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Date: April 08, 2025

Rob Bonta

Attorney General
California Department of Justice
Division of Law Enforcement
Bureau of Firearms
P.O. Box 160487
Sacramento, CA 95816-0487
Via Email: Rob.Bonta@DOJ.CA.gov

Re: Legal Demand – California DOJ’s Non-Compliance with Federal POC State Appeal Requirements

Dear Attorney General Bonta,

This letter serves as a formal legal demand to the California Department of Justice (CA DOJ), Bureau of Firearms, to bring its procedures into compliance with federal law governing Point of Contact (POC) states under the National Instant Criminal Background Check System (NICS), as established by the Brady Handgun Violence Prevention Act of 1993 (Brady Act).

Specifically, the CA DOJ’s current process, which relies solely on record correction as described in Public Records Act (PRA) responses dated June 5, 2024, and July 16, 2024 (DOJ No. 2024-00615), and on its website at <https://oag.ca.gov/firearms>, does not constitute a proper appeals mechanism as required by federal law.

The CA DOJ’s failure to maintain an appeals process for individuals denied a firearm purchase application violates its duties under 18 U.S.C. § 922(t), 18 U.S.C. § 925A, and 28 C.F.R. § 25.10. In doing so, it places an undue burden on applicants improperly denied their purchase of a firearm in violation of the Second Amendment, and overburdens the Federal Bureau of Investigation's NICS program, which bears the weight of processing appeals that the State of California is obligated to process upon the individual applicant’s request.

I demand that the CA DOJ establish a NICS POC state appeals process compliant with 18 U.S.C. § 922(t), 18 U.S.C. § 925A, and 28 C.F.R. § 25.10 within 30 days of receipt of this letter. Failure to comply may result in legal action or other means to enforce your duty under federal law.

Federal Law and Regulations Governing POC States

In the United States, the FBI manages the National Instant Criminal Background Check System (NICS) to conduct background checks for firearm purchases under the Brady Handgun Violence Prevention Act of 1993 (Brady Act). The implementation of NICS background checks varies depending on whether a state operates as a "Point of Contact" (POC) state, a "Partial POC" state,

April 8, 2025

Page 2

or a non-POC state. POC states have designated state agencies that serve as intermediaries between Federal Firearms Licensees (FFLs) and the FBI's NICS system, conducting some or all background checks themselves.

Federal Framework for NICS Background Checks

The Brady Act, codified at 18 U.S.C. § 922(t), mandates that FFLs must not transfer a firearm to a non-licensee until a background check is completed through NICS or an alternative state system, unless an exception applies (e.g., the transferee has a valid state-issued permit recognized as an alternative under federal law). The law allows states to function as POC states by establishing their own systems to conduct these checks, provided they meet or exceed federal requirements.

POC State Designation

A state becomes a POC state by voluntarily agreeing to manage NICS checks, as outlined in the NICS Participation Agreement with the FBI. As of April 08, 2025, there are thirteen full POC states, ten partial POC states (for handguns only or specific transactions), and the rest are non-POC states where the FBI handles all checks directly.

California’s Process as Described in PRA Responses and Website

California became a National Instant Criminal Background Check System (NICS) Point of Contact (POC) state as part of implementing the Brady Handgun Violence Prevention Act, signed into law on November 30, 1993, with the NICS system officially launching on November 30, 1998.

The Brady Act (Public Law 103-159) established the framework for background checks on firearm purchases from federally licensed firearm dealers (FFLs). It allowed states to either rely on the FBI to conduct NICS checks or designate a state agency as a POC to manage the process locally. California chose the latter, building on its existing infrastructure for firearm regulation.

Prior to the Brady Act, California had already implemented the Dealer Record of Sale (DROS) process under state law. The DROS system, formalized in the early 1990s, required FFLs to submit purchaser information to the California Department of Justice (DOJ) for background checks. This system was codified in California Penal Code Section 28220, which outlines the DOJ’s role in reviewing state and federal records to determine eligibility. The groundwork for DROS began with earlier legislation, such as the Roberti-Roos Assault Weapons Control Act of 1989, but it was fully operational by the early 1990s as a comprehensive check system.

When the NICS system went live on November 30, 1998, California officially became a full POC state. This date marks the nationwide rollout of NICS, as documented by the FBI, when states either opted into the POC model or deferred to the FBI [FBI, "NICS Operations Report," 1998]. California entered into an agreement with the FBI to integrate its system with NICS, allowing the DOJ to query federal databases while applying California’s stricter standards—such as the 10-day waiting period (California Penal Code Section 26815) and additional prohibitory categories beyond federal law.

April 8, 2025

Page 3

The exact date of California’s formal designation as a POC state is tied to the NICS launch on November 30, 1998. The California DOJ’s Bureau of Firearms has since managed all NICS checks for both handguns and long guns, distinguishing California as a "full POC" state, unlike partial POC states that handle only certain types of firearms [Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Permanent Brady State Lists," updated as of 2023].

POC State Duties

Below is a summary of the duties of a National Instant Criminal Background Check System (NICS) Point of Contact (POC) state, such as California, based on the federal laws and regulations governing the NICS process. These duties are derived from the provided audit documents and reflect the legal framework established under the Brady Handgun Violence Prevention Act of 1993 and associated regulations.

Summary of NICS POC State Duties

A NICS Point of Contact (POC) state serves as an intermediary between Federal Firearms Licensees (FFLs) and the FBI’s NICS to conduct background checks for firearm transfers, ensuring compliance with federal and state laws.

Under the Brady Act, codified at 18 U.S.C. § 922(t), POC states are required to provide FFLs access to NICS for all firearm transfers, verifying the eligibility of prospective buyers by transmitting background check requests via the National Crime Information Center (NCIC) interface (28 C.F.R. § 25.6(d)). This involves entering a purpose code to indicate the check is for a firearm transfer and confirming FFL eligibility, either through their license number or an alternative verification system (28 C.F.R. § 25.6(e)).

POC states must notify FFLs of the transaction outcome—proceed, delayed, or denied—based on NICS responses and any additional state or local records, with proceed notifications within three business days accompanied by a NICS Transaction Number (NTN) or State Transaction Number (STN) traceable to the NTN (28 C.F.R. § 25.6(g)). They are obligated to transmit electronic determination messages to the FBI for open, denied, overturned, or changed-to-proceed transactions by the end of the operational day the check was initiated (28 C.F.R. § 25.6(h)).

POC states must destroy all identifying information from allowed transactions within 24 hours unless retained under independent state law (28 C.F.R. § 25.9(b)), and they must conduct Immigration Alien Queries (IAQs) for non-U.S. citizens through U.S. Immigration and Customs Enforcement, as mandated by the Attorney General on February 13, 2002 (NICS User Manual, Section 4.13).

Security measures include restricting NICS access to authorized personnel, screening staff, and encrypting data transmissions (28 C.F.R. § 25.8(b)-(d)), while denials must align with federal criteria under 18 U.S.C. § 922(g) and (n), such as felony convictions or mental health adjudications, or stricter state standards.

April 8, 2025

Page 4

POC states are also required to manage an appeal process when acting as the denying agency (28 C.F.R. § 25.10)).

Collectively, these responsibilities ensure a consistent, secure, and legally compliant background check process, as outlined in the Gun Control Act of 1968, as amended (18 U.S.C. § 922), and implemented through federal regulations (28 C.F.R. Part 25).

Specific Duties Relating to POC State Appeals

The federal appeals process for NICS denials is a critical safeguard to ensure accurate application of firearm prohibitions while protecting individual rights. As a POC state, the CA DOJ is the "denying agency" under 28 C.F.R. § 25.10, which imposes the following mandatory duties:

- **Notification of Denial Reason:** "An individual may request the reason for the denial from the denying agency," and "the denying agency will respond to the individual with the reason(s) for the denial within five business days of the request" (28 C.F.R. § 25.10 (a)-(b)).
- **Opportunity to Submit Evidence:** "The individual may provide additional information or documentation to the denying agency to establish the individual’s eligibility to acquire a firearm" (28 C.F.R. § 25.10(c)).
- **Review and Redetermination:** "Upon receipt of such information or documentation, the denying agency will promptly review it and make a determination whether the individual is eligible to receive a firearm, consistent with applicable law" (28 C.F.R. § 25.10(c)).

These duties collectively require the CA DOJ to maintain an appeals process that: (1) informs individuals of the specific basis for their denial; (2) provides a mechanism to submit evidence challenging the denial’s validity—not merely the accuracy of underlying records; and (3) obligates the CA DOJ to review such evidence and redetermine eligibility based on federal and state law. This process must extend beyond correcting records to include evaluating whether the denial itself was erroneous, such as a misapplication of prohibitions under 18 U.S.C. § 922(g) or 18 U.S.C. § 922(n).

Evolution of California’s Appeal Process

Pursuant to the Freedom of Information Act, our office requested copies of the NICS POC Audit Reports dating back to 2008. The 2008 Report was the third audit by the United States Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division. Upon review, what became apparent was the evolution of California’s POC Appeal process from one that was compliant to the complete abandonment of an appeal process entirely. What follows is a summary of each NICS POC Audit’s Reports descriptions of the State’s Appeal Process, followed by the current standard posted on the California Department of Justice, Bureau of Firearms website:

April 8, 2025

Page 5

2008: Third Triennial Audit (February 26, 2008)

Source: "California NICS POC Audit Report, Third Triennial Audit," February 26, 2008, Page 9.

Appeal Process Description:

The 2008 audit describes California's appeal process as "very efficient and structured." When an individual is denied a firearm purchase, the Federal Firearms Licensee (FFL) provides them with the California Department of Justice Bureau of Firearms (CalDOJBOF) telephone number to initiate an appeal. The CalDOJBOF attempts to resolve the appeal during this initial phone conversation. If the issue cannot be resolved immediately, the appellant is sent an official appeal form and a fingerprint card to formally start the appeals process. Upon receiving these materials, CalDOJBOF conducts research on the disputed area. If the denial is overturned, CalDOJBOF corrects any deficient or erroneous records. During the initial call, appellants are also informed of their right to appeal directly to the FBI. Appeals based on NICS Index records are referred directly to the FBI NICS Section. The audit notes that CalDOJBOF was in the process of re-engineering the appeals process, planning to send denied individuals a letter via U.S. Mail outlining the exact reason for denial, including the contact number for appeals, though this was not yet implemented by the audit date.

Key Features:

- Initial resolution attempted via phone call.
- Formal process with appeal form and fingerprint card if unresolved.
- Notification of FBI appeal option.
- Planned enhancement to include mailed denial letters (not yet active).

2011: Fourth Audit Cycle (September 2011)

Source: "NICS Audit Report, Fourth Audit Cycle," September 2011, Pages 3 and 8.

Appeal Process Description:

The 2011 audit briefly mentions the appeal process under "Managing an Appeal Process" but does not provide a detailed description of its operation. It outlines the federal requirements: an individual can request the reason for denial in writing from the denying agency (either the FBI or the POC, in this case CalDOJBOF), with a response due within five business days. If unresolved, the appellant can challenge the record's accuracy with the denying agency or, alternatively, appeal to the FBI NICS Operations Center. The audit confirms compliance with these requirements (Page 5, "NICS Audit POC Policy Compliance Summary Chart") but lacks specific operational details about California's process beyond meeting the federal baseline.

April 8, 2025

Page 6

Changes from 2008:

- No detailed operational description provided, unlike 2008.
- Focus shifts to federal compliance standards rather than California-specific procedures.
- No mention of the phone-based resolution or fingerprint card process from 2008, suggesting either continuity without elaboration or a shift in emphasis.

2014: Fifth Audit Cycle (March 2014)

Source: "NICS Audit Report, March 2014," Pages 3 and 4.

Appeal Process Description:

Like 2011, the 2014 audit outlines the federal requirements for managing an appeal process under "POC Requirements" but does not provide a detailed description of California’s specific procedures. It states that an individual may request the reason for denial in writing from the denying agency (CalDOJBOF as the POC), with a response required within five business days. If unresolved, the appellant can appeal to CalDOJBOF or directly to the FBI NICS Operations Center. The audit confirms compliance (Page 4, "NICS Audit Policy Compliance Summary Chart") but offers no further operational insights into California’s process.

Changes from 2011:

- No significant changes noted, as both audits focus on federal compliance rather than California-specific details.
- Lack of mention of the 2008 phone resolution, fingerprint card, or mailed letter enhancements.

2018: Audit Results (June 1, 2018)

Source: Letter from FBI CJIS Division to California DOJ, June 1, 2018, Page 2.

Appeal Process Description:

The 2018 audit letter does not describe an appeal process. It summarizes the results of the September 2017 NICS audit of California, stating no findings required corrective action, but it focuses solely on audit outcomes and does not address requisite operational details like appeals.

Changes from 2014:

- No information provided on the appeal process, so no changes can be assessed from 2014.

April 8, 2025

Page 7

2020: Audit Findings and Response (February 2020)

Source: "California 2020 National Instant Criminal Background Check System (NICS) Audit Findings and Response," February 2020, Pages 1 through 7

Appeal Process Description:

The 2020 audit does not explicitly describe the appeal process. It focuses on three findings of noncompliance related to Purpose Identifications, unauthorized NICS uses, and NICS Indices submissions, with California’s responses to these issues. No section addresses how denied individuals appeal, suggesting the audit prioritized other compliance issues over operational details like appeals.

Changes from 2018:

- No appeal process description in either 2018 or 2020, so no changes can be assessed.

Current Appeal Process (As of April 8, 2025)

Source: California Office of the Attorney General, <https://oag.ca.gov/firearms>, accessed April 8, 2025

Appeal Process Description:

A denial triggers a letter within two weeks from the DOJ Bureau of Firearms, explaining the reason and providing instructions to obtain the record and dispute inaccuracies. Telephone discussions are prohibited, requiring individuals to get their record and follow written dispute instructions, with attorney involvement suggested. For Federal Brady prohibitions, individuals can appeal to the FBI NICS using the NTN from the denial letter, per the NICS Appeals brochure.

Key Features:

- Denial letter with generic reasons and appeal instructions mailed to the individual.
- Prohibits telephonic interactions.
- Focuses appeals solely to FBI NICS using the NTN.

The California Department of Justice (CA DOJ) initially maintained a robust state-level appeal process for National Instant Criminal Background Check System (NICS) denials, as evidenced in the 2008 audit, which described an efficient system starting with phone-based resolution attempts, followed by mailed appeal forms and fingerprint cards, and a planned shift to denial letters—a process that evolved into a formalized, record-driven approach by 2025, with letters sent within two weeks and instructions for disputing inaccuracies.

April 8, 2025

Page 8

However, this state-managed NICS POC appeal process was gradually abandoned, with the current policy (as of April 8, 2025) reflecting a significant shift: while the CA DOJ still issues denial letters and provides guidance on obtaining criminal records, it explicitly prohibits telephone discussions and no longer facilitates a direct state appeal mechanism for NICS denials.

Instead, for Federal Brady prohibitions, individuals are told how they can obtain and correct their criminal history reports and are directed to appeal exclusively to the FBI NICS using the NICS Transaction Number, effectively outsourcing the appeal process to the federal level. Nothing is stated about California prohibitions.

This transition, subtly unfolding between the detailed 2008 process and the sparse audit descriptions of 2011-2020, suggests a deliberate move by the CA DOJ to relinquish its role in adjudicating NICS appeals, culminating in the complete abandonment of a state NICS POC appeal process by at least 2025.

Why California’s Record Correction Process Is Not a True Appeals Process

The CA DOJ’s record correction process does not satisfy federal appeal requirements for the following detailed reasons:

1. Limited Scope to Record Correction:

- A true appeals process, as required by 28 C.F.R. § 25.10, allows individuals to submit evidence to establish their eligibility, challenging the denial’s legal or factual basis—e.g., arguing that a prohibition under 18 U.S.C. § 922(g) or was misapplied.
- California’s process, however, is confined to disputing record accuracy (e.g., correcting a misreported conviction via expungement). The BCIA 8706 form addresses only "alleged inaccuracy or incompleteness" in records, not the CA DOJ’s decision to deny based on those records.

2. Absence of Reconsideration Mechanism:

- Federal law mandates that the denying agency "promptly review" submitted evidence and "make a determination" on eligibility (28 C.F.R. § 25.10). This requires the CA DOJ to actively reassess the denial’s validity, not merely updating records.
- In California, once a denial is issued, the CA DOJ provides no process for submitting evidence to challenge the denial itself (e.g., proving a misdemeanor was wrongly classified as a felony under 18 U.S.C. § 922(g)(1)). Instead, individuals must correct records externally—through courts or other agencies—and reapply, leaving the CA DOJ uninvolved in any redetermination.

April 8, 2025

Page 9

3. Impermissible Burden Shifting:

- Under 28 C.F.R. § 25.10, the duty to resolve eligibility disputes rests with the denying agency. Further supports this by envisioning agency action to correct denials before judicial intervention.
- California’s process shifts this burden entirely to the individual, requiring them to navigate separate judicial or administrative channels (e.g. NICS Appeals) without CA DOJ participation in the appeal. This contravenes the federal requirement that the agency itself reviews and resolves disputes.

4. Incomplete Compliance with Federal Regulation:

- The CA DOJ complies with and (b) by providing denial reasons via the DROS letter (though the generic template nature of the letter, which fails to identify the specific reason within a record for a denial, is arguably non-compliant), but it fails to implement subsections (c) – (e).
- There is no mechanism for individuals to submit evidence directly to the CA DOJ to challenge the denial’s basis, nor does the CA DOJ undertake the required review and redetermination of eligibility, rendering its process incomplete under federal law.

5. Admission of Deficiency in PRA Responses:

- In my PRA request (DOJ No. 2024-00615), I explicitly sought "writings... that refer to or relate [to] procedures whereby denied persons may appeal the denial of a firearm purchase application with the State of California," excluding record correction processes. The CA DOJ initially provided record correction forms (BOF 8016RR, BCIA 8706), which I rejected as non-responsive.
- The July 16, 2024, response, stating no additional records were requested after my clarification, effectively admits the absence of a true appeals process beyond record correction, confirming non-compliance with and (d).

Non-Compliance with Federal Requirements

The CA DOJ’s record correction process fails to meet its obligations as a POC state under federal law. 28 C.F.R. § 25.10(c)-(d) mandates an appeals process enabling individuals to contest a denial’s validity directly with the denying agency—here, the CA DOJ—by submitting evidence, followed by agency review and eligibility redetermination. By limiting its role to record correction and outsourcing federal denials to the FBI without addressing state prohibitions (e.g., Penal Code § 29800), the CA DOJ violates these requirements and undermines 18 U.S.C. § 925A’s intent for administrative resolution prior to judicial action.

California’s failure to provide a compliant appeals process extends beyond federal violations to its handling of state-specific prohibitions, such as those under California Penal Code § 29800,

April 8, 2025

Page 10

which prohibits firearm possession by individuals convicted of certain felonies not necessarily covered by federal law (18 U.S.C. § 922(g)). The CA DOJ, as the denying agency for all NICS checks in California, issues denials based on both federal and state criteria. Yet its current process—limited to mailing denial letters and directing individuals to the FBI for federal Brady prohibitions—offers no state-level appeal mechanism for denials rooted in California law. For example, an individual denied under Penal Code § 29800 due to a state-specific felony has no avenue to submit evidence to the CA DOJ to challenge the denial’s validity, such as proving the conviction does not meet the statutory criteria. This absence of a state appeal process for California-specific denials compounds the CA DOJ’s federal non-compliance with 28 C.F.R. § 25.10, which mandates an appeal process for all denials issued by the denying agency, regardless of their legal basis.

The inadequacy of California’s process is starkly illustrated by practical scenarios. For instance, if an individual is denied a firearm purchase due to a misdemeanor misclassified as a felony under 18 U.S.C. § 922(g)(1), federal law under 28 C.F.R. § 25.10(c) entitles them to submit evidence—such as court records showing the correct classification—to the CA DOJ for review and redetermination. Yet California offers no mechanism for the CA DOJ to accept such evidence or reassess the denial’s validity. Instead, the individual must pursue external correction through courts or other agencies and reapply, leaving the CA DOJ uninvolved in the appeal process mandated by federal regulation. This burden-shifting not only violates the individual’s right to appeal to the denying agency and overburdens the federal agencies who are obligated and burdened by appeals of non-POC states but also exemplifies the CA DOJ’s failure to meet its POC state obligations.

California’s current process, which shifts the burden to individuals to correct records externally without CA DOJ review, contravenes this precedent and the regulatory framework, leaving denied individuals without the administrative remedy federal law requires. By limiting its role to providing denial reasons and facilitating record correction through external processes, the CA DOJ:

- Violates (d) and (e) by failing to accept and review evidence of eligibility or redetermine the denial’s correctness.
- Undermines by forcing individuals into judicial action without an administrative appeal, contrary to the regulation’s intent for agency resolution.
- Breaches its implied obligations under the POC agreement with the FBI, which requires full compliance with NICS regulations to maintain its status as a POC state.

The CA DOJ’s failure to provide a compliant appeals process under 28 C.F.R. § 25.10 not only violates federal law but also jeopardizes the fundamental right to keep and bear arms enshrined in the Second Amendment, as affirmed in *District of Columbia v. Heller* (554 U.S. 570, 2008) and *New York State Rifle & Pistol Ass’n v. Bruen* (597 U.S. 1, 2022). By denying individuals a meaningful method to appeal an erroneous firearm purchase denial, the CA DOJ risks depriving citizens of a constitutional right without due process, exposing the department to potential liability under 42 U.S.C. § 1983 for civil rights violations. This lack of an appeal mechanism—

April 8, 2025

Page 11

whether for federal prohibitions under 18 U.S.C. § 922(g) or state-specific ones like Penal Code § 29800—sets a dangerous precedent, leaving the CA DOJ accountable for the harm caused by unremedied errors in its NICS denials.

California’s persistent non-compliance with 28 C.F.R. § 25.10 also risks scrutiny from the FBI, which oversees POC state adherence to NICS regulations under the NICS Participation Agreement signed by California on November 30, 1998. The FBI retains authority to audit POC states and, in cases of sustained failure to meet federal standards, may revoke California’s POC status, reverting all NICS checks to federal management. Past audits (e.g., 2020 NICS Audit Findings) have identified unrelated compliance issues, and the absence of a proper appeals process could trigger further FBI intervention. This underscores the urgency of establishing a compliant state appeals process to maintain California’s POC designation and fulfill its agreed-upon responsibilities.

Demand and Notice

The CA DOJ must establish a state appeals process that complies with federal law. This process must include:

- A mechanism for individuals to submit evidence directly to the CA DOJ challenging the validity of a firearm purchase denial,
- A procedure for the CA DOJ to promptly review such evidence and make a determination on eligibility, distinct from record correction, per 28 C.F.R. § 25.10.
- Publicly available documentation of this appeals process, separate from the current record correction procedures outlined at <https://oag.ca.gov/firearms>.

Failure to comply with these federal requirements by May 08, 2025, may result in legal action or other means to enforce your duty to establish a compliant state appeals process. Please respond in writing by May 08, 2025, confirming your intent to comply or providing detailed justification for your current process under federal law. I reserve all rights to pursue appropriate remedies to ensure compliance with the CA DOJ’s obligations as a POC state.

I request a response within 30 days of receipt of this letter outlining the actions taken to address this matter.

Sincerely,

Jason Davis

Jason Davis
California Firearms Attorney

cc: Allison Mendoza,
California Department of Justice,
Bureau of Firearms,
Director
Via E-Mail: Allison.Mendoza@DOJ.CA.gov