No. _____

In The
Supreme Court of the United States

CHRISTOS KOUTENTIS,

Petitioner,

v.

N.Y.C. POLICE DEPARTMENT,
LICENSING DIVISION,

Respondent.

On Petition for Writ of Certiorari
to the Court of Appeals of the State of New York

PETITION FOR WRIT OF CERTIORARI

LAW OFFICE OF BERNARD V. KLEINMAN, PLLC
BERNARD V. KLEINMAN, ESQ.
Counsel of Record for Petitioner
108 Village Square
Suite 313
Somers, NY 10589-2305
Tel. 914-644-6660
Fax. 914-694-1647
Email: attrnylwyr@yahoo.com

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTIONS PRESENTED

Do the N.Y.P.D. regulations, as applicable to the revocation of a firearms permit, violate the Petitioner's rights under the Second Amendment?

Are the N.Y.P.D. regulations void for vagueness?

LIST OF PARTIES

The parties to this action below were the Petitioner, Christos Koutentis, the Petitioner below, the Respondent, N.Y.C. Police Department, Licensing Division, the Respondent below.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

Supreme Court:

District Courts:

State Courts

Statutes & Rules:

The Petitioner, Christos Koutentis, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Appellate Division, First Judicial Department, as entered on February 20th, 2018, *Matter of Koutentis v. NYC Police Department, Licensing Division,* 158 A.D.3d 542 (1st Dep't, Feb. 20, 2018), with leave to appeal denied by the Court of Appeals of the State of New York on June 12, 2018, *Koutentis v. NYC Police Department, Licensing Division,* 31 N.Y.3d 909 (N.Y. Court of Appeals, June 12, 2018).

JURISDICTION

The denial of leave to appeal to the Court of Appeals for the State of New York was entered on June 12th, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). See also Rules 10(b), (c), 13(1), Rules of the U.S. Supreme Court.

OPINIONS BELOW

The opinion of the Appellate Division, First Judicial Department, as entered on February 20th, 2018, *Matter of Koutentis v. NYC Police Department, Licensing Division,* 158 A.D.3d 542 (1st Dep't, Feb. 20, 2018), with leave to appeal denied by the Court of Appeals of the State of New York on June 12, 2018, *Koutentis v. NYC Police Department, Licensing Division,* 31 N.Y.3d 909 (N.Y. Court of Appeals, June 12, 2018. See Appendix.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Second Amendment to the federal Constitution states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

38 Rules of the City of New York (R.C.N.Y.) § 5-30:

§ 5-30 **Incidents Involving Suspension.**
(a) Whenever a handgun licensee is involved in an "Incident," the licensee shall immediately report said incident to the License Division's Incident Section – Telephone number (212) 374-5538 or 5539. Certain "Incidents" shall also be reported to the "Precinct of Occurrence" (where the incident took place).
(b) The following "Incidents" shall be immediately reported to the "Precinct of Occurrence" and the License Division Incident Section:

(1) Lost handgun(s).
(2) Stolen handgun(s).
(3) Discharge of handgun – other than at an authorize small arms range/shooting club.
(4) Lost handgun license (see lost/stolen license).
(5) Stolen handgun license (see lost/stolen license).
(6) Improper use/safeguarding of handgun(s).
(7) Public display of an unholstered handgun.

(c) The following "Incidents" shall be immediately reported to the License Division's Incident Section:

(1) Arrest, summons (except traffic infractions), indictment, or conviction of

licensee, in any jurisdiction, federal, state, local, etc.; suspension or ineligibility order issued pursuant to § 530.14 of the New York State Criminal Procedure Law or § 842-a of the New York State Family Court Act.

(2) Admission of licensee to any psychiatric institution, sanitarium, and/or the receipt of psychiatric treatment by licensee.

(3) The receipt of treatment for alcoholism or drug abuse by licensee.

(4) The presence or occurrence of a disability or condition that may affect the handling of a handgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder.

(5) Licensee is or becomes the subject or recipient of an order of protection or a temporary order of protection.

(6) Alteration, mutilation or destruction of handgun license.

Note: The above "Incidents" shall be reported if they were not previously disclosed by licensee to the License Division, or if previously disclosed, circumstances have changed.

(d) In addition to the aforementioned "Incidents," whenever the holder of a handgun license becomes involved in a situation which comes to the attention of any police department, or other law enforcement agency, the licensee shall immediately notify the License Division's Incident Section of the details.

(e) All "Incidents" shall be reviewed and evaluated by License Division investigators. If, as a result of the "Incident" the License Division finds it necessary to suspend or revoke the license, the licensee shall

receive notification by mail. Said notification shall advise the licensee of the status of her/his license and the reason for the suspension/revocation.

(f) The licensee shall be directed to immediately voucher for safekeeping all handguns, rifles and/or shotguns listed on any license and any rifle/shotgun permit s/he possesses. After the handguns, rifles and/or shotguns have been vouchered, the licensee shall immediately send her/his handgun license and any rifle/shotgun permit s/he possesses and a copy of the "Voucher" to the License Division's Incident Section.

(g) Failure to comply with these directions is a violation of the New York State Penal Law, and shall result in summary action by the Police Department. Possession of an unlicensed handgun is a crime. If a license is suspended or revoked, the handgun(s) listed thereon are no longer considered licensed. Failure to comply with the License Division's directions may result in the permanent revocation of the licensee's handgun license.

(h) If her/his license is suspended or revoked, the licensee shall be issued a written Notice of Determination Letter, which shall state in brief the grounds for the suspension or revocation of the license and notify the licensee of the opportunity for a hearing. The suspended/former licensee has the right to submit a written request for a hearing to appeal the decision. This request shall be made within thirty (30) calendar days of the date of the Notice of Determination Letter. The written request shall be submitted to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038. A licensee whose arrest or summons resulted in suspension or revocation of

her/his license may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law § 1.20(16)(c). If the suspension or revocation resulted from the licensee becoming the subject of an order of protection or a temporary order of protection, the licensee may only submit a written request for a hearing within thirty (30) calendar days after the expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply. However, requests for hearings shall not be entertained, nor shall a hearing be scheduled until the licensee:

(1) Complies with the provisions of subdivision (f) above; and

(2) Provides a Certificate of Final Disposition, if applicable; and

(3) Provides a Certificate of Relief from Disabilities, if applicable, to the License Division.

(i) The written request for a hearing shall include:

(1) License number.

(2) Reason(s) for the request.

(3) Disposition of license(s) and handgun(s).

(j) Upon receipt of the licensee's letter, the License Division shall schedule the licensee for a hearing and notify the licensee by mail.

STATEMENT OF THE CASE

INTRODUCTION

The Petitioner, CHRISTOS KOUTENTIS sought to challenge the recommendation of the Hearing Officer/Administrative Law Judge, as adopted by the Director of the Respondent, N.Y.C. POLICE DEPARTMENT, LICENSING DIVISION, (hereinafter referred to as "Respondent"), that permanently revoked the Petitioner's Residence Handgun License.

On December 2d, 2014, the Commanding Officer of the Licensing Division, canceled the Appellant's Residence Handgun License.

On administrative appeal of this decision a hearing was held before an Administrative Law Judge ("ALJ"). On or about February 5, 2016 the ALJ issued a recommendation that the Petitioner's Residence Handgun License be permanently revoked. On February 11, 2016, the Director of the Licensing Division, entered a Final Agency Determination adopting the aforesaid Recommendation of the ALJ.

It was asserted below that the Agency had failed to properly notify the Petitioner of the pending action, and that such failure implicated his rights under the Second Amendment.

It was further argued in the State court that the regulations setting forth a basis for handgun license revocation were so vague as to not pass constitutional muster.

The State courts rejected both of these arguments.

FACTUAL BACKGROUND

Procedural History

As set forth above, this action was commenced in the context of an administrative proceeding before the Respondent, Licensing Division of the New York City Police Department. The action had been commenced by the Respondent on the basis of an alleged Domestic Incident that the Petitioner had failed to notify the Police Department about. This failure to notify, and the nature of the incident, led to the administrative finding that the Petitioner had violated the relevant Rules, as challenged herein. In all of the agency actions the Petitioner appeared *pro se*.

After this finding, and its affirmance by the agency head, the Petitioner, through Counsel herein, brought an action, by way of an Order to Show Cause, in Supreme Court, New York County, pursuant to Article 78 of the N.Y. Civil Practice Law and Rules ("C.P.L.R."), challenging the agency decision as a violation of the state statute (C.P.L.R. § 7804), as follows:

> (a) not being supported by substantial evidence,
> (b) being arbitrary and capricious,
> (c) the sanction imposed, permanent revocation of the Petitioner's handgun license, was excessive and not supported by the evidence,
> (d) that the notice received by the Petitioner, of the administrative hearing, was inadequate considering the constitutional right involved, and
> (e) that the agency Rule itself (38 R.C.N.Y. § 5-30) was constitutionally void for vagueness.

The Supreme Court, rather than ruling on the Petitioner's Order to Show Cause, referred the matter to the Appellate Division for the First Judicial Department, pursuant to C.P.L.R. § 7804(g).

The Appellate Division, on February 20th, 2018, denied the Petitioner relief purely on procedural grounds. The Court of Appeals denied the Petitioner's leave application (raising the constitutional issues asserted herein) on June 12th, 2018.

THE DECISION OF THE LOWER COURT

The issues raised before the Appellate Division, by the Petitioner were (1) that the Licensing Division had failed to abide by its own rules of procedure, (2) that the agency penalty — permanent revocation — was unwarranted by the facts and the law, (3) the agency findings were not supported by substantial evidence as required by the statute, C.P.L.R. § 7804, (4) that the agency acted in an arbitrary and capricious manner, (5) the subject agency regulation, as enforced by the agency violated the appellant's rights under the Second Amendment to the federal Constitution, and (6) the regulations setting forth the bases for handgun license revocation were constitutionally void for vagueness. The Appellate Division issued its Opinion on February 20th, 2018. *Matter of Koutentis v. NYC Police Department, Licensing Division,* 158 A.D.3d 542 (1st Dep't, Feb. 20, 2018).

The one-page decision, in relevant part, dismissed the constitutional arguments solely on the basis that the Petitioner-Appellant, though having appeared *pro se*, waived such arguments, having

failed to raise them in the administrative hearing process.[1] Specifically the Appellate Division stated,

> Petitioner's arguments that the Hearing Officer was biased, and that revocation violated his Second Amendment rights, are unpreserved, as they were not raised at the hearing (*see Matter of Striplin v. Selsky,* 28 A.D.3d 969, 812 N.Y.S.2d 722 [3d Dept. 2006]), and are also unavailing (*see Matter of Delgado v. Kelly,* 127 A.D.3d 644, 8 N.Y.S.3d 172 [1st Dept. 2015], *lv denied* 26 N.Y.3d 905, 2015 WL 5445688 [2015]).

158 A.D.3d at 542-43.[2]

---

[1] It is clearly arguable that, in the context of an issue concerning an established right under the Constitution, not only should a *pro se* party's pleadings be construed liberally, but also his or her failure to raise significant and determinative issues — of a constitutional nature — ought not serve as the basis for a denial of relief. See generally *Brennan v. United States*, 867 F.2d 111, 117 (2d Cir.), *cert. denied* 490 U.S. 1022 (1989) ("With respect to constitutional or jurisdictional claims, we have adhered to the rule that a section 2255 petitioner may raise such claims even though they were not raised on direct appeal, unless there is some showing of deliberate delay or bypass.").

[2] Certainly, rather then merely taking a dismissive approach to the Petitioner's arguments, the Appellate Division could have remanded the matter to either the trial court or the agency, in order to properly develop a record on the issue. See *The Gun Range, LLC v. City of*

A Leave Application to appeal to the Court of Appeals was filed on March 9th, 2018, pursuant to C.P.L.R. § 5602. This was denied on June 12th, 2018. *Koutentis v. NYC Police Department, Licensing Division,* 31 N.Y.3d 909 (2018).

REASONS FOR GRANTING THE WRIT

A. INTRODUCTION

The case at bar raises significant issues regarding the application of the Second Amendment, as interpreted by this Court, to the legitimate rights of law-abiding handgun owners. This case represents a perfect example of the extreme limits that localities (and states) will go to in order to impose their political beliefs such that they end up restricting rights guaranteed to the citizenry by the Constitution. It is important to note that the Petitioner here comes before this Court with the highest of impeccables. The Petitioner, is a resident of the City, County, and State of New York. He is a licensed physician, Board Certified Anesthesiologist, currently completing a research thesis for the Executive Masters Program in Epidemiology at Mailman School of Public Health, Columbia University Medical Center. He has never been arrested, nor had any charges, of even the most minor import, ever preferred against him. Similarly, his professional record is spotless, with no actions ever having been brought as against him by any State or Professional governing body. Similarly,

---

Philadelphia, 2018 WL 2090303 (Commonwealth Ct. Pa. 2018).

among the charges against him brought by the N.Y.P.D., none of them alleged that he ever mishandled the firearms that he lawfully owned, nor that he ever acted in a manner, related to the firearms, that would subject another party to harm. The record below made clear, and as unrefuted by the Respondent, that he kept the firearms in a locked cabinet, to which only he had the key (no minor children being in the residence where he kept the gunsafe). Furthermore, all of the ammunition for these firearms was kept at a firing range, totally separate and distinct from the location where the firearms themselves were kept. If anyone could be a poster boy for the appropriate care and handling of a firearm, it is Dr. Koutentis.

Nevertheless, the agency, as affirmed by the Appellate Division, chose not to merely suspend his license, but to permanently revoke it — denying him his constitutional right to keep and bear arms. And, it did this relying upon factors such as his failure to timely respond to a request for additional information (though the regulations contained no time requirements), that he used a post office box for some of his mail, that, in a New York City apartment building, no one notified him of the policed presence (ignoring the fact that apartment building residents more often than not mind their own business), that the building doorman, in which he lived, did not recognize him, that his girlfriend telephoned the Hearing Officer more than forty times (even though acknowledged by the agency as being irrelevant), and other actions, none of which relate to (a) his right to keep a licensed firearm in his residence, nor (b) his manner of keeping the subject firearms safe, secure, and out of harm's way.

The Respondent agency, with the State Court's subsequent official blessing, rubber-stamped the actions of the agency.[3]

B. THE SUBJECT REGULATIONS, AS APPLIED TO THE PETITIONER, VIOLATED HIS RIGHTS UNDER THE SECOND AMENDMENT

It is the Petitioner's position that, since the license involved herein clearly implicated Dr. Koutentis' constitutional right to keep and bear arms under the Second Amendment, the agency was duty bound to employ reasonable additional methods to notify him of the hearing, and accord him other specific rights. See *Jones v. Flowers*, 547 U.S. 220, 225 (2006); *Echavarria v. Pitts*, 641 F.3d 92, 94-95 (5th Cir. 2011); *Perez-Alevante v. Gonzales*, 197 Fed. Appx. 191, 195 (3d Cir. 2006). Compare *In re Foreclosure of Tax Liens by County of Clinton*, 116 A.D.3d 1206, 984 N.Y.S.2d 216 (3d Dep't 2014) (Appellate Division, in challenge to tax lien foreclosure ruling, upholds foreclosure where taxpayer's property interest was clearly implicated,

---

[3] Not to be ignored is the fact that both at the Supreme Court and Appellate Division levels, during oral argument, the sitting judges commented on the fact that Dr. Koutentis owned six handguns. The fact that he owned these lawfully, and they were duly registered, and their safekeeping was properly maintained, was of little or no relevance. Such comments by the sitting judges goes a long way to establishing the fact that the State courts allowed the political climate in a particular jurisdiction to outweigh the constitutional rights of the Petitioner.

and Petitioner County engaged in additional efforts to locate him. *Id*. at 1208.[4])

The Licensing Division, is clearly duty bound to obey and enforce its rules and regulations in conjunction with, and subject to, the broad interpretations of the Second Amendment of the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 567 U.S. 742 (2010).[5] However, the N.Y.P.D. failed

---

[4] The Third Department made clear the type of efforts — going beyond those that the statute requires — at notice that the County engaged in (serving, arguably, as a guide for the Respondent herein since the issue clearly implicates Dr. Koutentis' Second Amendment right), *viz*.,

> Here, in addition to complying with the notice requirements of RPTL article 11 (*see RPTL 1125[1][b][i]*; [c]), petitioner took the additional steps of filing a change of address verification form with the post office, checking the local telephone book and several county agencies for notice of a possible address change, reviewing both the deeds and the equalization and assessment form to verify respondent's [taxpayer's] address, and reviewing the title search obtained for the tax foreclosure to determine whether there was any document on record that would provide an alternative address for respondent. Accordingly, petitioner undertook a more detailed and exhaustive search than was required and, therefore, respondent was not deprived of due process . . .

Id. at 1208. Citations omitted.

[5] See *Peruta v. California*, — U.S. —, 137 S. Ct. 1995 (2017), where Justice Thomas, in his dissent, described the Second Amendment right to keep and bear arms, as

to recognize, in actual practice, that, in the presence of a recognized right under the federal Constitution (here the Second Amendment right to keep and bear arms), an agency may well be required to go that "extra-mile" to ensure that the licensee's rights (not privileges) are fully protected from the actions of the

---

one treated by the courts as "a disfavored right." *Id*. at 1999. He went on to state,

> The Constitution does not rank certain rights above others, and I do not think this Court should impose such a hierarchy by selectively enforcing its preferred rights. [*Jackson v. City and County of San Francisco*, — U.S. —, 135 S. Ct. 2799, 2799-2800 (2015)] ("Second Amendment rights are no less protected by our Constitution than other rights enumerated in that document").

Ibid.

In accord see *Silvester v. Becerra*, — U.S. —, 138 S. Ct. 945, 950-51 (2018) (Thomas, J, dissenting op.). See also discussion in *Bridgeville Rifle & Pistol Club v. Small*, 176 A.3d 672, 678 at n. 100 (Del. 2017).

Indeed, in *Heller*, *supra*, the majority, in its analysis of the Second Amendment, stated the following, *viz*.,

> it has always been widely understood that the Second Amendment, <u>like the First and Fourth Amendments</u>, codified a *pre-existing* right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." As we said in *United States v. Cruikshank*, 92 U.S. 542, 533 (1876), "[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed . . . ."

554 U.S. at 592. Emphasis added. Footnote omitted.

State. What the restrictions imposed both by the Licensing Division regulations and the applicable state laws do is to serve as a burdensome, constitutionally suspect limit on a recognized right — they do not grant a right to own a firearm; this is already guaranteed under the Second Amendment and *Heller*, *et al.* For, if the regulation, and the implementation thereof, imposes an undue or unnecessary burden upon the right to keep and bear arms — within one's own home — then the action of the government is suspect, and may well not hold up under the applicable standard of scrutiny. *Texeira v. City of Alameda*, 873 F.3d 670, 682 (9th Cir. 2017) (*en banc*); *United States v. Mazzarella*, 614 F.3d 85, 89 (3d Cir. 2010).

In construing these regulations, and the authority granted to the Licensing Division, the courts may not interpret them in a manner that deprives the individual of his or her rights under the Second Amendment to keep and bear arms. In *McDonald, supra,* the Supreme Court held that the Second Amendment's guarantee of the right to bear arms, as set forth in *District of Columbia v. Heller, supra*, applies equally to the states. 561 U.S. at 748-49.

Instructive is the decision in *National Rifle Association of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185 (5th Cir. 2012). There, the Fifth Circuit was called upon to apply *Heller* in determining whether federal statutes that prohibit federally licensed firearms dealers from selling handguns to a person under the age of 21 were constitutional in light of the Second Amendment. The Court, recognizing the right protected by the Constitution, went through the

exercise of first canvasing the analytical frameworks that other Circuit Courts of Appeals had utilized in Second Amendment cases, and identified "[a] two-step inquiry" employed by some of those courts, and "adopt[ed] a version of this two-step approach." 700 F.3d at 194. The Court of Appeals concluded "that the first inquiry is whether the conduct at issue falls within the scope of the Second Amendment right." *Id*. at 194. That undertaking entails "look[ing] to whether the law harmonizes with the historical traditions associated with the Second Amendment guarantee." *Ibid*. In the case at bar, that clearly never occurred.

It is true that that the laws and regulations, in and for the City of New York, do not constitute an outright ban on the ownership or possession of firearms. Rather, the laws in New York only proscribe the unlicensed possession of firearms. See *People v. Perkins*, 62 A.D.3d 1160, 1161, 880 N.Y.S.2d 209 (3d Dep't 2009) ("Penal Law article 265 does not effect a complete ban on handguns and is, therefore, not a 'severe restriction' improperly infringing upon defendant's Second Amendment rights."); *People v. Foster*, 30 Misc.3d 596, 598-99, 915 N.Y.S.2d 449 (S. Ct. Kings Co. 2010). See Penal L. § 400.00(6). They may not, however, proscribe the licensed possession of a firearm for the protection of one's home. *McDonald*, *supra*, 561 U.S. at 767-68; *Heller*, *supra*, 554 U.S. at 628-30.[6]

---

[6] In *Kachalsky v. County of Westchester, infra*, the Second Circuit commented on the focus of the Second Amendment on the right to keep arms within one's home, *viz.*,

Indeed, the Second Circuit has recognized that "heightened scrutiny" is necessary where there is a challenge that implicates the Second Amendment right to keep and bear arms. See *Kachalsky v. County of Westchester*, 701 F.3d 81, 93 (2d Cir. 2012), *cert. denied sub nom. Kachalsky v. Cacace*, — U.S. — (2013).[7]

Compare *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 258-60 (2d Cir. 2015), *cert. denied sub nom. Shew v. Malloy*, — U.S. — (2016) (Court of Appeals applies an "immediate scrutiny" standard in reviewing limitations placed by States upon types of firearms that individuals may legally purchase, as opposed to the "heightened

---

> What we know from these decisions [*i.e., Heller* and *McDonald*] is that Second Amendment guarantees are at their zenith within the home.

701 F.3d at 89.

In accord see *Burgess v. Town of Wallingford,* 569 Fed. Appx. 21, 23 (2d Cir. 2014), *cert. denied* — U.S. — (2015).

[7] See also *Rowland v. Mad River Local School Dist., Montgomery County, Ohio*, 470 U.S. 1009, *reh'g denied* 471 U.S. 1062 (1985) (Supreme Court recognizing that a strict scrutiny should be applied wherever the State imposes restrictions on, or infringes upon, any rights' "explicitly or implicitly guaranteed by the Constitution; *id*. at 1015-16, quoting from *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 33-34, *reh'g denied* 411 U.S. 959 (1973)).

In accord see *Mance v. Sessions*, 896 F.3d 390, 398 (5th Cir. 2018) (Fifth Circuit recognizing that a "strict, rather than intermediate, standard of scrutiny [in a challenge to laws restricting rights of gun owners] is applicable."

See also discussion in N. 5, *supra*.

scrutiny" that *Kachalsky* applied, or the "strict scrutiny" that *Texeira, supra,* applied).

The question then is whether the manner in which the Licensing Division exercises its power to regulate the possession of firearms in one's own home, "operate[s] as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense[,] or for other lawful purposes . . ." *United States v. Lahey*, 967 F. Supp.2d 731, 751 (S.D.N.Y. 2013) (quoting from *Heller*).

In the case at bar, it is clear that the Petitioner's rights under the Second Amendment were not only egregiously abridged, but also effectively denied him, in the State proceedings. As set forth in brief above, the results-oriented action of the Respondent, as rubber-stamped by the state courts, took absolutely no cognizance of Dr. Koutentis' right under the Constitution, and clearly violated that right.

C. THE APPLICABLE REGULATION, AS ENFORCED BY THE RESPONDENT, WAS UNCONSTITUTIONALLY VAGUE

The Respondent, also relied upon the alleged failure of the licensee to report various "incidents" to the Police as required by Title 38, § 5-30. However, this section is vague at best. It defines an "incident" as follows,

> (1) Arrest, summons, (except traffic infractions), indictment, or conviction of licensee, in any jurisdiction, federal, state, local, etc.; suspension or ineligibility order issued pursuant to §

> 530.14 of the New York State Criminal Procedure Law or § 842-a of the New York State Family Court Act.
> (2) Admission of licensee to any psychiatric institution, sanitarium, and/or the receipt of psychiatric treatment by licensee.
> (3) The receipt of treatment for alcoholism or drug abuse by licensee.
> (4) The presence or occurrence of a disability or condition that may affect the handling of a handgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder.
> (5) Licensee is or becomes the subject or recipient of an order of protection or a temporary order of protection.
> (6) Alteration, mutilation or destruction of handgun license.

38 R.C.N.Y. § 5-30(c).

None of these occurred in the case at bar, nor did the Respondent ever claim that they did.

The section goes on to have a catch-all provision, as follows:

> In addition to the aforementioned "Incidents," <u>whenever</u> the holder of a handgun license becomes involved in a situation which comes to the attention of any police department, or other law enforcement agency, the licensee shall immediately notify the License Division's Incident Section of the details.

Id. at § 5-30(d). Emphasis added.

The problem here is that strict compliance with this section would mean that even if the license holder receives a traffic summons for parking at an expired meter, he needs to report it to the Licensing Division; or he fails to properly curb his dog, he needs to report it to the Licensing Division. This sub-section provides no guidance or limits.

The inherent vagueness of this "Definition" renders it, for all practical purposes, unenforceable. See *Colten v. Kentucky*, 407 U.S. 104, 110 (1972) ("The root of the vagueness doctrine is a rough idea of fairness."). In *Hill v. Colorado*, 530 U.S. 703 (2000), the Supreme Court made clear that a statute or regulation is void for vagueness, (i) "if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits," or (ii) "if it authorizes or even encourages arbitrary and discriminatory enforcement." *Id*. at 732.

In *Smith v. Goguen*, 415 U.S. 566 (1974), this Court recognized that local statutes or regulations are particularly suspect if they may infringe on First Amendment rights. *Id*. at 573. There is no constitutional reason why the same standard ought not be applied when the subject regulation is applied to the Second Amendment right to keep arms in one's own home. See discussion in *Jackson, supra*, 135 S. Ct. at 2802 (dissenting op., Thomas, Scalia, Js.).

Here, the very language of subsection (d) is so vague as to make its enforcement by the Licensing Division totally arbitrary, and its comprehension by the public, all but impossible. The regulation gives the Respondent *carte blanche* to revoke a gun owner's residence permit on the flimsiest and most

disconnected grounds, as it sees fit. This is the essence of an arbitrary regulation.

As such, it should be found void on vagueness grounds.

CONCLUSION

For all of the foregoing reasons, Petitioner would respectfully request that this Petition for a writ of *certiorari* be granted.

Respectfully submitted,

Bernard V. Kleinman, Esq.
LAW OFFICE OF BERNARD V. KLEINMAN, PLLC
Attorney for Petitioner
108 Village Square
Suite 313
Somers, NY 10589-2305
Tel. 914-644-6660
Fax. 914-694-1647
Email: attrnylwyr@yahoo.com

Dated: September 7, 2018