

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ROMOLO COLANTONE,
EFRAIN ALVAREZ, and JOSE ANTHONY IRIZARRY,

Applicants,

v.

THE CITY OF NEW YORK and THE NEW YORK CITY
POLICE DEPARTMENT-LICENSE DIVISION,

Respondents.

**APPLICATION TO THE HON. RUTH BADER GINSBERG
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

Pursuant to Supreme Court Rule 13(5), the New York State Rifle & Pistol Association, Inc., Romolo Colantone, Efrain Alvarez, and Jose Anthony Irizarry, hereby move for an extension of time of 30 days, to and including August 3, 2018, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be July 4, 2018.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Second Circuit rendered its decision on February 23, 2018 (Exhibit 1), and denied a timely petition for rehearing on April 5, 2018 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).
2. This case involves a challenge to an extraordinary New York City regulation that prohibits law-abiding citizens from transporting an unloaded firearm,

locked in a container and separated from its ammunition, outside of city limits—even to a second home for the core Second Amendment purpose of self-defense, or to a convenient out-of-city shooting range where they would use it to hone the safe and effective exercise of that constitutional right. As required by the Constitution, the City permits law-abiding residents to keep a handgun for defense of their home, but only after they obtain a license. While a resident who obtains such a license is allowed to transport her firearm to one of seven shooting ranges that serve the city’s 8.5 million residents, she is forbidden from transporting her firearm to a shooting range or even a second home outside the city.

3. Applicants argued that this regulation violates their Second Amendment rights. The City responded that the regulation promotes public safety by limiting the presence of firearms on city streets. But the City put forth no empirical evidence that transporting an unloaded firearm, locked in a container separate from its ammunition, poses a meaningful risk to public safety; and the federal government has concluded there is no such risk. Moreover, even if there were a material risk, the City’s restriction makes matters worse because it *proliferates* the number of handguns and likely increases the frequency of their transport within city limits. After all, the regulation still allows a resident to traverse the entire city to visit an in-city shooting range. Thus, the regulation actually *requires* many residents who wish to obtain firearms training to travel further with their firearm than they otherwise would, as the most convenient shooting range for many city residents is outside city limits. Worse still, any resident who desires to use a firearm to protect

both her primary residence and a second home must acquire a second firearm, meaning one firearm will be left unattended at essentially all times. Thus, in light of the regulation's nonsensical design, the only way it can accomplish its purported goal of keeping firearms off the streets is by imposing burdens so substantial that citizens forgo exercising their Second Amendment rights.

4. Even so, the Second Circuit sustained the City's novel firearms transport ban, by first finding that it does not even burden Second Amendment rights (because individuals can transport their handguns to in-city ranges and purchase a second handgun for their summer residence), and then paradoxically finding that it satisfies intermediate scrutiny even though it would increase the transportation of firearms within city limits (to get to inconvenient in-city ranges) and increase the number of handguns within city limits by guaranteeing that handguns will be left behind when residents head to their second homes. Neither the City nor the Second Circuit can have it both ways. Either the rule substantially burdens Second Amendment activity (like going to the range for practice) or it actually increases the extent of the very in-city transportation of handguns that it purports to deter. The former triggers strict scrutiny; the latter renders the rule affirmatively counterproductive; either is fatal.

5. Even if the City could justify its policy under the Second Amendment, moreover, it could not justify it under the dormant Commerce Clause, for it is a naked attempt to force city residents to use in-city shooting ranges, and to retard economic activity outside of city limits. Moreover, the ban impedes not just interstate

commerce, but interstate travel, by conditioning such travel on the relinquishment of Second Amendment rights. The Second Circuit concluded otherwise only by reasoning that the City has free rein to burden both out-of-city commerce and travel in the name of “public safety.” That is wrong doctrinally, and the court never explained how requiring city residents to spend *more* time transporting their unloaded and locked-up firearm through the streets of New York to get to inconvenient in-city firing ranges, or forcing individuals to keep second handguns in vacant homes, furthers any public safety interest in the first place.

6. Between now and the current due date of the petition, Counsel of Record, Paul D. Clement, has substantial briefing and oral argument obligations, including a petition for writ of certiorari in *Kennedy v. Bremerton School District*, No. ____ (U.S.); reply briefs in *Martins Beach 1, LLC v. Surfrider Foundation*, No. 17-1198 (U.S.), and *Noble Energy, Inc. v. ConocoPhillips Co.*, No. 17-1438 (U.S.); a reply in support of motion for bail pending appeal in *United States v. Ashe*, No. 18-1725 (2d Cir.); oral argument in *United States v. Ashe*, No. 18-1725 (2d Cir.); and a reply in support of motion to recall and enforce the mandate in *Arab Bank v. Linde*, No. 16-2119 (2d Cir.).

7. Applicants thus request a modest extension for counsel to determine whether to file a petition for certiorari, and, should the decision to file a petition be made, to prepare a petition that fully addresses the complex and far-reaching issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including August 3, 2018, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,



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