

Case No. 23-4356

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RENO MAY, ET AL.,
Plaintiffs- Appellees,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF CALIFORNIA,
Defendant-Appellant.

**On Appeal from the United States District Court
for the Central District of California**
No. 8:23-cv-01696-CJC-ADSx
The Honorable Cormac J. Carney, Judge

**PLAINTIFFS-APPELEES' MOTION FOR RECONSIDERATION OR
CLARIFICATION OF THIS COURT'S ORDER OF DECEMBER 30, 2023**

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(Additional caption appears on next page)

January 3, 2023

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I. INTRODUCTION

Judges, prosecutors, victims of stalkers and domestic violence, and even people who are targets for robbery because they have to regularly transport cash or valuables as part of their businesses often have something in common: prior to January 1, 2024, many of these highest at risk people (along with over 100,000 other law-abiding Californians), vetted by a rigorous background check process and licensed by the state, regularly carried a firearm for personal protection. Some had done so for years, if not decades.

With the December 30, 2023, administrative stay of the District Court’s December 20, 2023 injunction, (Dkt. No. 17) the Second Amendment-protected right to carry a firearm outside of the home has been effectively destroyed in California for all people with concealed carry weapon permits (“CCW permits”).¹ Plaintiffs-Appellees, as well as all other Californians with existing CCW permits, can no longer carry their handguns in any public place except some streets, sidewalks, and at the few private businesses that have posted signs affirmatively allowing carry on their private-premises. This extraordinary curtailment is the result of Senate Bill 2 (“SB 2”) taking effect this week.

SB 2 was enacted in response to the United States Supreme Court’s landmark ruling that recognized a “general right to publicly carry arms for self-defense.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 31 (2022). SB 2 thus represents California’s attempt to defy the U.S. Supreme Court and it –

¹ Plaintiffs-Appellees will not burden this court with a lengthy reiteration of their Response to the State’s Emergency Motion to Stay. That opposition briefing can be found at Dkt. No. 14 (and Dkt. No. 7 for the *Carralero* Plaintiffs). Counsel for the State has confirmed that Appellant opposes reconsideration.

not the district court's preliminary injunction -- interrupts the status quo ante of "where" people with carry permits can exercise their right to armed self-defense. California's defiance includes a plan to lure this Court's into treating the Second Amendment as a disfavored right. But doing so would gut the right of self-defense and put peoples' lives in danger. That is the urgency that attends the State's motion for a stay. That is the reason this motion must be addressed in haste.

The text of the administrative stay Order from the motions panel is somewhat unclear about what happens next and when. This motion seeks urgency and clarity from the Court.

From a constitutional law perspective, the position that Plaintiffs find themselves in because of the administrative stay allowing SB 2 to go into effect is no different than if the State had passed a law banning protest in most public spaces. Despite a district court agreeing that such a law upset the status quo of allowing peaceful public protest and inflicted a grave First Amendment injury on hundreds of thousands of citizens, protests against an unpopular war or a corrupt politician would then nonetheless be put on hold for months or longer while the State's emergency stay motion defending the law received more vetting by the appellate court. Such a pause on hundreds of thousands of peoples' exercise of their right to free speech—even for administrative reasons—would obviously be patently unacceptable. That the same sort of pause on the Second Amendment right is now being entertained in this case lends unfortunate credence to concerns that despite the Supreme Court's unambiguous holding to the contrary, the Second Amendment is still considered a second-class right in this Circuit. *See Duncan v.*

Bonta, 83 F.4th 803, 808 (9th Cir. 2023) (Bumatay, J., Ikuta, J., R. Nelson, J., and VanDyke, J. dissenting).

Plaintiffs-Appellees therefore seek clarification of whether this matter is still subject to a months-long briefing schedule before the District Court’s injunction might be allowed to take effect, or whether the transfer of the State’s emergency stay motion from the motions panel to the merits panel will take place on a more appropriate expedited schedule, in light of the constitutional injury presently inflicted.

II. THE ADMINISTRATIVE STAY IGNORES RECENT PRECEDENT

The District Court’s injunction had already served the most basic purpose of a preliminary injunction, which is to “preserve the status quo pending a determination of the action on the merits.” *King v. Saddleback Junior Coll. Dist.*, 425 F.2d 426, 427 (9th Cir. 1970); *see also P. v. Riles*, 502 F.2d 963, 965 (9th Cir. 1974) (“It is so well settled as not to require citation of authority that the usual function of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits.”). Indeed, California’s SB 2 upended a decades-long status quo that honored carry permits nearly everywhere, save for a few exceptions, until SB 2 demolished that status quo.

Under Ninth Circuit Rule 27-10(a)(3), a motion for reconsideration is appropriate here because Plaintiffs-Appellees can show that this Court “overlooked or misunderstood” controlling laws and practices in issuing the administrative stay Order. Specifically, in its unexplained Order, this Court’s December 2023 motions

panel issued an administrative stay that reversed the status quo that the District Court’s injunction preserved. That was erroneous, and it stands in stark contrast with how this Court has recently treated administrative stays.

Indeed, this Court has repeatedly ruled that an administrative stay is meant to preserve the status quo. *See Doe #1 v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019) (“A temporary stay in this context (sometimes referred to as an administrative stay) is only intended to preserve the status quo until the substantive motion for a stay pending appeal can be considered on the merits.”);² *Nat’l Urb. League v. Ross*, 977 F.3d 698, 701 (9th Cir. 2020) (“Based on our preliminary review of the record, we conclude that the status quo would be seriously disrupted by an immediate stay of the district court’s order.”); *Al Otro Lado v. Wolf*, 945 F.3d 1223, 1224 (9th Cir. 2019) (“Because granting the stay request would preserve the status quo, we grant the government’s motion for a temporary stay to preserve the status quo pending a decision on the motion for stay pending appeal.”).

Here the administrative stay does the exact opposite. It ended a longstanding status quo where CCW holders could carry in the places now designated post-*Bruen*, and only in defiance of that case, as “sensitive” and thus off-limits. An administrative stay should be viewed no differently here because the Second Amendment is at issue. That part of our founding charter is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights

² The motions panel cited this very case in its December 30 Order, but did not explain why it would apply here to *reverse* the decades-long status quo. Dkt. No. 17.

guarantees.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010). There is no reason this Court should use an administrative stay to disrupt the longstanding status quo in this circumstance when it has not done so in others.³

And with every passing hour, the irreparability increases because “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This applies “no matter how brief the violation”. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023).

Accordingly, Plaintiffs-Appellees request that this Court reconsider its December 30, 2023, administrative stay, promptly dissolve it, and restore the pre-January 1, 2024 status quo.

³ As a result of the administrative stay being entered allowing SB 2 to take effect, Californians are subject to a seemingly different interpretation by the Ninth Circuit as to what constitutes the status quo than Hawaiians are subject. Following *Bruen*, Hawaii passed a law similar to SB 2 severely curtailing the right to armed carry for self-defense in purportedly “sensitive places.” In *Wolford v. Lopez*, No. CV 23-00265, 2023 WL 5043805 at *1 (D.Haw. August 8, 2023), Hawaii’s new law was challenged and enjoined by a district court. See *id.* at * 2. Hawaii sought from the Ninth Circuit an emergency stay from the district court’s injunction pending appeal, which the appellate court not only refused to grant (administrative or otherwise), but expressly took no action on. See *Wolford v. Lopez*, No. 23-16164 (9th Cir. September 8, 2023), and *Wolford v. Lopez*, No. CV 23-00265 (D.Haw.) at Dkt. Nos. 68 & 73.

Pending the outcome of the *Wolford* appeal, Hawaiians are not subject to the restrictive new law, and the pre-law status quo remains in effect. Hawaii’s post-*Bruen* carry restrictions on newly-designated sensitive places remain unenforceable pending appeal, while California’s post-*Bruen* carry restrictions on newly-designated sensitive places are inexplicably enforceable pending appeal. The reasons for these differing outcomes and interpretations of what would preserve the status quo for one state’s citizens but not the other’s are not readily apparent, and seem to be logically irreconcilable.

Alternatively, this case should be expeditiously assigned to a merits panel, and that panel should quickly rule on the State's emergency motion to stay the injunction. Plaintiffs-Appellees waited until January 3 to bring this motion for reconsideration/clarification because they believed an order on the merits of California's emergency stay motion from a merits panel would have been quickly issued following the end of the holiday weekend. But with no order as of the morning of January 3, and given the gravity of the rights at stake, Plaintiffs-Appellees now move the Court for reconsideration or expedited processing with the merits panel.

III. AT MINIMUM, THE DECEMBER 30 RULING SHOULD BE CLARIFIED

If the motions panel is not inclined to reconsider its Order regarding the administrative stay, Plaintiffs request expedited processing of the December 30 Order to the merits panel. That Order stated that “[t]he motion for a stay pending appeal . . . and the supplements, responses and replies thereto, are otherwise referred to the panel assigned to decide the merits of these appeals.” Dkt. No. 17. Under this Circuit's General Order 6.4(d), the Motions Panel “may direct that a merits panel be drawn by lot to hear the motion, as well as the merits”. The December 30 Order does not explain whether a merits panel has already been drawn, or if not yet, *when* that will happen. Nor is it clear whether the Order directs empanelment specifically for and limited to this purpose, or whether the Court's intention was to immediately transfer this case to a merits panel assigned to review

the whole case on the merits, i.e., have a 3-judge merits panel decide both the State's emergency stay motion and the State's appeal.

Plaintiffs-Appellees are left not only disarmed and vulnerable on the streets of California, but remain entirely unaware whether the State's motion to stay and Plaintiffs' opposition thereto remains an urgent priority for the Court. Since the Administrative Stay Order expressly did not rule on the merits, that procedure should be clarified or resolved promptly by assigning a merits panel that can issue an Order on the stay request so that Plaintiffs-Appellees can determine what other relief it may be appropriate to seek.

IV. CONCLUSION

SB 2 seeks to disturb the constitutional order of the right of self-defense in California. But all Circuit Courts are bound by the decisions of the United States Supreme Court. That is what the District Court found, and that is why it issued a preliminary injunction.

The unusual application of an administrative stay to disrupt a long-standing status quo, combined with the absence of any clear indication as to when that administrative stay might be lifted, presents the urgent circumstances that warrant this request for relief. Moreover, as with the individual Plaintiffs-Appellees, tens of thousands of members of the associational Plaintiffs-Appellees, and hundreds of thousands of other citizens with CCW licenses are suffering from the loss of their fundamental right to bear arms in almost all public places.

Plaintiffs-Appellees respectfully request that this Court correct the oversights of the administrative stay.

Date: January 3, 2024

MICHEL & ASSOCIATES, P.C.

s/ C.D. Michel

C.D. Michel

Counsel for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2024, an electronic PDF of PLAINTIFFS-APPELEES' MOTION FOR RECONSIDERATION OR CLARIFICATION OF THIS COURT'S ORDER OF DECEMBER 30, 2023 was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: January 3, 2024

MICHEL & ASSOCIATES, P.C.

s/C.D. Michel

C.D. Michel

Counsel for Plaintiffs-Appellees