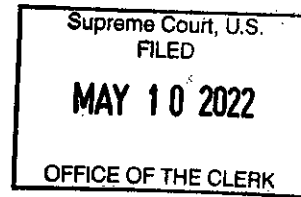


No. 21-1495



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IN THE  
**Supreme Court of the United States**

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JIMMY BALDEA,

*Petitioner,*

—v.—

CITY OF NEW YORK LICENSE DIVISION OF THE NYPD,

*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Is License Division empowered to deny an unrestricted concealed carry license to a qualified police officer, as defined by 18 U.S.C. § 926B (2017), who seeks to apply for such licensing?

2. Does License Division's interpretation and use of 38 RCNY violate 18 U.S.C. § 926B (2017) by preventing Baldea, a qualified police officer, from gaining access to his off-duty handgun?

3. Did any/all of the following (appellate division, first department; License Division; City of New York Law Department; court of appeals) act unjustly by denying Baldea an in-person and/or emergency hearing and/or special consideration in light of Baldea identifying himself as a qualified police officer who faces dangers at work by being unprotected without his off-duty handgun?

4. Should the City of New York be required to establish and empower, and should License Division be mandated to be held accountable to, an independent civilian Review Board, as opposed to the current practice of use of an in-house Appeals Unit that exists within and is staffed by License Division, for denials/disapprovals of handgun licenses by License Division?

## **CORPORATE DISCLOSURE STATEMENT**

Petitioner American Resources & Strategies Inc. has no parent corporation and no publicly held corporation owns any of its stock.

## **PARTIES TO THE PROCEEDINGS**

Petitioners Jimmy Baldea, AKA Police Officer Jimmy Baldea, American Resources & Strategies Inc. (collectively "Baldea") were the petitioners in the supreme court and the petitioner-appellant in the appellate court.

Respondents City of New York License Division of the NYPD (collectively "License Division") were the respondents in supreme court and the respondent-respondent in appellant court.

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## JURISDICTION

The order of the court of appeals was entered on February 10, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATUTORY PROVISIONS INVOLVED

The relevant provisions of 18 U.S.C. § 926B and 38 RCNY § 5-03(a) and (b).

## STATEMENT OF THE CASE

This case presents precedent-setting questions regarding whether License Division's broad discretionary powers enable it to deny Unrestricted Carry to an active sworn qualified police officer, and whether Change of Circumstances should be applied to Baldea by License Division in a manner that is consistent with License Division's use of Change of Circumstances in its motion to render moot its case in *N.Y. State Rifle & Pistol Ass'n, et al. v. City of N.Y., et al.*, 140 S. Ct. 1525 (2020).

Petitioner Baldea is a qualified police officer, per 18 U.S.C. § 926B, and is defined as a police officer per NYS PEN New York § 265.20 Criminal Procedure Law Section 1.20, Item 34(d). Baldea resides in New York City, and works as a police officer outside New York State. Respondent License Division disapproved the 2018-21 Renewal of (then-civilian) Baldea's Unrestricted Business Carry License # 2012112326 (hereinafter "Unrestricted Business Carry") by concluding that Baldea did not meet "proper cause" requirements needed for approval, then ordered Baldea to voucher his three handguns. Baldea seeks to retake possession of three handguns that he vouchered with a New York based Federal Firearms

Licensee (FFL) on November 20, 2018, prior to becoming a police officer. Baldea challenged License Division's disapproval, stating that License Division's arbitrary and capricious disapproval then-endangered and still-endangers Baldea's life and safety at work, and the disapproval also ascribed incorrect damaging implications to Baldea's police enforcement company business in a manner that disadvantages Baldea for eternity against other bidders for government work contracts (due to License Division's arbitrary and capricious actions, Baldea must disclose on all government bid documents such as VENDEX<sup>1</sup> that he was denied any type of license, and that a license was taken away from him, which figuratively, is a "punishment" that doesn't fit the "crime"). Baldea no longer seeks nor requires permission from License Division to carry a firearm due to his Change of Circumstances (namely, becoming a qualified police officer). Even after becoming a qualified police officer, Baldea is still labelled by License Division as not having "proper cause." This dispute remains alive, and the controversy continues to exist.

This case reveals a License Division violation of 436 U.S. 658. It is common policy or custom for NYPD and License Division to provide mechanisms for active and retired NYPD police officers to purchase a handgun for backup/off-duty/other work

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<sup>1</sup> Reference According to § 1-04 Contract Information of the Administrative Code of the City of New York, Baldea's company will be subject to the "Terminated for Cause," "Revoked," and/or "Disqualified for Cause," as seen in Questions 14a. and 14b. of the New York City VENDEX (and other similar forms from other municipalities); [https://www1.nyc.gov/assets/mocs/downloads/pdf/Vendex/principal\\_questionnaire\\_2014%20-%20Fillable%20\(140925\).pdf?msckid=af37b78bcf1a11ec84b5339619aa23b1](https://www1.nyc.gov/assets/mocs/downloads/pdf/Vendex/principal_questionnaire_2014%20-%20Fillable%20(140925).pdf?msckid=af37b78bcf1a11ec84b5339619aa23b1)

or lawful purposes. License Division fails to apply common policy or custom to Baldea. Baldea and other qualified police officers who work outside of New York State and reside in New York City cannot obtain permission documents (A.K.A. "Purchase Orders") to purchase a handgun for backup/off-duty/other work or lawful purposes, in a manner that is in accordance with federal laws 18 U.S.C. Part 1 Chapter 44 Section 922 (a)(3), (a)(5), and (b)(3), and 400.00 of the Penal Law of New York State, and those of New York City 38 RCNY 4-04 and 265.00(17). License Division must be compelled to create new legal mechanisms in its flawed handgun licensing scheme to end License Division prejudices and enable such qualified police officers to gain access to the same benefits that License Division offers to its own qualified police officers.

Baldea seeks to introduce video recording evidence for consideration in this case, due to pressing severity and gross violations of justice revealed by the following truths. License Division, at the level of its top in-house licensed lawyers/executives, has violated 18 U.S.C. § 921 (GCA 68) by advising Baldea to have his FFL ship Baldea's handguns to Vermont in order to try to take possession in Vermont as a police officer (Baldea is a resident of the City of New York and holds a valid New York State Drivers License, and would be unable to take possession of handguns in another state by presenting a New York State license). The in-house licensed lawyers/executives of License Division gave illegal advice/orders and should be held to a higher standard. License Division has violated IACP's Code of Ethics through its interpretation of the extent and limits of police powers, when advising Baldea. License Division has violated Baldea's 1st Amendment rights by advising

Baldea to move out of New York City and New York State. License Division even stated that Baldea should quit his police job since his bosses don't care enough about him to provide for his safety. License Division has violated Baldea's 2nd Amendment rights in a unique manner, noting that qualified police officers are members of well-regulated militias and are necessary to the security of a free State. License Division has violated Baldea's 14th Amendment rights by denying Baldea equal protection by instructing Baldea to apply for a Premise License handgun license (a restricted<sup>2</sup> type of license, issued for residence or business, which does not allow for carrying a handgun on a person); because License Division's scheme allocates or eliminates restrictions based on specific serial numbers of each handgun, such a solution would not only be problematic to a qualified police officer, but would also be unacceptable and illegal. License Division also informed Baldea that he can wait for the "Bruen" ruling and re-apply however may face extended wait time because there would probably be a large number of applications ahead of Baldea's.

Baldea has pleaded to License Division and also the judicial system to utilize one of his vouchered handguns for off-duty carry, and currently faces occupational safety risks as he arrives to and departs from his police job unprotected. Baldea faces personal safety risks while off-duty, and is blocked by License Division from the same protections that other qualified police officers have access to. Because this case is the optimal vehicle through which to address the important questions presented, the petition for a writ of certiorari should be granted.

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<sup>2</sup> <https://licensing.nypdonline.org/new-app-instruction/>

### A. Statutory Background

1. Amendment I, U.S. Constitution guarantees the right to life, liberty, and pursuit of happiness. Baldea cannot currently protect himself because he is being denied his off-duty handgun by License Division. License Division denied Baldea liberty by telling Baldea to move out of the state and to quit his job.
2. Amendment II, U.S. Constitution: Baldea is a police officer, thus a member of a well-regulated militia, necessary to the security of a free State.
3. Amendment XIV, U.S. Constitution guarantees equal protection under the Law.
4. 18 U.S.C. § 921 (GCA 68) is the Gun Control Act of 1968 which regulates the gun industry and gun ownership. Part of this act prohibits FFLs from selling handguns to out-of-state buyers, per Sec 901 of Title IV of Pub. L. 90-351 (a)(3).
5. 18 U.S.C. § 922(a)(3) is part of the national act that makes it illegal for a resident of one state to use their official drivers license or state identification to willfully purchase a handgun from an FFL that is located in another state.
6. 18 U.S.C. § 926B is part of the national act that exempts qualified law enforcement officers from most state and local laws that prohibit the carriage of concealed firearms; the act clearly defines what a qualified law enforcement officer is, and sets requirement for possession of valid work identification in order for a qualified law enforcement officer to be protected under this act. In rare cases, a

qualified law enforcement officer may be employed by a law enforcement employer that is located outside the local and/or state borders of the residence of said officer. Such officers are allowed to carry concealed within their municipalities of residence under this act, however may be unable to purchase a handgun for backup/off-duty/other work or lawful purposes, due to FFL regulations and also due to state/local gun laws. It should be noted that, although such point is not being argued for this case, there have been cases where federal law enforcement agencies have not issued retired identifications to their retiring qualified law enforcement officers, thus broadening the potential base of victims that are impacted by the deficiency in the act.

7. 436 U.S. 658 is the national act that states claims against municipal entities must be based on common policy or custom. Baldea cited how License Division treats him in manners that go against common policy or custom: Baldea is not afforded the ability to access his off-duty handgun, Baldea is not enabled according to 38 RCNY to purchase a handgun, and Baldea pays \$340 for applications while NYPD retired officers and other police officers throughout New York State are given zero-fee applications.
8. NYS PEN § 265.20 is part of the New York State Law that empowers License Division to further regulate firearms permits and licenses for its residents and workers within the borders of the City of New York. It should be noted that Baldea is defined as a police officer

by New York Criminal Procedure Law Section 1.20, Item 34(d).

9. NYS PEN § 400.00(2)(f) is part of the New York State Penal Law on Licenses to Carry, Possess, et.al., Firearms, that requires "proper cause" for issuance of concealed carry licenses.
10. 38 RCNY § 1-04(f) grants License Division the authority to issue a Notice of Determination Letter to an FFL that violates 38 RCNY. Such a notice will result in the suspension or revocation of a dealer's license. FFLs require such licenses in order to conduct their daily business.
11. 38 RCNY § 5-03(a) empowers License Division to consider the exposure of a concealed carry applicant by reason of employment or business necessity to extraordinary personal danger requiring authorization to carry a handgun.
12. 38 RCNY § 5-03(b) empowers License Division to consider the exposure of a concealed carry applicant to extraordinary personal danger, documented by proof of threats or recurring threats to life or safety requiring authorization to carry a handgun.
13. 38 RCNY § 5-25(14)(b)(3)(c) establishes rules for obtaining a handgun by residents of the City of New York. In order to obtain a handgun, one a) must be a licensee, and also b) must be issued a Handgun Purchase Authorization form. It should be noted that License Division has sued out-of-state FFLs, charging illegal sales<sup>3</sup>.

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3 <https://www.nytimes.com/2006/05/16/nyregion/16guns.html>



## **B. Factual Background**

In 2009, Baldea founded a company and created a series of health strategies for police officers, to help them understand the impact of their vital signs and health choices on their daily work, and to help officers improve their health and reduce preventable municipal expenditures. Baldea worked side jobs throughout New York City and State, at odd hours, and often in dangerous environments to accumulate the funds to perform R&D and to, in 2014, purchase blood pressure cuffs and other medical devices to issue to police officers in New York City, Los Angeles, and other municipalities. Baldea then established professional relationships with management and labor organizations of police departments then obtained permission to distribute these medical devices to, and perform field observations alongside, police officers while in their work environments. Baldea applied for, and was approved for, and was issued a Restricted Business Carry by License Division in 2012, and was subsequently granted renewals and multiple expansions of privileges to Unrestricted status by demonstrating "proper cause" due to continued business growth and increased exposure to dangers in a manner that was in accordance with License Division's requirement for applicants and license holders to demonstrate special need for self-protection that distinguished Baldea from other members of the community and/or other members of Baldea's profession. Baldea was the victim of several crimes, while continuing to work odd jobs at odd hours to fund his police medical work, and submitted police reports to License Division. It should be noted that, in 2018, License Division denied the existence of, then later interpreted in a manner that decreased the severity of reports of

multiple documented and recurring NY police crime accounts by stating all of Baldea's submitted police reports failed to establish "proper cause." During the COVID-19 pandemic and lockdown, Baldea was hired by a municipality near his second home at Stratton Mountain, Vermont, and became an active sworn police officer. Baldea continues to serve as a police officer, and also still performs police health and wellness work. Baldea has attained an expertise that has enabled him to give speeches and hold workshops during IACP and U.S. Department of Justice events, and at other venues. Baldea does not have access to his off-duty handgun and two other handguns as a result of a License Division decision, and the reputation of Baldea's police enforcement company business is tarnished (ref. VENDEX), and Baldea is presently in litigation to resolve this matter.

### **C. Procedural History**

1. On July 18, 2019, Baldea challenged License Division in the Supreme Court, County of New York, alleging arbitrary and capricious abuse and misuse of its broad powers of discretion, and seeking, among other remedies, an emergency relief to revert the status of Baldea's 2018-21 Renewal application to a status of abeyance. The supreme court put forth a decision and order in favor of License Division. During this proceeding, the court interpreted Baldea's work to be police enforcement, yet ruled that Baldea does not meet "proper cause." The court declined to perform a de novo review and to address Baldea's discovery of statements of perjury by License Division. The court relied on License Division's reasoning to order the disposal of the case, stating that Baldea is not in danger in

the same way that a "diamond dealer" who walks around 48th Street with a briefcase of precious diamonds is. It should be noted that the court scolded Baldea when Baldea recommended mental health counseling for License Division employees who may have been mentally injured and thus prejudiced after witnessing federal agents and Internal Affairs enter their workplace and arrest their co-workers and superiors in 2016 post discovery of pistol licensing bribery and corruption by License Division.

2. Due to disagreeing with the Order of the Supreme Court to dispose of the case, Baldea filed suit in the New York Supreme Court Appellate Division First Department. Appellate Division denied Baldea a ten-minute oral argument, then ruled in favor of License Division on May 27, 2021.
3. Due to disagreeing with Decision and Order of the Appellate Division First Department, Baldea appealed to the State of New York Court of Appeals. On February 10, 2022 the court ordered a denial of Baldea's Motion for Leave to Appeal.

### **REASONS FOR GRANTING REVIEW**

Baldea's certiorari petition presents clear evidence of gross violations and overreach by License Division in a manner that surpasses historical accusations arbitrary and capricious decisions of License Division because of Baldea's status as a qualified police officer. For the reasons set forth below, intervention is necessary to address the Court of Appeals'

unsupportable refusal to consider Motion for Leave to Appeal presented by Baldea.

**I. BALDEA IS A QUALIFIED POLICE OFFICER, AND IS BEING DENIED ACCESS BY LICENSE DIVISION TO HIS HANDGUNS.**

Baldea has been involved in the arrest of violent persons, and is presently exposed to dangers due to his documented police interactions with known drug dealers and murder suspects who have been known to travel from New York, New Jersey, and Pennsylvania to New England. Baldea's body camera footage has been called upon by Major Crimes units to help identify crime suspects, yet License Division continues to prevent Baldea from gaining access to his off-duty handgun.

Baldea's work as a police officer is affirmed as "necessary to the security of a free State." License Division has disabled Baldea from possessing the work tools necessary to fulfill his Duty to Act by refusing to grant Baldea equal protection and protection that is consistent with License Division's common policy or custom regarding other qualified police officers.

**II. LICENSE DIVISION OPERATES UNDER STATUTORY FLAWS BECAUSE IT DOES NOT HAVE MECHANISMS IN PLACE TO ASSIGN A LICENSE TYPE / CATEGORY THAT IS APPLICABLE TO BALDEA'S UNIQUE CIRCUMSTANCES SO THAT BALDEA MAY RETRIEVE HIS PREVIOUSLY VOUCHERED HANDGUNS IN A MANNER THAT DOES NOT PREJUDICE BALDEA.**

License Division is the sole authority and licensing body for residents and workers of New York City, and must be held accountable for addressing Baldea's Change of Circumstances, in light of Baldea's status as a qualified police officer. FFLs are afraid of retaliation by License Division according to License Division's ability to issue a Notice of Determination Letter, according to 38 RCNY § 1-04(f).

**III. PRIOR TO BALDEA BECOMING A POLICE OFFICER, THE SUPREME COURT, COUNTY OF NEW YORK, INTERPRETED BALDEA'S WORK TO BE "POLICE ENFORCEMENT" AT THE TIME OF BALDEA'S 2018-21 RENEWAL APPLICATION YET RULED IN A FLAWED MANNER BY FAILING TO IDENTIFY BALDEA AS HAVING "PROPER CAUSE" FOR UNRESTRICTED BUSINESS CARRY RENEWAL.**

Baldea is a victim of political circumstance. New York City government and laws are, bluntly, anti-gun. Baldea's police-documented reports of being a victim of crimes were never fairly evaluated.

**IV. LICENSE DIVISION POLICIES REGARDING LICENSE FEE WAIVERS IS FLAWED BECAUSE LICENSE DIVISION HAS FAILED TO APPLY COMMON POLICY OR CUSTOM, WHICH ARE AVAILABLE TO QUALIFIED LAW ENFORCEMENT OFFICERS WHO WORK IN NEW YORK CITY / NEW YORK STATE, TO BALDEA AND OTHER QUALIFIED LAW ENFORCEMENT OFFICERS WHO WORK OUTSIDE OF AND RESIDE IN NEW YORK CITY.**

It is the common policy or custom of License Division to waive<sup>4</sup> the \$340 application / renewal fee for qualified law enforcement officers who work in New York City / New York State. Other law enforcement officers, including Baldea and, separately, retired federal and other law enforcement officers, are required to pay full application fees, in violation of 436 U.S. 658.

**V. THE CITY OF NEW YORK HAS NO OVERSIGHT PANEL(S) IN PLACE FOR LICENSE DIVISION.**

License Division permanently scarred Baldea's police enforcement company business. Without intervention and jurisprudence, Baldea will forever be required to affirm, when competing against other bidders for government work contracts, on VENDEX and similar government forms that (due to License Division's arbitrary and capricious actions) he was denied any type of license, and that a license was taken away from him.

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<sup>4</sup> <https://licensing.nypdonline.org/renewal-instruction/>

**VI. THE STATE OF NEW YORK COURT OF APPEALS ORDER TO DENY BALDEA'S MOTION FOR LEAVE TO APPEAL IS FLAWED BECAUSE IT FAILS TO RECOGNIZE BALDEA'S ALREADY-EXISTING RIGHTS AS A QUALIFIED POLICE OFFICER.**

This Court is being asked to rule sans blinders worn by the Lower Courts. This court is being asked to consider and review underlying facts, and also consider Change of Circumstances. This Court is also asked to address loopholes, including but not limited to, 38 RCNY § 5-25(14)(b)(3)(c) that prevent Baldea from purchasing a handgun. Baldea fears being incorrectly arrested one day like Arthur Rodriguez (State of New York v. Arthur Rodriguez, Indictment # 2917/06, N.Y. Sup. Ct. 2006).

**CONCLUSION**

Baldea has been a first responder in New York City and New York State since 1993. Baldea's official training and experience (both as a New York State Certified Emergency Medical Technician and also as a Vermont Criminal Justice Council Certified Police Officer) qualifies Baldea to understand/identify/evaluate/address dangers and emergencies far better than do the lawyers and judges that ruled that Baldea does not face dangers and emergencies that pose threats and/or life-threats and/or recurring threats. Baldea has been sought out specifically because he has developed subjectmatter expertise as a result of the first-responder-specific dangers he has faced over the years. Baldea gave a speech at the 2017 Harvard Law School Police Union Leadership Seminar, and before the 2020 Presidential

Commission on Law Enforcement & the Administration of Justice. On November 4, 2021, Baldea was elected as Board Secretary of his local Fraternal Order of Police, and serves as an advocate of health improvements for public safety workers. Baldea attends educational events at police academies and police venues across the country, both as a student and also as a lecturer. License Division refused to issue a pistol license to Baldea, after Baldea advised License Division that he is a police officer. Federal law defines Baldea as a police officer, New York State law also defines Baldea as a police officer. Does it make any sense that License Division is preventing Baldea from retaking possession of his off-duty handgun and two other handguns?

All attorneys take an oath to a) support the Constitution of the United States, and b) faithfully discharge the duties of an attorney, and c) conduct oneself with integrity and civility. Because Baldea is a qualified police officer and already is permitted to carry concealed, the top in-house attorneys of License Division, and the assigned lawyers of the New York City Law Department, and all judicial parties involved, all broke their oath by failing to employ prudence and to seek reasonable resolution to Baldea's police-specific needs. These municipal employees exploited local taxpayer levy monies to merely fight multiple legal battle without regard to the totality of the circumstances of the specific case circumstances. These legal professionals may never be penalized, as there are no accountability provisions in place. Baldea has had no alternative other than to litigate this matter.

The factual record in this case provides this Court with an opportunity to uphold 18 U.S.C. § 926B and to hold License Division accountable for its illegal



and unreasonable actions that violate the rights of Baldea and other police officers.

Dated: May 10, 2022

Respectfully submitted,

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