
IN THE
Supreme Court of the United States

NADINE GAZZOLA, individually, and as coowner, President, and as BATFE Federal Firearms Licensee Responsible Person for Zero Tolerance Manufacturing, Inc., SETH GAZZOLA, individually, and as coowner, Vice President, and as BATFE FFL Responsible Person for Zero Tolerance Manufacturing, Inc., JOHN A. HANUSIK, individually, and as owner and as BATFE FFL Responsible Person for d/b/a AGA Sales, JIM INGERICK, individually, and as owner and as BATFE FFL Responsible Person for Ingerick's LLC, d/b/a Avon Gun & Hunting Supply, CHRISTOPHER MARTELLO, individually, and as owner and as BATFE FFL Responsible Person for Performance Paintball, Inc. d/b/a Ikkin Arms, MICHAEL MASTROGIOVANNI, individually, and as owner as as BATFE FFL Responsible Person for Spur Shooters Supply, ROBERT OWENS, individually, and as owner and as BATFE FFL Responsible Person for Thousand Islands Armory, CRAIG SERAFINI, individually, and as owner and as BATFE FFL Responsible Person for Upstate Guns and Ammo, LLC, NICK AFFRONTI, individually, and as BATFE FFL Responsible Person for East Side Traders LLC, EMPIRE STATE ARMS COLLECTORS ASSOCIATION, INC.,

Plaintiffs-Appellants,

– v. –

KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of New York, STEVEN A. NIGRELLI, in his Official Capacity as the Acting Superintendent of the New York State Police, ROSSANA ROSADO, in her Official Capacity as the Commissioner of the Department of Criminal Justice Services of the New York State Police, LETICIA JAMES, in her Official Capacity as the Attorney General of the State of New York,

Defendants-Appellees.

**ON EMERGENCY APPLICATION FOR WRIT OF INJUNCTION TO THE
HONORABLE SONIA SOTOMAYOR, CIRCUIT JUSTICE FOR THE
U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT**

**EMERGENCY APPLICATION TO REVERSE DENIAL BY
SECOND CIRCUIT OF PETITIONER'S REQUEST FOR
EMERGENCY PRELIMINARY INJUNCTIVE RELIEF
AND FOR AN IMMEDIATE ADMINISTRATIVE STAY**

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CORPORATE DISCLOSURE STATEMENT

(FRAP 26.1)

No nongovernmental corporation that is an appellant to this application has a parent corporation or is publicly held.

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

The Applicants are:

Nadine Gazzola, individually, and as co-owner, President, and as BATFE Federal Firearms Licensee Responsible Person for Zero Tolerance Manufacturing, Inc.;

Seth Gazzola, individually, and as co-owner, Vice President, and as BATFE FFL Responsible Person for Zero Tolerance Manufacturing, Inc.;

John A. Hanusik, individually, and as owner and as BATFE FFL Responsible Person for d/b/a “AGA Sales”;

Jim Ingerick, individually, and as owner and as BATFE FFL Responsible Person for Ingerick’s, LLC, d/b/a “Avon Gun & Hunting Supply”;

Christopher Martello, individually, and as owner and as BATFE FFL Responsible Person for Performance Paintball, Inc., d/b/a “Ikkin Arms,”;

Michael Mastrogiovanni, individually, and as owner and as BATFE FFL Responsible Person for “Spur Shooters Supply”;

Robert Owens, individually, and as owner and as BATFE FFL Responsible Person for “Thousand Islands Armory”;

Craig Serafini, individually, and as owner and as BATFE FFL Responsible Person for Upstate Guns and Ammo, LLC; and,

Nick Affronti, individually, and as BATFE FFL Responsible Person for “East Side Traders LLC”; and,

Empire State Arms Collectors, Inc.

The Respondents are:

Kathleen Hochul, in her Official Capacity as Governor of the State of New York

Steven A. Nigrelli, in his Official Capacity as the Acting Superintendent of the New York State Police

Rossana Rosada, in her Official Capacity as the Commissioner of the Department of Criminal Justice Services of the New York State Police

Leticia James, in her Official Capacity as the Attorney General of the State of New York

The related proceedings below are:

1. *Gazzola, et al. v. Hochul, et al.*, Case No. 22-3068 (2d Cir.) – Order denying requested relief of Temporary Restraining Order (December 21, 2022); and,
2. *Gazzola, et al. v. Hochul, et al.*, Case No. 1:22-cv-1134 (N.D.N.Y.) – Text Order denying requested relief of Emergency Motion for TRO/PI (December 2, 2022, delayed decision dated December 7, 2022).

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**TO THE HONORABLE SONIA SOTOMAYOR,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:**

On August 19, 2023, Mr. Jarrett Ford of Ford & Sons Firearms was going through the mail in the normal course of a Saturday and opened a 1-page notification from NYS Governor Kathleen Hochul and NYSP Acting Superintendent Stephen Nigrelli. The letter announced that, on September 13, 2023, Hochul and Nigrelli will take-over background checks for “firearm, rifle, shotgun, and ammunition purchases.” It set off alarm bells in part because the 2022 10-bill package of laws jammed through by NY Governor Hochul only granted state law authorization for “firearm” and “ammunition” purchases. It did not contain statutory authority for “rifle” or “shotgun” background check purchases. This was the first written notice received by federally-licensed dealers in firearms from the NYS Police. Nigrelli and the NYSP had been largely quiet since the laws passed and he threatened “zero tolerance” through enforcement, more than one year prior.

Plaintiffs have fought since the commencement of the case on November 1, 2022 to stay the conversion of this state to what is known and described in legal detail below as a “partial POC state.” It is part of the Emergency Motion for injunctive relief initially filed November 8, 2022. Plaintiffs’ Declarations contain specific examples that support their legal arguments in favor of the *status quo* “Brady state” ATF/FBI operations. For more than twenty-five years (25-years), plaintiffs and more than 1,700 FFLs with business premises in New York have enhanced public safety through their direct, active, and on-going partnership with the ATF and the FBI for mandated federal background checks of specified types of firearms, be they handguns, rifles, or shotguns.

The Hochul-Nigrelli announcement of an intended take-over the entire (100%) firearms background check system to convert New York into a “single POC state” came as a surprise. It exceeds the limited authority of the new (2022) state laws to shift New York from a “Brady state” into a “partial POC state,” meaning for handgun background checks, *only*. Hochul is the one who took the bill drafts from the bully pulpit to the legislature. She said they were prepared by her “attorneys” and “experts,” a maneuver set forth in detail throughout the record. Indeed, amendments were concurrently made to the state definitions of “firearm,” “rifle,” and “shotgun.” Hochul did not draft, request, or obtain statutory authority through her new (2022) to do what she has now declared she intends to do on Wednesday, September 13, 2023.

Not all NY-licensed dealers – who are first and foremost “Federal Firearms Licensees” (FFLs) – received the exact letter mailed to Mr. Ford. None of the plaintiffs did. What the plaintiffs did receive were one or more e-mails from Mr. Eric Moore of the FBI-NICS Unit, beginning on August 23, 2023. Mr. Moore’s e-mail attached a .pdf version of substantially the same Hochul-Nigrelli letter received by Mr. Ford.

In the FBI e-mail, Mr. Moore used only the word “firearm” in the federal firearms compliance law vocabulary of “firearm background checks.” Mr. Moore’s e-mail plainly states:

“On September 13, 2023, the FBI NICS E-Check service and FBI NICS call center will no longer be available for NY FFL (*sic*) to initiate the firearm background checks. All FFLs are required to register with the NY State Police to begin processing firearm background checks.” [Ex D]

At no point on, before, or after the August 17, 2023 Hochul-Nigrelli letter did the NYS Police directly contact the plaintiffs, or, to the best available information coming into this law office, all FFLs statewide. The NYSP did issue two, different e-mails (August 10 and 17, 2023) that were said to be sent to “selected dealers” (undefined). [Exh. B-2, B-3.] As plaintiffs

established in the record, the NYSP has no history of communication with dealers through a single statewide method. By comparison, the ATF engages plaintiffs and FFLs statewide in regular and routine USPS mail, e-mail, telephone, personal communication via Field Agents, and live seminar offerings. Nor does the NYSP have established relationship(s) with any plaintiff, in particular, or with FFLs statewide, in general, in sharp contrast to the ATF.

Federally-licensed dealers in firearms and pawnbrokers, like the plaintiffs, who have attempted to use the NYSP-promoted URL were unable to do so prior to Tuesday, September 6, 2023. Plaintiff Christopher Martello was initially told during his telephone call to the NYSP that he wouldn't be permitted to set up an on-line account because he hadn't renewed his NY dealer license. This was false. Fortunately, he was able to provide proof of renewal fee payment, and the officer approved Mr. Martello's dealer account. The on-line dealer portals are being manually approved by NYSP officers. There are more than 1,700 FFLs with a New York business premises, an unpublished number of which also have NY dealer's licenses.

And, for those dealers, like Mr. Martello, who have (as of September 6, 2023) been approved for dealer accounts and can see the "dashboard," there is no content. Dashboard buttons don't work, including that there is no standard .pdf formatted "User Guide" with screen shot illustrations and instructions. None of the plaintiffs or witnesses named has any knowledge of, nor training in, the new state firearms and ammunition background check system.

In the absence of a stay, the NYS Police has two business days remaining to bring a highly specialized industry on line and train them on live relay transaction software. It can't be done and defendants are needlessly interfering in an existing FFL relationship with a federal system that is fully operational. There's no eyes-on proof the system exists and is operational. There are no training sessions for dealers. And there's not even a printed user's guide to the

systems platform. Plaintiffs don't even know what the NYSP system will indicate in response to a submitted background check request. The terms "proceed," "deny," and "delay" originate in The Brady Act and are part of organically-evolved regulations.

The Acting NYSP Superintendent hasn't fulfilled a lengthy, 6-page list of dealer-facing requirements under the new laws [A-521 to A-526], including that he hasn't certified the ammunition background check system is operational.

As if it isn't enough for citizens and firearms dealers in New York to face the probability of statewide collapse of all Second Amendment-protected firearms transactions as of Wednesday, September 13, 2023, the NYS Police maliciously dispatched investigators from their "Terrorism" units to start on-site, unscheduled dealer "inspections," including at the shops of plaintiff Mr. Craig Serafini and witness Mr. Richard Sehlmeier. It had the intended effect of destabilizing these individual dealers, in addition to sending a tremor through the industry.

These "terrorist" investigators handed Mr. Serafini and Mr. Sehlmeier a 4-page, 31-point "checklist" and started asking questions. Questions asked were designed to elicit self-incriminating statements of the failures of the dealers to perform all 31 mandates on the checklist. They pretended to need "help" from Messrs. Serafini and Sehlmeier because (the investigators said) they had received "no training" in compliance inspections; they, too, were critical of the new laws found at NY Gen Bus §875; and they were pleased to hear someone was suing Albany to get things overturned.

Each one of the dealer mandates under NY Gen Bus §875 is chargeable, criminally, as an A misdemeanor. NY Gen Bus §875-i. Mr. Serafini, a plaintiff, and other witnesses subject to this tactic (both named and as-yet unnamed in this litigation) are now subject to arrest at any time.

These new state mandates under NY Gen Bus §875 are a significant portion of the complaint, plaintiff declarations, and the broader motion for a preliminary injunction hung up at the Second Circuit. In sum, the challenged mandates are pre-empted by federal law, are unconstitutional under the Second, Fifth, and Fourteenth Amendments, and/or are unconstitutional under “to keep” of “to keep and bear arms” of the Second Amendment under our proffered watershed theory of “unconstitutional regulatory overburden.” [*See, e.g.,* A-102 through A-122 (Complaint).]

OPINION BELOW

On September 8, 2023, the Second Circuit Court of Appeals denied the Emergency Motion of Plaintiffs (dated August 29, 2023), without findings. This Second Circuit Order is unreported. It is attached.

JURISDICTION

This Court has jurisdiction under the All Writs Act, 28 U.S.C. §1651 and pursuant to Sup. Ct. Rules 22 and 23.

FRAMEWORK OF REQUESTED RELIEF

This Emergency Application pulls three items to the forefront from the emergency motion for preliminary injunction that is languishing at the Second Circuit Court of Appeals since March 20, 2023. Plaintiffs were compelled to file this motion because of the aggressive siege launched by the defendants. It is situation critical that we achieve a stay on three, enumerated fronts ahead of Wednesday, September 13, 2023.

1. A stay of the 100% take-over of the firearms background check system
2. & the launch of the new ammunition background check system the defendants announced will occur on Wednesday, September 13, 2023. Defendants should not be permitted to cut-off all federally-licensed dealers in firearms, including the plaintiffs, from their FBI/ATF/FFL relationship, including, but not limited to, FFL direct use of the Brady Act NICS background check system, both electronic, telephonic, and in conjunction with the ATF. Without an operational firearms background check system that complies with The Brady Act, no (none) sales or regulated transfers of firearms of any firearm type to New York residents can be completed, whether through plaintiffs or any other federally-licensed dealers.¹
3. The third request is for a stay of NYSP “Joint Terrorism Task Force” so-called “compliance” inspections, which are, in law and fact, *criminal* investigations designed to scare or otherwise threaten or otherwise issue criminal charges against federally-licensed dealers in firearms. Defendant Gov. Hochul has made clear her current political position is anti-Second Amendment and that she intends to shut down the firearms industry. Hochul is abusing federally-licensed firearms dealers for political theater, using NYS Police “Joint Terrorism Taskforce” investigators to go out to dealer’s shops, unannounced, and start asking questions, including with customers present. The ATF already conducts rigorous, on-site compliance inspections with full attention to the Due Process Clause and the Fifth

¹ This will be true, regardless whether the FFL is situated in New York or is an out-of-state FFL (nationwide and U.S. territories) doing business with a New York resident. That out-of-state FFL is required to use interstate shipments to an FFL within New York for completion of the sale, if otherwise restricted by state law.

Amendment, as detailed at length throughout this record. Indeed, more than one plaintiff has successfully completed ATF on-site compliance inspections within the past twelve months.

The fully briefed Emergency Motion for Preliminary Injunction Brief with Joint Appendix and Reply Brief is the context, depth, and articulated legal arguments support this limited subset. [Brief and Special Appendix – ECF 68 (January 31, 2023); Joint Appendix – ECF 63 and 64; Reply Brief – ECF 85 (March 10, 2023).] Unlike the “Concealed Carry Improvements Act” (CCIA) which went live *en toto* on September 1, 2022, the morass of new laws targeting federally-licensed dealers in firearms became effective December 5, 2022 but have been going “live” on a roll-out calendar that culminates September 13, 2023.

The eleven major documents I have written and filed is an evolving chronicle of the assault of FFLs by defendants to put them out of business, in order to extinguish the Second Amendment in New York. The attention of everyone – judges, amici, media – has been on the CCIA and the individual right to carry. As we have shouted from the mountaintops straight the way along in this case, if you don’t have “to keep” of “to keep and bear arms,” manifested through dealers in firearms and ammunition as part of the lawful stream of commerce, you don’t have “to bear.”²

I therefore also ask:

4. Please take jurisdiction of the broader Emergency Motion for Preliminary Injunction, stalled out at the Second Circuit Court of Appeals since March 20, 2023. A comprehensive, cohesive set of issues was fully briefed nearly six

² Submission of this emergency application should not be read as a waiver of any pending argument in the broader emergency motion for preliminary injunction that was first filed November 8, 2023.

months ago. This portion of the record could easily be brought up to serve as a Rule 11 Petition, followed with expedited oral arguments. The Brief and Reply Brief are beautifully executed, and this Emergency Motion basically brings the issues current.

If I may draw your attention to the denial of the emergency application in *Antonyuk II v. Nigrelli*, 598 U.S. ____ (January 11, 2023), particularly the following dissent statement of Justices Thomas and Alito:

“I understand the Court’s denial today to reflect respect for the Second Circuit’s procedures in managing its own docket, rather than expressing any view on the merits of the case. Applicants should not be deterred by today’s order from again seeking relief if the Second Circuit does not, within a reasonable time, provide an explanation for its stay order or expedite consideration of the appeal.”

This case, the *Antonyuk II* case, and the three, related cases were brought together for joint oral arguments on March 20, 2023 via order of the Circuit Court on expedited schedules. Yet, here we are, nearly six months later, with not a word in any of the five cases, except for the one sentence denial I received last Friday to my August 29, 2023 Emergency Motion.

The protracted silence of the Second Circuit Court allowed the defendants to launch their siege against NY-licensed dealers in a manner that exceeds the scope of what was briefed using the black letter of the new (2022) laws.

The defendants have significantly advanced their agenda, since we last filed to this court in early January 2023. This emergency motion is all that remains to stop the final ‘go live’ of the remaining provisions challenged in this case from the massive NYS S.4970-A (eff. Dec. 5, 2022) [A-144, *et seq.*] and from portions of NYS S.51001, the “Concealed Carry Improvements Act.” [A-151, *et seq.*] If no stay is granted, then come midnight tomorrow, it will all become injury-in-

fact, as the impact spreads across the plaintiffs and FFLs statewide. The plaintiffs and other FFLs will have only their original Fifth Amendment assertions for defense. [A-191 (Nadine Gazzola); A-210 (Seth Gazzola); A-222 (Serafini); A-254 (Mastrogiovanni); A-278 (Martello); A-303 (Affronti); and A-316 (Owens).]

REASONS FOR GRANTING THE STAY

I. DEFENDANTS INTEND TO LAUNCH A SYSTEM IN EXCESS OF THE NEW STATUTES AT ISSUE IN THIS CASE

Action to stop: the FBI disconnect of FFLs from the ATF NICS background check system as of Tuesday, September 12, 2023 at 11:59 p.m. [Exh. D] The FBI may, unfortunately, be relying, upon the Hochul-Nigrelli notification letter of August 17, 2023. [Exh. A, D] It says “The NICS Section has been asked to send out this notice from NY to the FFLs we have on file.”³ [Ex. E]

The FBI-NICS “E-Check” and the FBI/ATF telephone and field agent interface are necessary components to support FFLs as they help citizens satisfy federal law requirements through efficient and effective background checks at the point of sale. Without a “proceed” from NICS⁴, an FFL is not permitted to sell a handgun, rifle, or shotgun to an individual, even themselves as individuals.⁵ 18 U.S.C. §922(t). Since November 1998 when the NICS system launched, the federal system has been used by federally-licensed dealers in firearms and

³ Multiple FBI e-mails exposed the e-mail addresses to which it was sent. It appears not all FFL Type-01s and Type-02s are being notified, concurrently.

⁴ Or a “delay” that is either cleared through to “proceed” or exceeds the three-day delay restriction. 18 U.S.C. §922(t)(1)(B)(ii).

⁵ Although the e-mail is from the FBI in reference to the electronic NICS background check system, it is the understanding of plaintiffs that the FBI will terminate any direct *communication* from dealers to the FBI or the ATF.

pawnbrokers, such as the plaintiffs. The dealer licensing system is older still, originating from the 1968 Gun Control Act. A stay merely preserves a long-standing, highly-functional *status quo* designed to protect public safety in New York and across the nation.

Second action to stop: as of 12:00 a.m. on Wednesday, September 13, 2023, the NYS Police will insert themselves as intermediaries between FFLs and the ATF/FBI for all firearms background checks, including the three types of handguns, rifles, and shotguns.

This contradicts the limits of the new state laws, which limit the NYSP to becoming an intermediary for handgun purchases *only*. There is no state statutory authority for Hochul and Nigrelli to take-over the background checks of shotguns, rifles.⁶ Even if the plaintiffs do not prevail in their pre-emption or constitutional challenges, there is *no* state statutory authority for the NYSP to co-opt rifle and shotgun background checks.

When the Second Circuit denied our Emergency Motion of August 29, 2023, that Order implicitly approved Hochul and Nigrelli’s illegal power grab, the unconstitutional ammunition background check, and the failure to recognize “to keep” of “to keep and bear arms” as having individual civil rights value for FFLs operating to serve and facilitate the exercise of individual Second Amendment rights. With that one “DENIED” sentence, the court below gave a green light for the defendants to violate the law. The state’s weak argument that this specific argument was not briefed – when the defendants’ bad behavior is what exceeds the pending legal analysis and request for preliminary injunctive relief – is no defense.

⁶ There is no federal background check requirement for antique firearms or ammunition. 18 U.S.C. §921(a)(3), §921(a)(16), §922(t); 27 CFR §478.11 and §478.102 It is illegal at federal law to use the NICS system for either a background check relative to antique firearms or ammunition. 28 CFR §25.6 and §25.11.

The state’s position begs the question: then why pass laws at all? If a state governor can override a federal agency public safety system without federal or state approval, then why did Congress and President Biden bother to further refine and enhance the federal background check system and the FFL role and responsibilities through the “2022 Bi-Partisan Public Safety Act?” The defendants are careening New York back to the 1950s setting of *Brown v. Board of Education*. The Second Circuit Order that merely denies, without explanation, thus acts as an endorsement of civil rights regression.

This September 8, 2023 Order by the Second Circuit sets precedent for New York and New Jersey, that, if it becomes a denial affirmed by this nation’s high court, vaults to a national precedent. Hochul, a NYS-licensed attorney and a former Member of Congress, will have succeeded in her quest, spelled out at the microphone and through press releases during summer 2022, to destroy the Rule of Law and the Supremacy Clause. She will take down the Fourteenth Amendment along with them.

**I. (A.) THE DEFINITIONS OF “FIREARM”
AT FEDERAL AND STATE LAWS ARE NOT THE SAME**

The New York definition of “firearm” is not the same as the federal definition of “firearm.” The plaintiffs’ argument in support of this emergency motion is that simple. The New York definition of “firearm” is akin to the U.S. definition of “handgun.” The federal definition of “firearm” overarches all manner of firearms and some component parts, including, but not limited to, handguns, shotguns, rifles, frames, and receivers, as well as classifications of firearms that are not required to go through a NICS background check, like antique firearms. The New York definition of “firearm” is, by contrast, what can best be described as a *type* of “firearms.”

Until the new laws jammed through in June/July 2022, as detailed in the record, state agencies had very limited involvement with FFLs.⁷ The counties collect the application and renewal fees, the form, the photograph, and the fingerprints and the “state” dealer’s license is, for practical purposes, administered by and thought of more as a “county” license good statewide.

The federal definition of “firearm” at 18 U.S.C. §921(a)(3) is as follows:

“The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.”⁸

By contrast, this is the New York state definition of “firearm” from NY PEN §265.00(3):

"Firearm" means (a) *any pistol or revolver*; or (b) a shotgun having one or more barrels less than eighteen inches in length⁹; or (c) a rifle having one or more barrels less than sixteen inches in length¹⁰; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches; or (e) an assault weapon¹¹; or (f) any other weapon that is not otherwise defined in this section¹² containing any component that provides housing or a structure designed to hold or integrate any fire control component that is designed to or may readily be converted to expel a projectile by action of explosive..." (emphasis added; technical specifications for measurements omitted)

⁷ For purposes of this case, we make no discussion of any local law, e.g., New York City.

⁸ This definition was incorporated from the Gun Control Act of 1968 into the Brady Act of 1993 (which established NICS) at 28 CFR §25.2.

⁹ Such “short-barreled shotgun,” defined at 27 CFR §478.11 being prohibited at federal law with limited exception. 27 CFR §478.98.

¹⁰ Such “short-barreled rifle,” defined at 27 CFR §478.11 being prohibited at federal law with limited exception. *Id.*

¹¹ A term existing only at state law.

¹² The terms “rifle” and “shotgun” being defined in the same section, *see*, NY PEN §§400.00(11), (12).

When they originally called for deal licenses and populated civil and administrative laws to coordinate with pre-existing criminal laws, such as those of the “Sullivan Act,” the state created and sustained a unique definition of “firearm.”

New York wrote its own definitions for the words “firearm,” “rifle,” and “shotgun.” Hochul’s 2022 laws stuck to the state “firearm,” “rifle,” and “shotgun” terminology. When Hochul pushed through her 10-bill package in summer 2022, amendments were made to the New York definitions of “firearm,” “rifle,” and “shotgun.” (*See*, NYS Senate Bill 51001, p. 20, §24, effecting NY PEN §265.00(11), “Rifle,” and §265.00(12), “Shotgun.”) The state word definitions were edited a bit, but substantially retained their original meaning. Hochul intended these words remain separate and distinct from federal law. The term “firearm” in New York continues to mean, essentially, the handgun, such as a pistol or revolver.

Hochul and Nigrelli should not be allowed to operate above the law and disrupt to the point of terminate the federal relationship between FFLs and national public safety and security agencies.

The language of the Hochul-Nigrelli letter spells out their bad intention:

- “This means that starting on September 13, 2023, background check requests **for firearm, rifle, shotgun**, and ammunition purchases will be submitted to the New York State Police and dealers will no longer submit requests directly to FBI NICS.” (emphasis added, ¶1)
- “Effective September 13, 2023, prior to transferring **a firearm, rifle, shotgun**, or ammunition to a purchaser, you must go to www.NYSNICS.ny.gov to complete the background check process.” (emphasis added, ¶3)

The state submitted a false claim to the Second Circuit that it had incorporated the federal definition of “firearms” for the limited purpose of background checks. If that were true, then the Hochul-Nigrelli letter (above) would only have used the words “firearms” and “ammunition.” To say “firearms, rifles, shotguns” through the lens of federal firearms compliance law is sloppy, at best. To say “firearms, rifles, shotguns” through the lens of the FFL with a NY dealers license is “New York speak.” “Firearm” is consistently used throughout state law, including additional examples below, as the state-only term for handguns, such as pistols and revolvers. Nothing more.

**I. (B.) THE DEFINITION OF “POINT OF CONTACT” REFERS
TO THREE SUB-TYPES, OF WHICH NEW LAW
AUTHORIZES ONLY A “PARTIAL POC”**

The next vocabulary word from federal law that supports this application is “Point of Contact.” This is a federal term from The Brady Act, signifying which federal and/or state agency is on lead to the FFL and for which type of firearm for the FFL-initiated background check using the federal ATF Form 4473. 28 CFR §25.1.

- A “NICS state” or a “Brady state” or a “Non-POC state” is a state where the FFL directly contacts the FBI for all background checks. This is true in the majority of thirty-eight (38) states in the U.S. and U.S. Territories. <https://www.fbi.gov/file-repository/nics-participation-map.pdf>.
- A “single POC state” or simply a “POC state” is one where the FFL instead contacts a *state* office or agency, which state office is an intermediary contact to the FBI for the NICS database portion of a federally-required firearms background check. The state then supplements the NICS using its own records and criteria for personal disqualification. This is the system in thirteen (13) states/territories.

- A “partial POC state” is one where the FFL contacts the ATF/FBI for a NICS long gun background check, and, separately, contacts the state for the handgun check. The state in the “partial POC state” is the intermediary for handgun background checks *only*. This configuration is used in only five (5) states/territories. It has been anticipated for the past year – and argued against in this case – that NYS would join only these five states/territories as a “partial POC state” for handgun background checks, *only*.

An ATF website page also illustrates these types by states with detail on which state agency is at play in partial or full POC states. See <https://www.atf.gov/rules-and-regulations/permanent-brady-state-lists>.

NY EXEC §228(1)(a) and (b) from the new (2022) laws authorized New York to become, *only*, a “partial POC state.” The language is clear, as follows:

“(a) The division is hereby authorized and directed to serve as a state point of contact for implementation of 18 U.S.C. sec. 922(t), all federal regulations and applicable guidelines adopted pursuant thereto, and the national instant criminal background check system for the purchase of firearms and ammunition¹³.”

“(b) Upon receiving a request from a licensed dealer pursuant to section eight hundred ninety-six or eight hundred ninety-eight of the general business law, the division shall initiate a background check by (i) contacting the National Instant Criminal Background Check System (NICS) or its successor to initiate a national instant criminal background check, and (ii) consulting the statewide firearms license and records database established pursuant to subdivision three of this section, in order to determine if the purchaser is a person described in sections 400.00 and 400.03 of the penal law, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or ammunition.”

¹³ The state makes an error of federal law in this provision. There is no federal ammunition background check requirement or system. 18 U.S.C. §922(t) specifically and only relates to the transfer of “a firearm,” as that term is defined at federal law. It is illegal for a state to use or attempt to use the NICS federal background check system for an ammunition background check. 28 CFR §25.11. This point is briefed throughout our record.

The NY EXE §228(1)(a) use of the word “firearms” is already covered above, and it means handguns, such as pistols or revolvers. The “licensed dealer” referenced in NY EXEC §228(1)(b) is the state-licensed dealer in “firearms,” per the state statute, meaning handguns, *only*. NY Gen Bus §896 is the gun show operator. NY Gen Bus §898 is the private sale or transfer of firearms. No state license is required for an FFL to engage in the lawful stream of commerce in rifles and shotguns in New York. Those sales can be made on the federal license, standing alone.

Defendants Hochul and Nigrelli misrepresented the law in their notification letter of August 17, 2023 when they wrote “Pursuant to Executive Law §228, New York has been designated a **Point of Contact state** for the purpose of processing National Instant Background Check (“NICS”) transactions.” (emphasis added) [Exh. A] That is a false representation. NYS may become, at best, a “partial POC state.”

Hochul’s new (2022) laws direct NY-licensed dealers to contact NYSP for background checks for “firearms” *only*. NY EXE §228(7)(i) and (ii), references only “firearm.”

The new laws neither authorize the state, nor require FFL dealers, to go through the NYSP for background checks for, e.g., rifles, shotguns, frames, receivers, and/or antique firearms. NY-licensed dealers are required to contact NYSP for a background check only in accordance with NY EXE §228. *See*, NY PEN §400.06(1), which states:

“Any dealer in firearms that sells, delivers or otherwise transfers **any firearm** shall contact the division of state police to conduct a national instant criminal background check pursuant to section two hundred twenty-eight of the executive law.”

This new law came out of the NYS Senate Bill 51001, titled the “Concealed Carry Improvements Act” (CCIA). The focus of the bill is the handgun and the concealed carry permit holder.

**I. (C.) AN FFL NEED ONLY OBTAIN A NYS DEALER LICENSE
IF THAT FFL WANTS TO SELL “FIREARMS,”
AS DEFINED BY STATE LAW, MEANING THE TYPE
KNOWN AT FEDERAL LAW AS HANDGUNS**

This reading of state law is consistent with New York’s state dealer licensing scheme. New York only requires an FFL to obtain a duplicitous state license *if the FFL intends to sell handguns*. The NYS dealer license is housed in New York Penal Law, as is the concealed carry license. It is a criminal statute grants exemptions from prohibitions to define the license for the state dealer in “firearms,” meaning handguns, such as pistols or revolvers.

Here is the state statutory language at NY PEN §265.00(9):

“Dealer in firearms” means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, *any assault weapon, large capacity ammunition feeding device, pistol, revolver, or semiautomatic rifle.*” (emphasis added)

An FFL Type-01 or Type-02 doing business in New York, such as the plaintiffs, is already federally-authorized to sell firearms in accordance with federal laws, regulations, guidance, and rulings. No New York state license is required if an FFL chooses not to sell handguns and sells all other items permitted by the federal license, e.g., rifles, shotguns, frames, and/or receivers.

The new state laws, seeking to insert the NYSP between FFLs and the FBI must be read to apply to those FFLs with NYS dealer licenses to sell “firearms,” meaning handguns, and only for a handgun background check. There is no other way to read these state laws.

The Hochul-Nigrelli letter makes false claims that New York will become now a “single POC state,” as follows:

- “This means that starting on September 13, 2023, background check requests *for firearm, rifle, shotgun, and ammunition purchases* will be submitted to the New York State Police and dealers will no longer submit requests directly to FBI NICS.” (emphasis added, ¶1)
- “As a dealer, you and your staff will be required to register on the NYSNICS.ny.gov web application in advance of *New York becoming a Point of Contact State.*” (¶2)
- “Effective September 13, 2023, prior to transferring a firearm, rifle, shotgun, or ammunition to a purchaser, you must go to www.NYSNICS.ny.gov to complete the background check process.” (¶3)

At best, NYSP may insert itself between the FFL who is a NY-licensed dealer and the FBI for NY “firearm” defined transactions, *only*, meaning, essentially, for handgun purchase background checks, only. Not for rifle purchase background checks. Not for shotgun background checks. There is no state statutory scenario whereby defendants Hochul and Nigrelli can take-over the entire “firearms” (by federal definition) background check system for FFLs.

**I. (D.) THE STATE BACKGROUND CHECK IS ONLY FOR
HANDGUN PERMITS, ASSAULT WEAPON REGISTRATION,
AND AMMUNITION SALES**

NY EXE §228(3) grants authorization for NYS Police to check various records when performing a background check for only three, specific types of background checks: “Such database shall be used for the certification and recertification of firearm permits under section 400.02 of the penal law, assault weapon registration under subdivision sixteen-a of section 400.00 of the penal law, and ammunition sales under section 400.03 of the penal law.”

There is no authorization for the State Police to use state records to run a background check for rifles, shotguns, or antique firearms. (If you read this section carefully, it does not provide authorization for the state to run handgun background checks, either.)

I. (E.) THERE IS REASON TO BELIEVE THE NYSP BACKGROUND CHECK SYSTEM IS NOT OPERATIONAL

Further, it appears there will not be a NYSP “background check system” in time for the launch date. The Hochul-Nigrelli notification letter of August 17, 2023 contains a website address and request for dealers to create their accounts and then those of their employees who perform background checks. [Exh. A, D] That URL was non-operational until September 6, 2023, and the NYSP are approving dealer account applications by hand. Once an approved dealer signs on, the screen offers nothing, not even a computer industry standard “user guide.” There is not one plaintiff – let alone one other FFL throughout the state – who will have any idea what they are looking at on Wednesday, assuming the system even goes live. This entire defendant-sponsored fiasco is designed to stress citizens into panic buying ahead of the 13th and cause chaos as on the 13th and thereafter.

How is a citizen to protect their fundamental Second Amendment rights in this environment? Plaintiffs raise their voices with subject matter and operational expertise, including a combined experience of more than 250 years of experience as federally-licensed dealers. They also sued as individuals. Have they no way to protect their own civil rights, even with such extraordinary standing?

It is probable that all firearms and ammunition sales will stop in New York as of Wednesday, September 13, 2022, in the absence of a stay. Under one scenario, Hochul pulls a *Kashinsky v. Murphy* and have the NYSP shut off the system, the way software vendor NICUSA

did so on behalf of New Jersey Governor Murphy in March 2020.¹⁴ Under the second plausible scenario, the system appears to go “live,” but defendant Nigrelli puts all or nearly all entered transactions into “delay” status for up to thirty days under a 2019 law slid through by former NYS Gov. Cuomo.^{15,16}

Through the record we have established that the law says and state’s attorneys confirmed: the NYS Police intend to use the background check system to build a gun owners’ registry. We emphasize throughout our filings that a gun owners’ registry is pre-empted, if not unconstitutional. For every hour the Hochul-Nigrelli system goes live, any and every background check run through it contributes records to what we thoroughly developed in the record amounts to a prohibited gun owners’ registry with the private information of individual customers which the state should not be permitted to compile in such a manner.

I. (F.) THE GOVERNOR HAS NO DEMONSTRATED HISTORY OF STANDING UP TO CRIMINALS WHO TRY TO BUY GUNS FROM A FEDERALLY-LICENSED DEALER IN FIREARMS

At no point in this case has the State answered for Governor Hochul’s public, repeated refusals to contribute disqualification records to FBI-NICS, except in two categories for which she gets paid. Hochul does not report even convicted felons, misdemeanants, illegal aliens, or persons who have renounced their U.S. citizenship. [A-92 to A-94 (Complaint); A-258

¹⁴ *Kashinsky v. Murphy*, case 3:20-cv-3127, *see*, doc 3-1 for screenshot of system shutdown by gubernatorial executive order (March 21, 2020) [Exh. F, hereto] and doc 28 for stipulation of settlement to restore the background check system (dated April 21, 2020).

¹⁵ Hochul was then his Lieutenant Governor.

¹⁶ The ATF may “delay” an individual transaction for up to three days, after which, and in the absence of a “proceed” or “deny,” the FFL has discretion to complete the transaction. 18 U.S.C. §922(t)(1)(B)(2); 27 CFR §478.102(a)(2)(ii). However, in New York, the dealer must then wait up to thirty days law has no comparable pass-through.

(Mastrogiovanni), A-277 (Martello), A-302 (Affronti).^{17]} This issue of the insertion of the NYSP between FFLs and the ATF/FBI for purposes of building a gun owners' registry has nothing to do with public safety and everything to do with consolidating power.

II. THE AMMUNITION BACKGROUND CHECK SYSTEM VIOLATES *NYSRPA V. BRUEN* AND IS NOT CERTIFIED AS OPERATIONAL

Action to stop: on Wednesday, September 13, 2023 the NYS Police will launch its new ammunition background check system. Suffice to recap from the record that the state failed to present even one historical antecedent or analogue in defense of this unconstitutional novelty. The District Court and then the Circuit Court should have stayed the ammunition background check, yet neither did. The Second Circuit did not do so even when it was isolated into the skinny August 29, 2023 emergency motion.

To add insult to injury, Nigrelli did not even bother to issue state law required certification of the operational status of the ammunition background check system. NY PEN §400.02(2). The NYSP never did has not issued any ammunition background check form this entire past year, nor produce regulations for any administrative appeals process for denials of a firearm or ammunition background check. NY PEN §§400.03(2) and (6) and NY EXE §228(4)(a). The defendants repeatedly and persistently fail to comply with their own laws –

¹⁷ See, also, (1.) Memorandum of Law to N.D.N.Y., Dkt. 13-11, p. 28 (November 8, 2022); (2.) Emergency Motion for TRO - Second Circuit, ECF 12:23, 115, 135, 276-278 (December 6, 2022); (3.) Reply Brief for Emergency Motion for TRO - Second Circuit, ECF 39:16 (December 22, 2022); (4.) Emergency Application for TRO - SCOTUS, 22-622, p. 37 (docketed January 3, 2023); (5.) Reply for SCOTUS Emergency Application for TRO, p. 14 (January 11, 2023); (6.) Rule 11 Petition for Writ of Certiorari Before Judgment - SCOTUS, 22A591, p. 35 (docketed January 9, 2023); (7.) Reply for SCOTUS Rule 11 Petition – SCOTUS, 22-622, p. 10 (April 24, 2023); (8.) Brief for Emergency Motion for Preliminary Injunction to Second Circuit (January 30, 2023), ECF 68:59; (9.) Reply Brief for Emergency Motion for Preliminary Injunction to Second Circuit (March 10, 2023), ECF 85:20.

since the bills passed in June/July 2022 – an argument we repeatedly spell out. It defies logic that no judge, to date, has held the defendants to the limits and requirements of their own 2022 laws.

An additional note is the ambiguity of the standards and records the NYS Police will use to conduct the ammunition background checks. Notice that the National Shooting Sports Foundation e-mail of August 4, 2023 includes the remark: “Amazingly the state police said there could be situation where someone could pass a background check for a firearm but fail for the ammunition. Their explanation was that for ammunition they might check more records in state...” The NYS Police put out a 1-page flyer on September 4, 2023 through a Spectrum News (Rochester) reporter that converts the federal disqualification factors at 18 U.S.C. §922(g) into street English and then vaguely references “state records.” There is nothing in the 2022 laws that require NYSP or DCJS to disclose the record used in the event of a “deny.”¹⁸

III. REQUEST FOR STAY OF INVESTIGATIONS OF FEDERALLY-LICENSED DEALERS USING THE NEW YORK STATE POLICE “JOINT TERRORISM TASKFORCE” AND OTHER “TERRORISM” UNITS

Third, on August 9, 2023, the situation on the ground for plaintiffs took a significant turn for the worse when plaintiff Craig Serafini of Upstate Guns & Ammo was notified the NYS Police “Joint Terrorism Task Force” was starting their investigations of dealers, an officer provided him with a 4-page compliance “checklist,” and put him through about thirty minutes of on-site questions. [Exh. B – Declaration; Exh. B-1 – the NYSP “checklist”]

¹⁸ As we laid out in our record, there is a federally-mandated administrative appeals process through the ATF/FBI. See, e.g., <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/national-instant-criminal-background-check-system-nics-appeals-vaf>.

On July 25, 2023, Mr. Richard Sehlmeier – retired from the NYSP – found himself on the other side of NYSP-JTTF investigators for more than three hours, going through that “checklist” one question at a time. [Exh. C - Declaration]

No attorney present at either interview.

No offer by the officers to call an attorney, even though Mr. Serafini told the officer he is represented by an attorney in this lawsuit.

Any deficiency in mandate fulfillment chargeable as an A misdemeanor.

New York is the only state in the country with these mandates at NY Gen Bus §875, and this lawsuit has been fighting to get a stay against their enforcement since November 7, 2022.

Dealers in New York have spent their entire careers as part of an FBI-ATF-FFL partnership, where a “compliance inspection” is about joint identification of any areas for improvement in compliance with extensive, detailed, and specific federal laws, regulations, guidance documents, and rulings; demonstration of and auditing of meticulous record-keeping; and exchanges of information about any new regulations, rulings, and the like. Any FFL, such as Messrs. Serafini and Sehlmeier, going through a NYSP-JTTF unannounced intrusion by inspectors claiming, repeatedly, to not know what they are doing, was absolutely designed to get Serafini, Sehlmeier, and other dealers not yet named herein talking.

We defined, analyzed, conducted financial impact analysis, and then laid out in detail in the record, beginning with the Complaint [section A-102 to A-122] the myriad of problems with the mandates. We even illustrated the essential arguments through a single-page schemata [A-527]. Our collective expert analysis is that there isn’t a plaintiff or an FFL in this state – no matter whether a chain store such as Walmart or Runnings or the smallest in-home dedicated

space – that is capable of meeting the mandates, even if the FFL is willing to waive claims of federal pre-emption and constitutional violation. This is the very definition of “constitutional regulatory overburden” and that is the standard we proposed months ago.

The NYSP-JTTF inspection “checklist” is a crude version of NY Gen Bus §875. The state mandates are designed for one purpose, and it isn’t to increase public safety. NY Gen Bus §875 was designed by Hochul and her named attorney “experts” to put the firearms industry out-of-business in New York. It was always going to be the federally-licensed dealers in firearms, as among the presently pending cases, who would be attacked first by Hochul. Dealers in firearms are sitting ducks. Open during regular hours. Many of the mandates involving tangible objects that will be in plain view, or not.

After-action recounts from Messrs. Serafini and Sehlmeier, along with a very small group of additional FFLs who have contacted this law office, are the same: the NSYP-JTTF investigator *modus operandi* is a script of “lack of training” and needing “help” from the dealer to go back to the office with something to put on the “Whiteboard.” These investigators profiled dealers in firearms, who many officers know well because of how much time they spend at gun shops both on-the-job and for their own self-defense, hunting, competition shooting, and recreational pursuits. All the plaintiffs have regular customers who work in law enforcement and local government. Mr. Serafini and even Mr. Sehlmeier, included.

An emergency stay is critical to stave off impending criminal charges against Mr. Serafini, Mr. Sehlmeier, and additional FFLs statewide. What started as NYSP Troops C and G, is within the past three days at least also expanded to Troop B jurisdiction. While we have not had the benefit of a formal judicial stay, because defendants were not enforcing the new laws (we thought out of respect for the process, but that was clearly in error on our part), the plaintiffs and

most other FFLs statewide managed to hang on and keep a steady hand from the statute effective date of December 5, 2022 until the NSSF e-mail circulated on Friday, August 4, 2023 (first word of a target date of September 13, 2023). With the FBI e-mails hitting in boxes nearly every day since August 23, 2023, with word of “Terrorism” units of the NYSP hitting dealers at their shops, and with the 4-page “checklist” going into circulations, it all became real. Hochul’s war has begun in earnest against federally-licensed dealers in firearms. If we cannot get this emergency stay, there will be widespread collapse of FFL dealers in firearms in New York, and that will translate into the Second Amendment going dark for every New York citizen.

CONCLUSION

Since commencement on November 1, 2022, plaintiffs and I have filed eleven major documents, fifteen sworn declarations, and more than thirty-five exhibits in admissible form. The state has yet to produce a single declaration from a party or witness or to answer any factual allegations, and the only four historic laws they filed were unrelated to the ammunition background check system.

Our submissions chronicle the living history of our Second Amendment-centric industry as it suffers the roll-out of new provision after new provision, making it more and more difficult to sustain the individual civil rights embodied in the word “to keep.” Our papers are laden with dozens of new state statutes and probably a couple hundred federal statutes and regulations that have never required judicial intervention since inception. The pages depict the events, capturing hours of conversations with the plaintiffs and with many other FFLs all around the state.

Whatever may be lacking in my submission, I apologize. May I simply remark that whatever may be hurried in this application is well set forth in plaintiffs’ Brief, Reply Brief, and

Appendix sitting at the Second Circuit. Whether you pull up that record as a Rule 11 or return us to await that circuit court ruling, I cannot sufficiently emphasize the need for an immediate stay at least on the three items herein requested.

On behalf of the plaintiffs, we respectfully submit this application this 11th day of September 2023.

Paloma A. Capanna

Paloma A. Capanna, Attorney
Attorney for the Appellants
106-B Professional Park Drive
Beaufort, North Carolina 28516
(585) 377-7260

APPENDIX

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**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of September, two thousand twenty-three.

Before: Dennis Jacobs,
Gerard E. Lynch,
Eunice C. Lee,
Circuit Judges,

Nadine Gazzola, individually, and as coowner, President, and as BATFE Federal Firearms Licensee Responsible Person for Zero Tolerance Manufacturing, Inc., Seth Gazzola, individually, and as coowner, Vice President, and as BATFE FFL Responsible Person for Zero Tolerance Manufacturing, Inc., John A. Hanusik, individually, and as owner and as BATFE FFL Responsible Person for d/b/a AGA Sales, Jim Ingerick, individually, and as owner and as BATFE FFL Responsible Person for Ingerick's LLC, d/b/a Avon Gun & Hunting Supply, Christopher Martello, individually, and as owner and as BATFE FFL Responsible Person for Performance Paintball, Inc. d/b/a Ikkin Arms, Michael Mastrogiovanni, individually, and as owner as as BATFE FFL Responsible Person for Spur Shooters Supply, Robert Owens, individually, and as owner and as BATFE FFL Responsible Person for Thousand Islands Armory, Craig Serafini, individually, and as owner and as BATFE FFL Responsible Person for Upstate Guns and Ammo, LLC, Nick Affronti, individually, and as BATFE FFL Responsible Person for East Side Traders LLC, Empire State Arms Collectors Association, Inc.,

Plaintiffs - Appellants,

v.

Kathleen Hochul, in her Official Capacity as Governor of the State of New York, Steven A. Nigrelli, in his Official Capacity as the Acting Superintendent of the New York State Police, Rossana Rosado, in her Official Capacity as

ORDER

Docket No. 22-3068


the Commissioner of the Department of Criminal Justice Services of the New York State Police, Leticia James, in her Official Capacity as the Attorney General of the State of New York,

Defendants - Appellees.

Appellants seek to enjoin the New York State Police's implementation of firearm and ammunition background checks, which are scheduled to begin on September 13, 2023. They also seek to enjoin the New York State Police from conducting on-site inspections of firearm dealers.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court


Catherine O'Hagan Wolfe

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Nadine Gazzola, individually, and as co-owner,
President, and as BATFE Federal Firearms Licensee
Responsible Person for **Zero Tolerance
Manufacturing, Inc.**; *et al.*

Plaintiffs

v.

KATHLEEN HOCHUL, in her Official Capacity as
Governor of the State of New York; *et al.*

Defendants

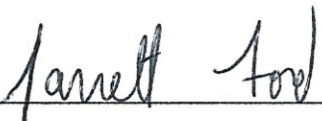
**DECLARATION OF JARRETT FORD
– FORD AND SONS FIREARMS**

1. I am Jarrett Ford and I make this Declaration under penalties of perjury. These statements are true to the best of my knowledge, and are based upon my personal knowledge and experience unless otherwise specified.
2. I submit this affidavit in support of the plaintiffs’ emergency motion for a judicial stay of the defendants’ demonstrated intention to take over all firearms purchase background checks and against any state compliance inspections using the new (2022) laws.
3. I hold and am the responsible person for a federal license Tye-01 to be a dealer in “firearms,” as that term is defined at federal law. I am new to the industry. I opened my doors in November 2022.
4. Because I sell handguns, I also have a state license as a dealer.

5. **Hochul-Nigrelli notification letter authentication.** My role in supporting this emergency motion is to authenticate the physical letter I received through the USPS on Saturday, August 19, 2023 on the letterhead of NYS Gov. Kathleen Hochul and NYS Police Acting Superintendent Stephen Nigrelli. The letter does not bear a date (“August ___, 2023”). The envelope was postmarked by USPS on August 17, 2023.
6. Attached to this declaration is a true copy of this letter and envelope as I received it.
7. **No other NYSP communication.** I did not receive the “Angie” e-mail (August 10, 2023). No NYSP officer has visited my shop, nor has an officer provided me with a copy of the 4-page dealer compliance checklist. I did not receive an e-mail from the FBI-NICS Unit (August 23, 2023 or August 25, 2023).
8. The Ford and Sons Firearms state license original application was processed through my local Greene County Clerk’s Office. The NYS Police played no role in my state license and renewal process. The state license was signed by a county court judge. Upon information and belief, the county sheriff’s office initiates the background checks as part of that county-centric process. From beginning to end, as a “state-licensed dealer,” I had no direct contact with or from the state or the NYS Police.
9. My physical business premises is in the village of Catskill, Greene County, New York.
10. I am available to provide testimony or further written submission, if the court requests it.

Whereas, I respectfully request this emergency motion be granted in favor of the plaintiffs.

Dated: August 28, 2023



Jarrett Ford

Ford and Sons Firearms
116 [REDACTED]
Hudson NY 12534

August __, 2023

To: New York State Firearm Dealers and Ammunition Sellers

Pursuant to Executive Law § 228, New York has been designated a Point of Contact state for the purpose of processing National Instant Background Check (“NICS”) transactions. This means that starting on September 13, 2023, background check requests for firearm, rifle, shotgun, and ammunition purchases will be submitted to the New York State Police, and dealers will no longer submit requests directly to FBI NICS.

As a dealer, you and your staff will be required to register on the NYSNICS.ny.gov web application in advance of New York becoming a Point of Contact State. Instructions on the registration process will be posted on the www.NYSNICS.ny.gov site.

Effective September 13, 2023, prior to transferring a firearm, rifle, shotgun, or ammunition to a purchaser, you must go to www.NYSNICS.ny.gov to complete the background check process.

An Interactive Voice Response (IVR) telephone solution will be implemented as well so you may call in a background check request to 1-877-NYS-NICS should the online system be unavailable. To use this functionality, you must have already set up your business’s online profile and have a saved payment method on file in the NYSNICS application which you can register and login to at www.NYSNICS.ny.gov.

Please visit www.NYSNICS.ny.gov for more details about Point of Contact.

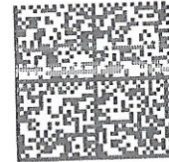
New York State Police
NYS NICS Unit
1-877-NYS-NICS
NYSNICS@troopers.ny.gov

NEW YORK STATE POLICE

Building 22
1220 Washington Ave.
Albany, NY 12226-2252

OFFICIAL BUSINESS

1253481442 0006



PTNEY BOWES
US POSTAGE
\$00.66⁰⁰
AUG 17 2023
ZIP 12207
02 1T
3010863

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Nadine Gazzola, individually, and as co-owner,
President, and as BATFE Federal Firearms Licensee
Responsible Person for **Zero Tolerance
Manufacturing, Inc.**; *et al.*

Plaintiffs

v.

KATHLEEN HOCHUL, in her Official Capacity as
Governor of the State of New York; *et al.*

Defendants

**DECLARATION OF PLAINTIFF CRAIG SERAFINI
– UPSTATE GUNS & AMMO**

1. I am Craig Serafini and I make this Declaration under penalties of perjury. These statements are true to the best of my knowledge, and are based upon my personal knowledge and experience unless otherwise specified.
 2. As a co-plaintiff in the above-captioned case, I have read and am familiar with the contents of this emergency motion, specifically, and the record of this case, generally.
 3. I submit this affidavit in support of the emergency motion. I incorporate as if set forth herein the explanations of the definitions of the word “firearms” at federal and at state law, and of the reading of the new (2022) state law as limiting the defendants, at best, to that of a “partial POC state” and at best to inspections of NY-licensed dealers in handguns.
- I concur with the description of the federal and state laws relating to what types of firearms

may be sold under which federal and state license. It is clear to me that any attempt by the defendants to take over all firearms background checks – as the term “firearms” is understood at federal law – would exceed their state-level authority. It would also exceed state-level authority for the defendants to audit all federally-licensed dealers or even all FFL Type-01s.

4. I continue to object to everything set forth in our original motion for TRO/PI, and continue to ask the Second Circuit to rule in favor of the plaintiffs on our appeal of the request for preliminary injunction. I continue to object to the defendants’ intention to push their way in between our federally-licensed business and the FBI-NICS Unit, as set forth in my Declaration in support of the TRO/PI. [ECF Doc. 13-4]
5. This emergency motion is necessitated by the defendants’ bad acts. I ask this court to rule on this emergency motion ahead of Wednesday, September 13, 2023, in order to (a.) stave off any impending arrest of myself, any other of the plaintiff(s) and any other FFLs similarly situated; (b.) stop the defendants from initiating a background check system on all firearms (federal definition) in excess of state authority¹; (c.) stop the defendants from conducting compliance audits on all federal firearms licenses, regardless of type or state

¹ Note of Counsel: the challenge to the state authority is pending as part of the appeal for a preliminary injunction. The declarations and exhibits to this motion demonstrate the intention of defendants to *exceed* even their own new power under the challenged state laws.

license, in excess of state authority²; and, (d.) stop the defendants from launching an ammunition background check³, which system has not been certified as operational.

6. I request the court rule in our favor on the already-pending appeal of our comprehensive motion for preliminary injunction. In submitting this emergency motion, I do not waive any argument or request previously submitted.
7. **NYSP dealer compliance interview at my store.** On Wednesday, August 9, 2023, shortly after my store opened at 10:00 a.m., two NYS Police officers came to my store, “Upstate Guns & Ammo,” with a copy of the 4-page “checklist” in hand. I was not present. I received a call from one of my two employees who were present, Jimmy, asking when I would be getting there. I heard Jimmy to say that there were officers at the shop and they were dropping off a compliance checklist concerning the new laws. I received the 4-page compliance checklist from my employees when I arrived at the shop. One officer returned, at or after approximately 2:00 p.m. I was present at the shop at that time. The ensuing conversation with the officer lasted approximately thirty minutes (30-minutes).
8. Attached to this affidavit is a complete copy of the 4-page “checklist” from the NYSP investigator received August 9, 2023.
9. I understood the purpose of the visit would be to discuss the suspicious, attempted ammunition purchase I had reported the prior week to the local police department and the

² Note of Counsel: similarly, the challenge to the state authority is pending as part of the appeal for a preliminary injunction. The declarations and exhibits to this motion demonstrate the intention of defendants to *exceed* even their own new power under the challenged state laws.

³ Note of Counsel: the state authority is pending as part of the appeal for a preliminary injunction.

FBI. I e-mailed the officer video surveillance footage of the suspect while he was still at the store, being at or about 2:48 p.m.

10. The officer, however, wanted to talk about dealer compliance inspections, which relate to the “checklist.” The officer asked me pretty early in the conversation “whether your guys gave you the checklist that I dropped off,” or words to that effect.
11. I knew enough about the new (2022) compliance laws from our lawsuit that I knew the NYSP “checklist” was the substance of what they are going to run us over with, if we don’t win our case. So, in response to his question I said words to the effect that if NYSP goes forward with these inspections and arrests dealers it will drive a wedge between dealers and law enforcement that will benefit no one but the actual criminals. The officer said “I know it. I get it. And I don’t blame you.”
12. I got the near immediate impression from the officer, whose card indicates he is NYSP Investigator Bonanno, that he was a guy venting on the job about what he was being told to do by headquarters. I formed this impression because of the many remarks made by Investigator Bonanno during the conversation, including, but not limited to:
 - a. the NYSP was told to start doing inspections “immediately;”
 - b. he put together the 4-page form to improve what he understood to be the cut-and-paste list taken out of the General Business Law;
 - c. dealer inspections have nothing to do with their jobs at JTTF [“Joint Terrorism Task Force”];

- d. the JTTF is being used as a “catch-all” and they are getting stuck with dealer inspections as an additional duty;
 - e. he had no training in dealer inspections;
 - f. he couldn’t answer questions about, e.g., definitions of specific terms or phrases, because the officers were trying to get their own answers to the same questions;
 - g. he and other officers feel that some of the provisions are contradictory to one-and-other;
 - h. any feedback on the checklist or whatever that I could share he would go back to the office and add it to the officers’ “White Board,” which is the questions they need answers to [before *what*, he didn’t say].
13. Investigator Bonanno volleyed with me, behaving as if he was sympathetic to dealers getting caught under a pile of new requirements from the politicians in Albany. He referenced the new laws under NY General Business Law §875 with words like “This stuff doesn’t make any sense!” When Investigator Bonanno said “Where the hell are you supposed to send that?” (referencing copies of the Form 4473 and the A&D Book), I jived back, “You tell me,” and he bounced straight back, “That’s what I’m talking about!”
14. Through Investigator Bonanno’s casual manner, body language, lack of uniform, and ease being within my small shop and with my employees and with customers going in and out, he came across to me as just a guy on the force who disagreed with what the upstairs guys were yelling at the rank-and-file to do, so he was just trying to give me the head’s up.

15. I did not know Investigator Bonanno prior to his contacting me over the suspicious customer I reported. He is not among the law enforcement customers who frequent my shop.
16. At no time did Investigator Bonanno ask if I wanted to contact an attorney, nor did he inform me that I had no obligation to answer his questions or that I could remain silent or that I could plead the Fifth Amendment.
17. I told Investigator Bonanno that I was a co-plaintiff in the *Gazzola v. Hochul* lawsuit about these very compliance laws, and he responded in a chummy manner, “Good! Somebody’s got to do something about this.” Investigator Bonanno gave me the distinct impression that he, personally, was on my side in the matter.
18. Another example of an exchange between us was when Investigator Bonanno said that they did some calculations and they anticipate auditing every dealer within the next three years. I asked him how many hours he thought it would take to do a compliance inspection? He said maybe three or four. I then asked him how many hours he thought it took the ATF to do their most recent inspection at my shop? He said one to two hours. I told him: four ATF agents x three weeks, full-time. Investigator Bonanno expressed disbelief. He wanted to know why it took so long? When I started to give him a basic explanation of what’s involved in auditing an FFL’s A&D Book,⁴ he told me he had no

⁴ Note by Counsel: the “A&D Book” is the dealer’s bound book of “Acquisitions and Dispositions,” as required by federal law, for each firearm brought into inventory (the “acquisition”) and taken out of inventory through, e.g., sale (the “disposition”). A detailed discussion concerning the same, including constitutional and legal challenges are pending as part of the appeal for a preliminary injunction.

idea what I was talking about. None. Likewise, Investigator Bonanno said he had no idea the A&D Books are now trending towards on-line systems through third party vendors, such that a dealer might not have a physical copy of it on hand for spot inspections.

19. Investigator Bonanno said the NYSP compliance forms would “likely” be forwarded to the ATF to affect our ability to get our licenses renewed.
20. On the advice of Counsel, I am not including in this affidavit a full accounting of my statements to Investigator Bonanno because one or more such statements may have been made against my legal interests. I do not waive any defenses that may be available to me in any subsequent criminal case basis this submission in support of the emergency motion in this civil case.
21. Investigator Bonanno referred to himself and his group as “JTTF.” It was not until preparing this affidavit that I registered that the business card of the officer states he was Mr. Brian Bonanno, Investigator, Counter Terrorism Intelligence Unit – Central, out of the Latham, NY office, with a troopers.ny.gov e-mail address.⁵ Investigator Bonanno referred to himself and other officers speaking with dealers as “JTTF” and/or “Joint Terrorism Task Force.” It is only now that I look at his card that he gave me that I see “Counter Terrorism Unit.” I do not know the relationship, if any, between these two offices.

⁵ Note of Counsel: It appears the “Counter Terrorism and Intelligence Units,” the “Joint Terrorism Task Force,” and the “Intelligence Center” are all part of the state’s “Fusion Center.” See, Assistant Deputy Superintendent Lt. Col. Andrew J. Crowe on <https://troopers.ny.gov/our-executive-team>.

22. According to the Troopers.ny.gov website page for the “Counter Terrorism Unit” at <https://troopers.ny.gov/counter-terrorism>:

“The mission of the New York State Police Office of Counter Terrorism is to detect, deter, and prevent future terrorist attacks by working in partnership with our citizens, the New York State Division of Homeland Security and Emergency Services, and the law enforcement community. The Office of Counter Terrorism seeks to advance the efficient, timely and accurate exchange of information on a statewide basis.”

23. I did not receive further contact from Investigator Bonanno since then, as of the signing of this affidavit, the evening of August 28, 2023.
24. **NYSP “Angie” e-mail (August 10)**. I received an e-mail from “Angie” showing an e-mail box of “NYSNICS@troopers.ny.gov” (dated August 10, 2023). The subject line is “NYS Point of Contact Registration Pilot.”
25. Attached to this affidavit is a copy of this e-mail.
26. I did not respond to it. I did not participate in the session on August 18, 2023.
27. **NYSP “Pilot” e-mail (August 17)**. I also received an e-mail from the e-mail box “NYSNICS@troopers.ny.gov” (dated August 17, 2023). The subject line of this e-mail is “NYS Point of Contact Pilot Registration.”
28. Attached to this affidavit is a copy of this e-mail and the .PDF version of the Hochul-Nigrelli letter attached to it.⁶

⁶ Note from Counsel: This version of the Hochul-Nigrelli letter is the third such version transmitted to affiants. This version differs from the version received by Jarrett Ford as the date of “August 17, 2023” is completed. It differs from the version e-mailed out by the FBI, which bears no date line, as illustrated in the version received by Nadine Gazzola.

29. I did not respond to it.
30. **General Lack of NYSP Communication**. I otherwise did not receive the Hochul-Nigrelli letter from the NYSP. Nor did I receive either of the two FBI e-mails, upon information and belief, received by co-plaintiff Nadine Gazzola.
31. The Upstate Guns & Ammo state license original application and renewal applications since 2014 went through our local Schenectady County Clerk's Office. The process of going through the county clerk's office for the state dealer's license and renewal is, upon information and belief, the same for all FFLs in New York. The NYS Police role in the state license and renewal is non-existent. The license and the renewal is reviewed and signed by a county court judge. Upon information and belief, the county sheriff's office initiates the background checks as part of that process. From beginning to end, as a "state-licensed dealer," I have no direct contact with or from the state or the NYS Police.
32. My business premises is in Niskayuna, Schenectady County, New York. It has been at this location since I first obtained my original federal and state licenses in 2014. This is the business premises address I provided on each application and renewal form for my federal and state licenses.
33. **NSSF e-mail (August 4, 2023)**. I am also the authenticating witness for an e-mail I received on forward that originated from the National Shooting Sports Foundation ("NSSF") on August 4, 2023. Upon information and belief, the NSSF sent it to their member FFLs in New York. It was forwarded to me by a NY distributor with whom I do business.

34. I was not invited to participate in any NYSP conference call for the NSSF and/or FFLs in New York. The same is referenced in the first paragraph of the e-mail. A substantial amount of the e-mail content is either validated by materials I received and include with this affidavit and/or, upon information and belief, are otherwise received and attached to affidavits from others in support of this emergency motion.
35. **Fear of Imminent Arrest.** Since the encounter with the NYSP Counter Terrorism Investigator on August 9, 2023, *my* whole world is terrorized. I don't know what's going to happen to me. I fear that I could be arrested, at any time.
36. I am dealing with this immediate threat on a day-to-day basis. I've started explaining to my kids, "If something happens, you guys gotta pick up the load while I'm in handcuffs or whatever --" I'm trying to explain to them "This is where things are, if you have to come to get me." *I mean, how do I even talk to my kids about this?* I don't know what's involved in living a life where you have to worry about the very real probability that you're going to get arrested. Within this past year of the lawsuit pending, I achieved my goal of becoming an ordained minister.
37. What confounds me about this juncture is all I've done is want to create a business that I could enjoy with people who have similar interests and to do so legally.
38. I'm confused, trying to reflect on what I've been thinking since December 5, 2022, the day these laws we're fighting in this case went into effect. I think I've managed the past year of working with counsel on this case based upon my belief that the police would respect that we've taken them to court and we're doing the right thing and that we'll all respect the ultimate decision [on the merits]. I mean, my brain comprehends that we don't yet have a

formal (judicial) stay, but it's the Second Amendment and I'm a federally-licensed dealer fulfilling all federal, state, and local requirements, excepting one or more of the new (2022) compliance laws that are the subject of this lawsuit. Since commencement of this case on November 1, 2022, we've all – both sides of this case plus all the other CCIA cases – we've all come this far in a sort of a détente or a civilized understanding that we would all respect the process.

39. In my heart, I want to say that I still believe in the system that we have and if you do the right thing you're not in jeopardy, but now? This belief – this *core* belief – is now hanging by a thread of hope. I don't know what's going to happen to me, if the court doesn't grant an immediate stay.

40. I am available to provide testimony or further written submission, if the court requests it.

Whereas, I respectfully request this emergency motion be granted in favor of the plaintiffs.

Dated: August 28, 2023



Craig Serafini

NY Dealer Certification / Compliance Checklist

Business Name/FFL Number

Address

--	--

Date Inspected

Inspected By

--	--

1) Has the dealer implemented a security plan? (GBL 875-b{1})	Yes	No	
2) Are all firearms, rifles and shotguns secured, other than during business hours, in a locked fireproof safe or vault on the dealer's business premises or in a secured and locked area on the dealer's business premises?	Yes	No	
3) Is ammunition stored separately from firearms, rifles and shotguns and out of reach of customers?	Yes	No	
4) Is the dealer's business premises secured by a security alarm system that is installed and maintained by a properly licensed security alarm operator?	Yes	No	
5) Is the security alarm system capable of being monitored by a central station?	Yes	No	
6) Does the security system provide complete protection and monitoring for all accessible openings into areas containing firearms, rifles, shotguns, and/or ammunition, including doorways and windows?	Yes	No	
7) Does the security system provide partial motion and sound detection at certain other areas of the premises containing firearms, rifles, shotguns, and/or ammunition, as deemed appropriate by the licensed installer?	Yes	No	
8) Is the dealer equipped with a video recording device at each point of sale and each entrance and exit to the premises, which shall be recorded from both the indoor and outdoor vantage point?	Yes	No	

NY Dealer Certification / Compliance Checklist

9) Does the dealer maintain recordings for a minimum of two years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
10) Does the dealer exclude all persons under 18 years old from areas where firearms, rifles, shotguns, or ammunition are stocked or sold, unless such person is accompanied by a parent or guardian?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
11) Does the dealer sell or otherwise dispose of firearms, rifles, and shotguns only at the location listed on the dealer's federal firearms license or at gun shows?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
12) Does the dealer provide training to all new employees within 30 days of employment?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
13) Have all existing employees completed the training published by the New York State Police before March 3, 2023?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
14) Are records documenting the successful completion of the required employee training maintained for at least five years following the completion of such training by each employee?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
15) Do all employees complete the required training annually?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
16) Are dealer employees or agents under the age of 21 participating in the sale or disposition of firearms, rifles, or shotguns?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
17) Have all employees or agents received training before they participate in the sale or disposition of firearms, rifles, or shotguns?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
18) Does the dealer maintain a record book or electronic-based record of purchase, sale inventory, and other records at the dealer's place of business?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

NY Dealer Certification / Compliance Checklist

19) Does the dealer submit a copy of records to the State Police every April and October?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
20) Do the records include the make, model, caliber or gauge, manufacturers, name, and serial number of all firearms, rifles, and shotguns that are acquired or disposed of not later than one business day after their acquisition or disposition ?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
21) Are monthly backups of paper records maintained in a secure container designed to prevent loss by fire, theft, or flood?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
22) If the dealer chooses to maintain an electronic-based record system, are those records backed up on an external server or over the internet at the close of business each day?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
23) Does the dealer record the date, name, age, occupation, and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the caliber, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
24) Are all firearms, rifles and shotguns accounted for through an inventory check prepared once each month and maintained in a secure location?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
25) Is sold firearm, rifle, and shotgun disposition information, including serial numbers, dates of sale, and identity of purchasers, maintained and available at any time to government law enforcement agencies and to the manufacturer of the weapon or its designee?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
26) Are the records documenting the acquisition, disposition, tracing, and other transactions involving firearms, rifles and shotguns maintained for at least twenty years following each transaction?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>

NY Dealer Certification / Compliance Checklist

27) Does the dealer maintain records of criminal firearm, rifle and shotgun traces initiated by the ATF?	Yes	No
	<input style="width: 100%; height: 100%;" type="checkbox"/>	<input style="width: 100%; height: 100%;" type="checkbox"/>
28) Are ATF Form 4473 transaction records retained on the dealer's business premises in a secure container designed to prevent loss by fire, theft, or flood?	Yes	No
	<input style="width: 100%; height: 100%;" type="checkbox"/>	<input style="width: 100%; height: 100%;" type="checkbox"/>
29) Does the dealer implement and maintain sufficient internal procedures to ensure compliance with Article 39-BB of the General Business Law?	Yes	No
	<input style="width: 100%; height: 100%;" type="checkbox"/>	<input style="width: 100%; height: 100%;" type="checkbox"/>
30) Does the dealer annually certify to the New York State Police, by January 31 of each year, that the dealer has complied with all of the requirements of Article 39-BB of the General Business Law?	Yes	No
	<input style="width: 100%; height: 100%;" type="checkbox"/>	<input style="width: 100%; height: 100%;" type="checkbox"/>
31) Does the dealer provide the Division of State Police full access to the dealer's premises for periodic inspections?	Yes	No
	<input style="width: 100%; height: 100%;" type="checkbox"/>	<input style="width: 100%; height: 100%;" type="checkbox"/>

Additional Comments

Signature

FW: NYS Point of Contact Registration Pilot

From: Craig Serafini (craig@upstategunsandammo.com)

To: pcapanna@yahoo.com

Date: Tuesday, August 29, 2023 at 12:00 AM EDT

----- Original message -----

From: "troopers.sm.nysnics" <NYSNICS@troopers.ny.gov>

Date: 8/10/23 12:46 PM (GMT-05:00)

To:

Subject: NYS Point of Contact Registration Pilot

Hello,

I am reaching out to you today to ask for your assistance with the rollout of the new registration process for dealers as NY becomes a Point of Contact State in the upcoming weeks.

We ask that you do not pass on any of the information shared with you during this process as it is a test! We are starting with a select few stores to ensure that the process put in place is working properly and the directions are correct and understandable.

We would ask that the administrators set up the accounts initially, we will have staff that will verify all information for accuracy and then approve the dealer's registration. Upon receiving your registration approval email, you can set up your saved payment method and, invite some or all of your employees to register as well.

The test will take place on Friday August 18th around 10:00am, I will send you out the notification that will eventually be sent out to all dealers letting you know that registration has opened. At that point we would like the administrators to go online, we will provide the link, to begin the registration.

Please let me know if you have any questions and are willing to be part of our pilot groups.

Thank you for your time and assistance!

Angie

CONFIDENTIALITY NOTICE: This e-mail, including any attachments, may contain highly sensitive and confidential information. It is intended only for the individual(s) named. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

FW: NYS Point of Contact Pilot Registration

From: Craig Serafini (craig@upstategunsandammo.com)

To: pcapanna@yahoo.com

Date: Sunday, August 27, 2023 at 11:31 PM EDT

----- Original message -----

From: "troopers.sm.nysnics" <NYSNICS@troopers.ny.gov>

Date: 8/17/23 9:36 PM (GMT-05:00)

To:

Subject: NYS Point of Contact Pilot Registration

Hello,

New York State will become a Point of Contact State within the next couple of weeks. We are doing a phased rollout of the program beginning with Dealer Registration. You are receiving this email because we would like you to be one of the first firearms dealers to register through this new process.

The attached notification will be sent out to all dealers in the upcoming weeks. Please read the attached notification and follow the directions to complete your registration.

We would like your feedback on the registration process and documentation provided on the site. Your input is very important as we work to improve our processes.

New York State Police

NYS NICS Unit

1-877-NYS-NICS

NYSNICS@troopers.ny.gov

CONFIDENTIALITY NOTICE: This e-mail, including any attachments, may contain highly sensitive and confidential information. It is intended only for the individual(s) named. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.



NYS Point of Contact Notification.pdf

120kB

New York Timeline for New System

New York State Police Hold Informational Call

The New York State Police held a call earlier today to discuss the changes that will impact retailers across the state as New York transitions to a point of contact state. Unfortunately, the process has been done without input from the firearm industry and will most likely cause severe impacts to your daily business.

As discussed, the state police will be the clearing house through a web-based application for all background checks for firearms and ammunition. Answers to many of the questions posed by the participants were not thoroughly addressed. State police did lay out a timeline for the roll-out along with explaining an upcoming addition to their FAQ section on the website concerning this major change. The call was accompanied by 2 slides with bullet point generally explaining the process with very little detail.

While lacking concrete information concerning how the new system will function, recourse for when it fails, appeals processes and the inevitable delays retailers will experience, they did lay out a few bullet points referencing actions retailers must take.

1. All NYS Firearms and Ammunition Dealers will be able to begin the registration process on August 16th.
2. Business Owners/Administrators will need to register the business-One Administrator for all stores.
3. Business Administrators invite their employees to register for their business.
4. Each user (administrators and store employees) will need an NY.gov business account.
5. All employee transactions are seen in one dashboard for the business.

The state police also mentioned that the background check fee for firearms will be \$9 and ammunition \$2.50. The state police said they will be the intermediary for all firearms transactions as they will contact NICS which does not explain then why they need to charge a fee. There seems to be little misunderstanding of what exactly a point of contact state (POC) actually means. Amazingly the state police said that there could be situations where someone could pass a background check for a firearm but fail for the ammunition. Their explanation was that for ammunition they might check more records in state, but obviously if one is prohibited from possessing or buying ammunition you would think they would also be prohibited from purchasing a firearm but not in New York's bureaucratic world.

- The targeted date to begin processing NICS applications is Wednesday, September 13th.
- FBI will disconnect all connections with FFLs once NY becomes a POC.
- All registered users will be able to login in to the NYS NICS web application and submit new NICS transactions.
- Transactional cost- Firearms=\$9 and Ammunition=\$2.50
- An IVR-Automated Phone application system will be available for use by all dealers with a saved payment method.
- Live operators will only be available to help with technical assistance, they will not have the ability to enter NICS applications on behalf of the business.

NSSF® will continue to monitor the situation and the impending roll-out.



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[Ensure NICS works as intended](#)



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National Shooting Sports Foundation
6 Corporate Drive
Shelton, CT 06484

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Nadine Gazzola, individually, and as co-owner,
President, and as BATFE Federal Firearms Licensee
Responsible Person for **Zero Tolerance
Manufacturing, Inc.**; *et al.*

Plaintiffs

v.

KATHLEEN HOCHUL, in her Official Capacity as
Governor of the State of New York; *et al.*

Defendants

**DECLARATION OF RICHARD SEHLMAYER
– THE GUN SHOP AT MacGREGOR’S, LLC**

1. I am Richard Sehlmeier and I make this Declaration under penalties of perjury. These statements are true to the best of my knowledge, and are based upon my personal knowledge and experience unless otherwise specified.
2. I submit this affidavit in support of the plaintiffs’ emergency motion for a judicial stay of the defendants’ demonstrated intention to take over all firearms purchase background checks and against any state compliance inspections using the new (2022) laws.
3. I hold and am the responsible person for a federal license Tye-01 to be a dealer in “firearms,” as that term is defined at federal law. Because I sell handguns, I have also a NYS dealers license.

4. My business is “The Gun Shop at MacGregor’s, LLC” in Lake Luzerne, New York. We sell handguns, rifles and shotguns, ammunition, and accessories. I also offer full gunsmithing services.
5. I first obtained a federal license as a Type-01 “Dealer in Firearms” twenty years ago in 2004.
6. I first obtained my FFL-01 when I was still working for the NYS Police. I retired from the NYSP in 2007. I have also served in law enforcement at the local level. Since 2007, I have worked full-time as an FFL dealer in firearms in the lawful stream of commerce in New York.
7. I have also a concealed carry license issued by Warren County.
8. **NYSP 4-Page “NY Dealer Certification/Compliance Checklist” authentication.** My role in supporting this emergency motion is to authenticate the 4-page, physical document titled “NY Dealer Certification/Compliance Checklist.” Although it does not bear any identifying information, I personally received this document from NYSP-JTTF Senior Investigator Warren Law on July 25, 2023.
9. Attached to this declaration is a true copy of this 4-page “checklist.”
10. **Mine was the first dealer audit using the checklist.** Upon information and belief from Mr. Law, he oversees the NYSP Domestic Terrorism Task Force for G Troop and C Troop (covering an area from Warren/Essex Counties to the Pennsylvania border). Upon information and belief, Mr. Law is now tasked with inspecting the gun dealers under the new (2022) laws.

11. Mr. Law contacted me and asked if he could come by and go through inspection at my shop. Mr. Law told me the NYSP-JTTS was directed to start inspections by August 1, 2023. We've known each other for years and Mr. Law is a customer of mine, and so I agreed. He said I would be the first dealer to be inspected using the new checklist.
12. When Mr. Law arrived at my shop, he handed me the blank copy of the questionnaire.
13. Mr. Law stated he had no idea on how to interpret the new 31 question "questionnaire" and that he was seeking my feedback and knowledge of what was passed.
14. At the start of the compliance audit, I gave Mr. Law a statement drawn up for me by an attorney who I know, which included that I am not an attorney and I have not received any guidance on how to implement the changes brought on by the new (2022) laws. I asked Mr. Law to read it.
15. The audit went on for just over three hours on July 25, 2023.
16. Mr. Law used the checklist, starting with the first question and went through the questions one-by-one. My business premises is a single room, approximately 400 square foot in size. Unless something is behind the counter, it's in plain view. I responded to the questions and Mr. Law offered various remarks.
17. Mr. Law told me that the inspections will include box stores.
18. Mr. Law said he was given an ATF list of all FFLs to audit *with no differentiation between types of FFLs*.
 - a. The NYS Police do not have state law authority to audit any FFL which does not have a state dealer license. The "dealer" license in New York, under NY Penal Law

- §400.00(1-a) is limited to an FFL that is either a gunsmith and/or that sells handguns and/or any of four other specific types of NY-illegal firearms, including, e.g., an “assault weapon” (which is defined at state law as part of the 2013 “SAFE Act”).
- b. For the information of the court, the ATF publishes to its website and updates monthly a list of all FFLs in every U.S. state and territory.
 - c. The public ATF list includes all FFL types – not just FFL Type-01 dealers in firearms and FFL Type-02 pawnbrokers. The ATF list includes types, e.g., FFL Type-07 (manufacturer of firearms) and FFL Type 11 (importer of destructive devices).
 - d. Please refer to the ATF website page <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-federal-firearms-and-explosives-licenses-types> for an overview of the licensing and types.
 - e. Please refer to the ATF website page <https://www.atf.gov/firearms/listing-federal-firearms-licensees> for up-to-date lists of FFLs by state.
 - f. The new (2022) laws do not grant authority to the NYS Police to conduct a compliance audit to any federally-licensed type, other than the Type-01 (dealer in firearms, including gunsmiths) and the Type-02 (pawnbroker), *and then, only if that Type-01 or Type-02 also has a NYS dealer license.*
19. I also explained to Mr. Law that he had no state authority to audit federally-licensed dealers who are not also state-licensed dealers.
20. I explained to Mr. Law that under the new (2022) laws, I have an option to turn in my NYS dealer license and simply operate on my federal license, as long as I do not sell handguns or the other three firearms listed in NY Penal Law §265.00. I also expressed that I have

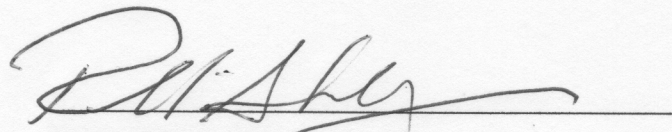
another legal option to stop selling handguns and surrender my state license and not do any gunsmithing, then none of NY General Business Law §875 would apply as to the definition of the term “dealer” as used in that section.

21. If the NYS Police impose state “dealer” audits on all FFLs, regardless of federal license type (meaning Types 03 through 11), there is a probability of wrongful widespread arrests on E felony charges. There is no state authority to audit anyone but a NY-licensed dealer in “firearms” by the state’s own definition, meaning, handguns.
22. I told Mr. Law at the end of his audit “It’s going to put me out of business.” I asked him what would happen next. Mr. Law told me he was “using it for feedback and critique.”
23. In plain English: it’s going to be a disaster if the NYSP takes this live.
24. **Prior NYSP interaction.** A few months ago, I called the NYS Police Permit Section in Albany and got a supervisor. I pointed out that a muzzleloader is not a “rifle” under federal law and I was not permitted to run a NICS check through the FBI NICS section for it. I also told him I called the ATF Albany office to verify the fact that I cannot run a NICS check through the NICS for a non-gun. The officer told me: “We understand – just ignore that part of the law.” The problem with that approach, of course, is that the law remains on the books and available to be charged against an individual.
25. **No other NYSP communication.** I did not receive the Hochul-Nigrelli notification letter. I did not receive the “Angie” e-mail (August 10, 2023). I did receive two (duplicate) e-mails from the FBI-NICS Unit (August 23, 2023 and August 25, 2023) with the Hochul-Nigrelli notification letter attached to it in .PDF form.

26. My state dealers license and state gunsmith license were processed, issued, and renewed by the county judge through the Warren County Clerk's Office. From beginning to end, I had no direct contact with or from the state or the NYS Police.
27. Even though the NYSP issues a "State Firearms Dealers ID Number" when one obtains the state license, it appears the NYSP do not have a database of those FFLs to whom they have issued such a number. Mr. Law told me they got the list of dealers from the ATF. This would appear consistent with the opening line of the FBI e-mail of August 23 & 25, 2023, which reads "The NICS Section has been asked to send out this notice from NY to the FFLs we have on file." The NYS Police are having to rely, themselves, upon the FBI to get out their first letter.
28. My physical business premises is in Lake Luzerne, Warren County, New York.
29. I am available to provide testimony or further written submission, if the court requests it.

Whereas, I respectfully request this emergency motion be granted in favor of the plaintiffs.

Dated: August 27, 2023


Richard Sehlmeier

NY Dealer Certification / Compliance Checklist

Business Name/FFL Number

Address

--	--

Date Inspected

Inspected By

--	--

1) Has the dealer implemented a security plan? (GBL 875-b{1})	Yes	No	
	<input type="checkbox"/>	<input type="checkbox"/>	
2) Are all firearms, rifles and shotguns secured, other than during business hours, in a locked fireproof safe or vault on the dealer's business premises or in a secured and locked area on the dealer's business premises?	Yes	No	
	<input type="checkbox"/>	<input type="checkbox"/>	
3) Is ammunition stored separately from firearms, rifles and shotguns and out of reach of customers?	Yes	No	
	<input type="checkbox"/>	<input type="checkbox"/>	
4) Is the dealer's business premises secured by a security alarm system that is installed and maintained by a properly licensed security alarm operator?	Yes	No	
	<input type="checkbox"/>	<input type="checkbox"/>	
5) Is the security alarm system capable of being monitored by a central station?	Yes	No	
	<input type="checkbox"/>	<input type="checkbox"/>	
6) Does the security system provide complete protection and monitoring for all accessible openings into areas containing firearms, rifles, shotguns, and/or ammunition, including doorways and windows?	Yes	No	
	<input type="checkbox"/>	<input type="checkbox"/>	
7) Does the security system provide partial motion and sound detection at certain other areas of the premises containing firearms, rifles, shotguns, and/or ammunition, as deemed appropriate by the licensed installer?	Yes	No	
	<input type="checkbox"/>	<input type="checkbox"/>	
8) Is the dealer equipped with a video recording device at each point of sale and each entrance and exit to the premises, which shall be recorded from both the indoor and outdoor vantage point?	Yes	No	
	<input type="checkbox"/>	<input type="checkbox"/>	

NY Dealer Certification / Compliance Checklist

9) Does the dealer maintain recordings for a minimum of two years?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
10) Does the dealer exclude all persons under 18 years old from areas where firearms, rifles, shotguns, or ammunition are stocked or sold, unless such person is accompanied by a parent or guardian?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
11) Does the dealer sell or otherwise dispose of firearms, rifles, and shotguns only at the location listed on the dealer's federal firearms license or at gun shows?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
12) Does the dealer provide training to all new employees within 30 days of employment?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
13) Have all existing employees completed the training published by the New York State Police before March 3, 2023?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
14) Are records documenting the successful completion of the required employee training maintained for at least five years following the completion of such training by each employee?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
15) Do all employees complete the required training annually?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
16) Are dealer employees or agents under the age of 21 participating in the sale or disposition of firearms, rifles, or shotguns?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
17) Have all employees or agents received training before they participate in the sale or disposition of firearms, rifles, or shotguns?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
18) Does the dealer maintain a record book or electronic-based record of purchase, sale inventory, and other records at the dealer's place of business?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>

NY Dealer Certification / Compliance Checklist

19) Does the dealer submit a copy of records to the State Police every April and October?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

20) Do the records include the make, model, caliber or gauge, manufacturers, name, and serial number of all firearms, rifles, and shotguns that are acquired or disposed of not later than one business day after their acquisition or disposition ?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

21) Are monthly backups of paper records maintained in a secure container designed to prevent loss by fire, theft, or flood?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

22) If the dealer chooses to maintain an electronic-based record system, are those records backed up on an external server or over the internet at the close of business each day?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

23) Does the dealer record the date, name, age, occupation, and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the caliber, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

24) Are all firearms, rifles and shotguns accounted for through an inventory check prepared once each month and maintained in a secure location?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

25) Is sold firearm, rifle, and shotgun disposition information, including serial numbers, dates of sale, and identity of purchasers, maintained and available at any time to government law enforcement agencies and to the manufacturer of the weapon or its designee?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

26) Are the records documenting the acquisition, disposition, tracing, and other transactions involving firearms, rifles and shotguns maintained for at least twenty years following each transaction?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

NY Dealer Certification / Compliance Checklist

	Yes	No
27) Does the dealer maintain records of criminal firearm, rifle and shotgun traces initiated by the ATF?	<input type="checkbox"/>	<input type="checkbox"/>
28) Are ATF Form 4473 transaction records retained on the dealer's business premises in a secure container designed to prevent loss by fire, theft, or flood?	<input type="checkbox"/>	<input type="checkbox"/>
29) Does the dealer implement and maintain sufficient internal procedures to ensure compliance with Article 39-BB of the General Business Law?	<input type="checkbox"/>	<input type="checkbox"/>
30) Does the dealer annually certify to the New York State Police, by January 31 of each year, that the dealer has complied with all of the requirements of Article 39-BB of the General Business Law?	<input type="checkbox"/>	<input type="checkbox"/>
31) Does the dealer provide the Division of State Police full access to the dealer's premises for periodic inspections?	<input type="checkbox"/>	<input type="checkbox"/>

Additional Comments

Signature

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Nadine Gazzola, individually, and as co-owner,
President, and as BATFE Federal Firearms Licensee
Responsible Person for **Zero Tolerance
Manufacturing, Inc.**; *et al.*

Plaintiffs

v.

KATHLEEN HOCHUL, in her Official Capacity as
Governor of the State of New York; *et al.*

Defendants

**DECLARATION OF PLAINTIFF NADINE GAZZOLA
– ZERO TOLERANCE MANUFACTURING, INC.**

1. I am Nadine Gazzola and I make this Declaration under penalties of perjury. These statements are true to the best of my knowledge, and are based upon my personal knowledge and experience unless otherwise specified.
2. As lead plaintiff in the above-captioned case, I have read and am familiar with the contents of this emergency motion, specifically, and the record of this case, generally. I attended court appearances with argument by counsel both at the Northern District Court and the Second Circuit Court of Appeals.
3. I submit this affidavit in support of the emergency motion. I incorporate as if set forth herein the explanations of the definitions of the word “firearms” at federal and at state law, and of the reading of the new (2022) state law as limiting the defendants, at best, to that of

a “partial POC state” and at best to inspections of NY-licensed dealers in handguns.

I concur with the description of the federal and state laws relating to what types of firearms may be sold under which federal and state license. It is clear to me that any attempt by the defendants to take over all firearms background checks – as the term “firearms” is understood at federal law – would exceed their state-level authority. It would also exceed state-level authority for the defendants to audit all federally-licensed dealers or even all FFL Type-01s.

4. I continue to object to everything set forth in our original motion for TRO/PI, and continue to ask the Second Circuit to rule in favor of the plaintiffs on our appeal of the request for preliminary injunction. I continue to object to the defendants’ intention to push their way in between our federally-licensed business and the FBI-NICS Unit, as set forth in my Declaration in support of the TRO/PI. [N.D.N.Y. Doc. 13-2]
5. This emergency motion is necessitated by the defendants’ bad acts. I ask this court to rule on this emergency motion ahead of Wednesday, September 13, 2023, in order to (a.) stave off any impending arrest of one or more plaintiff(s) and any other FFLs similarly situated; (b.) stop the defendants from initiating a background check system on all firearms (federal definition) in excess of state authority; (c.) stop the defendants from conducting compliance audits on all federal firearms licenses, regardless of type or state license, in excess of state authority; and, (d.) stop the defendants from launching an ammunition background check, which system has not been certified as operational.
6. I continue, on behalf of the plaintiffs, to request the court rule in our favor on the already-pending appeal of our comprehensive motion for preliminary injunction. In submitting this emergency motion, I do not waive any argument or request previously submitted.

7. **FBI e-mail authentication.** My role in supporting this emergency motion is to authenticate the two e-mails I received from the Federal Bureau of Investigations NICS Unit (“FBI-NICS”) on Wednesday, August 23, 2023 and again on Friday, August 25, 2023. Attached to this affidavit are complete copies of these two e-mails with attached .PDF of a notification letter¹ from NYS Gov. Kathleen Hochul and NYSP Acting Superintendent Stephen Nigrelli.
8. I received the first e-mail (August 23, 2023) to my business e-mail address of ZeroToleranceCorp@gmail.com. This is the e-mail address I submitted on the ATF/FBI license application and renewal forms, which I submit every three years. My federal license most recently renewed this year.
9. I received the second FBI-NICS e-mail (August 25, 2023) to my personal e-mail address of N [REDACTED]@gmail.com². My personal e-mail address is not part of my federal or state license process.
10. **Zero State Police Communication.** I have received no communication from the NYSP, either by USPS first class mail, e-mail, or otherwise, either since on or about July 25, 2023 or at any prior time. I did not receive the Hochul-Nigrelli notification letter directly from the NYSP. I did not receive the “Angie” e-mail. No officer has visited our shop, nor has an officer provided me with a copy of the 4-page dealer compliance checklist.

¹ A comparison of the Hochul-Nigrelli letter attached to the FBI-NICS e-mail shows the date line is removed, altogether, as compared to the letter received by Mr. Jarred Ford (attached to this emergency motion).

² Plaintiff’s personal e-mail address was redacted by her Counsel.

11. The Zero Tolerance Manufacturing state license original application and renewal applications went through our local Columbia County Clerk's Office. The process of going through the county clerk's office for the state dealer's license and renewal is, upon information and belief, the same for all FFLs in New York. The NYS Police role in the state license and renewal is non-existent. The license and the renewal is reviewed and signed by a county court judge. Upon information and belief, the county sheriff's office initiates the background checks as part of that process. From beginning to end, as a "state-licensed dealer," I have no direct contact with or from the state or the NYS Police.
12. Our business premises is in Ghent, Columbia County, New York. It has been at this location since we first obtained our original federal and state licenses in 2015. This is the business premises address I provided on each application and renewal form for our federal and state licenses.
13. I am available to provide testimony or further written submission, if the court requests it.

Whereas, I respectfully request this emergency motion be granted in favor of the plaintiffs.

Dated: August 27, 2023



Nadine Gazzola

Fwd: FFL registration with NY State Police

From: Zero Tolerance (zerotolerancecorp@gmail.com)

To: pcapanna@yahoo.com

Date: Sunday, August 27, 2023 at 04:44 PM EDT

----- Forwarded message -----

From: nicслиason@fbi.gov <nicслиason@fbi.gov>

Date: Wed, Aug 23, 2023 at 11:45 AM

Subject: FFL registration with NY State Police

To:

The NICS Section has been asked to send out this notice from NY to the FFLs we have on file.

All New York federal firearms licenses (FFL),

On September 13, 2023, the FBI NICS E-Check service and FBI NICS call center will no longer be available for NY FFLs to initiate new firearm background checks. All FFLs are required to register with the NY State Police to begin processing firearm background checks.

Please see the attached information for instructions and contact information should you have any questions.

Eric Moore

NICS BRT

--

Nadine and Seth Gazzola

Zero Tolerance Manufacturing Inc.

518-938-1335



NY Public Awareness.pdf

119.9kB



**State
Police**

KATHY HOCHUL
Governor

STEVEN A. NIGRELLI
Acting Superintendent

To: New York State Firearm Dealers and Ammunition Sellers

Pursuant to Executive Law § 228, New York has been designated a Point of Contact state for the purpose of processing National Instant Background Check (“NICS”) transactions. This means that starting on September 13, 2023, background check requests for firearm, rifle, shotgun, and ammunition purchases will be submitted to the New York State Police, and dealers will no longer submit requests directly to FBI NICS.

As a dealer, you and your staff will be required to register on the NYSNICS.ny.gov web application in advance of New York becoming a Point of Contact State. Instructions on the registration process will be posted on the <https://NYSNICS.ny.gov> site.

Effective September 13, 2023, prior to transferring a firearm, rifle, shotgun, or ammunition to a purchaser, you must go to <https://NYSNICS.ny.gov> to complete the background check process.

An Interactive Voice Response (IVR) telephone solution will be implemented as well so you may call in a background check request to 1-877-NYS-NICS should the online system be unavailable. To use this functionality, you must have already set up your business’s online profile and have a saved payment method on file in the NYSNICS application which you can register and login to at <https://NYSNICS.ny.gov>.

Please visit <https://NYSNICS.ny.gov> for more details about Point of Contact.

New York State Police
NYS NICS Unit
1-877-NYS-NICS
NYSNICS@troopers.ny.gov

Fwd: FFL registration with NY State Police

From: Nadine Gazzola [REDACTED]@gmail.com)

To: pcapanna@yahoo.com

Date: Sunday, August 27, 2023 at 04:45 PM EDT

----- Forwarded message -----

From: nicслиason@fbi.gov <nicслиason@fbi.gov>

Date: Fri, Aug 25, 2023 at 7:15 AM

Subject: FFL registration with NY State Police

To:

The NICS Section has been asked to send out this notice from NY to the FFLs we have on file

All New York federal firearm licenses (FFL),

On September 13, 2023, the FBI NICS E-Check service and FBI NICS call center will no longer be available for NY FFLs to initiate new firearm background checks. All FFLs are required to register with the NY State Police to begin processing firearm background checks.

Please see the attached information for instructions and contact information should you have any questions.

Eric Moore

NICS BRT

Nadine Gazzola

Owner - Zero Tolerance Gun Shop

Assistant Manager - Pulcher Transportation/ AIRCO Inc



NY Public Awareness.pdf

119.9kB



**State
Police**

KATHY HOCHUL
Governor

STEVEN A. NIGRELLI
Acting Superintendent

To: New York State Firearm Dealers and Ammunition Sellers

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Please visit <https://NYSNICS.ny.gov> for more details about Point of Contact.

New York State Police
NYS NICS Unit
1-877-NYS-NICS
NYSNICS@troopers.ny.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Nadine Gazzola, individually, and as co-owner,
President, and as BATFE Federal Firearms Licensee
Responsible Person for **Zero Tolerance
Manufacturing, Inc.**; *et al.*

Plaintiffs

v.

KATHLEEN HOCHUL, in her Official Capacity as
Governor of the State of New York; *et al.*

Defendants

**DECLARATION OF CHRISTOPHER MARTELLO
– IKKIN ARMS**

1. I am Christopher Martello and I make this Declaration under penalties of perjury. These statements are true to the best of my knowledge, and are based upon my personal knowledge and experience unless otherwise specified.
2. I submit this affidavit in support of the plaintiffs' emergency application for a stay of the defendants' demonstrated intention to take over all firearms purchase background checks, launch an ammunition background check, and against any state compliance inspections under NY Gen Bus §875.
3. This affidavit covers a specific update that transpired after the submission of the Emergency Motion to the Second Circuit (dated August 29, 2023).

4. On July 24, 2023, I timely renewed my state dealer license through the Monroe County Clerk's Office, as I have done more than once, previously. I presented myself with my completed and sworn NYSP PPB-6 renewal form with attached photograph, was re-fingerprinted, and paid the fee. The Clerk gave me a date-stamped receipt.
5. Prior to Tuesday, September 5, 2023, my efforts were unsuccessful to open a dealer account on line through the NYS Police URL quoted in their notification letter. There was nothing at the website for weeks after they made the URL public. On Friday, September 1, 2023, I emailed the NYS Police to inform them I was unable to register and included copies of my ATF license number, my NYS ID, and my NY dealer license. I also called the NYSP number published to dealers, more than once, but heard only an automated message to call '911' in the event of an emergency.
6. The morning of Tuesday, September 5, 2023, I received a telephone call someone identifying himself as an operator from the NYS Police (he gave an operator number I cannot remember). He was trying to set up my account with them to do background checks and needed me to send them a copy of my licenses. I informed him that I had already e-mailed it to them. Ten minutes later, he gets back on to say that they did receive my e-mail with attachments, however my state dealer license was expired and they could process my requests to do handgun or ammunition transfers for that reason.
7. I reiterated what was in my e-mail, which was that my state dealer's license was timely submitted for renewal, not expired, and even though it is a simple renewal, previous experience taught me it can take up several months to receive the updated license in the mail.

- a. In comparison, the ATF sends FFLs a pre-filled renewal form for each license at least 90-days ahead of the renewal date. The ATF automatically issues an “interim” or “provisional renewal” license within thirty days of a license expiration.
 - b. FFLs are required to demonstrate a current ATF license, including, e.g., for FFL-to-FFL transfers of firearms.
8. The NYSP operator told me he would have to look into it and put me on hold for almost thirty minutes. When he got back on the phone, he apologized and let me know that everything was fine and my account would be set up and I would be receiving an email letting me know when my account became active.
9. I did subsequently receive an e-mail with log-on credentials.
10. I first logged on to the system on September 6, 2023. There is nothing there. A single screen that looks like a dashboard, but any button clicked on goes nowhere. Even the button for “User Guide,” which should contain some kind of PDF instruction on how to use the system, including screenshots for illustrations, isn’t there. There’s just the 1-page Hochul-Nigrelli letter. The only thing I could do was input my credit card information, which is required, along with a bank account with NYSP access permissions for electronic funds transactions, in order to set up the dealer account.
11. There are no visible fields to input background check data or to run a test.
12. I am available to provide testimony or further written submission, if the court requests it.

Whereas, I respectfully request this emergency motion be granted in favor of the plaintiffs.

Dated: September 10, 2023

A handwritten signature in black ink, appearing to read 'C. Martello', is positioned above a horizontal line.

Christopher Martello



STATE OF NEW JERSEY
NEW JERSEY STATE POLICE
NICS ONLINE



[New User](#) [Help](#) [Login](#)

National Instant Criminal Background Check System (NICS)

New Jersey National Instant Criminal Background Check System is only for use by licensed State of New Jersey Firearm Dealers possessing a Federal Firearms License (FFL) authorized to conduct business with the New Jersey Police NICS Unit.

Important Message:

On Saturday March 21, 2020, Governor Phil Murphy announced he is putting New Jersey in lockdown to combat the spread of coronavirus. Per Executive Order 107, he is ordering the residents of New Jersey to stay home, directing all non-essential retail businesses closed to the public. At this time, the order includes New Jersey Firearms State Licensed Dealers. The New Jersey State Police NICS Unit is directing the vendor of the NICS Online Application (NICUSA) to turn off the NICS Online Services for submitting NICS transactions by eliminating the "Request Form" button, effective 9:00pm EST, Saturday, March 21, 2020. You will still have the ability to view the message board and the status of previously submitted transactions. This "Request Form" feature will remain off until further order by Governor Murphy.

Getting Started

Create a login account to access NICS Online Service. You will require a My New Jersey account, your State Firearms License Number (SFL), Federal Firearms License Number (FFL), and either a credit card or bank account if you wish to store payment information.

[Create an account →](#)

[Login →](#)

Holidays

The New Jersey Police NICS Unit will not be conducting business on the holidays defined by the state.

[NJ State Holiday's List →](#)