

No. 20-1419

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In The  
**Supreme Court of the United States**

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REB RUSSELL, II,

*Petitioner,*

v.

STATE OF NEW JERSEY,

*Respondent.*

—◆—  
**On Petition For Writ Of Certiorari To The  
Superior Court Of New Jersey – Appellate Division**

—◆—  
**REPLY BRIEF FOR THE PETITIONER**

—◆—  
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**ARGUMENT**

**I. The Court may grant this petition.**

New Jersey denied petitioner a permit to carry a firearm. App. 15. Petitioner’s matter directly implicates the Second Amendment, which safeguards that the right to bear arms shall not be infringed.

**A. The Second Amendment was raised below and is integral in this matter.**

Petitioner’s Petition for Certification to the New Jersey Supreme Court raised under its Reasons for Certification:

Presently at issue is the interest of justice regarding the Due Process and fundamental fairness afforded licensing applications, as well as, ultimately, the constitutional right to keep and bear arms since the license at issue provides the means by which citizens may exercise that fundamental, individual, constitutional right.

Based on the above, this case presents questions of “general public importance” pursuant to *R. 2:12-4*, as well as “a substantial question involving a substantial question arising under the Constitution of the United States.”

Pursuant to *New Jersey Court Rule 2:2-1(a)*:

Appeals may be taken to the Supreme Court from final judgments as of right . . . in cases

determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or this State[.]

In New Jersey, where an appeal involves a constitutional question, the court may consider it even if not raised below. *The Presbyterian Homes v. Div. of Tax Appeal*, 55 N.J. 275, 289 (1970); *Bd. of Ed. of Elizabeth v. City Coun. of Elizabeth*, 55 N.J. 501, 509 (1970). Here, petitioner's issue plainly involves a constitutional question: Whether the Second Amendment protects the right to carry arms outside of the home for self-defense.

In New Jersey, issues not raised below will ordinarily not be considered on appeal unless they are jurisdictional in nature or substantially implicate public interest. *State v. Robinson*, 200 N.J. 1, 20-22 (2009). Here, petitioner's issue affects millions of lawful firearm owners across the United States and, therefore, substantially implicates public interest.

Other jurisdictions have similarly found: If the issue involved is purely one of law and is fully supported by the record below, an appellate court has the discretion to consider it. *Greene v. United States*, 13 F.3d 577, 586 (2d Cir. 1994); *In re Hall, Bayoutree Assocs., Ltd.*, 939 F.2d 802, 804 (9th Cir. 1991); see also *T I Federal Credit Union v. Delbonis*, 72 F.3d 921, 930 (1st Cir. 1995) (“[C]ases involving important constitutional or governmental issues may be exceptional and, as such, there should be a full treatment of all legal issues

involved, whether squarely introduced by the parties or not.”)

The majority of cases relied upon by the Courts below – as well as by the Government below – concern and rely upon New Jersey’s interpretation of the Second Amendment.

Notably, the Trial court’s Opinion denied petitioner based upon:

*In re Pantano*, 429 N.J. Super. 478 (App.Div. 2013), certif. dismissed as improvidently granted, 2014 N.J. Lexis 904 (2014), finding that the U.S. Supreme Court’s decision in *Heller* did not affect the constitutionality of *N.J.S.A. 2C:58-4* (New Jersey’s carry permit statute). App. 16, 18, 23.

*State v. Ingram*, 98 N.J. 489 (1985), affirming the constitutionality of requiring a permit to carry. App. 17.

*Siccardi v. State*, 59 N.J. 545 (1971), citing *Burton v. Sills*, 53 N.J. 86 (1968), as to the constitutionality of New Jersey’s 1966 Gun Control Law. App. 18.

The Appellate Division followed suit, relying on the aforementioned *Pantano* (App. 13), *Ingram* (App. 12), and *Siccardi* (App. 12), but also upon *In re Wheeler*, 433 N.J. Super. 560 (App. Div. 2013), which, after the U.S. Supreme Court’s decision in *McDonald*, specifically challenged the Constitutionality of New Jersey’s “justifiable need” requirement of *N.J.S.A. § 2C:58-4*. App. 12. The *Wheeler* Court found that this Court’s *Heller/McDonald* decisions only concerned possession

of a firearm at one's residence, and that New Jersey's "justifiable need" requirement to carry a firearm outside of one's home did not violate the Second Amendment. *Id.* at 597.

In his appellate brief, petitioner argued *In re Carlstrom*, 240 N.J. 563 (2020), which relied upon the aforementioned *Siccardi* and was cited by the Trial court and Appellate Division below. App. 2, 13, 14.

The Second Amendment was plainly implicated throughout the matter below. The facts of the matter are not in dispute. The Questions Presented are questions of law. The State has been given multiple opportunities to consider applicability of the statute at issue in light of constitutional challenge, and the Court may therefore grant the petition.

**B. Petitioner suffered from lack of counsel, and Government suffers no prejudice.**

Point Four of petitioner's appellate brief to the New Jersey Appellate Division argued:

IV. PLAINTIFF HAD NOT RETAINED COUNSEL WHICH WAS TO HIS DETRIMENT AND ULTIMATELY HINDERS HIS ABILITY TO PROPERLY ARTICULATE HIS ARGUMENT.

Plaintiff proceeded pro se and therefore was not able to articulate his argument fully. Plaintiff was under the impression that he did not need counsel since he was approved by the

New Jersey Police Superintendent already. Only after his denial did he retain counsel in order to file this appeal. In the interest of justice, plaintiff must be given the chance to adequately prepare with the aid of experienced counsel. Appellate Brief 11.

The New Jersey Appellate Division Opinion found no merit in this Point. App. 2. Nor did the Appellate Division remand the matter so that petitioner may fully prepare and articulate his arguments with the aid of experienced counsel. App. 2.

Even though a consequence of magnitude was at issue – the loss of a Constitutional right – the Trial court did not assign an attorney to the petitioner. Even though the deprivation of a Constitutional right was at issue, petitioner was not informed by the Trial court that he needed or may want counsel [Supp. App. 96a-151a], and he suffered from ineffective (*i.e.*, lack of) counsel. Effective counsel would have raised “the Second Amendment” by name to the Trial court.

Whereas, the Government suffers no prejudice. If this petition is accepted for certification, Government will be provided opportunity to present arguments as to why the Second Amendment should not be found to apply outside of the home. That said, even when provided the opportunity here, Government has declined to substantively address petitioner’s argument. Petitioner requests that the petition be granted because Government failed to put forward any substantive dispute to the assertions that the law is unconstitutional.



**II. Respondent is correct insofar as the *Corlett* matter presents a similar question.**

The State argues in the alternative that petitioner's matter should be held pending *New York State Rifle & Pistol Association Inc. et al. v. Keith M. Corlett*, No. 20-843 (2021).

Petitioner asserts that Government's alternative is at a minimum and not the only alternative.

The Court, respectfully, may want to consolidate this New Jersey matter with *Corlett* since New York has a history of changing its laws to moot a Second Amendment question before this Court. See *New York State Rifle & Pistol Association Inc. v. City of New York, New York*, No. 18-280 (2020).



**CONCLUSION**

Certiorari should be granted.

Respectfully submitted,

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