roe #2, John Doe
15 #1, John Doe #2, John Doe #3, John
16 Doe #4, John Doe #5, John Doe #6,
Second Amendment Foundation, Inc.,

17 Plaintiff(s),

18 vs.

19
20 United States of America, United
21 States Department of Justice, Federal
22 Bureau of Investigation, Bureau of
23 Alcohol, Tobacco, Firearms and
24 Explosives, William P. Barr (U.S.
25 Attorney General), Christopher Wray
26 (Director, FBI), Regina Lombardo
(Acting Director, BATFE), Xavier
Becerra (California Attorney General),
and Does 1 to 100.

27 Defendant(s).
28

Case No.: 1:19-CV-270-DAD-BAM

**FIRST AMENDED COMPLAINT
FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF AND
RECOVERY OF ATTORNEY
FEES AND COSTS**

SECOND AMENDMENT (Keep and Bear Arms);
FIFTH AMENDMENT (Due Process and Equal Protection);
TENTH AMENDMENT;
FOURTEENTH AMENDMENT (Due Process and Equal Protection);
18 U.S.C. § 925A;
28 U.S.C. § 2412;
42 U.S.C. §§ 1983, 1988

JURY TRIAL DEMANDED

**NOTICE OF CLAIM OF
UNCONSTITUTIONALITY OF
FEDERAL LAW [Fed. R. Civ. P.
5.1]**

**NOTICE OF CLAIM OF
UNCONSTITUTIONALITY OF
STATE LAW [Fed. R. Civ. P. 5.1]**

1 **INTRODUCTION**¹

2 1. This is an action to challenge the policies, practices, customs, and procedures
3 of either (or both) the United States Government and the State of California in
4 their interpretation and implementation of statutory law and various regulations
5 relating to exercising Second Amendment rights by persons; who at one time in
6 their life, were subject to some version of a mental health hold, and for whom
7 there is no current, constitutionally valid finding that they are a danger to
8 themselves or others.

9 2. To the extent that these government entities are correctly interpreting federal
10 and/or state law, this suit seeks a judgment from this Court declaring those statutes
11 and/or regulations violate the United States Constitution to the extent those laws
12 and regulations impose a lifetime ban on exercising a fundamental right, with no
13 mechanism for restoration of that right.

14 **PARTIES**

15 3. Plaintiff JANE ROE #1 is a natural person and citizen of the United States
16 and of the State of California. Her individual facts relevant for this case are:

17 a. The exact date of JANE ROE #1's alleged mental health hold is
18 unknown, but probably occurred in 1988/1989.

19 b. JANE ROE #1 was living with her parents in New Jersey at the time. She
20 was 15 or 16 years old. She believes the hospital where she was treated was
21 Summit Oaks Hospital in Summit, New Jersey.

22 c. Upon inquiry by JANE ROE #1 the hospital in question could provide no
23

24 ¹ The Amended Complaint adds a Tenth Amendment Claim after an
25 exchange of Initial Disclosures revealed that California law has cleared some
26 plaintiffs to own/possess firearms, but Federal law still classifies them as
27 prohibited.

28 This Amended Complaint also clarifies that the Due Process claims against
the federal defendants include a denial of adequate restoration procedures. *See: Mai v. United States*, 2020 U.S. App. LEXIS 7562 (Decided Mar. 11, 2020).

1 record of her being a patient there at any time. Nor does the hospital have any
2 records of any adjudication, or due process hearing, relating to any commitment or
3 mental health pathology.

4 d. JANE ROE #1 was a minor at the time of the treatment. She does not
5 recall being appointed an attorney or guardian ad litem. She does not recall being
6 given notice of a hearing, its consequences, nor being advised of appellate rights.

7 e. JANE ROE #1 attempted to purchase a firearm in January of 2015. She
8 was denied a purchase based on the California Background Check System for
9 firearm purchases which utilizes federal resources and applies federal law in
10 addition to state law in determining firearm purchase eligibility.

11 f. A February 10, 2015 letter from the California Department of Justice -
12 Bureau of Firearms (CA-DOJ-BOF) indicates that JANE ROE #1 has no criminal
13 history that would disqualify her from exercising her Second Amendment rights.

14 g. A February 14, 2015 letter from the CA-DOJ-BOF indicates that the
15 Federal Bureau of Investigations - National Instant Check System (FBI-NICS)
16 database is the cause of the denial.

17 h. The federal government fails to provide an adequate means of reviewing
18 and correcting erroneous denials of firearms purchases, and/or in the alternative
19 the federal government fails to provide adequate an court remedy to restore the
20 right to keep and bear arms, and/or in the alternative California's restoration
21 procedure fails to meet federal standards to expunge mental health
22 disqualifications from the federal NICS system.

23 i. JANE ROE #1 was honorably discharged from the United States Army
24 on or about January 14, 1998. During her service she was awarded: Army
25 Achievement Medal, Joint Meritorious Unit Award, Army Good Conduct Medal,
26 National Defense Service Medal, and Army Service Ribbon. She received firearm
27 training in the United States Army and used various small arms while on active
28 duty.

1 j. JANE ROE #1 desires to exercise her Second Amendments rights to
2 acquire, keep and bear firearms, but is being prevented from doing so by the
3 actions of the Defendants.

4 4. Plaintiff JANE ROE #2 is a natural person and citizen of the United States
5 and of the State of California. Her individual facts relevant for this case are:

6 a. On or about July 5, 2008 JANE ROE #2 was admitted to St. Helena
7 Hospital in Vallejo, California. She was discharged on or about July 11, 2008.
8 The exact nature of her treatment and the statutory authority for her detention are
9 disputed.

10 b. JANE ROE #2 was a minor at the time of the incident. She does not
11 recall there being a hearing. She does not recall being appointed an attorney or
12 guardian ad litem at any time during her stay at the hospital. She does not recall
13 being given notice of any hearing, the consequences of any hearing or her
14 appellate rights relating to any hearing.

15 c. In March of 2017, JANE ROE #2 attempted to purchase a firearm. She
16 was denied a purchase based on the California Background Check System, which
17 utilizes federal resources and applies federal law in addition to state law in
18 determining firearm purchase eligibility.

19 d. Under California Law her right to acquire, keep and bear firearms under
20 the Second Amendment would have been restored by operation of law (5-year
21 suspension) if she had been detained under Welfare and Institutions Code (WIC) §
22 5150 (unadjudicated hold). See WIC § 8103 et seq.

23 e. Upon inquiry with the CA-DOJ-BOF, JANE ROE #2 found out that her
24 treatment at St. Helena Hospital in Vallejo, California in 2008 had been classified
25 as a detention under WIC § 5250 (adjudicated hold) and that her rights were
26 suspended for 10 years by California Law under WIC § 8103 et seq., but somehow
27 is now classified as a life-time prohibition under federal law by the Defendants.
28 See 18 U.S.C. § 922(g)(4).

1 f. In May of 2018, JANE ROE #2 successfully petitioned a court in
2 Mendocino County to restore her right to acquire, keep and bear firearms under
3 WIC § 8103 et seq., notwithstanding this successful petition, both the California
4 background check system and the FBI-NICS system still classifies JANE ROE #2
5 as ineligible to exercise her Second Amendment rights.

6 g. By August 1, 2018, the suspension of JANE ROE #2's Second
7 Amendment rights would have been set aside by operation of law (lapse of 10
8 years) under California's statutory scheme, even if she was properly detained
9 under WIC § 5250 in July of 2008. See WIC § 8103 et seq.

10 h. Therefore, JANE ROE #2's rights have been restored (if indeed they
11 were constitutionally suspended) by BOTH operation of law and an evidentiary
12 hearing in a California superior court.

13 i. JANE ROE #2 currently works for a local law enforcement agency in a
14 non-peace officer position. She has been encouraged to, and very much desires to,
15 apply for work as a peace officer and has been offered a position contingent on
16 obtaining a firearms clearance. Defendants' wrongful conduct is preventing that
17 and may be causing her monetary damages in addition to the various
18 Constitutional violations.

19 j. Furthermore, JANE ROE #2 still wants to exercise her right to acquire,
20 keep and bear firearms for self-defense, in addition to pursuit of employment
21 opportunities that require a firearm clearance.

22 k. Furthermore, as JANE ROE #2's rights have been restored by state law,
23 but she still suffers a disability under federal law, the federal government's failure
24 to provide an adequate means of reviewing and correcting erroneous denials of
25 firearms purchases, and/or in the alternative providing a federal remedy to restore
26 the right to keep and bear arms, and/or California's deficient restoration
27 procedures violate her constitutional rights.

28 5. Plaintiff JOHN DOE #1 is a natural person and citizen of the United States

1 and of the State of California. His individual facts relevant for this case are:

2 a. JOHN DOE #1 was placed on a mental health hold pursuant to WIC §
3 5250 (adjudicated hold) in August of 2011.

4 b. Under California law, an adjudicated hold under WIC § 5250 suspends
5 the right to acquire, keep and bear firearms for a period of 10 years, unless relief is
6 sought under WIC § 8103 et seq.

7 c. Defendants interpret 18 U.S.C. § 922(g)(4) as imposing a life-time ban
8 on exercising Second Amendment rights.

9 d. In January of 2013, in Sacramento County Superior Court, a hearing
10 under WIC § 8103 was conducted in which JOHN DOE #1 petitioned to have his
11 rights to acquire, keep and bear firearms restored. The People of the State of
12 California were represented by the District Attorney's Office. The Court granted
13 JOHN DOE #1's petition and relieved him of firearm disabilities. [Note: The
14 evidentiary burden, burden of proof, and elements of proof are the same whether a
15 court is hearing a petition for restoration of rights after an adjudicated (WIC §
16 5250) or an unadjudicated (WIC § 5150) hold.] See WIC §§ 8103(f) and 8103(g).

17 e. Plaintiff JOHN DOE #1 is being denied the right to acquire, keep and
18 bear firearms because he cannot pass the background check. This denial is being
19 caused by the wrongful conduct of Defendants.

20 f. Furthermore, as JOHN DOE #1's rights have been restored by state law,
21 but he still suffers a disability under federal law, the federal government's failure
22 to provide an adequate means of reviewing and correcting erroneous denials of
23 firearms purchases, and/or in the alternative providing a federal remedy to restore
24 the right to keep and bear arms, and/or California inadequate procedures violate
25 his constitutional rights.

26 g. Plaintiff JOHN DOE #1 still wants to exercise his right to acquire, keep
27 and bear firearms for self-defense and other lawful purposes.

28 6. Plaintiff JOHN DOE #2 is a natural person and citizen of the United States

1 and of the State of California. His individual facts relevant for this case are:

2 a. JOHN DOE #2 was admitted to Sharp Mesa Vista Hospital in San
3 Diego, California for a mental health evaluation on or about April 10, 2015.

4 b. On December 19, 2016, in San Diego County Superior Court, with the
5 People of California represented by the District Attorney of San Diego County
6 JOHN DOE #2's WIC § 8103 petition was granted and his right to acquire, keep
7 and bear firearms was restored.

8 c. Plaintiff JOHN DOE #2 is being denied the right to acquire, keep and
9 bear firearms because he cannot pass the background check. This denial is being
10 caused by the wrongful conduct of Defendants.

11 d. Furthermore, as JOHN DOE #2's rights have been restored by state law,
12 but he still suffers a disability under federal law, the federal government's failure
13 to provide an adequate means of reviewing and correcting erroneous denials of
14 firearms purchases, and/or in the alternative providing a federal remedy to restore
15 the right to keep and bear arms, and/or in the alternative California's inadequate
16 restoration procedures violate his constitutional rights.

17 e. Plaintiff JOHN DOE #2 still wants to exercise his right to acquire, keep
18 and bear firearms for self-defense and other lawful purposes.

19 7. Plaintiff JOHN DOE #3 is a natural person and citizen of the United States
20 and of the State of California. His individual facts relevant for this case are:

21 a. On or about June 12, 2012, JOHN DOE #3 was placed on a mental health
22 hold after a "Certification Review Hearing" that purported to place him on a hold
23 pursuant to WIC § 5150. The ambiguity being that hearings are usually only
24 required for holds under WIC § 5250.

25 b. Regardless of the statutory authority for the hearing, JOHN DOE #3 was
26 never offered an attorney, he was never appointed an attorney, he was never
27 appointed a conservator, he was never advised of the full consequences of the
28 hearing (i.e., loss of Second Amendment rights), nor was he advised of his

1 appellate rights.

2 c. If JOHN DOE #3 was subjected to only a WIC § 5150 hold, his rights
3 would have been restored by operation of law, after a five-year suspension in late
4 June of 2017.

5 d. In a July 1, 2017 letter, JOHN DOE #3 was informed by CA-DOJ-BOF
6 that he is ineligible to acquire, keep and bear firearms.

7 e. In a letter dated July 26, 2017, JOHN DOE #3 received a letter from the
8 CA-DOJ-BOF indicating that he has no criminal history that would prevent him
9 from acquiring, keeping and bearing firearms.

10 f. Furthermore, as JOHN DOE #3's rights have been restored by state law,
11 but he still suffers a disability under federal law, the federal government's failure
12 to provide an adequate means of reviewing and correcting erroneous denials of
13 firearms purchases, and/or in the alternative providing a federal remedy to restore
14 the right to keep and bear arms, and/or California's inadequate restoration
15 procedures violate his constitutional rights.

16 g. Plaintiff JOHN DOE #3 still wants to exercise his right to acquire, keep
17 and bear firearms for self-defense and other lawful purposes.

18 8. Plaintiff JOHN DOE #4 is a natural person and citizen of the United States
19 and of the State of Oregon. His individual facts relevant for this case are:

20 a. On January 3, 1996, JOHN DOE #4 was admitted to Cedar Vista
21 Hospital in Fresno, California, for a mental health evaluation and discharged on
22 January 11, 1996. There is no indication this evaluation involved any hearing or
23 adjudication of any kind. Therefore, it is alleged on information and belief that
24 this hold was conducted pursuant to WIC § 5150.

25 b. On or about October 5, 1996, JOHN DOE #4 was admitted for a second
26 time to Cedar Vista Hospital in Fresno, California, for a mental health evaluation
27 and was discharged on October 15, 1996. He was then admitted to a voluntary
28 program and discharged on November 22, 1996. There is prima facie evidence that

1 this second evaluation may have involved a hearing as JOHN DOE #4 was advised
2 of the consequences of the hearing and his right to petition a court later for relief
3 from firearm disabilities and/or that his right to possess firearms would only be
4 suspended for five (5) years under California and restored by operation of law if
5 he did not seek a court hearing. He was not appointed a lawyer, nor a conservator,
6 nor was he advised of his appellate rights.

7 c. On or about February 13, 2008, JOHN DOE #4 received a letter from
8 FBI-NICS indicating that he was disqualified from owning, acquiring or
9 possessing firearms based on his adjudicated mental health status.

10 d. On or about July 9, 2008, JOHN DOE #4 received a letter from
11 CA-DOJ-BOF indicating that he has no criminal history maintained by that
12 agency.

13 e. On or about June 2, 2010, JOHN DOE #4 received a letter from
14 CA-DOJ-BOF indicating that he is ineligible to acquire, own or possess firearms.

15 f. On or about July 27, 2010, JOHN DOE #4 Filed a Petition for Relief
16 from Firearms Prohibition under WIC § 8103, despite more than ten years having
17 lapsed from his hospitalization. (i.e., The disqualification should have expired by
18 operation of law.)

19 g. On September 24, 2010, in Fresno County, with the People represented
20 by the District Attorney, the Superior Court, denied the petition, stating: "[...]
21 Motion for Relief of Firearm Prohibition is DENIED. The Court cannot grant the
22 requested relief the petition is seeking. Prohibition period lapsed, 10/4/2001." In
23 other words, the case was not resolved on the merits because the Judge considered
24 the matter mooted by operation of law. (i.e., the passage of time.)

25 h. Furthermore, as JOHN DOE #4's rights have been restored by state law,
26 but he still suffers a disability under federal law, the federal government's failure
27 to provide an adequate means of reviewing and correcting erroneous denials of
28 firearms purchases, and/or in the alternative providing a federal remedy to restore

1 the right to keep and bear arms, and/or California inadequate restoration
2 procedures violate his constitutional rights.

3 i. JOHN DOE #4 still wants to exercise his right to acquire a firearm for
4 self-defense and other lawful purposes. He currently lives in Oregon and still
5 cannot pass the background check based on his mental health records that are
6 maintained by Defendant CA-DOJ-BOF and/or the FBI-NICS.

7 9. JOHN DOE #5 is a natural person and citizen of the United States and of the
8 State of Nevada. His individual facts relevant for this case are:

9 a. On or about April 30, 2007, JOHN DOE #5 was admitted to Del Amo
10 Hospital in Torrance, California, for a mental health evaluation. He was 15 years
11 old at the time. He was discharged on or about May 8, 2007.

12 b. No records exist at this time to indicate whether the evaluation of JOHN
13 DOE #5 was voluntary or involuntary or conducted under the non-adjudicated
14 hold (WIC § 5150) or an adjudicated hold (WIC § 5250).

15 c. JOHN DOE #5 does not recall ever having been advised of any hearings,
16 the consequences of any hearing, his appellate rights, nor was he appointed an
17 attorney or guardian ad litem.

18 d. Despite more than 10 years since the termination of any evaluation or
19 treatment, JOHN DOE #5 is being denied the right to acquire, keep and bear
20 firearms, despite his desire to exercise those rights.

21 e. Furthermore, as JOHN DOE #5's rights have been restored by state law,
22 but he still suffers a disability under federal law, the federal government's failure
23 to provide an adequate means of reviewing and correcting erroneous denials of
24 firearms purchases, and/or in the alternative providing a federal remedy to restore
25 the right to keep and bear arms, and/or California's inadequate restoration
26 procedures violate his constitutional rights.

27 10. JOHN DOE #6 is a natural person and citizen of the United States and of the
28 State of California. His individual facts relevant for this case are:

1 a. On or about February 22, 2016, JOHN DOE #6 was discharged from
2 Newport Bay Hospital in Newport, California. The nature of the mental health
3 evaluation (whether it was lawfully conducted under WIC § 5150 or § 5250) is in
4 dispute. JOHN DOE #6 does not recall being advised of his rights or being
5 offered the right to hire an attorney. JOHN DOE #6 is a man of means and could
6 have afforded to and would have hired counsel given the opportunity. Nor was
7 JOHN DOE #6 advised that he would potentially be subject to a life-time
8 prohibition on exercising his Second Amendment rights.

9 b. On or about January 15, 2018, JOHN DOE #6 caused a "Notice of
10 Hearing Re: Relief from Firearms Prohibition" to be filed in Mendocino Superior
11 Court. This was a petition under WIC § 8103 to restore JOHN DOE #6's right to
12 acquire, keep and bear firearms. The People of California were represented by the
13 District Attorney's office.

14 c. The California Department of Justice, Firearms Division, Mental Health
15 Unit was given notice of the proceedings and the hearing, that agency did not
16 appear at any hearings nor file any pleadings in the matter.

17 d. On November 15, 2018, the Superior Court of Mendocino County issued
18 an order, based in part on an expert report submitted by JOHN DOE #6 during
19 discovery, granting the petition under WIC § 8103, specifically ordering that:

- 20 - JOHN DOE #6 was relieved from all disabilities arising out of his
21 treatment, whether he was detained under WIC § 5150 or § 5250.
- 22 - Notice of this relief be sent to the California Department of
23 Justice, Firearms Bureau - Mental Health Unit.
- 24 - That the California Department of Justice notify all other
25 relevant government agencies, the Federal Bureau of Investigations,
26 the National Instant Check System, and the Bureau of Alcohol,
27 Tobacco, Firearms, and Explosives that JOHN DOE #6 is no longer
28 prohibited from acquiring, keeping and bearing firearms.

1 e. On or about December 17, 2018, JOHN DOE #6 was notified by the
2 CA-DOJ-BOF that he remains ineligible to possess or purchase firearms.

3 f. JOHN DOE #6 still wants to exercise his right to acquire a firearm for
4 self-defense. He cannot pass the background check based on his mental health
5 records that are maintained by Defendant CA-DOJ-BOF and/or the FBI-NICS.

6 g. Furthermore, as JOHN DOE #6's rights have been restored by state law,
7 but he still suffers a disability under federal law, the federal government's failure
8 to provide an adequate means of reviewing and correcting erroneous denials of
9 firearms purchases, and/or in the alternative providing a federal remedy to restore
10 the right to keep and bear arms, and/or California's inadequate restoration
11 procedures violate his constitutional rights.

12 11. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a
13 non-profit membership organization incorporated under the laws of Washington
14 with its principal place of business in Bellevue, Washington. SAF has over
15 650,000 members and supporters nationwide, including California. The purposes
16 of SAF include education, research, publishing and legal action focusing on the
17 Constitutional right to privately owned and possess firearms, and the
18 consequences of gun control. SAF brings this action on behalf of itself and its
19 members. SAF brings lawsuits like this because the fees and costs of prosecuting
20 such actions often exceeds the personal resources of individual gun owners and
21 value of their gun collections.

22 12. Defendant United States of America is a proper defendant in this action
23 pursuant to 5 U.S.C. § 702 and 18 U.S.C. § 925A.

24 13. Defendant U.S. Department of Justice is the principal agency charged with
25 enforcing the unconstitutionally broad prohibition under 18 U.S.C. § 922(g)(4),
26 thus preventing Plaintiffs from obtaining firearms based on alleged or actual
27 mental health commitments.

28 14. Defendant Federal Bureau of Investigation is charged with implementing and

1 interpreting statutory law and regulations related to the National Instant Check
2 System (NICS).

3 15. Defendant Bureau of Alcohol, Tobacco, Firearms and Explosive, (BATFE) is
4 the arm of the Department of Justice responsible for prevention of federal offenses
5 involving the use, manufacture, and possession of firearms, including the
6 unconstitutionally broad ban challenged in this case. Defendant ATF also
7 regulates, via licensing, the sale, possession, and transportation of firearms and
8 ammunition in interstate commerce. ATF is currently enforcing the laws, customs,
9 practices and policies complained of in this action.

10 16. WILLIAM P. BARR is the United States Attorney General and is charged
11 with interpretation and enforcement of federal firearms laws, including the Federal
12 Bureau of Investigation, the National Instant Check System, and has supervisory
13 control over the Bureau of Alcohol, Tobacco, Firearms and Explosives.

14 17. Defendant CHRISTOPHER A. WRAY is the Director of the Federal Bureau of
15 Investigations and is charged with interpretation and enforcement of federal
16 firearm laws, including the National Instant Check System.

17 18. Defendant REGINA LOMBARDO is the Acting Director, Head of the
18 Bureau of Alcohol, Tobacco, Firearms and Explosives and is charged with
19 enforcing federal firearms laws and regulations at issue in this matter.

20 19. Defendant XAVIER BECERRA is the Attorney General of the State of
21 California and is charged with the interpretation and enforcement of California
22 (and Federal) firearms laws and has supervisory control over the California
23 Department of Justice and its subordinate agencies and bureaus, including but not
24 limited to the Bureau of Firearms.

25 20. At this time, Plaintiffs are ignorant of the names any additional individuals
26 or government agencies giving rise to Plaintiffs' claims. Plaintiffs therefore name
27 these individuals as DOE Defendants and reserves the right to amend this
28 complaint when their true names are ascertained. Furthermore, if/when additional

1 persons and entities are discovered to have assisted and/or lent support to the
2 wrongful conduct of the Defendants named herein, Plaintiff reserves the right to
3 amend this complaint to add those persons and/or entities as Defendants.

4 **JURISDICTION AND VENUE**

5 21. This Court has subject matter jurisdiction pursuant to 18 U.S.C. § 925A, 28
6 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988.

7 22. This Court has supplemental jurisdiction over any state law causes of action
8 that may arise under 28 U.S.C. § 1367.

9 23. Venue for this action is proper under 28 U.S.C. §§ 1391 and/or the Civil
10 Local Rules for bringing an action in this district.

11 **RELATED CASE**

12 24. This case involves similar questions of fact and law to *Silvester v. Harris*, 41
13 F. Supp. 3d 927 (E.D. Cal., 2014), and *Silvester v. Harris*, 843 F.3d 816 (9th Cir.
14 2016). E.g., Standards of review for Second Amendment rights and appropriate
15 constitutional tests for adjudicating Second Amendment claims. Additionally, that
16 case required the presiding trial judge to review evidence on the unique aspects of
17 California's comprehensive background check system. Assignment of this matter
18 to the same Judge would prevent duplication of labor and conservation of judicial
19 resources.

20 **CONDITIONS PRECEDENT**

21 25. All conditions precedent have been performed, and/or have occurred, and/or
22 have been excused, and/or would be futile. FURTHERMORE, During March and
23 May of 2018, Plaintiffs caused multiple letters, emails, and releases (permitting
24 the Defendants to communicate directly with Plaintiffs' counsel) to the Defendants
25 trying to resolve the violations set forth herein. Therefore, Defendants (or their
26 agents) are readily familiar with the facts and circumstances (and identity) of
27 JANE ROE #1 and #2, and JOHN DOES #1 through #5 and they were advised that
28 JOHN DOE #6 would be added if litigation ensued.

BACKGROUND FACTS

1
2 26. The National Instant Criminal Background Check System (NICS) is used by
3 Federal Firearms Licensees, importers, and manufacturers (collectively, "dealers")
4 to determine whether a prospective purchaser is legally authorized to purchase
5 (and possess) firearms, which are necessary for exercising Second Amendment
6 rights. The process begins when the person provides a dealer with photo
7 identification and a completed Bureau of Alcohol, Tobacco, Firearms and
8 Explosives (ATF) Form 4473. The form asks questions corresponding to the
9 categories of persons prohibited by federal law from possessing firearms.
10 Providing false information is a federal crime.

11 27. The FBI is responsible for maintaining data integrity during all NICS
12 operations that are managed and carried out by the FBI. This responsibility
13 includes:

- 14 a. Ensuring the accurate adding, canceling, or modifying of NICS Index
15 records supplied by Federal agencies;
- 16 b. Automatically rejecting any attempted entry of records into the NICS
17 Index that contains detectable invalid data elements;
- 18 c. Automatic purging of records in the NICS Index after they are on file for
19 a prescribed period of time; and
- 20 d. Quality control checks in the form of periodic internal audits by FBI
21 personnel to verify that the information provided to the NICS Index remains valid
22 and correct.

23 28. During a firearm purchase, if a prospective purchaser answers "yes" to any
24 questions (including questions regarding mental health evaluations), the sale must
25 be denied. Otherwise, the dealer generally must request a NICS check from the
26 Federal Bureau of Investigation (FBI) or their state point of contact. The transfer
27 can occur only if the check does not identify prohibitive criteria, or if it takes more
28 than 3 business days. If 3 business days pass without a determination that the

1 transaction can be approved or must be denied, the dealer can either complete the
2 sale (unless prohibited by local law) or wait for the check to be performed.

3 29. The NICS served 49,547 Federally Licensed Firearms Dealers (FFLs)
4 conducting business in 36 states, 5 U.S. territories, and the District of Columbia as
5 late as 2015. The FFLs contacted the NICS Section either via telephone or the
6 NICS E-Check via the Internet to initiate the required background checks. In
7 2015, 68 percent of all transactions were initiated via the NICS E-Check. For 7 of
8 the 36 states, the NICS Section processes all long gun transactions, while the
9 states conduct their own background checks on handguns and handgun permits. In
10 addition, 13 states participate with the NICS in a Full Point of Contact (Full-POC)
11 capacity by performing all background checks for their states' FFLs.

12 30. California is one of those Full-POC States charged with overall
13 responsibility for the administration and usage of the FBI-NICS within a state.
14 This designation as a Full-POC, means California must ensure that a certain
15 minimum service baseline is provided. Those requirements include:

16 a. The POCs must access the NICS as part of their background check
17 process. The POCs are not required, but are encouraged, to search available state
18 data sources as part of the background checks they perform.

19 b. The POCs shall ensure that all FFLs within their state are provided
20 access to the NICS through a designated state POC or network of state or local
21 agencies. It is recommended that a single state POC be established.

22 c. The POCs, with the assistance of the ATF and the FBI, shall notify the
23 FFLs in its state regarding the procedures for contacting the POC and all other
24 procedures related to firearm background checks.

25 d. The POCs will have automated access to the NICS via the NCIC
26 telecommunications network.

27 e. The POCs will offer telephone access to the FFLs, at a minimum,
28 between 10 am and 9 pm, Monday through Saturday, and during normal retail

1 business hours within their state on Sundays.

2 f. The POCs shall have procedures in place that provide assurance that
3 NICS background checks are initiated only by authorized personnel and only for
4 purposes authorized under the Brady Act.

5 g. The POCs shall provide supporting processes and personnel to review
6 record data, make disqualification decisions, respond to the FFLs, and manage an
7 appeal process.

8 h. The POCs shall not deny the purchase of a firearm based on an arrest
9 without a disposition. If such a practice is occurring, a state law must be in place
10 authorizing the practice.

11 i. The POCs shall deny firearm sales based on criteria equal to or more
12 stringent than imposed by the GCA of 1968 (18 U.S.C. §922), as amended.

13 j. The POCs shall ensure that they adhere to all applicable federal laws
14 regarding the NICS.

15 k. The POCs shall adhere to federal guidelines which dictate the purging of
16 proceed transaction data according to the current retention period. If this time limit
17 is exceeded, there must be an independent state law regarding firearm transactions
18 authorizing this practice.

19 l. The POCs shall ensure that a state-generated State Transaction Number
20 (STN) for a NICS inquiry can be cross-referenced with unique identifying
21 numbers generated by the NICS.

22 m. The POCs shall ensure that all appropriate inquiries are made and
23 transmitted through the United States Department of Immigration and Customs
24 Enforcement (ICE) on all non-U.S. Citizen transactions.

25 n. If utilized within their state, the POCs shall ensure that all Identification
26 for Firearm Sales (IFFS) flags are being properly set for Interstate Identification
27 Index (III) records.

28 o. The POCs shall not deny a transaction based solely upon the existence of

1 a protective order without consideration being given to the Brady indicator.

2 p. The POCs in decentralized states shall ensure that information from the
3 ATF and the FBI is disseminated to all agencies performing NICS background
4 checks. The POCs should provide guidance and training regarding this
5 information in order to ensure consistency throughout the state.

6 q. The POCs must ensure the transmittal of final transaction status to the
7 NICS in accordance with federal rule 28 C.F.R. 25.

8 31. In addition to its status as a Full-POC State for federal background checks to
9 ensure compliance with federal laws at the point-of-sale for firearms, California
10 maintains its own sophisticated, though parallel, system for ensuring compliance
11 with California's notoriously more strict firearm laws. *See generally, Silvester v.*
12 *Harris*, 41 F. Supp. 3d 927 (E.D. Cal., 2014), and *Silvester v. Harris*, 843 F.3d 816
13 (9th Cir. 2016). [E.g., Although un-adjudicated mental health holds (WIC § 5150)
14 have no federal consequences, firearm dealers in California must deny the sale of a
15 firearms if the gun purchaser has been subjected to such a hold under California
16 law and that gun-buyer has not applied for relief under WIC § 8103 et seq., or
17 waited the statutory five years.]

18 32. The "NICS Improvement Amendments Act of 2007" (110 P.L. 180, 121 Stat.
19 2559) (hereafter "the Act") contains amendments to federal law setting forth
20 updated standards for adjudicated commitments related to mental health
21 determinations. Furthermore, the Act requires a process for relief from disabilities
22 attributable to mental health determinations. The Act also provides funding for
23 participating states to modernize and update their systems for the reporting of
24 disqualifying characteristics that come to the attention of those participating states.

25 33. California does not currently participate in the funding program set up
26 through the Act, however California has its own modern, comprehensive,
27 background check system that is equal to or superior to the minimum
28 qualifications set forth in the Act. Furthermore, California statutory law already

1 has two processes (hearings and passage of time) for restoration of Second
2 Amendment rights after a mental health disqualification. Those processes meet or
3 exceed the requirements set forth in the Act. (i.e., Plaintiffs should not be denied
4 the exercise of fundamental rights based on the intricacies of federal revenue
5 sharing, when the underlying public safety interests are adequately addressed by
6 existing, overlapping federal and state law.)

7 34. Finally, the lack of a process for relief from disabilities based on mental
8 health determinations, that are sometimes decades old, was found to violate the
9 Constitutional rights of a prospective gun-buyer in *Tyler v. Hillsdale County*
10 *Sheriff's Department*, 837 F.3d 678 (6th Cir. 2016).

11 **CASE SPECIFIC FACTS**

12 35. Plaintiff JANE ROE #1 is the only Plaintiff who has not had contact with a
13 mental health provider located in California, even though California apparently
14 transmitted disqualifying criteria to FBI-NICS when she attempted to purchase a
15 firearm. Therefore, it is assumed that California's Full-POC background check,
16 which is denying her the right to purchase a firearm here in California, is based
17 solely on New Jersey's report of a mental health hold to FBI-NICS. JANE ROE
18 #1 should not be required to hire a lawyer in New Jersey to restore her right to buy
19 a firearm in that state, which would apparently be a futile act anyway, because
20 JANE ROE #1 has no intention of returning to New Jersey or living there.
21 Furthermore, she is prohibited by federal law from being a resident of this state
22 and seeking to buy a firearm in another state. 18 U.S.C. § 922(a)(3) and (b)(3).
23 The restoration of JANE ROE #1's rights can be obtained in one of three ways:

24 a. This Court can find that the original alleged commitment, failed to
25 provide adequate due process safe guards for a "hearing" that deprives an
26 otherwise law-abiding citizen of a fundamental right for the rest of her life. The
27 Court can set-aside the alleged commitment and order these Defendants to purge
28 their records of this disability against Plaintiff JANE ROE #1.

1 b. This Court can find that the federal government should be estopped from
2 asserting a firearm disability against Plaintiff JANE ROE #1, because that same
3 government relied on her as an adult to bear arms in defense of this nation, after
4 the alleged commitment, which occurred when she was a minor.

5 c. This Court can find that Plaintiff JANE ROE #1, is subject to California
6 statutory law, and as the alleged commitment took place more than 10 years ago,
7 and her rights are restored by the passage of time, by operation of law. See WIC §
8 8100 *et seq.*

9 36. Every other Plaintiff (excepting JANE ROE #1) in this matter has had contact
10 with a mental health provider in California and therefore have mental health
11 records maintained by the CA-DOJ-BOF.

12 37. Plaintiffs JANE ROE #2, JOHN DOE #3, JOHN DOE #5, and JOHN DOE
13 #6 suffered due process violations from woefully inadequate, constitutionally
14 defective alleged mental health adjudications. They were not advised of the
15 consequence of the hearing, they were not given an opportunity to have counsel,
16 they were not advised of their appellate rights.

17 38. Furthermore, JANE ROE #2 and JOHN DOE #5 were both minors at the time
18 of the alleged adjudications and neither were appointed a guardian ad litem nor
19 were they appointed counsel.

20 39. Plaintiffs JANE ROE #2, JOHN DOE #1, JOHN DOE #2, and JOHN DOE
21 #6, have all had hearings under California's WIC § 8103 to restore their rights and
22 the Superior Court Judges granted their petitions and restored their rights after full
23 adversarial hearings.

24 40. Plaintiff JOHN DOE #4 also participated in a hearing under California's WIC
25 § 8103, but the Superior Court Judge's sole reason for denying relief was that the
26 issue was moot based on the passage of time and operation of law. (i.e., There was
27 no hearing on the merits.)

28 41. Plaintiffs JANE ROE #1, JANE ROE #2, JOHN DOE #3 (if disqualification

1 is based on WIC § 5150 and not § 5250), JOHN DOE #4, and JOHN DOE #5 all
 2 qualify for restoration of their rights (assuming they were legitimately suspended)
 3 by the passage of time through operation of law. See WIC § 8100 *et seq.*

4 42. All Plaintiffs have been denied a fundamental right because the Federal
 5 Government refused to recognize state law restoration procedures and/or refuses
 6 to establish a constitutionally adequate review/restoration procedure under federal
 7 law. This failure to provide a judicial process may also violate the Federal
 8 Administrative Procedures Act. See: 5 U.S.C. §§ 701 *et seq.*

9 43. A table showing why Plaintiffs should not be classified among the
 10 mental-health prohibited class for exercising Second Amendment rights:

	Roe #1	Roe #2	Doe #1	Doe #2	Doe #3	Doe #4	Doe #5	Doe #6
Estoppel	x							
Due Process Violation ²	x	x			x	x	x	x
Equal Protection Violation	x	x	x	x	x	x	x	x
Minor When Held	x	x					x	
Lapse of Time	x?	x			x?	x	x	
Won Hearing to Restore		x	x	x		x?		x
Due Process Violation ³	x	x	x	x	x	x	x	x

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 20 44. There are several theories for WHY constitutional violations are keeping
 21 Plaintiffs from exercising a fundamental right, with the most benign explanation
 22 being bureaucratic inertia, and the most sinister being a hostility to Second
 23 Amendment rights by government actors and policy makers.

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 25 ² Initial hearing lacked constitutionally adequate indicia of fundamental
 26 fairness.

27 ³ The federal government’s failure to provide a review/restoration procedure
 28 of the right to keep and bear arms after a mental health suspension and/or
 California’s inadequate restoration procedures.

1 a. Every Plaintiff is eligible to buy guns under California law based on any
2 number of theories.

3 b. California may be interpreting 18 U.S.C. § 922(g)(4) as a lifetime ban,
4 and therefore denying the Plaintiffs the right to purchase a gun because California
5 is a Full-POC state charged with interpreting federal and state law. If that is the
6 case, then California's interpretation of federal law must be corrected and brought
7 into line with the modification set forth under the "NICS Improvement
8 Amendments Act of 2007."

9 c. If FBI-NICS is showing incorrect (or defective) records from New Jersey
10 (for JANE ROE #1) and California (for the remaining Plaintiffs), and thus issuing
11 a disqualification from their database, then CA-DOJ-BOF and FBI-NICS are
12 jointly and severally at fault for maintaining erroneous records and/or for not
13 updating their records with new and correct information.

14 d. If this Court finds that California is exempt from the "NICS
15 Improvement Act of 2007" and residents of this state are ineligible for the
16 restoration of rights procedures set forth in that law, then Plaintiffs are being
17 denied Equal Protection of the law under either (or both) the Fifth Amendment
18 and Fourteenth Amendments to the United States Constitution.

19 e. Finally, if this Court ultimately finds that the relevant agencies are
20 correctly interpreting 18 U.S.C. § 922(g)(4) as a lifetime ban, with no provision
21 for restoration of rights for these plaintiffs, then this Court will have to subject that
22 federal statute to constitutional analysis as a violation of the Second Amendment
23 to the United States Constitution. See, *Tyler v. Hillsdale County Sheriff's*
24 *Department*, 837 F.3d 678 (6th Cir. 2016).

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1 **FIRST CAUSE OF ACTION**

2 [Violation of Second Amendment – As Applied Challenge]⁴

3 45. Paragraphs 1 through 44 are incorporated by reference.

4 46. The Second Amendment provides that the People's "right to keep and bear
5 arms, shall not be infringed."

6 47. Defendants, either jointly or severally, have misapplied state and/or federal
7 law in a way that denies Plaintiffs the ability to lawfully acquire the means of
8 exercising their Second Amendment rights, after a mandated background check,
9 through the purchase of a firearm at a licensed firearms dealer in the community
10 where they reside.

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12 **SECOND CAUSE OF ACTION**

13 [Violation of Second Amendment – Facial Challenge]⁵

14 48. Paragraphs 1 through 47 are incorporated by reference.

15 49. The Second Amendment provides that the People's "right to keep and bear
16 arms, shall not be infringed."

17 50. If 18 U.S.C. § 922(g)(4) imposes a lifetime ban, with no means for
18 restoration, on the right to acquire, keep and bear arms, for any person who has
19 been placed on an adjudicated hold for a mental health observation, it is an
20 unconstitutional violation of the Second Amendment and must give way to the
21 higher law of the U.S. Constitution.

22 _____
23 ⁴ Plaintiffs are aware of the recent Ninth Circuit decision in *Mai v. United*
24 *States*, 2020 U.S. App. LEXIS 7562 (Decided March 11, 2020). But plaintiffs
25 also believe that this case can be distinguished on its facts and therefore wish to
26 preserve this claim.

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THIRD CAUSE OF ACTION

[Violation of Fifth Amendment – Due Process of Law and Equal Protection]
[Against Federal Defendants]

51. Paragraphs 1 through 50 are incorporated by reference.

52. The Fifth Amendment to the United States Constitution provides that no person shall be deprived of "life, liberty or property" without due process of law. This amendment also extends "equal protection" guarantees to all persons in the United States, thus ensuring that federal law is uniformly applied without regard to state citizenship.

53. To the extent that any of the individual Plaintiffs are subject to 18 U.S.C. § 922(g)(4), their "commitment hearings" were constitutionally deficient as they lacked fundamental indicia of fairness, such as: Adequate Notice, Right to Counsel, Right to Guardian ad Litem or Conservator, Effective Appellate Notice and Remedies, thus violating due process of law.

54. To the extent that any of the individual Plaintiffs are subject to 18 U.S.C. § 922(g)(4), any remedies for restoration of fundamental rights under federal law must be uniform throughout the United States, and/or all states must meet minimum standards for restoration of rights after mental health holds, without regard to any particular state's participation in federal programs or receipt of federal monies. To the extent that federal law does not require such uniform standards, Plaintiffs are being denied equal protection of the law.

55. To the extent that any of the individual Plaintiffs have had their rights restored under state law, yet remain prohibited under federal; and to the extent that the federal government refuses to provide a constitutionally adequate review/restoration procedure of the "right to keep and bear arms" after a mental health hold, 18 U.S.C. § 922(g)(4) violates due process of law and/or the Administrative Procedure Act. 5 U.S.C. § 701 *et seq.*

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FOURTH CAUSE OF ACTION

[Violation of Fourteenth Amendment – Due Process of Law and Equal Protection]
[Against State Defendants]

56. Paragraphs 1 through 55 are incorporated by reference.

57. The Fourteenth Amendment to the United States Constitution provides that no person shall be deprived of "life, liberty or property" without due process of law. The Fourteenth Amendment also mandates "equal protection the law" for all persons by state actors implementing state policies.

58. To the extent that any of the individual Plaintiffs are subject to 18 U.S.C. § 922(g)(4), their "commitment hearings" were constitutionally deficient as they lacked fundamental indicia of fairness, such as: Adequate Notice, Right to Counsel, Right to Guardian ad Litem or Conservator, Effective Appellate Notice and Remedies, thus violating due process of law.

59. To the extent that any of the individual Plaintiffs are subject to 18 U.S.C. § 922(g)(4), as interpreted by California and their agencies, the remedy for restoration of fundamental rights under federal law must be uniform throughout California without regard to California's participation in federal programs or receipt of federal monies. To the extent that state law does not require such uniform standards, Plaintiffs are being denied equal protection of the law. Furthermore, to the extent the California's restoration procedures are inadequate under any valid federal standard, Plaintiffs are being denied due process of law.

FIFTH CAUSE OF ACTION

[Statutory Remedy Under 18 U.S.C. § 925A]

[Against All Defendants]

60. Paragraphs 1 through 59 are incorporated by reference.

61. The Constitutional violations of Plaintiffs' rights arise from misapplication of the federal and/or state background check system, or erroneous data contained in that system, thus Plaintiffs are afforded the right to bring an action against any

1 state or political subdivision, or against the United States to correct the erroneous
2 denial of a firearm purchase. 18 U.S.C. § 925A (Remedy for erroneous denial of
3 firearm).

4 62. Plaintiffs are being denied a firearm purchase by either or both sets of
5 Defendants and are entitled to relief under 18 U.S.C. § 925A.

6 **SIXTH CAUSE OF ACTION**

7 [Tenth Amendment]

8 [Against All Defendants]

9 63. Paragraphs 1 through 62 are incorporated by reference.

10 64. The Tenth Amendment provides: “The powers not delegated to the United
11 States by the Constitution, nor prohibited by it to the states, are reserved to the
12 states respectively, or to the people.”

13 65. All Plaintiffs were disqualified through state court processes⁶ from
14 exercising a fundamental right. The United States Government relied on those
15 state court proceedings to make a determination that Plaintiffs were (are)
16 disqualified from exercising Second Amendment rights. As the Plaintiffs herein
17 have satisfied California’s restoration of rights procedures, either through lapse of
18 time or favorable court ruling, and as the United States Government has no federal
19 parallel process for restoration of rights after a mental health disqualification,
20 either or both Defendants are violating the Plaintiffs’ Second Amendment rights
21 by refusing to grant full faith and credit to California Law on restoration by
22 operation of law and lapse of time, and California State Court determinations of
23 Plaintiffs’ restoration of rights after a hearing on their mental health status.

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27 ⁶ In making this claim, none of the Plaintiffs are conceding that those
28 processes were constitutionally valid. Some of the Plaintiffs have live claims that
in allege those processes were constitutionally infirm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants as follows:

A. Declare⁷ that 18 U.S.C. § 922(g)(4), its derivative regulations, and all related laws, policies, and procedures violate Plaintiffs' right to keep and bear arms as secured by the Second Amendment to the United States Constitution.

B. Declare⁸ that 18 U.S.C. § 922(g)(4), its derivative regulations, and all related laws, policies, and procedures violate Plaintiffs' rights to equal protection and due process under the Due Process Clause of the Fifth and/or Fourteenth Amendment to the United States Constitution.

C. Declare that either or both Defendants are in violation of the Tenth Amendment to the United States Constitution by refusing to recognize California's statutory and court-driven procedures for restoration of rights after a mental health disqualification.

D. Permanently enjoin the Defendants, their officers, agents, servants, employees, and all persons in active concert or in participation with each other from enforcing against Plaintiffs 18 U.S.C. § 922(g)(4) and all its derivative regulations, and all related laws, policies, and procedures that would impede or criminalize Plaintiffs' exercise of their right to keep and bear arms.

E. Award damages to any Plaintiffs who have incurred compensable losses caused by Defendants' wrongful conduct, in an amount according to proof.

F. Award Plaintiffs their costs and attorney's fees and expenses to the extent permitted under all relevant statutes, including but not limited to 18 U.S.C.

⁷ This necessarily includes relief from this Court authorizing Plaintiffs to truthfully state the they have NOT been adjudicated with mental-health disqualifiers, as of the date of judgment, on any state or federal form when purchasing a firearm.

⁸ See footnote #6.

1 § 925A, 28 U.S.C. § 2412, 42 U.S.C. §§ 1983, 1988.

2 G. Grant such other and further relief as the Court deems just and proper.

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Dated March 16, 2020.

Respectfully Submitted by:

/s/ Donald Kilmer

Attorney for Plaintiffs (Lead Counsel)

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