

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT ARAGON; DAVID ANTHONY SEGURA; ZACHARY FORT; RICHARD KENNEDY; ROSE'S GUNS & MORE, LLC, a limited liability company; SOUTHWEST GUNSMITH TECHNOLOGIES, LLC, a limited liability company; NEW MEXICO SHOOTING SPORTS ASSOCIATION, a nonprofit corporation; NATIONAL RIFLE ASSOCIATION OF AMERICA, a nonprofit corporation; SECOND AMENDMENT FOUNDATION, a nonprofit corporation; and FIREARMS POLICY COALITION, INC., a nonprofit corporation,

Plaintiffs,

v.

MICHELLE LUJAN GRISHAM, Governor of New Mexico, in her official capacity; NEW MEXICO DEPARTMENT OF HEALTH; and KATHYLEEN KUNKEL, Secretary for the New Mexico Department of Health, in her official capacity; J. Does 1–10,

Defendants.

Case No. 20-cv-
00325-KK-JHR

**PLAINTIFFS' NOTICE OF STIPULATED WITHDRAWAL
OF THEIR MOTION FOR A TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY INJUNCTION**

Please take notice that Plaintiffs hereby respectfully withdraw their pending *Motion for Temporary Restraining Order and/or Preliminary Injunction* ("Motion"), and their *Brief in Support of Their Motion for Temporary Restraining Order and/or Preliminary Injunction* ("Brief in Support"), filed on April 16, 2020,

without prejudice to refile. ECF Nos. 11, 12. The issues raised in that Motion and Brief in Support relate to Executive Orders 2020-004 and 2020-022, as well as Secretary Kunkel's March 23 Public Health Emergency Order.

This Court denied Plaintiffs' request for a temporary restraining order and set a briefing schedule to consider Plaintiffs' request for a preliminary injunction. ECF No. 15. Defendants' response to Plaintiffs' motion was initially due on April 27, 2020.

On April 30, 2020, Governor Grisham "renewed and extended" Executive Orders 2020-004 and 2020-022 through May 15, 2020. Executive Order 2020-026.¹ On April 30, 2020, Secretary Kunkel issued a new Public Health Emergency Order, allowing most firearm retailers and ranges to reopen for business on an appointment-based system only as of May 1, 2020, and allowed individuals to travel to and utilize those businesses. April 30, 2020 Emergency Order at 7.²

¹ Executive Order 2020-026 is available at <https://www.governor.state.nm.us/wp-content/uploads/2020/05/Executive-Order-2020-026.pdf> (last visited May 17, 2020).

² The April 30, 2020 Emergency Order is available at <https://www.governor.state.nm.us/wp-content/uploads/2020/05/DOH-PHO-4-29-essential-businesses-mass-gatherings-fv.pdf> (last visited May 17, 2020) ("(11) Federally licensed firearm dealers may operate to the extent necessary to conduct background checks and to allow individuals to take possession of firearms that were ordered online or through other remote means. They shall provide these services by appointment only. They shall provide these services by appointment only. Shooting ranges may open by appointment and shall ensure that appropriate social distancing measures are in place.").

On May 1, 2020, Defendants filed a *Notice of Agreed Extension of Time to Respond to Plaintiffs' Motion for a Temporary Restraining Order [Doc. 11]*, notifying this Court that Plaintiffs and Defendants agreed to an extension of Defendants' time to respond to May 19, 2020, due to the provisions of Executive Order 2020-026 and the April 30, 2020 Emergency Order. ECF No. 40.

On May 15, 2020, Secretary Kunkel issued a new Public Health Emergency Order, allowing most firearm retailers and ranges to open “provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy” May 15, 2020 Emergency Order at 6.³

Given that all firearm retailers, ranges, and repair facilities in the State of New Mexico are currently allowed to operate under Defendants' updated guidelines, and that individuals are allowed to travel to and utilize those businesses, Plaintiffs have received much of the relief initially sought in their Motion. Accordingly, in the interest of judicial economy, Plaintiffs withdraw their *Motion for a Temporary Restraining Order and/or Preliminary Injunction* and their Brief in Support, without prejudice to refile their motion should Defendants again order firearm retailers, ranges, and repair facilities to close and prevent New Mexicans from traveling to and utilizing those businesses. ECF Nos. 11, 12. The underlying final declaratory

³ The May 15, 2020 Emergency Order is available at https://www.governor.state.nm.us/wp-content/uploads/2020/05/05_15_2020_PHO.pdf (last visited May 17, 2020).

and injunctive relief sought in Plaintiffs' Complaint is still unsatisfied and necessary, but Plaintiffs have received much of the interim injunctive relief sought in their Motion. ECF Nos. 1, 11, 12.

Plaintiffs discussed this Notice with Defendants who agreed to the withdrawal of Plaintiffs' Motion.

DATED this 18th day of May 2020.

Respectfully submitted,

/s/Patrick J. Rogers

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CERTIFICATE OF SERVICE

I, Patrick J. Rogers, CERTIFY that, on May 18, 2020, I filed the foregoing using CM/ECF, which causes the parties of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Patrick J. Rogers