

APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A Opinion in the United States Court of Appeals for the First Circuit (September 14, 2021) App. 1

Appendix B Memorandum and Order on Plaintiff’s Motion for Summary Judgment, the Commonwealth’s Cross-Motion for Summary Judgment, and Chief Lyver’s Cross-Motion for Summary Judgment (Docket Nos. 19, 25, and 29) (March 4, 2020) App. 17

Appendix C Statutory Provisions Involved . . . App. 32

App. 1

APPENDIX A

**United States Court of Appeals
For the First Circuit**

No. 20-1280

[Filed: September 14, 2021]

ALFRED MORIN,)
)
Plaintiff, Appellant,)
)
v.)
)
WILLIAM LYVER, in his official)
capacity as Northborough Chief of Police,)
and THE COMMONWEALTH OF)
MASSACHUSETTS,)
)
Defendants, Appellees.)

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

[Hon. Timothy S. Hillman, U.S. District Judge]

Before

App. 2

Barron and Selya, Circuit Judges,
and Delgado-Hernández, District Judge.*

David D. Jensen, with whom J. Steven Foley was on brief, for appellant.

Janelle M. Austin, with whom KP Law, P.C. was on brief, for appellee William Lyver.

Julia E. Kobick, Assistant Attorney General, with whom Maura Healey, Attorney General, was on brief, for appellee Commonwealth of Massachusetts.

Neil Goldfarb, amicus curiae, on brief in support of appellees.

September 14, 2021

BARRON, Circuit Judge. In 2018, William Lyver, Chief of Police for Northborough, Massachusetts, denied Alfred Morin what is known under Massachusetts law as a “permit to purchase” a firearm. Lyver did so based on Morin’s criminal history -- specifically, his two out-of-state firearms-related convictions. Morin thereafter filed suit, in which he alleged that the denial violated his rights under the Second Amendment of the U.S. Constitution as recognized by the United States Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008). See McDonald v. City of Chicago, 561 U.S. 742, 750 (2010). The Commonwealth of Massachusetts intervened to defend the denial. Morin then moved for summary judgment, and the defendants cross-moved for the same. The District Court granted the defendants’

* Of the District of Puerto Rico, sitting by designation.

cross-motions for summary judgment and rejected Morin’s motion for summary judgment. We affirm.

I.

In 1985, Morin obtained what was known under Massachusetts law at that time as a Class A license. Morin v. Lyver, 442 F. Supp. 3d 408, 411 (D. Mass. 2020). That license authorized Morin to carry a concealed firearm in public, which he did regularly. Id.; see also Mass. Gen. Laws ch. 140, § 131(a) (2004). It also authorized him to “purchase, rent, lease, borrow, possess and carry” both “firearms,”¹ and “rifles and shotguns,” including “large capacity” varieties of each type of weapon. Mass. Gen. Laws ch. 140, § 131(a) (2004).

In 2004, Morin brought his pistol on a trip to Washington, D.C. Morin, 442 F. Supp. 3d at 411. While there, he visited the American Museum of Natural History, which displayed a sign stating that firearms were prohibited in the building. Id. Morin asked a museum employee whether he could check the pistol that he was carrying at the time. He was thereafter detained and placed under arrest for violating D.C.’s gun laws. Id.

¹ A “firearm” included “a pistol, revolver or other weapon . . . of which the length of the barrel or barrels is less than 16 inches or 18 inches,” but excludes any weapon that is “constructed in a shape that does not resemble a handgun, short-barreled rifle or short barreled shotgun” or one that is “not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk-through metal detectors.” Mass. Gen. Laws ch. 140, § 121.

App. 4

In November 2004, Morin pleaded guilty to one count of attempting to carry a pistol without a license, in violation of D.C. Code § 22-3204(a)(1) (2004), and one count of possession of an unregistered firearm, in violation of D.C. Code § 6-2376 (2004).² Morin, 442 F. Supp. 3d at 411-12. Both convictions were misdemeanors under D.C. law. The former conviction carried a maximum sentence of 180 days of imprisonment. The latter conviction carried a maximum sentence of one year of imprisonment.

In 2008, once back in Massachusetts, Morin sought to renew his Class A license. Id. at 412. He filed the requisite application for renewal with his local licensing authority, the Northborough, Massachusetts Police Department. Id.

At that time, a licensing authority could not issue or renew a Class A license to certain categories of persons. The categories included persons who had, “in any state or federal jurisdiction, been convicted” of “a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed.” Mass. Gen. Laws ch. 140, § 131(d)(i)(D) (2008).

Morin indicated on his application to renew his Class A license that he did not have any such prior conviction. Morin, 442 F. Supp. 3d at 412. In processing his application, however, the Northborough Police Department ran his fingerprints and learned about his

² These provisions have since been renumbered and are codified at D.C. Code §§ 22-4504(a)(1), 7-2502.01, and 7-2507.06.

Washington, D.C.-related firearms convictions. Id. The Northborough Police Department denied Morin's application to renew his Class A license on April 29, 2008. See id.

In 2014, Massachusetts modified its firearm licensing scheme. Id. at 412 n.3. Rather than designating licenses to carry by "Class," as it had, it established a single "license to carry."³

In February 2015, Morin applied to the Northborough Police Department for a new license to carry. His application this time did note his D.C. convictions. The Northborough Chief of Police at the time, Mark Leahy, denied the application on February 18, 2015.

Morin filed suit pursuant to 42 U.S.C. § 1983 against Leahy on March 25, 2015 in the District of Massachusetts, alleging that his Second Amendment rights had been violated. Id. at 412. The District Court permitted the Commonwealth to intervene and subsequently entered summary judgment for the defendants on May 18, 2016. Morin v. Leahy, 189 F. Supp. 3d 226, 236-37 (D. Mass. 2016), aff'd, 862 F.3d 123 (1st Cir. 2017). Morin then appealed. Morin, 862 F.3d at 126. We affirmed the District Court's ruling granting the defendants' motions for summary judgment. Id. at 128.

³The change did not become fully effective until January 2021, but licenses issued or renewed after August 2014 were no longer designated by their "Class" as they had been. We therefore use the term "license to carry" to refer to the type of license that Morin sought in 2018. See 2014 Mass. Acts ch. 284, § 101.

App. 6

We first explained that Morin “argue[d] that his statutory disqualification for a [license to carry] and the Massachusetts firearm licensing scheme, as applied to him, violate[d] his Second Amendment right to own a firearm in the home for purposes of self-defense.” Id. at 126 (citation omitted). But, we explained, “a more restrictive license, [a Firearm Identification Card (FID Card)], would permit [such] a license holder to have a firearm in the home for purposes of self-defense.” Id. at 127. At the time, an FID Card entitled the holder to “keep a firearm and ammunition in his home or place of business” but did not authorize the holder to carry certain weapons, including large-capacity rifles and shotguns, in public. Id. (quoting Powell v. Tompkins, 783 F.3d 332, 337 (1st Cir. 2015)); see Mass. Gen. Laws ch. 140, §§ 129B(6), 129C; Mass. Gen. Laws ch. 269, § 10. “Thus,” we explained, “the rejection of Morin’s application for a [license to carry] [did] not violate the Second Amendment right he ha[d] asserted.” Morin, 862 F.3d at 127.

We did note that “Morin believe[d] that only a [license to carry] will allow him to possess a firearm in his home,” but we explained that he was wrong because he would be permitted to do so with an FID Card. Id. (citing Powell, 783 F.3d at 337; Commonwealth v. Gouse, 461 Mass. 787, 799 n.14 (2012); Commonwealth v. Powell, 459 Mass. 572, 587 (2011)). We also noted, however, that Morin was “correct that [an] FID Card alone is insufficient to purchase and transport a firearm to one’s home.” Id. But, we observed that Massachusetts General Laws Chapter 140, Section 131A provided that a person with an FID Card could apply at least in some circumstances for a “permit to

App. 7

purchase.” Id. We then explained that “[a]lthough a person who purchases a firearm using [an] FID Card and a permit to purchase may not herself transport the firearm to her home, the law specifically provides that she may have it delivered to her home.” Id. (citing Mass. Gen. Laws. ch. 140, § 123). We thus concluded as follows:

Therefore, with both a[n] FID Card and a permit to purchase, one could purchase a firearm, have it delivered to one’s home, and possess it there -- without the need for a [license to carry.] Thus, the denial of an application for a [license to carry] does not infringe upon the Second Amendment right to possess a firearm within one’s home, the only constitutional right Morin has raised.

Id. We also explained that Morin had not applied for a permit to purchase and so lacked standing to challenge “any such denial.” Id. at 127 n.9.

Finally, we addressed Morin’s “as-applied constitutional challenge to” Massachusetts’ scheme for the “issuance of FID Cards.” Id. at 128. We noted that “[a]ll parties agree[d]” that if he were to apply for an FID Card, Morin would be denied one based on his firearms-related convictions in D.C. Id.; see also Mass. Gen. Laws ch. 140, § 129B(1)(ii)(D). But, we concluded that he lacked standing to bring his as-applied challenge to this aspect of Massachusetts law because he had not applied for an FID Card. Id. As a result, we concluded:

App. 8

Since the denial of Morin's [license to carry] application does not infringe on the Second Amendment rights he asserts in this litigation and he lacks standing on his FID Card challenge, it is unnecessary for this Court to reach the other issues presented here, such as the constitutionality of the prohibition against granting a [license to carry] or [an] FID Card to individuals who have committed nonviolent misdemeanors or the appropriate level of constitutional scrutiny for such an inquiry.

Id.

Subsequently, in February 2018, Morin applied to the Northborough Police Department for an FID Card. Massachusetts law makes issuance of an FID Card mandatory unless the applicant is disqualified as a "prohibited person." Mass. Gen. Laws ch. 140, § 129B(1). The list of "prohibited persons" includes individuals who have been convicted "in any other state or federal jurisdiction" of a felony, certain misdemeanors and violent crimes, or for violating certain laws regulating controlled substances and weapons. Id. § 129B(1)(ii). Although some of these restrictions -- such as the disqualification for individuals convicted of a felony -- are permanent, others "shall not disqualify" an FID Card applicant if at least five years have elapsed since the later of that individual's conviction or release from confinement or supervision. Id. For example, the statute only temporarily disqualifies from obtaining an FID Card those individuals who, like Morin, have been convicted

of certain out-of-state firearms-related misdemeanors. See id. §§ 129B(1)(ii)(D), 129B(1)(ii).

By the time that Morin applied for an FID Card in 2018, nearly fourteen years had passed since his conviction for violating D.C.'s gun laws. Thus, then-Northborough Chief of Police Lyver granted Morin's application for an FID Card, as Morin was not a "prohibited person" at that time.

In addition to applying in 2018 for an FID Card from the Northborough Police Department, Morin also applied at that time for a permit to purchase from that same department. Under Massachusetts law, though, Morin could not be eligible for a permit to purchase unless he was also eligible for a license to carry. Id. § 131A. Yet, he was not eligible for a license to carry because his D.C. convictions, notwithstanding their age, rendered him ineligible for that license, since Massachusetts barred anyone with prior firearms-related convictions for which a term of imprisonment could be imposed from obtaining one. See id. § 131(d)(ii)(D). Accordingly, Chief Lyver denied Morin's application for the permit to purchase.

On July 18, 2018, following the denial of his application for a permit to purchase, Morin filed this suit against Chief Lyver pursuant to 42 U.S.C. § 1983. In his complaint, Morin seeks a declaratory judgment that Massachusetts General Laws Chapter 140, Section 131(d)(ii)(D), which prohibits Morin from obtaining a license to carry, "violates . . . the Second and Fourteenth Amendments to the U.S. Constitution, to the extent [it] allow[s] [the defendants] to prohibit otherwise qualified private citizens from purchasing and possessing

‘firearms’ for the purpose of self-defense in the home” and an injunction against the “customs, policies, and practices related to enforcement of” the same prohibition. He also seeks an injunction requiring Chief Lyver “to issue [to him] a Massachusetts [license to carry] or [p]ermit to [p]urchase sufficient . . . to possess and purchase a firearm for the purpose of self-defense in the home.”

The Commonwealth filed an assented-to motion to intervene as a defendant on October 26, 2018, which the District Court granted. Morin thereafter filed for summary judgment, and the Commonwealth and Chief Lyver each filed a cross-motion for summary judgment. In his cross-motion, Chief Lyver incorporated the Commonwealth’s argument supporting the constitutionality of the statutory restrictions at issue and argued further that he could not be held liable for executing a “non-discretionary statutory mandate” that “did not cause a violation of Morin’s constitutional rights through any municipal custom and policy.” Morin contended in his motion for summary judgment, among other things, that Massachusetts had imposed on him a “lifetime handgun ban” which he specified at that time as one that prohibited him from both “acquir[ing]” and “obtain[ing]” a handgun to possess for self-defense in his home.

The District Court ruled against Morin on both his own motion and the defendants’ cross-motions. Morin, 442 F. Supp. 3d at 417. The District Court began its analysis by noting that Morin had been granted an FID Card and so “can lawfully possess a firearm within his home.” Id. at 414. It then noted Morin’s contention

that, nonetheless, the provisions of Massachusetts law at issue “burden his Second Amendment right because they prevent him from lawfully obtaining any firearm to possess within his home.” Id. The District Court at that point “assume[d], without deciding, that [Morin] is correct that these provisions burden conduct falling within the scope of the Second Amendment right” and moved on to address the level of scrutiny to apply. Id.

The District Court concluded that only intermediate scrutiny -- and not the more intensive form of scrutiny for which Morin advocated -- applied because the provisions at issue burdened only those individuals who were not “law-abiding, responsible citizens,” and that Morin did not qualify as such an individual due to his earlier firearms-related convictions in D.C. Id. at 415 (quoting Heller, 554 U.S. at 635) (emphasis omitted). The District Court then upheld the provisions on the ground that they were substantially related to an important governmental interest. Id. at 417.⁴

Morin appealed the same day. Our review is de novo. See Gutwill v. City of Framingham, 995 F.3d 6, 12 (1st Cir. 2021).

II.

As we have seen, the District Court rejected Morin’s contention that the restrictions at issue were subject to a more intensive form of scrutiny than intermediate

⁴ Because the District Court found Massachusetts’s licensing restrictions to be constitutional, it did not reach the issue of Chief Lyver’s individual liability in granting his motion for summary judgment. Id. at 417 n.5.

scrutiny. Morin had argued to the District Court that the restrictions were subject to this more intensive form of scrutiny because he contended there that they burdened the core right to possess a firearm that Heller recognized by categorically banning his right to “obtain” or “acquire” a handgun for the purpose of possessing it in the home. Morin, 442 F. Supp. 3d at 414-15. In rejecting Morin’s argument for applying the more intensive form of scrutiny that he sought, the District Court did not take issue with the way Morin at that time had characterized the effect of the restrictions. Rather, it determined that, even assuming they had the effect that Morin claimed they had, they were still subject to only intermediate scrutiny because they burdened persons who -- by dint of their prior firearms misdemeanor convictions -- did not qualify as “law-abiding.” Id. at 415. The District Court thus did not address whether the restrictions at issue could be upheld if they were subjected to the more intensive form of scrutiny that Morin referred to at points as “strong showing” scrutiny and that he contended applied under Heller, notwithstanding his prior convictions in D.C. Id. at 414.

In now appealing that ruling, Morin notably develops no argument that, insofar as intermediate scrutiny does apply, the District Court erred in upholding the restrictions. Instead, he contends only that a more intensive form of scrutiny applies and that, under it, these restrictions are unconstitutional.⁵

⁵ At oral argument, Morin’s counsel did assert that, “[f]irst and foremost, it’s the government that bears the burden of showing that the burden is justified, and the statistical evidence we’ve got

In pressing that contention to us on appeal, Morin devotes much of his briefing to us to challenging the District Court's conclusion that he is not law-abiding within the meaning of Heller. But, Morin does not in doing so at any point develop -- or even state -- the argument that he made below that his right to "obtain a handgun in order to possess it" for lawful use at home has been categorically prohibited. (emphasis added). Thus, he has failed to describe how the core right articulated in Heller has been so burdened that "strong showing" scrutiny applies, notwithstanding his previous firearms-related convictions.

True, on appeal, Morin contends that he is subject to a handgun "ban" that he contends triggers such a demanding form of review. However, he does not describe it as a ban on his right to obtain a handgun for the purpose of possessing it in the home, as he did below. He instead describes it on appeal only as a ban on his right to possess a handgun for that purpose, insofar as he describes it with any specificity.⁶ And that

doesn't meet that showing." But, given the focus in Morin's briefing on the contention that the restrictions are subject to a more intensive form of scrutiny than the intermediate scrutiny that the District Court applied, we do not understand that assertion -- belated as it is -- to amount to a contention on appeal that the restrictions would not survive even intermediate scrutiny.

⁶ For example, in the statement of facts in his opening brief to us, Morin asserts that the Massachusetts "licensing scheme precludes [him] from lawfully possessing a firearm in the home for the purposes of self-defense." (emphasis added). Then, soon after, he characterizes the restrictions as imposing "disarmament." Morin does refer at one point in his opening brief more generally to a "deprivation" to which he is subject, but in doing so he fails to

is true of his reply brief as well.⁷ It is clear though, that, in fact, Morin is not subject to a ban on handgun possession for the purposes of self-defense in the home, because his FID Card permits him to possess a handgun for just that purpose. See Morin, 862 F.3d at 127. Indeed, the Commonwealth makes that very point in arguing that, contrary to Morin’s contention on appeal that we must apply “strong showing review” due to the “ban” to which he contends that he is subject, intermediate scrutiny applies.⁸

specify what he understands that “deprivation” to be. And, while at another point he argues that his “core right to possess a handgun in his home for self-defense is directly affected,” (emphasis added), he again fails to elaborate as to how. Morin also at one point describes the restrictions at issue as “firearm disenfranchisement,” which appears to be a typo. In the remainder of his brief, moreover, he characterizes Massachusetts’s actions as imposing a “lifetime handgun ban,” without further describing what that ban entails.

⁷ The reply brief does early on describe the restrictions at issue as imposing a “lifetime bar.” But, in doing so, it does not specify what is barred. It then goes on to state that Morin “seeks to possess a handgun for lawful purposes such as self-defense” but that “Commonwealth law definitively prevents him from doing that by operation of criminal penalty,” (emphasis added) even though it does not, and that he seeks to “challenge categorical restrictions on firearm[] possession by non-violent misdemeanants,” (emphasis added) even though the reply brief does not specify the content of those “restrictions.”

⁸ The Commonwealth further contends that there is not even a ban on Morin’s right to obtain a handgun, as he may acquire one through inheritance so long as he has an FID Card. Morin at no point addresses that contention.

In pointing out this shift in how Morin describes the restrictions at issue on appeal in arguing for more intensive scrutiny compared to how he described them below in arguing for such demanding review, we do not mean to suggest that there is no argument to be made that the severe though (if Massachusetts is right about how the Commonwealth treats the inheritance of a handgun) not total restriction on acquisition of a handgun for home use may heavily burden the core right that Heller recognized. Nor do we mean to suggest that there is not an argument to be made that insofar as those restrictions have that effect, they warrant more than intermediate scrutiny even when they are applied to someone who, like Morin, has more-than-decade-old misdemeanor firearms-related convictions.

But, here, Morin cannot be said to have made any such argument on appeal for applying that more demanding form of review to the restrictions at issue. Given the way that he has described on appeal the “ban” that he contends that those restrictions impose on him, no such argument has been advanced to us. Thus, we must affirm the grant of summary judgment against him because the only ground that he has given for overturning it rests on a description of the restrictions’ effect on his conduct that is clearly mistaken insofar as it is developed at all. See Morin, 862 F.3d at 126 n.8 (explaining that we may affirm a grant of summary judgment on any ground manifest in the record); United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.”). For, although it

is true that Morin does argue at length that the District Court erred in relying on the conclusion that he is not “law-abiding” in assessing his Heller-based arguments, he fails to develop any argument for applying a greater level of scrutiny than the District Court applied to the actual restrictions at issue due to the vague way in which he describes them at some points and the specific way that he mischaracterizes them at others. Accordingly, Morin provides us with no basis for overturning the District Court’s grant of summary judgment to the defendants.

III.

The District Court’s denial of Morin’s motion for summary judgment and grants of the defendants’ cross-motions for summary judgment are **affirmed**.

APPENDIX B

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**CIVIL ACTION
NO. 4:18-40121-TSH**

[Filed: March 4, 2020]

ALFRED MORIN,)
Plaintiff,)
)
v.)
)
WILLIAM LYVER, in his official)
capacity as Northborough Chief of)
Police,)
Defendant,)
)
COMMONWEALTH OF)
MASSACHUSETTS,)
Intervenor-Defendant.)

MEMORANDUM AND ORDER ON
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT, THE COMMONWEALTH'S
CROSS-MOTION FOR SUMMARY JUDGMENT,
AND CHIEF LYVER'S CROSS-MOTION FOR
SUMMARY JUDGMENT
(Docket Nos. 19, 25, and 29)

March 4, 2020

HILLMAN, D.J.

Alfred Morin (“Plaintiff”) filed the instant action against William Lyver (“Chief Lyver”) in his official capacity as Chief of Police of the Town of Northborough, alleging that the Massachusetts firearms licensing scheme, which renders him ineligible for a license to carry, or a permit to purchase, a firearm, violates his Second Amendment right to possess a firearm in his home for self-defense. The Commonwealth of Massachusetts has intervened as a Defendant, and all parties move for summary judgment. For the reasons set forth below, I find the statute constitutional and ***deny*** Plaintiff’s motion for summary judgment (Docket No. 19), ***grant*** the Commonwealth’s cross-motion for summary judgment (Docket No. 25), and ***grant*** Chief Lyver’s cross-motion for summary judgment (Docket No. 29).

Background

The Commonwealth issued Plaintiff a Class A license to carry firearms in 1985. His Class A license allowed him to carry a concealed firearm in public, and he had a habit of always carrying a loaded pistol on his person. In October 2004, Plaintiff drove from Massachusetts to Washington, DC, to visit his daughter. Unaware that the District of Columbia would not recognize his Massachusetts license, he carried his pistol with him. While visiting the American Museum of Natural History during his trip, Plaintiff noticed a sign banning firearms. He approached a guard at the museum and asked to check

his weapon. The guard contacted the police, who arrested Plaintiff and charged him with carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition. Plaintiff pled guilty to attempting to carry a pistol without a license, in violation of D.C. Code § 22-3204(a)(1) (2004),¹ and possession of an unregistered firearm, in violation of D.C. Code § 6-2376 (2004).² (Docket No. 21-3). The court sentenced him to sixty days in prison on each count, to run concurrently, as well as three months of supervised probation and twenty hours of community service. His prison sentence was suspended.

Plaintiff's Class A license expired in 2008, and he applied for a renewal. The renewal form asked whether he had, "in any state or federal jurisdiction," been convicted of a "violation of any law regulating the use, possession, ownership, sale, transfer, rental, receipt or transportation of weapons for which a term of imprisonment may be imposed." (Docket No. 25-3 at 3). Plaintiff answered "no." (Docket No. 25-3 at 3). The Northborough Police Department ran a fingerprint check, discovered his convictions, and denied his license in accordance with Mass. Gen. Laws ch. 140, § 131(d)(ii)(D). (Docket No. 25-7 at 2).

Seven years later, in February 2015, Plaintiff reapplied for a license to carry. This time, when asked

¹ This provision has been renumbered and is now codified at D.C. Code § 22-4504(a)(1).

² This provision has been renumbered and is now codified at D.C. Code §§ 7-2502.01, 7-2507.6.

about previous firearms-related convictions, he answered “yes.” (Docket No. 25-5 at 3). Because his convictions rendered him ineligible for a license to carry, then-Chief of Police Mark Leahy denied Plaintiff’s application. (Docket No. 25-8 at 2). Plaintiff filed suit in this Court to challenge the constitutionality of the Massachusetts firearms licensing scheme. The Commonwealth intervened, and the parties cross-moved for summary judgment. I entered summary judgment against Plaintiff, reasoning that, because Plaintiff had applied only for the least restrictive firearms license in Massachusetts, it was unnecessary to decide “whether a complete categorical prohibition on the arms rights of individuals who have been convicted of certain weapons-related misdemeanors is constitutional, because that is not what is being challenged in this case.” *Morin v. Leahy*, 189 F. Supp. 3d 226, 234 (D. Mass. 2016), *aff’d*, 862 F.3d 123 (1st Cir. 2017). The First Circuit affirmed on appeal. *Morin v. Leahy*, 862 F.3d 123, 127 (1st Cir. 2017).

In February 2018, Plaintiff applied for a firearm identification (“FID”) card and a permit to purchase a firearm under Mass. Gen. Laws ch. 140, §§ 129B, 131A. (Docket No. 30-1). Chief Lyver issued Plaintiff an FID card but denied his application for a permit to purchase, noting that Plaintiff’s convictions in DC rendered him ineligible for a permit to purchase a firearm under Section 131A. (Docket No. 22-2). Plaintiff filed suit in this Court, raising an as-applied Second Amendment challenge to the licensing scheme. The Commonwealth intervened as a Defendant, and the parties filed cross-motions for summary judgment.

Statutory Framework

Massachusetts regulates the possession of firearms within its borders, and “[i]t is generally a crime under Massachusetts law to carry a firearm without having the appropriate license or FID card, or being exempt from licensing.” *Hightower v. City of Bos.*, 693 F.3d 61, 65 (1st Cir. 2012) (citing Mass. Gen. Laws ch. 269, § 10). An individual wishing to possess and/or carry firearms in an open or concealed manner in his home or in public may apply for a license to carry³ through the “licensing authority,” Mass. Gen. Laws ch. 140, § 131, defined as “the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them,” *see id.* § 121. The licensing authority “may issue [a license] if it appears that the applicant is not a prohibited person . . . and that the applicant has good reason to fear injury to the applicant or the applicant’s property or for any other reason, including the carrying of firearms for use in sport or target practice only.” *Id.* § 131(d). An applicant is a “prohibited person” if, as relevant here, he has been convicted in any state or federal jurisdiction of “a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for

³Massachusetts law currently designates certain licenses to carry as “Class A” or “Class B.” In 2014, however, the Legislature enacted a law effective January 1, 2021, to combine the two into a single license to carry, and licenses issued or renewed after August 11, 2014, have not been designated as “Class A” or “Class B.” *See* 2014 Mass. Acts ch. 284, § 101.

which a term of imprisonment may be imposed.” *Id.* §§ 131(d)(i)(D), (d)(ii)(D).

The licensing authority also reviews applications for FID cards. The holder of an FID card may “own, transfer, or possess a firearm in his residence or place of business.” *Commonwealth v. Gouse*, 965 N.E.2d 774, 799 n.14 (Mass. 2012); *see also Powell v. Tompkins*, 783 F.3d 332, 337 (1st Cir. 2015). However, “a[n] FID Card alone is insufficient to purchase and transport a firearm to one’s home.” *Morin*, 862 F.3d at 127. An individual with an FID must separately apply for a permit to “purchase, rent or lease a firearm for a proper purpose.” Mass. Gen. Laws ch. 140, § 131A. To obtain a permit to purchase, an applicant must possess the same qualifications for obtaining a license to carry under Section 131. *Id.*

Legal Standard

Under Federal Rule of Civil Procedure 56, a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” An issue is “genuine” when a reasonable factfinder could resolve it in favor of the nonmoving party. *Morris v. Gov’t Dev. Bank of Puerto Rico*, 27 F.3d 746, 748 (1st Cir. 1994). A fact is “material” when it may affect the outcome of the suit. *Id.* When ruling on a motion for summary judgment, “the court must view the facts in the light most favorable to the non-moving party, drawing all reasonable inferences in that party’s favor.” *Scanlon v. Dep’t of Army*, 277 F.3d 598, 600 (1st Cir. 2002) (citation omitted).

Discussion

1. Legal Framework

The Second Amendment provides that “[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.” In the landmark decision of *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment provides an individual right to bear arms.⁴ *Id.* at 576–626. The Court based its holding on the “operative clause” of the Second Amendment i.e., the portion stating that “the right of the people to keep and bear Arms, shall not be infringed.” *Id.* at 577, 592. The Court interpreted this clause to “guarantee the individual right to possess and carry weapons in case of confrontation.” *Id.* at 592. The Court held that, although “self-defense had little to do with the right’s *codification*; it was the *central component* of the right itself.” *Id.* at 599 (emphasis in original). The Court explained that, at its core, the Second Amendment protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Id.* at 635; *see also Gould v. Morgan*, 907 F.3d 659, 672 (1st Cir. 2018); *Hightower*, 693 F.3d at 72; *United States v. Chester*, 628 F.3d 673, 683 (4th Cir. 2010). The Court noted, however, that “the right secured by the Second Amendment is not unlimited” and cautioned that nothing in its opinion “should be taken to cast doubt on

⁴ And in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court held that the Second Amendment extends to state regulation of firearms through the Fourteenth Amendment. *Id.* at 750.

longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Heller*, 554 U.S. at 626–27.

“In the decade since *Heller* was decided, courts have adopted a two-step approach for analyzing claims that a statute, ordinance, or regulation infringes the Second Amendment right.” *Gould*, 907 F.3d at 668. First, a court “asks whether the challenged law burdens conduct that falls within the scope of the Second Amendment’s guarantee.” *Id.* at 668–69. “This is a backward-looking inquiry, which seeks to determine whether the regulated conduct ‘was understood to be within the scope of the right at the time of ratification.’” *Id.* at 669 (quoting *Chester*, 628 F.3d at 680). Second, “[i]f that step is successfully negotiated so we can say that the challenged law ‘burdens conduct falling within the scope of the Second Amendment,’ then the court “‘must determine what level of scrutiny is appropriate and must proceed to decide whether the challenged law survives that level of scrutiny.’” *Worman v. Healey*, 922 F.3d 26, 33 (1st Cir. 2019) (quoting *Gould*, 907 F.3d at 669).

2. Analysis

In this case, Plaintiff has received an FID card and can lawfully possess a firearm within his home. Chief Lyver, however, denied his application for a license to carry or a permit to purchase a firearm. Plaintiff argues that Sections 131 and 131A, the provisions under which Chief Lyver denied his application, burden

his Second Amendment right because they prevent him from lawfully *obtaining* any firearm to possess within his home. (Docket No. 19 at 9). I assume, without deciding, that Plaintiff is correct that these provisions burden conduct falling within the scope of the Second Amendment right. *See Worman*, 922 F.3d at 36 (“For present purposes, we simply assume, albeit without deciding, that the Act burdens conduct that falls somewhere within the compass of the Second Amendment.”). I therefore focus on the second step of the framework, i.e., “what level of scrutiny is appropriate” and “whether the challenged law survives that level of scrutiny.” *Id.* at 33 (quoting *Gould*, 907 F.3d at 669).

A. Level of Scrutiny

The level of scrutiny a court should apply “turn[s] on how closely a particular law or policy approaches the core of the Second Amendment right and how heavily it burdens that right.” *Gould*, 907 F.3d at 670–71. “A law or policy that burdens conduct falling within the core of the Second Amendment requires a correspondingly strict level of scrutiny, whereas a law or policy that burdens conduct falling outside the core of the Second Amendment logically requires a less demanding level of scrutiny.” *Id.* at 671.

Plaintiff contends that something more rigorous than intermediate scrutiny is appropriate here because the Massachusetts licensing scheme burdens the core right guaranteed by the Second Amendment. (Docket No. 19 at 11). I disagree. At its core, the Second Amendment protects “the right of *law-abiding, responsible* citizens to use arms in defense of hearth

and home.” *Heller*, 554 U.S. at 635 (emphasis added); *see also Gould*, 907 F.3d at 672. Individuals convicted of weapons-related offenses punishable by a term of imprisonment are not the type of law-abiding, responsible citizens contemplated by the Court in *Heller*.

Plaintiff suggests I should consider him, in particular, as law-abiding because he has “never committed a crime of violence,” “honestly believed what he was doing was perfectly legal,” and “has lived a successful and productive life and contributed to society.” (Docket No. 19 at 11). He cites to the D.C. Circuit’s decision in *Schrader v. Holder*, 704 F.3d 980 (D.C. Cir. 2013), for the proposition that a court may consider an individual law-abiding despite a prior conviction. But the passage Plaintiff quotes is dicta. In it, the D.C. Circuit notes that, *if Schrader had raised an as-applied challenge on an individual basis*, it “would hesitate to find [him],” an individual whose only offense involved a fistfight forty years earlier, “outside the class of ‘law-abiding, responsible citizens’ whose possession of firearms is, under *Heller*, protected by the Second Amendment.” *Id.* at 991. On a class-wide basis, however, the D.C. Circuit held that “common-law misdemeanants . . . cannot be considered law-abiding and responsible.” *Id.* at 293. And here, I decline to consider Plaintiff’s as-applied challenge on an individual basis. As I noted in disposing of Plaintiff’s previous case, “[i]t would be unreasonable to expect the courts to make individualized considerations for every person who is statutorily precluded from obtaining a firearms license but who nevertheless believes that he or she should be entitled to carry a weapon.” *Morin*,

189 F. Supp. 3d at 236; *see also United States v. Booker*, 644 F.3d 12, 23 (1st Cir. 2011) (noting that “the Second Amendment permits categorical regulation of gun possession by classes of persons . . . rather than requiring that restrictions on the right be imposed only on an individualized, case-by-case basis”). The proper means by which to assess an as-applied challenge is to look at “the class of persons affected, not the particular circumstances of each individual’s situation.” *Morin*, 189 F. Supp. 3d at 236.

In sum, because individuals convicted of weapons-related offenses punishable by a term of imprisonment are not, as a class, law-abiding and responsible citizens, Sections 131 and 131A do not implicate the core of the right protected by the Second Amendment. And because the First Circuit has indicated that “intermediate scrutiny is appropriate as long as a challenged regulation . . . fails to implicate the core Second Amendment right,” I find intermediate scrutiny to be the correct level of scrutiny to assess the constitutionality of these provisions. *See Worman*, 922 F.3d at 38; *see also Booker*, 644 F.3d at 25 n.17 (“We would question whether appellants, who manifestly are not ‘law-abiding, responsible citizens,’ fall within this zone of interest [protected by the Second Amendment].”); *id.* at 25 (“We think it sufficient to conclude, as did the Seventh Circuit, that a categorical ban on gun ownership by a class of individuals must be supported by some form of ‘strong showing,’ necessitating a substantial relationship between the restriction and an important governmental objective.” (quoting *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc))).

B. Constitutionality

“To survive intermediate scrutiny, a statute must be substantially related to an important governmental objective.” *Worman*, 922 F.3d at 38 (citations and internal quotation marks omitted). A statute is substantially related to an important governmental objective if there is a “‘reasonable fit’ between the restrictions imposed by the law and the government’s valid objectives, ‘such that the law does not burden more conduct than is reasonably necessary.’” *Id.* (quoting *Gould*, 907 F.3d at 674).

The Massachusetts firearms licensing scheme prevents individuals previously convicted of any weapons-related offense punishable by a term of prison from obtaining a license to carry or permit to purchase a firearm. The goal of this scheme is to improve public safety and prevent crime by limiting the access of irresponsible individuals to deadly weapons. *Chief of Police of City of Worcester v. Holden*, 470 Mass. 845, 853 (2015) (“The purpose of G.L. c. 140, § 131, is to ‘limit access to deadly weapons by irresponsible persons.’” (quoting *Ruggiero v. Police Comm’r of Bos.*, 18 Mass. App. Ct. 256, 258 (1984))). Massachusetts’ interests in preventing crime and promoting public safety are undoubtedly important, *see Gould*, 922 F.3d at 39, so what remains is to determine whether a categorical ban reasonably serves these interests.

The answer is yes. Ample empirical evidence suggests that those who have been convicted of weapons-related offenses—even nonviolent offenses—are more likely to commit a crime or threaten public safety than those who have not. *See, e.g.*, Garen J.

Wintemute et al., *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*, 280 J. AM. MED. ASS'N 2083, 2086 (1998) (“[H]andgun purchasers who had prior convictions for nonviolent firearm-related offenses such as carrying concealed firearms in public, but none for violent offenses, were at increased risk for later violent offenses.”); *id.* at 2087 (“[T]here now is evidence that denial of handgun purchase reduces the incidence of subsequent criminal activity among [persons convicted of misdemeanor crimes].”); Mona A. Wright & Garen J. Wintemute, *Felonious or Violent Criminal Activity that Prohibits Gun Ownership Among Prior Purchasers of Handguns: Incidence and Risk Factors*, 69 J. TRAUMA 948 tbl. 2 (2010) (finding that persons convicted of misdemeanor offenses are five times more likely to commit future crimes that would disqualify them from possessing firearms under federal and state law than persons without such convictions). Section 131 and 131A, moreover, do not prevent *all* individuals convicted of weapons-related offenses from purchasing firearms but instead focus on individuals convicted of offenses for which a term of imprisonment may be imposed. Studies document high recidivism rates among individuals serving a prison term for a weapons-conviction. *See, e.g.*, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, at 8 tbl. 8 (Apr. 2014) (finding a 79.5% recidivism rate after 5 years among those arrested for weapons-related offenses); Bureau of Justice Statistics, U.S. Dep’t of Justice, *Fact Sheet: Profile of Nonviolent Offenders Exiting State Prisons*, at 2 (Oct. 2004)

(“Within 3 years of their release from prison, about 7 in 10 nonviolent releasees were rearrested for a new crime; nearly half were reconvicted; and more than a quarter were returned to prison . . .”). By excluding individuals convicted of lower-level offenses punishable only by fine or forfeiture—i.e., those least likely to pose a danger to society—from their sweep, Sections 131 and 131A avoid burdening more conduct than reasonably necessary.

In sum, because Sections 131 and 131A substantially relate to Massachusetts’ interest in preventing crime and promoting public safety and are reasonably tailored to meet these needs, the provisions pass constitutional muster. I accordingly ***deny*** Plaintiff’s motion for summary judgment (Docket No. 19) and ***grant*** the Commonwealth’s motion (Docket No. 25).

3. Chief Lyver

In his motion for summary judgment, Chief Lyver incorporates the Commonwealth’s constitutionality arguments. (Docket No. 29 at 3). I therefore ***grant*** his motion for summary judgment for the reasons discussed above.⁵

Conclusion

For the reasons stated above, I ***deny*** Plaintiff’s motion for summary judgment (Docket No. 19), ***grant*** the Commonwealth’s cross-motion for summary

⁵ Because I find the statute constitutional, I decline to address the other arguments in favor of summary judgment advanced by Chief Lyver.

App. 31

judgment (Docket No. 25), and ***grant*** Chief Lyver's cross-motion for summary judgment (Docket No. 29).

SO ORDERED

/s/ Timothy S. Hillman
TIMOTHY S. HILLMAN
DISTRICT JUDGE

APPENDIX C

Statutory Provisions Involved

D.C. CODE § 6-2311 (2004)

(a) Except as otherwise provided in this unit, no person or organization in the District of Columbia (“District”) shall receive, possess, control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization in the District shall possess or control any firearm, unless the person or organization holds a valid registration certificate for the firearm. A registration certificate may be issued:

(1) To an organization if:

(A) The organization employs at least 1 commissioned special police officer or employee licensed to carry a firearm whom the organization arms during the employee’s duty hours; and

(B) The registration is issued in the name of the organization and in the name of the president or chief executive officer of the organization;

(2) In the discretion of the Chief of Police, to a police officer who has retired from the Metropolitan Police Department; or

(3) In the discretion of the Chief of Police, to the Fire Marshal and any member of the Fire and Arson Investigation Unit of the Fire Prevention Bureau of the Fire Department of the District of Columbia, who is

App. 33

designated in writing by the Fire Chief, for the purpose of enforcing the arson and fire safety laws of the District of Columbia.

(b) Subsection (a) of this section shall not apply to:

(1) Any law enforcement officer or agent of the District or the United States, or any law enforcement officer or agent of the government of any state or subdivision thereof, or any member of the armed forces of the United States, the National Guard or organized reserves, when such officer, agent, or member is authorized to possess such a firearm or device while on duty in the performance of official authorized functions;

(2) Any person holding a dealer's license; provided, that the firearm or destructive device is:

(A) Acquired by such person in the normal conduct of business;

(B) Kept at the place described in the dealer's license; and

(C) Not kept for such person's private use or protection, or for the protection of his business;

(3) With respect to firearms, any nonresident of the District participating in any lawful recreational firearm-related activity in the District, or on his way to or from such activity in another jurisdiction; provided, that such person, whenever in possession of a firearm, shall upon demand of any member of the Metropolitan Police Department, or other bona fide law enforcement officer, exhibit proof that he is on his way to or from such activity, and that his possession or control of such

App. 34

firearm is lawful in the jurisdiction in which he resides; provided further, that such weapon shall be unloaded, securely wrapped, and carried in open view.

D.C. CODE § 6-2376 (2004)

Any person convicted of a violation of any provision of this unit shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both; except that:

(1) A person who knowingly or intentionally sells, transfers, or distributes a firearm, destructive device, or ammunition to a person under 18 years of age shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any person who is convicted a second time for possessing an unregistered firearm shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

(B) A person who in the person's dwelling place, place of business, or on other land possessed by the person, possesses a pistol, or firearm that could otherwise be registered, shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

D.C. CODE § 22-103 (2004)

Whoever shall attempt to commit any crime, which attempt is not otherwise made punishable by chapter 19 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321), shall be punished by a fine not exceeding \$1,000 or by

App. 35

imprisonment for not more than 180 days, or both. Except, whoever shall attempt to commit a crime of violence as defined in § 23-1331 shall be punished by a fine not exceeding \$5,000 or by imprisonment for not more than 5 years, or both.

D.C. CODE § 22-3204 (2004)

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than \$5,000 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection,

App. 36

the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence.

MASS. GEN. LAWS ch. 140, § 121

As used in sections 122 to 131Y, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:- . . .

* * *

“Firearm”, a stun gun or a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk- through metal detectors. . . .

* * *

“Licensing authority”, the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them. . . .

App. 37

* * *

“Purchase” and “sale” shall include exchange; the word “purchaser” shall include exchanger; and the verbs “sell” and “purchase”, in their different forms and tenses, shall include the verb exchange in its appropriate form and tense. . . .

* * *

“Rifle”, a weapon having a rifled bore with a barrel length equal to or greater than 16 inches and capable of discharging a shot or bullet for each pull of the trigger. . . .

“Shotgun”, a weapon having a smooth bore with a barrel length equal to or greater than 18 inches with an overall length equal to or greater than 26 inches, and capable of discharging a shot or bullet for each pull of the trigger. . . .

* * *

MASS. GEN. LAWS ch. 140, § 129B

A firearm identification card shall be issued and possessed subject to the following conditions and restrictions:

(1) Any person residing or having a place of business within the jurisdiction of the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority an application for a firearm identification card, or renewal of the same, which the licensing authority shall issue if it appears that the

App. 38

applicant is not a prohibited person. A prohibited person shall be a person who:

(i) has ever, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, or both as defined in section 52 of chapter 119, for the commission of: (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years ; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C, including, but not limited to, a violation under said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33); provided, however, that, except for the commission of a felony, a misdemeanor crime of domestic violence, a violent crime or a crime involving the trafficking of controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever occurs last, for 5 or more years immediately preceding such application, then the applicant's right or ability to possess a non-large capacity rifle or shotgun shall be deemed restored in the commonwealth with respect to such conviction or adjudication and that conviction or adjudication shall not disqualify the applicant for a firearm identification card;

App. 39

(ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of: (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C, including, but not limited to, a violation under said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33); provided, however, that, except for the commission of felony, a misdemeanor crime of domestic violence, a violent crime or a crime involving the trafficking of weapons or controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever occurs last, for 5 or more years immediately preceding such application and the applicant's right or ability to possess a rifle or shotgun has been fully restored in the jurisdiction wherein the conviction or adjudication was entered, then the conviction or adjudication shall not disqualify such applicant for a firearm identification card;

(iii) is or has been: (A) except in the case of a commitment pursuant to sections 35 or 36C of chapter 123, committed to any hospital or institution for mental illness, alcohol or substance abuse, unless after 5 years from the date of the confinement, the applicant submits

with the application an affidavit of a licensed physician or clinical psychologist attesting that such physician or psychologist is familiar with the applicant's mental illness, alcohol or substance abuse and that in the physician's or psychologist's opinion the applicant is not disabled by a mental illness, alcohol or substance abuse in a manner that should prevent the applicant from possessing a firearm, rifle or shotgun; (B) committed by an order of a court to any hospital or institution for mental illness, unless the applicant was granted a petition for relief of the court's order pursuant to said section 36C of said chapter 123 and submits a copy of the order for relief with the application; (C) subject to an order of the probate court appointing a guardian or conservator for a incapacitated person on the grounds that that applicant lacks the mental capacity to contract or manage affairs, unless the applicant was granted a petition for relief pursuant to section 56C of chapter 215 and submits a copy of the order for relief with the application; or (D) found to be a person with an alcohol use disorder or substance use disorder or both and committed pursuant to said section 35 of said chapter 123, unless the applicant was granted a petition for relief of the court's order pursuant to said section 35 of said chapter 123 and submits a copy of the order for relief with the application;

(iv) is at the time of the application younger than 14 years of age; provided however that the applicant shall not be issued the card until the applicant reaches the age of 15.

App. 41

(v) is at the time of the application more than 14 but less than 18 years of age, unless the applicant submits with the application a certificate of a parent or guardian granting the applicant permission to apply for a card;

(vi) is an alien who does not maintain lawful permanent residency;

(vii) is currently subject to: (A) an order for suspension or surrender issued pursuant to section 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; (B) a permanent or temporary protection order issued pursuant to chapter 209A, a similar order issued by another jurisdiction, including an order described in 18 U.S.C. 922(g)(8); or (C) an extreme risk protection order issued pursuant to sections 131R to 131X, inclusive, or a similar order issued by another jurisdiction;

(viii) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;

(ix) has been discharged from the armed forces of the United States under dishonorable conditions;

(x) is a fugitive from justice; or

(xi) having been a citizen of the United States, has renounced that citizenship. . . .

* * *

(2) Within seven days of the receipt of a completed application for a card, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police,

who shall, within 30 days, advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a card; provided, however, that the taking of fingerprints shall not be required in issuing the renewal of a card if the renewal applicant's fingerprints are on file with the department of state police. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of mental health, department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. If the information available to the colonel does not indicate that the possession of a non-large capacity rifle or shotgun by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within such 30 day period. The licensing authority shall provide to the applicant a receipt indicating that it received the applicant's application. The receipt shall be provided to the applicant within 7 days by mail if the application was received by mail or immediately if the application was made in person; provided, however, that the receipt shall include the applicants' name, address, current firearm identification card number, if any, the current card's expiration date, if any, the date when the application was received by the licensing authority, the name of the licensing authority and its agent that received the application, the licensing authority's

App. 43

address and telephone number, the type of application and whether it is an application for a new card or for renewal of an existing card; and provided further, that a copy of the receipt shall be kept by the licensing authority for not less than 1 year and a copy shall be furnished to the applicant if requested by the applicant.

(3) The licensing authority may not prescribe any other condition for the issuance of a firearm identification card and shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such card shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a rifle or shotgun by the applicant would be in violation of state or federal law.

(4) A firearm identification card shall be revoked or suspended by the licensing authority or his designee upon the occurrence of any event that would have disqualified the holder from being issued such card or from having such card renewed or for a violation of a restriction provided under this section. Any revocation or suspension of a card shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such card and receipt for fee paid for such card, and the person whose card is so revoked or suspended shall take all action required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or

suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended card may be reinstated only upon the termination of all disqualifying conditions. . . .

* * *

(6) A firearm identification card shall not entitle a holder thereof to possess: (i) a large capacity firearm or large capacity feeding device therefor, except under a license issued to a shooting club as provided under section 131 or under the direct supervision of a holder of a license issued to an individual under said section 131 at an incorporated shooting club or licensed shooting range; or (ii) a non-large capacity firearm or large capacity rifle or shotgun or large capacity feeding device therefor, except under a license issued to a shooting club as provided under said section 131 or under the direct supervision of a holder of a license issued to an individual under said section 131 at an incorporated shooting club or licensed shooting range. A firearm identification card shall not entitle a holder thereof to possess any rifle or shotgun that is, or in such manner that is, otherwise prohibited by law. A firearm identification card issued pursuant to subclause (vi) of clause (1) of section 122D,1 shall be valid to purchase and possess chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate. Except as otherwise provided herein, a firearm identification card shall not be valid for the use, possession, ownership,

App. 45

transfer, purchase, sale, lease, rental or transportation of a rifle or shotgun if such rifle or shotgun is a large capacity weapon as defined in section 121. . . .

* * *

MASS. GEN. LAWS ch. 140, § 129C

No person, other than a licensed dealer or one who has been issued a license to carry a pistol or revolver or an exempt person as hereinafter described, shall own or possess any firearm, rifle, shotgun or ammunition unless he has been issued a firearm identification card by the licensing authority pursuant to the provisions of section one hundred and twenty-nine B.

No person shall sell, give away, loan or otherwise transfer a rifle or shotgun or ammunition other than (a) by operation of law, or (b) to an exempt person as hereinafter described, or (c) to a licensed dealer, or (d) to a person who displays his firearm identification card, or license to carry a pistol or revolver. . . .

* * *

The provisions of this section shall not apply to the following exempted persons and uses: . . .

* * *

(n) The transfer of a firearm, rifle or shotgun upon the death of an owner to his heir or legatee shall be subject to the provisions of this section, provided that said heir or legatee shall within one hundred and eighty days of such transfer, obtain a firearm identification card or a license to carry firearms if not otherwise an exempt person who is qualified to receive such or apply to the

App. 46

licensing authority for such further limited period as may be necessary for the disposition of such firearm, rifle or shotgun; . . .

* * *

Nothing in this section shall permit the sale of rifles or shotguns or ammunition therefor to a minor under the age of eighteen in violation of section one hundred and thirty nor may any firearm be sold to a person under the age of 21 nor to any person who is not licensed to carry firearms under section one hundred and thirty-one unless he presents a valid firearm identification card and a permit to purchase issued under section one hundred and thirty-one A, or presents such permit to purchase and is a properly documented exempt person as hereinbefore described. . . .

* * *

The possession of a firearm identification card issued under section one hundred and twenty-nine B shall not entitle any person to carry a firearm in violation of section ten of chapter two hundred and sixty-nine and, the possession of a firearm identification card issued under section 129B shall not entitle any person to possess any large capacity rifle or shotgun or large capacity feeding device therefor in violation of subsection (m) of said section 10 of said chapter 269. . . .

* * *

App. 47

MASS. GEN. LAWS ch. 140, § 131

The issuance and possession of a license to carry firearms shall be subject to the following conditions and restrictions:

(a) A license shall entitle a holder thereof of a license to purchase, rent, lease, borrow, possess and carry: (i) firearms, including large capacity firearms, and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of firearms as the licensing authority considers proper; and (ii) rifles and shotguns, including large capacity weapons, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as it considers proper. A violation of a restriction imposed by the licensing authority under this paragraph shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that section 10 of chapter 269 shall not apply to a violation of this paragraph. . . .

* * *

(c) A license to carry firearms shall be valid to own, possess, purchase and transfer non-large capacity rifles and shotguns, consistent with the entitlements conferred by a firearm identification card issued under section 129B.

(d) A person residing or having a place of business within the jurisdiction of the licensing authority or any

App. 48

law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police an application for a license to carry firearms, or renewal of the same, which the licensing authority or the colonel may issue if it appears that the applicant is not a prohibited person as set forth in this section to be issued a license and that the applicant has good reason to fear injury to the applicant or the applicant's property or for any other reason, including the carrying of firearms for use in sport or target practice only, subject to the restrictions expressed or authorized under this section.

A prohibited person shall be a person who:

(i) has, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, both as defined in section 52 of chapter 119, for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in section 1 of chapter 94C including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33);

App. 49

(ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in said section 1 of said chapter 94C including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33);

(iii) is or has been (A) committed to a hospital or institution for mental illness, alcohol or substance abuse, except a commitment pursuant to sections 35 or 36C of chapter 123, unless after 5 years from the date of the confinement, the applicant submits with the application an affidavit of a licensed physician or clinical psychologist attesting that such physician or psychologist is familiar with the applicant's mental illness, alcohol or substance abuse and that in the physician's or psychologist's opinion, the applicant is not disabled by a mental illness, alcohol or substance abuse in a manner that shall prevent the applicant from possessing a firearm, rifle or shotgun; (B) committed by a court order to a hospital or institution for mental illness, unless the applicant was granted a petition for relief of the court order pursuant to said section 36C of said chapter 123 and submits a copy of the court order with the application; (C) subject

App. 50

to an order of the probate court appointing a guardian or conservator for a incapacitated person on the grounds that the applicant lacks the mental capacity to contract or manage the applicant's affairs, unless the applicant was granted a petition for relief of the order of the probate court pursuant to section 56C of chapter 215 and submits a copy of the order of the probate court with the application; or (D) found to be a person with an alcohol use disorder or substance use disorder or both and committed pursuant to said section 35 of said chapter 123, unless the applicant was granted a petition for relief of the court order pursuant to said section 35 and submits a copy of the court order with the application;

(iv) is younger than 21 years of age at the time of the application;

(v) is an alien who does not maintain lawful permanent residency;

(vi) is currently subject to: (A) an order for suspension or surrender issued pursuant to sections 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; (B) a permanent or temporary protection order issued pursuant to said chapter 209A or a similar order issued by another jurisdiction, including any order described in 18 U.S.C. 922(g)(8); or (C) an extreme risk protection order issued pursuant to sections 131R to 131X, inclusive, or a similar order issued by another jurisdiction;

(vii) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;

App. 51

(viii) has been discharged from the armed forces of the United States under dishonorable conditions;

(ix) is a fugitive from justice; or

(x) having been a citizen of the United States, has renounced that citizenship.

The licensing authority may deny the application or renewal of a license to carry, or suspend or revoke a license issued under this section if, in a reasonable exercise of discretion, the licensing authority determines that the applicant or licensee is unsuitable to be issued or to continue to hold a license to carry. A determination of unsuitability shall be based on: (i) reliable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety. . . .

* * *

(e) Within seven days of the receipt of a completed application for a license to carry or possess firearms, or renewal of same, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall within 30 days advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a license to carry or

possess firearms. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. The colonel shall inquire of the commissioner of the department of mental health relative to whether the applicant is disqualified from being so licensed. If the information available to the colonel does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within said 30 day period.

The licensing authority may also make inquiries concerning the applicant to: (i) the commissioner of the department of criminal justice information services relative to any disqualifying condition and records of purchases, sales, rentals, leases and transfers of weapons or ammunition concerning the applicant; (ii) the commissioner of probation relative to any record contained within the department of probation or the statewide domestic violence record keeping system concerning the applicant; and (iii) the commissioner of the department of mental health relative to whether the applicant is a suitable person to possess firearms or is not a suitable person to possess firearms. The director or commissioner to whom the licensing authority makes such inquiry shall provide prompt and full cooperation for that purpose in any investigation of the applicant.

App. 53

The licensing authority shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such license shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law. . . .

* * *

(f) A license issued under this section shall be revoked or suspended by the licensing authority, or his designee, upon the occurrence of any event that would have disqualified the holder from being issued such license or from having such license renewed. A license may be revoked or suspended by the licensing authority if it appears that the holder is no longer a suitable person to possess such license. Any revocation or suspension of a license shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such license and the person whose license is so revoked or suspended shall take all actions required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended license may be reinstated only

upon the termination of all disqualifying conditions, if any. . . .

* * *

MASS. GEN. LAWS ch. 140, § 131A

A licensing authority under section one hundred and thirty-one, upon the application of a person qualified to be granted a license thereunder by such authority, may grant to such a person, other than a minor, a permit to purchase, rent or lease a firearm if it appears that such purchase, rental or lease is for a proper purpose, and may revoke such permit at will. The colonel of the state police or a person authorized by him, upon the application of a person licensed under section one hundred and thirty-one F, may grant to such licensee, other than a minor, a permit to purchase, rent or lease a firearm, rifle or shotgun, or to purchase ammunition therefor, if it appears that such purchase, rental or lease is for a proper purpose, and may revoke such permit at will. Such permits shall be issued on forms furnished by the commissioner of the department of criminal justice information services shall be valid for not more than ten days after issue, and a copy of every such permit so issued shall within one week thereafter be sent to the said executive director. The licensing authority may impose such restrictions relative to the caliber and capacity of the firearm to be purchased, rented or leased as he deems proper. Whoever knowingly issues a permit in violation of this section shall be punished by a fine of not less than five hundred nor more than one thousand dollars and by imprisonment for not less than six months nor more than two years in a jail or house of correction.

App. 55

The fee for the permits shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund.

MASS. GEN. LAWS ch. 269, § 10

(a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

- (1) being present in or on his residence or place of business; or
- (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; . . .

* * *

. . . and whoever knowingly has in his possession; or knowingly has under control in a vehicle; a rifle or shotgun, loaded or unloaded, without either:

- (1) being present in or on his residence or place of business; or
- (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or . . .

* * *

(4) having in effect a firearms identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or

(5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns; . . .

. . . shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years, or for not less than 18 months nor more than two and one-half years in a jail or house of correction. The sentence imposed on such person shall not be reduced to less than 18 months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 18 months of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file.

App. 57

No person having in effect a license to carry firearms for any purpose, issued under section one hundred and thirty-one or section one hundred and thirty-one F of chapter one hundred and forty shall be deemed to be in violation of this section. . . .

* * *

The provisions of this subsection shall not affect the licensing requirements of section one hundred and twenty-nine C of chapter one hundred and forty which require every person not otherwise duly licensed or exempted to have been issued a firearms identification card in order to possess a firearm, rifle or shotgun in his residence or place of business. . . .

* * *

(h)(1) 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. Whoever commits a second or subsequent violation of this paragraph shall be punished by imprisonment in a house of correction for not more than 2 years or by a fine of not more than \$1,000, or both. Any officer authorized to make arrests may arrest without a warrant any person whom the officer has probable cause to believe has violated this paragraph.

* * *

(n) Whoever violates paragraph (a) or paragraph (c), by means of a loaded firearm, loaded sawed off shotgun or

App. 58

loaded machine gun shall be further punished by imprisonment in the house of correction for not more than 2 ½ years, which sentence shall begin from and after the expiration of the sentence for the violation of paragraph (a) or paragraph (c). . . .

* * *