

IN THE
Supreme Court of the United States

JIMMY BALDEA.

Petitioner,

v.

CITY OF NEW YORK LICENSING DIVISION OF THE
NYPD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
NEW YORK STATE COURT OF APPEALS

BRIEF IN OPPOSITION

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INTRODUCTION

Pro se petitioner Jimmy Baldea brought a proceeding in New York state court to review the denial of his application to renew his license to carry a concealed handgun. He challenged the denial solely under state law, asserting that the License Division of the New York City Police Department (NYPD) had erred in finding that he lacked “proper cause” to carry a concealed handgun—a then-extant requirement for issuance of the license. He did not assert that the statutory “proper cause” requirement was unconstitutional. The state trial court and intermediate appellate court upheld the License Division’s determination, and the New York Court of Appeals denied discretionary review. Baldea now asks this Court to review the denial of his license application. The petition for certiorari should be denied.

Baldea’s challenge to the denial of his license application does not properly present any question of federal law for review. Although Baldea now seeks to challenge the denial of his application under the Law Enforcement Officers Safety Act, 18 U.S.C. § 926B (2017) (LEOSA), that statute made no appearance in his filings in the state courts until his application for leave to appeal to the Court of Appeals. Nor were the predicate facts that support his LEOSA argument disclosed—or even in existence—at the time of his license application. By Baldea’s own account, during the briefing of his appeal to the intermediate appellate court, Baldea obtained a position as a law-enforcement officer in Vermont. The License Division had no opportunity to address this purported change in circumstances; this issue was not properly preserved in the state courts; and the record does not establish Baldea’s

claimed status as a law-enforcement officer. The various other questions that Baldea asks the Court to consider turn on his unsupported assertion that he is now a law-enforcement officer, are unpreserved, or implicate no question of federal law. And none of the fact-bound questions that he asserts would merit the Court's review in any event.

STATEMENT

A. The legal framework for issuance of a concealed-carry handgun license at the time of Baldea's application

New York state law establishes the framework for handgun licensing in the state and delegates authority to local governments to regulate and administer the licensing scheme. A state resident may apply for a handgun license in the city or county where that person resides. N.Y. Penal L. § 400.00(3)(a). The handgun licensing officer in New York City is the NYPD Commissioner. *Id.* §§ 400.00, 265.00; N.Y. City Admin. Code § 10-131(a)(1). Licensing determinations are made by the NYPD's License Division.

Broadly speaking, New York law provides for two categories of handgun licenses: (1) premises licenses, which permit the licensee to possess a handgun in the licensee's dwelling or place of business; and (2) carry licenses, which permit the licensee to carry a concealed handgun in public. N.Y. Penal L. § 400.00(2)(a), (f). At the time of Baldea's application, an applicant for a carry license was required to establish "proper cause" for issuance of the license, *id.* § 400.00(2)(f) (McKinney 2008), which state courts defined as "a special need for self-protection distinguishable from that of the general

community or of persons engaged in the same profession,” *Matter of Kaplan v. Bratton*, 673 N.Y.S.2d 66, 68 (N.Y. App. Div. 1998).

B. The denial of Baldea’s application for a concealed-carry handgun license and his challenge to that determination under state law in the New York courts

1. In July 2018, Baldea applied for renewal of his Carry Business License, New York City’s term for a type of permit to carry a concealed handgun (Appendix (“A”) 216-29).¹ In his application, Baldea stated that he needed the license because he “potentially face[d] extraordinary personal danger due to [his] business” (A225). As set forth in his application, this business provided wellness services—designed to improve fitness and nutrition, reduce blood pressure, and improve overall health—with a particular emphasis on providing such services to law-enforcement unions (A104-14, A128-46, A150). The application further noted that the company sometimes operated as a subcontractor for his wife’s construction-industry company, providing logistical support (A238, 283). Baldea also identified four instances where he or his wife’s company had allegedly been the victim of a crime (A34-39).

Baldea did not assert in his application that he or his company performed law-enforcement work (*see* A22). In a supplemental submission, Baldea stated that he was engaged in “police work” throughout the country that provided a basis for

¹ Citations to the Appendix are to the appendix that Baldea filed in connection with his appeal to the New York Appellate Division. Respondent will provide a copy of the appendix on request.

granting him a handgun license (A38). This statement generated some confusion in the License Division's review of his application, leading the Division to note that Baldea had not provided any evidence to support a claim of law-enforcement work as a basis for his application (see A83). But Baldea subsequently clarified that he was referring only to his company's wellness work with police officers (A22-23).

Consistent with the legal framework then in effect, the License Division denied Baldea's application, finding that Baldea had failed to show proper cause for issuance of a carry license (A257). The License Division reviewed the circumstances of the instances in which Baldea or his wife's company had allegedly been the victim of a crime and determined that they did not indicate that Baldea was in any extraordinary personal danger, including because the crimes at issue were either purely financial or were perpetrated against his wife's business property when he was not present (A257). Following the denial of his application, Baldea vouchered his firearms for safekeeping as directed by the License Division (A61-62).

2. In July 2019, Baldea commenced this proceeding for administrative review under article 78 of the New York Civil Practice Law and Rules (C.P.L.R.), alleging that the denial of his renewal application was arbitrary and capricious (A17-27). He was not then a law-enforcement officer² and did not allege that he was entitled to a carry license by virtue of LEOSA, 18 U.S.C. §926B (2017). Nor did he

² See Pet. 9 ("During the COVID-19 pandemic and lockdown, Baldea ... became an active sworn police officer.").

raise any other issue of federal law—statutory or constitutional.

Concluding that the License Division had reasonably denied the application as a matter of state law, New York Supreme Court, New York County denied the petition with prejudice and dismissed the proceeding (Pet. App. C).

3. The New York Appellate Division, First Department unanimously affirmed. *Matter of Baldea v. City of New York License Div. of the NYPD*, 144 N.Y.S.3d 567 (N.Y. App. Div. 2021).

Baldea’s opening brief to the Appellate Division had asserted, for the first time in the judicial proceeding, that he was entitled to a license based on his “police enforcement” work (Brief of Petitioner-Appellant (“App. Br.”) 8).³ He made this assertion even though he had not yet become a sworn officer of any kind, and even though his article 78 petition explicitly disclaimed that he was a member of law enforcement (A22).

Baldea based the assertion in his appellate brief on an erroneous contention that the trial court had ruled that he was involved in “police enforcement” (App. Br. 1, 5, 8, 9, 10). The misunderstanding stemmed from the court’s statement during oral argument that part of Baldea’s work “supports law enforcement” (A293). But, as of the filing of his opening appellate brief, his only work with law

³ Citations to the appellant’s brief are to the brief Baldea filed in support of his appeal to the New York Appellate Division. Respondent will provide a copy of the brief upon request.

enforcement consisted of providing wellness services to police unions through his company.

During briefing of his appeal to the Appellate Division, in a filing opposing respondent's motion for an extension of time to file its brief, Baldea asserted for the first time in this proceeding that he had become a law-enforcement officer in October 2020, and that this change in circumstances established proper cause for issuance of an unrestricted concealed-carry license. He did not, however, reiterate this fact in a reply brief before the Appellate Division. He also did not seek to reopen his application in the License Division or file a new application for a license. Nor did he take any action that would make this alleged change of circumstance part of the record before the Court.

4. After losing his appeal in the Appellate Division, Baldea moved unsuccessfully for leave to appeal to the New York Court of Appeals, seeking leave first from the Appellate Division and then from the Court of Appeals itself.

In his motion submitted to the Appellate Division, Baldea asserted that his new status as a law-enforcement officer entitled him to a carry license and that the denial of such a license violated his rights under LEOSA (Memorandum of Law in Support of Motion for Leave to Appeal 11-12).⁴ He further argued that receipt of such a license was the only way that he could recover his vouchered firearms (*id.* at 10-13). In his motion submitted to

⁴ This citation refers to the memorandum of law Baldea filed in support of his motion for leave to appeal to the New York Court of Appeals, filed in New York's Appellate Division. A copy of Baldea's motion will be provided on request.

the Court of Appeals, Baldea faulted the Appellate Division for not considering LEOSA (Memorandum of Law in Support of Motion for Leave to Appeal in Court of Appeals 4)—even though the statute had not been raised in the appeal to that court until he filed his motion for leave to appeal—and asked the Court of Appeals to resolve various issues regarding the circumstances under which he could recover his vouchered firearms, be permitted to purchase new firearms in New York City, and carry such firearms concealed on his person (*id.* at 3-4).⁵

Both courts denied Baldea’s applications for leave to appeal (Pet. App. 1, 2).

5. Baldea has not filed a new application for a concealed-carry license with the License Division—whether based on his purported new employment as a Vermont police officer or otherwise.

Instead, in May of this year, Baldea filed this petition for a writ of certiorari. He did not serve the petition on respondent in accordance with this Court’s Rule 29; instead, he served the Solicitor General of the United States. Accordingly, this office first became aware of Baldea’s petition in August 2022, when the Court directed it to file a response.

C. New York’s substantial revision of its firearms licensing statute after *Bruen*

In June 2022, after Baldea filed his petition for certiorari, this Court held in *New York State Pistol*

⁵ This citation refers to the memorandum of law Baldea filed in support of his motion for leave to the New York Court of Appeals, filed in that court. A copy of Baldea’s motion will be provided on request.

& Rifle Association, Inc. v. Bruen that New York’s proper-cause requirement for issuance of a concealed-carry handgun license violated the Second Amendment. 142 S. Ct. 2111, 2122 (2022). Following the Court’s decision, the State of New York enacted new legislation regarding the regulation of firearms. 2022 N.Y. Laws 371.

The legislation deleted the requirement of proper cause from the licensing scheme. It also adopted a new definition of “good moral character,” a preexisting requirement for issuance of a handgun license, specifying that an applicant must “hav[e] the essential character, temperament and judgement necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others.” N.Y. Penal L. § 400.00(1)(b) (2022); *see also Bruen*, 142 S. Ct. at 2123 n.1 (noting that Connecticut operates as a “shall issue” jurisdiction where licensing officials’ may deny a license to “individuals whose conduct has shown them to be lacking the essential character of temperament necessary to be entrusted with a weapon”).

In response to *Bruen* and the new legislation, the NYPD similarly revised its rules regarding handgun licenses to eliminate the proper-cause requirement for a carry license. *See* 38 R. City of N.Y. §§ 5-01, 5-03 (2022). The NYPD also issued a rule, effective August 19, 2022, to address the circumstances of applicants who were denied carry licenses based on their failure to demonstrate proper cause. *See id.*

§ 5-12.⁶ Since the term of a license is three years, N.Y. Penal L. § 400.00(10)(d), the new rule allows any person who “was denied a license or was offered a more restrictive license solely on the grounds that such individual did not show proper cause,” within three years before the issuance of *Bruen* on June 23, 2022, to reapply within 60 days of the rule’s effective date “without being subject to additional fees.” 38 R. City of N.Y. § 5-12(b).

REASONS TO DENY THE PETITION

The petition should be denied because it does not properly raise any question of federal law, much less one worthy of this Court’s consideration.

Baldea offers several proposed questions for review: (1) whether he is entitled to issuance of a carry license under LEOSA, 18 U.S.C. § 926B; (2) whether LEOSA entitles him to return of firearms that he vouchered with the NYPD; (3) whether he should have received a hearing or “special consideration” based on his status as a law-enforcement officer; and (4) whether a “civilian Review Board” should review determinations of the License Division (Pet. i). None of these questions was properly raised below; the record is inadequate to permit their review; and, if the questions had been properly presented, they would not warrant review.

First, the issues are unpreserved. “[A]lmost unfailingly,” this Court has “refused to consider any

⁶ The text of the rule is available at [https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYC rules/0-0-0-134449](https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYC_rules/0-0-0-134449). The License Division announced the rule on its website and provided instructions on how to submit a reapplication.

federal-law challenge to a state-court decision unless the federal claim” was properly presented to or addressed by the state court that rendered the decision under review. *Howell v. Mississippi*, 543 U.S. 440, 443 (2005). In part, this is because the record in such a case “is very likely to be inadequate since it certainly was not compiled with those questions in mind.” *Illinois v. Gates*, 462 U.S. 213, 221 (1983) (cleaned up).⁷

Until Baldea sought leave to appeal to the New York Court of Appeals, the only question he presented to the New York courts was whether, as a matter of then-existing state law, the License Division had arbitrarily denied his application for renewal of his carry license based on his failure to establish proper cause.⁸ See C.P.L.R. 7803(3) (permitting judicial review of “whether [an administrative] determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion”). He neither challenged the constitutionality of the proper-cause requirement nor suggested that the denial of his application conflicted with federal law.

⁷ This brief uses “(cleaned up)” to indicate that internal quotation marks, alterations, or citations have been omitted from quotations.

⁸ While Baldea captioned one of the sections of his appellate brief “Equal Protection under the Law,” based on his assertion that the trial court had ruled that his company was involved in “police enforcement” yet had not granted him a carry license, the essence of the argument was that the License Division’s determination was arbitrary (App. Br. 8-9).

Rather, he simply challenged the correctness of the determination that he lacked proper cause, under the now-defunct state-law “special need” standard, *see Matter of Kaplan*, 673 N.Y.S.2d at 68. Before the License Division, Baldea had argued that he possessed proper cause based on alleged dangers inherent in his wellness business and four criminal incidents involving either himself or his wife’s company (A41-42, 82-84). In his article 78 proceeding for administrative review, he contended that the License Division had failed to properly credit those dangers (A21-26).

Neither Baldea’s petition for review of the administrative determination, filed in New York Supreme Court, nor his appellate brief to the New York Appellate Division raised any question regarding LEOSA, his entitlement to a hearing, or the need for independent civilian review of the License Division’s determinations (*see* A19-28; App. Br. 8-14). Accordingly, the state courts had no opportunity to consider the issues that Baldea proposes for review, and those issues are thus unpreserved. *Howell*, 543 U.S. at 443.

Second, the record is bereft of the facts that would be necessary to consider these questions. *See Gilbert v. Cal.*, 388 U.S. 263, 269 (1967) (certiorari improvidently granted where facts did not appear in the record with sufficient clarity to enable decision on a question); *Ellis v. Dixon*, 349 U.S. 458, 464 (1955) (Court could not decide questions sought to be presented on a “vague and empty record”). Although Baldea premises most of his arguments on his representation that he is a law-enforcement officer, he did not purportedly become an officer until several months after he appealed the denial of his state-court petition for administrative review, so

this central fact does not appear in the administrative record before the License Division or the record before the state courts. Similarly, because Baldea did not attempt to recover his vouchered handguns until after he had lost his state-court appeal, the record does not reflect what efforts he undertook to recover them, how the License Division responded to whatever efforts he made, or the present disposition of the handguns. Likewise, the record contains no evidence regarding any purported need for emergency action or any systemic issues that might reflect a need for an outside review board for the License Division.

Third, even if they had been preserved, none of the questions that Baldea asks the Court to review would raise a certworthy issue of federal law. His case-specific arguments under LEOSA amount to an assertion that the License Division or the New York courts erred by failing to apply this statute to his particular circumstances. But certiorari is not a means simply to correct purported errors in a state court's application of the law. *See Watt v. Alaska*, 451 U.S. 259, 275 (1981) (Stevens, concurring) (“[T]his Court does not sit primarily to correct what we perceive to be mistakes committed by other tribunals.”). Further, Baldea's assertion that determinations of the License Division should be reviewed by a civilian review board implicates no discernable federal question. In any event, the law regarding review of licensing determinations has changed considerably since Baldea filed his petition. Recent state legislation provides for the creation of a state administrative body to review the decisions of local licensing officials, 2022 N.Y. Laws 371 § 1(4-a), although the precise scope and details of such review have not yet been finalized. Thus, none of

these questions remotely warrants this Court's review.

Baldea is free to raise his alleged new role as a law-enforcement officer in a new application to the License Division. Any such application will be evaluated without reference to the proper-cause requirement, which is no longer part of the New York licensing statutes or NYPD rules. The License Division would not hold the denial of his 2018 renewal application against him in reviewing the new application.

Finally, while Baldea suggests that the denial of his 2018 application will affect his ability to obtain government contracts in the future (Pet. 2, 13), there is no evidence that this is the case. He fails to show that the denial of a license application, especially for reasons unrelated to misconduct on his part, would have any bearing on his ability to bid for or obtain government contracts. Indeed, the "VENDEX" questionnaire for New York City contractors that he points to in support of this assertion (Pet. 2 n.1) does not ask about license denials. Although the questionnaire asks whether the applicant has had a license "terminated for cause or revoked" within the previous five years, that question does not cover the license denial at issue here. Contrary to Baldea's contention that his carry license was "taken away from him" (Pet. 13), his license was not revoked. It simply was not renewed based on the showing of need that he made in his 2018 renewal application. After *Bruen* and this state legislation enacted in response to it, Baldea would no longer be required to make such a showing.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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