

No. 25-6940

In the Supreme Court of the United States

OMAR JOHNSON,

PETITIONER,

v.

NEW YORK,

RESPONDENT.

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

BRIEF IN OPPOSITION

DARCEL D. CLARK
District Attorney, Bronx County

GINA MIGNOLA
Deputy General Counsel

YAEL V. LEVY*
Chief, Appeals Bureau

Office of the District Attorney
Bronx County
198 East 161st Street
Bronx, NY 10451
(718) 838-7199
levyy@bronxda.nyc.gov

*Counsel of Record for Respondent

QUESTIONS PRESENTED

Does this Court have jurisdiction to review whether the “proper cause” requirement rendered New York’s entire gun licensing scheme facially unconstitutional when, at the time of the crime, the provision had already been invalidated and, therefore, was neither traceable to, nor a predicate for, petitioner’s conviction?

Did the state court properly reject petitioner’s facial challenge to New York’s gun licensing scheme on the grounds that (1) under state law, the “proper cause” provision was severable from the rest of the scheme, and (2) petitioner failed to show that there was no set of circumstances under which the scheme would be constitutionally valid?

TABLE OF CONTENTS

	<u>Page(s)</u>
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	iv
INTRODUCTION.....	1
STATEMENT OF THE CASE.....	4
I. Legal Background.....	4
II. Factual Background.....	6
A. The Crime.....	6
B. The Dismissal Motion.....	7
C. The Plea And Appeal Waiver.....	8
D. The Pre-Sentence Report And Sentence.....	9
E. The Appeals.....	10
REASONS FOR DENYING THE PETITION.....	12
I. THIS COURT HAS NO JURISDICTION TO REVIEW THE QUESTION PRESENTED.....	12
A. Petitioner Lacks Standing Because He Was Not Subject To The Invalid Licensing Provision.....	12
B. The Judgment Rests On An Independent And Adequate State Law Determination.....	14
II. THERE IS NO SPLIT OF AUTHORITY OR ERRONEOUS APPLICATION OF METHODOLOGY WARRANTING THE COURT'S INTERVENTION.....	16
III. THE CASE IS A POOR VEHICLE FOR RESOLVING THE QUESTION PRESENTED.....	19
A. The Judgment Rests On A Ground Independent Of The Question Presented.....	20
B. Petitioner Validly Waived His Right To Appellate Review Of The Question Presented.....	21
C. Resolution Of The Question Presented Would Not Be Outcome-Determinative Because It Rests On An Inaccurate Factual Predicate.....	23
IV. REVIEW OF THE QUESTION PRESENTED WILL HAVE LIMITED PROSPECTIVE IMPACT.....	26
CONCLUSION.....	28

APPENDICES

Appendix A - Felony Complaint (July 31, 2022).....	RA1
Appendix B - Notices & Voluntary Disclosure Form (August 12, 2022)	RA3
Appendix C - Indictment (August 19, 2022).....	RA6
Appendix D - Plea Minutes (January 5, 2023)	RA9
Appendix E - Waiver of the Right to Appeal (January 5, 2023)	RA18
Appendix F - Pre-Sentence Report (March 24, 2023).....	RA19
Appendix G - Sentencing Minutes (March 28, 2023)	RA27
Appendix H - Brief for Intervenor Attorney General (March 19, 2025).....	RA30

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

<i>ASARCO, Inc. v. Kadish</i> , 490 U.S. 605 (1989).....	12
<i>Ayotte v. Planned Parenthood of N. New England</i> , 546 U.S. 320 (2006).....	14
<i>Brewer v. Williams</i> , 430 U.S. 387 (1977).....	21
<i>Brockett v. Spokane Arcades, Inc.</i> , 472 U.S. 491 (1985).....	15
<i>Brookhart v. Janis</i> , 384 U.S. 1 (1966).....	21
<i>Clapper v. Amnesty Int’l USA</i> , 568 U.S. 398 (2013).....	12
<i>Class v. United States</i> , 583 U.S. 174 (2018).....	22
<i>Coleman v. Thompson</i> , 501 U.S. 722 (1991).....	14
<i>Commonwealth of Mass. v. Painten</i> , 389 U.S. 560 (1968).....	24
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	5
<i>Fox Film Corporation v. Muller</i> , 296 U.S. 207 (1935).....	14
<i>Free Enterprise Fund v. Public Co. Accounting Oversight Bd.</i> , 561 U.S. 477 (2010).....	15
<i>Hooper v. Bernalillo Cnty. Assessor</i> , 472 U.S. 612 (1985).....	14

<i>Illinois v. Gates</i> , 462 U.S. 213 (1983).....	24
<i>Johnson v. Com. of Mass.</i> , 390 U.S. 511 (1968).....	24
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938).....	23
<i>Khadr v. United States</i> , 67 F.4th 413 (D.C. Cir. 2023)	22
<i>Leavitt v. Jane L.</i> , 518 U.S. 137 (1996).....	14, 16
<i>Menna v. New York</i> , 423 U.S. 61 (1975).....	22
<i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024).....	20-21
<i>New York State Rifle & Pistol Assoc., Inc. v. Bruen</i> , 597 U.S. 1 (2022).....	1, 5, 13, 21, 26
<i>Oliver v. United States</i> , 951 F.3d 841 (7th Cir. 2020).....	22
<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985).....	12
<i>Piccirillo v. New York</i> , 400 U.S. 548 (1971).....	16
<i>Pollard v. United States</i> , No. 3:24-cv-169 (SRU), 2024 WL 4533745 (D. Conn. Oct. 21, 2024), <i>certif. of appealability denied</i> , No. 24-3029, 2025 WL 4352663 (2d Cir. Dec. 15, 2025)	22
<i>Railroad Retirement Bd. v. Alton R. Co.</i> , 295 U.S. 330 (1935).....	17
<i>Regan v. Time</i> , 468 U.S. 641 (1984).....	15

<i>Ricketts v. Adamson</i> , 483 U.S. 1 (1987).....	22
<i>Shuttleworth v. City of Birmingham</i> , 394 U.S. 147 (1969).....	17-18
<i>Smith v. Cahoon</i> , 283 U.S. 553 (1931).....	17-18
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016).....	12-13
<i>Staub v. City of Baxley</i> , 355 U.S. 313 (1958).....	17-19
<i>United States v. Hansen</i> , 599 U.S. 762 (2023).....	6
<i>United States v. Hemani</i> , 146 S. Ct. 326 (2025).....	25
<i>United States v. Lloyd</i> , 901 F.3d 111 (2d Cir. 2018).....	23
<i>United States v. Mejia-Quintanilla</i> , No. 17-15899, 2022 WL 3278992 (9th Cir. Aug. 11, 2022).....	22
<i>United States v. Miles</i> , No. 22-10932, 2024 WL 1827825 (5th Cir. Apr. 26, 2024), <i>cert. denied</i> , 145 S. Ct. 318 (2024).....	22
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024).....	2, 5, 11, 20-21, 24
<i>United States v. Salerno</i> , 481 U.S. 739 (1987).....	6, 20, 24
<i>United States v. Trujillo</i> , No. 23-2080, 2023 WL 5093358 (10th Cir. Aug. 9, 2023).....	22
<i>United States v. Williams</i> , 341 U.S. 58 (1951).....	21

<i>Virginia House of Delegates v. Bethune-Hill</i> , 587 U.S. 658 (2019).....	14
<i>Walker v City of Birmingham</i> , 388 U.S. 307 (1946).....	18
<i>Waller v. Georgia</i> , 467 U.S. 39 (1984).....	13
<i>Washington State Grange v. Washington State Republican Party</i> , 552 U.S. 442 (2008).....	20
<i>Wilson v. Hawaii</i> , 145 S. Ct. 18 (2024).....	19

STATE CASES

<i>Conley v. United States</i> , 79 A.3d 270 (D.C. 2013).....	17
<i>CWM Chem. Servs., L.L.C. v. Roth</i> , 6 N.Y.3d 410, 846 N.E.2d 448 (2006).....	15
<i>Klenosky v. New York City Police Dep’t</i> , 75 A.D.2d 793, 428 N.Y.S.2d 256 (1st Dep’t 1980), <i>aff’d</i> , 53 N.Y.2d 685, 421 N.E.2d 503 (1981).....	5
<i>People ex rel. Alpha Portland Cement Co. v. Knapp</i> , 230 N.Y. 48, 129 N.E. 202 (1920).....	15
<i>People v. Cabrera</i> , 41 N.Y.3d 35, 230 N.E.3d 1082 (2023).....	26
<i>People v. David</i> , 41 N.Y.3d 90, 231 N.E.3d 402 (2023).....	26-27
<i>People v. Pastrana</i> , 41 N.Y.3d 23, 230 N.E.3d 447 (2023).....	26
<i>Ward v. United States</i> , 318 A.3d 520 (D.C. 2024).....	17

STATUTES & LAWS

New York

Ch. 189, 2000 McKinney’s N.Y. Laws § 27	16
Ch. 1, 2013 McKinney’s N.Y. Laws § 57	16
Ch. 135, 2019 McKinney’s N.Y. Laws § 5	16
Ch. 207, 2022 McKinney’s N.Y. Laws § 4	16
Ch. 371, 2022 McKinney’s N.Y. Laws § 1	5
Ch. 371, 2022 McKinney’s N.Y. Laws § 25	16
Ch. 114, 2025 McKinney’s N.Y. Laws § 2.	16
N.Y. Penal Law § 70.02	7
N.Y. Penal Law § 265.03	7
N.Y. Penal Law § 265.20	4
N.Y. Penal Law § 400.00	4, 15-16, 25-26

Other

18 U.S.C. § 922.....	6
21 U.S.C. § 802.....	4, 25
21 U.S.C. § 812.....	4, 25
D.C. Code § 45-201 (2001)	17

OTHER AUTHORITIES

Eric S. Fish, <i>Severability As Conditionality</i> , 64 EMORY L.J. 1293 (2015)	17
Michael C. Dorf, <i>Facial Challenges to State and Federal Statutes</i> , 46 STAN. L. REV. 236 (1994).....	17
S. Ct. Rule 15.2	24

INTRODUCTION

In July of 2022, petitioner—a predicate felon, domestic abuser, and substance abuser—toted a loaded, unregistered pistol while taking his moped for a spin through the Bronx. Petitioner had no firearm license and had not applied for one. He had purchased the gun from some “guys [who] don’t have names.”

Petitioner was indicted for felony unlicensed weapon possession and related charges. He moved to dismiss the indictment, contending that this Court’s June 2022 invalidation, in *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1 (2022), of New York’s “proper cause” eligibility requirement for an unrestricted concealed carry license rendered the entire licensing scheme facially unconstitutional. The motion court disagreed. Pet. App. 67-68. To avoid a potential 15-year prison term, petitioner pled guilty to attempted felony weapon possession in exchange for a five-year probationary sentence.

When the case reached the New York Court of Appeals, the court rejected petitioner’s challenge for two independent reasons. Applying state law, it found that the “proper cause” requirement was severable and did not infect the remainder of the licensing scheme. It also found that petitioner had not shown that there was no set of circumstances in which the scheme would be constitutionally valid. Despite these determinations, each of which alone established the legality of his prosecution, petitioner maintains that he could not have been prosecuted but for the invalid “proper cause” requirement.

This Court should deny certiorari for the following reasons.

First, this Court has no jurisdiction to review petitioner’s constitutional challenge. Petitioner lacks Article III standing to bring the challenge because he was not subject to the “proper cause” requirement. The provision was no longer in effect at the time of his crime. Moreover, the state court’s decision turned entirely on the application of New York severability law. The severability of a state statute is, as this Court has oft stated, a question of state law. Thus, the state court’s conclusion that its legislature would have intended that the invalid “proper cause” requirement be severed is unreviewable by this Court.

Second, there is no split of authority on whether severability is a permissible methodology for assessing a criminal defendant’s facial Second Amendment challenge to a gun law. Rooted in the separation of powers, the doctrine is uniformly applied by courts across the nation. And there was nothing unconstitutional in its application here.

Third, the case is a poor vehicle for deciding whether the “proper cause” requirement rendered the entire licensing scheme unconstitutional because (1) it was resolved on an alternative ground independent of the severability question and (2) can be resolved on two additional such grounds. Applying *United States v. Rahimi*, 602 U.S. 680, 693 (2024), the state court correctly determined that petitioner had not shown that there was no set of circumstances under which the licensing scheme would be constitutionally valid. Pet. App. 19-20. Moreover, petitioner expressly waived appellate review of the issue in exchange for a beneficial plea bargain. Finally, the record reveals that petitioner was ineligible for an unrestricted concealed carry

license under several licensing criteria unrelated to the “proper cause” requirement, which confirms that that provision was *not* the “but for” basis for his prosecution. For all these reasons, petitioner’s conviction would have been affirmed even if the Court were to review and reverse based on the question presented.

Finally, resolution of the circumstances under which the “proper cause” requirement rendered prosecutions unconstitutional will affect a minute class of individuals who (1) committed weapon possession offenses prior to *Bruen* in New York or jurisdictions with “proper cause” analogues and (2) had the foresight to preserve “*Bruen* challenges.”

STATEMENT OF THE CASE

I. Legal Background

It is illegal in New York to possess a gun without a license. N.Y. Penal Law § 265.20(a)(3) (exempting license holders from criminal liability for weapon possession). Carrying a loaded gun in public without a license is a felony. *Id.* at § 265.03(3).

To obtain a gun license in New York, an applicant must submit to an investigation, and the licensing officer must find that all statements in the application are true. N.Y. Penal Law § 400.00(1). The applicant must be at least 21 years old and of good moral character. § 400.00(1)(a)-(b). An applicant may be disqualified if, among other things, he or she has a prior conviction “anywhere” for a felony or other serious offense, is a fugitive from justice, is an unlawful user of or addicted to a federally defined controlled substances—including marijuana, has a history of mental illness, has an outstanding order of protection, or if other “good cause” exists for denying the license. § 400.00(1)(c)-(n) (incorporating 21 U.S.C. §§ 802(6), 812, Schedule I(c)(10)). Each applicable license eligibility criterion must be independently satisfied. § 400.00(1).

New York issues several types of gun licenses, including one for concealed public carry. § 400.00(2). In July 2022, an applicant for such a license would have had to meet most of the § 400.00(1) eligibility criteria. Prior to June 23, 2022, they also would have had to demonstrate “proper cause.” § 400.00(2)(f) (effective through June 23, 2022). This was defined as “a special need for self-protection distinguishable from

that of the general community.” See *Klenosky v. New York City Police Dep’t*, 75 A.D.2d 793, 428 N.Y.S.2d 256 (1st Dep’t 1980), *aff’d*, 53 N.Y.2d 685, 421 N.E.2d 503 (1981).

On June 23, 2022, in *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, this Court invalidated the “proper cause” requirement as inconsistent with the Nation’s historical tradition of firearm regulation. 597 U.S. at 70-71. At the time, six other jurisdictions had “proper cause” analogues, but one had been enjoined in 2017. *Id.* at 13-15.

The Court stressed that its analysis was not a “regulatory straightjacket.” *Id.* at 30. It did not “suggest the unconstitutionality” of the “shall-issue” licensing regimes of then-43 States. *Id.* at 38 n.9; *accord id.* at 79 (Kavanaugh, J., concurring). Those regimes often required background checks and firearms safety courses “to ensure only that those bearing arms ... are, in fact, ‘law-abiding, responsible citizens.’” *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)).

Indeed, *Bruen* “decide[d] nothing about who may lawfully possess a firearm or the requirements that must be met to buy” one. *Id.* at 72 (Alito, J., concurring). The Second Amendment still “allows a ‘variety’ of gun regulations.” *Id.* at 80 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 636).

One week later, on July 1, 2022, the New York Legislature repealed the “proper cause” requirement. The amendment took effect two months later. See Ch. 371, 2022 McKinney’s N.Y. Laws § 1 (eff. Sept. 1, 2022).

Two years later, in *United States v. Rahimi*, this Court resolved a facial challenge to a conviction under a federal statute prohibiting firearm possession by

subjects of civil protection orders who pose credible physical threats to others (18 U.S.C. § 922(g)(8)). 602 U.S. at 690, 698. Reaffirming that bearing arms was always “subject to regulations,” the Court explained that “[s]ince the founding, our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms.” *Id.* at 690-91.

The Court underscored that a facial challenge is the “most difficult” type to mount successfully: the challenger must show that “no set of circumstances exist under which the Act would be valid.” *Id.* at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). To defeat the challenge, the Government must show only that a statute “is constitutional in some of its applications.” *Id.* The Court chided the Fifth Circuit for disregarding its admonition that “[w]hen legislation and the Constitution brush up against each other, [a court’s] task is to seek harmony, not to manufacture conflict.” *Id.* at 701 (quoting *United States v. Hansen*, 599 U.S. 762, 781 (2023)).

II. Factual Background

A. The Crime

On the evening of July 29, 2022, over a month after the Court struck down the “proper cause” requirement, petitioner—an armed robbery felon—repeatedly punched his domestic partner and children’s mother, Jessica Rodriguez, in the face and back of the head. Resp. App. 20-22. Rodriguez’s mother called 911. Resp. App. 3. The next day, a police officer saw petitioner approach the victim and her mother and say, “Both of you are dead. I will kill you.” Resp. App. 1-3.

The police apprehended petitioner while he cruised through the Bronx on a moped. Inside the moped was an unregistered 9mm pistol loaded with seven rounds of ammunition. Resp. App. 2. Petitioner did not have a gun license and had never applied for one. *Id.* Later that day, petitioner told a detective that he had “smacked” and threatened to kill his “wife” and her mother and that he had been “drinking all night.” Resp. App. 3-4. He acknowledged that the gun was his. He had bought it and the bullets from some “guys [who] don’t have names.” Petitioner said he had more ammunition in his backpack and claimed he carried the gun for “protection.” Resp. App. 4.

A grand jury charged petitioner with Criminal Possession of a Weapon in the Second Degree (N.Y. Penal Law § 265.03(3)), which carried a potential prison sentence of 15 years (*id.* at § 70.02(3)(b)), and lesser weapon offenses. Resp. App. 6-8.

B. The Dismissal Motion

Petitioner moved to dismiss the charges, arguing that due to the Court’s invalidation in *Bruen* of the “proper cause” requirement, he had been prosecuted based on an unconstitutional licensing provision. Pet. App. 44-46. He did not allege or submit proof that he met any of the remaining licensing criteria. Pet. App. 39-47.

The court denied the motion, holding that petitioner lacked standing to raise his claim and that, in any event, *Bruen* did not invalidate New York’s entire gun licensing scheme and thus did not prevent petitioner from being prosecuted for unlicensed weapon possession. Pet. App. 67-68.

C. The Plea And Appeal Waiver

Petitioner pled guilty to the reduced charge of attempted second-degree weapon possession in exchange for a promised sentence of five years' probation and an appeal waiver—which he was told was “a separate and independent part” of the plea. Resp. App. 10. He confirmed that he had signed a waiver, was satisfied with counsel's services, and understood that he was relinquishing the many rights associated with going to trial, which the court enumerated. Resp. App. 11-14.

The court then explained the appeal waiver as follows:

Ordinarily a defendant retains the right to appeal after pleading guilty, so the waiver of a right to appeal is separate and distinct from the waiver and [*sic*] other rights by a plea of guilty. In this case, you're asked to waive your right to appeal.

An appeal is a proceeding before a higher court. We call it an appellate court. If you could not afford the cost of an appeal or a lawyer, the state would pay them. On appeal you could argue, normally through your lawyer, that an error took place in this court requiring reversal or modification of the conviction. Reversal would require[] new proceedings in the Court or dismissal.

Petitioner confirmed he understood this. Resp. App. 14-15. The court continued:

When you waive your right to appeal, you do not give up your right to take an appeal by filing a notice of appeal with the Court and the district attorney within thirty days of sentence. But if you take an appeal, with this waiver, you're giving up your right to have that appellate court consider most claims of error and to consider whether the sentence is harsh and excessive. Essentially it means the plea, conviction, sentence is normally final.

Again, petitioner confirmed he understood. Resp. App. 15. The court explained that some claims survived the waiver, including the voluntariness of the plea and waiver, the legality of the sentence and the court's jurisdiction. Petitioner confirmed that he

understood and had discussed the waiver with counsel. *Id.* He said he was voluntarily waiving his right to appeal in return for the promised sentence and that no one had promised him anything else in exchange for his plea. Resp. App. 16.

The written waiver, which was signed by petitioner, counsel, and the court, stated:

I, Omar Johnson, the defendant in the above-captioned matter, in addition to pleading guilty, hereby waive my right to appeal. I understand that my right to appeal is separate and distinct from the rights automatically forfeited upon a guilty plea. I understand that the right to appeal would have allowed me, with the assistance of an attorney, to have a higher court review my conviction and sentence, particularly the excessiveness of my sentence, the resolution of any suppression motion that I may have made, and whether my statutory right to a speedy trial has been violated. I am waiving that right to appeal as a condition of this plea. I also understand that, despite this waiver, I will nevertheless retain my right to raise certain limited issues on appeal, including: constitutional speedy trial; the legality of the sentence; my competency to stand trial; the court's failure to determine whether I am an eligible youth entitled to youthful offender status; the validity of my guilty plea; and the validity of this waiver.

I have had an opportunity to discuss these matters with my attorney and any questions I may have had have been answered to my satisfaction. I further understand that if the waiver of my right to appeal has not been explained to my satisfaction by the Court, I am free to ask for further clarification from the Court or my attorney...or both, before signing this document.

Resp. App. 18.

D. The Pre-Sentence Report And Sentence

Despite counsel's affirmation in the dismissal motion papers that petitioner did "not have a violent felony record" (Pet. App. 40), a pre-sentence investigation revealed that petitioner had previously been convicted in Georgia of armed robbery

and served a ten-year prison sentence. Resp. App. 21-22. The current offense was “an escalation in criminal activity.” Resp. App. 23.

Petitioner was also a daily marijuana user, an every-other-day alcohol consumer, and a prior attendee of three drug treatment programs. Resp. App. 23. He was, he told the police, “under the influence of alcohol” when he struck his wife. Resp. App. 23. His substance abuse screening revealed that he would benefit from further evaluation “in a clinically based treatment setting or by clinically trained professionals.” *Id.* Nonetheless, the court imposed the promised probationary sentence. Resp. App. 28-29.

E. The Appeals

On appeal, petitioner reasserted that his weapon possession prosecution was the product of a licensing regime that was facially unconstitutional under *Bruen*. Pet. App. 70-77.

On March 12, 2024, the New York Appellate Division, First Department, affirmed the conviction. It found that petitioner’s appeal waiver foreclosed review of his constitutional challenge, that petitioner lacked standing to assert the challenge because he had not applied for a gun license, and that *Bruen* did not invalidate the prosecution. Pet. App. 1-4.

The New York Court of Appeals unanimously affirmed. It found—as a matter of state law—the appeal waiver did not bar review and that petitioner had standing to raise his facial challenge despite not having sought a license. Pet. App. 8-17. Turning to the merits, it explained that petitioner had made “only one” argument

before the trial court: that *Bruen*'s invalidation of the "proper cause" provision rendered New York's entire licensing scheme, on which his conviction hinged, facially unconstitutional. Pet. App. 17. It then rejected that challenge on two independent grounds.

First, it found under state law that the "proper cause" requirement was severable and did not infect the remainder of the licensing scheme. Pet. App. 18-20. It also found, based on *Rahimi*, that petitioner had not shown that there was no set of circumstances in which the scheme would be constitutionally valid. *Id.* at 19-20. Three judges concurred in the result but would have found that the appeal waiver barred review. *Id.* at 22-35.

REASONS FOR DENYING THE PETITION

I. THIS COURT HAS NO JURISDICTION TO REVIEW THE QUESTION PRESENTED.

This Court lacks jurisdiction to review petitioner’s claim that New York’s gun licensing regime is facially unconstitutional. First, petitioner lacks standing because his claim rests on a false factual predicate—that the “proper cause” requirement was the “but for” reason for his prosecution. *See* Pet. 4, 6-7, 16. In fact, the “proper cause” requirement had no bearing on his indictment because it had been repealed and was not in effect at the time he committed the crime. Second, the state court decision turned on an application of the state’s severability doctrine. Accordingly, the judgment rests on an independent and adequate state law determination that is beyond this Court’s review.

A. Petitioner Lacks Standing Because He Was Not Subject To The Invalid Licensing Provision.

Article III of the Constitution limits this Court’s jurisdiction to cases and controversies. A party must thus establish standing to challenge a statute in federal court. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013); *accord Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Standing is “a federal question which does not depend on the party’s prior standing in state court.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985). This is because “state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability.” *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 617 (1989). To establish standing in this Court, a party must show that they (1) suffered an “injury in fact,” (2) that is “fairly traceable” to

the challenged action, and (3) that is redressable by a favorable ruling. *Spokeo*, 578 U.S. at 338.

Here, petitioner cannot meet this burden because he was not subject to the “proper cause” requirement when he publicly possessed a concealed unlicensed gun. The provision was invalidated on June 23, 2022, over a month before petitioner’s July 29, 2022, crime and July 30, 2022, arrest. *Bruen*, 597 U.S. at 70-71. It thus did not prevent him from obtaining a license in that intervening month.

Since petitioner’s prosecution is not traceable to the “proper cause” requirement, he lacks standing to challenge it. This is true, despite the state court’s finding of standing. *See Waller v. Georgia*, 467 U.S. 39, 43 n.3 (1984) (holding that despite state court’s finding of standing, convicted defendants lacked standing to challenge warrantless seizure provisions of state statute in federal court since all trial evidence was obtained via warrants).

To be sure, respondent did not press this specific standing argument in state court. Instead, relying on the September 1, 2022, repeal of the “proper cause” requirement, respondent mistakenly stated that at the time of petitioner’s arrest, “proper cause” was a prerequisite for a concealed carry permit. Pet. App. 124. The intervenor nevertheless alerted the court that because the “proper cause” provision was no longer in effect at the time of petitioner’s arrest, it did not prevent him from seeking a license. Resp. App. 31-32. Moreover, the state court expressly stated that the crime and arrest occurred after *Bruen* was decided. Pet. App. 6-7.

Ultimately, the state court decided that petitioner had standing, despite not having sought a license, based on state law principles that do not include traceability. But Article III standing is a limitation on this Court’s jurisdiction that “cannot be waived or forfeited.” *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 662-63 (2019). An erroneous concession cannot confer standing where there is none. Accordingly, on this basis alone, certiorari should be denied.

B. The Judgment Rests On An Independent And Adequate State Law Determination.

This matter is also unreviewable because the state court judgment turned on the application of New York law. This Court will not review a state court’s decision on a question of federal law if the decision “rests on a state law ground that is independent of the federal question and adequate to support the judgment.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991); accord *Fox Film Corporation v. Muller*, 296 U.S. 207, 210 (1935) (state court determination that invalid clause was not severable from remainder of contract was adequate nonfederal ground on which to sustain the judgment). “In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional.” *Coleman*, 501 U.S. at 729.

“Severability is of course a matter of state law.” *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996) (per curiam); accord *Hooper v. Bernalillo Cnty. Assessor*, 472 U.S. 612, 624 (1985) (“It is for the New Mexico courts to decide, as a matter of state law, whether the state legislature would have enacted the statute without the invalid portion.”). The doctrine is rooted in separation of powers. See *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006) (“we try not to nullify more

of a legislature’s work than is necessary”). Therefore, this Court has long employed a “presumption ... in favor of severability.” *Regan v. Time*, 468 U.S. 641, 653 (1984); accord *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 508 (2010) (“partial, rather than facial, invalidation is the required course”); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985).

Applying its own precedent, the New York Court of Appeals found the “proper cause” provision severable from the remainder of the licensing scheme. It assessed the statute’s text and structure to determine whether if partial invalidity had been foreseen, the legislature would have wanted the statute to be invalidated altogether or enforced without the unconstitutional provision. Pet. App. 18-20 (citing *CWM Chem. Servs., L.L.C. v. Roth*, 6 N.Y.3d 410, 423, 846 N.E.2d 448, 455 (2006) and *People ex rel. Alpha Portland Cement Co. v. Knapp*, 230 N.Y. 48, 60, 129 N.E. 202, 207 (1920)).

The court characterized § 400.00 as “detailed and multi-faceted; the ‘proper cause’ provision was just one aspect of a much broader scheme that includes a variety of distinct requirements”—many of which were retained in the post-*Bruen* amendments. Pet. App. 18-20.

For example, a separate provision sets forth various eligibility criteria to obtain a license, including that the applicant be over 21 years of age, of good moral character, not a convicted felon, and not an unlawful user of a controlled substance (*see* Penal Law § 400.00[1]). Another provision sets forth the types of licenses that an applicant may obtain (*see* Penal Law § 400.00[2]). Other provisions set forth the procedures for applying and reviewing gun license applications (*see* Penal Law § 400.00[2]-[5]).

Id. at 19. The court found it “implausible” that the Legislature would have intended that all the other provisions be invalidated just because the “proper cause” requirement was found unconstitutional. *Id.* New York’s high court’s divination of the New York Legislature’s intent is conclusive. *See Leavitt*, 518 U.S. at 139.

Significantly, when after *Bruen*, the Legislature excised the “proper cause” requirement from § 400.00 and added some eligibility requirements, it incorporated a severability clause into the law. *See* Ch. 371, 2022 McKinney’s N.Y. Laws § 25. And it did the same in earlier and later amendments to the statute. *See, e.g.*, Ch. 189, 2000 McKinney’s N.Y. Laws § 27; Ch. 1, 2013 McKinney’s N.Y. Laws § 57; Ch. 135, 2019 McKinney’s N.Y. Laws § 5; Ch. 207, 2022 McKinney’s N.Y. Laws § 4; Ch. 114, 2025 McKinney’s N.Y. Laws § 2. This confirms that the Legislature did not want the licensing scheme to stand or fall based on a single provision.

Because the state court’s severability determination was an independent and adequate basis for its decision, the decision is beyond this Court’s review. *See Piccirillo v. New York*, 400 U.S. 548, 549 (1971) (dismissing writ as improvidently granted because determination of need to confer transactional or use immunity to compel state grand jury testimony was academic where case rested on state law determination that petitioner had transactional immunity).

II. THERE IS NO SPLIT OF AUTHORITY OR ERRONEOUS APPLICATION OF METHODOLOGY WARRANTING THE COURT’S INTERVENTION.

Petitioner asks the Court to “reject the broad ‘severability’ rule that New York and some other jurisdictions have adopted.” Pet. 7. He suggests that New York, California, and Massachusetts are outliers in rejecting Second Amendment defenses

on severability grounds following partial invalidity findings. *Id.* at 6-9, 13. Yet there is no split of authority on whether severability is a permissible methodology for assessing a facial challenge. On the contrary, there is broad consensus that it is.

State severability law is “remarkably uniform.” Michael C. Dorf, *Facial Challenges to State and Federal Statutes*, 46 STAN. L. REV. 236, 285 (1994). Every jurisdiction but Tennessee and Virginia employs a presumption of severability, absent a nonseverability clause. *Id.* 285, 295; Eric S. Fish, *Severability As Conditionality*, 64 EMORY L.J. 1293, 1352 (2015) (citing Dorf’s survey as still accurate). This includes the District of Columbia, which has codified its severability doctrine. *See* D.C. Code § 45-201(a) (2001); *see also Conley v. United States*, 79 A.3d 270, 280-81 (D.C. 2013) (discussing applicability of severability analysis to Second Amendment challenge). It did not conduct a severability analysis in *Ward v. United States* (*see* Pet. 9) and make findings of fact pertinent to that analysis because the government consented to a remand to allow the trial court to address a post-conviction *Bruen* challenge. 318 A.3d 520, 529, 532 (D.C. 2024).

Nor do *Shuttleworth v. City of Birmingham*, 394 U.S. 147 (1969), *Staub v. City of Baxley*, 355 U.S. 313 (1958), or *Smith v. Cahoon*, 283 U.S. 553 (1931), countenance against employment of the severability doctrine here (*see* Pet. 8-11). They merely illustrate the settled proposition that not all invalid statutes are susceptible to severability. *See Railroad Retirement Bd. v. Alton R. Co.*, 295 U.S. 330, 362 (1935) (courts may not “rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole”).

Shuttleworth concerned a challenge to an ordinance which conferred unfettered discretion to deny a parade permit—to a Black minister marching for civil rights—based on subjective and indefinite notions of “public welfare, peace, safety, health, decency, good order, morals or convenience.” *Id.* at 149-52. Because the invalidity infected the entire ordinance, the Alabama Court of Appeals performed “a remarkable job of plastic surgery” and held that a permit “must be granted” upon a finding that public convenience would not be unduly disturbed. *Id.* at 153-54. But given the ordinance’s broad language, this “severely narrowing construction” could not have been anticipated. *Id.* at 155-56. Moreover, a week before the march, the minister’s efforts to seek a permit had been rebuffed, making “indisputably clear” the futility of any future attempted compliance. *Id.* at 157-58 (discussing *Walker v City of Birmingham*, 388 U.S. 307 (1946)).

Staub and *Smith* also concerned subjective and indefinite licensing provisions whose excision would gut the laws in which they appeared. *See Staub*, 355 U.S. at 320-25 (invalidating ordinance with “interdependent” sections requiring permit to solicit union membership because it conferred “uncontrolled discretion” without guiding standards); *Smith*, 283 U.S. at 560 (invalidating licensing scheme for common carriers where state court’s narrowing construction created new issues of indefiniteness).

While some Justices of the Court have opined that a criminal defendant may always assert unconstitutionality when an attempt is made to enforce the penalties of a facially invalid statute (*see* Pet. 7), that proposition, if adopted by the full Court,

would merely confer standing to raise the challenge—assuming traceability to the challenged provision could be established. *See Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (statement of Thomas and Alito, J., respecting cert. denial) (questioning whether state *standing* law may constitutionally restrict a defense to a firearm charge); *Staub*, 355 U.S. at 319 (finding that failure to apply for license under facially invalid ordinance did not bar review). It does not, however, prevent a court from employing a severability analysis to reject the challenge on its merits.

Accordingly, the cases cited by petitioner fully accord with the application of severability methodology to salvage a state penal statute—and an ensuing conviction. Petitioner’s reports of a conflict are greatly exaggerated.

III. THE CASE IS A POOR VEHICLE FOR RESOLVING THE QUESTION PRESENTED.

This case is also a poor vehicle for deciding whether the “proper cause” requirement infected New York’s gun licensing scheme or was properly severed because it was resolved on a ground independent of that question and can be resolved on two other such grounds. First, the state court correctly found that petitioner had not shown that the licensing scheme was invalid in all its applications. Second, petitioner validly waived his right to appellate review in exchange for a beneficial plea. Third, the factual predicate for petitioner’s challenge—that he was ineligible for an unrestricted concealed carry license *solely* because of the “proper cause” requirement—is contradicted by the record. Accordingly, resolution of the question presented would not be outcome-determinative.

A. The Judgment Rests On A Ground Independent Of The Question Presented.

This case is a poor vehicle for addressing the question presented because the judgment rested on an alternate ground independent of the severance issue. Applying this Court’s settled precedent, the state court appropriately determined that petitioner had not shown that there was no set of circumstances under which the licensing scheme would be constitutionally valid. Pet. App. 19-20. Thus, a reversal based on the severance issue would not impact petitioner’s conviction.

As this Court underscored in *Rahimi*, a facial challenge is “the most difficult challenge to mount successfully” because the challenger must “establish that no set of circumstances exists under which the Act would be valid.” 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). To defeat it, the State “need only demonstrate” that a law “is constitutional in some of its applications.” 602 U.S. at 693.

For several reasons, “facial challenges are disfavored.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 744 (2024). They “often rest on speculation,” which “raise[s] the risk of premature interpretation of statutes on the basis of factually barebones records.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008) (internal quotation marks omitted). They are also inconsistent with the judicial restraint principle that a court should not anticipate a constitutional law before the need to decide it arises. *Id.* “And facial challenges threaten to short circuit the democratic process by preventing duly enacted laws from being implemented in constitutional ways.” *Moody*, 603 U.S. at 723 (internal quotation marks omitted).

Citing *Rahimi*, the state court concluded that petitioner did not meet his heavy burden of showing that the licensing scheme was invalid in all its applications. Pet. App. 19. It cited, as an example, the statute’s prohibition on gun possession by convicted felons. *Id.* This, it found, accorded with the Court’s holding in *Rahimi* sanctioning the disarmament of those who “pose a credible threat to the physical safety of others.” *Id.* (quoting *Rahimi*, 602 U.S.at 693); *see also Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring) (reiterating that felon-in-possession bans are presumptively lawful).

Because the foregoing determination was both a proper application of this Court’s precedents and a basis for affirmance independent of the question presented, review of the severability issue would be an academic exercise.

B. Petitioner Validly Waived His Right To Appellate Review Of The Question Presented.

This case is also unsuitable for review because petitioner expressly waived his right to appeal in exchange for a very favorable plea bargain. This is so despite the state court majority’s determination that a facial challenge to a charging statute is nonwaivable in New York (Pet. App. 8-13), for whether a state prisoner has waived a federal constitutional right is a question of federal law. *Brewer v. Williams*, 430 U.S. 387, 403-04 (1977) (citing *Brookhart v. Janis*, 384 U.S. 1, 4 (1966)).

A challenge to the constitutionality of a statute of conviction is non-jurisdictional. *United States v. Williams*, 341 U.S. 58, 66 (1951). It can thus be waived. *See, e.g., United States v. Miles*, No. 22-10932, 2024 WL 1827825, at *1 (5th Cir. Apr. 26, 2024) (finding Second Amendment challenge to federal gun statute waived), *cert.*

denied, 145 S. Ct. 318 (2024); *Pollard v. United States*, No. 3:24-cv-169 (SRU), 2024 WL 4533745, at *4 (D. Conn. Oct. 21, 2024) (same), *certif. of appealability denied*, No. 24-3029, 2025 WL 4352663 (2d Cir. Dec. 15, 2025).

While this Court has determined, in *Class v. United States*, that a guilty plea *alone* does not prevent a criminal defendant from challenging a statute of conviction, it has signaled that an appeal waiver does. 583 U.S. 174, 178, 182 (2018) (underscoring that the petitioner had “neither expressly nor implicitly waived his right to appeal his constitutional claims”). And this is how the federal Circuits have understood *Class*. See *United States v. Trujillo*, No. 23-2080, 2023 WL 5093358, at *2n.6 (10th Cir. Aug. 9, 2023) (per curiam) (*Class* did not hold that constitutional challenge to statute of conviction was non-waivable); *Khadr v. United States*, 67 F.4th 413, 420 (D.C. Cir. 2023) (same); *United States v. Mejia-Quintanilla*, No. 17-15899, 2022 WL 3278992, at *1 (9th Cir. Aug. 11, 2022) (same); *Oliver v. United States*, 951 F.3d 841, 846 (7th Cir. 2020) (same); *United States v. Lloyd*, 901 F.3d 111, 138 n.11 (2d Cir. 2018) (same). Indeed, even the double jeopardy protection may be expressly waived (see *Ricketts v. Adamson*, 483 U.S. 1, 8-10 (1987)), though it may not be forfeited by plea because it halts an unlawful prosecution at the courthouse door. See *Menna v. New York*, 423 U.S. 61, 62 (1975).

If an issue is waivable, a court must assess whether a waiver is knowing and intelligent. *Class*, 583 U.S. at 186 (Alito, J., dissenting). A valid waiver entails an intentional relinquishment of a known right or privilege. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

Here, as the three concurring state court jurists—who believed the right was waivable—found, the appeal waiver was exactly that. Pet. App. 24. It afforded petitioner, a prior felon, an excellent deal: a plea to a lesser offense and a sentence of probation rather than a 3½-to-15-year prison term. *Id.* It was made orally and in writing following consultation with counsel and a “lengthy colloquy” detailing the trial rights forfeited by the plea and that the waiver was “separate” from them. *Id.*; Resp. App. 10-16, 18. And although the unrestricted waiver did not expressly reference a *Bruen* claim, because petitioner unsuccessfully litigated a *Bruen* challenge to his indictment (Pet. App. 39-47)—and because that issue was not among those delineated as surviving the waiver (Resp. App. 15, 18)—petitioner plainly understood that the waiver encompassed it. The waiver was therefore valid. It should be enforced.

C. Resolution Of The Question Presented Would Not Be Outcome-Determinative Because It Rests On An Inaccurate Factual Predicate.

Review is also unwarranted because the question presented rests on the inaccurate factual predicate that petitioner could have secured a license absent the invalid “proper cause” requirement. In fact, the record reveals that petitioner was ineligible for an unrestricted concealed carry license under several licensing criteria unrelated to the “proper cause” requirement. Thus, answering the question presented would not impact the outcome of petitioner’s case.

To decide a constitutional question, this Court requires a “sufficiently clear and specific” factual record. *Commonwealth of Mass. v. Painten*, 389 U.S. 560, 561 (1968).

It does not review claims that are based on factual inaccuracies and demands that briefs in opposition identify any such misstatements. *See* S. Ct. Rule 15.2. And it routinely declines to review claims hinging on inadequately developed records. *See, e.g., Illinois v. Gates*, 462 U.S. 213, 221 (1983) (declining to address whether to fashion good faith exception to exclusionary rule because record was bare as to subjective good faith of officers); *Johnson v. Com. of Mass.*, 390 U.S. 511 (1968) (dismissing writ as improvidently granted because record was insufficient to permit decision on constitutional claims).

Here the record contradicts petitioner’s assertion that the invalid “proper cause” requirement was the but-for cause of his prosecution. *See* Pet. 4, 6-7, 16. First, as discussed, the provision was invalidated a month before the crime.

Second, as also discussed, to successfully mount a facial challenge, the challenger must “establish that no set of circumstances exists under which the Act would be valid.” *Rahimi*, 602 U.S. at 693 (quoting *Salerno*, 481 U.S. at 745). And in *Rahimi*, the Court rejected a facial challenge to a federal gun law because one of its provisions was “constitutional as applied to the facts of *Rahimi*’s own case.” *Id.* at 693.

Accordingly, even if petitioner had been subject to the invalid “proper cause” requirement, he still would have had to show that he could have satisfied the other applicable license eligibility criteria or, alternatively, that those criteria were also unconstitutional. *See* N.Y. Penal Law § 400.00(1) (effective through September 1, 2022). And since petitioner has not challenged the remaining licensing criteria, his

only path to success is to show that he could have satisfied them. But the record establishes that he could not have.

For instance, petitioner would have had to show that he had not been previously convicted “anywhere” of a felony or serious offense. § 400.00(1)(c). Yet in 2002, he had been convicted of armed robbery in Georgia and sentenced to ten years in prison. Resp. App. 22-23; *see also* Pet. App. 24 (Cannataro, J., concurring) (observing that petitioner’s prior armed robbery conviction “likely disqualified him from obtaining a license,” even after *Bruen*). Indeed, the Department of Probation characterized the New York offense as “an escalation in criminal activity.” Resp. App. 23.

Petitioner would also have had to show that he was “of good moral character.” § 400.00(1)(b). This would have been unlikely, however, in view of (1) his armed robbery conviction, (2) his admitted abuse of—and threat to kill—his domestic partner while “drinking all night” (Resp. App. 1-4, 23), and (3) his admitted purchase of an unlicensed, unregistered gun and ammunition from some “guys [who] don’t have names.” Resp. App. 1-4.

And petitioner would have had to show that he was not an unlawful user of or addicted to certain federally defined controlled substances, including marijuana. § 400.00(1)(e) (incorporating 21 U.S.C. §§ 802(6), 812, Schedule I(c)(10)); *but see United States v. Hemani*, 146 S. Ct. 326 (2025) (granting certiorari to consider constitutionality of federal law barring firearm possession by unlawful users of marijuana). But this too would have been improbable, given (1) his admission to

smoking seven grams of marijuana daily over the “5+ years” preceding his crime, (2) his participation in three drug-treatment programs, and (3) the probation department’s assessment that he would benefit from further evaluation “in a clinically based treatment setting.” Resp. App. 23.

Evidently, petitioner was not a law-abiding citizen. *Cf. Bruen*, 597 U.S. at 15-16, 71 (invalidating “proper cause” requirement because it prevented *law-abiding citizens*, like the license applicant-petitioners, from exercising the right to bear arms). He thus would not have secured a concealed public carry license, irrespective of the “proper cause” requirement.

IV. REVIEW OF THE QUESTION PRESENTED WILL HAVE LIMITED PROSPECTIVE IMPACT.

Finally, resolution of the circumstances under which the “proper cause” provision rendered prosecutions unconstitutional will affect a minute class of individuals who (1) were prosecuted prior to *Bruen* in New York or one of the six other jurisdictions with “proper cause” analogues (*see Bruen*, 597 U.S. at 13-15)¹ and (2) had the foresight to preserve “*Bruen* challenges.” *Cf. People v. Cabrera*, 41 N.Y.3d 35, 42-51, 230 N.E.3d 1082, 1087, 1093 (2023) (finding *Bruen* claim unpreserved); *People v. Pastrana*, 41 N.Y.3d 23, 31, 230 N.E.3d 447, 451 (2023) (same); *People v. David*, 41 N.Y.3d 90, 96, 231 N.E.3d 402, 405 (2023) (same). Indeed, petitioner so acknowledged before the New York Court of Appeals. Pet. App. 108 n.15 (professing

¹ The District of Columbia’s “proper cause” analogue was enjoined in 2017, so the class of defendants who would have preserved a *Bruen* challenge there is even smaller. *Id.* at 15.

that a reversal would “not have widespread effects” because petitioner was “one of likely few individuals who both preserved a *Bruen* claim and would have been unconstitutionally denied a firearm at the time of their arrest”). Accordingly, determination of the question presented will have very limited prospective impact.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

DARCEL D. CLARK
District Attorney, Bronx County

GINA MIGNOLA
Deputy General Counsel



Yael V. LEVY*
Chief, Appeals Bureau

Office of the District Attorney
Bronx County
198 East 161st Street
Bronx, NY 10451
(718) 838-7199
levyy@bronxda.nyc.gov

*Counsel of Record for Respondent

May 11, 2026

APPENDICES

Appendix A

CR-013406-22BX



CRIMINAL COURT OF THE CITY OF NEW YORK
BRONX COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

v.

1. OMAR JOHNSON M/36
Arrest# B22626246

Defendant

STATE OF NEW YORK

COUNTY OF THE BRONX

FAMILY OFFENSE

Defendant:

HUSBAND

(Relationship To Victim)

PO BRANDON DIDIEGO of 52 PCT, Shield# 23817, states that on or about July 29, 2022 at approximately 7:49 PM inside of 2529 Grand Avenue Apt# 2, County of the Bronx, State of New York,

THE DEFENDANT COMMITTED THE OFFENSES OF:

- 1 (M) P.L. 120.00(1) Assault 3^ DQO
- 2 (V) P.L. 240.26(1) Harassment 2^

(2) on or about July 30, 2022 at approximately 6:00 AM in front of 2529 Grand Avenue Apt# 2, County of the Bronx, State of New York,

THE DEFENDANT COMMITTED THE OFFENSES OF:

- 1 (F) P.L. 265.03(3)* Criminal Possession of a Weapon 2^ DQO
- 2 (F) P.L. 265.01-b(1) Criminal possession of a firearm
- 3 (M) P.L. 240.25 Harassment in the First Degree DQO

IN THAT THE DEFENDANT DID: intentionally cause physical injury; with intent to harass, annoy or alarm another person struck, shoved, kicked or otherwise subjected such other person to physical contact, or attempted or threatened to do the same; possess a loaded firearm and such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this section if such possession takes place in such person's home or place of business; possess any firearm and he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or be engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury.

THE GROUNDS FOR THE DEPONENT'S BELIEF ARE AS FOLLOWS:

INCIDENT #1:

Deponent is informed by informant, JESSICA RODRIGUEZ, that at the above time and place, defendant engaged informant in a physical altercation where defendant struck informant about her face and the back of her head with a closed fist multiple times. Deponent is further informed by informant that as a result of defendant's aforementioned conduct, informant suffered substantial pain to her face and the back of her head. Deponent is further informed by



002779687

Page 1 of 2

RA1

Appendix A

informant that as a result of defendant's aforementioned conduct, informant was caused to experience annoyance, alarm, and fear for her physical safety.

INCIDENT #2:

Deponent states that at the above time and place, deponent observed defendant approach informant, JESSICA RODRIGUEZ, and informant, NIKOLA RODRIGUEZ, and state in sum and substance, BOTH OF YOU ARE DEAD. I WILL KILL YOU. Deponent further states that at the above time and place, he observed defendant operating a moped scooter, in that, defendant was seated behind the handle bars, with the engine running and the moped scooter moving along a public roadway.

Deponent further states that he observed defendant to have in his custody and control, inside the aforementioned moped scooter, one (1) black 9mm Springfield Armory Pistol (Serial # HG912130) loaded with seven (7) 9mm rounds (each round is a metal casing topped with a metal projectile).

Deponent further states that deponent searched the New York City database, which catalogues holders of valid permits and certificates for registrations for firearms, shotguns, rifles, and related ammunition. Deponent further states that said database is maintained by the New York City Police Department for the purpose of determining whether a specific individual maintains a new York City permit and/or certificates of registration for weapons or ammunition. Deponent further states that defendant, OMAR JOHNSON, who resides at 2529 Grand Avenue, Apartment # 2, BRONX, NY 10468, does not have a valid permit and/or certificate of registration for the aforementioned firearm or ammunition.

FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE
AS A CLASS A MISDEMEANOR PURSUANT TO P.L. 210.45

07/31/2022

0013

DATE and TIME



SIGNATURE



002779687

Page 2 of 2

RA2

Appendix B

OFFICE OF THE DISTRICT ATTORNEY, BRONX COUNTY NOTICES & VOLUNTARY DISCLOSURE FORM

PREPARED BY A.D.A.: **Joel Wright**

Date: **August 12, 2022**

Defendant

#1: Omar Johnson

Docket No.

#1: CR-013406-22BX

Crime Date:

#1: 7/30/2022

Approximate Time:

#1: 6:00 a.m.

Location:

#1: Front of 2529 Grand Avenue, Bronx, NY

Complainants:

#1: Jessica Rodriguez

PLEASE TAKE NOTICE, pursuant to Section 710.30 of the Criminal Procedure Law, that during the trial of the indictment herein the People intend to offer evidence of a statement(s) made by the defendant, Omar Johnson, to a public servant, Officer Brandon Didiego, on July 30, 2022 at approximately 6:18 a.m., at in front of 2529 Grand Avenue Ave Bronx, NY, the substance of which was: WHAT I'M TELLING YOU RIGHT NOW IS, AT THE END OF THE DAY, I JUST WANT TO GET MY STUFF. I DON'T HAVE TO COME BACK HERE NO MORE. ALLOW ME TO GET MY STUFF, ALLOW ME TO PACK MY STUFF. I GOT BIG ASS HANDS, IF I PUNCH HER, SHE'S GOING TO BRUISE, THERE'S NO BRUISES. I HAVE FIVE KIDS IN THAT HOUSE, TWO OF THEM HERS, WITH HER OTHER BABY FATHER, AND THREE OF THEM MINE. SHE'S KICKING ME OUT OF MY HOUSE AND TAKING ME AWAY FROM MY KIDS. WORD TO MY MOTHER, Y'ALL BETTER WATCH Y'ALL BACK. Y'ALL DEAD BITCHES. THAT IS A THREAT BITCH. I'LL KILL YOU BITCH, which statement was Oral.

The People intend to offer evidence of a statement(s) made by the defendant, Omar Johnson, to a public servant, Detective Daniel Baca, on July 30, 2022 at approximately 11:21 a.m., at inside of 3016 Westchester Avenue, Bronx, NY, the substance of which was: I GOT UP LATE AROUND 7 OR 8 O'CLOCK, PM, I USUALLY TAKE MY WIFE OUT, WE HAVE THREE KIDS. IT'S BEEN HARD LATELY, I TOLD HER I DON'T WANT TO FEEL OBLIGATED TO TAKE YOU OUT. IT STARTED DOWNSTAIRS, SHE PUSHED ME, AND I PUSHED HER BACK. SHE SWUNG THE DOOR AND IT HIT ME, WHEN IT HIT ME IN MY FACE, I MUSHED HER, I DIDN'T PUNCH HER BECAUSE LOOK AT MY HANDS, I WOULDN'T LIE TO YOU. IF I PUNCHED HER YOU WOULD KNOW I PUNCHED HER. I MUSHED HER. AFTER THAT SHE CAME OUT THE HOUSE AND WAS YELLING AND SCREAMING BELLIGERENT, I'M NOT GOING TO LIE I SMACKED HER. SO, HER MOM IS IN A CAB AND IS COMING. HER MOTHER IS SCHIZOPHRENIC AND HAD CASES WITH THE COPS AND EVERYTHING. SHE STABBED A COP AND GOT AWAY WITH IT. LONG STORY SHORT THE MOTHER CALLED THE COPS. I LEFT. SHE TEXTED ME AND ASK

RA3

Appendix B

ME TO BRING BACK HER PHONE. I GAVE IT TO HER, BUT I BOUGHT IT. I TOOK HER PHONE, BUT AT THIS POINT I'M GOING BACK TO THE HOUSE. HER MOM ESCALATED THE SITUATION. FIRST TIME I DRIVE OFF BECAUSE I WAS LIKE I DIDN'T DO NOTHING, WHEN THEY ARRIVE, I'M YELLING, SCREAMING AND LETTING THEM KNOW I DIDN'T DO NOTHING. I ASKED THEM IF IT'S POSSIBLE CAN ALL FOUR OF Y'ALL COME UPSTAIRS SO I CAN PACK MY STUFF. THAT'S MY HOUSE TOO, I HAVE A LEASE. LONG STORY SHORT, I ASKED ALL FOUR OF THEM. BY THE TIME WE GET OVER THERE I SEE THEM BRINGING MY BAG, BUT I SAID I WANT MY STUFF. MY WIFE WAS YELLING YOU CAN'T COME IN HERE DUMMY, SO I THREATENED THEM AND SAID I'LL KILL YOU. BOTH OF THEM, IN FRONT OF THE COPS. THE BIKE IS MINE, YES. ITS RED. ITS NOT A MOTORCYCLE IT'S A LIKE A MOPED. THE FIRST TIME I LEFT AND WENT AND GOT A BOTTLE. HENNESSEY, I WAS DRINKING ALL NIGHT. I'M A STRESSED-OUT INDIVIDUAL AND I DO UBER. I'M NOT PROUD OF WHAT I DID. THAT'S MINE. I HAVE IT FOR MY PROTECTION. FOR ME PERSONALLY, IT'S BEEN A LOT GOING ON IN THE BRONX. I'VE HAD IT FOR FIVE YEARS, BEING HONEST I HAVE NO LEGITIMATE, LIKE I'M JUST BEING HONEST, JUST MY PROTECTION. IT'S NEVER BEEN FIRED OR NOTHING. THERE SHOULD BE LIKE UM, TEN IN THERE. I BOUGHT IT. I'M GOING TO HONEST WITH YOU THESE GUYS DON'T HAVE NAMES. I PAID SEVEN HUNDRED. IT WAS NEVER FIRED, TO MY RECOLLECTION TEN IS SUPPOSED TO BE IN THERE. I THINK THERE ARE EXTRA BULLETS INSIDE MY BOOKBAG. I BUY THEM. THEY SELL THEM, PROBABLY LIKE TEN FOR A HUNDRED DOLLARS., which statement was Oral.

PLEASE TAKE NOTICE, pursuant to Section 710.30 of the Criminal Procedure Law, that during the trial of the indictment herein the People intend to offer evidence of an identification of the defendant, Omar Johnson, to a public servant, Police Officer Brandon Didiego, on July 30, 2022 at approximately 6:10 a.m., in front of 2529 Grand Avenue Ave Bronx, NY, Bronx, NY, that the complainant, Jessica Rodriguez, identified the defendant via a point out.

People intend to offer evidence of an identification of the defendant, Omar Johnson, to a public servant, Police Officer Brandon Didiego, on July 30, 2022 at approximately 6:10 a.m., in front of 2529 Grand Avenue Ave Bronx, NY, Bronx, NY, that an eyewitness, identified the defendant via a point out.

PLEASE TAKE NOTICE, pursuant to Section 250.20 of the Criminal Procedure Law, that if a defendant charged in the indictment herein intends to offer a trial defense that at the time of the commission of a crime charged he was at some place or places other than the scene of such crime and to call witnesses in support of such defense, the District Attorney demands that, within eight days of service hereof, such defendant serve upon the District Attorney, and file with the court, a Notice of Alibi, reciting: (a) the place or places where such defendant claims to have been at the time in question, and (b) the names, the residential addresses, the places of employment and the addresses thereof of every such alibi witness upon whom such defendant intends to rely.

PLEASE TAKE NOTICE, pursuant to Section 240.30 of the Criminal Procedure Law, that the District Attorney demands that each defendant charged in the indictment disclose and make available for inspection, photographing, copying or testing, subject to constitutional limitations, (a) any written report

Appendix B

or document, or portion thereof, concerning a physical or mental examination, or scientific test, experiment, or comparisons, made by or at the request or direction of, such defendant, if the defendant intends to introduce such report or document at trial, or if such defendant has filed a notice of intent to proffer psychiatric evidence and such report or document relates thereto, or if such report or document was made by a person, other than defendant, whom such defendant intends to call as a witness at trial; and (b) any photograph, drawing, tape or other electronic recording which such defendant intends to introduce at trial.

PLEASE TAKE NOTICE, that the District Attorney is aware of his continuing obligation under Brady v. Maryland to disclose any exculpatory material in his possession. Whenever the District Attorney comes into possession of exculpatory material, he will disclose the same to the defense in court and on the record.

DARCEL D. CLARK
District Attorney
Bronx County

Appendix C
I N D I C T M E N T

S U P R E M E C O U R T O F T H E S T A T E O F N E W Y O R K
C O U N T Y O F B R O N X

PEOPLE OF THE STATE OF NEW YORK
AGAINST

(X) JOHNSON, OMAR - VFO
VIOLENT FELONY OFFENDER
DEFENDANT: CR-013406-22BX

INDICTMENT #: *IND-73320-22*
GRAND JURY #: 42445/2022

COUNTS

CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE
CRIMINAL POSSESSION OF A FIREARM
CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE
POSSESSION OF AMMUNITION

AUG 19 2022

ORIGINAL

A Panel
8th Term
AUGUST 5, 2022
A TRUE BILL


FOREPERSON

DARCEL D. CLARK
DISTRICT ATTORNEY

RA6

Appendix C

FIRST COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT,
ACCUSES THE DEFENDANT OMAR JOHNSON OF THE CRIME OF CRIMINAL POSSESSION OF A
WEAPON IN THE SECOND DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, OMAR JOHNSON, ON OR ABOUT JULY 30, 2022, IN THE
COUNTY OF THE BRONX, DID POSSESS A LOADED FIREARM, THAT BEING A PISTOL, SUCH
POSSESSION NOT BEING IN HIS HOME OR PLACE OF BUSINESS.

SECOND COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT,
ACCUSES THE DEFENDANT OMAR JOHNSON OF THE CRIME OF CRIMINAL POSSESSION OF A
FIREARM COMMITTED AS FOLLOWS:

THE DEFENDANT, OMAR JOHNSON, ON OR ABOUT JULY 30, 2022, IN THE
COUNTY OF THE BRONX, DID POSSESS ANY FIREARM, THAT BEING A PISTOL.

THIRD COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT,
ACCUSES THE DEFENDANT OMAR JOHNSON OF THE CRIME OF CRIMINAL POSSESSION OF A
WEAPON IN THE FOURTH DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, OMAR JOHNSON, ON OR ABOUT JULY 30, 2022, IN THE
COUNTY OF THE BRONX, DID POSSESS A PISTOL.

FOURTH COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT,
ACCUSES THE DEFENDANT OMAR JOHNSON OF THE CRIME OF POSSESSION OF AMMUNITION
COMMITTED AS FOLLOWS:

THE DEFENDANT, OMAR JOHNSON, ON OR ABOUT JULY 30, 2022, IN THE
COUNTY OF THE BRONX, NOT BEING AUTHORIZED TO POSSESS A PISTOL WITHIN THE
CITY OF NEW YORK AND NOT BEING A DEALER IN RIFLES AND SHOTGUNS, DID POSSESS
PISTOL AMMUNITION.

DARCEL D. CLARK
DISTRICT ATTORNEY

RA7

Appendix C

G R A N D J U R Y R E P O R T

C O U N T Y : B R O N X

INDICTMENTS# GRAND JURY # 42445/2022 FINDING: INDICTED

DEFENDANTS

CORRESPONDING DOCKETS

1. JOHNSON, OMAR

CR-013406-22BX

INDICTMENT CHARGES

CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE

P.L. 265.03(3)

CRIMINAL POSSESSION OF A FIREARM

P.L. 265.01-b(1)

CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE

P.L. 265.01(1)

POSSESSION OF AMMUNITION

A.C. 10-131(i)(3)

SCHEDULED ARRAIGNMENT DATE:

ARRAIGNMENT PART:

OTHER ASSOCIATED INDICTMENTS:

DATE COMPLETED: AUGUST 5, 2022

ADA: WRIGHT, JOEL

BUREAU: DOMESTIC VIOLENCE

RA8

Appendix D

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF BRONX : CRIMINAL TERM : PART 17

3 -----x

4 THE PEOPLE OF THE STATE OF NEW YORK, Indictment:

73320-22

-against-

6 OMAR JOHNSON,

7 Defendant(s).

8 -----x

9 265 East 161st Street
10 Bronx, New York 10451

11 January 5, 2023

12 B E F O R E:

13 HONORABLE ALBERT LORENZO,
14 Justice

15 A P P E A R A N C E S:

16 DARCEL D. CLARK, ESQ.
17 District Attorney, Bronx County
18 BY: DANIEL DEFILIPPI, ESQ.
19 Assistant District Attorney
20 For the People

21 The Bronx Defenders
22 For the Defendant, Omar Johnson
23 BY: JULEMA LAFORCE, ESQ.

FILED
JUL -6 2023
SUP COURT APP. DIV.
FIRST DEPT.

24 SARAH E. de BOURG
25 Senior Court Reporter

SCANNED
DATE: _____
BY: *SL. Owens*

Appendix D

Proceedings

1 THE CLERK: Omar Johnson, 73220 of 22, number
2 eighteen on the calendar.

3 Appearances.

4 MS. LAFORCE: On behalf of Mr. Johnson, Bronx
5 Defenders by Julema Laforce. Good afternoon.

6 MR. DEFILIPPI: Dan DeFilipi standing for the
7 Assigned Assistant Joel Wright.

8 THE COURT: Good afternoon. I believe you have an
9 offer.

10 MR. DEFILIPPI: We do, Judge.

11 After reviewing all the facts and evidence
12 pertaining to this case, taking into account some of the
13 defendant's background, also factoring into the case that
14 there was no evidence that the weapon was discharged, that
15 the defendant didn't menace anyone with it and it is the
16 People's position that probation is still consistent with
17 public safety, while still an appropriate sanction and
18 punishment to the defendant. Penal Law section 110 slash
19 265.03, subdivision 3, attempted criminal possession of a
20 weapon in the second degree, class D as in David violent
21 felony offense with a proposed sentence of five years
22 probation. It is a separate and independent part of this
23 plea also requiring the defendant to waive his right to
24 appeal.

25 THE COURT: Essentially, Mr. Johnson, there's

Appendix D

Proceedings

1 three things you have to do between now and sentence. You
2 have to meet with probation, right, because your promise is
3 five years probation.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Come back to court, not get arrested.
6 Very simple. As long as you do that, I have to give you
7 the five years probation or allow you to withdraw the plea.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: If you do something silly, I have to
10 warn you. I don't expect you will do it. If you get
11 arrested, I have to tell you, you can wind up in state
12 prison, all right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You ready to do this?

15 THE DEFENDANT: Yes, Sir. Definitely.

16 THE COURT: Did you execute the waiver already?

17 MS. LAFORCE: Yes.

18 THE COURT: Then I'll take your application,
19 Ms. LaForce.

20 MS. LAFORCE: Mr. Omar Johnson has authorized me
21 to enter into a plea of guilty to Penal Law 110 slash
22 265.03, subsection 3. This is a D felony. This will give
23 him a criminal record in the State of New York, with the
24 understanding the promised sentence is five years probation
25 and we waive prosecution by --

Appendix D

Proceedings

1 THE COURT: It's based, Ms. LaForce, on everything
2 we have said on the record, correct?

3 MS. LAFORCE: Yes. You will adjourn for
4 sentencing?

5 THE COURT: Let's swear him in.

6 THE CLERK: Please raise your right hand. Do you
7 solemnly swear or affirm the statements you give this Court
8 will be the truth, the whole truth and nothing but the
9 truth?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You may put your hand down. Off the
12 record.

13 (Whereupon, an off the record discussion was
14 held.)

15 THE COURT: Does your client have any immigration
16 issues?

17 MS. LAFORCE: No.

18 THE COURT: I have to warn you by law, that if you
19 were not a United States citizen, you could be deported.
20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you satisfied with the services of
23 your attorney?

24 THE DEFENDANT: Yes, Sir.

25 THE COURT: You understand when you plead guilty,

Appendix D

Proceedings

1 you give up your right to remain silent and not to
2 incriminate yourself?

3 THE DEFENDANT: Yes, Sir.

4 THE COURT: Your attorney says you wish to plead
5 guilty, as we discussed, in complete satisfaction of this
6 indictment. Is that what you wish to do?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: It is, in essence charged under the
9 first count, that on or about July 30, 2022 here in the
10 Bronx, you possessed a loaded firearm, a pistol, and this
11 possession was not in your home or place of business, is
12 that true?

13 THE DEFENDANT: Yes, Sir.

14 THE COURT: Did you have a license for the gun?

15 THE DEFENDANT: No, sir.

16 THE COURT: You therefore plead guilty to
17 attempted criminal possession of a weapon in the second
18 degree?

19 THE DEFENDANT: Yes, Sir.

20 THE COURT: When you plead guilty, you give up
21 certain rights, including any rights you may have to move
22 to suppress evidence, do you understand that?

23 THE DEFENDANT: Yes, Sir.

24 THE COURT: You're giving up your right to a trial
25 by jury where you have the following rights, the right to

Appendix D

Proceedings

1 be represented by an attorney, the right to confront and
2 cross-examine the People's witnesses, the right to remain
3 silent and not to incriminate yourself. You have the
4 right, but are not required to call and present witnesses
5 on your own behalf, to testify yourself on your own behalf,
6 and you are presumed to be innocent and the People would
7 have to prove your guilt beyond a reasonable doubt to a
8 jury that must be unanimous in finding you guilty beyond a
9 reasonable doubt. When you plead guilty, you give up those
10 rights as well as any defense to these charges. You give
11 up your right to a trial as well as any defense to this
12 case, you understand?

13 THE DEFENDANT: I understand, your Honor.

14 THE COURT: This plea of guilty is the same as a
15 verdict of guilty by a jury after trial, do you understand?

16 THE DEFENDANT: Yes, Sir.

17 THE COURT: You're also waiving your right to
18 appeal. Ordinarily a defendant retains the right to appeal
19 after pleading guilty, so the waiver of a right to appeal
20 is separate and distinct from the waiver and other rights
21 by a plea of guilty. In this case, you're asked to waive
22 your right to appeal.

23 An appeal is a proceeding before a higher court.
24 We call it an appellate court. If you could not afford the
25 cost of an appeal or a lawyer, the state would pay them.

Appendix D

Proceedings

1 On appeal you could argue, normally through your lawyer,
2 that an error took place in this court requiring reversal
3 or modification of the conviction. Reversal would required
4 new proceedings in the Court or dismissal, do you
5 understand so far?

6 THE DEFENDANT: Yes, Sir.

7 THE COURT: When you waive your right to appeal,
8 you do not give up your right to take an appeal by filing a
9 notice of appeal with the Court and the district attorney
10 within thirty days of sentence. But if you take an appeal,
11 with this waiver, you're giving up your right to have that
12 appellate court consider most claims of error and to
13 consider whether the sentence is harsh and excessive.
14 Essentially it means the plea, conviction, sentence is
15 normally final, do you understand that?

16 THE DEFENDANT: Yes, Sir.

17 THE COURT: Certain claims survive the waiver of
18 the right to appeal and they include the voluntariness of
19 the plea, the validity and voluntariness of the waiver, the
20 legality of the sentence and the jurisdiction of the Court.
21 Do you understand that?

22 THE DEFENDANT: Yes, Sir.

23 THE COURT: You spoke to your attorney about
24 waiving your right to appeal and you signed it?

25 THE DEFENDANT: Yes, sir.

Appendix D

Proceedings

1 THE COURT: You voluntarily waive your right to
2 appeal in return for the plea and sentence promise?

3 THE DEFENDANT: Yes, Sir. I do.

4 THE COURT: Has anyone promised you anything else
5 to get you to plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: Anyone threatening or forcing you to
8 plead guilty?

9 THE DEFENDANT: No, Sir.

10 THE COURT: You're pleading guilty voluntarily,
11 because you're guilty?

12 THE DEFENDANT: Yes, Sir.

13 THE COURT: This plea and conviction could be the
14 basis for additional punishment if in the future you're
15 convicted of another crime. What we all want is you put
16 this behind you, do your probation and move on with your
17 life. Do you understand?

18 THE DEFENDANT: Yes, Sir.

19 THE COURT: Plea acceptable?

20 MR. DEFILIPPI: Yes.

21 THE COURT: Let's enter it.

22 THE CLERK: Omar Johnson, do you now withdraw your
23 previously entered plea of not guilty and do you now plead
24 guilty to the attempted criminal possession of a weapon in
25 the second degree, Penal Law section 110 slash 265.03,

Appendix D

Proceedings

1 subsection 3 to cover indictment 73320 of 22. Is that what
2 you wish to do?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: You're going to get some paperwork.
5 Go to probation, I'll see you on the sentencing date.

6 How is March 28th, around then?

7 MS. LAFORCE: Sure.

8 THE COURT: Has to be six weeks.

9 MS. LAFORCE: That's a good date.

10 THE COURT: March 28th. All right, good luck.
11 I'll see you then. You can wait in the hallway for your
12 paperwork.

13 THE DEFENDANT: All right.

14 (Proceedings adjourned to March 28, 2023.)

15 * * * * *

16 This is to certify that the foregoing is a true
17 and accurate transcript of the stenographic minutes taken
18 within.

19
20 

21 SARAH DEBOURG
22 Senior Court Reporter

23
24
25

Appendix E

WAIVER OF THE RIGHT TO APPEAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 77

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

OMAR JOHNSON,

Defendant

Indictment or SCI #:
73320-22

-----X

I, Omar Johnson, the defendant in the above-captioned matter, in addition to pleading guilty, hereby waive my right to appeal. I understand that my right to appeal is separate and distinct from the rights automatically forfeited upon a guilty plea. I understand that the right to appeal would have allowed me, with the assistance of an attorney, to have a higher court review my conviction and sentence, particularly the excessiveness of my sentence, the resolution of any suppression motion that I may have made, and whether my statutory right to a speedy trial has been violated. I am waiving that right to appeal as a condition of this plea. I also understand that, despite this waiver, I will nevertheless retain my right to raise certain limited issues on appeal, including: constitutional speedy trial; the legality of the sentence; my competency to stand trial; the court's failure to determine whether I am an eligible youth entitled to youthful offender status; the validity of my guilty plea; and the validity of this waiver.

I have had an opportunity to discuss these matters with my attorney and any questions I may have had have been answered to my satisfaction. I further understand that if the waiver of my right to appeal has not been explained to my satisfaction by the Court, I am free to ask for further clarification from the Court or my attorney, Julema LaForce, or both, before signing this document.

Dated:

1/5/23

Omar Johnson
Defendant

Julema LaForce
Attorney for Defendant

The above defendant appeared before this Court on this date and in open court, in the presence of this Court and with the approval of this Court, and with the advice and consent of defendant's attorney, signed the foregoing waiver of said defendant's right to appeal.

Dated:

1-5-23

(1/2020)

Albert Lorenzo
J.S.C.

**ALBERT LORENZO
JUDGE**

Appendix F



New York City Department Of Probation Pre-Sentence Investigation Face Sheet

Report Type: PSI	Court: BRONX SUPREME	NYSID #: 11879719H	Case #: CCI-XS202300242
County: Bronx	FBI: 282997VB3	PO: Victoria Betton	Sentence Promise: Probation
Conviction Dt.: 01/05/2023	Sentence/Return Dt.: 03/28/2023	Custody Status: Bail	Conviction: Plea

PERSONAL INFORMATION

Last Name:	Johnson	First Name:	Omar	
True Name (if different)				
Current Address	Mailing Address		Resides with	
2529B Grand Avenue, Apt #2, Bronx, NY 10468	2529B Grand Avenue, Apt #2, Bronx, NY 10468		Domestic Partner-Jessica Rodriguez	
Primary Phone	(347)776-2863		Sex Assigned at Birth	Male
Cell Phone	(347)776-2863	Citizenship	USA	Race
Birth Date	05/08/1986	Alien Status		Ethnicity
Country of Birth	USA	Alien #		Height
State if US	New York	Visa Type		Weight
City of Birth	Brooklyn	Visa #		Eyes
Primary Language	English	Marital Status	Living Together / Common Law	Hair
Speaks English?	Yes			Glasses
Interpreter?	No			Contacts
Identifiable Marks				
Law Actions	DNA			
Defendant Interview Date	01/23/2023			

PRESENT COURT PROCEEDING

#	DKT/IND #	Court Control #	Offense Date	Arrest Date	Final Charge(s)
1	IND-73320-22	70023057Q	07/20/2022	07/30/2022	PL 265.03 03 D F 2 - ATT Crim Possess Weapon-2:Loaded Firearm-Other Than Person's Home/business - 01 ct(s)
Indict. Arrest Charges					
	Charge Description	Count	VO	JO	Covers Indict.
1	PL 265.03 03 D F 2 ATT Crim Possess Weapon-2:Loaded Firearm-Other Than Person's Home/business	1	True	False	

Appendix F

2	PL 265.01-B 01 E F 0 Criminal Possession Of A Firearm - Possess A Firearm	1	False	False
3	PL 265.01 01 A M 4 Criminal Possession Weapon-4th:Firearm/Weapon	1	False	False
4	ADM 10-131 (I)(3) X Possession of Pistol or Revolver Ammunition	1	False	False
5	PL 265.03 03 C F 2 Crim Possess Weapon-2:Loaded Firearm-Other Than Person's Home/business	1	True	False

Conviction Charge Code		Court Details		Additional Information	
Law	PL	Judge	Hon. Alberto Lorenzo	ADA	Wright, Joel
Section	265.03	Part	BRONX SUPREME - 17	Phone #	(718)664-2335
SubDiv	03	Co-Defendants	No	Defense Counsel	Laforce, Julema
Class/Offense	F	YO Eligible	Not Applicable	Phone #	(718)579-3000
Attempted	1	Pending Charges	No	Address	260 East 161st Street, Bronx, NY 10451
Degree	2	COR Eligible	No		

DETAILS SENTENCE PROMISE (cont. from Facesheet)

Sentence Type	Probation	Duration	5-Year
Details of Promise	5-Year Probation		

LEGAL HISTORY

Adult

Arrest Date	Final Charge	Court	Indict. #	Disposition	Date
12/15/2001	Conv/Adj: - Armed Robbery	Richmond County Superior Court, GA	02RCR36	Restitution. Confinement 10-Years, Probation 10-years	8/23/2002

PRESENT OFFENSE

Circumstances of Arrest

Offense Date(s)	07/20/2022	Arresting Officer	PO Brandon Didiego
Offense/Arrest Location	2529 Grand Avenue Apt #2, Bronx, NY	Arrest Number	B22626246
Arrest Date	07/30/2022	Shield	23817
The defendant was arrested	Yes		
Defendant influenced by substance at time of offense	Yes		

Appendix F

Description of Present Offense

The account which follows is based on information obtained from the indictment and court papers.

Description:

On or about July 30, 2022, at approximately 6:00 AM in front of 2529 Grand Avenue, Apt #2, Bronx, NY the defendant was observed to have in his custody and control, inside of a moped scooter, one black 9mm Springfield Armory pistol (serial #HG912130) loaded with seven 9mm rounds.

PO Didiago states that he searched the New York City database, which catalogues holders of valid permits and certificates for registrations for firearms, shotguns, rifles, and related ammunition. PO Didiago further states that said database is maintained by the New York City Police department for the purpose of determining whether a specific individual maintains a New York City permit and/or certificates of registration for weapons or ammunition. PO Didiago states that defendant, Omar Johnson, who resides at 2529 Grand Avenue, Apartment #2, Bronx, NY 10468 does not have a valid permit and or certificate of registration for the aforementioned firearm or ammunition.

Arrested on July 30, 2022, the defendant remains at liberty pending sentence.

SUMMARY OF DEFENDANT'S STATEMENT

The defendant admitted guilt in the instant offense. The defendant reports that he carried a firearm for personal protection.

ANALYSIS OF OFFENSE AND LEGAL HISTORY

According to E-Justice report, the instant offense represents this defendant first felony conviction in New York City.

In the instant offense, the defendant was found in possession of a loaded firearm.

A Type III E-Justice inquiry revealed a conviction in Georgia for Armed Robbery resulting in a 10-year Prison sentence, Restitution, and 10-years of Probation. Said inquiry also indicates he was supervised by New York State Parole from January 20, 2012, to January 5, 2022 when he was discharged upon reaching his MED.

FAMILY AND ENVIRONMENT

Name	Relation	Age	Residence	Profession
Lennon, Cloie Lee	Stepdaughter	14	2529 Grand Avenue #2, Bronx, NY 10468	Student
Lennon, William Michael	Stepson	13	2529 Grand Avenue #2, Bronx, NY 10468	Student
Johnson, Jr., Omar James	Son	9	2529 Grand Avenue #2, Bronx, NY 10468	Student

Appendix F

Johnson, Sharif Lavon	Son	6	2529 Grand Avenue #2, Bronx, NY 10468	Student
-----------------------	-----	---	--	---------

As verified by Birth Certificate no. 156-86-312454, the defendant, Omar Johnson, was born on May 8, 1986, in Kings County, NY. Reportedly, he is one of six children born to the consensual union of Richard James, a retired bus driver living in Brooklyn, NY and Darlene Johnson, deceased.

The defendant reports that his sibling's range in age from 29-years old to 40-years old.

As verified by a Certificate of Domestic Partnership, the defendant and complainant were registered as domestic partners on July 26, 2013, verified by certificate no. X-2013-106583. Ms. Rodriguez is unemployed and dependent on the defendant for support. In case of emergency, Ms. Rodriguez may be contacted at (646)439-7549. As verified by Birth Certificates, two children resulted from their union: Omar James Johnson, Jr., (9) and Sharif Lavon Johnson, (6). Ms. Rodriguez is also the mother of two older children, Cloie Lee Lennon, D.O.B.: 7/10/08 and William Michael Lennon, D.O.B.: 10/15/09.

Since 2017, the defendant has lived at the case address in the second-floor apartment of a three-family home. Said apartment is described as having three-bedrooms/two-bathrooms and is occupied by his domestic partner, their respective children and a four-year-old female Pitbull. Said address was verified by a Lease, dated April 26, 2018.

CURRENT RESIDENCE

Address	Apt #	City	State	Zip
2529B Grand Avenue,	Apt #2	Bronx	NY	10468
Type of Residence				
Residential				

SOURCE OF INCOME

Public Assistance

CURRENT EDUCATION

Grade 10

EDUCATION, EMPLOYMENT, AND MILITARY

Reportedly upon completion of the tenth grade, the defendant stopped attending Abraham Lincoln High School in Brooklyn, NY . To date, he has not received a High School diploma or attained his GED.

Since the pandemic, the defendant is reported to have earned \$300.00 weekly working for Uber Eats but did not provide verification of income. He further stated that his domestic partner's public assistance budget of \$1500 monthly helps to sustain the family, unverified.

Prior thereto, the defendant was serving a 10-year sentence for armed robbery in Georgia.

The defendant states that he needs something to help keep him occupied and release frustrations and hopes to find a job he enjoys.

PHYSICAL HEALTH

The defendant is 6'2" tall and weighs 215 pounds. Even though, the defendant has been diagnosed with High Blood Pressure, he decided not to take medication and is controlling his blood pressure through diet and exercise.

Sex Assigned at Birth	Height	Weight	Race	Ethnicity	Hair	Eyes
Male	6'2"	215	Black	Not Hispanic	Black	Brown

SUBSTANCE ABUSE

Defendant reported use of controlled substances and/or alcohol.

Appendix F

Substance Used	Age At First Use	Frequency of Use	Currently Using	Amount/Quantity Used	Length of Present Use	Method Of Use
Alcohol	1 - 15	Occasionally	True	Unknown	5+ years	Oral Intake
Marijuana/Hashish	26 - 30	Daily	True	7 Grams	5+ years	Smoked

Last time used:

Longest period of abstinence:

Defendant reported being drug free since:

Defendant was enrolled in a treatment program at time of offense: No

Defendant has been in an inpatient or outpatient substance abuse program within past five years: No

MENTAL HEALTH

The defendant reports good mental health.

RESULTS OF NEEDS ASSESSMENT & EVALUATION

Client was screened for substance use needs; results of the screening indicate that the client may benefit from further assessment and evaluation in a clinically based treatment setting or by clinically trained professionals.

EVALUATIVE ANALYSIS

According to an E-Justice report, the instant offense represents this defendant first felony conviction in New York City.

In the instant offense, the defendant was found in possession of a loaded firearm.

In Georgia, he has a felony conviction for Armed Robbery in 2002. The defendant was supervised by New York State Parole and discharged upon reaching his MED.

Admitting guilt, the defendant reports that he carried a firearm for his personal protection.

The defendant has not resumed his education since leaving high school in the tenth grade. He provided no verification of his employment as a food deliveryman.

With the exception of high blood pressure, the defendant reports good physical and mental health.

Reportedly, the defendant started drinking at 12-years-old and currently consumes alcohol every two days to alleviate stress. He also informed that he was under the influence of alcohol at the time of commission of the instant offense. The defendant further stated that since his release to parole in 2012, he has smoked marijuana on a daily basis. To date, he has attended three drug-treatment facilities, Odyssey House where he met his domestic partner, Samaritan Village, and Palladia, but he provided no verification.

The defendant's recent arrest appears to demonstrate an escalation in criminal activity. Therefore, he should be monitored closely to ensure compliance with supervision and referred to a substance abuse program for out-patient treatment.

Appendix F

Attested By:



PROBATION OFFICER - Victoria Betton

Reviewed By:



SUPERVISING PROBATION OFFICER - Myrtle Luke

Submitted By:

SUPERVISING PROBATION OFFICER - Myrtle Luke

Appendix F

VERIFICATION GRID					
#	Verification Type	Verified?	Method/Source	By Whom	Date
1	Legal History	Yes	Viewed E-Justice	Betton, Victoria	01/23/2023
2	Present Offense	Yes	Viewed Court Papers	Betton, Victoria	01/05/2023
3	Victim Impact Statement	No			
4	Date of Birth	Yes	Viewed Birth Certificate	Betton, Victoria	01/23/2023
5	Current Address	Yes	Viewed Lease	Betton, Victoria	01/23/2023
6	Current or Most Recent School / Training Program		N/A		
7	Source of Other Income	No			
8	Military Service		N/A		
9	Current of Most Recent Treatment for Physical Illness/Disability		N/A		
10	Current of Most Recent Treatment for Psychiatric/Psychological		N/A		
11	Current of Most Recent Treatment for Alcohol/Drug Abuse		N/A		

Appendix F



New York City Department Of Probation

Departmental Sentence Recommendation

County Investigation Branch

Date	03/24/2023	Probation Case Number	XS202300242
To: Judge	Hon. Alberto Lorenzo	Court/Part	BRONX SUPREME/BRONX SUPREME - 17
Case Name	Johnson, Omar	County	Bronx

Sentence Details

Recommendations

As this defendant is before the Court on his first conviction in New York State, a sentence of Probation is recommended. In the instant offense, the defendant was found in possession of a loaded firearm.

In Georgia, the defendant has a felony conviction for Armed Robbery in 2002 for which he was supervision of New York State Parole and was discharged upon reaching his MED.

A high school dropout, the defendant cites being employed as a food deliveryman, unverified. Claiming good mental health, he reports suffering from high blood pressure. As stated in this report, the defendant currently consumes alcohol every two days to alleviate stress and smokes marijuana daily, despite three prior drug-treatment programs.

As he has failed to benefit from prior Parole supervision, this defendant should be monitored closely to ensure compliance with supervision. He could also benefit from a substance abuse program for out-patient treatment, gainful employment, and educational/vocational programs.

SUPERVISING PROBATION OFFICER - Myrtle Luke

03/24/2023

Date

Appendix G

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF BRONX : CRIMINAL TERM : PART 17

3 -----x

4 THE PEOPLE OF THE STATE OF NEW YORK, Indictment:

5 73320-22

6 -against-

7 OMAR JOHNSON,

8 Defendant(s).

9 -----x

10 265 East 161st Street
11 Bronx, New York 10451

12 March 28, 2023

13 B E F O R E:

14 HONORABLE ALBERT LORENZO,
15 Justice

16 A P P E A R A N C E S:

17 DARCEL D. CLARK, ESQ.
18 District Attorney, Bronx County
19 BY: KRYSTAL PALMERS, ESQ.
20 Assistant District Attorney
21 For the People

22 The Bronx Defenders
23 For the Defendant, Omar Johnson
24 BY: JULEMA LAFORCE, ESQ.

FILED
JUL -6 2023
SUP COURT APP. DIV.
FIRST DEPT.

25 SARAH E. de BOURG
Senior Court Reporter

Appendix G

Proceedings

1 THE CLERK: Number fifteen on the calendar,
2 indictment 73320 of 22, Omar Johnson.

3 Appearances.

4 MS. LAFORCE: On behalf of Mr. Johnson, the Bronx
5 Defenders by Julema LaForce, good morning.

6 MS. PALMERS: Krystal Palmers for the Office of
7 the District Attorney standing in for the assigned, Joel
8 Wright. Good morning.

9 THE COURT: Good morning.

10 All right, I did look at the pre-sentence report.
11 Actually looks like you were very forthright with them,
12 which is good. It's an agreed upon sentence. Have you
13 both seen the pre-sentence report?

14 MS. LAFORCE: Yes, I have.

15 MS. PALMERS: Yes, your Honor.

16 THE COURT: Do you waive any further adjournment,
17 stand ready for the promised sentence?

18 MS. LAFORCE: Yes, we do.

19 THE COURT: Anything further, People?

20 MS. PALMERS: No, your Honor.

21 THE COURT: Anything else, Ms. LaForce?

22 MS. LAFORCE: No, your Honor.

23 THE COURT: Do you want to say anything else,
24 Mr. Johnson?

25 THE DEFENDANT: No, Sir.

Appendix G

Proceedings

1 THE COURT: Sentence is five years probation.
2 You'll get paperwork today to report to probation. There
3 is a mandatory surcharge, victim assistance fee, DNA. I'm
4 going to give you plenty of time. If you don't pay, they
5 don't arrest you for it. It could affect your credit,
6 credit card in the future. I'm going to go all the way out
7 to December. You can even ask for more time, okay?

8 THE DEFENDANT: Yes, Sir.

9 THE COURT: December 20th for the payment. You
10 don't come back to the court here, you go to the clerk's
11 office.

12 Good luck to you.

13 THE CLERK: Mr. Johnson, you have the right to
14 appeal the judgment of the Court. If you do so, it must be
15 done within thirty days.

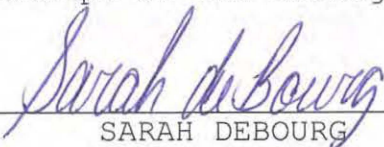
16 Counsel, your office will stay on the case for the
17 statutory time?

18 MS. LAFORCE: Yes.

19 THE COURT: Let the record reflect the defendant
20 has been given his written notice of his right to appeal.
21 You can wait outside for your paperwork. Thank you.

* * * * *

22 This is to certify that the foregoing is a true
23 and accurate transcript of the stenographic minutes taken
within.

24 
SARAH DEBOURG
25 Senior Court Reporter

Appendix H

To be argued by:
MATTHEW KELLER
10 minutes requested

Supreme Court, Bronx County, Indictment No. 73320/2022
APL-2024-00111

State of New York Court of Appeals

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

v.

OMAR JOHNSON,

Defendant-Appellant,

BRIEF FOR INTERVENOR ATTORNEY GENERAL

BARBARA D. UNDERWOOD
Solicitor General
IRA M. FEINBERG
Deputy Solicitor General
MATTHEW KELLER
*Assistant Deputy Solicitor General
of Counsel*

LETITIA JAMES
*Attorney General of the
State of New York*
28 Liberty Street
New York, New York 10005
(212) 416-8022
Matthew.Keller@ag.ny.gov

Dated: March 19, 2025

Appendix H

POINT II

DEFENDANT LACKS STANDING TO BRING HIS CONSTITUTIONAL CHALLENGE.

Even if defendant’s appeal waiver did not bar consideration of his Second Amendment challenge, both courts below correctly ruled that defendant lacked standing to argue that the firearm statutes he was charged with violating are invalid under the Second and Fourteenth Amendments. (Def. App’x A39-40; 225 A.D.3d at 455.) The Supreme Court in *Bruen* merely held that the state law requiring an applicant for a license to demonstrate “proper cause” to carry a firearm in public was unconstitutional, but did not otherwise undermine the state’s gun licensing scheme or the requirement that citizens obtain a license before they can lawfully carry a firearm. On the contrary, both the majority and concurring opinions make clear that, absent the “proper cause” requirement, such licensing schemes are presumptively valid. Moreover, the “proper cause” provision was no longer in effect at the time defendant was arrested—the Supreme Court had held it unconstitutional one

Appendix H

month earlier—so there was no reason why defendant could not have sought and potentially obtained a firearms license.

But defendant never applied for a firearms license and, thus, never submitted himself to the licensing regime he seeks to challenge. He therefore cannot show that he was aggrieved by that regime, and lacks standing to challenge it.

A. New York’s Firearm Licensing Regime Permits Eligible Individuals to Possess and Carry Firearms.

To evaluate defendant’s claims and his standing to raise them, it is important to understand the structure of the State’s firearms licensing laws. Firearm licenses are issued under Penal Law § 400.00, “the exclusive statutory mechanism for the licensing of firearms in New York State.” *O’Connor v. Scarpino*, 83 N.Y.2d 919, 920 (1994). New York’s laws provide for several different types of licenses to possess or carry a firearm. The most basic license is a residence license, which authorizes a person to possess a firearm in his or her dwelling. Penal Law § 400.00(2)(a). A merchant or storekeeper may apply for a license to possess a firearm in his or her place of business. Penal Law § 400.00(2)(b). A person may also seek a license to carry a concealed firearm in public.