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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MATTHEW JONES, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of
California, et al.,

Defendants.

Case No.: 19-cv-1226-L-AHG

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiffs in this Second Amendment rights case have filed a motion for declaratory and injunctive relief. Defendants filed an Opposition and Plaintiffs filed a Reply. Both parties have filed additional recent authority which they claim supports their respective positions.

I. BACKGROUND

Plaintiffs argues that California Penal Code § 27510(a), as amended by Senate Bill (“SB”) 1100 and SB61, violates the Second Amendment rights of 18-20 year-old persons (“Young Adults”) because it bans them from purchasing, using, transferring, possessing, or controlling any firearm. (Motion at 1). In Plaintiffs view, the ban directly contradicts

1 the holdings in *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) and *McDonald*
2 *v. City of Chicago, Ill.*, 561 U.S. 742 (2010), which collectively held that the Second
3 Amendment’s “text, structure and history” confirm an individual’s fundamental right to
4 keep and bear arms, and that this right applies with full force to the states. (*Id.*) Plaintiffs
5 contend that California’s age-based gun ban cannot stand under the textual and historical
6 analysis of *Heller* because it abridges Young Adults’ Second Amendment right to keep
7 and bear arms in self-defense and for other lawful purposes. (*Id.* at 11-15). Even if the
8 Court finds that the ban does not abridge a core right of the Second Amendment, the gun
9 ban cannot pass strict or immediate scrutiny. (*Id.* at 17). In addition, Plaintiffs contend
10 that the gun ban’s exemptions are illusory and inapplicable because very few, if any,
11 Young Adults qualify for those exemptions. (*Id.* at 27).

12 Defendants counter that the Court should deny Plaintiffs request to enjoin
13 enforcement of § 27510 because Plaintiffs cannot show they are likely to succeed on the
14 merits of their claims. (Oppo. at 1). Defendants argue that §27510, as amended by SB
15 1100 and SB 61, is not an outright ban, but instead imposes limited restrictions with
16 exceptions carved out for individuals with firearm training. (*Id.*) The restrictions allow
17 Young Adults to obtain long guns under certain circumstances, and ensure that “only
18 those Young Adults with adequate training are able to purchase from federally licensed
19 firearm dealers (“FFL”) semi-automatic centerfire rifles capable of inflicting serious
20 injury.”¹ (*Id.*) Defendants argue that Plaintiffs cannot meet their burden to establish the
21 other preliminary injunction factors. Specifically, Defendants suggest that the balance of
22 equities and public interest weigh against enjoining enforcement of a law that promotes
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26 ¹ Semi-automatic centerfire rifles are “able to fire repeatedly through an automatic reloading process but
27 requiring release and another pressure of the trigger for each successive shot” using “centerfire”
28 ammunition in which a primer is located in the center of the cartridge case head, rather than in the rim.
See <https://www.merriam-webster.com/dictionary/semiautomatics>;
https://en.wikipedia.org/wiki/Centerfire_ammunition.

1 firearm safety education and limits access to dangerous semi-automatic weapons to
2 individuals in an age group prone to impulsive or reckless behavior. (*Id.* 1-2).

3 California Penal Code § 27510 prohibits FFL’s from selling a firearm to a person
4 under 21 years of age: “A person licensed under Sections 26700 to 26915, inclusive, shall
5 not sell, supply, deliver, or give possession or control of a firearm to any person who is
6 under 21 years of age.” Cal. Penal Code §27510(a).

7 Section 27510 was amended by Senate Bill 1100 (SB 1100) and Senate Bill 61 (SB
8 61) which imposed age-based restrictions on the sale, supply, delivery, possession, or
9 control of a firearm. *See Id.*; 2017 California Senate Bill No. 1100; 2019 California
10 Senate Bill No. 61. Notably, SB 1100 restricts the sale, rental, delivery, or transfer of
11 long guns² to any person under the age of 21 unless the individual has a valid, unexpired
12 hunting license issued by the Department of Fish and Wildlife, is an active duty member
13 of the Armed Forces, is an active duty peace officer, or honorably discharged member of
14 the Armed Forces. *See* Cal. Penal Code §27510 (b)(1)-(2). In 2019, the Legislature
15 passed SB 61 which limited the sale to individuals under age 21 of semi-automatic
16 centerfire rifles by FFL’s to active duty or reserve law enforcement officers who are
17 authorized to carry a firearm in the course of their employment, or active duty members
18 of the Armed Forces. Cal. Penal Code. §27510(3).

19 II. PRELIMINARY INJUNCTION STANDARD

20 Preliminary injunctive relief is “an extraordinary remedy that may only be awarded
21 upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res.*
22 *Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A party seeking such relief under Federal Rule
23 of Civil Procedure 65 must show “that he is likely to succeed on the merits, that he is
24 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
25 equities tips in his favor, and that an injunction is in the public interest.” *Am. Trucking*
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28 ² A long-gun is “a handheld firearm with a long barrel, as a rifle, designed to be fired when braced
against the shoulder.” <https://www.dictionary.com/browse/long-gun>

1 *Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir.2009)(quoting *Winter*, 555
2 U.S. at 20). The Ninth Circuit applies a sliding scale approach to the showing of
3 likelihood of success on the merits. See *Alliance for Wild Rockies v. Cottrell*, 632 F.3d
4 1127, 1131 (9th Cir. 2011). Under this approach, the elements of the preliminary
5 injunction test are balanced and, where a plaintiff can make a stronger showing of one
6 element, it may offset a weaker showing of another. *Id.* at 1131, 1134-35. “Therefore,
7 ‘serious questions going to the merits’ and a hardship balance that tips sharply towards
8 the plaintiff can support issuance of an injunction, so long as the plaintiff also shows a
9 likelihood of irreparable injury and that the injunction is in the public interest.” *Id.* at
10 1134-35.

11 III. SECOND AMENDMENT

12 The Second Amendment states: “A well regulated Militia, being necessary to the
13 security of a free state, the right of the people to keep and bear Arms, shall not be
14 infringed.” U.S. Const. amend. II. An individual’s right to possess a handgun in the
15 home for self-defense is protected by the Second Amendment. *Heller*, 554 U.S. 595. In
16 *Heller*, the Supreme Court struck down a series of laws in the District of Columbia which
17 banned handgun possession within the home along with requirements that all firearms
18 within the home be “unloaded and disassembled or bound by a trigger lock or similar
19 device,” *Id.* at 575. The Court found that the core of the Second Amendment right is to
20 allow “law-abiding, responsible citizens to use arms in defense of hearth and home.” *Id.*
21 at 635. However, the Court noted that this right is “not unlimited” and that individuals
22 may not “keep and carry any weapon whatsoever in any manner whatsoever and for
23 whatever purpose.” *Id.* at 626. Importantly, the Court stated that “nothing in our opinion
24 should be taken to cast doubt on longstanding prohibitions on the possession of firearms
25 by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive
26 places such as schools and government buildings, or laws imposing conditions and
27 qualifications on the commercial sale of arms.” *Id.* at 626-27.

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1 In 2010, the Supreme Court incorporated the Second Amendment to the states via
2 the Fourteenth Amendment’s Due Process Clause. *McDonald v. City of Chicago*, 561
3 U.S. 742, 767 (2010). The *McDonald* Court found that the right of law-abiding citizens
4 to keep and bear arms for self-defense is “deeply rooted in this Nation's history and
5 tradition.” *Id.* at 768 (internal quotation marks omitted). In sum, the Court held that
6 “[s]elf-defense is a basic right, recognized by many legal systems from ancient times to
7 the present day.” *Id.* at 767.

8 The Ninth Circuit has adopted a two-part test when considering the
9 constitutionality of a firearm regulation which: “(1) asks whether the challenged law
10 burdens conduct protected by the Second Amendment and (2) if so, directs courts to
11 apply an appropriate level of scrutiny.” *United States v. Chovan*, 735 F.3d 1127, 1138
12 (9th Cir. 2013). When determining whether a regulation creates a burden on protected
13 Second Amendment conduct, the Ninth Circuit recently announced that it appears to ask
14 four questions:

15 First, as a threshold matter, we determine whether the law regulates ‘arms’
16 for purposes of the Second Amendment. Second, we ask whether the law
17 regulates an arm that is both dangerous and unusual. If the regulated arm is
18 both dangerous and unusual, then the regulation does not burden protected
19 conduct and the inquiry ends. Third, we assess whether the regulation is
20 longstanding and thus presumptively lawful. And fourth, we inquire whether
21 there is any persuasive historical evidence in the record showing that the
22 regulation affects rights that fall outside the scope of the Second
23 Amendment.

24 *Duncan v. Becerra*, 970 F.3d 1133, 1145 (9th Cir. 2020)(internal citations omitted).

25 IV. ANALYSIS

26 A. *Likelihood of Success on the Merits*

27 Plaintiffs must show that they are likely to succeed on the merits of the claim that §
28 27510 is unconstitutional. In accordance with the *Chovan* two-part test, the Court first
29 asks whether the challenged law burdens conduct protected by the Second Amendment.
30 *See* 735 F.3d at 1138. To answer this question, the Court applies the Ninth Circuit’s four
31 prong inquiry, beginning with whether Section 27510 regulates “arms.” *Jackson v. City*

1 of *San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014)(“The Second Amendment protects
2 ‘arms,’ ‘weapons,’ and ‘firearms.’”) At issue here are regulations limiting who may
3 obtain or use “semi-automatic centerfire rifles” and “long-guns.” These firearms
4 constitute “arms” under the National Firearms Act (Act), 26 U.S.C. §§ 5801–5872,
5 satisfying the first prong.

6 Next, the Court considers whether long-guns and semi-automatic centerfire rifles
7 are considered “dangerous and unusual” to determine whether they fall outside the
8 protections of the Second Amendment. *Duncan*, 970 F.3d at 1146. A firearm is not
9 unusual if it is “typically possessed by law-abiding citizens for lawful purposes.” *Heller*,
10 554 U.S. at 627. Whether a firearm is “common” is generally a question of statistics.
11 *Duncan*, 970 F.3d at 1147. Hand grenades, sawed-off shotguns and fully automatic “M–
12 16 rifles and the like,” are not in common use or typically possessed by the citizenry,
13 making them unusual weapons that fall outside of the Second Amendment. *Heller*, 554
14 U.S. at 627; *U.S. v. Fincher*, 538 F.3d 868, 874 (8th Cir. 2008) (“Machine guns are not in
15 common use by law-abiding citizens for lawful purposes and therefore fall within the
16 category of dangerous and unusual weapons that the government can prohibit for
17 individual use.”). Both long-guns and semi-automatic centerfire rifles are commonly used
18 by law abiding citizens for lawful purposes such as hunting, target practice, and self-
19 defense. Because these weapons are not considered “unusual,” the Court does not need
20 to determine whether they are also “dangerous.” *Duncan*, 970 F.3d n.8 at 1149.

21 The final inquiry requires that the Court assess whether the regulation is
22 longstanding and thus presumptively lawful. In addition, if text, history, and tradition,
23 demonstrate that the challenged law does not impose a burden on conduct falling within
24 the protections of the Second Amendment, the law “passes constitutional muster” and the
25 Court’s inquiry “is complete.” See *Teixeira v. County of Alameda*, 873 F.3d 670, 682 (9th
26 Cir. 2017) (internal quotations omitted). If, however, the challenged law burdens the
27 Second Amendment, the court must next determine whether to apply intermediate or
28 strict scrutiny. *Chovan*, 735 F.3d at 1138.

1 1. *Longstanding Regulation, History and Tradition*

2 The inquiry as to whether a regulation is longstanding necessarily requires the
3 Court to examine the history of the law. When analyzed through the lens of history and
4 tradition, it is apparent that a number of gun regulations have co-existed with the Second
5 Amendment right. *Heller v. District of Columbia* (“*Heller II*”), 670 F.3d 1244, 1274
6 (U.S.App. D.C. 2011). The exceptions to the Second Amendment include “laws
7 imposing conditions and qualifications on the *commercial* sale of arms” and some
8 “longstanding prohibitions on the possession of firearms.” *Heller*, 554 U.S. at 626-27 &
9 n. 26. Although the term “longstanding” is somewhat ambiguous, “*Heller* demonstrates
10 that a regulation can be deemed ‘longstanding’ even if it cannot boast a precise founding-
11 era analogue.” *National Rifle Ass’n of America, Inc., v. Bureau of Alcohol and Tobacco,*
12 *Firearms, and Explosives*, 700 F.3d 185, 196 (5th Cir. 2012)(“*NRA*”); *see also United*
13 *States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (“[W]e do take from *Heller* the
14 message that exclusions need not mirror limits that were on the books in 1791.”) As an
15 example, the Court drew an analogy between long recognized rights such as freedom of
16 speech and libel afforded by the First Amendment, and the regulation of firearms under
17 the Second Amendment, noting that simply because those First Amendment rights were
18 not established by the Court for almost 150 to 200 years from the ratification of the
19 Amendment they nonetheless are considered longstanding rights. *See Heller*, 554 U.S. at
20 625 (citing *Near v. Minnesota ex.rel. Olson*, 283 U.S. 697 (1931); *New York Times Co. v.*
21 *Sullivan*, 376 U.S. 254 (1964).)

22 The Ninth Circuit has yet to weigh in on the constitutionality of age-based
23 restrictions on the possession and use of specific firearms, but the Fifth Circuit
24 determined that a federal prohibition against the sale of handguns to those under age 21
25 by FFL’s passed constitutional muster because it was “consistent with a longstanding
26 historical tradition” and therefore the regulation did not burden the Second Amendment’s
27 protections. *NRA*, 700 F.3d at 203. In so finding, the Fifth Circuit looked as far back as
28 the Founding Era when concluding that various gun safety regulations, including laws

1 that restricted the ability of persons under 21 to purchase or use particular firearms, were
2 longstanding and served public safety purposes. *Id.* 700 F.3d 200-203.

3 Other courts have agreed that prohibitions on the acquisition and possession of
4 certain firearms by those under the age of 21 are longstanding and fall outside the ambit
5 of Second Amendment protections. See *Hirschfeld v. Bureau of Alcohol, Tobacco,*
6 *Firearms and Explosives*, 417 F.Supp.3d 747, 755 (W.D. Virginia 2019)(federal criminal
7 statutes prohibiting FFL’s from selling handguns to those under 21 reflect
8 “‘longstanding’ prohibitions on the use or possession of handguns by those of a given
9 age”). Though not binding on this Court, the reasoning of *Mitchell v. Atkins*, from the
10 Western District of Washington, another district court within the Ninth Circuit, is
11 instructive. *Mitchell v. Atkins*, --F.Supp.3d --, 2020 WL 5106723 (W.D. Wash. Aug.
12 2020). The Plaintiffs there challenged the constitutionality of I-1639, a Washington
13 initiative that prohibits individuals under the age of 21 from purchasing semiautomatic
14 assault rifles (“SARs”). *Id.* at 1. The district court noted that “at common law and at the
15 time of the adoption of the Constitution, the age of majority was 21 years,” and that “by
16 1923, over half the states then in the union had set 21 as the minimum age for purchase or
17 use of a particular firearm.” *Id.* at 4. Age-based restrictions for firearm possession and
18 use continue into the modern age, with federal law prohibiting FFL’s from selling
19 handguns to persons under 21 starting in 1968 under 18 U.S.C. § 922(b)(1), and five
20 states prohibit the sale of all long-guns to persons under age 21. *Id.* In conclusion, the
21 court held that the “authorities demonstrate that reasonable age restrictions on the sale,
22 possession, or use of firearms have an established history in this country,” therefore the
23 Washington initiative did not burden Second Amendment rights, and the plaintiffs
24 challenge failed at the first step of the inquiry. *Id.* at 5.

25 The Ninth Circuit has noted that, even “early twentieth century regulations might .
26 . . demonstrate a history of longstanding regulation if their historical prevalence and
27 significance is properly developed in the record.” *Fyock v. Sunnyvale*, 779 F.3d 991, 997
28 (9th Cir. 2015); see also *Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016). Courts may

1 look to a “variety of legal and other sources” when attempting to determine whether a
2 regulation burdens Second Amendment protections or is a longstanding exclusion.
3 *Heller*, 554 U.S. at 605.

4 Plaintiffs argue that extensive historical analysis demonstrates there were no age-
5 based restrictions on the acquisition, purchase, or possession of firearms during the
6 Colonial and Founding Era, and that in fact all male citizens over the age of 18 were
7 required to use their own arms “to help enforce the law” by participating in the militia.
8 (Reply at 4-5). Defendants counter that Section 27510’s age-based restrictions on FFL
9 sales and transfers are consistent with historical prohibitions and are presumptively
10 lawful regulations that do not implicate the Second Amendment. (Oppo. at 7).

11 Though the Fifth Circuit’s reasoning in *NRA* is not controlling, it sheds light on the
12 extensive historical background of firearm regulations, the reasoning behind such
13 regulations, and militia requirements to ensure members complied with accountability
14 rules. Although the regulations in question in *NRA* and §27510 involve the prohibition of
15 different weapons, the historical backdrop of age-based restrictions is the same. They
16 support the conclusion that age-based restrictions like the one in section 27510 are
17 longstanding, and presumptively Constitutional.

18 Plaintiffs take issue with comparisons between Young Adults and “dubious laws
19 disarming and prohibiting sales of arms to certain groups” of individuals such as felons,
20 the mentally unstable, Loyalists, and slaves, as the Court in *NRA* did. (Mot. at 16-17.)
21 This decision does not rest on such comparisons. Individuals under the age of 21 were
22 considered minors or “infants” for most of our country’s history without the rights
23 afforded adults. It is therefore, not surprising that Young Adults were included along
24 with others believed unfit of responsible firearm possession and use. *See e.g.* 1
25 *Commentaries on the Laws of England* 55 (1769) William Blackstone, (“So that full age
26 in male or female, is twenty-one years . . ., who till that time is an infant, and so styled in
27 law.”) Indeed, Black’s Law Dictionary defines an “infant” under the law as “a person
28 under the age of twenty-one years, and at that period . . . he or she is said to attain

1 majority.” Black's Law Dictionary (11th ed. 2019). The reasoning behind those
2 prohibitions was that these groups were considered incapable of the trust required to
3 ensure proper and safe use of firearms. *See generally Powell*, 926 F.Supp.2d at 387. Even
4 today, laws prohibit individuals under 21 from renting a car or purchasing alcohol,
5 indicating that age-based restrictions facilitate important public safety goals. *See*
6 *Mitchell*, 2020 5106723 at *5-6; Declaration of Combs, Ex 2 at 0012 [ECF No. 21-8.]

7 Plaintiffs argument that in the Founding Era, Young Adults age 18 and up were
8 expected to participate in the militia and were required to have their own firearm is not at
9 odds with the regulation of Young Adults’ firearm possession. Militias were well
10 regulated by each state in the Founding Era: members of the militia were required to meet
11 regularly for weapons inspection and registration, and members who did not show up
12 with the required equipment could be fined. Saul Cornell, Nathan DeDino, *A Well*
13 *Regulated Right: The Early America Origins of Gun Control*, 73 Fordham L. Rev. 487,
14 509-511. Militia members were required to possess their own firearms if they complied
15 with accountability and maintenance regulations. The strict rules surrounding militia duty
16 demonstrate that as far back as the Founding Era, firearm regulations were considered
17 necessary and an individual’s right to firearm possession came with obligations to ensure
18 public safety. The regulations applied to militia members support the *Heller* court’s
19 finding that an individual may not “keep and carry any weapon whatsoever in any
20 manner whatsoever and for whatever purpose” he or she chooses. *Heller*, 554 U.S. at
21 626.

22 As indicated above, Plaintiffs cannot show a likelihood of success on the merits
23 when other courts, including those within the Ninth Circuit, have found that age-based
24 firearm restrictions such as California Penal code 27510 are longstanding, do not burden
25 the Second Amendment, and are therefore presumptively Constitutional.

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1 2. *Intermediate or Strict Scrutiny*

2 Although the Court concludes that Plaintiffs cannot demonstrate a likelihood of
3 success on the merits because the challenged regulation does not burden the Second
4 Amendment, most courts, in an abundance of caution, also consider whether the
5 regulation in question survives strict or intermediate scrutiny. *See NRA*, 700 F.3d at 204-
6 205; *Mitchell*, 2020 WL 5106723 at *5. The level of scrutiny depends on “(1) how close
7 the law comes to the core of the Second Amendment right, and (2) the severity of the
8 law's burden on the right.” *Chovan*, 735 F.3d at 1138 (internal quotation marks omitted).
9 For strict scrutiny to apply, the law must (1) implicate the core Second Amendment right
10 of defense of home and hearth, and (2) severely burden that right. *Pena v. Lindley*, 898
11 F.3d 969, 977 (9th Cir. 2018). If the law “does not implicate the core Second
12 Amendment right *or* does not place a substantial burden on that right,” the court applies
13 intermediate scrutiny. *See Fyock*, 779 F.3d 998-99. There has been “near unanimity in
14 the post-*Heller* case law that, when considering regulations that fall within the scope of
15 the Second Amendment, intermediate scrutiny is appropriate.” *Silvester*, 843 F.3d at 823.

16 Plaintiffs argue that strict scrutiny is the proper test, citing the recent Ninth Circuit
17 decision in *Duncan v. Becerra*. There, the appellate court addressed a California law
18 banning possession of large capacity magazines (LCM) that carried more than ten rounds
19 of ammunition, finding that “any law that comes close to categorically banning the
20 possession of arms that are commonly used for self-defense imposes a substantial burden
21 on the Second Amendment” requiring strict scrutiny. *Duncan*, 970 F.3d at 1152.

22 Defendants counter that intermediate scrutiny is the proper test because § 27510 is
23 limited in scope to the category of individuals affected, allows alternative channels for
24 self-defense, and proscribes only commercial conduct outside the home. (Oppo. at 10.)

25 Contrary to Plaintiffs’ assertions, the California law in question is not a complete
26 ban on the sale, transfer or supply by a federally licensed firearms dealer of all firearms
27 for persons 18 to 20 years old. Instead, a careful reading of the provision shows that
28 FFL’s may sell, deliver, transfer any firearm that is not a handgun or semiautomatic

1 centerfire rifle to Young Adults who have a valid, unexpired hunting license, or who have
2 been honorably discharged from the armed forces, or National Guard.³ Cal. Pen. Code §
3 27510(b)(1)-(2). The only complete ban is for any FFA to sell, deliver, or supply a
4 handgun to a Young Adult. Under the SB61 amendments, individuals between the ages
5 of 18 and 20 may possess semi-automatic centerfire rifles if they are members of law
6 enforcement, active duty members of the Armed Forces, National Guard, Air National
7 Guard, or active reserve components of the United States. Cal. Pen. Code 27510
8 (b)(3)(A)-(D). Section 27510 also allows Young Adults to purchase long guns for self-
9 defense from FFL's or receive otherwise prohibited firearms via transfer from immediate
10 family. The exemptions in §27510 arguably ensure that access to these weapons is
11 restricted to mature individuals who have successfully completed safety training,
12 furthering the public safety objectives and ensuring that the Founding Era balancing of
13 Second Amendment rights with safety concerns continues today. *Chovin*, 735 F.3d at
14 1138 (If a law creates exceptions to the regulation of a core Second Amendment right, the
15 impact of the burden on that right may be alleviated.)

16 Plaintiffs further argue that the exemptions for individuals with hunting licenses,
17 military, or law enforcement training are illusory because requiring Young Adults to
18 enlist in the military or police force, or “feign interest” in hunting just to purchase the
19 weapons of their choice makes the exemptions prohibitive. (Reply at 2). They claim that
20 the hunting exemption is “useless and inapplicable to ordinary, law-abiding Young
21 Adults” who want to buy certain firearms for self-defense. (*Id.*) In addition, Plaintiffs
22 point to the fact that many police forces will not allow a candidate to apply until he or she
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25 ³ Plaintiffs claim that prior to SB 61's passage, honorably discharged Young Adults were able to
26 purchase firearms, but now the exemption is “guttled” because they can no longer access semiautomatic
27 centerfire rifles. (Reply at 2). The exemption is not “guttled” because SB 61's amendment only prohibits
28 them from a specific kind of firearm, specifically semi-automatic centerfire rifles. Honorably discharged
Young Adults may still purchase long-guns.

1 is 20 years old, and some do not allow anyone to serve as a law enforcement officer until
2 he or she is 21, which means that the exemption does not assist Young Adults as it
3 appears. (Mot at 26.)

4 Contrary to Plaintiffs assertions, the hunting license course is not a severe burden
5 to Young Adults who wish to possess long-guns. The standard fee for online hunting
6 courses is \$28.95, which is about the same as the \$25 firearm safety certificate required
7 absent section 27510's amendments. *See* Combs Decl, Ex. 6 at 0156 [ECF No. 21-8];
8 Rosenberg Decl. Ex. 7, Cal. Dept. of Justice, Firearm Safety Certificate Program FAQs,
9 <http://oag.ca.gov/firearms/fscpfaqs>). The courses are widely available and combine
10 written testing with a firearm safety demonstration follow-up class, effectuating the stated
11 intent of the legislature to allow Young Adults with proper safety training the right to
12 own long-guns. The law enforcement exemption is more limited, as it is true that some
13 agencies require individuals to be 20 years old to apply, and individuals may not join the
14 force until they are 21. It is notable that many law enforcement agencies do not allow
15 individuals under the age of 21 to become officers, and even then require extensive
16 physical, academic, and firearms training, supporting the argument that individuals under
17 the age of 21 are not ready for the responsibilities attendant with the gravity of the
18 position.

19 While the Ninth Circuit found strict scrutiny appropriate in *Duncan*, the reasoning
20 is distinguishable because the large capacity magazines (“LCM”) at issue there were
21 banned completely. This led the court to find that this complete prohibition struck the
22 very heart of Second Amendment protections. *Duncan*, 970 F.3d at 1152. Section 27510
23 does not categorically ban the possession of arms used for self-defense. It therefore, does
24 not impose a substantial burden on the Second Amendment, and allows for intermediate
25 rather than strict scrutiny.

26 Under intermediate scrutiny, “all forms of the standard require (1) the
27 government's stated objective to be significant, substantial, or important; and (2) a
28

1 reasonable fit between the challenged regulation and the asserted objective.” *Chovan*,
2 735 F.3d at 1139.

3 Plaintiffs contend that §27510 fails intermediate scrutiny because it is not
4 substantially related to the State’s interests in reducing school shootings and gun
5 violence. (Mot. at 18-21.) In addition, Plaintiffs claim that the restriction is not a
6 reasonable fit to facilitate those interests because there is no reliable data confirming that
7 Young Adults commit more violent crimes, and therefore, restricting FFL’s from selling
8 certain weapons to Young Adults will not reduce gun related crime. (*Id.*)

9 Defendants counter that California has a substantial interest in increasing public
10 safety and preventing gun violence, and that section 27510 furthers those interests by
11 ensuring that Young Adults with access to certain firearms have additional safety
12 training. (Oppo. at 12). Defendants further argue that the limitations on semi-automatic
13 centerfire rifles is also a reasonable fit with the stated public safety interest in ensuring
14 that “weapons capable of quickly inflicting violence on large numbers of people remain
15 in the hands of those with proper training.” (*Id.*) Age-based regulations on specific
16 commercial firearm sales are also supported by scientific data that shows Young Adults
17 are disproportionately disposed to harm themselves or others in part due to the general
18 rate of cognitive development in individuals in this age group. (*Id.* at 14). The
19 exemptions allowed for those with firearm safety training in the military, law
20 enforcement, or through hunting licenses, are a “modest requirement.” Finally, despite
21 the restrictions imposed by §27510, sales of the allowed firearms have continued. (*Id.* at
22 21).

23 The stated objectives of SB 1100 and SB 61 are to increase public safety through
24 sensible firearm control and limit access to certain firearms for some Young Adults with
25 proper safety training. (Combs Decl., Ex. 2 0010-0011, Ex. 6. [ECF No. 21-8.]) The
26 Ninth Circuit has stated that “public safety is advanced by keeping guns out of the hands
27 of people who are most likely to misuse them[.]” *Bauer v. Becerra*, 858 F.3d 1216, 1223
28 (9th Cir. 2017). When Congress passed the Omnibus Crime Control and Safe Streets Act

1 of 1968, one of the aims was to reduce crime by keeping “firearms out of the hands of
2 those not legally entitled to possess them” including those under a certain age.
3 *Huddleston v. United States*, 415 U.S. 814, 824 (1974) (quoting S.Rep No. 90-1501, at
4 22). In passing the Act, the legislature heard testimony from law enforcement officials,
5 including one who stated “[t]he greatest growth of crime today is in the area of young
6 people, juveniles, and young adults. The easy availability of weapons makes their
7 tendency toward wild, and sometimes irrational behavior that much more violent, that
8 much more deadly.” *Federal Firearms Act: Hearings Before the Subcomm., to*
9 *Investigate Juvenile Delinquency of the Sen. Comm. on the Judiciary*, 90th Cong. 57
10 (1967)(testimony of Sheldon S. Cohen). Similarly, courts that have considered Second
11 Amendment challenges to age-based firearm restrictions or prohibitions have noted that
12 this group “tend[s] to be relatively immature and that denying them easy access to
13 [certain firearms] would deter violent crime.” *NRA*, 700 F.3d at 203. The stated public
14 safety concerns and objectives of section 27510 to promote public safety through age-
15 based long-gun and semiautomatic centerfire rifle regulations is significant.

16 Plaintiffs argue that Defendants’ evidence suggesting Young Adults are more
17 prone to violence and poor judgment misrepresents or misconstrues the statistical
18 evidence, and that there is no foundation to that claim. (Plaintiffs’ Objections to
19 Defendants Evidence at 1-4.) The Court recognizes that the specific age to which the
20 Congressional delegates were referring is unclear, and that many 18-20 year olds
21 navigate those years without criminal records or engaging in reckless behavior. However,
22 it remains commonly understood that Young Adults may require additional safeguards to
23 ensure proper training and maintenance of firearms, and that § 27510 provides a
24 reasonable fit to the stated public safety aims with its enumerated exceptions.

25 As noted above, the majority of courts have applied intermediate scrutiny to
26 similar challenges to age-based firearm restrictions, finding them to pass Constitutional
27 muster. Plaintiffs, therefore, are not likely to succeed on the merits of the claim.

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1 B. *Irreparable Harm*

2 “Irreparable harm is traditionally defined as harm for which there is no adequate
3 legal remedy, such as an award of damages.” *Arizona Dream Act Coal. v. Brewer*, 757
4 F.3d 1053, 1068 (9th Cir. 2014). Even if Plaintiffs can show a likelihood of success on
5 the merits, they have not demonstrated irreparable harm requiring enjoining section
6 27510.

7 Plaintiffs argue they have been deprived of their Second Amendment rights, which
8 is sufficient in itself to show irreparable harm. (Mem. P. & A. at 28). Moreover,
9 Plaintiffs argue that Defendants have no plausible argument that enjoining enforcement
10 of 27510 will endanger public safety or lead to an increase in mass school shootings.
11 (*Id.*) Instead, Plaintiffs contend that safeguards remain in place for all firearm sales
12 including federal and state background checks, a valid firearm safety certificate, proofs of
13 age and residency, a ten-day waiting period, a safe handling demonstration of the firearm
14 being purchased, a gun safe affidavit or a firearm cable lock, and a background check to
15 purchase ammunition. (*Id.* at 29). Finally, Plaintiffs argue that any suggestion that the
16 prohibitions result in temporary inconvenience is “absurd” because the prohibitions on
17 Young Adults “could be deadly to them and/or their families.” (Reply at 9-10).

18 In response, Defendants argue that Plaintiffs cannot establish they will suffer any
19 irreparable harm in the absence of a preliminary injunction because they have not shown
20 that they are likely to succeed on their Second Amendment claim. (*Oppo.* at 26.)
21 Moreover, the purpose of a preliminary injunction is to provide speedy action to protect a
22 plaintiff’s rights, but Plaintiffs waited three months after filing their initial complaint
23 before filing the request for a preliminary injunction belying their contention that they
24 were suffering from grave and irreparable harm. (*Id.* at 28). Defendants note that none of
25 the named Plaintiffs alleged in the SAC stated that they wanted to acquire a semi-
26 automatic centerfire rifle or that he could not acquire the firearm he desired through a
27 parent, grandparent, or spouse. (*Oppo* at 27).
28

1 Plaintiffs claim that a deprivation of their rights for any amount of time is
2 sufficient to demonstrate irreparable harm is contradicted by the fact that they did not
3 immediately request a preliminary injunction to stop the alleged deprivation. Instead,
4 Plaintiffs, waited two months after filing the SAC to seek this relief and did not allege
5 they were unable to acquire semi-automatic centerfire rifles. The delay is a factor in this
6 Court’s consideration of the matter. *Oakland Tribune, Inc. v. Chronicle Pub. Co.*, 762
7 F.2d 1374, 1377 (9th Cir. 1985)(“[L]ong delay before seeking a preliminary injunction
8 implies a lack of urgency and irreparable harm”); *but see Arc of Cal. v. Douglas*, 757
9 F.3d 975, 990 (9th Cir. 2014)(“delay is but a single factor to consider in evaluating
10 irreparable injury.”)

11 More importantly, Young Adults are not banned from acquiring all firearms, but
12 may qualify under an exception, or may receive transfers from parents, grandparents, and
13 spouses. They may also use firearms at shooting ranges under certain circumstances.
14 Although the Court recognizes that Plaintiffs might prefer to protect themselves with any
15 firearm of their choice, this is still possible if they comply with exemption qualifications.
16 The restrictions placed on acquisition of long-guns and semi-automatic centerfire rifles
17 from FFL’s includes exceptions allowing qualified individuals access to certain firearms
18 for self-defense and other legal purposes. The conditions placed on commercial
19 transactions from FFL’s imposes a condition or qualification on commercial transactions
20 to ensure public safety, as Plaintiffs may still access firearms if they meet the exemptions,
21 through family transfers and when they turn 21. *See Hirschfield*, 417 F.Supp 3d at 757.

22 For the reasons above, Plaintiffs have not shown a likelihood of success on the
23 merits of their claim that § 27510 violates Young Adults Second Amendment rights, and
24 have not shown they will suffer irreparable harm in the absence of a preliminary
25 injunction.

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1 C. *Balancing Interests*

2 Plaintiffs contends that the balance of harms sharply tips in their favor because
3 they seek to maintain the status quo while they litigate the merits of their action, and
4 prohibiting lawful sales, transfers, acquisitions, use, handling, and rentals of “any firearm
5 does not increase public safety, especially where, as here, all such purchases must comply
6 with a vast array of regulations.” (Mot. at 30.)

7 Defendants counter that the “modest inconveniences any individual Young Adult
8 may experience in procuring a hunting license in order to purchase a long-gun, or
9 lawfully securing a firearm through a non-FFL transfer, do not outweigh the public safety
10 concerns” outlined in their opposition. (Oppo. at 29-30.)

11 This Court must balance the burden that some Young Adults will experience
12 because they are deprived of their choice to purchase or use certain firearms, against the
13 enjoinder of a law designed to increase public safety. When undertaking this weighing
14 “of the public interest against a private interest, the public interest should receive greater
15 weight.” *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1236 (9th Cir. 1999) (internal
16 quotation marks omitted).

17 As noted above, the aim of § 27510 was to advance public safety by limiting the
18 possession and use of deadly weapons to mature individuals who have demonstrated
19 discipline through proper training to ensure public safety while honoring the Second
20 Amendment rights of these individuals. *See generally NRA*, 700 F.3d at 203; *Mitchell*,
21 2020 WL5106723 *4-5. The potential harm of enjoining a duly-enacted law designed to
22 protect public safety outweighs Young Adults’ inability to secure the firearm of their
23 choice without proper training. *See, Tracy Rifle & Pistol LLC v. Harris*, 118 F.Supp. 3d
24 1182, 1193 (E.D. Cal. 2015), *aff’d*, 637 Fed.Appx. 401 (9th Cir. 2016) (holding that
25 “[t]he costs of being mistaken, on the issue of whether the injunction would have a
26 detrimental effect on handgun crime, violence, and suicide, would be grave.”) Here, the
27 public interests outweigh the potential for private harm.

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1 V. CONCLUSION

2 For the foregoing reasons, the Court **DENIES** Plaintiffs motion for preliminary
3 injunctive relief.

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5 **IT IS SO ORDERED**

6 Dated: November 3, 2020

7 
8 Hon. M. James Lorenz
9 United States District Judge

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