

ORIGINAL

No. 21-1249

In the Supreme Court of the United
States

JOHN CASSIDY

Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Judicial Court of Massachusetts

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

John Cassidy has been convicted of seven firearm offenses for firearms he possessed solely inside his home as a new resident to Massachusetts. Under Massachusetts's gun licensing scheme a carrying license is required for possession of certain firearms and devices kept inside one's home. New residents to the state are unable to 'import' common firearms to this state without having to confront government officials with unbridled discretionary powers to prosecute felonies under Massachusetts's gun licensing scheme. Questions presented:

1. Does The Second Amendment's 'core' protections, The Due Process Clause, and Privileges and Immunities Clause extend to new residents when they 'import' legally acquired firearms to a new state?
2. When reviewing a state's firearm licensing scheme under The Second and Fourteenth Amendment is the state's licensing scheme reviewed under strict scrutiny when charges arise from a new resident's continued possession of legally acquired firearms inside their new home?
3. Is a new resident's actual ability to obtain a state license a mitigating factor for consideration when the state licensing scheme mandates felony convictions for in home possession of firearms, triggering a lifetime ban on exercise of 'core' protections of in home possession?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

STATEMENT OF RELATED PROCEEDINGS

John Cassidy v. Commonwealth, F.A.R.#28644(denied 2022) (clarification motion)

John Cassidy v. Commonwealth, 2020-P-0872 (2021)(clarification motion relating to Cassidy SJC12350 and Harris SJC12607

Commonwealth v. John Cassidy, 2017 Mass. App. Unpub LEXIS 218 (2017).

Commonwealth v. John Cassidy, 479 Mass. 527 (2018)(opinion issued).

Oral argument video recording available via
Suffolk Law School:

www.youtube.com/watch?v=kLpNfWs-7ZA

Video is 40minues and 17 seconds long. Cassidy begins at 18 minutes 40 seconds, opposition DA is after

John Cassidy v. Commonwealth, Writ of Certiorari of Supreme Court of United States, No. 18-191 (2018)(denied)

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II. This Court needs to address Massachusetts's gun licensing scheme for new residents as it is impossible to comply with. The law cannot be complied with. A contemporary lens allows discretionary application and enforcement by government officials who disagree or find private ownership of firearms 'an unpopular exercise' of a fundamental right. SUBJECTIVE application of licensing laws, punishing citizens for prior legal conduct, and misinterpreting constitutional safeguards under guise of public safety and comparing lawful, legal gun owners to felonious criminals such as drug dealers, robbers, rapists, and drunks are not analogous arguments to support enforcement of the licensing scheme against new residents and legal arms.....19

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records bureau and the attorney general's hotline in which varying answers are given out by the state employees. And while this isn't legal advice, varying answers seem to suggest there is a lot of confusion internally on what the law 'is.' Contact is 617-660-4782 & frb@state.ma.us or guninquiries@state.ma.us & 617-727-8400 for AG's hotline. I can provide sample questioning but the attached appendix 'F' has basic questions which will likely elicit varying answers on varying days if This court wishes to confirm this 'confusion' on its own.

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OPINIONS BELOW

The notice and docket entry by The Supreme Judicial Court of Massachusetts denying Petitioner's motion for clarification regarding process of 'importing' firearms to the state along with Cassidy and *Harris*' conflicting opinions issued by same court with same facts as to licensing scheme and its application to new residents. See appendix A--- FAR28644. Appendix B & C for conflicting opinions and analysis of importing firearms and licenses.

JURISDICTION

The date and judgment of The Supreme Judicial Court of Massachusetts sought to be reviewed is February 11, 2022. This petition is filed _____ March 1, __, 2022, which is within the 90 day filing period and in compliance with Rule 30. The Supreme Judicial Court of Massachusetts is the highest court of Massachusetts. The jurisdiction of this Court is invoked under 28 U.S.C. s1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to The United States Constitution provides:

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.

Section One of The Fourteenth Amendment to The United States Constitution provides:

...No State shall....deprive any person of life, liberty, or property, without due process of law...

Mass. Gen. Laws c. 140, §131M provides:

No person shall . . . possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Whoever not being licensed under the provisions of section 122 violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years.

Mass. Gen. Laws c. 269, § 10(m) provides:

Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession . . . a large capacity weapon or large capacity feeding device therefore who does not possess a valid Class A or Class B license to carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years. The possession of a valid firearm identification card issued under section 129B

shall not be a defense for a violation of this subsection; provided, however, that any such person charged with violating this paragraph and holding a valid firearm identification card shall not be subject to any mandatory minimum sentence imposed by this paragraph.

Mass. Gen. Laws c. 269, § 10(h)(1) provides:

Whoever owns, possesses or transfers a firearm, rifle, shotgun or ammunition without complying with the provisions of section 129C of chapter 140 shall be punished by imprisonment in a jail or house of correction for not more than 2 years or by a fine of not more than \$500.

STATEMENT OF THE CASE

John Cassidy, lifelong resident of Texas, lawfully purchased a nine millimeter handgun and an "AK-47 like" firearm, and ammunition in Texas, both firearms came with multiple magazines/feeding devices as part of the purchase. Receipts for purchase are part of court records and Mr. Cassidy's lawful purchase of firearms and devices as well as his possession inside his home is not in question by the state or courts. Mr. Cassidy moved to Massachusetts to attend law school in 2010 and brought his firearms with him. Through his roommate, the Dartmouth Massachusetts police learned of these firearms, and executed a search warrant. Mr. Cassidy did not deny that the items were his, and voluntarily gave a video/audio recorded statement for forty five minutes post arrest, and

maintained throughout his trial and appeals, that the Second Amendment protected his right to have these items in his home.

Petitioner Cassidy pre-trial presented receipts showing lawful acquisition of firearms, a Hunter's Education Course which is accepted by Massachusetts's law as a valid safety course. In August 2011 Petitioner enrolled in and finished Massachusetts's local firearm safety course; both courses meet Massachusetts's licensing scheme's 'safety' requirement for ownership and license. That is said course and fees paid simultaneously with state application ----a license will issue.

In March 2011 Mr. Cassidy was indicted for illegally possessing firearms, devices, and ammo inside his home. On March 10, 2015 Mr. Cassidy was found guilty of seven felonies. One violation of Ch. 140§ 131M, five violations of Ch.269§10(m), and one violation of Ch. 269§10(h). Summer 2015 Petitioner filed post-conviction remedies; and his direct appeal in April 2016. All denied.

March 2017 Mr. Cassidy filed for further appellate review to The Massachusetts Supreme Judicial Court("SJC"). June 2017 further appellate review granted, SJC#12350. In May 2018 SJC of Massachusetts affirmed all seven felony gun possession convictions and issued a thirteen opinion. 479 Mass. 527(2018). Massachusetts's highest state court ruled

Petitioner Cassidy was rightly convicted of possession of firearms, devices, and ammo¹.

It took one page for The SJC to explain that the state's licensing scheme can convicted for in home possession of firearms and is valid under federal Second Amendment law. There have been no successful challenges to the state's regime and the requirement of a carrying license for possession inside one's home is 'presumptively lawful.' *citations omitted, Cassidy at 539-540*. The court did not review under any level of scrutiny. Citing case-law involving criminals and felons carrying already illegal arms during the commission of their principle offenses was 'proof that Massachusetts's gun licensing scheme was 'presumptively lawful,' valid under *Heller*, needed to protect public safety, and Petitioner was convicted.

In 2019, a year after Cassidy's opinion, the SJC issued another opinion. The *Harris* case, 481 Mass. 767. The case is authored by the same justice authoring Cassidy's opinion: Honorable Justice Gaziano. Both cases deal with:

- (1) illegal possession of a firearm, device, and ammunition by lack of a Massachusetts issued license;

¹ It is noteworthy that Mr. Cassidy's case was granted review to answer the questions of (1) level of scienter required and (2) Second Amendment Challenge under the state licensing scheme. The SJC dedicated one page to Second Amendment claim, dismissed in a single page explanation by the court and did not review under any level of scrutiny.

- (2) by a new resident of Massachusetts;
- (3) who is licensed in their home state;
- (4) met statutory exemptions.

The core difference in cases is Cassidy's firearms were possessed solely inside his home, Mr. Harris was carrying said items. Both defendants produced a state license as proof of lawful ownership and relied upon this as an affirmative defense to the charges.

The SJC applied an analysis on how exemptions and licenses by new residents raised as a defense are dealt with, but process varied in both opinions yet were relied upon by the court to justify the state's enforcement of the gun licensing scheme.

Petitioner Cassidy raised his affirmative defense of a license, statutory exemptions, and The Second Amendment pre-trial in July & September 2011 in Fall River Superior Court in front of Honorable Judge Kane as part of a motion to dismiss the case on exemptions within the gun licensing scheme, The Second Amendment, and vagueness/notice. See appendix D. In addition Mr. Cassidy submitted to same court and District Attorney Mr. Aaron Strony in August 2011 a local Massachusetts safety course which suffice carrying license requirement as well as requests to Firearms Records Bureau requests for information. See appendix D & E.

At this point even if the state refused to acknowledge his exemptions, Mr. Cassidy now met all

requirements (qualified) for a Massachusetts license except for payment of money for the license (state's exercise tax on firearm ownership).

These same documents were submitted again in 2012 pre-trial under Attorney James Powderly, a third time the week leading to trial in 2015 by attorney Powderly. Submitted again during post-conviction relief via Rule 30(a)² (*see SJ-2015-0524*), and on appeal to The Massachusetts Appeals Court (*see 2016-p-0475*), and The Supreme Judicial Court of Massachusetts (*see FAR-28644, FAR-25173 & sjc12350*). See appendix D,E, F, & G.

REASONS FOR GRANTING THE PETITION

I. Massachusetts's gun licensing scheme vests too much discretionary power in its government officials to prosecute. Massachusetts licensing scheme gives no flexibility and punishes with a felony, which then bans the future exercise of a fundamental right. This

² See Cassidy's 2015 memorandum in support of R30(a) pages starting at bottom of p58-65 for in depth discussion of 'right to travel' component protected by Privileges and Immunities Clause of 14th Amendment as described by Honorable Justice Stevens and cases cited; as well as Massachusetts's gun licensing explained AND hypothetical showing its impossibility as applied to new residents. No government official, that is district attorney or judge ever challenged, responded, or provided a rebuttal. (BEG. p58: "In the 1999 case of...." END p65: "offends this defendant's due process rights.")

plainly restricts and chills 'core' right of owning firearms inside one's home.³

Heller and The Second Amendment has limitations, but its 'core' protections of in home possession of firearms and munitions 'shall not be infringed,' and is not subject to the will of a government official. Massachusetts has and is infringing rights protected by The U.S. Constitution; *Heller*, and its progeny. Firearm ownership inside one's home is not a privilege, it is a right. See *Caetano v. Massachusetts*, 136 S. Ct. 1027, 1030(2016)(Alito, J., concurring)(quoting *Heller*, 554 U.S. at 625)(The Second Amendment "guarantees the right to carry weapons 'typically possessed by law-abiding citizens for lawful purposes.'"), See *Hightower v. Boston*, 693 F3d 61, 71(1st Cir 2012)("Courts have consistently recognized *Heller* established that the possession of operable firearms for use in defense of home constitutes the 'core' of The Second Amendment.")

Petitioner Cassidy's firearm illegalities could have swiftly and justly been resolved had the licensing scheme not have vested too much discretion in a government official to pursue their own predilections. Petitioner could have been asked by the government official to relinquish the arms or face criminal or civil

³ *Heller* holds that operable firearms in the home are a perfect and protected exercise of Second Amendment. *McDonald* applied this right to states through 14th Amendment. *McDonald v. City of Chicago, Ill*, 130 S.Ct. 3010(2010)(The Second Amendment right to keep and bear arms is fully applicable to the states by virtue of the 14th Amendment).

penalties. He could have been asked to prove lawful ownership. He could have been temporarily in custody or arms temporarily confiscated until a proper permit was issued. Mr. Cassidy could have legally transferred the arms to another private citizen or removed them from the state via a federal firearms license transfer. He could have been given a grace period to own arms while application was pending. He was prosecuted, convicted, jailed and his fundamental rights ignored.

Specifically, the state through its government officials has convicted Petitioner Cassidy of in home possession. This occurred by judges and district attorneys working in concert to not acknowledge or review licenses and exemptions pled but purposely use criminally possessed firearms by known criminals in commission of other principle offenses as 'proof,' firearm ownership is dangerous in this state. Peaceful enjoyment by law abiding citizens cannot be regarded as criminal; if it is The U.S. Constitution ought to step in and protect the citizen. This is the instant case. If the statements in this paragraph are in doubt, review record of pleadings/briefs and court opinions. There are no acknowledgement of license exemptions and no court ever reviewed in home possession under any level of scrutiny.

Restraint not contempt would have ensured post-*Heller* and *McDonald* constitutional safeguards were abided by. However when a state's licensing scheme for a constitutionally enumerated or implied

right is subject to unbridled discretionary power of government officials that right is converted into a privilege. See *Heller* at 2821 (“A constitutional guarantee subject to future judge’s assessments of its usefulness is no constitutional guarantee at all.”), See *Thornhill v. State of Alabama*, 60 S. Ct. 736, 741-742(1940)(“A criminal law is overbroad if it punishes activities which are constitutionally protected). See generally, *Commonwealth v. Abramms*, 849 N.E.2d 867 (Mass. App. 2006)(Court acknowledging that in addition to fixing minimum standards for providing notice of the conduct proscribed by particular laws, the vagueness doctrine also prohibits such imprecision as might give rise to arbitrary enforcement of laws; consistent with this principle, legislatures are constitutionally required by Due Process Clause to set forth minimum guidelines for the enforcement of criminal statutes to avoid a standardless sweep that allows policemen, prosecutors, and juries to pursue their own personal predilections)(Per Gelinas, J with one judge concurring in result) U.S.C.A. Const. Amend. 14. See also *Opinion of the Justices to House of Representatives*, 393 N.E.2d 313 (Mass. 1979)(Where uncertainty engendered by a criminal statute threatens to restrain the exercise of constitutionally protected rights, judicial relief is particularly appropriate), *Opinion of the Justices*, 229 N.E.2d 263 (Mass. 1967)(Vice of unconstitutional vagueness is aggravated where statute in question operates to inhibit exercise of individual freedoms affirmatively protected by Constitution).

A severe burden on the 'core' of The Second Amendment is what Mr. Otis McDonald and Mr. Dick Heller were burdened with when This Court took up their respective cases. Petitioner Cassidy moved to Massachusetts with lawful firearms he had legally purchased. He 'imported' them to Massachusetts as part of his move to the state, this was in 2010. Petitioner is not submitting to This Court that Massachusetts is prohibited from enforcing their gun licensing scheme as a sovereign state. Petitioner Cassidy is submitting to This Court that Massachusetts's licensing scheme is problematic on its face because it

- (1) vests too much power in government officials resulting in abuse,
- (2) automatically disarms new residents, and
- (3) cannot be complied with by new residents moving to the state

The three issues above place a burden of criminality on law abiding citizens exercising a fundamental right that move to Massachusetts. A lifetime resident of Massachusetts likely is fully informed of processes to legally obtain firearms, but that conduct and notice cannot be expected of a new resident to the state. The licensing scheme places a presumption of illegality on firearm ownership, it requires new residents to do one of the following: disarm before moving to the state and then once residency is established the government will allow 'you' to own firearms once you have asked them for permission and paid them money for exercising; one cannot then 'import' the firearms

'you' had but the government will decide what you can or cannot have with the ultimate power of deciding this rests with the colonel of the state police and the licensing board⁴. OR 'you' can as a new resident sell all your firearms, that is disarm yourself, move to the state, establish residency and then re-arm yourself based upon the firearms the state has decided 'you' are allowed to possess designed by the state's "approved roster of firearms." These options seem to confer a privilege not a right, and an in depth look will reveal Massachusetts has gotten a constitutional guarantee exactly backwards as applied to new residents.

The results of the Massachusetts's permitting regime is wholly legal conduct and constitutionally protected activity --moving to the state as a legal gun owner, is subject to abuse by officials attempting to convert fundamental, constitutionally protected rights into a privilege to the satisfaction of a government official(s). That is not how constitutional rights work, possession inside one's home cannot be treated as immaterial and cannot punish prior legal conduct due to the state's 're-regulation' of firearms. Precedent by This Court and others do agree, "firearm possession is an act sufficiently innocent that no one could be ex-

⁴ "Defendant he did not apply for a license to carry or an FID card, the defendant cannot properly raise an as-applied constitutional challenge to licenses," see *Commonwealth v. Johnson*, 461 Mass. 44, 58 (2011), citing *Commonwealth v. Powell*, 459 Mass. 572, 589-590 (2011). Citation for presumption of no right to own arms in state, NOT that either defendant was anything close to a law abiding citizen. They are known criminals.

pected to know that 'they' would violate the law by possessing a gun and without more than simple possession is not kind of activity comparable to possession of hand grenades, narcotics or child pornography. U.S. v. *Meade*, 175 F.3d 215,226 (1st Cir. 1999) quoting *Staples* at 610-612. See U.S. v. *Hart*, 726 F.Supp2d 56(2010). See also U.S. v. *Anderson*, 885 F.2d 1248 (1989 5th Cir)(Court stressed and ultimately held that government must prove mens rea in any criminal prosecution, declaring it too severe for community to bear, and certainly not intended by Congress to subject serious criminal punishment on one who possess what appears to be and innocently and reasonably believes to be, wholly ordinary and legal pistol merely because it's been modified, unknown to him to be fully automatic).

Massachusetts permitting scheme automatically disarms new residents who move to the state with weapons that are re-classified by the state as 'large capacity' and 'assault weapons.' Once a new resident's firearms are defined statutory as one of these that resident is in immediate violation (no grace period) of the gun licensing laws and triggers felony indictments carrying mandatory minimum jail sentences. The only way out is for the district attorney to use their discretion not to charge. See *Commonwealth v. Clint Cornelius*, 78 Mass.App.Ct. 413 (2010)(in home possession of firearms as affirmative defense to a MGL Ch. 269 s.10(a) charge not a defense for 10(m) charge)(60 day new resident exemption charge not extended to large capacity items).

Petitioner Cassidy was immediately in violation for his prior legal conduct and Massachusetts refused to protect or review in home possession as lawful exercise of The Second Amendment. Unfortunately, he is not alone as no less than two more defendants have suffered the same fate since Cassidy's arrest in 2011. However, in *Harris's* case, and Angel deLaCruz's case the District attorney nol prose the 10(m) charge, leaving the affirmative defense of in home possession available to both. Likely insignificant as *Harris* was carrying and deLaCruz possessed his firearms in a sensitive area. But for Cassidy it would have meant availing himself to 10(a) affirmative defense of in home possession, statutory enumerated affirmative defense; his charges would have been dismissed. The 'will of an official,' is significant. That did not happen, the government officials' discretionary power to enforce 10(m) on Petitioner Cassidy went unchecked by his Second Amendment rights and he was subject to their unfretted will. Specifically, the state ignored constitution safeguards at every level of proceedings.

There are numerous situations where the district attorney (government official) has discretionary power to decide if charging document is under 10(a) or 10(m), which is the power to decide if the defendant has the 'right' to possess firearms inside their home. The difference between 10(a) and 10(m)? The characteristic of weapon possessed, not any activity. And just as *Miller* and *Heller* so aptly noted, "...it would have been odd to examine the character of the weapon ra-

ther than simply note that the two crooks were not militiamen." *Heller* at 622. See *City of Cambridge v. Phillips*, 612 N.E.2d 638 (Mass. 1993)(Principle underlying void for vagueness concept is that vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on ad hoc and subjective basis) U.S.C.A. Const. Amends. 5, 14. See also *Commonwealth v. Seay*, 376 Mass. 735,742 (1978)(holding carrying a firearm within one's residence or place of business by one having a valid FID card but not having a license under Ch.140 s.131 is NOT a criminal offense). Additionally, looking to the history of charging statutes in Cassidy's case the legislature's intent can be found:

G.L. c. 269 § 10(m): St. 1974 c. 649, § 2, approved July 30, 1974, and by § 3 made effective Jan. 1, 1975 rewrote the section, which prior thereto read: "the court may, if the firearm or other article was lost by or stolen from the person lawfully in possession of it, order its return to such person, and where it has been the finding of the court that a person has been guilty of unlawful possession of a firearm, but makes the further finding that such possession was in ignorance of the law, the court may order the return of said firearms to its owner *upon his compliance with those regulations relative to the establishment of lawful possession.*"

Lastly, it is noteworthy that Petitioner Cassidy was convicted of one count of possessing ammunitions inside his home, which it is settled law that banning possession of ammunition inside one's home would effectively be a ban on firearms as they are useless without each other.⁵

Here is some empirical data on Massachusetts's licensing scheme. Prior to this data the most in depth look at Massachusetts's licensing scheme was done by James Beha in 1977 at Boston University Law. It is contained in this petition's table of contents, relied upon for its substantive data on too much discretionary power contained in the state's licensing regime and remains one of it not the only in depth look at the state's laws and its effects. See tables I, II, and IV for data on the Bartley-Fox Act crime data. It was published in 1977, after the passing of Bartley-Fox Act and *Commonwealth v. Angelo Jackson*. Both aforementioned are the 'hill' that the state and Boston sit on when enforcing gun laws. See "And nobody can get you out:" The impact of mandatory prison sentence for the illegal carrying of a firearm, on the use of firearms, and on the administration of criminal justice in Boston' Part I & II, Boston University Law Review 57(1977)("Beha").

⁵ In addition Attorney General Maura Healey's Press Conference July 20, 2016 and her remarks regarding not applying the assault weapon or copy-cat ban *retro-actively* but only going forward seem to be at odds with how Mr. Cassidy was prosecuted for his possession prior to her press conference.

Fast-forward from Bartley-Fox Act to 1998 when Massachusetts passed the lionshare of what is still in effect today and was in full force when Petitioner Cassidy was arrested in 2011, it was The Gun Control Act of 1998. It created FID cards, licenses to carry, and license to sell firearms in the Commonwealth. The Act also set a timeline on all existing permits/licenses in the state, they would expire in 1999 or 2000 in order to roll out the newly established multi-tiered licensing scheme. Pistol permits would now be varying levels of carrying licenses, it required safety course to be completed, firearm storage laws, banned certain guns, and established new category of 'large capacity weapons and devices.'

Beha's two part article dealt with enforcement and prosecution data, so this Petitioner moves on to empirical data alone. The Gun Control Act of 1998 reduced licenses in the state by 86%. The Criminal History Systems Board and Firearms Records Bureau admitted that 1,251,808 of the 1,541,201 licenses in the state were now unaccounted for in their system. The House Post Audit and Oversight Committee admitted it had failed to notify three quarters of a million gun owners in the state of their expiring licenses, and later noted that only 5% of FID cardholder's on file are currently licensed. This is clearly a move of less licensed, legal gun owners in the state, while criminals will forgo the laws and often pay no attention to them is almost axiomatic. Lastly, Cassidy noting that The Gun Control Act of 1998 takes verbatim the language, classes of arms, and language of the federal assault

weapon ban. (1994-2004), and that the state's new licensing act listed statutory exemptions from it for government officials at all levels, while also including in that police and military, the Act made no mention of a local militia or any constitutional safeguards for The Second Amendment or art. 17 of their state constitution.

In July 2010 the Executive Office of Public Safety ("EOPS") prepared a report titled "An Overview of Firearms Related Offenses Arraigned in Massachusetts Courts Between 2006 and 2008." The report was written by Mica Astion, Shelley Penman and Marc Germain and issued by the Office of Grants and Research. The most astonishing statistics are as follows:

- More than half, 56%, of firearm related charges were dismissed or Nol Prossed;
- only 13% of charges resulted in a term of commitment;
- The report found that as the age of the defendant increases, the likelihood of receiving a term of commitment decreases; and
- That four firearm offenses: FID Card, Possession of Firearm without permit, possession of firearm, and firearm violation(other), accounted for 75% of all the charges or for 20,039 of the entire 26,723 firearm offenses

The above four paragraphs speak for themselves, and statistics tend to suggest that Massachusetts's gun licensing scheme is at best arbitrary at enforcing its gun offenses. The 2010 report found 56% of firearm charges were dismissed or Nol prossed. How is that possible? Discretionary power to enforce or not enforce gun crimes held in power of a government official, in this case likely the district attorney. *But see* Ch140 s. 129b&c and Ch. 269 s. 269(10) and subsequent gun licensing subsections and enforcement statutes where no less than 5 times sections are quoted as: "prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file" or "nothing in this section shall prevent any person from being prosecuted for any violation of this chapter." Sadly, private firearm ownership in Massachusetts is unpopular and the licensing scheme is used to enforce ownership against legal gun owners, there is never a more plainly obvious reason for The Second Amendment to be used to protect such unpopular sentiment toward this right and other rights protected in The Bill of Rights. The 4th, 5th, and 6th Amendments free known criminals every day, The First Amendment protects hate speech and advocating violence.

II. This petition should be granted, because the actual process of 'importing' firearms to Massachusetts as a new resident is impossible. Since both issued opinions (*Cassidy* and *Harris*) apply an entirely different process as described by the SJC, but same set of material facts except *Cassidy* had his inside his home,

Harris in his car. Massachusetts's highest court refused to clarify which process is correct, both analyses cannot be correct as they represent two different applications of the same process and licensing laws.

Text, history, tradition, and *Heller* is how to review Petitioner's case because his conduct inside home warrants strict scrutiny. If intermediate scrutiny is warranted, than a narrowly trailed law is not even close to what Massachusetts permitting scheme is as it is enforced and applied. Cassidy's knowledge of his 'traditionally lawful conduct,' was usurped and Massachusetts imputed criminal activity to his gun ownership. This eased the state's path to convictions. See *Staples v. United States*, 511 U.S. 600, 615-16(1994)(Court then stated that "they are reluctant to impute that purpose to Congress, whereas here, it would mean easing the path to convicting persons whose conduct would not even alert them to the probability of strict regulation in the form of a statute such as present one), *U.S. v. Harris*, 959 F.2d 246, 257-61 (1992 D.C. Cir)(Court stated: "We believe that if Congress, against the background of widespread lawful gun ownership, wished to criminalize the mere unregistered possession of certain firearms often in-disguisable from other, non-prohibited types it would of spoken clearly."), *U.S. v. Weintraub*, 273 F.3d 139,148 (2001)("Ultimately the court noted that the long history of substantially unregulated possession of guns in the United States meant that a possessor would not

reasonably expect that possession to be closely regulated, yet asbestos was a highly regulated at local, state, and federal level).

When Massachusetts refuses to review the licensing scheme under any level of scrutiny for a constitutionally protected right: firearms possessed inside one's home, it leaves government officials with unbridled discretionary power to prosecute firearm offenses and is not aligned with court precedent.

The disregard for an enumerated constitution right by Massachusetts is bewildering. In fact, when the state was asked to review the right of marriages between same sex partners the SJC found that an implied constitutional right was present. The SJC was a bellwether. The Court did that by reviewing the marriage license under strict scrutiny for an implied constitutional right. "Where a statute implicates a fundamental right or uses a suspect classification, we employ "strict judicial scrutiny." *Hillary Goodridge & Others v. Department of Public Health & Another*, 440 Mass. 309, 330 (2003) citing *Lowell v. Kowalski*, 380 Mass. 663, 666 (1980). The SJC in Cassidy's case paid no mind to an enumerated right.

This Court and the SJC have acknowledged that a marriage license for same sex partners performed out of state must be recognized by any state, and did so by finding an implied constitutionally protected right. *See Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). However, Massachusetts has abused legal gun owners and treats out of state gun licenses as a lesser

right even though it is enumerated in The U.S. Constitution. Massachusetts needs to review gun cases arising from possession inside one's home under strict scrutiny. Doing so would affirm John Cassidy's rights and would avoid unconstitutionality in their scheme. Differentiating lawful conduct from illegal conduct would be gleamed from the inception of possession of arms in question and if a principle offense beyond the in home possession was present in the court's analysis when challenges are raised. Criminals who possess firearms illegally do so with the intent to commit more crimes. Their crime of possession is ancillary to the intended or future crime.

Massachusetts has purposefully not overtly run afoul of *Heller* and *McDonald* or their progeny, they do it systemically and covertly through the licensing regime's vested discretionary power which restricts a considerable amount of individuals' freedom to exercise. The process of obtaining firearm licenses as a new resident is impossible and over-bearing which results in a subjective review of each case and no constitutional safeguards.

The state does not maintain their firearm information online for new residents, you click a link and the link is 'dead,' it goes nowhere. See appendix G. 'Dead link' meaning the links do not represent anything or give you any information. You click on link to learn about the gun laws, and there is no information. Which is not only important, it would be mandatory if you are a new resident searching for information that

could 'save' you from a prison sentence and revocation of a constitutional right via felony conviction.

However, it does not end there, the approved rosters and statutory exemptions issued by the Colonel of state police do not even seem to be distributed or created as mandated by the statute(s). See appendix E. Petitioner has requested them multiple times, and once under code of law, the state's response: nothing. In not responding to Petitioner Cassidy's final request under code of law the state violated its own statutes.

Additionally, EOPS and their employees along with licensing bureau do not themselves even seem to understand the laws with any uniformity or be able to advise a new resident on standard operating procedure within the state's licensing scheme. See appendix F.

In sum, the state unmercifully prosecuted Cassidy for legal firearms; but is not held to any standard in the same statutory scheme requiring government officials to produce documents, rosters, or assistance in those who seek licenses. Requiring strict scrutiny review would have and would of stopped Petitioner Cassidy's case from violating his rights, but no court demanded it and no district attorney used their discretionary power to allow for peaceful exercise of in home possession.

QUESTIONS WHICH SHOULD HAVE BEEN ANSWERED BY MASSACHUSETTS GOVERNMENT OFFICIALS TO STOP CONSTITUTIONAL VIOLATIONS BUT TOO MUCH DISCRETIONARY POWER IS VESTED IN THEIR GOVERNMENT OFFICIALS TO PROSECUTE RESULTING IN NO ACCOUNTABILITY or HAD PRIVATE OWNERSHIP OF FIREARMS INSIDE ONE'S HOME BEEN REVIEWED BY STATE COURT(S) USING A LEVEL OF SCRUPINITY, CONSTITUTIONAL SAFEGUARDS WOULD HAVE BEEN IN PLACE

When you 'import' firearms to Massachusetts do you import firearms as generally understood a working firearm to be? Or do your firearms automatically become defined statutorily by Massachusetts once you cross the border into the state regardless of notice? Or when one 'imports' firearms to the state does said items retain their statutorily defined federal description, and acquire the new statutory description under the state /Massachusetts, a sort of 'dual' definition; how does the Second Amendment determine importing and exporting constitutional safeguards for this natural right, or is covered under privileges and immunities? A new resident's knowledge of their new state's licensing scheme is not the same knowledge of a lifelong resident of said state, is completely different than the knowledge of a criminal relying on The Second Amendment because this knowledge likely turns on the initial acquisition or possession of the arm, was it legally obtained?(guilty conscience, concealment)

Was the item in question intended use for legal purposes(militiamen) or does record tend to suggest the item was obtained for a criminal purpose(crook)?
Strict scrutiny is required and will do this.

- a. This process and analysis needs to encompass how new residents move to the state with items defined by the state as large capacity⁶. This matters because normal firearms are elevated to much more serious items and require more licenses and it appears a latent ambiguity in the statute (See *Cornelius*)(how affirmative defense license exemption in 10(a) not applied to (m)). The constitutional matter of notice, and equal protection clause need to be addressed since an enumerated constitutional right is involved;
- b. Punishment for unlicensed possession matters in a constitutional analysis, where the unlicensed possession is a lack of a state issued license by a new resident punishment needs to be a factor taken in when reviewing criminal charges. Compare with unlicensed possession where

⁶ Massachusetts's gun licensing scheme places firearms or devices which are capable of holding more than ten bullets into a subcategory, requiring additional licenses and fees. This category is 'large capacity,' and depends on how many bullets said firearm or device may hold.

the lack of a state issued license is by a criminal who acted unlicensed because they could not legally obtain a license or knew better and they chose to not follow the law is not same analysis. Unlicensed possession carries a felony conviction, which then triggers a lifetime ban of owning firearms. Thus when a new resident is being charged with unlicensed possession, and this new resident has 'imported' firearms to Massachusetts, yet acquired the firearms in question legally under federal and another state's law, the punishment needs to be taken into consideration. Otherwise you have quasi-ex post facto laws in regards to prior legal conduct: the original legal purchase, now becoming illegal under another state's law, and this illegality stems from a possessory charge. Which can be resolved by seeking a state issued license(John Cassidy was qualified for a Massachusetts license). If the accused, new resident qualifies for the Massachusetts license, then there is no reason not to allow him/her to obtain this license. In home possession should not be a trap for the unwary or the militiamen⁷.

⁷ Ch140 s.129 makes exceptions for expired licenses in the Commonwealth(meaning 90 days after stated license expiration)that

The appendix filed here-within contains documents which have been filed numerous times in varying Massachusetts's Criminal Courts by John Cassidy or his attorney at trial, pre-trial, Rule 30 (a), and appeals which comply with AND show lawful possession of said items. The appendix in its entirety, but items D and E are exemptions previously submitted and requested which should have shifted burden to prosecutor or been accepted as affirmative defense to all charges. *See Cassidy Cf. Harris.*

In 'finding' Massachusetts's licensing scheme to be legal under *Heller* Massachusetts has subjectively applied their licensing law to effectuate their own means. There is no place for a subjective review of any constitutional right, there is no place for a review of the scheme through a 'contemporary lens.' The state's licensing process must be applied uniformly to in home possession. The law does not matter to criminals, they own firearms regardless of the laws, and it starts at the inception of their possession, which is most likely not through legal means, example: *a street purchase*. Thus there will be no doubt some sort of mens rea in the acquisition of the firearm.

Laws made at deterring firearm possession are geared toward those who misuse firearms. And should not enforced against new residents, moving to a state

confiscated arms be returned under this section after licensee re-applies and said license is reinstated as well as exceptions for voluntarily surrendering arms.

with prior legally purchased firearms. In much the same way same sex marriage licenses must be respected when issued by another state/out-of-state (*Goodridge* and *Obergefell* case). A change in state licensing law in regards to an enumerated or implied constitutional right is not a criminal offense, much less a felony which results in a lifetime revocation of the right, it is at best a civil violation.

There is zero possibility of a new resident having the actual ability to comply with Massachusetts's licensing scheme as it relates to certain classes of firearms: large capacity. These said classes of firearms are a creature of Massachusetts's legislature and are exactly what John Cassidy was in possession of, with no way to comply with the law, no notice of statutes, no notice of this newly defined 'class' of arms specific to Massachusetts. Mandatory minimum felony convictions were the only outcome and a lifetime revocation of his constitutional right to bear arms.

The one avenue available to John Cassidy was in the hands of a decision by the district attorney's office, this was the only person who could have stopped this by way of dismissing the 10(m) charges. This would have allowed John to rely upon the affirmative defense contained in 10(a): in home possession. From there Petitioner Cassidy could have then legally sought his state licenses through the local police chief. This would have saved John and would have also ensured the state's licensing scheme was valid under

Heller. This was not allowed by the state and its government officials, and is a prime example when discussing 'criminal justice reform.'

A severe burden on the 'core' of The Second Amendment right should require a strong justification. General practice when reviewing gun licensing schemes is a two-prong test. (1) whether the law burden conduct protected by The Second Amendment; and (2) if so, what level of scrutiny apply to the regulation. In Petitioner Cassidy's case there is no doubting his core rights are effected. The answer to first prong of test is: YES. The second prong is also answered in the affirmative. How This Court gets there is a simple, well beaten path.

There is not more than a few sentences ever **acknowledging the validity or in the alternative challenging Mr. Cassidy's exemptions and licenses entered into record until footnote 7 by Justice Gaziano's in 2018.** It is as follows:

The defendant also contends that if the weapons and feeding devices had not been considered 'large capacity,' he would not have been required to obtain an FID card to possess them within his home. In support of this argument, the defendant cites G.L. c. 140, § 129C (u), which allows some nonresidents who hold a license in another State to be exempt from Massachusetts licensing re-

quirements. "Provided...that the licensing requirements of such nonresident's [S]tate of residence are as stringent as the requirement of the [C]ommonwealth for a firearms identification card.." **The defendant presented no evidence, however, that his Texas License would have satisfied that requirement.**

See Cassidy, 479 Mass. 527,533 (2018)(emphasis added by author as misrepresentation of facts and systematic suppression of licenses).

In 2019 Justice Gaziano authored the *Harris* opinion, as previously discussed, and during licenses, exemptions, and affirmative defenses discussion the opinion notes that "because it is an affirmative defense, a defendant has the initial burden of production as to the possession..... if such evidence is presented, however, the burden is on the prosecution to persuade the trier of facts beyond a reasonable doubt that the defense does not exist." *See Harris* at 772. Next Justice Gaziano again uses footnote 7 to discuss a new resident's license, exemption, and affirmative defenses. It is as follows:

In relevant part, G. L. c. 278, § 7, states that "[a] defendant in a criminal prosecution, relying for his justification upon a license . . . shall prove the same; and, until so proved, the presumption shall be

that he is not so authorized." This court has said that "[a]lthough the language of § 7 suggests that the defendant must shoulder the entire burden of proof (i.e., the burden of production and the burden of persuasion) as discussed, we have interpreted it only to impose the burden of production on the defendant, maintaining the ultimate burden of disproving a properly raised affirmative defense on the prosecution." *Commonwealth v. Gouse*, 461 Mass. 787, 807 (2012).

Both SJC opinions deal with (1) illegal possession of a firearm, device, and ammunition by lack of a Massachusetts issued license, (2) by a new resident of Massachusetts, (3) who is licensed in their home state, and (4) meets statutory exemptions. Petitioner Cassidy's affirmative defenses, licenses, exemptions, and in home possession of lawful firearms were wholly ignored at every stage of his criminal proceedings, *culminating* in a denial of any qualification ever being brought to the attention of any government official in footnote 7 of the SJC's opinion in 2018. Which is an outright misrepresentation of material facts and submissions. See appendix D & E.

One year later, the same court, the same justice, and even the same number footnote is used to then apply a completely different rationale and process for to an almost identical issue: a new resident to Massachusetts relying upon a lawful firearms license

to avoid a felony conviction (Noting *Harris* was in fact carrying, which is not the same as in home possession).

A conviction serves as a lifetime ban on ever exercising the same fundamental right. Now in Petitioner Cassidy's case, he has never acted unlicensed or acquired a firearm contrary to any state or federal firearm law. When he moved from one state to another state, he continued to possess lawfully acquired firearms and ammunitions inside his home. A state law changed which now made the same legal firearms now defined under a new licensing scheme with vastly different statutory definitions. Carrying with them mandatory minimum prison sentences, felony convictions, and lifetime denial of future exercise of a fundamental right. There are no safeguards in place to protect *except* for The Second and Fourteenth Amendment. The licensing scheme in place in Massachusetts vests ultimate discretionary power to prosecute for owning firearms inside new residents' home and that power rests in hands of police officers, district attorneys, and judges. That is unconstitutional.

CONCLUSION

In This Court's *reporter's guide to applications pending before The Supreme Court of The United States* document the very first sentence defines a writ of certiorari as: "an application is a request for emergency action addressed to an individual Justice." I whole heartedly agree with this definition. This is an emergency.

Justice delayed is justice denied and having spent ten years under the yoke of prosecution, conviction, and now living out my life as a convicted felon for the simple exercise of owning lawfully acquired firearms inside my home I humbly request my pro se petition to be granted by This Court, however much of an anomaly a pro se writ is to This Court by a non-incarcerated individual.

An individual's right to unalienable rights as life, liberty, and the pursuit of happiness are considered inherent in all persons and roughly what we mean today when we say human rights or "my constitutional rights." The United States government respects 'you' and believes in personal responsibility. The ultimate minority in this country is the individual.

A license of any kind generally bestows upon its holder the ability to rely upon it in some form or another or to gain access to places or items. The generally accepted definition of a license is: permission to

act, freedom of action, permission granted by competent authority to engage in business or occupation. Yet a license never replaces your eye, ear, or brain, it is simply issued by a governing body as proof 'you are' a competent or trained person in the object or event being regulated.

In the case of firearms, there are licenses to manufacture, buy, sell, own, ship, and destroy them. Gun control is effectuated through federal and state laws and government officials. Gun control has limitations and can and has been used to regulate the individual into being disarmed. The Second Amendment to The United States Constitution protects U.S. citizens from that situation. We have always loved guns as a country, as of 2015 there are more than 300 million guns in private hands; half of these are large capacity, as defined by some states. They freed us from the tyrannical rule of England, fed us, protected us from dangers on the frontier, and served/serve us in war. Guns are a part of The United States of America past, present, and future.

This petition should be granted so The Court can make clear that without an accompanying crime beyond the simple possession of firearms the 'core' of The Second Amendment protects individual's right to keep lawfully purchased arms inside their home as a new resident. And the new resident's actual ability to obtain a license cannot be subject to unbridled discretion of government officials and threat of felony prosecution resulting in lifetime ban on exercise of simple

possession is always unacceptable.

The prior cases cited in opposition to Petitioner Cassidy by the state always represent unsuccessful challenges to criminal firearm charges raised by known criminals and an already criminal principle act. A constitutional right cannot be subjected to comparing its lawful exercise by a law abiding citizen to a criminal committing crimes, to do so imputes crimes and criminality to simple enjoyment of a protected conduct. In *Loadholt*, a Massachusetts citizen that never applied for an FID card was criminally prosecuted for firearms possession. 460 Mass. 723 (2011); In *Gouse* and *Johnson*, the defendants had a gun in the trunk of their respective cars and were criminally prosecuted for firearms violations. 461 Mass. 787 (2012) and *Johnson*, 461 Mass. 44 (2011); and in *Powell*, a Massachusetts citizen under twenty-one ran from the police and was prosecuted for firearms violations 459 Mass. 572 (2011). See generally, *McGowan*, 464 Mass. 232(2013); *Heng*, 80 Mass.App.Ct. 1101(2011).

Petitioner Cassidy's firearms where legally purchased and owned inside his home innocently, had Massachusetts's given him an opportunity to legally proceed with its state licensing scheme he would have, after all he had never broken any licensing laws prior or any firearms laws. Rigid and inflexible state licensing schemes and public official's discretion prevented reasonableness. The prayers of Mr. Otis McDonald and Mr. Dick Heller were the same as Mr. Cassidy's:

we all wished to own firearms inside our home for self-defense without threat of imprisonment. Mr. Cassidy's right to continue to own his firearms should have been allowed once his deficiency in state license was discovered. Imprisoning and stripping one of their constitutional right for exercising is at odds with what a natural right is.

To end, Petitioner Cassidy is cognizant of allegations made in this petition, this is a matter of a state abridging rights held by U.S. citizens and is a federal question.

Under pains and penalties of perjury Petitioner Cassidy notes he has established his Second Amendment Right and all rights in prior legal filings which have been ignored by the government officials of Massachusetts. Therefore This Court should now apply the *Heller* standard to his lawful exercise and direct Massachusetts to recognize Petitioner Cassidy's rights that the state's licensing scheme violated and remand to affirm his rights inside his home, which overturns all seven felony convictions.

Respectfully submitted,

JohnCassidy

/s/ 3-1-2022

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APPENDIX