

No. _____

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

JASON PEGUERO,

Petitioner,

v.

STATE OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari
to the Appellate Division First Judicial
Department of the Supreme Court of the State of
New York

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Second Amendment bar criminal prosecution for unlicensed-firearm possession where the defendant was subject to an unconstitutional firearms-licensing law and there were otherwise no lawful bases for disarming the defendant?

PARTIES TO THE PROCEEDING

The parties to this proceeding are Petitioner Jason Peguero and Respondent the State of New York.

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PETITION FOR A WRIT OF CERTIORARI

Jason Peguero petitions for a writ of certiorari to review the judgment of the New York Appellate Division.

OPINIONS BELOW

The opinion of the Appellate Division, First Judicial Department, is published at 246 A.D.3d 668. *See also* Pet. App. 2a-3a. Further review in the New York Court of Appeals was denied by an order published at 45 N.Y.3d 998. The relevant order of the Bronx County Supreme Court is unpublished. *See* Pet. App. 4a-7a.

JURISDICTION

A Judge of the New York Court of Appeals denied leave to appeal the Appellate Division's order on May 28, 2026, rendering this petition timely filed on August 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

As this petition draws into question the constitutionality of state statutes, 28 U.S.C. § 2403(b) may be applicable and the Attorney General of the State of New York has been served with this petition. *See* Sup. Ct. Rule 29(4)(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES,
Amendment II:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

CONSTITUTION OF THE UNITED STATES,
Amendment XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEW YORK PENAL LAW
§ 265.20(a)(3)

. . . Sections 265.01, 265.02, [and] 265.03 [of New York Penal Law]. . . shall not apply to . . . Possession of a pistol or revolver by a person to whom a license therefor has been issued as provided under section 400.00 of this chapter . . .

NEW YORK PENAL LAW
§ 265.03(3)

A person is guilty of criminal possession of a weapon in the second degree when . . . such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business. . .

NEW YORK PENAL LAW
§ 265.01-b(1)

A person is guilty of criminal possession of a firearm when he or she . . . possesses any firearm . . .

NEW YORK PENAL LAW
§ 265.01(1)

A person is guilty of criminal possession of a weapon in the fourth degree when . . . He or she possesses any firearm . . .

FORMER NEW YORK PENAL LAW
§ 400.00(1), (2)(f)

A license for a pistol or revolver . . . shall be issued to . . . have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof.

INTRODUCTION

In *New York State Rifle & Pistol Assn. v. Bruen*, 597 U.S. 1 (2022), this Court confirmed that the Second Amendment guarantees the right to keep and bear arms as a “means of self-defense” outside the home. See *United States v. Rahimi*, 602 U.S. 680, 690 (2d Cir. 2024) (citing *Bruen*, 597 U.S. at 17). The government’s curtailment of this “fundamental” right (*Rahimi*, 602 U.S. at 690) is presumptively unconstitutional unless the governmental regulation is consistent with a founding-era regulatory tradition. *Bruen*, 597 U.S. at 17, 37.

Bruen invalidated New York’s “proper cause” firearm-licensing standard (Former N.Y. Penal Law § 400.00(2)(f)), which required that New Yorkers demonstrate a “special need for self-protection distinguishable from that of the general community.” *Bruen*, 597 U.S. at 12-13 (quoting *In re Klenosky*, 428 App.Div.2d 793 (1980)). That “demanding” requirement “broadly prohibit[ed]” the core right and rendered it “virtually impossible” to bear arms. *Id.* at 12, 38; *id.* at 76 (Alito, J., concurring). The proper-cause requirement violated the Second Amendment because there was no founding-era tradition of prohibiting the right to bear arms on the grounds that the applicant could not show a sufficient need to exercise that right. *Id.* at 37, 70.

Now that *Bruen* has rendered licensing standards vulnerable to constitutional attack, a critical constitutional question has repeatedly arisen in our nation’s criminal courts: when an individual is subject to an unconstitutional licensing

standard and then prosecuted for unlicensed-weapon possession, under what circumstances does the Second Amendment furnish a defense to criminal prosecution.

In *Wilson v. Hawaii*, 145 S. Ct. 18 (2024), several Justices, in statements respecting the denial of certiorari, discussed the need to review the question presented in an appropriate case. There, the petitioner was prosecuted for unlicensed-firearm possession under a discretionary licensing regime that closely paralleled New York’s proper-cause standard. *Id.* at 21 (Thomas and Alito, JJ.). Although that case’s “interlocutory posture” rendered it a poor vehicle for deciding the question presented, *id.* at 18, Justices Thomas, Alito, and Gorsuch flagged the important question presented.

Justice Gorsuch observed that, where penal statutes prohibit *unlicensed* weapon possession, the licensing laws and the unlicensed-possession criminal statutes “work hand-in-glove.” *Id.* at 22-23 (Gorsuch, J.). So, a constitutional defect in the licensing laws may taint the unlicensed-possession charge itself. *Id.*

Justice Thomas and Alito’s separate statement explained that “[a] defendant can always raise unconstitutionality as a defense ‘where a statute is invalid upon its face and an attempt is made to enforce its penalties in violation of constitutional right.’ A ‘long line of precedent’ confirms this point.” *Id.* at 20 (quoting *Smith v. Cahoon*, 283 U.S. 553, 562 (1931) and *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 755-57 (1988)). “In an appropriate case,” the Court “should make clear that Americans are always free to invoke the Second Amendment as a defense against unconstitutional firearms-licensing schemes.” *Id.* at 21-22.

This is that “appropriate case.” At the time of his felony arrest for unlicensed weapon possession in New York, Mr. Peguero was a “law abiding” American with no criminal record. *Bruen*, 597 U.S. at 8-10. He was not, consistent with the Second Amendment, subject to disarmament. He had a Florida public-carry license and had even applied for a New York license in December 2021, while the unconstitutional proper-cause standard was still in full effect. After his indictment for unlicensed weapon possession in New York, he argued that the Constitution barred the State from prosecuting him for violating an unconstitutional firearms-licensing standard. The New York courts refused to honor his Second Amendment defense, leaving him with a felony conviction.

This petition raises the question of whether, and under what circumstances, individuals prosecuted under unconstitutional firearms-licensing regimes can raise a Second Amendment defense to a criminal charge for unlicensed firearm possession. This Court should intervene to prevent state courts from continuing to convert a fundamental right into one that plays no role against the State’s most oppressive power: the power to convict and punish.

STATEMENT OF THE CASE

A. Petitioner Is Prosecuted for Unlicensed-Firearm Possession

Since a young age, Petitioner has lived in fear of violence. Pet. App. 12a. Growing up, he witnessed people shooting guns in his neighborhood. *Id.* When he was 14, bullets whizzed by him as he was playing basketball. *Id.* In his adult life, he was

robbed multiple times: once at gunpoint and once after someone attacked him with a baseball bat. *Id.*

Mr. Peguero believed that carrying a gun would protect him from this kind of violence. *Id.* He therefore completed a basic firearms-training course and applied for a firearm license in Florida on September 2, 2021. *Id.* Two weeks later, after verifying that he met the threshold requirements, Florida issued him a concealed-carry license. *Id.*

Petitioner subsequently applied for a New York State public-carry license on December 15, 2021, and submitted his fingerprints to the State on March 7, 2022 for a background check. *Id.* His application, governed by the insurmountable proper cause standard (Former N.Y. Penal Law § 400.00(2)(f)), would languish for over six months.

At the time of his application, Petitioner was a 28-year-old Bronx resident enrolled in online classes at Arizona State University and working towards a bachelor's degree in technology, entrepreneurship, and management. Pet. App. 10a. He had already received an associate degree from a community college and had held positions as a bank teller and a pharmacy technician. *Id.* Petitioner had no criminal convictions or history of mental illness. Pet. App. 12a. There were no restraining orders or orders of protection pending against him. *Id.*

On July 15, 2022—seven months after submitting his firearm license application in New York and while it remained pending—New York City Police Department (“NYPD”) officers pulled him over for tinted windows. Pet. App. 10a.

Petitioner was forthright with the officers and told them, “There’s a gun in the car, but I have a Florida permit.” *Id.* For his honest admission that he was exercising his Second Amendment rights, Petitioner would ultimately be arrested and charged with, among other lesser charges, second-degree criminal possession of a weapon, a C-violent felony carrying a mandatory prison term of 3.5 years and a maximum of 15 years. *See* N.Y. Penal Law § 265.03(3); Pet. App. 11a; *see also id.* (the indictment also charged [1] criminal possession of a firearm under § 265.01-b(1); [2] fourth-degree criminal possession of a weapon under § 265.01(1); and [3] possession of ammunition under N.Y.C. Admin. Code § 10-131(i)(3)). A license is an absolute defense to all of the firearm-possession charges in the indictment. *See* N.Y. Penal Law § 265.20(a)(3).

NYSRPA v. Bruen, 597 U.S. 1 (2022), which struck down New York’s proper-cause standard as unconstitutional, had been decided three weeks prior to his July 2022 arrest. The New York statute repealing the proper-cause requirement did not go into effect until September 2022. N.Y. Session Laws, L. 2022, ch. 371, § 1, § 26.

On August 5, 2022, three weeks after the arrest, the NYPD denied Petitioner’s public-carry-license application. Pet. App. 43a. No longer capable of wielding the unconstitutional proper-cause standard since *Bruen* had struck it down several weeks earlier, the NYPD denied the license application because of Petitioner’s moving-vehicle violations, prior allegations lodged against him, and prior arrests (none of these prior allegations or arrests resulted in a criminal conviction). *Id.* (invoking 38 Rules of the City of New York § 5-10(a),(e),(g),(i),(n)).

B. Petitioner Raises a Second Amendment Defense to the Charges

Because there were no lawful bases for disarming him, Petitioner moved to dismiss the indictment under the Second Amendment and *Bruen*. Pet. App. 14a-23a. He pressed that he was a law-abiding citizen who had the constitutional right to carry a firearm in public for self-defense, had successfully obtained a valid Florida license, and had made good-faith but futile efforts to obtain a New York gun permit under an unconstitutional licensing scheme. *Id.* As Petitioner’s application had been pending for seven months, he was not required to wait indefinitely for permission that was unlikely to ever come before exercising his right. *Id.* Further, local New York City licensing provisions that purportedly justified his application’s denial were, like the proper-cause requirement (Former N.Y. Penal Law § 400.00(2)(f)) unconstitutionally restrictive under *Bruen*. Pet. App. 18a.

The State opposed, stating that *Bruen* “did not disturb any other aspect of New York’s gun licensing scheme” apart from the proper-cause requirement. Pet. App. 50a. “*Bruen* was a civil case”; the plaintiffs there “did not seek to take the law into their own hands by obtaining guns illegally and carrying those unlicensed firearms on city streets. The *Bruen* decision, therefore, does not implicate New York’s *criminal* laws forbidding possession of unlicensed firearms, as those laws, by definition, do not apply to law-abiding citizens.” Pet. App. 53a. The State did not claim there were any lawful bases for denying Petitioner a license, nor did it defend the New York City licensing restrictions that the NYPD had invoked after the arrest. *See also* Petitioner’s Reply: Pet. App. 56a-59a (the State “does not offer any explanation or argument for why Mr.

Peguero in particular could lawfully be denied a license, or why it took seven months to deny his application”).

The trial court denied the motion to dismiss. Pet. App. 4a-7a. The court found that Petitioner had “made a colorable claim of standing” to challenge the licensing laws because he had applied for a license. Pet. App. 6a. But the court held that *Bruen* neither invalidated the entire state-licensing statute nor the New York City licensing laws. Pet. App. 5a-6a.

C. The Guilty Plea and Subsequent Appellate Litigation

Petitioner pled guilty on May 10, 2023 to fourth-degree criminal possession of a weapon, a misdemeanor (N.Y. Penal Law § 265.01(1)), in satisfaction of the indictment. He was sentenced to a conditional discharge.

On appeal to the Appellate Division, Petitioner argued that the proper-cause standard tainted the indictment because there was no lawful basis to deny him a license. Pet App. 74a-75a, 158a-162a. Further, the post-arrest bases identified by the NYPD licensing officials were unconstitutional under *Bruen. Id.*

The Appellate Division rejected Petitioner’s argument that the conviction violated the Second Amendment “because he was convicted under a facially unconstitutional gun licensing scheme.” Pet. App. 2a. Petitioner had “standing to assert” his constitutional challenge to the proper-cause licensing statute “regardless of whether he sought to obtain a gun license.” Pet. App. 2a. But his “facial constitutional challenge fail[ed] on the merits because [*Bruen*] did not strike down New York’s gun-licensing regime in its entire[t]y but rather invalidated the statute’s

proper cause requirement and left the balance of the statute undisturbed.” *Id.* (citing *People v. Johnson*, 2025 WL 3259873, *3 (N.Y. Ct. App. Nov. 24, 2025), *cert. denied*, 2026 WL 1780086 (2026) (rejecting challenge to the New York licensing laws because *Bruen* did not invalidate the “entire” licensing scheme and the proper-cause provision was severable from the scheme’s remainder)).

After Petitioner renewed his Second Amendment claims before a Judge of the New York Court of Appeals, the Court denied leave to appeal. 45 N.Y.3d 998. This timely petition follows.

REASONS FOR GRANTING THE WRIT

The question presented is of fundamental importance to the Second Amendment rights of the American People.

In *Bruen*, this Court held that New York’s “proper cause” licensing standard violated the Second Amendment. 597 U.S. 1. There is, *Bruen* held, no founding-era tradition of conditioning the fundamental right to bear arms on a government bureaucrat’s first finding a “special need” to exercise the right. *Id.*

Individuals like Petitioner, whose criminal charges were tainted by unconstitutional firearms-licensing statutes, are entitled to a remedy. *See, e.g., Marbury v. Madison*, 5 U.S. 137, 163 (1803) (“[Our government] has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.”). After all, the government cannot lawfully prosecute and punish an individual for violating a “void” law “repugnant to the constitution.” *Moore v.*

Harper, 600 U.S. 1, 19-20 (2023) (“an act of the legislature, repugnant to the constitution, is void”) (quoting *Marbury*, *supra*).

But in reviewing the hundreds of appeals challenging convictions under unconstitutional licensing standards, New York courts are—like numerous other courts throughout the nation—asking the wrong questions and therefore getting the wrong answers. The decision below reflects an unfortunate pattern of denying relief to anyone prosecuted for unlicensed-weapon possession under an unconstitutional regime while ignoring whether that unconstitutional regime tainted the individual’s access to a license and thus to a complete defense. *See* N.Y. Penal Law § 265.20(a)(3) (a firearms license confers absolute immunity from criminal-possession prosecution).

Here, as there were no lawful bases for denying Petitioner a license—indeed the Appellate Division never even tried to identify one—this is the “appropriate case” to both confirm that “Americans are always free to invoke the Second Amendment as a defense against unconstitutional firearms-licensing schemes” and address the circumstances under which such a defense must prevail. *See Wilson*, 145 S. Ct. at 21-22 (Thomas, and Alito, JJ., statement respecting the denial of certiorari).

A. The question presented has divided our nation’s courts.

Only the District of Columbia Court of Appeals has permitted defendants to challenge criminal weapon-possession charges by demonstrating that they were subject to an unconstitutional licensing standard and that there were no other lawful bases for disarmament. *See Ward v. United States*, 318 A.3d 520, 533-36 (D.C. Ct. App. 2024) (remanding for a hearing to determine “whether [Ward] may be

‘disqualified from the exercise of Second Amendment rights’); *id.* at 533 n.12 (“Where the record does not resolve the question of whether an appellant was qualified to exercise Second Amendment rights, this court typically remands to the trial court for an evidentiary hearing to resolve the issue.”) (citing *Plummer v. United States*, 983 A.2d 323, 342 (D.C. 2009) and *Magnus v. United States*, 11 A.3d 237, 242-45 (D.C. 2011) (firearm possession cannot be penalized “unless the government proves the defendant was [otherwise] disqualified from exercising his Second Amendment rights”)). This theory is straightforward: if there are no lawful bases for depriving the defendant of a license, an unconstitutional licensing law taints a prosecution for *unlicensed* weapon possession since it deprives the accused of a defense. *See Wilson*, 145 S. Ct. at 22-23 (Gorsuch, J.) (a licensing statute works “hand-in-glove” with the unlicensed-possession-penal statute).

Numerous other state courts, by contrast, hold that defendants who did not seek and obtain a firearms-license decision lack “standing” to raise a Second Amendment challenge of the licensing regime. *State v. Wade*, 301 A.3d 393, 403-04 (N.J. App. Ct. 2023), *lv. to appeal denied*, 255 N.J. 492 (2023); *State v. Wilson*, 543 P.3d 440, 444-45 (Haw. 2024), *cert. denied*, 145 S. Ct. 18 (2024); *Bourdeau v. State*, 2023 WL 6567799 at *5 (Md. Ct. App. Oct. 10, 2023), *cert. denied*, 486 Md. 351 (2024); *State v. Ortiz*, 317 A.3d 737, 741-45 (R.I. 2024). This camp posits that “law-abiding citizens are not free to ignore a statute and presume that they would have been granted a permit but for one potentially invalid provision of a permit statute.” *Wade*, 301 A.3d at 403.

The standing camp recognizes this Court’s decisions holding that individuals need not first seek a permit under an unconstitutional permitting scheme when seeking to exercise First Amendment rights. *See Wilson*, 145 S. Ct. at 20 (Thomas and Alito, JJ.) (“A defendant can always raise [a statute’s] unconstitutionality as a defense ‘where a statute is invalid upon its face and an attempt is made to enforce its penalties in violation of constitutional right.’”) (quoting *Smith v. Cahoon*, 283 U.S. 553, 562 (1931)); *Staub v. City of Baxley*, 355 U.S. 313, 319 (1958) (“The decisions of this Court have uniformly held that the failure to apply for a license under an ordinance which, on its face, violates the Constitution does not preclude review in this Court of a judgment of conviction under such an ordinance.”) (collecting cases). Nevertheless, this standing camp affords the Second Amendment less protection than the First Amendment, declining to “incorporate[]” First Amendment protections “wholesale.” *Wade*, 301 A.3d at 404.

A third camp, which includes New York, has rejected Second Amendment defenses to unlicensed-possession charges by stressing that the defendant cannot show that the “entire licensing scheme” is unconstitutional since the offending provision is “severable” from the remainder of the licensing laws. *See, e.g., People v. Mosqueda*, 97 Cal.App.5th 399, 403 (Cal. App. 2023); Pet. App. 2a-3a (observing that *Bruen* invalidated the proper-cause standard and did not strike down the remainder of the licensing statute) (citing *Johnson*, 2025 WL 3259873, *3 (“We find the ‘proper cause’ requirement severable.”)). As the California courts have explained, “[defendants] have argued, unsuccessfully, that *Bruen* rendered California’s entire

licensing scheme facially unconstitutional, and as a result, it was unconstitutional to punish nonfelons such as them for carrying a firearm in public solely because they did not have a license.” *Mosqueda*, 97 Cal.App. 5th at 403 (citing, e.g., *People v. Miller*, 94 Cal.App.5th 935 (Cal. App. 2023)). Although such defendants have “standing to raise the [Second Amendment] defense,” it fails on the merits because “*Bruen* did not render California’s entire licensing scheme or the charges against them unconstitutional. The offending ‘good cause’ requirement is severable from the remainder of the licensing statute[.]” *Mosqueda*, 97 Cal.App.5th at 403; *see also Miller*, 94 Cal.App.5th at 945 (“Critically, while *Bruen* raises constitutional concerns regarding the licensing requirements set forth [in California law], it does not suggest [California’s] concealed carry prohibitions . . . are unconstitutional. *Bruen* addressed only the constitutionality of New York’s licensing regime—not its impact on any potential criminal charges for carrying a firearm without a license.”).

B. Contrary to the Appellate Division’s finding, Petitioner has a valid Second Amendment defense to the unlicensed-weapon-possession charges.

A “defendant can always raise [a statute’s] unconstitutionality as a defense ‘where a statute is invalid upon its face and an attempt is made to enforce its penalties in violation of constitutional right.’” *Wilson*, 145 S. Ct. at 20 (Thomas and Alito, JJ.) (quoting *Smith*, 283 U.S. at 562); *see Staub*, 355 U.S. at 319.). As this Court has held in the First Amendment context, this Court’s “decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law

purports to require a license.” *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969).

This rule makes good sense. It is unconstitutional to prosecute someone for failing to comply with a “void” law. *Harper*, 600 U.S. at 19-20. “[C]onstitutional rights are ‘self-executing prohibitions on governmental action.’ A constitutional violation accrues the moment the government undertakes an unconstitutional act” and that principle applies “to the Second Amendment[,] which is similarly self-executing.” *Wilson*, 145 S. Ct. at 20 (Thomas and Alito, JJ.) (quoting *City of Boerne v. Flores*, 521 U.S. 507, 524 (1997)). A “State transgresses” the Second Amendment “as soon as the State implements a licensing regime that is inconsistent with the Nation’s ‘historical tradition of firearm regulation.’” *Id.* at 20-21.

Further, New York’s firearms-licensing statutes, like almost all firearms-licensing statutes, work “hand in glove” with the criminal-unlicensed-possession statutes. *Wilson*, 145 S. Ct. at 22 (Gorsuch, J.); see N.Y. Penal Law § 265.20(a)(3). If the licensing statute imposes an unconstitutional standard (e.g., “proper cause”), that unconstitutional standard taints the criminal-unlicensed-possession charge too because it interferes with the defendant’s access to the absolute defense that a license confers. N.Y. Penal Law § 265.20(a)(3). New York’s pre-*Bruen* proper-cause regime, in effect at the time of Petitioner’s licensing application, is thus indistinguishable from one declaring that it is a felony to: (a) possess a loaded firearm (b) without first establishing “proper cause” to carry. Just as the Constitution would bar a conviction

under that statute, it similarly bars a conviction under the licensing scheme at issue here.

So, while it is true that *Bruen* was a civil case that addressed the “constitutionality of New York’s licensing regime” and “not its impact on any potential criminal charges for” unlicensed carry (*Miller*, 94 Cal.App.5th at 945, *see also* Pet. App. 2a-3a), it is also irrelevant. *Bruen* confirmed that licensing requirements lacking sufficient historical pedigree violate the Second Amendment. The necessary result of that decision is that Americans cannot be prosecuted for failing to satisfy unconstitutional, and thus void, licensing laws. Anything less produces the unprecedented result that a fundamental constitutional right has no role to play in a criminal case. That result would violate this Court’s precedents and ignore the basic reality that the “framers were obsessed with curbing government overreach in *criminal* matters.” Rachel E. Barkow, *Justice Abandoned*, 50 (Harv. Univ. Press 2025) (emphasis added).

To be sure, not all defendants charged with unlicensed weapon-possession can secure relief because licensing standards are unconstitutional. As the D.C. Court of Appeals has held, a defendant is not harmed by unconstitutional licensing requirements—and may be lawfully prosecuted—if the licensing statute contains other *constitutional* bases for denying the defendant a license. *Ward*, 318 A.3d at 533-36; *see also United States v. Miselis*, 972 F.3d 518, 547 (4th Cir. 2020) (conviction upheld because record “establishes conclusively that the defendants’ [] conduct falls under the statute’s surviving purposes”). A 14-year-old defendant charged with

unlicensed weapon possession, for example, would not be aggrieved by an unconstitutional proper-cause standard since that defendant's age provided a lawful basis for prosecution independent of the unconstitutional proper-cause requirement. Under such circumstances, the unconstitutional-licensing standard does not taint the unlicensed-possession charge.

Here though, the unconstitutional proper-cause standard tainted the indictment because there were no other lawful bases for denying Petitioner a license. In response to Petitioner's motion to dismiss, the State did not claim that Petitioner was in any way disqualified from public carry. Nor could it. Petitioner was a "law abiding" American citizen who was over the age of 21 and had no prior convictions. Additionally, his conduct was plainly protected by the Second Amendment. It was uncontested that he possessed a firearm for self-protection purposes.

While the NYPD found, in its post-arrest-license denial, that Petitioner could be disarmed on the basis of moving violations, prior arrests, and prior allegations of wrongdoing¹—none of which resulted in any criminal convictions—the Appellate Division did not find that those grounds were constitutional bases for license denial.²

¹ Pet. App. 43a.

² The Appellate Division vaguely stated that "defendant's argument that the New York regulations cited in the ultimate denial of his gun license application were the equivalent of the proper cause requirement that the *Bruen* court struck down rests on an inadequately developed record." Pet. App. 3a. This is incomprehensible: Petitioner plainly argued before the trial court that denying a license on the bases identified by the NYPD—moving violations, allegations, and arrests—would violate the Second Amendment, a point the State did not even contest before the trial court. Pet. App. 18a-20a ("Such unproven allegations and minor infractions are not enough to deprive someone of his Second Amendment rights."); Pet. App. 43 (documentary record of the bases for the NYPD's license denial); Pet. App. 58a ("Yet the prosecution offers no historical evidence, from the founding era or otherwise, showing that someone can be stripped of their constitutional right to carry a gun based only on unproven allegations and minor infractions, as Mr. Peguero was. That is likely because there is none: disqualifying someone from keeping and bearing arms based on tickets or arrests, without an

That is because there is no historical tradition of disarming Americans on the basis of prior accusations, moving violations, or mere arrests. *Bruen*, 597 U.S. at 70.³

The severability of the proper-cause provision cannot defeat Petitioner’s Second Amendment defense either. Pet. App. 2a-3a (citing *Johnson*, 2025 WL 3259873 (N.Y. Ct. App. Nov. 24, 2025); *Miller*, 94 Cal.App.5th at 945. To be sure, a severability analysis is necessary if the defendant is actually subject to lawful disarmament under other constitutional licensing provisions. For instance, if a defendant could also be disarmed under a constitutional order-of-protection provision, the proper-cause provision’s unconstitutionality would not furnish a defense *unless* it is unseverable from the order-of-protection provision. Under those circumstances, the accused must, to prevail, show that the unconstitutional provision is a “poison pill” that dooms other lawful and applicable licensing restrictions.

But here, as there are no constitutional bases for disarmament, the proper-cause provision tainted the indictment even though it is severable from the licensing statute’s remainder. *One* unconstitutional licensing provision is more than enough to taint a possession charge where, as here, there are no other lawful provisions justifying disarmament.

As for standing, the New York courts correctly found that Petitioner had standing to challenge the licensing laws even though he did not first secure a

accompanying conviction, is inconsistent with historical tradition.”) (citation omitted). Petitioner supplied a crystal-clear record. The State simply failed to counter it at all, thus failing to meet its burden of justifying disarmament. *See Bruen*, 597 U.S. 1 (the State bears the burden of justifying disarmament).

³ If one could be disarmed based upon arrests, accusations, or moving violations, a giant swath of Americans would have no Second Amendment rights.

licensing decision. Pet. App. 2a-3a. A contrary finding would plainly violate this Court’s precedents. *See, e.g., Staub*, 355 U.S. at 319 (holding, in a free-speech case, that “[t]he decisions of this Court have uniformly held that the failure to apply for a license under an ordinance which, on its face, violates the Constitution does not preclude review in this Court of a judgment of conviction under such an ordinance.”); *Shuttlesworth*, 394 U.S. at 151; *Smith*, 283 U.S. at 562. This Court, in First Amendment cases, has rejected the requirement that a defendant complete the licensing-application process in order to retain standing to later raise the licensing statute’s unconstitutionality as a defense. The Second Amendment is entitled to the same protections against standing rules as the First. *See Johnson*, 2025 WL 3259873, *3 (rejecting a First and Second Amendment distinction in this standing context because “the Supreme Court [has] made clear in *Bruen* that the Second Amendment is not a ‘second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’”) (quoting *Bruen*, 597 U.S. at 70)).

The government can no more punish someone for failing to satisfy an unconstitutional firearms-licensing standard than it can punish unlicensed assembly under a permit law requiring a showing that the assembly will “likely spread wisdom.” *Shuttlesworth*, 394 U.S. at 159. Nor could a state punish unlicensed marriage if its marriage-licensing standard unconstitutionally required that the couple show that “their love is likely to advance the general welfare.” And yet, when it comes to the Second Amendment, courts, such as the New Jersey appellate courts, are diluting the right to bear arms with a novel standing obstacle, reducing that right

“to the status of a “a second-class right.” *Bruen*, 597 U.S. at 70 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)).

Unconstitutionally “mandat[ing] that would-be gun owners go through an unconstitutional licensing process” (*Wilson*, 145 S.Ct. at 21 (Thomas and Alito, JJ.)), causes grave harm too. Such a regime forces Americans to sacrifice their right to bear arms—and thus the fundamental right to self-defense—while they trudge through an unconstitutional licensing system and wait for a licensing decision. The standing camp, operating under the premise that the Second Amendment right is a disfavored right, ignores that reality.

C. The Second Amendment question presented is important to core liberty interests.

The question presented is constantly recurring in the thousands of unlicensed-possession prosecutions that the states are pursuing every year. A clear answer to the question presented will provide much-needed guidance.

Courts’ indiscriminate rejection of Second Amendment defenses carries significant ramifications. In New York, unlicensed public carry is a Class C, violent felony. New York Penal Law § 265.03. An individual with no prior criminal record faces a mandatory term of incarceration between 3.5 and 15 years for merely failing to obtain a license. N.Y. Penal Law §§ 60.05(4), 70.02(3)(b). And prosecuting unlicensed possession has become a cottage industry in New York. According to the most recently published data from the New York Department of Corrections and Community Supervisions, over 4,800 individuals are currently in prison for weapons offenses. NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION,

Incarcerated Profile Report – February 2026, at Tbl. 3A (Feb. 1, 2026). Until this Court holds that the Second Amendment can furnish a defense to unlicensed-possession prosecutions, the State, having lost the power to deny licenses under unconstitutional requirements, *Bruen*, 597 U.S. 1, will paradoxically maintain the power to prosecute individuals for failing to satisfy those very requirements.

D. This case is an excellent vehicle for resolving the question presented.

The facts and procedural posture of this case make it an excellent vehicle to determine whether, or under what circumstances, individuals can be prosecuted for failing to comply with a licensing scheme that contains a facially invalid standard, such as “proper cause.”

The question is squarely and cleanly presented. Petitioner raised his Second Amendment claim at every stage of the litigation. And the state courts rejected it on the merits. The Appellate Division did not find, because the record does not support, that there were any lawful bases to disarm Petitioner. Thus, as this case comes to this Court, the unconstitutional proper-cause standard tainted the unlicensed-weapon-possession indictment.

This case also demonstrates the harsh consequences of reducing the Second Amendment to a second-class right. Petitioner, a law-abiding citizen who had already obtained a license in Florida and submitted to the licensing system in New York, is now saddled with a felony conviction because he could not secure a license under an unconstitutional licensing regime. That result is hard to square with the Second Amendment, this Court’s decisions, or common sense. Americans have little reason

to put their faith in the Second Amendment if the Amendment has no role when the State wields the “most oppressive tool in its arsenal—the criminal instrument.” Joshua Kleinfeld & Hadar Dancig-Rosenberg, *Social Trust in Criminal Justice: A Metric*, 98 Notre Dame L. Rev. 815, 869 (2022).

This Court should intervene to clarify that the Second Amendment can provide a defense to unlicensed-weapon-possession charges.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX

Appendix A

State of New York Court of Appeals

BEFORE: HON. JENNY RIVERA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Respondent,

ORDER
DENYING
LEAVE

JASON PEGUERO,

Appellant.

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure
Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: May 28, 2026


Associate Judge

*Description of Order: Order of the Appellate Division, First Department, entered February 26, 2026,
affirming a judgment of the Supreme Court, Bronx County, rendered May 10, 2023.

Appendix B

FILED: APPELLATE DIVISION - 1ST DEPT 02/26/2026 09:43 AM

2023-02642

NYSCEF DOC. NO. 22

RECEIVED NYSCEF: 02/26/2026

Kennedy, J.P., Scarpulla, Kapnick, González, Rodriguez, JJ.

5935

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

Ind. No. 73144/22
Case No. 2023-02642

-against-

JASON PEGUERO,
Defendant-Appellant.

Jenay Nurse Guilford, Center for Appellate Litigation, New York (Matthew Bova of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Maria I. Wager of counsel), for respondent.

Judgment, Supreme Court, Bronx County (Guy Mitchell, J., at motion to dismiss; Albert Lorenzo, J., at plea and sentencing), rendered May 10, 2023, convicting defendant of criminal possession of a weapon in the fourth degree, and sentencing him to a conditional discharge, unanimously affirmed.

Defendant argues that his weapon possession conviction must be vacated as violative of his Second Amendment rights because he was convicted under a facially unconstitutional gun licensing scheme and because the seven months between his submission of an application for a gun license and his arrest constituted an unconstitutionally long delay. Pursuant to *People v Johnson* (– NY3d –, –, 2025 NY Slip Op 06528, *2 [2025]), defendant’s facial challenge survives his voluntary waiver of the right to appeal, and he had standing to assert it on appeal regardless of whether he sought to obtain a gun license. However, the facial constitutional challenge fails on the merits because *New York State Rifle & Pistol Assn., Inc. v Bruen* (597 US 1 [2022]) did

Appendix B

not strike down New York's gun-licensing regime in its entirety but rather invalidated the statute's proper cause requirement and left the balance of the statute undisturbed (*see Johnson*, 2025 NY Slip Op 06528, *3).

Defendant validly waived his right to appeal (*see People v Thomas*, 34 NY3d 545 [2019], *cert denied* 589 US 1302 [2020]). Accordingly, his as-applied challenge to the licensing statute, premised on the claim that the purported delay in processing his gun license application was unconstitutional based on the particular circumstances of defendant's application, does not survive his valid appeal waiver (*see Johnson*, 2025 NY Slip Op 06528, *2). In any event, on the merits his argument fails because there is nothing in the record specifying the cause of the delay and because defendant failed to demonstrate that the delay was unconstitutionally long under the relevant circumstances. Finally, defendant's argument that the New York regulations cited in the ultimate denial of his gun license application were the equivalent of the proper cause requirement that the *Bruen* court struck down rests on an inadequately developed record. The argument fails in any event because the gun possession offense for which defendant was prosecuted was complete before the ruling on his license application.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: February 26, 2026

A handwritten signature in black ink, appearing to read 'Susanna Molina Rojas', with a stylized, cursive script.

Susanna Molina Rojas
Clerk of the Court

Appendix C

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: PART 11

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

-against-

JASON PEGUERO,

Defendant.

-----X
MITCHELL, GUY H., J:

FILED

DEC 20 2022

SUPREME COURT CLERK'S OFFICE
BRONX COUNTY

DECISION AND ORDER
IND. # 73144-2022

The defendant submits the instant motion seeking dismissal of his indictment pursuant to the Second Amendment and the United States Supreme Court decision in *New York State Rifle & Pistol Assn., Inc. v Bruen*, 142 S Ct 2111 [2022] and to CPL 210.40. The defendant's motion is *denied*.

The defendant asserts that the counts against him relating to gun possession should be dismissed under *Bruen* because he is a law-abiding citizen who has the constitutional right to carry a handgun in public for self-defense, he had a Florida gun license and he had made a good faith effort to obtain a New York gun permit. The People oppose the motion, stating that the *Bruen* decision "did not disturb any other aspect of New York's gun licensing scheme" (People's opposition at 6) apart from the "proper cause" requirement.

In *New York State Rifle & Pistol Assn., Inc. v Bruen*, 142 S Ct 2111 [2022], the Supreme Court struck down a portion of New York's firearm licensing scheme that requires an applicant to show "proper cause exists" to obtain an unrestricted license to "have and carry" a concealed pistol or revolver outside one's home or place of business (*Bruen*, 142 S Ct at 2122; *see also* Penal Law § 400.00[2][f]). The Court held that "New York's proper-cause requirement violates the Fourteenth

Appendix C

Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms” (*id.* at 2156). Specifically, the Court found too “demanding” the requirement that to carry a firearm outside one's home or place of business, the applicant must “demonstrate a special need for self-protection distinguishable from that of the general community” which “generally require(s) evidence of particular threats, attacks or other extraordinary danger to personal safety” (*id.* at 2122-2123) (internal citations omitted). The *Bruen* Court found that New York, as well as six other states and the District of Columbia, provide too much discretion to licensing officials and unconstitutionally hamper “the right of law-abiding, responsible citizens to use arms for self-defense” (*id.* at 2131).

The Court’s holding in *Bruen* did not find the entire firearm licensing scheme, nor any of the Penal Law sections that criminalize firearm possession, unconstitutional. The long-standing and constitutionally permissible prohibitions discussed in *Bruen* remain within New York State's licensing laws (*see e.g.* Penal Law § 400.00[1][c]-[e]).¹ Further, the *Bruen* decision does not preclude the prosecution for unlawful possession of a firearm of a defendant who did not previously apply for, or was denied, a license. The new regulations passed by the Legislature, effective starting September 2, 2022, eliminate the “proper cause” provision struck in *Bruen* and add additional requirements designed to preserve public safety (*see* L 2022, ch 371). These regulations do not cast doubt on the validity of Penal Law § 400.00 nor do they suggest that the Legislature intended the unfettered possession of firearms as the defendant suggests.

¹ The Court left standing that part of the licensing statute related to possessing a firearm in the home or place of business (NY PL § 400.00[2][a]) or at a place of business (NY PL § 400.00[2][b]). The Court also left in place other procedural safeguards such as background checks, criminal history and fingerprinting (NY PL § 400.00[3][4]).

Appendix C

This Court finds that the defendant has made a colorable claim of standing to challenge the constitutionality of Penal Law 265.03 as applied to him. In this case, the defendant had submitted a handgun license application in New York on December 29, 2021. The application was pending when the defendant was arrested for the instant matter on July 15, 2022.

The defendant received a Letter of Disapproval, dated August 5, 2022, indicating his application for a handgun license was denied pursuant to Title 38 of the Rules of the City of New York, sections 5-10 (A, E, G, I and N). Specifically, the defendant's application was denied because he had two (2) arrests, including the arrest for the instant matter, had five (5) criminal court summons, three (3) complaint reports, five (5) Domestic Incident Reports, and sixteen (16) moving violations (*see* Letter of Disapproval, Defense Exhibits). ²

New York City, as the defendant rightfully notes, maintains additional requirements to obtain a public carry license. The defendant argues that this City regime, consisting of a list of fourteen factors and a catch all provision, is the same type of unconstitutionally restrictive licensing law as the State regime invalidated in *Bruen*. These rules, however, were not subject to

² Title 38 of the Rules of the City of New York § 5-10- Grounds for Denial of Handgun License (a) The applicant has been arrested, indicted, or convicted for a crime or violation except minor traffic violations, in any federal, state or local jurisdiction. (e) The applicant made a false statement on her/his application, or failed to disclose her/his complete arrest history, including sealed arrests. Sealed arrests are made available to the License Division pursuant to Article 160 of the Criminal Procedure Law when an application has been made for a license to possess a gun. (g) The applicant has a history of one or more incidents of domestic violence. (i) The applicant has failed to comply with federal, state or local law or with Police Department rules governing possession and use of firearms, rifles, shotguns or ammunition. (n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the license.

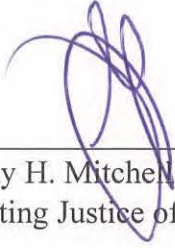
Appendix C

challenge in *Bruen* and therefore remain in effect. Per the city rules, the defendant had thirty (30) days to file an appeal to the License Division Administrative Appeal Unit but failed to do so.

Accordingly, defendant's motion is *denied*.

This constitutes the decision and order of the Court.

Bronx, NY
December 20, 2022



Guy H. Mitchell
Acting Justice of the Supreme Court

HON. GUY H. MITCHELL

Appendix D

12/2



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, CRIMINAL TERM PART 11

THE PEOPLE OF THE STATE OF NEW YORK

-against-

JASON PEGUERO,

Defendant.

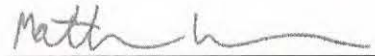
NOTICE OF MOTION TO
DISMISS THE INDICTMENT

Ind. No. 73144-22

PLEASE TAKE NOTICE, that upon the annexed affirmation and memorandum of law of Matthew A. Wasserman, Esq. and the prior proceedings in this case, the undersigned will move this Supreme Court, Criminal Term, Part 11, on the 2nd day of December, 2022, at 9:30 a.m., or as soon thereafter as counsel may be heard for an order:

1. Dismissing the four counts of the indictment relating to Jason Peguero's unlicensed possession of a firearm under the Second and Fourteenth Amendment;
2. Dismissing the four counts of the indictment relating to Jason Peguero's unlicensed possession of a firearm in the furtherance of justice under CPL § 210.40;
3. Granting such additional relief as the Court deems just and proper.

DATED: Bronx, New York
October 21, 2022



Matthew A. Wasserman, Esq.
Counsel for Jason Peguero
The Bronx Defenders
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Bronx, NY 10451
mwasserman@bronxdefenders.org
(347) 926-7452

TO: Bronx District Attorney's Office
Attn: ADA James Waller

Case No. Ind. No. 73144-22

Appendix D

Clerk of the Supreme Court, Criminal Term
Bronx County

Appendix D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, CRIMINAL TERM PART 11

THE PEOPLE OF THE STATE OF NEW YORK

-against-

AFFIRMATION

JASON PEGUERO,

Ind. No. 73144-22

Defendant.

Matthew A. Wasserman, Esq., an attorney duly admitted to practice law in New York State, affirms the following to be true:

1. I am associated with The Bronx Defenders and am one of the attorneys of record for Jason Peguero. I am familiar with the facts of this case and the prior proceedings held in it.
2. Unless otherwise indicated, all allegations of fact are based upon inspection of the record, initial investigation of the facts and circumstances of this case, conversations with Mr. Peguero, and discussions with the assigned prosecutor, and are made on information and belief.
3. Jason Peguero is a 28-year-old resident of the Bronx, currently enrolled in online classes for a bachelor's degree in technology, entrepreneurship, and management at Arizona State University. He has an associate degree from Bronx Community College and has worked as a bank teller for Chase Bank and a cashier and pharmacy technician for CVS.
4. Mr. Peguero was arrested for unlicensed possession of a loaded firearm on July 15, 2022. The felony complaint alleges that the police found a handgun in the car he was driving, in an area within his "custody and control, underneath the center console region." Compl. at 1.
5. According to the prosecution's statement notice, Mr. Peguero told the police: "There's a gun in the car, but I have a Florida permit." Voluntary Disclosure Form (VDF) at 1.

6. Mr. Peguero was later indicted on six counts: (1) Criminal Possession of a Weapon in the Second Degree, in violation of Penal Law § 265.03(3); (2) Criminal Possession of a Firearm, in violation of Penal Law § 265.01-b(1); (3) Criminal Possession of a Weapon in the Fourth Degree, in violation of Penal Law § 265.01(1); (4) Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree, in violation of VTL § 511(1)(a); (5) Unlicensed Driving, in violation of VTL § 509(1); and (6) Possession of Ammunition, in violation of NYC Admin. Code § 10-131(i)(3).

7. Penal Law § 265.03(3), the top charge, makes it a class C violent felony for a person to possess a loaded firearm outside of their home or place of business—unless such person has been granted a license to carry a gun in public under Penal Law § 400.00.

8. Less than a month before Mr. Peguero's arrest, on June 23, 2022, the Supreme Court of the United States struck down New York's gun-licensing regime as violating the Second and Fourteenth Amendments of the United States Constitution. *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111. *Bruen* held that Penal Law § 400.00 unconstitutionally infringed upon constitutional rights because it did not permit a person to obtain a public-carry permit unless they showed "a special need for self-defense." *Id.* at 2122. This requirement, the Court held, "violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms." *Id.* at 2156.

9. Mr. Peguero is nonetheless being prosecuted for Criminal Possession of a Weapon in the Second Degree and related charges for no other reason than that he allegedly possessed a loaded pistol in public without a license to do so.

10. There is no allegation in this case that Mr. Peguero fired the gun he allegedly possessed or had the intent to use the firearm he allegedly possessed in an unlawful manner.

11. Mr. Peguero has no criminal convictions and no history of mental illness. At the time of this incident, there was no restraining order or order of protection against him.

12. Mr. Peguero would like to be allowed to carry a gun in public for self-defense. Since he was young, he has seen people shooting guns into the air in his neighborhood. When he was about 14 years old, he was playing basketball with friends at a park when someone shot into the park in the general direction of the basketball court. A couple of years later, he was robbed at gunpoint. Then, just last year, he was robbed again and hit with a baseball bat to the head. Mr. Peguero believes that carrying a gun would help protect him against this kind of violence.

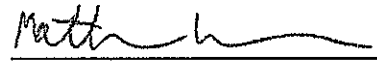
13. Mr. Peguero obtained a concealed-carry gun permit from Florida on September 16, 2021. Ex. A (FL DOA letter). He applied for this license on September 2, 2021. Ex. B (FL application). Prior to obtaining this license, he completed basic firearms training. *See id.* at 2, 3.

14. At the time of his arrest, Mr. Peguero also had a pending application for a public-carry handgun license in New York. He applied for this license on December 15, 2021. Ex. C (emails re: application). His fingerprints were taken for a background check on March 7, 2022. *Id.* at 3.

15. On August 5, 2022, the NYPD denied Mr. Peguero's application for a handgun license, based on Section 5-10 of Title 38 of the Rules of the City of New York. Ex. D (letter).¹ Although he has no criminal convictions, his application was apparently denied because he had two arrests—including *this case*—had been named as the subject of several NYPD complaint reports and domestic incident reports, and had received a number of summonses and moving violations. *See id.*

¹ Because this letter contains information about a sealed arrest and incidents that did not lead to criminal charges, a redacted version is being filed on EDDS. An unredacted version will be provided to the Court and prosecution. Though this letter says that Mr. Peguero's application for a "premise residence" license is being denied, Mr. Peguero actually applied for and was denied a public-carry license. *See Ex. C (emails)*

DATED: Bronx, New York
October 21, 2022



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, CRIMINAL TERM PART 11

THE PEOPLE OF THE STATE OF NEW YORK

-against-

MEMORANDUM OF LAW

JASON PEGUERO,

Ind. No. 73144-22

Defendant.

ARGUMENT

- I. The four counts of the indictment relating to unlicensed gun possession should be dismissed under *Bruen* because Jason Peguero is a law-abiding citizen who has a constitutional right to carry a handgun in public for self-defense, he had a Florida gun license, and he had made a good-faith effort to obtain a New York permit.

In *New York State Rifle & Pistol Association v. Bruen*, the United States Supreme Court held “that the Second and Fourteenth Amendments protect the constitutional right to carry handguns publicly for self-defense.” 142 S. Ct. 2111, 2122 (2022). New York’s gun-licensing regime, which required individuals to show “a special need for self-defense” to obtain a permit to carry a handgun in public, *id.*, was thus unconstitutional because “it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *Id.* at 2156. To be sure, the Court did not forbid states from requiring a public-carry permit. But *Bruen* distinguished between New York’s “may-issue” licensing law and the 43 states with “shall-issue” statutes, which issue gun licenses “whenever applicants satisfy certain threshold requirements.” *Id.* at 2123–24.

Jason Peguero is squarely among the “law-abiding citizens with ordinary self-defense needs” whose constitutional right to keep and bear arms is protected by this binding precedent. He is a 28-year-old college student with no criminal convictions and no history of mental illness.

Mr. Peguero would like to exercise this constitutional right and has tried to comply with state regulations in doing so. He obtained a concealed-carry permit from Florida and made good-faith efforts to obtain a license to carry a handgun in public from New York. In fact, at the time of his arrest in this case, his application for a New York public-carry license had been pending for seven months. (The NYPD denied the application after his arrest, in part based on this arrest.)

The contrast between Mr. Peguero's experience in applying for gun licenses in Florida and New York illustrates the constitutional infirmities of New York's scheme. In Florida, Mr. Peguero took a gun-safety course, filled out an application, and then two weeks later, after verifying that he met the threshold requirements, the state issued him a concealed-carry license. In New York, Mr. Peguero applied, waited several months for a fingerprint check, then waited several months longer, only for his application to be denied based on unproven allegations. This is precisely the kind of regime that the Supreme Court rejected in *Bruen*. See *id.* at 2138 n.9.

Because Mr. Peguero is a law-abiding citizen with a constitutional right to publicly carry a gun, had a Florida gun permit, and made good-faith efforts to obtain a New York license, the four counts of the indictment relating to unlicensed possession of a firearm should be dismissed. If *Bruen* does not protect him from prosecution, it is hard to understand whom it would protect.

A. The Second and Fourteenth Amendments to the United States Constitution protect Jason Peguero's right to possess and carry a firearm in public.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation." 554 U.S. 570, 592 (2008). This right of "the people" to keep and bear arms for self-defense belongs to "all

members of the political community, not an unspecified subset.” *Id.* at 580; *see also id.* at 581 (announcing a “strong presumption that the Second Amendment right . . . belongs to all Americans.”). The individual right to possess and carry guns is incorporated against the states through the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 767–78 (2010). Indeed, “the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.” *Id.* at 778.

In *Bruen*, the Supreme Court explained “that the Second and Fourteenth Amendments protect the constitutional right to carry handguns publicly for self-defense.” 142 S. Ct. at 2122. The Court rejected New York’s requirement that applicants for a public-carry license show a “special need for self-protection distinguishable from that of the general community.” *See id.* at 2138, 2156 (citation omitted). Instead, *Bruen* held, the right to publicly carry a handgun belongs to all “law-abiding citizens with ordinary self-defense needs.” *Id.* at 2156. *Bruen* also emphasized that the rights bestowed by the Second Amendment should be treated no differently than the rights protected by any other part of the constitution: “The constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” *Id.* (quoting *McDonald*, 561 U.S. at 780).

Jason Peguero is a law-abiding citizen who wishes to carry a gun for self-defense. Aff. ¶¶ 11, 12, *supra*. He has no criminal convictions and no history of mental illness. Aff. ¶ 11. And, although his efforts were ultimately futile, Mr. Peguero took substantial steps to comply with state firearms regulations. He obtained a concealed-carry permit from Florida. Aff. ¶ 13 & Ex. A. He also applied for a public-carry license in New York. Aff. ¶ 14 & Ex. C. At the time of his arrest

in this case, his application for a New York license had already been pending for seven months.

Aff. ¶ 14. (It was later denied, based in part on this arrest. Aff. ¶ 15.)

Mr. Peguero therefore has a constitutional right to publicly carry a handgun for self-defense. Surely, he was not required to wait indefinitely for permission that was unlikely to ever come before exercising this right. This is not how courts treat other constitutional rights, such as those protected by the First Amendment. *Cf. Shuttlesworth v City of Birmingham, Ala.*, 394 U.S. 147, 148–59 (1969) (holding that the First Amendment prohibited the plaintiff from being lawfully convicted of parading without obtaining a permit when the permitting scheme “empower[ed] its licensing officials to roam essentially at will, dispensing or withholding permission to speak, assemble, picket, or parade according to their own opinions” and the plaintiff understood, based on his experience, that he would never be issued a permit).

B. But for New York’s unconstitutional gun-licensing regime, Jason Peguero would have been legally allowed to carry the firearm he is charged with possessing.

The varying fates of Jason Peguero’s Florida and New York gun-license applications amply demonstrate the difference between the kind of “shall-issue” licensing regime approved of by the Court in *Bruen* and the kind of overly-restrictive “may-issue” regime struck down by the Court.

In order to lawfully carry a firearm in public in New York, the government requires citizens to first obtain a license. Under the regime in place for most of the time that Mr. Peguero’s handgun application was pending—until *Bruen* struck it down in June 2022—to grant a public-carry license, among other criteria, the licensing officer had to find that “proper cause exists.” Penal Law § 400.00(2)(f).² “Proper cause” has been defined in caselaw as “a special need for self-protection

² Since *Bruen*, New York State has revised Penal Law § 400.00. A federal district court, however, has already held that the new licensing law is likely unconstitutional on a number of grounds. *See Antonyuk v Hochul*, 1:22-CV-0986 (GTS) (CFH), ___ F. Supp. 3d ___, 2022 WL 5239895 (N.D.N.Y. Oct. 6, 2022).

Appendix D

distinguishable from that of the general community.” *In re Klenosky*, 75 A.D.2d 793, 793 (1st Dep’t 1980). And New York law criminalizes the public carrying of a firearm without first obtaining such a license. *See* Penal Law § 265.03(3); *see also People v. Hughes*, 22 N.Y.3d 44, 50 (2013) (“New York’s criminal weapon possession laws prohibit only *unlicensed* possession of handguns.”).

New York City maintains additional requirements to obtain a public-carry license, which were not subject to challenge in *Bruen* (as the plaintiffs lived upstate), and therefore remain in effect. Under Section 5-10 of Title 38 of the Rules of the City of New York, “an application for a handgun license may be denied where it is determined that an applicant lacks good moral character or that other good cause exists for denial.” Section 5-10 then lists 14 factors for licensing officials to consider in making this determination. The NYPD ultimately denied Mr. Peguero’s handgun application on this basis, rather than Penal Law § 400.00. *See* Ex. D (letter).

★ This City regime is the same kind of unconstitutionally-restrictive licensing law as the State regime invalidated in *Bruen*. In striking down New York’s “proper-cause” requirement, the Court contrasted New York’s “may-issue” regime with “shall-issue regimes” in other states that “contain only ‘narrow, objective, and definite standards’ guiding licensing officials . . . , rather than requiring the ‘appraisal of facts, the exercise of judgment, and the formation of an opinion.’” *Id.* at 2123–24, 2138 n.9. Unlike New York’s licensing regime, which prevents law-abiding citizens from exercising their Second Amendment rights, shall-issue regimes in states like Florida contain requirements “designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens,’” and were thus not called into question by *Bruen*. *See id.* at 2138 n.9.³

³ The Court left open the possibility of “constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications . . . deny ordinary citizens their right to public carry.” *Id.*

For a practical illustration of how New York's may-issue licensing regime effectively makes it impossible for law-abiding citizens to exercise their Second Amendment rights, compare the application process in Florida with that in New York. To apply for a Florida gun license, Mr. Peguero had to take a gun-safety course. He also had to answer a two-page questionnaire with 17 yes or no questions (some containing multiple parts), relating to his immigration status, mental health history, criminal history, and so on. *See* Ex. B. Because his answers established that he satisfied the statutory criteria, he was issued a concealed-carry license two weeks later. Aff. ¶ 13.

In New York, by contrast, Mr. Peguero had to wait nearly eight months for his application to be denied. And under the City Rules, officials may deny a license based on a set of 14 factors, including a catch-all provision, applied in Mr. Peguero's case, for "[o]ther information that demonstrates the lack of good moral character, an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons, and/or for public safety, and/or other good cause for the denial of the license." 38 RCNY § 5-10(n). This licensing process requires precisely the kind of "'appraisal of facts, the exercise of judgment, and the formation of an opinion'" that is disfavored by *Bruen*. *See* 142 S. Ct. at 2138 n.9.

An examination of the reasons given for denying Mr. Peguero's application shows that the City's licensing process is a "may-issue" regime in theory, but a "don't-issue" regime in fact. In *Heller* and *McDonald*, the Supreme Court recognized there may be certain exceptions to the Second Amendment's scope, noting, for example, that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." *Heller*, 554 U.S. at 570; *accord McDonald*, 561 U.S. at 786. But the rejection of Jason Peguero's public-carry application did not rely on any such narrowly-drawn and historically-grounded

exceptions. Instead, the NYPD rejected his application based on two arrests—one of which was for this case—his reported role as a suspect in a few domestic incident reports and complaints, and some summonses and moving violations. *See* Aff. ¶ 15 & Ex. D. Such unproven allegations and minor infractions are not enough to deprive someone of his Second Amendment rights.

Indeed, the resort of licensing officials to the New York City Rules to deny Mr. Peguero's application demonstrates their determination to deny him a gun license. When the Supreme Court declared New York's "proper-cause" requirement unconstitutional, licensing officials should have responded by promptly granting Mr. Peguero a public-carry permit. The logical corollary of *Bruen*'s holding that "New York's proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms," 142 S. Ct. at 2156, is that states must grant public-carry licenses to law-abiding citizens with ordinary self-defense needs like Jason Peguero. But, instead, the NYPD waited more than a month longer before denying his application based on a supposed lack of "good moral character or . . . other good cause"—and based in part on an arrest for unlicensed gun possession that occurred after *Bruen*. If his application had been approved within three weeks of the *Bruen* decision—it took two weeks to be approved in Florida—then he would have had a permit by the time of his arrest.

In sum, if New York had a "shall-issue regime" of the kind approved of by the Supreme Court, Jason Peguero's application for a public-carry license would have almost certainly been approved by the time of his arrest on July 15, 2022—seven months later. Indeed, the swift approval of his Florida application appears to prove the point. But since he lives in New York, and was subject to a licensing regime that prevents law-abiding citizens from carrying guns, he is instead being criminally charged with unlicensed possession of a firearm for exercising his constitutional rights.

C. The four counts relating to unlicensed gun possession should be dismissed because this prosecution infringes upon Jason Peguero's constitutional rights.

Jason Peguero is being charged with Criminal Possession of a Weapon in the Second Degree, a "C" violent felony, solely because he did not obtain a public-carry permit. He is also being charged with the lesser-included counts of Criminal Possession of a Firearm, Criminal Possession of a Weapon in the Fourth Degree, and Possession of Ammunition; the only basis for these charges, too, is that he allegedly possessed a pistol and ammunition without a license to do so. Since this prosecution infringes upon Mr. Peguero's Second and Fourteenth Amendment rights, this Court should dismiss the four counts of the indictment relating to unlicensed gun possession.

The Criminal Procedure Law grants this Court the authority to dismiss counts of an indictment that violate a criminal defendant's constitutional rights. Criminal Procedure Law § 210.20(1)(a) allows the accused to move to dismiss an indictment, or counts of an indictment, when "[s]uch indictment or count is defective, within the meaning of section 210.25." And "[a]n indictment or a count thereof is defective within the meaning of [CPL § 210.20(1)(a)] when . . . [t]he statute defining the offense charged is unconstitutional." CPL § 210.25(3). Similarly, Criminal Procedure Law § 210.20(1)(h) allows the accused to move to dismiss an indictment, or counts of the indictment, when there exists a "jurisdictional or legal impediment to conviction." Regardless of whether the statutes defining the charged offenses are considered unconstitutional as applied to this case, or whether the infringement upon Mr. Peguero's constitutional rights is better understood as a "legal impediment to conviction," this Court can—and should—dismiss the four counts relating to the possession of a firearm and ammunition without a license.

The way the First Amendment shields individuals from criminal liability provides a fruitful analogy. It is well established that "any proscription of pure speech must be sharply

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limited to words which, by their utterance alone, inflict injury or tend naturally to evoke immediate violence.” *People v. Golb*, 23 N.Y.3d 455, 467 (2014) (quoting *People v. Dietze*, 75 N.Y.2d 47, 52 (1989)). In other words, “prohibitions of pure speech must be limited to communications that qualify as fighting words, true threats, incitement, obscenity, child pornography, fraud, defamation or statements integral to criminal conduct.” *People v. Marquan M.*, 24 N.Y.3d 1, 7 (2014). Accordingly, when a person is prosecuted for speech that does not fall into one of these categories, the charges must be dismissed for attempting to criminalize constitutionally protected activity. *See, e.g., People v. Orr*, 47 Misc. 3d 1213(a), at *2-5 (Crim. Ct. N.Y. Cty. 2014) (dismissing misdemeanor count of aggravated harassment as facially insufficient because the complaint did not allege a “true threat”). Likewise, here, the four counts of the indictment relating to unlicensed gun possession should be dismissed as they attempt to criminalize the precise kind of conduct that is protected by the Second and Fourteenth Amendments under binding Supreme Court precedent. *See Bruen*, 142 S. Ct. at 2122, 2156.

The D.C. Court of Appeals dealt with a series of similar cases after the Supreme Court declared Washington, D.C.’s ban on handgun possession in the home to be unconstitutional in *Heller*. In *Plummer v. United States*, the D.C. Court of Appeals held that criminal defendants could raise the Second Amendment as an affirmative defense when accused of possessing a handgun in the home. 983 A.2d 323, 340-42 (D.C. 2009). Then, in *Magnus v. United States*, the D.C. Court of Appeals made clear that “unless the government proves the defendant was disqualified from exercising his Second Amendment rights,” it is “impermissible under the Second Amendment to convict a defendant” for unlicensed possession when an unconstitutional licensing scheme made it “impossible” for him to obtain a license. 11 A.3d 237, 242-43 (D.C. 2011). The same logic applies to

this case: because the prosecution cannot prove Mr. Peguero was disqualified from exercising his Second Amendment rights, and his efforts to obtain a public-carry permit demonstrate the futility of his trying to do so, it is impermissible to prosecute him for possessing a gun without a license.

Indeed, *Bruen* made clear that the right of law-abiding citizens like Jason Peguero to publicly carry a handgun cannot constitutionally be curtailed. The Court explicitly rejected the application of “means-end scrutiny in the Second Amendment context.” 142 S. Ct. at 2127. Courts are not to balance the importance of the government interest in a regulation against the burden on the Second Amendment right. *See id.* at 2126–27. Instead, there is only one question: whether “the challenged law regulates activity falling outside the scope of the right as originally understood.” *Id.* at 2126 (citation omitted). In other words, when a law is challenged as infringing upon Second Amendment rights, “the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 2127. Prosecuting law-abiding citizens for publicly carrying a firearm is not.

Jason Peguero is a law-abiding citizen who made a good-faith attempt to comply with state licensing laws, but was thwarted by an unconstitutionally restrictive permitting process. The Second and Fourteenth Amendments therefore shield him from criminal liability for exercising his constitutional right to publicly carry a handgun. The four counts of the indictment charging him with possessing a firearm or ammunition without a license should be dismissed.

II. In the alternative, the four counts of the indictment relating to the unlicensed possession of a firearm should be dismissed in the furtherance of justice.

For allegedly exercising the right to publicly carry a handgun that the Supreme Court has proclaimed to be protected by the Second and Fourteenth Amendments, Jason Peguero faces the lifelong stigma of a felony conviction and a sentence of 3.5 to 15 years in prison. Meanwhile, in

many other areas of the country individuals routinely and openly carry guns with no fear of consequence. Indeed, politicians bearing arms are a staple of political advertising. Criminalizing certain people for behavior for which others are celebrated is not equal justice.⁴ Nor is it just for Mr. Peguero to face a harsh mandatory minimum sentence when he made a good-faith effort to obtain a public-carry permit, but was stymied by an unconstitutional licensing regime.

The Criminal Procedure Law empowers this Court to dismiss an indictment, or any counts thereof, “in furtherance of justice” when “the existence of some compelling factor, consideration or circumstance clearly demonstrat[es] that conviction or prosecution of the defendant . . . would constitute or result in injustice.” CPL § 210.40(1). The availability of relief depends “only on principles of justice, not on the legal or factual merits of the charge or even on the guilt or innocence of the defendant.” *People v. Clayton*, 41 A.D. 2d 204, 206 (2d Dep’t 1973). The statute’s “thrust . . . has been ‘to allow the letter of the law gracefully and charitably to succumb to the spirit of justice.’” *People v. Rickert*, 58 N.Y.2d 122, 126 (1983) (citation omitted).

In deciding whether to grant a motion for dismissal in the interest of justice, courts must consider ten statutorily enumerated factors. *See* CPL § 210.40(1). These factors are discussed below in turn. While a couple of these factors cut against Mr. Peguero or are neutral, taken as a whole these factors favor a dismissal of the gun-related counts in the furtherance of justice. It would be a grave injustice to convict him of a felony for constitutionally-protected activity despite his Florida concealed-carry license and efforts to obtain a New York public-carry permit.

⁴ According to the NYPD’s own arrest data, in 2020 “96% of arrests made for gun possession under N.Y. Penal Law § 265.03(3) were of Black or Latino People.” Brief of the Black Attorneys of Legal Aid et al. as Amici Curiae in Support of Petitioners in *Bruen*, 2021 WL 4173477, at *15 (July 20, 2021). This is consistent with the history of New York’s firearms licensing laws and enforcement, which “consciously excluded people of color” from obtaining gun licenses “[t]hroughout the twentieth century.” *Id.* at 9-11.

A. The seriousness and circumstances of the offense

This is far from the most heinous of crimes, and the circumstances make it even less so.

Jason Peguero is charged with possessing a loaded firearm without a license. The gun was allegedly found in the center console of his car. And there is no allegation that he fired it or intended to use it unlawfully. All he is being accused of is unlicensed possession, not use.

This conduct falls under the Second Amendment's protection. Just three weeks before his arrest, the highest court in the land announced that law-abiding citizens like Jason Peguero have a constitutional right to publicly carry handguns—and that New York's licensing law impermissibly prevented such citizens from exercising this right. *Bruen*, 142 S. Ct. at 2122, 2156.

Moreover, the only thing that makes Mr. Peguero's purported conduct illegal is his lack of a license. Yet he had already obtained a Florida gun permit and applied for a New York license. Aff. ¶¶ 13, 14. And, as discussed above, if New York had a constitutionally permissible permitting scheme, he would have almost certainly been granted a public-carry permit before his arrest.

This factor, then, supports dismissal in the interest of justice.

B. The extent of harm caused by the offense

There is no harm caused by possessing a gun without a license. This is merely a *malum prohibitum* offense. And if Mr. Peguero had succeeded in his attempt to obtain a public-carry permit, there would have been no crime committed either. This factor also supports dismissal.

C. The evidence of guilt, whether admissible or inadmissible at trial

This factor cuts against Mr. Peguero, but it is not dispositive. Dismissal in the furtherance of justice may be granted even when "the evidence of guilt is unquestioned." *People v. Hirsch*, 85 A.D.2d 902, 902 (4th Dep't 1981). As discussed above, dismissal in the interest of justice

depends “only on principles of justice, not on the legal or factual merits of the charges or even on the guilt or innocence of the defendant.” *Clayton*, 41 A.D.2d at 206.

D. Jason Peguero’s history, character, and condition

Jason Peguero is a 28-year-old college student without a criminal record. These factors may not be exceptional; however, they still support the dismissal of the gun-related charges.

E. Any exceptionally serious misconduct of law enforcement personnel

Though the defense believes the evidence against Mr. Peguero may have been obtained in violation of his constitutional rights, it does not allege any *exceptionally* serious police misconduct.

F. The purpose and effect of imposing an authorized sentence upon Jason Peguero

If Mr. Peguero is convicted of the top count, a “C” violent felony, he faces a minimum of three and a half years’ imprisonment and a maximum of fifteen years. Penal Law § 70.02(3)(b). In prison, he would likely be subjected to violent, cruel, and degrading conditions. And when he gets out, he would be saddled with the burden and stain of a felony record for life. This would likely estrange him from his family and friends, and make it far more difficult to find a job.⁵ Given that Mr. Peguero has no criminal record, made good-faith efforts to obtain a gun license, and his conduct was protected by the Second Amendment, this would be wildly disproportionate.

G. The impact of a dismissal upon public confidence in the criminal-justice system

If anything, it would boost public confidence to see a court step in to stop the prosecution of someone who made a good-faith attempt to comply with state licensing laws, but was unable to

⁵ A recent study estimates that spending time in prison reduces a person’s lifetime earnings by over half and even a felony conviction alone (without imprisonment) reduces lifetime earnings by 22 percent. Brennan Center for Justice, *Conviction, Imprisonment, and Lost Earnings* (2020), at 7 tbl. 1, available at https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf.

obtain a permit under a licensing regime that the Supreme Court has held to be unconstitutional.

Whether or not this is a “legal impediment to conviction,” it is at least a moral impediment.

H. The impact of a dismissal on the safety or welfare of the community

A dismissal would not adversely affect community safety or welfare. Mr. Peguero has no criminal convictions and the crime alleged is unlicensed possession, not a crime against a person.

I. The attitude of the complainant or victim with respect to the motion

What is alleged here is a possessory crime. There is no complainant or victim to consider.

J. Any other fact indicating that a conviction would serve no useful purpose

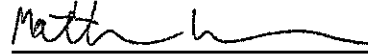
Notable here is Jason Peguero’s Florida concealed-carry license. New York may not be legally obliged to give full faith and credit to this out-of-state permit, but it routinely recognizes the validity of out-of-state driver’s licenses and marriage licenses even though other states have different processes and criteria for awarding such licenses. And cars, too, can be a deadly weapon in the wrong hands. It serves no useful purpose to prosecute someone for possessing a firearm without a license when they did possess a license, just from the wrong state.⁶

CONCLUSION

Because the Supreme Court has held that the Second and Fourteenth Amendments protect the rights of “law-abiding citizens with ordinary self-defense needs” to carry a handgun in public, and Jason Peguero is among the class of law-abiding citizens who are protected by this precedent, this Court should dismiss the four counts of the indictment relating to unlicensed gun possession. *See Bruen*, 142 S. Ct. at 2156; *see also* U.S. Const. Amend. II, XIV; CPL §§ 210.20, 210.25. In the alternative, this Court should dismiss these counts in the interest of justice. *See* CPL § 210.40.

⁶ In fact, the noticed statement suggests that Mr. Peguero may have believed that his Florida license made it legal for him to publicly carry a gun: “There’s a gun in the car, but I have a Florida permit.” VDF at 1.

DATED: Bronx, New York
October 21, 2022



Matthew A. Wasserman, Esq.
Counsel for Jason Peguero
The Bronx Defenders
360 East 161st Street
Bronx, NY 10451
mwasserman@bronxdefenders.org
(347) 926-7452

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, CRIMINAL TERM PART 11

THE PEOPLE OF THE STATE OF NEW YORK

-against-

JASON PEGUERO,

Defendant.

AFFIRMATION OF SERVICE

Ind. No. 73144-22

I, Matthew Wasserman, an attorney duly admitted to practice law in the State of New York, under penalty of perjury and pursuant to Rule 2106 of the CPLR, hereby affirm that the following statements are true, except those based upon information and belief, which I believe to be true:

1. I am an attorney at The Bronx Defenders. I am over eighteen years of age and am not a party to this action.
2. On October 21, 2022, I served a true copy of the motion to dismiss in this case on the Bronx County District Attorney's Office by transmitting the same via electronic means to the following e-mail address: BXDAMotions@bronxda.nyc.gov, which is the email address designated by the Bronx District Attorney's Office for service of all non-appellate filings.
3. On October 21, 2022, I served a true copy of the attached motion to dismiss upon New York Attorney General Letitia James by mailing a true copy of the attached papers, enclosed and properly sealed in a postpaid envelope, which I caused to be deposited in an official depository under the exclusive care and custody of the United States Postal Service within New York State addressed to Attorney General Letitia James at: Office of the Attorney General, 28 Liberty Street, New York, NY 10005, ATTN: Managing Attorney's Office/Personal Service.

DATED: Bronx, New York
October 21, 2022



Matthew A. Wasserman, Esq.
Counsel for Jason Peguero
The Bronx Defenders
360 East 161st Street
Bronx, NY 10451
mwasserman@bronxdefenders.org
(347) 926-7452

Exhibit A

Appendix D

DIVISION OF LICENSING
(850) 245-5500
(850) 245-5353 FAX



POST OFFICE BOX 5647
TALLAHASSEE, FLORIDA 32314-5647

4040 ESPLANADE WAY, SUITE 135
TALLAHASSEE, FLORIDA 32399

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES COMMISSIONER NICOLE "NIKKI" FRIED

August 10, 2022

James B. Waller, Esq.
Bronx County District Attorney's Office
198 East 161st Street
Bronx, NY 10451

RE: Case Number: CR-012553-22BX

Dear Mr. Waller:

In response to your public records request, a search of our files indicates Jason Peguero, date of birth September 28, 1994, was issued Concealed Weapon or Firearm License WY3134525, pursuant to Section 790.06, Florida Statutes, on September 16, 2021. This license is in good standing and will expire unless renewed on September 16, 2028. There have been no administrative actions filed against this license.

Pursuant to Section 790.0601, Florida Statutes, the personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm is confidential and exempt from Section 119.07(1), Florida Statutes and Section 24(a), Article 1 of the State Constitution (the Public Records Law). Accordingly, the information contained in this correspondence is provided for law enforcement use only.

Please contact me at 850-245-5459 or DOLPublicRec@fdacs.gov if you need further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Gay", is written over a horizontal line.

Kevin Gay
Records Analyst

Exhibit B



Florida Department of Agriculture and Consumer Services
Division of Licensing
Appendix B
APPLICATION FOR CONCEALED WEAPON OR FIREARM LICENSE

NICOLE "NIKKI" FRIED
COMMISSIONER

Chapter 790, Florida Statutes
Post Office Box 6687 • Tallahassee, FL 32314-6687 • (850) 245-5691
www.mylicensesite.com



T150737325

S M I T H #3123

2021 SEP -7 AM 6:24
DOL-TAH #3123

SECTION I APPLICANT INFORMATION

Read application instructions before you begin. Place letter/number inside each box as shown above.

SOCIAL SECURITY NUMBER

VOLUNTARY

See APPLICATION INSTRUCTIONS

ALIEN REGISTRATION NUMBER

If you are an alien, provide your 8- or 9-digit Alien Registration Number.

LAST NAME

FIRST NAME

MI

Pegucero

Jason

RESIDENCE ADDRESS

PHONE NUMBER

1425 Wythe Place

9292548720

RESIDENCE ADDRESS CONTINUED (SUITE, BLDG., APT., ETC.)

SE

CITY

STATE ZIP CODE

Bront

NY 10452

MAILING ADDRESS IF DIFFERENT FROM ABOVE

MAILING ADDRESS CONTINUED (SUITE, BLDG., APT., ETC.)

CITY

STATE ZIP CODE

SEX

RACE

EYE COLOR

HAIR COLOR

DATE OF BIRTH (MMDDYYYY)

WEIGHT

HEIGHT

M

H

Brown

Black

09281994

210 LBS

6 FT 01 IN

PLACE OF BIRTH - (INCLUDE STATE OR PROVINCE --- AND COUNTRY)

New York, USA

EMAIL ADDRESS

JasonPegucero20@gmail.com

Are you an active-duty United States military servicemember, as defined in Section 250.01, Florida Statutes, or an honorably discharged United States veteran, as defined in Section 1.01, Florida Statutes, and are requesting expedited processing of your application?

☐ YES ☒ NO

SECTION II QUALIFYING DATA (SHADE IN THE APPROPRIATE CIRCLE)

1. Are you applying for this license as a consular security official of a foreign government which meets the standards defined in Section 790.06(2)(a), Florida Statutes?

☐ YES ☒ NO

2. Do you hold an active certification from the Florida Criminal Justice Standards and Training Commission as a law enforcement officer, correctional officer, or correctional probation officer as defined in Section 943.10(1), (2), (3), (6), (7), (8) or (9), Florida Statutes?

☐ YES ☒ NO

3a. Are you a retired Florida law enforcement officer, correctional officer, or correctional probation officer as defined in Section 943.10 (1), (2) or (3), Florida Statutes?

☐ YES ☒ NO

3b. If you answered YES to Question 3a., have you been retired for one year or less?

☐ YES ☒ NO



LICCW02

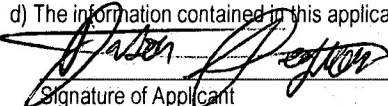
Appendix D	
4a. Do you qualify for exemption from the public records law as provided by s. 119.071, Florida Statutes?	☐ YES ☒ NO
4b. If YES, do you wish to have the specified information kept confidential?	☐ YES ☐ NO
5a. Have you ever renounced or formally given up United States citizenship? If YES, you are not eligible for licensure.	☐ YES ☒ NO
5b. Are you currently residing in the United States? If NO, you are not eligible for licensure unless you are serving overseas in the United States Armed Forces.	☒ YES ☐ NO
5c. Are you a United States citizen? If YES, proceed to question 6. If NO, proceed to question 5d.	☒ YES ☐ NO
5d. Are you deemed a lawful permanent resident alien by the Department of Homeland Security, U.S. Citizenship and Immigration Services? If you are neither a U.S. citizen nor a permanent resident alien, you are not eligible for licensure.	☐ YES ☐ NO
6. Have you received training with a firearm as required by Section 790.06(2)(h), Florida Statutes, relating to competency with a firearm?	☒ YES ☐ NO
7. Have you ever been convicted of a felony?	☐ YES ☒ NO
8. Have you had adjudication of guilt withheld or imposition of sentence suspended on any felony charge?	☐ YES ☒ NO
9. Have you had adjudication of guilt withheld or imposition of sentence suspended on a misdemeanor crime of domestic violence?	☐ YES ☒ NO
10. Have you been convicted, found guilty of, or had adjudication withheld on one or more misdemeanor crimes of violence?	☐ YES ☒ NO
11. Have you been convicted or found guilty of a misdemeanor crime of domestic violence? If YES, you are not eligible for licensure.	☐ YES ☒ NO
12. Have you been issued an injunction that is currently in force and effect that restrains you from committing acts of domestic violence or acts of repeat violence? If YES, you are not eligible for licensure.	☐ YES ☒ NO
13. Have you ever been adjudicated incapacitated, committed to a mental institution, or adjudicated mentally defective?	☐ YES ☒ NO
14. During the three years preceding the date of this application, have you been:	
a. Committed for the abuse of controlled substances, or been found guilty or convicted of a crime under the provisions of Chapter 893, Florida Statutes, or similar laws of any other state, or had multiple arrests for such offenses within the past five years with the most recent arrest occurring within the past year?	☐ YES ☒ NO
b. Committed for the abuse of alcoholic beverages or other substances under the provisions of Chapter 397, or under the provisions of former Chapter 396, Florida Statutes, or convicted under Section 790.151, Florida Statutes, or been deemed a habitual offender under the provisions of Section 856.011(3), Florida Statutes, or similar laws of any other state?	☐ YES ☒ NO
c. Convicted two or more times under Section 316.193, Florida Statutes, or similar laws of any other state for driving under the influence of alcohol or a controlled substance? If you answered YES to any of these questions, you are not eligible for licensure.	☐ YES ☒ NO
15. Are you under arrest or currently charged in any court with a felony, any crime punishable by imprisonment for more than one year, or any crime of violence, including crimes of domestic violence?	☐ YES ☒ NO
16. Are you a fugitive from justice?	☐ YES ☒ NO
17. Have you been discharged from the Armed Forces under dishonorable conditions? If YES, you are not eligible for licensure.	☐ YES ☒ NO

SECTION III OATH OF APPLICANT

THIS APPLICATION IS EXECUTED UNDER OATH. FALSIFICATION OR MISREPRESENTATION OF ANY PART OR ANY DOCUMENT SUBJECTS THE APPLICANT TO CRIMINAL PROSECUTION UNDER SECTION 837.06, FLORIDA STATUTES.

I DO SWEAR AND AFFIRM THAT:

- a) I have been provided a website link to Chapter 790, Florida Statutes, relating to weapons and firearms, and that I am knowledgeable of the provisions contained therein.
- b) I desire a legal means to carry a concealed weapon or firearm for lawful self-defense.
- c) I do not suffer from a physical infirmity that would prevent my safely handling a weapon or firearm.
- d) The information contained in this application and all attached documents is true and correct to the best of my knowledge.


Signature of Applicant

9/2/21
Date Signed



NATIONAL RIFLE ASSOCIATION OF AMERICA

certifies that

JASON CESAR PEGUERO

has successfully completed the

BASICS OF PISTOL SHOOTING

Marksanship Skill Level: Level 2

Antonio B. Urena

INSTRUCTOR SIGNATURE

ANTONIO B. URENA

INSTRUCTOR PRINTED NAME

151841184

INSTRUCTOR I.D.

September 2, 2021

DATE

John C. Frazer

JOHN C. FRAZER, SECRETARY
NATIONAL RIFLE ASSOCIATION

SERIAL NUMBER: 535958

THE NATIONAL RIFLE ASSOCIATION OF AMERICA

CERTIFIES THAT

ANTONIO B. URENA

*Has successfully met the requirements established by the
National Rifle Association of America and is hereby designated an*

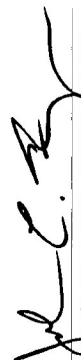
NRA INSTRUCTOR

and is authorized to teach the following basic courses:

**Certified Home Firearm Safety * Certified Pistol * Certified Rifle * Certified Shotgun * Personal
Protection In The Home**



NRA


JOHN C. FRAZER, SECRETARY
NATIONAL RIFLE ASSOCIATION

Valid through: 3/31/2022

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Exhibit C

Appendix D

Fwd: Handgun eCheck Initiated

Jason Peguero [REDACTED]

Wed 8/10/2022 11:01 AM

To: Oded Oren <odedo@bronxdefenders.org>

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

From: **NYPD-Work, SERVICE** <donotreplylicdiv@nypd.org>

Date: Wed, Dec 15, 2021 at 11:38 PM

Subject: Handgun eCheck Initiated

To: [REDACTED]

Dear ,

Reference # P-2021018960

Our records indicate that you have initiated an application for a Special Carry handgun license. You authorized payment of the application fee through CityPay eCheck. Your payment is in "pending" status with your bank. Once your bank has completed processing of your payment, we will notify you through e-mail.

Sincerely,

Deputy Inspector Hugh Bogle

Commanding Officer

License Division

Appendix D

Fwd: Handgun Submitted application

Jason Peguero [REDACTED]

Wed 8/10/2022 11:01 AM

To: Oded Oren <odedo@bronxdefenders.org>

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

From: **NYPD-Work, SERVICE** <donotreplylicdiv@nypd.org>

Date: Wed, Dec 29, 2021 at 2:50 PM

Subject: Handgun Submitted application

To: Peguero, Jason C. [REDACTED]

Dear Peguero, Jason C.

The New York City Police Department License Division has received your application for Special Carry handgun license. Payment of your application fee was also received. Your application number is SC2021018402.

Next Steps: You will be scheduled through e-mail to be fingerprinted. The fingerprint fee is \$88.25 (eighty eight dollars and twenty five cents). The fee must be paid by credit card, debit card or money order (Postal or U.S. Bank) payable to "New York City Police Department."

Please bring

- Fingerprint fee payment.
- A government-issued photo ID.
- Your Application Number and/or a copy of this email.
- Originals of all uploaded documents.

Location

[1 Police Plaza, Room 110A, New York, NY 10038](#)

Government ID

A government issued ID is required for access to the building and for fingerprinting.

Sincerely,

Deputy Inspector Hugh Bogle
Commanding Officer
License Division

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Fwd: NYPD LICENSE DIVISION- APPOINTMENT CONFIRMATION

Jason Peguero [REDACTED]

Tue 8/9/2022 2:12 PM

To:

- Oded Oren <odedo@bronxdefenders.org>

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

From: **BERNARD, MARK** <MARK.BERNARD@nypd.org>

Date: Mon, Feb 28, 2022 at 5:31 PM

Subject: NYPD LICENSE DIVISION- APPOINTMENT CONFIRMATION

To: Peguero, Jason C. [REDACTED]

Good Afternoon Mr. Peguero,

This email is to confirm your fingerprinting appointment for Monday, **March 07, 2022** at 12:00 P.M. Please bring your **NYS Driver's License**, a **Debit/Credit Card** or Money Order to pay the fingerprinting fee of \$88.25, and a **face mask** to enter the building. We are located at 1 Police Plaza, 1 Police Plaza Path, New York, N.Y. 10038 **(ROOM 110A)**.

Thank you,
P.O. BERNARD

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LICENSE APPLICATION DISAPPROVED
PD 616-121A (Rev 6-01)

LICENSE DIVISION
ADMINISTRATIVE APPEAL UNIT
1 POLICE PLAZA - Room 110
New York, NY 10038
1-646 610 5873

Jason C Peguero
[REDACTED]

DATE: 8/05/22

DISAPPROVAL#SC2021018402

NOTICE OF DISAPPROVAL

Dear Applicant:

Your application for a (Premise Residence) Handgun License is DISAPPROVED as per Title 38 of the RULES OF THE CITY OF NEW YORK §5-10 (A,E,G,I & N) based on the following reasons:

ARREST HISTORY: Applicant has 2 Arrest.

- [REDACTED]
- Arrest #B22624601N from 07/15/2022 for CPW-2nd Loaded Firearm (PL 265.03 01B F).

C/TAB SUMMONS HISTORY: You have 5 Criminal Court Summons.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

COMPLAINT REPORTS: You have 3 Complaint Reports as the listed suspect.

- [REDACTED]
- [REDACTED]
- Complaint Report # 2022-046-006733 from 07/15/2022 for Crim Poss Weapon (PL 265.01).

DIR HISTORY: Applicant has 5 Domestic Incident Reports as listed suspect.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

DRIVING HISTORY: You have 16 Moving Violations from 11/2014-06/2022.

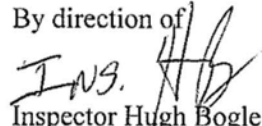
ANY OTHER PERTINENT INFORMATION: You failed to disclose during your application any Arrest, Domestic Incidents or Criminal Court Summons. This includes your Arrest #B22624601N from 07/15/2022 which occurred after your application on 12/29/2021.

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To appeal this decision, the applicant must submit a notarized statement setting forth the grounds for the appeal. The notarized statement shall contain the following language and be signed by the applicant in the presence of a Notary Public:

“Under penalty of perjury deponent being duly sworn, says that he/she is familiar with all of the statements contained herein and that each of these statements are true, and no pertinent facts have been omitted.”

Appeals that are not notarized, or appeals submitted by individuals or business entities other than the applicant (or applicant's attorney) will not be accepted. Appeals must be forwarded to the Director of the License Division within (30) days of the date of this notice. Mark Envelope – ATTENTION: APPEAL UNIT

By direction of

Inspector Hugh Bogle
Commanding Officer

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12/2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 11

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

- v. -

AFFIRMATION IN
OPPOSITION
TO DEFENDANT'S MOTION
TO DISMISS

JASON PEGUERO

INDICTMENT NO.: 73144-2022
ADJOURN DATE: 12/2/2022

Defendant.

-----X

I, **James B. Waller**, under penalty of perjury, pursuant to Rule 2106 of the C.P.L.R., hereby affirm and state:

1. That I am an Assistant District Attorney in the Office of Darcel D. Clark, District Attorney of Bronx County, and I submit this affirmation in opposition to defendant's motion to dismiss, dated and received by the Office of the Bronx County District Attorney on October 21, 2022.

2. That all answers are upon information and belief, court papers associated with this matter, and records maintained in the Office of the Bronx District Attorney, which I believe to be true and accurate.

3. Pursuant to *People v. Gruden*, 42 N.Y. 2d 214 (1977), the People specifically deny every factual allegation contained in Defendants motions unless herein admitted to be true; or unless "conclusively substantiated by unquestionable documentary proof." C.P.L. § 210.45(4) (C).

4. That the indictment filed charges the defendant with P.L. § 265.03(3), Criminal Possession of a Weapon in the Second Degree, and related charges. The matter is next scheduled to be heard in Bronx County Supreme Court on December 2, 2022.

5. Defendant now moves to dismiss the weapon counts on the indictment.

Appendix D**PROCEDURAL HISTORY**

1. The defendant was arrested on July 15, 2022.
2. On July 16, 2022, the defendant was arraigned in criminal court.
3. On April 8, 2022, the defendant was indicted by a grand jury for Criminal Possession of a Weapon in the Second Degree, P.L. § 265.03(3), and related charges.
4. On August 22, 2022, the People filed a Certificate of Compliance ("COC"), Statement of Readiness ("SOR"), and an Automatic Disclosure Form ("ADF").
5. On August 24, 2022, the defendant was arraigned in Supreme Court on the indictment.
6. The defendant filed the instant motion to dismiss on October 21, 2022.

OPPOSITION TO MOTION DISMISS

Defendant argues that the weapon possession charges should be dismissed on the ground that New York's gun prohibitions violate the Second Amendment of the United States Constitution. In support of that assertion, defendant cites the Supreme Court's recent decision in *New York State Rifle & Pistol Assn. v. Bruen*, 142 S. Ct. 2111 (2022). For the reasons stated below, defendant's claim lacks merit. In particular, defendant lacks standing to challenge the constitutionality of New York's gun laws, because unlike the plaintiffs in *Bruen*, he made no effort to purchase a gun lawfully or to obtain a gun license. Further, contrary to defendant's contention, the Supreme Court's decision in *Bruen* did not legalize his possession of an unlicensed firearm.

A. Facts and Procedural History

On July 11, 2022, officers pulled over a car for having excessively tinted windows. The defendant was driving the car and he was accompanied by the co-defendant, Victor Delvalle, in the passenger seat. A check of the defendant's license revealed that his license was suspended and the passenger gave officers a fake name. Upon asking the defendant to step out of the car to be placed under arrest for driving without a license, the defendant said there was a firearm in the car and that he had a license in Florida.

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A subsequent investigation revealed that the defendant *did* possess a valid license to carry a firearm in Florida and had applied for a license to carry in New York as well. It is important to note, however, that at the time of his arrest and possession of the weapon in this case, he did not *actually possess* a license to carry a gun in New York.

B. Background: New York's Gun Licensing Scheme and the *Bruen* Decision

1. New York's Gun Licensing Scheme

Under New York law, it is illegal to possess an unlicensed firearm. The degree of crime depends on various factors, including whether the firearm is loaded, whether it is possessed outside of one's home or place of business, and whether the defendant harbors the intent to use the firearm unlawfully.

For instance, under Penal Law § 265.01(1), a person who possesses "any firearm" is guilty of Criminal Possession of a Weapon in the Fourth Degree, a class A misdemeanor. If the defendant has previously been convicted of a crime, the charge can be elevated to Criminal Possession of a Weapon in the Third Degree, a class D felony. Penal Law § 265.02(1). Additionally, possession of a loaded firearm outside one's home or place of business, possession of a loaded firearm by a person previously convicted of a crime, or possession of any firearm with the intent to use it unlawfully against another constitutes a class C felony offense. Penal Law §§265.03(1)(b), (3).

A person may avoid criminal liability for possession of a firearm if he or she has a valid gun license issued by a *New York* licensing authority. Pertinent here, under Penal Law § 265.20(3), a licensed owner of a pistol or a revolver is exempt from prosecution from weapon possession under the above-referenced statutes (as well as other, specified weapon possession statutes). Specifically, under section 265.20(3), the possession of a valid New York gun license is an affirmative defense to the charge – the prosecutor is not required to prove unlicensed possession in order to present a legally sufficient case. See *People v. Washington*, 209 A.D.2d 162, 163 (1st Dept. 1995). Further, New York does not give effect to out-of-state gun licenses, except in certain limited circumstances such as police

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officers conducting official business in New York and nonresidents attending certain competitive shooting events. *See* 1997 N.Y. Atty. Gen. Op. 14, 1997 WL 136367 (March 13, 1997).

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 a proper application for a license are true.” Penal Law § 400.00(1). The applicant must be 21 years of age or older and of good moral character. Penal Law § 400.00(1)(a)-(b). An applicant may be disqualified if, among other things, he or she has a prior conviction for a felony or other serious offense, has an outstanding warrant for a felony or a serious offense, is a fugitive from justice, has a history of mental illness, or has an outstanding order of protection – or if there is any other “good cause” for the denial of the license. *See* Penal Law § 400.00(1)(c)-(n).

Further, before July 1, 2022, to obtain a license permitting the carrying of a concealed firearm outside of one’s home or place of business, an applicant was required to show “proper cause,” *see* Penal Law § 400.00(2)(f) (former), which was defined as “a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession.” *Matter of Klenosky v. New York City Police Dept.*, 75 A.D.2d 793 (1st Dept. 1980), *aff’d*, 53 N.Y.2d 685 (1981).¹

2. The Supreme Court’s Second Amendment Decisions: *Heller* and *Bruen*

Contrary to defendant’s argument, the Supreme Court has never held that a person has the right to possess an unlicensed firearm. Nor has the Court prohibited states and local governments from requiring that a person obtain a permit in order to carry a handgun in public. Further, the Court has not prohibited states and local governments from making a distinction between the possession of a handgun in the home and in a public place. Instead, as demonstrated below, the Court has held only

¹ Following the *Bruen* decision, the Legislature eliminated the “proper cause” requirement for obtaining a concealed carry permit. In its place, the Legislature substituted additional requirements, including the completion of a training class, an expanded background check including character references, a review of social media accounts, an in-person interview, and an expanded list of disqualifying prior convictions. *See* L.2022 Ch.371 (enacted July 1, 2022).

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that (1) a locality may not enact a *complete* ban on the possession of handguns in the home for self-defense and (2) a law-abiding citizen – who has submitted to a full background check – may not be denied a concealed carry permit on the ground that he has failed to demonstrate a greater need than other members of the public to carry a handgun for self-defense.

The pertinent decisions can be briefly summarized. In *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008), the Supreme Court held that the District of Columbia’s “ban on handgun possession in the home violate[d] the Second Amendment, as [did] its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.” In *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010), the Court applied this right to possess a firearm to the states.

Critically, in *Heller*, the Court made clear that “the right secured by the Second Amendment is not unlimited.” *Heller*, 554 U.S. at 626. The Court observed that the right to keep and bear arms “was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* For instance, the Court declared that “nothing” in the *Heller* decision “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” *Id.* The Court added that the Second Amendment did not prohibit localities from enacting “laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 626-27. The Court noted, too, that it “identif[ied] these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.” *Id.* at 627 n.26; *accord McDonald*, 561 U.S. at 786.

The Court’s recent decision in *Bruen* did not disturb those holdings. In *Bruen*, two individual plaintiffs and the New York State Rifle and Pistol Association challenged New York’s “proper cause” requirement for the issuance of a concealed carry permit. The two individual plaintiffs were “law-abiding, adult citizens” of New York State who had applied for “unrestricted” licenses to carry a handgun in public. *See Bruen*, 142 S. Ct. at 2124-25. Both plaintiffs submitted to – and passed – the background checks required at the time and were issued restricted licenses, which allowed them to carry handguns outside the home for certain limited purposes, such as hunting and target shooting.

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However, because the plaintiffs had not demonstrated a special need to carry a concealed weapon in public for self-defense, the licenses prohibited them from carrying their weapons in areas typically frequented by the general public. *See id.*

In *Bruen*, the Supreme Court considered a narrow question: whether New York could require a law-abiding citizen who applied for a concealed carry permit to demonstrate “proper cause” – that is, a “special need” to carry a weapon in public for self-defense. *See Bruen*, 142 S. Ct. at 2123. The Court issued a comparably narrow ruling, holding that the Second Amendment protects the right to carry a weapon in public for self-defense, which may not be conditioned on “demonstrating to government officers some special need.” *Bruen*, 142 S. Ct. at 2156. The Court held, therefore, that “New York’s proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *Id.*

Significantly, the Court did not disturb any other aspect of New York’s gun licensing scheme. In fact, the Court reiterated that the Second Amendment right was subject to “well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms.” *Bruen*, 142 S. Ct. at 2138. Instead, in invalidating New York’s “proper cause” requirement, the Court focused on the level of discretion that this standard conferred on licensing officers. The Court observed that 43 states issued “concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability.” *Id.* at 2123. The Court declared that nothing in its “analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes, under which a general desire for self-defense is sufficient to obtain a [permit].” *Id.* at 2138 n.9 (internal quotation omitted). The Court added that, in contrast to New York’s “proper cause” rule, “these licensing regimes do not require applicants to show an atypical need for armed self-defense.” *Id.* The Court emphasized that the regimes of the 43 other states, “which often require applicants to undergo a background check or pass a firearms safety

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course,” were proper, as they were “designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” *Id.* (quoting *Heller*, 554 U. S. at 635).

Concurring in *Bruen*, Justice Kavanaugh (joined by the Chief Justice) observed that “the Court’s decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense.” *Bruen*, 142 S. Ct. at 2161 (Kavanaugh, J., concurring). Justice Kavanaugh remarked that the “shall-issue” licensing regimes employed by 43 states passed constitutional muster – and that “the 6 States including New York potentially affected by today’s decision may continue to require licenses for carrying handguns for self-defense so long as those States employ objective licensing requirements like those used by the 43 shall-issue States.” *Id.* at 2161-62. Justice Kavanaugh recounted the holding of *Heller* that “the Second Amendment allows a variety of gun regulations,” including “prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 2162 (Kavanaugh, J., concurring) (internal quotation marks omitted).

Justice Alito echoed those comments, observing that the Court had not “disturbed anything that we said in *Heller* or *McDonald* ... about restrictions that may be imposed on the possession or carrying of guns.” *Bruen*, 142 S. Ct. at 2157 (Alito, J., concurring). Justice Alito added that the *Bruen* “holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun.” *Id.*

Thus, the Supreme Court’s opinion in *Bruen* – along with concurring opinions joined by three of the six Justices in the *Bruen* majority – make clear that New York may continue to require that a person obtain a license to purchase or possess a firearm, and it may continue to require that a person obtain a concealed carry permit in order to carry a handgun in public. The only caveat is that, when a person applies for a concealed carry permit, the state may not require the applicant to show a “special need” to carry a firearm for self-defense. In all other respects, the Court left New York’s licensing scheme undisturbed.

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C. Argument

Defendant's motion to dismiss the weapons charges should be denied because the Supreme Court's decision in *Bruen* invalidated only a single aspect of New York's gun licensing scheme and left the remainder of New York's gun laws intact.

The defendant's broad constitutional challenge to the weapons charges fails for a single, fundamental reason. Contrary to defendant's assertion, the Supreme Court's decision in *Bruen* did *not* undermine New York's gun licensing scheme as a whole. Instead, the only provision of New York law at issue in *Bruen* was the requirement that an applicant for a concealed carry permit demonstrate "proper cause" – that is, a special reason why the applicant needed to carry a gun in public for self-defense. Here, the charges against defendant are based on the fact that he did not obtain a gun license *of any sort* – not because he failed to demonstrate "proper cause" for a concealed carry permit. As discussed, to obtain *any* gun license, defendant would have had to satisfy numerous other conditions that the Supreme Court left undisturbed in *Bruen*. Those conditions remain valid, as they can easily be severed from the "proper cause" requirement that the Supreme Court invalidated.

If the federal courts declare only part of a state statute unconstitutional, it is a matter of state law whether the remainder of the statute survives. *See generally City of New Orleans v. Dukes*, 427 U.S. 297, 302 (1976) (it is a "state-law question" whether the challenged statute "will be totally invalidated" or whether only the unconstitutional portion "will be struck down"); *Vermont Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 389 (2d Cir. 2000) (whether the unconstitutional portion may be severed from the remainder of the statute "is a matter governed by state law"). In New York, the "basic rule governing severability" turns on "whether the legislature, if partial invalidity had been foreseen, would have wished the statute to be enforced with the invalid part excised, or rejected altogether." *CWM Chem. Servs., L.L.C. v. Roth*, 6 N.Y.3d 410, 423 (2006) (quoting *People ex rel. Alpha Portland Cement Co. v. Knapp*, 230 N.Y. 48, 60 (1920) (Cardozo, J.)). That question must be answered "pragmatically, by the exercise of good sense and sound judgment." *Id.* (quoting *Knapp*, 230 N.Y. at 60).

Here, the Legislature surely would have preferred excising the "proper cause" requirement to invalidating New York's entire gun licensing scheme. After all, the Supreme Court merely invalidated

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one small part of the scheme – creating an additional, “proper cause” requirement for obtaining a concealed carry permit – and left intact the detailed statutory provisions requiring a license to buy, sell, or possess a gun. *See* Penal Law § 400.00. Obviously, the legislative intent was to forbid the unlicensed sale, purchase, possession, and carrying of firearms. Certainly, then, the Legislature would not have wanted the invalidation of the “proper cause” requirement to cause the remainder of the licensing scheme to fall.

Further, the pre-*Bruen* licensing scheme can be enforced without the proper cause requirement. Indeed, as Justice Kavanaugh noted, the concealed carry licensing scheme can instead be reinterpreted as a “shall-issue” statute, allowing a person to obtain a concealed carry permit if he or she satisfies all of the remaining (and valid) conditions for the issuance of a license. In the Legislature’s view, that result would undoubtedly have been preferable to invalidating the entire licensing scheme, which would allow anyone – regardless of their background, history, and character – to carry a firearm in public.

Moreover, *Bruen* was a civil case in which the plaintiffs were law-abiding citizens who submitted to background checks and followed lawful processes when purchasing firearms. The *Bruen* plaintiffs did not seek to take the law into their own hands by obtaining guns illegally and carrying those unlicensed firearms on city streets. The *Bruen* decision, therefore, does not implicate New York’s *criminal* laws forbidding possession of unlicensed firearms, as those laws, by definition, do not apply to law-abiding citizens. *See Rodriguez*, 2022 NY Slip Op 22217, *supra*, at *2-*3 (*Bruen* “did not hold that the State is powerless to criminalize the unlicensed possession of firearms on city streets”); *Brown*, No. 71673/22, *supra* (“*Bruen* cannot be read to require dismissal of this action charging defendant with unlicensed possession of a firearm in a public place”); *People v. Radhiid Monroe*, Ind. No. 232/2021 (Sup. Ct. Bronx Co. July 14, 2022) (rejecting defense claim that, under *Bruen*, “a license was not required to carry a handgun for self-defense outside the home”).

Indeed, as the *Rodriguez* court explained, “[d]efendant’s reading of the Second Amendment, unsupported by *Bruen*, would turn New York into the Wild West, placing its citizens at the mercy of

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criminals wielding unlicensed firearms, concealed from public view, in heavily populated areas.” *Rodriguez*, 2022 NY Slip Op 22217, *supra*, at *3. The court continued, “Defendant misreads *Bruen* as eviscerating the police powers of the State to address criminality, or as applying to anyone other than law-abiding citizens. Failing to seek a license before roaming the streets with a loaded firearm is not abiding by the law, and nothing in the Second Amendment requires that it be tolerated. The Constitution is not a suicide pact.” *Id.*

In short, the *Bruen* decision – while making it easier to obtain a concealed carry permit – did not invalidate the remainder of New York’s gun licensing scheme. And certainly, *Bruen* did not, in the blink of the eye, legalize the unlicensed possession of firearms on the streets of New York City. Therefore, defendant’s motion to dismiss the weapons charges should be denied.

In sum, for all the reasons stated above, this Court should reject defendant’s Second Amendment challenge to the weapons counts.

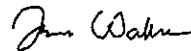
OPPOSITION TO RESERVATION OF RIGHTS

The People oppose the filing of additional motions by defendant absent a showing of good cause. The People request that any additional motions filed, and any motions filed after the forty-five (45) day period, be summarily denied absent a showing of good cause. C.P.L. § 255.20(3).

WHEREFORE, the People respectfully request the defendant’s motion be denied in all respects except as heretofore stated.

Dated: Bronx, New York
November 18, 2022

Respectfully submitted,
DARCEL D. CLARK
District Attorney, Bronx County



By: **James B. Waller**
Assistant District Attorney
Bronx County District Attorney’s Office
198 East 161st Street, Bronx, NY 10451

Appendix D

To: Matthew Wasserman, Esq.
The Bronx Defenders
360 East 161st Street
Bronx, NY, 10451

cc: The Honorable Justice Mitchell
Bronx County Supreme Court
Part 11
265 East 161st Street
Bronx, NY 10451

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, CRIMINAL TERM PART 11

THE PEOPLE OF THE STATE OF NEW YORK

-against-

**REPLY MEMORANDUM OF
LAW**

JASON PEGUERO,

Ind. No. 73144-22

Defendant.

Jason Peguero submits the following reply memorandum of law in further support of his motion to dismiss the gun counts of the indictment. He replies only to certain points raised in the prosecution's response ("Pros. Opp."), and relies on the affirmation of counsel ("Defense Aff.") and his prior memorandum of law ("Defense Mem. of Law") for all other points.

ARGUMENT

I. The Second and Fourteenth Amendments to the United States Constitution protect Jason Peguero from prosecution for possessing an unlicensed firearm.

The prosecution does not dispute that Jason Peguero is a law-abiding citizen with an ordinary need for self-defense, who has a Second Amendment right to publicly carry a pistol. And it concedes he had a Florida concealed-carry license and had applied for a New York public-carry license seven months before his arrest. *See Pros Opp.* at 3. Yet it does not offer any explanation or argument for why Mr. Peguero in particular could lawfully be denied a gun license, or why it took over seven months to deny his application. Instead, it devotes pages upon pages to a general discussion of the law and defense of Penal Law § 265.03's constitutionality. *See id.* at 3-10.

Jason Peguero, however, raises only an as-applied constitutional challenge to the charges against him. He cannot be convicted of unlicensed possession of a firearm because (a) he is a law-

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abiding citizen with an ordinary need for self-defense, who (b) applied for a public-carry license seven months before his arrest, and (c) would have been issued this gun license if he lived in a “shall-issue” state (as demonstrated by the fact that Florida issued him a concealed-carry license). Contrary to the prosecution’s boilerplate response, he does not dispute that New York can lawfully require him to obtain a gun license. *Contra* Pros. Opp. at 7, 9. Nor does he raise a “broad constitutional challenge” to New York’s gun licensing statute. *Contra* Pros. Opp. at 8. Rather, he argues that New York was required to issue *him* a public-carry license *when he applied for one* because he is a law-abiding citizen with an ordinary need for self-defense—and he cannot be prosecuted for New York’s unconstitutional failure to do so. Defense Mem. of Law at 5–14; *see also New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, 2156 (2012).

Notably, though the prosecution spends pages defending the constitutionality of requiring people to obtain gun licenses and New York’s gun-licensing statute, it never provides any reason why New York can lawfully deny Mr. Peguero a public-carry license. It asserts that “to obtain *any* gun license, defendant would have to satisfy numerous other conditions that the Supreme Court left undisturbed in *Bruen*,” Pros. Opp. at 8, but does not provide a single example of a licensing condition that Mr. Peguero fails. He does not have a prior felony conviction, an outstanding warrant, a history of mental illness, or an outstanding order of protection, and he was not a fugitive from justice. *Compare* Pros. Opp. at 4, *with* Defense Aff. ¶ 11.¹ In fact, he has no criminal record. Defense Aff. ¶ 11. To the extent that the prosecution might argue that there nonetheless existed “other ‘good cause’ for the denial of the license,” Pros Opp. at 4, this

¹ Although Mr. Peguero’s initial papers did not discuss whether he had an outstanding warrant or was a fugitive from justice, a review of his RAP sheet shows that neither factor applies here.

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requires exactly the kind of “‘appraisal of facts, the exercise of judgment, and the formation of an opinion’” that the Supreme Court rejected in *Bruen*. See 142 S. Ct. at 2138 n.9.

Bruen requires that, when a law is challenged as infringing upon Second Amendment rights, “*the government must affirmatively prove* that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” Defense Mem. of Law at 14 (emphasis added) (quoting *Bruen*, 142 S. Ct. at 2127). Yet the prosecution offers no historical evidence, from the founding era or otherwise, showing that someone can be stripped of their constitutional right to carry a gun based only on unproven allegations and minor infractions, as Mr. Peguero was. See *id.* at 11 & Ex. D. That is likely because there is none: disqualifying someone from keeping and bearing arms based on tickets or arrests, without an accompanying conviction, is inconsistent with historical tradition. See *United States v. Quiroz*, ___ F. Supp. 3d ___, 2022 WL 4352482 (W.D. Tex. Sept. 19, 2022) (concluding, after an analysis of historical practice, that the government cannot prosecute someone for possessing a gun while under felony indictment, and dismissing the gun-possession charges as violating the Second Amendment).

As Justice Newbauer recently concluded in an unlicensed gun-possession case involving a Vermont resident without a criminal record, Mr. Peguero “should not be prosecuted if he is able to demonstrate, as the defense alleges, he would have met the remaining constitutional standards for gun possession.” *People v. Sovey*, ___ N.Y.S.3d ___, 2022 WL 16704589, at *3 (Sup. Ct. N.Y. Cty. Nov. 1, 2022). Because Mr. Peguero has plausibly alleged that he is part of “the people” who are protected by the Second Amendment, it is unconstitutional to prosecute him unless “the government proves the defendant was disqualified from exercising his Second Amendment rights.” *Magnus v. United States*, 11 A.3d 237, 243 (D.C. 2011). The prosecution has not met this burden.

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The trial court cases that the prosecution cites, *see id.* at 9–10, offer it no help. Mr. Peguero does not claim that “a license was not required to carry a handgun for self-defense outside the home,” *id.* at 9; he contends he was unconstitutionally denied such a license. Nor does he quarrel with assertions that *Bruen* applies only to “law-abiding citizens.” *Id.* at 10 (quoting *People v. Rodriguez*, 76 Misc. 3d 494, 499 (Sup. Ct. N.Y. Cty. 2022)). Instead, he argues—and the prosecution does not dispute—that he is part of the class of citizens whose rights *Bruen* “sought to vindicate . . . : ‘law-abiding, responsible citizens’ who wish to obtain a license in compliance with a fairly administered law based on ‘narrow, objective, and definite’ criteria.” *Rodriguez*, 76 Misc. 3d at 497 (quoting *Bruen*). These cases are therefore not on point.

Finally, the prosecution’s argument that Mr. Peguero lacks standing to raise a Second Amendment defense is self-refuting. It initially claims he lacks standing because “he made no effort to purchase a gun lawfully or to obtain a gun license.” Pros. Opp. at 2. But he *did* try to obtain a license. *Id.* at 3 (noting that Mr. Peguero “had applied for a license to carry in New York”). Presumably for this reason, the prosecution never expounds on its claim that Mr. Peguero lacks standing, despite emphasizing this point in its summary of argument. *See id.* at 2.

Indeed, the caselaw the prosecution typically relies on to argue standing establishes that Mr. Peguero has standing to raise a Second Amendment defense. In *United States v. Decastro*, the Second Circuit held that “because [the defendant] failed to apply for a gun license in New York, he lacks standing to challenge the licensing laws of the state.” 682 F.3d 160, 164 (2012). The logical corollary is that if someone applies for a license, like Mr. Peguero, they do have standing. Moreover, Mr. Peguero has standing because his attempts to obtain a public-carry license show that it was futile for him to do so. *See* Defense Mem. of Law at 10–11; *Plummer v. United States*,

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983 A.2d 323, 340–42 (D.C. 2009) (holding that a criminal defendant has standing to raise a Second Amendment defense despite not applying for a gun license where it would have been a “futile exercise” for him to “seek[] registration and licensing of a pistol”); *Bach v. Pataki*, 408 F.3d 75, 82–83 (2d Cir. 2005) (holding that the plaintiff had standing to challenge New York’s gun-licensing laws despite not applying for a license since he was statutorily ineligible to obtain a license, as an out-of-state resident, and applying for a license would have been a “futile gesture”), *abrogated on other grounds by McDonald v. Chicago*, 561 U.S. 742 (2010).

II. The *Clayton* motion is unopposed and therefore should be granted.

Despite submitting its response two weeks late, the prosecution did not respond to Mr. Peguero’s motion to dismiss the weapons-related counts of the indictment in the interest of justice. *Compare* Pros. Opp, *with* Defense Mem. of Law at 14–18. Because the prosecution did not oppose the *Clayton* branch of the motion to dismiss, it should be granted. *See People v. Gruden*, 42 N.Y.2d 214, 216 (1977) (“Normally what is not disputed is deemed to be conceded.”).

CONCLUSION

For these reasons, as well as the reasons in the initial affirmation and memorandum of law, this Court should dismiss the four counts of the indictment relating to unlicensed gun possession.

DATED: Bronx, New York
 November 22, 2022


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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, CRIMINAL TERM PART 11

THE PEOPLE OF THE STATE OF NEW YORK

-against-

AFFIRMATION OF SERVICE

JASON PEGUERO,

Ind. No. 73144-22

Defendant.

I, Matthew Wasserman, an attorney duly admitted to practice law in the State of New York, under penalty of perjury and pursuant to Rule 2106 of the CPLR, hereby affirm that the following statements are true, except those based upon information and belief, which I believe to be true:

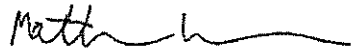
1. I am an attorney at The Bronx Defenders. I am over eighteen years old and am not a party to this action.

2. On November 22, 2022, I served a true copy of the reply memorandum of law in this case on the Bronx County District Attorney's Office by transmitting the same via electronic means to the following e-mail address: BXDAMotions@bronxda.nyc.gov, which is the email address designated by the Bronx District Attorney's Office for service of all non-appellate filings.

3. On November 22, 2022, I served a true copy of the attached motion to dismiss upon New York Attorney General Letitia James by mailing a true copy of the attached papers, enclosed and properly sealed in a postpaid envelope, which I caused to be deposited in an official depository under the exclusive care and custody of the United States Postal Service within New York State addressed to Attorney General Letitia James at: Office of the Attorney General, 28 Liberty Street, New York, NY 10005, ATTN: Managing Attorney's Office/Personal Service.

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DATED: Bronx, New York
November 22, 2022



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2023-02642

NYSCEF DOC. NO. 7

RECEIVED NYSCEF: 07/07/2025

To be argued by:

FRANCES WEIL

TIME REQUESTED: 10 MINUTES

New York Supreme Court



Appellate Division—First Department



THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

- against -

New York County

Ind. No. 73144-22

ACN: 2023-02642

JASON PEQUERO,

Defendant-Appellant.

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July 7, 2025

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PRELIMINARY STATEMENT

This is an appeal from a judgment of the Supreme Court, Bronx County, rendered May 10, 2023, convicting appellant Jason Peguero upon a plea of guilty to fourth-degree criminal possession of a weapon (Penal Law § 265.01(1)). Mr. Peguero was sentenced to a conditional discharge. (Lorenzo, J. at plea and sentence).

Mr. Peguero filed a timely notice of appeal, and, on August 17, 2023, this Court granted him leave to appeal and assigned Jenay Nurse Guilford, Center for Appellate Litigation, as counsel. No stay of execution of sentence has been sought. Mr. Peguero is not currently incarcerated and has completed his conditional discharge.

QUESTION PRESENTED

Mr. Peguero had no prior convictions and had a Florida license to possess a firearm when he applied for a New York license in December 2021. The State did not rule on his license application for over seven months. Meanwhile, he was arrested while his application was pending in July 2022 and ultimately convicted of weapon possession.

Did his conviction violate the Second Amendment?

STATEMENT OF FACTS¹

Since Mr. Peguero was a child, he has lived in fear of violence (File: Mtn. to Dismiss, hereinafter “MTD” at 5). Growing up, he witnessed people shooting guns in

¹ Citations to the papers contained in the court file are preceded by “File.” “P” refers to the plea and sentencing minutes on May 10, 2023.

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his neighborhood (*id.*). When he was 14, bullets whizzed by him as he was playing basketball (*id.*). In his adult life, he was robbed multiple times: once at gunpoint and once after getting hit on the head with a baseball bat (*id.*). Mr. Peguero believed that carrying a gun would help protect him against this kind of violence (*id.*). He therefore completed a basic firearms-training course (*id.*, Ex. A, FL DOA Letter), and applied for a firearm license in Florida on September 2, 2021 (*id.*, Ex. B). Two weeks later, after verifying that he met the threshold requirements, Florida issued him a concealed-carry license (*id.* at 8).

Mr. Peguero also applied for a New York State license on December 15, 2021, and submitted his fingerprints to the State on March 7, 2022 for a background check (*id.*, Ex. C).

At the time of his applications, Mr. Peguero was a 28-year-old student at Arizona State and working towards a bachelor's degree in technology, entrepreneurship, and management (MTD at 3). He had already received an associate degree from Bronx Community College and had held positions as a teller at Chase bank and a pharmacy technician at CVS (*id.*). He had no criminal convictions or history of mental illness (*id.* at 5; RAP). There were no restraining orders or domestic violence orders of protection pending against him (MTD at 5).

On July 15, 2022—seven months after Mr. Peguero submitted his firearm license application in New York and while it was still pending—he was pulled over for a traffic stop in the Bronx for tinted windows (MTD 6). When initially approached by the police,

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Mr. Peguero was forthright with the officers and told them, “There’s a gun in the car, but I have a Florida permit” (*id.* at 3). The officers arrested him for unlicensed possession of a loaded firearm (*id.*). *NYSRPA v. Bruen*, 597 U.S. 1 (2022), which struck down New York’s proper-cause standard as unconstitutional, had been decided three weeks prior to his arrest (*id.* at 4).

On August 5, 2022—three weeks after Mr. Peguero’s arrest—the NYPD finally issued a decision on Mr. Peguero’s application and denied him a license, based on § 5-10(a), (e), (g), (i) and (n) of Title 38 of the Rules of NYC (MTD, Ex. D; File: Decision at 1 (Mitchell, J.) (Dec. 20, 2022)).² Although he had no convictions, his application was denied because of (two) prior arrests—one sealed arrest and the arrest for the present

² Those rules provide:

Title 38 § 5-10 Grounds for Denial of Handgun License.

(a) The applicant has been arrested, indicted, or convicted for a crime or violation except minor traffic violations, in any federal, state or local jurisdiction. . . .

(e) The applicant made a false statement on her/his application, or failed to disclose her/his complete arrest history, including sealed arrests. . . .

(g) The applicant has a history of one or more incidents of domestic violence. . . .

(i) The applicant has failed to comply with federal, state or local law or with Police Department rules governing possession and use of firearms, rifles, shotguns or ammunition. . . .

(n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the license.

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case—(five) summons, (three) complaint reports, (five) domestic incident reports, and (sixteen) moving violations (Decision at 3).

Indictment and MTD

Mr. Peguero was indicted for second-degree CPW (possession outside home or place of business) and related charges because he possessed a loaded pistol in public without a license to do so (Indictment; MTD at 4). There were no allegations that Mr. Peguero had used or intended to use the firearm in any unlawful manner (MTD at 4).

Mr. Peguero moved to dismiss the indictment (MTD at 1). He argued that the weapon possession charges violated his Second Amendment rights under *Bruen*, and, further, that the case should be dismissed in the furtherance of justice (*id.* at 1). He argued that he was a law-abiding citizen who had the constitutional right to carry a firearm in public for self-defense, he had successfully obtained a valid Florida license for a firearm, and he had made good-faith but futile efforts to obtain a New York gun permit under an unconstitutional licensing scheme which had been since struck down prior to his arrest (*id.* at 10). As Mr. Peguero's application had been pending for seven months, he was not required to wait indefinitely for permission that was unlikely to ever come before exercising his right (*id.*). Had his application been processed promptly, he would have been issued a license by the time of his arrest (*id.* at 13). Mr. Peguero further argued that the denial of his application under the Rules of the NYC, Title 38, § 5-10

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presented the same type of unconstitutionally restrictive licensing law as the regime invalidated in *Bruen* (*id.* at 11).

The prosecution opposed the motion in a boilerplate response, stating that the *Bruen* decision “did not disturb any other aspect of New York’s gun licensing scheme” apart from the “proper cause” requirement (MTD Opp. 6).

The court denied Mr. Peguero’s motion, finding that the entire licensing law had not been struck down (File: Decis. at 2). The court found that Mr. Peguero established standing by applying for a license, but ruled that the Rules of New York City were not challenged in *Bruen* and therefore remained in effect (*id.* at 3-4).

Plea and Sentence

Mr. Peguero pled guilty on May 10, 2023 to fourth-degree CPW, a misdemeanor (Penal Law § 265.01(1)), with a sentence of a conditional discharge (P: 5). The prosecution acknowledged that Mr. Peguero had a license for the firearm in Florida and a pending application in New York state (*id.* at 4). As a condition of the plea, the prosecution required a waiver of appeal (*id.*).

Prior to entering the plea, the court told Mr. Peguero, “As soon as the waiver is executed, I’ll take your application” (P: 5). The court confirmed that the waiver had been executed before proceeding to the plea (*id.*; File: Waiver of Appeal). Mr. Peguero admitted then that he possessed a pistol in the Bronx and that he lacked a license to carry in New York, despite having applied for one (P: 7-8). He made factual admissions to the offense before the court provided any further explanation of the waiver of appeal

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(*id.* at 3-5). After the factual colloquy, the court explained that Mr. Peguero would normally have appointed counsel to argue that an error required reversal of the conviction (*id.* at 9-10). But here, where Mr. Peguero was asked to waive his right to appeal, “the plea and conviction is normally final” (*id.* at 10). The court explained that some claims survived the waiver, but it did not clarify that Mr. Peguero retained his right to counsel and poor persons’ relief even with the appeal (*id.*). On the same day, the court imposed the promised sentence of a conditional discharge (*id.* at 12).

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ARGUMENT

POINT I

THE INDICTMENT AGAINST MR. PEGUERO MUST BE DISMISSED BECAUSE THE LENGTHY DELAY IN PROCESSING HIS FIREARM LICENSE APPLICATION AND HIS ARREST UNDER AN UNCONSTITUTIONAL PERMITTING SCHEME VIOLATED HIS SECOND AMENDMENT RIGHTS. U.S. CONST. AMENDS. II; XIV.

Mr. Peguero’s case is an illustration of exactly how New York’s unconstitutional licensing schemes serve to deny ordinary citizens’ their Second Amendment rights and then punish them. U.S. Const. Amends. II. Mr. Peguero had a valid license to carry a firearm issued by Florida and made efforts to obtain a license in New York—but was thwarted by unconstitutional regulations. He applied for a New York license in December 2021, when the “proper cause” requirement at issue in *Bruen* was still in effect. At the time of his arrest in July 2022, his application had been pending under that unconstitutional regime for seven months, which is not only an unconstitutionally lengthy wait time, but also exceeds the six-month processing timeline outlined by Penal Law § 400.00(4-b), even though he objectively met all baseline eligibility requirements. *See* Penal Law §§ 400.00(1); 400(4-b). Then, after his arrest in the instant matter, his application was denied under provisions of the Rules of NYC that are discretionary and unconstitutional in precisely the same way as the “proper cause” requirement struck down in *Bruen*.

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The taint of the unconstitutional licensing regimes on Mr. Peguero's conviction is clear because the ultimate denial of Mr. Peguero's license application demonstrates that there was no explanation for the lengthy delay, or the eventual denial, of his application that would pass constitutional muster after *Bruen*. But for the unconstitutional regimes, Mr. Peguero should have been promptly issued a license well before his arrest in this matter. Though the lower court found that Mr. Peguero had established standing, it nevertheless denied his motion to dismiss in error and in violation of his constitutional rights. U.S. Const. Amends. II; XIV.

- A. The lengthy delay in processing Mr. Peguero's license application under an unconstitutional licensing scheme was a violation of his Second Amendment rights.

New York law only criminalizes the public possession of a firearm if it is unlicensed. Penal Law § 265.20(a)(3); *People v. Hughes*, 22 N.Y.3d 44, 50 (2013). A license confers immunity, and thus a complete defense, to a weapon-possession charge. Penal Law § 265.20(a)(3). Here, Mr. Peguero was denied the opportunity to present this defense solely because his application for a license was pending for seven months—exceeding the six-month processing timeline outlined by Penal Law § 400(4-b)—under an unconstitutional regime, despite meeting basic eligibility requirements. Ultimately, his application was denied—after his arrest and indictment for weapon possession—for reasons that do not pass constitutional muster. His conviction was therefore unlawful, and the Second Amendment shields him from criminal liability for exercising his constitutional right to publicly carry a handgun. U.S. Const. Amends. II; XIV.

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Bruen held that, although the State can impose licensing restrictions, the Second Amendment limits its power to do so. To establish that a licensing requirement satisfies the Second Amendment, the Government has the burden to show that the restriction “is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U. S. at 24. A court must ascertain whether the new law is “relevantly similar” to laws that our tradition permits, “apply[ing] faithfully the balance struck by the founding generation to modern circumstances.” *Id.* at 29, and n. 7. Why and how the regulation burdens the right are central to this inquiry. As *Bruen* explained, a challenged regulation that does not precisely match its historical precursors “still may be analogous enough to pass constitutional muster.” *Id.* at 30.

Applying that test, the Supreme Court categorically invalidated New York’s former statutory requirement that, to obtain the license necessary to gain immunity, the individual must prove “proper cause” to publicly carry, which was the licensing scheme in place when Mr. Peguero’s application was submitted and pending without approval prior to his arrest. *Id.* at 34-70; Former Penal Law § 400.00(2)(f). Where state law conditions access to a legal defense on compliance with an unconstitutional standard (proper-cause)—it is unconstitutional to prosecute someone for not complying with that “void” law. *Moore v. Harper*, 600 U.S. 1, 19-20 (2023) (“an act of the legislature, repugnant to the constitution, is void”) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)).

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Since satisfying the unconstitutional proper-cause-licensing requirement was Mr. Peguero's only path to immunity from criminal prosecution at the time, the conviction itself is unconstitutional.

This prosecution is directly traceable to the State's unconstitutional delay of Mr. Peguero's licensing application. *Bruen*, 597 U.S. at 38 n. 9 (“[B]ecause any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications . . . deny ordinary citizens their right to public carry.”). Mr. Peguero did everything he could to obtain a license. He submitted the application and his fingerprints for the background check. He was over 21 and had no convictions, mental illness, or active orders of protection against him. But when he was arrested in July 2022, his license had remained pending for seven months and over the six-month processing timeline outlined in Penal Law § 400.00(4-b). Sitting on an application for seven months is an unconstitutionally burdensome delay that violates the Second Amendment. *See McRorey v. Garland*, 99 F.4th 831, 840 (5th Cir. 2024) (holding a 10-day waiting period acceptable, but finding that a background check can become so lengthy that it is “put towards abusive ends” or subject to *Bruen*'s historical framework as a *de facto* prohibition on possession”); *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 227 (4th Cir. 2024) (finding a 30-day application period not a “lengthy” delay contemplated by *Bruen* but heavily relying on data that applications were in reality processed well before the permissible outer limit of 30 days).

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A right has little meaning if the State can wait months to determine whether a citizen can exercise it. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 228 (1990)(explaining that a license, in the First Amendment context, must be issued within a “specified and reasonable time period” because “undue delay” results in the unconstitutional suppression of the right involved); *Yututake v. Lopez*, 130 F.4th 1077, 1099 (9th Cir. 2025)(applying *FW/PBS, Inc.’s* reasoning in the Second Amendment context to find Hawaii’s permitting scheme impermissibly abusive under *Bruen*). Mr. Peguero did not have to submit to an unconstitutional regime at all, *see* Brief, *below*, and he certainly did not have to wait indefinitely to exercise his constitutional right to bear arms under a regime that had already been categorically invalidated as unconstitutional. *See e.g. Shuttlesworth*, 394 U.S. at 147, 148-59 (holding that the First Amendment prohibited the plaintiff from being lawfully convicted when the permitting scheme “empower[ed] its licensing officials to roam essentially at will” and the plaintiff understood, based on his experience, that he would never be issued a permit).

In any event, Mr. Peguero cannot be prosecuted for declining to wait indefinitely for a license determination under the unconstitutional proper-cause standard—especially after the *Bruen* decision had invalidated this regime weeks earlier. As the Supreme Court has repeatedly held, the State cannot punish an individual for failing to comply—here, by failing to wait over six months for a decision—with an unconstitutional permitting standard. *See, e.g., Shuttlesworth*, 394 U.S. at 151; *see also Magnus v. United States*, 11 A.3d 236, 242-43 (D.C. 2011)(“unless the government proves

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the defendant was disqualified from exercising his Second Amendment rights,” it is “impermissible...to convict a defendant” for unlicensed possession when an unconstitutional licensing scheme made it “impossible” for him to obtain a license). The State cannot convict someone for failing to wait indefinitely under an unconstitutional firearms-licensing standard any more than it can convict for failing to submit to an unconstitutional marriage-license standard (“good cause to wed”) or an unconstitutional professional-licensing requirement. *See generally Obergefell v. Hodges*, 576 U.S. 644 (2015).

The prosecution and conviction of Mr. Peguero was therefore unlawful.

B. The Rules of NYC—which provided the ultimate basis for Mr. Peguero’s denial after the lengthy delay in his application—fare no better under the *Bruen* test.

It does not matter that, *after* an unconstitutional delay in resolving the licensing application, licensing officials denied the application under the Rules of NYC. The lengthy delay itself was unconstitutional even if the State, post arrest, offered reasons for denying a license.

In any event, the ultimate justifications for the denial of Mr. Peguero’s license under the Rules of NYC lack any historical tradition and demonstrate that there was no constitutionally valid basis for delaying or denying his license. *Bruen* makes clear that the test and historical tradition analysis must be applied to any regulation limiting the use of firearms—that framework is not limited to the unconstitutional proper cause clause. The Supreme Court explicitly described the broad implications for licensing schemes

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across the country and has since applied that test to other regimes. The prosecution’s and trial court’s narrow readings of *Bruen* to hold that its impact was limited to the proper cause clause and has no bearing on other licensing regimes in New York is contrary to the clear mandate of Supreme Court, which clarified that the prosecution must bear the burden to affirmatively show that *any* challenged regulation limiting the right to “keep and bear arms” is in line with historical tradition. *Bruen*, 597 U.S. at 15.

But here, when Mr. Peguero challenged the Rules of NYC’s bases for denying Mr. Peguero’s application, the court below erroneously failed to hold the prosecution to its burden and found that *Bruen* left the Rules of NYC intact simply because it only discussed the “proper cause” clause.

When the NYPD finally issued a decision on Mr. Peguero’s application in August 2022—one month after his arrest and eight months after his application was submitted—they denied him a license and cited subsections (a), (e), (g), (i) and (n) under § 5-10, Title 38 of the Rules of NYC to justify its decision.³ Although he had no

³ Those rules provide:

Title 38 § 5-10 Grounds for Denial of Handgun License.

(a) The applicant has been arrested, indicted, or convicted for a crime or violation except minor traffic violations, in any federal, state or local jurisdiction. . . .

(e) The applicant made a false statement on her/his application, or failed to disclose her/his complete arrest history, including sealed arrests. . . .

(g) The applicant has a history of one or more incidents of domestic violence. . . .

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convictions, Mr. Peguero’s application was apparently denied because of (two) arrests—one sealed arrest and the arrest for the present case—(five) summons, (three) complaint reports, (five) domestic incident reports, and (sixteen) moving violations. Had the court properly applied *Bruen*, the inevitable conclusion would be that the Rules of New York City are faulty for the same reasons as the “proper cause” clause, as they are factors enumerated as part of a discretionary analysis left to licensing officials to determine “good moral character or that other good cause exists for denial.” Rules of NYC § 5-10 of Title 38.

Using past and unproven allegations against Mr. Peguero as factors to consider in a discretionary decision or “formation of an opinion” of whether Mr. Peguero met a non-objective standard of “other good cause” demonstrates on the record that there was no constitutionally valid basis for the lengthy delay or denial of Mr. Peguero’s license application. *Bruen*, 597 U.S. at 38, n. 9. The resort of licensing officials to the Rules of NYC demonstrates their sheer determination to deny Mr. Peguero a gun license and to prevent ordinary citizens like him from exercising their right to public carry in a regime that is neither narrowly drawn nor historically grounded. This denial

(i) The applicant has failed to comply with federal, state or local law or with Police Department rules governing possession and use of firearms, rifles, shotguns or ammunition. . . .

(n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the license.

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was therefore an infringement of his rights under a regime just as unconstitutional as the struck-down “proper cause” clause.

The Supreme Court’s subsequent decision in *United States v. Rahimi*—where the court applied the *Bruen* test to a federal law prohibiting people with active restraining orders from obtaining a license—is illustrative. 602 U.S. 680 (2024). New York’s ability to rely on the pure existence of prior domestic incident reports, where there was no active order of protection in place, is untenable given the Supreme Court’s rationale. Even in upholding the licensing regime at issue in *Rahimi*, the Supreme Court stressed that the Second Amendment right “may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others.” *Id.* at 700. In finding that this regime had footing in historical analogues, it underscored that the disarmament was of limited duration and only prohibited firearm possession so long as the defendant “is” subject to a restraining order. *Id.* at 699. Finally, the *Rahimi* Court explicitly stated that disarmament for someone simply because they were not, for example, “responsible” would be unacceptable. *Id.* at 701.

Prior unsworn and unproven allegations in domestic incident reports from Mr. Peguero’s past, of course, fall far short of showing a “credible threat to the physical safety of others” and, even if they did, any disarmament of Mr. Peguero would be strictly curtailed by time and duration. Similarly, the inference from Mr. Peguero’s prior summons or moving violations would fall much more into the category of not being “responsible”—an unacceptable standard—than being a “credible threat to the physical

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safety of others.” This reflects exactly the kind of overly restrictive and discretionary regime struck down by the Supreme Court in *Bruen*. The prosecution would be unable to meet their burden for such a regime.

The reasons provided for the denial—after seven months of inexcusable delay—of Mr. Peguero’s application therefore only demonstrate that there was no constitutionally valid basis for the lengthy processing delay and eventual denial of Mr. Peguero’s application.

- C. This indictment is directly traceable to New York’s unconstitutional licensing schemes as applied to Mr. Peguero because he met the threshold eligibility requirements for obtaining a license and should have been granted a license without lengthy delay.

New York’s unconstitutional regimes tainted the weapon-possession indictment because there was no historically valid explanation for the lengthy delay and denial of his application where he met all other threshold eligibility requirements. Under Penal Law § 400.00(4-b), the commissioner “shall act upon any application for a license... within six months of the date of presentment of such an application” and any delay “may only be for good cause” and, in acting upon an application, the licensing officer “shall either deny the application for reasons specifically and concisely stated in writing or grant the application and issue the license applied for.” Penal Law § 400.00(4-b).

Here, Mr. Peguero applied for a license in December 2021 and was arrested in July 2022. More than six months had passed since submitting his application without a decision. As argued, *supra*, the record affirmatively shows that there was no lawful

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restriction that would have barred Mr. Peguero from obtaining a license. The lengthy delay and eventual resort to the Rules of NYC after *Bruen* invalidated the “proper cause” clause show the State’s sheer determination to deny Mr. Peguero a license. Mr. Peguero had no prior criminal convictions, and he was over the age of 21. Penal Law § 400.00(1)(a), (1)(c). He had no history of mental illness or an order of protection pending against him. *Cf. Rahimi*, 602 U.S. at 680. He was a 28-year-old student who had an ordinary need of self-defense, and he had submitted to NYPD’s background check and provided his fingerprints. He should have been promptly issued a license, and there is no constitutionally valid basis to prevent him from exercising his Second Amendment rights. This case therefore represents exactly how a request for a lengthy background check—to which Mr. Peguero complied—can be put towards the “abusive ends,” *Bruen* cautioned against. *Bruen*, 597 U.S. at n. 9.

That Mr. Peguero held a valid license from Florida further illuminates the constitutional infirmities of New York’s regulatory schemes, along with the resultant taint on the indictment here. The expeditious processing and approval of his application in Florida highlights the precise issue discussed by the Supreme Court when it contrasted New York’s “may issue” licensing law with the “shall issue” statutes of 43 other states, including Florida. *Bruen*, 597 U.S. at 14-15. The reason the “shall issue” regimes are constitutionally favorable is because authorities in those states must issue the license “whenever applicants satisfy certain threshold requirements, without

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granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability.” *Id.* at 14.

In Florida, Mr. Peguero took a gun-safety course, filled out an application, and then two weeks later, after verifying that he met the threshold requirements, the state issued him a concealed carry license. In New York, by contrast, Mr. Peguero applied, submitted to the background check, and provided fingerprints. At the time of his arrest, his application had been pending for seven months. This delay was unacceptable. Even under a shall-issue regime, the *Bruen* Court explained that a lengthy wait time could be the basis of a constitutional challenge and an example of an “abusive” permitting scheme because a lengthy wait time in processing applications effectively denies the right to public carry, which is exactly what happened to Mr. Peguero. *Id.* at n. 9.

Because Mr. Peguero met the threshold requirements and submitted to the background check, New York should have issued a license to him promptly but for the unconstitutional regimes. The lengthy delay in the processing of his application was an infringement of his rights, as the delay denied him his right to public carry. The constitutionally unacceptable reasons for his eventual denial illustrate New York’s determination to deny ordinary citizens like Mr. Peguero their right to bear arms and show that there was no valid basis to prevent him from exercising this right. On this record and as applied to Mr. Peguero, it is clear that New York’s permitting scheme was put toward “abusive ends” to prevent an ordinary citizen from exercising his right to bear arms. The indictment—seven months after he had applied for a license—is tainted

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by the violation of his Second Amendment rights, and he cannot be lawfully convicted of the weapon-possession offenses.

* * *

Mr. Peguero was squarely part of “the People” whom the Second Amendment protects. *Bruen*, 597 U.S. at 32. His conduct in this case—carrying a handgun for self-defense—was protected by the plain text of the Second Amendment. *Id.* But for New York’s unacceptable regimes, Mr. Peguero should have had a license—and thus full immunity—by the time of his arrest. Mr. Peguero was not required to wait indefinitely for permission before exercising these rights, especially after the regulatory regime in place was invalidated by the Supreme Court in *Bruen*. The ultimate reasons for his denial and resort to the Rules of NYC—after his arrest and indictment—demonstrate the taint of New York’s unconstitutional licensing schemes on Mr. Peguero’s indictment, do not have any narrowly-drawn historical tradition, and are unconstitutional for the same reasons as the “proper cause” requirement.

Mr. Peguero’s conviction for weapon-possession was unlawful and the indictment must be dismissed. Mr. Peguero has standing to pursue this challenge, and the issue is preserved. *See* C.P.L. 470.05.

D. The purported waiver of appeal is invalid.

The purported appeal waiver does not foreclose review of the instant claim. A waiver constitutes “an intentional relinquishment or abandonment of a right or privilege.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). The defendant must be informed

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of the nature of the right and must evince a full understanding of the consequences of the waiver. *See People v. Tyrell*, 22 N.Y.3d 359, 365-66 (2013); *People v. Seaberg*, 74 N.Y.2d 1, 11 (1989). Although a defendant may waive their fundamental right to appeal, “giving up the right to appeal is not a perfunctory step.” *People v. Lopez*, 6 N.Y.3d 248, 256 (2006). For a waiver to be enforceable, the record must reflect a knowing, voluntary, and intelligent waiver. *See People v. Bradshaw*, 18 N.Y.3d 257, 264 (2011); *Lopez*, 6 N.Y.3d at 256; *People v. Callahan*, 80 N.Y.2d 273, 280, 283 (1992).

Here, Mr. Peguero could not have validly waived his right to appeal. The court informed Mr. Peguero that “normally” an appointed lawyer would argue his case on appeal when it discussed what Mr. Peguero was giving up by signing the waiver. By contrasting what would ordinarily happen to what occurs with a waiver in this way, the court made it seem that he was also waiving his right to appellate counsel. This confusion was reinforced when the court clarified that some claims survived the waiver of appeal but did not clarify that Mr. Peguero retained his right to counsel when he filed an appeal. The colloquy therefore made it seem that Mr. Peguero was not entitled to counsel on appeal. *People v. Bisono*, 36 N.Y.3d 1013, 1018 n.* (2020) (finding an appellate waiver invalid based, in part, on the trial court’s incorrect statements that a waiver of appellate rights also included a waiver of the right to appellate counsel).

Moreover, the voluntariness of the waiver was compromised by having Mr. Peguero execute the waiver, waive his right to trial, and make factual admissions of guilt to the offense before the explanation of the appeal waiver. *See* U.S. Const. Amends. V,

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XIV; N.Y. Const. art. I, § 6; *Lopez*, 6 N.Y.3d at 256; *People v. Heft*, 220 A.D.3d 806, 806 (2d Dept. 2023). Before the plea colloquy began, the court told Mr. Peguero it would only proceed once the waiver was signed but provided no explanation, making it seem like it was a required part of the plea. Having already executed the waiver and then making factual admissions to the offense, Mr. Peguero—a person in his twenties with no prior convictions—had compromised his legal position and had no alternative to going forward. *See People v. Frank*, 223 A.D.3d 683 (2d Dept. 2024) (“The record does not reflect that the defendant knowingly, voluntarily, and intelligently waived his right to appeal, as the County Court did not discuss the appeal waiver with the defendant until after he had already fully admitted his guilt as part of the plea agreement”) (citations omitted); *People v. Jennings*, 221 A.D.3d 617 (2d Dept. 2023) (same). Unlike in *People v. Rivera*, 2025 WL 1033727, * 1 (2025), where this Court found that making factual admissions prior to the explanation was not dispositive, Mr. Peguero was required to execute the written waiver *and* make factual admissions prior to any explanation of the right to appeal or the opportunity to consult with counsel.

The written waiver did not cure these deficiencies. *People v. Bonilla*, 211 A.D.3d 614, 615 (1st Dept. 2022) (written waiver could not cure flawed oral waiver); *People v. Rivera*, 201 A.D.3d 673 (2d Dept. 2022) (written waiver not a “permissible substitute[] for the court’s proper appraisal of the nature and scope of the appeal waiver”) (citations omitted). In pertinent part, the waiver stated that Mr. Peguero waived his right to appeal, and he attested that, “I understand that the right to appeal would have allowed

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me, with the assistance of an attorney, to have a higher court review my conviction and sentence.” The waiver therefore repeated the same flaw in the court’s colloquy, by failing to clarify that Mr. Peguero retained his right to an appellate attorney, notwithstanding the waiver. *See People v. Sealey*, 187 A.D.3d 1067 (2d Dept. 2020) (invalidating waiver in part due to the colloquy’s failure to clarify that the waiver did not preclude him from appointed appellate counsel); *People v. Walder*, 186 A.D.3d 1272 (2d Dept. 2020) (same); *People v. Howard*, 183 A.D.3d 640 (2d Dept. 2020) (same).

Considering the totality of the circumstances in this case—particularly Mr. Peguero’s lack of experience with the criminal legal system—it cannot be said that he comprehended the nature and consequences of waiving his fundamental right to appeal. *See People v. Thomas*, 34 N.Y.3d 545, 559 (2019); *Bisono*, 36 N.Y.3d at 1018 (finding several appeal waivers deficient under the totality of the circumstances) (citations omitted). Indeed, the court in *People v. Frank* looked specifically to the defendant’s “relatively young age and limited contact with the criminal justice system” in setting aside the purported appeal waiver. 223 A.D.3d at 683. For someone in Mr. Peguero’s position, it cannot be said that he knowingly, voluntarily, and intelligently waived his right to appeal. Accordingly, Mr. Peguero’s purported appeal waiver is invalid.

Even a valid waiver of appeal should not preclude this Court’s review of Mr. Peguero’s claim. The right to appeal the constitutionality of the Penal Law for weapon possession could not be waived, notwithstanding this Court’s decision in *People v.*

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Johnson, 225 A.D.3d 453 (1st Dept. 2024) (leave granted and pending in the Court of Appeals).

CONCLUSION

MR. PEGUERO'S WEAPON-POSSESSION
CONVICTION SHOULD BE VACATED AND THE
INDICTMENT DISMISSED.

Respectfully submitted,

Jenay Nurse Guilford
Attorney for Defendant-Appellant

Of Counsel
Frances Weil
July 2025

Appendix E

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

-----X

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

JASON PEGUERO,

Defendant-Appellant. :

-----X

PRINTING SPECIFICATIONS STATEMENT

This brief was prepared in Microsoft Word, using a 14-point Garamond font in the body and 12-point Garamond font in the footnotes. It totals 5,707 words.

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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

Respondent, :

-against- :

JASON PEGUERO, :

Defendant-Appellant. :
-----X

STATEMENT PURSUANT TO RULE 5531

1. The indictment number in the court below was 73144-22.
2. The full names of the original parties were People of the State of New York against Jason Peguero. There has been no change of parties on this appeal.
3. This action commenced in the Supreme Court, Bronx County.
4. This action was commenced by the filing of an indictment.
5. This is an appeal from a judgment rendered May 10, 2023 by the Supreme Court, Bronx County, convicting appellant Jason Peguero, upon a plea of guilty, of criminal possession of a weapon in the fourth degree (Penal Law § 265.01). Mr. Peguero was sentenced to a conditional discharge (Lorenzo, J. at plea and sentence).
6. Appellant has been granted permission to appeal as a poor person on the original record. The appendix method is not being used.

Appendix E

AFFIDAVIT OF SERVICE OF BRIEF ON CLIENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Frances Weil, an attorney duly admitted to the practice of law in this State,
does hereby affirm and show:

That on July 7, 2025 the Brief for Defendant-Appellant was served upon Jason
Peguero via email within the State of New York.

Dated: New York, New York
 July 7, 2025

Frances Weil
Frances Weil

Appendix E

AFFIDAVIT OF SERVICE OF BRIEF ON DISTRICT ATTORNEY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Frances Weil, an attorney duly admitted to the practice of law in this State,
does hereby affirm and show:

1. I am not a party to this action, am over 18 years of age, and I am
associated with the Center for Appellate Litigation.

2. On July 7, 2025, I served a true copy of the within Brief for Defendant-
Appellant on behalf of Jason Peguero, upon Respondent's attorney, the Bronx
County District Attorney Appeals Bureau, via email, on consent, at
appellatebriefs@bronxda.nyc.gov.

Dated: New York, New York
July 7, 2025

Frances Weil
Frances Weil

Appendix E

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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

Respondent, :

-against- :

JASON PEGUERO, :

Defendant-Appellant. :

-----X

NOTICE OF CONSTITUTIONAL CHALLENGE

Please take notice that, under C.P.L.R. § 1012(b) and Executive Law § 71, Defendant-Appellant hereby notifies the Attorney General of the State of New York that, in his appeal before the Appellate Division First Department, in the above matter, he asserts, among other constitutional challenges, that Penal Law §§ 265.01(1) and 400.00(1)(b) are unconstitutional. A copy of the defendant's appellate brief in this matter is attached.

Dated: New York, New York
July 7, 2025

TO: Office of the Attorney General
Division of Appeals & Opinions
28 Liberty Street
New York, NY 10005
Attn: Ira Feinberg, Deputy Solicitor General for Criminal Matters
ira.feinberg@ag.ny.gov

Appendix E

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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

Respondent, :

-against- :

JASON PEGUERO, :

Defendant-Appellant. :

-----X

AFFIRMATION OF SERVICE ON ATTORNEY GENERAL

FRANCES WEIL, an attorney duly admitted to the practice of law in this State, does hereby affirm and show:

That on July 7, 2025, the within Brief for Defendant-Appellant and Notice of Constitutional Challenge were served upon the Attorney General of New York by mailing these documents to the Attorney General at: Office of the Attorney General Division of Appeals & Opinions, 28 Liberty St., New York, NY 10005, the address designated for such service, by depositing these documents in a first class, prepaid, properly addressed wrapper, in a depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Those documents were also e-mailed to Ira Feinberg, Deputy Solicitor General for Criminal Matters at ira.feinberg@ag.ny.gov.

Dated: New York, New York
July 7, 2025

Frances Weil
Frances Weil

Appendix E

To be argued by
MARIA I. WAGER
(10 MINUTES REQUESTED)

New York Supreme Court

Appellate Division - First Department

App. Case No. 2023-02642
Bronx County. Ind. No. 73144-22

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

- against -

JASON PEGUERO,

Defendant-Appellant.

BRIEF FOR RESPONDENT

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SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

JASON PEGUERO,

Defendant-Appellant.

BRIEF FOR RESPONDENT

PRELIMINARY STATEMENT

Defendant appeals from a judgment of Supreme Court, Bronx County (Lorenzo, J.), entered May 10, 2023, convicting him, upon his guilty plea, of fourth-degree criminal possession of a weapon (Penal Law § 265.01(1)) and sentencing him to a conditional discharge. Defendant is free on bail after being arrested for possessing another unlicensed, loaded firearm, in Bronx County, on June 6, 2025; that case is pending.

INTRODUCTION

Defendant possessed an unlicensed, loaded firearm while driving a car with excessively tinted windows, with a suspended driver's license, on Bronx streets. Although defendant was charged with a class C violent felony offense, he received the misdemeanor plea he actively sought—and he was not required to serve any jail or probationary term. The People agreed to the misdemeanor plea because of the

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mitigation defendant offers now—that he had a Florida gun permit and had applied for a New York permit. While those circumstances do not make defendant’s conduct lawful, he was shown leniency and received the exact bargain he sought.

As a condition of that bargain, defendant agreed to waive his right to appeal. Defendant litigated the *Bruen* claims he raises now: that the lengthy delay in processing his gun application, and the ultimate denial of that application, violated his Second Amendment rights. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). And he made the reasoned decision to waive his right to appeal his challenge to the licensing scheme, as applied to him, in exchange for a highly favorable plea bargain. The totality of circumstances shows that defendant fully appreciated the consequences of the waiver. That waiver should foreclose defendant’s as-applied Second Amendment challenges. *See People v. Omar Johnson*, __N.Y.3d__, 2025 WL 3259873, *2 (November 24, 2025) (ruling that facial challenges (as opposed to challenges to a specific proceeding concerning an individual defendant) should be excepted from appeal waivers because they transcend an individual defendant’s interests).

In addition to the appeal waiver, defendant cannot demonstrate standing to press his “as-applied” challenges. Since defendant’s claims are rooted in his purported personal ineligibility to obtain a gun permit, he should be required to have fully submitted to the process before challenging it. *Id.* at *6. Although defendant applied for a New York license, he did not fully submit to the process, including the required background check, before arming himself. Further, although defendant now complains

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about the reasons that he was ultimately denied a New York gun license, he had not been aggrieved by that decision at the time of his unlawful possession, as he brazenly carried an unlicensed gun in New York while his application was still pending.

Reviewability aside, defendant's attempt to avoid the consequences of his actions simply because he possessed a permit to carry a gun in another state, and had a New York permit application pending, is unavailing. *Bruen* did not decriminalize the unlicensed, public possession of loaded weapons—and defendant was not licensed to carry a gun in New York. *See Id.* at *1, *6. The *Bruen* court recognized that states may employ licensing schemes to regulate the possession of firearms and may require applicants to submit to background checks. *Id.* Here, defendant violated New York's valid licensing rules by carrying a loaded gun before the licensing process and full background check were completed. Thus, defendant was lawfully prosecuted for his unlicensed possession of a loaded pistol.

STATEMENT OF THE CASE

The Offense

On July 11, 2022, at about 8:50 P.M., on Palisades Place, Bronx County, defendant was driving a vehicle with Pennsylvania license plates when he was stopped by police because the vehicle had excessively tinted windows. The officers determined that defendant's driver's license was suspended. When the officers asked defendant to exit the vehicle, he told them there was a gun in the car and that he had a Florida gun permit. A loaded firearm was found in the center console. Defendant was arrested. The

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police verified that defendant was issued a gun permit in Florida and had a pending New York permit application (Judgment Roll: Felony Complaint; Affirmation of A.D.A James B. Waller, dated November 18, 2022, filed in opposition to defendant's *Bruen* motion at 2-3).

Defendant had submitted his New York permit application, with the required fee, on December 29, 2021. His fingerprints for the background check were scheduled to be taken on March 7, 2022—four months before the instant offense. On August 5, 2022—about three weeks after defendant's arrest—his application was denied, citing the instant arrest, as well as one other arrest, five criminal court summonses, three complaint reports, five domestic violence reports, and sixteen moving violations (*see* Judgment Roll: affirmation of Matthew A. Wasserman, Esq., dated October 21, 2022, in support of defendant's *Bruen* motion, at ¶¶ 14-15 and Exhibit C; *Bruen* decision, dated December 20, 2022, at 3).

The Indictment

By an indictment filed August 12, 2022, defendant was charged with second-degree criminal possession of a weapon (Penal Law § 265.03(3)); criminal possession of a firearm (Penal Law § 265.01-b(1)); fourth-degree criminal possession of a weapon (Penal Law § 265.01(1)); third-degree aggravated unlicensed operation of a motor vehicle (VTL § 511(1)(a)); unlicensed operation of motor vehicle (VTL § 509(1)); and possession of ammunition (A.C. § 10-131(i)(3)).

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The *Bruen* Motion

On October 21, 2022, defendant moved to dismiss the four weapon counts in the indictment as violative of the Second and Fourteenth Amendments, relying on *Bruen*, 597 U.S. 1. Defendant also sought dismissal in the interest of justice pursuant to CPL 210.40 (Judgment Roll: defendant’s *Bruen* motion).

The People opposed the motion, arguing that defendant did not have standing and that *Bruen* invalidated only the “proper cause” requirement and left the remainder of New York’s gun laws intact (Judgment Roll: People’s opposition).

On December 20, 2022, the court (Mitchell, J.) found defendant had a “colorable” standing argument but denied the motion, finding that *Bruen* had not invalidated the entirety of New York’s gun laws nor authorized the unfettered possession of guns (Judgment Roll: *Bruen* decision). The court also noted that defendant had not appealed the denial of his New York gun license application (*id.* at 4).

The Plea

At a calendar call on May 10, 2023, defendant’s attorney remarked that defendant was interested in a misdemeanor plea. The prosecutor said the current offer was a class E felony with a five-year probationary term (P.2-3).¹

Later that same day, the case was recalled. The prosecutor said that, because defendant had a Florida gun permit and had applied for a New York permit, the People

¹ Numbers preceded by “P” refer to pages of the May 10, 2023, plea and sentence transcript.

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were offering the misdemeanor plea defendant sought. The offer was to fourth-degree criminal possession of a weapon, a class A misdemeanor, with a promised sentence of a conditional discharge (P.4-5).

The court told defendant that if he would like the offer of a misdemeanor “to cover everything,” with a conditional discharge and a waiver of appeal, he could be sentenced that day if he liked (P.5). The court said it would take the plea after defendant signed the written appeal waiver. Defendant, with the assistance of counsel, signed the waiver (P.5).

Defendant’s counsel stated defendant had authorized her to enter a guilty plea to fourth-degree criminal possession of a weapon in full satisfaction of the indictment. The court repeated that the promised sentence was a conditional discharge, and that defendant was agreeing to waive his right to appeal. Counsel agreed that was their understanding (P.5).

In response to questions from the court, defendant confirmed he was satisfied with his attorney’s representation (P.6-7). The court asked defendant if he understood that by his guilty plea, he was giving up his right to remain silent and not incriminate himself. Defendant asked for clarification, and after the court’s explanation, defendant said he understood (P.7). Defendant admitted he possessed a pistol in Bronx County on July 15, 2022. Although he had a Florida gun license, and applied for one in New York, defendant conceded he did not have a New York gun permit. He agreed to plead guilty to fourth-degree criminal possession of a weapon (P.8).

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Defendant acknowledged he was giving up trial rights: to a trial by jury; to confront the witnesses against him; to present a defense, including calling witnesses and testifying in his own behalf; and to require the People to prove his guilt beyond a reasonable doubt. Defendant said he understood that his conviction resulting from his plea was the same as a trial verdict (P.9).

The court then turned to the appeal waiver. The court informed defendant that he was waiving his right to appeal as a condition of the plea agreement. The court explained that the waiver of the right to appeal was separate and distinct from the waiver of defendant's trial rights, noting that "[o]rdinarily, a defendant retains the right to appeal even after pleading guilty." (P.9). The court explained that "[a]n appeal is a proceeding in a higher court. We call it an Appellate Court." The court added that if defendant could not afford the cost of an appeal, including appellate counsel, the state would pay those costs for him (P.9). The court explained that defendant, with the assistance of counsel, could argue that there was an error requiring that his conviction be modified or reversed, which then may require new proceedings or a dismissal. Defendant said he understood (P.9-10).

The court informed defendant that, by his appeal waiver, he was not giving up his right to file a notice of appeal but that he was giving up his right to pursue most claims of error, for example, whether his sentence was excessive. The court told defendant, "Essentially, it means the plea conviction and sentence is normally final. Do you understand that?" (P.10). Defendant said he understood.

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The court then listed some claims that would survive the waiver: the voluntariness and validity of the plea and appeal waiver; the legality of the sentence; and the jurisdiction of the court. Defendant said he understood (P.10).

Defendant confirmed that he spoke to his attorney about waiving his right to appeal and that he signed the written waiver (P.10). Defendant agreed he was voluntarily waiving his right to appeal in exchange for the promised plea and sentence (P.10-11).

The written waiver states:

I, JASON PEGUERO, 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.

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(Judgment Roll: appeal waiver (emphasis added)).

Defendant's counsel also signed the waiver, as did the court, attesting that "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" (*id.*).

Defendant confirmed that no other promises were made to him, no one threatened or forced him to plead guilty, and he was pleading guilty because he was guilty. When the clerk asked defendant if he was withdrawing his previously entered not-guilty plea and entering a guilty plea to fourth-degree criminal possession of a weapon, in satisfaction of the entire indictment, defendant responded, "Indeed" (P.11).

Defendant requested immediate sentencing, and he was sentenced as promised. Defendant thanked the court. The clerk then advised defendant of his right to appeal (P.12-13). Defense counsel filed a notice of appeal that same day (Judgment Roll: notice of appeal).

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POINT I

Defendant's Valid Waiver Of His Right To Appeal
Forecloses Review Of His "As-Applied" Second
Amendment Claims (Answering Defendant's Brief, Point I
at 19-23).

Defendant's case had been pending for 10 months. During that time, his attorney actively litigated a host of issues and engaged in plea negotiations. Although defendant was charged with a class C violent felony offense, he was offered a plea to a Class E nonviolent felony offense with a probationary sentence. Nonetheless, his attorney continued to negotiate on his behalf and ultimately negotiated the plea defendant sought—a plea to a misdemeanor offense with a promised sentence of a conditional discharge.

Defendant does not, and could not, dispute that he voluntarily, intelligently, and knowingly pled guilty in exchange for a highly favorable plea bargain—one that allowed him to avoid a felony conviction and any prison or probationary term. As a condition of that bargain, he agreed to waive his right to appeal. The parties reached a resolution “by mutual concessions.” *People v. Seaberg*, 74 N.Y.2d 1, 7 (1989). That waiver should foreclose defendant's as-applied challenges.

A. The Valid Appeal Waiver Should Foreclose Defendant's As-Applied Second Amendment Challenges.

While defendant makes a broad claim that New York's licensing scheme is facially invalid, he challenges the procedure of his specific licensing application and his eligibility under individual New York provisions. He challenges the legality of the delay

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in processing his individual application (defendant’s brief at Point I(A)), the reasons for the individual denial of his application (defendant’s brief at Point I(B)), and asks this Court to decide if he should have been granted a license (defendant’s brief, Point I(C): challenging requirements “*as applied* to Mr. Peguero because he met the threshold eligibility requirements”) (emphasis added). *See People v. Garcia*, 41 N.Y.3d 62, 70 (2023) (defendant’s claim that “because he held a Utah license, the only reason he did not possess a New York license must have been the ‘proper cause’ requirement invalidated in *Bruen*” was an as-applied challenge to New York’s licensing scheme); *People v. Cabrera*, 41 N.Y.3d 35, 51 (2023) (defendant’s claims that he would have been eligible to obtain a New York license because he was licensed in Florida and met all requirements were as-applied challenges); *People v. Pastrana*, 41 N.Y.3d 23, 31 (2023) (Rivera, J. dissenting) (defendant’s challenge to the licensing ban of convicted felons was an as-applied constitutional challenge). His appeal waiver should foreclose review of those as-applied challenges.

Valid appeal waivers are generally enforceable and serve vital interests, such as “providing a prompt conclusion to litigation, avoiding delay, and removing inevitable risks and uncertainties of criminal trials.” *People v. Thomas*, 34 N.Y.3d 545, 557 (2019) (internal quotations and citations omitted). Valid waivers should be enforced because plea bargaining would serve little to no purpose if plea deals could later be undone or renegotiated despite validly executed appeal waivers. *Id.* at 558; *see also Johnson*, 2025 WL

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3259873 at *2-3 (recognizing that valid appeal waivers serve important interests and should be generally enforceable).

The Court of Appeals recently ruled in *Johnson*, 2025 WL 3259873, that waivers should not be enforced for facial constitutional challenges of statutes defining criminal offenses. The court repeatedly limited that ruling to facial challenges only. *See Id.* at *1-4. The court differentiated claims that transcend a defendant's individual concerns (such as broad, facial challenges) from those that challenge "a specific proceeding concerning a particular defendant." *Id.* at *2. Defendant's claims center on the delay in processing his application and the ultimate denial of it. Thus, defendant's claims are particular to him.

The Court of Appeals stressed that:

the class of claims excepted from the general rule enforcing appeal waivers remains narrow. There will be few types of claims that transcend a defendant's individual interests and implicate a larger societal value to such an extent that they cannot be waived, and appeal waivers otherwise should be enforced.

Johnson, 2025 WL 3259873 at *4. This Court has also held that as-applied challenges are foreclosed by a valid appeal waiver. *See e.g. People v. Lombard*, 241 A.D.3d 1126 (1st Dept. 2025); *People v. Lowndes*, 239 A.D.3d 574, 575 (1st Dept. 2025).

Here, defendant's challenges to the delay in processing his application and the reasons for its denial, and his request for this Court to decide whether he should have been issued a license, are specific to him and do not fall under the narrow class of claims

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that are excepted from the general enforceability of waivers. *See People v. Stuart*, 100 N.Y.2d 412, 421 (2003) (“an as-applied challenge calls on the court to consider whether a statute can be constitutionally applied to the defendant under the facts of the case”); *see also People v. Martin*, 241 A.D.3d 1211, 1212 (1st Dept. 2025) (defendant’s argument that *Bruen* invalidated permissive presumption of intent to use a gun unlawfully was an as-applied challenge where court considered defendant’s circumstances surrounding his possession); *People ex rel. Neville v. Toulon*, 43 N.Y.3d 1, 14 (2024) (petitioner’s challenge regarding the delay in conducting his hearing was an as-applied due process claim). Thus, defendant’s appeal waiver, which is valid (as detailed below) should foreclose his as-applied constitutional challenges.

B. The Appeal Waiver Is Valid.

The court conducted a lengthy allocution in which defendant acknowledged his satisfaction with his attorney and understanding of the waiver. Defendant also executed a written waiver, which he discussed with counsel. He confirmed at the plea hearing that he understood the appeal waiver. Defendant’s waiver of appellate review “was the quid pro quo to the reduced plea bargain, which was designed to end the litigation for all parties. . . Defendant does not have the right to subsequently eviscerate the favorable plea bargain he knowingly and voluntarily accepted.” *See Thomas*, 34 N.Y.3d at 564-565.

An appeal waiver is knowing, intelligent, and voluntary if all the circumstances demonstrate that the defendant understood the nature of the appellate rights he was waiving. *Thomas*, 34 N.Y.3d at 545; *see also Seaberg*, 74 N.Y.2d at 11. Those circumstances

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include the trial court's oral colloquy, the defendant's consultation with his attorney, on-the-record acknowledgments of comprehension, a written appeal waiver that supplements or clarifies the court's oral colloquy, and any prior experience with the criminal justice system the defendant may have had. *Thomas*, 34 N.Y.3d at 560.

Here, the court first explained the trial rights defendant was automatically surrendering by his guilty plea (P.7-9). After ensuring that defendant understood, the court next turned to the appeal waiver, making clear that it was separate and distinct from the forfeiture of trial rights (P.9). The court explained that some appellate rights would survive the waiver, but most would not. The judge also made clear that the appeal waiver was a condition of this specific plea (P.9-11). The court's colloquy regarding the waiver of the right to appeal—interspersed with repeated assurances from defendant that he understood—ensured defendant's waiver was knowing and voluntary.

Additionally, defendant confirmed that he had the opportunity to discuss the written waiver with counsel, understood it, and agreed to it (P.10). A written waiver supplements and can clarify any ambiguities in the court's oral colloquy. *See Thomas*, 34 N.Y.3d at 560; *People v. Ramos*, 7 N.Y.3d 737, 738 (2006). Defendant was also guided by counsel. His plea was entered after the case had been pending for ten months, during which time counsel actively litigated a host of issues, including moving for omnibus relief and dismissal of the indictment, challenging the People's application to compel defendant to provide a DNA sample, and moving to suppress the results (*see* Judgment Roll). Defendant was offered a lenient plea bargain to a class E nonviolent felony

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offense, yet his counsel continued to negotiate and ultimately obtained the exact plea defendant sought—to a misdemeanor offense (*see* P.3). It is unsurprising that defendant averred that he was satisfied with counsel’s representation (P.6-7). Of course, a reviewing court must presume that counsel provided competent advice about the plea deal and the appeal waiver. *See Thomas*, 34 N.Y.3d at 560 (“In the absence of any record support, we do not presume that counsel was somehow incompetent and failed to provide effective assistance during the plea negotiations as demanded by the Sixth Amendment”).

That defendant reviewed and signed the written waiver before the court’s factual allocution does not vitiate the waiver. After all, the court made clear from the outset that the appeal waiver was a condition of the plea, and defendant signed the written waiver as part of a negotiated, integrated plea colloquy. *See People v. Guzman*, 237 A.D.3d 570, 571 (1st Dept. 2025) (that the court conducted its colloquy after defendant signed a written appeal waiver did not render the waiver unknowing or involuntary). Neither the timing of an allocution nor the signing of a written waiver invalidates an otherwise knowing and voluntary waiver because courts have “repeatedly steered clear of a uniform mandatory catechism . . . in favor of broad discretions controlled by flexible standards.” *Thomas*, 34 N.Y.3d at 563. A court need not engage in any litany, ritual, or catechism. *People v. Sanders*, 25 N.Y.3d 337, 341 (2015). So long as the totality of the circumstances show that a defendant fully appreciated the consequences of the waiver,

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it will be upheld. *Seaberg*, 74 N.Y.2d at 11; *People v. Castillo*, 226 A.D.3d 573, 574 (1st Dept. 2024).

The relevant circumstances included the clear and comprehensive explanations of the nature of the appellate rights being waived in both the court's oral colloquy and the written waiver; defendant's explicit acknowledgments, in the colloquy and written waiver, that the right to appeal is separate and distinct from the trial rights automatically forfeited upon pleading guilty; the leniency and desirability of the sentence agreed to; the active involvement of competent counsel; and the court's repeated elicitations of defendant's acknowledgments that he had discussed the waiver with counsel, understood the nature and consequences of the waiver, and was voluntarily waiving the right to appeal.

Id. at 574. All those circumstances were present here.

Defendant, citing *People v. Rivera*, 237 A.D.3d 481, 482 (1st Dept. 2025), concedes that this Court has upheld waivers where a defendant admitted guilt prior to the court's allocution about the waiver (defendant's brief at 21). *See also People v. Cordero*, 239 A.D.3d 487, 487-488 (1st Dept. 2025) (waiver upheld although the court conducted the waiver colloquy after defendant's allocution"); *Castillo*, 226 A.D.3d at 574 (same). The Court of Appeals has also upheld a waiver that occurred after defendant's allocution. *People v. Bryant*, 28 N.Y.3d 1094, 1096 (2016) (waiver valid where "only after the allocution did the court turn to the waiver of appeal"). There is no hint in the record that defendant or his attorney were surprised by the waiver condition (*see* P.2). *Cf.*, *People v. Ramos*, 152 A.D.2d 209, 211 (1st Dept. 1989) (waiver invalid where "[n]o one mentioned the waiver

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of appeal until after the plea had been entered”). Rather, it is clear from the record that plea negotiations had been ongoing (*see* P.3).

Not only are the Second Department cases defendant cites not binding on this Court, but those cases involved deficiencies aside from the timing of the waiver that are not present here (defendant’s brief at 21). In *People v. Frank*, 223 A.D.3d 683 (2d Dept. 2024), the record did not support that the young, inexperienced defendant understood the nature of the appellate rights he was waiving. Here, when the nearly-30-year-old defendant did not understand the court’s questions, he did not hesitate to ask for clarification (*see* P.6-7; Judgment Roll: criminal repository). There is no hint in this record that defendant did not understand the plea or the waiver. In *People v. Jennings*, 221 A.D.3d 617 (2d Dept. 2023), the court suggested the waiver was mandatory. The court made clear here that the waiver was a condition of this plea (P. 2, 7-9; Judgment Roll: criminal repository).

Defendant’s argument that the waiver is invalid because he was not clearly informed that he was entitled to appellate counsel is equally unavailing (defendant’s brief, p. 20). The court advised defendant regarding that right:

If you cannot 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 a reversal or modification of the conviction. A reversal would require new proceedings in court or a dismissal. Do you understand so far? (P.9-10).

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After defendant answered that he understood, the court continued that “[w]hen you waive your right to appeal, you do not give your right to take an appeal, by filing a notice of appeal with the Court and the district attorney within 30 days of sentence.” The court went on to give examples of claims that did and did not survive a waiver (P.10). The written waiver also stated defendant was entitled to the assistance of appellate counsel (Judgment Roll: written waiver).

For those reasons, defendant’s argument that the court’s language was confusing (*see* defendant’s brief at 21) has already been rejected by this Court and the Court of Appeals. The court’s language regarding appellate counsel tracked the model colloquy, which “neatly synthesizes [Court of Appeals] precedent and the governing principles and provides a solid reference for a better practice.” *Thomas*, 34 N.Y.3d at 567; CJI2d & Model Colloquies – Waiver of Right to Appeal.² The *Thomas* Court observed that, in the model language, which was used here, “[t]here is no mention made of an absolute bar to the taking of an appeal or any purported waiver of collateral or federal relief in the Model Colloquy *or to the complete loss of the right to counsel to prosecute the direct appeal.*” *Thomas*, 34 N.Y.3d at 567 (emphasis added). This Court has made that same determination. *See People v. Rosario*, 242 A.D.3d 527, 527 (1st Dept. 2025) (“The language in the colloquy and the written waiver did not suggest that defendant waived his right to appellate counsel”); *See People v. Yizar*, 240 A.D.3d 416, 416 (1st Dept. 2025) (“The

² See model colloquy at the following website: <https://nycourts.gov/judges/cji/8-Colloquies/Waiver%20of%20Right%20to%20Appeal.pdf> (last visited December 9, 2025).

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court [using the same language] properly explained defendant’s right to counsel on appeal, and did not imply that by waiving appeal, defendant would forfeit his right to appellate counsel for claims that survived the waiver”).

Indeed, defendant filed a notice of appeal the day of his plea and is represented on appeal by court-appointed counsel. Thus, his claim that he did not know he would have the right to court-appointed counsel on appeal lacks credulity. *Cf. People v. Bisono*, 36 N.Y.3d 1013, 1024 (2020) (where a companion defendant, Todd Daniels, was told “that waiving the right to appeal ‘means [that] nobody is going to provide you with an attorney, transcripts, any help whatsoever to appeal the sentence, or this conviction’” (Garcia, J., dissenting)).

In sum, the totality of circumstances shows that defendant was aware of the nature of the appellate rights he was waiving. Defendant made an informed decision to waive his appellate rights in exchange for a favorable plea that allowed him to avoid a felony conviction and prison term. *See Thomas*, 34 N.Y.3d at 564–565 (the appeal waiver of the suppression claim was the “quid pro quo” to the plea bargain). Defendant should not be allowed to have availed himself of this bargain by “mutual concessions” and then renege on his part of the bargain. *Seaberg*, 74 N.Y.2d at 7. Defendant’s appeal waiver should foreclose his Second Amendment “as-applied” challenges.

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POINT II

Defendant Lacks Standing To Bring His “As-Applied” Constitutional Challenges. In Any Event, He Had No Second Amendment Right To Carry A Loaded, Unlicensed Firearm On A Bronx Street (Answering Defendant’s Brief, Point I).

Defendant had no lawful right to arm himself in New York without first obtaining a New York gun license. This Court should reject defendant’s “as-applied” Second Amendment challenges to his conviction for two independent reasons, beyond his valid appeal waiver. First, defendant does not have standing to challenge his “personal ineligibility” or the delay under New York’s gun licensing scheme. *Johnson*, 2025 WL 3259873, *6, citing *United States v. Decastro*, 682 F.3d 160, 164 (2d Cir. 2012). While defendant applied for a gun license, he did not await a decision on his application before carrying an unlicensed firearm in New York. Therefore, he was not aggrieved by the licensing scheme at the time of his unlawful possession. He had lawful avenues of redress within which to challenge his ineligibility, as well as the delay.

Second, defendant’s Second Amendment claims, whether facial and/or as-applied, lack merit. In *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 2 (2022), the Supreme Court did not decriminalize the unlicensed, public possession of loaded weapons. *Johnson*, 2025 WL 3259873, *1, *6-*7. To the contrary, the Court recognized that states may employ licensing schemes to regulate the possession of firearms. *Id.* at *6. Defendant’s impatience with the lawful process, and decision to unlawfully arm himself instead of seeking a legal remedy, should not be countenanced.

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A. Defendant Lacks Standing To Raise As-Applied Second Amendment Claims Because He Did Not Fully Submit To The Licensing Process And Was Not Aggrieved By It.

While the Court of Appeals held that the defendant in *Johnson* had standing, the court limited that finding to the facial challenge presented there. The court noted the distinction of a claim “rooted in ‘personal ineligibility’ to obtain a firearm license,” *Id.* at *6. “[I]t makes sense to require the defendant to first attempt to obtain a license in order to challenge the eligibility rules.” *Id.* Defendant, here, is challenging the eligibility rules and, thus, should have had to submit fully to the process to challenge those rules.

Defendant cannot meet that burden because he did not fully submit to the licensing scheme he attacks, nor was he aggrieved by it at the time of his unlawful possession. While the trial court found that defendant had “made a colorable claim of standing to challenge the constitutionality of Penal Law 265.03 as applied to him” (*Bruen* Decision at 3), this Court has the authority to review that jurisdictional determination. *See Mental Hygiene Legal Services v. Daniels*, 33 N.Y.3d 44, 48-50 (2019) (where the Court of Appeals did not reach the issue underlying the appeal because it disagreed with both the Supreme Court and Appellate Division that petitioner had standing, which is a jurisdictional predicate).

At the time defendant was charged with criminal possession of a weapon, he had not yet been denied a license and, thus, had not suffered a cognizable harm from the licensing process. A court does not have inherent power to correct a wrong if a party has not actually suffered a wrong, an injury in fact, or a cognizable harm that is not

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conjectural. *See Mental Hygiene Legal Services*, 33 N.Y.3d at 50; *see also Howell v. Benson*, 105 Misc.2d. 757, 759 (Sup. Ct., Albany County 1980) (petitioner’s standing to seek relief could not be determined because he was not yet an aggrieved party until his pending applications were denied). Hence, defendant should not be heard to challenge the constitutionality of the licensing process as it applies to him, because he short-circuited the process by carrying an illegal gun before receiving a ruling on his application.

Therefore, the injury defendant ultimately suffered—a criminal prosecution—was not the result of any flaw in New York’s gun licensing scheme. Rather, it was the result of his decision to arm himself without resolution of his application. *See Chino v. New York Department of Financial Services*, 171 A.D.3d 610, 610-611 (1st Dept. 2019) (petitioners lacked standing because they did not exhaust their administrative remedies and any injury they suffered was self-created by the abandonment of the licensing process).

Defendant had a lawful remedy at his disposal for the alleged delay in processing his application—mandamus. A CPLR article 78 proceeding is the proper vehicle to compel acts that officials are duty-bound to perform, even where the officials may exercise discretion in acting. *Klostermann v. Cuomo*, 61 N.Y.2d 525, 540 (1984); *see also Matter of Bonanno v. Town Bd. Of Town of Babylon* A.D.2d 532 (2d Dept. 1989) (mandamus appropriate where there was unreasonable delay in acting on petitioner’s application for a license); *Matter of Kamenshchik, v. Ryder*, 78 Misc.3d 646, 649 (Sup. Ct., Nassau County 2023), *vacated in part, modified in part*, 84 Misc.3d 1048 (2024) (mandamus appropriate

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where petitioner was challenging delay in processing his pistol permit). The licensing officer could have been “directed to act, but not how to act.” *Klostermann*, 61 N.Y.2d at 540. Thus, if defendant thought the delay was “abusive,” he did not have to wait “indefinitely” (defendant’s brief at 10-11). His recourse was an article 78 proceeding, not unlicensed possession.

Defendant never alerted the licensing officials about his dissatisfaction with the amount of time it was taking to process his application. It is unsurprising that his application was ultimately denied given that he carried an illegal firearm while his application was pending, as his conduct is the antithesis of acting as a law-abiding, responsible citizen. *Accord Bruen*, 597 U.S. at 9 (holding that the Second Amendment protects the right of “law-abiding citizens” to possess guns for self-defense).

Instead, defendant wants to flip that procedure on its head. Defendant did not see the process through; instead, he carried a loaded gun in public unlawfully. Now he wants this Court to give him permission after the fact. He argues that it was permissible for him to circumvent the legal process by illegally carrying around his loaded firearm despite knowing he did not have a permit. But the Second Amendment does not sanction such lawlessness, which would pose a grave danger to public safety. Simply put, if the standing rule were discarded for personal eligibility claims and claims of delay, it would incentivize those who are disinclined to abide by the law to carry loaded firearms in public in defiance of a state’s “reasonable, well-defined restrictions.” *Bruen*, 597 U.S. at 70.

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By arguing that he had a constitutional right to possess an unlicensed gun, defendant improperly asked the criminal courts to do the work of the gun licensing authorities: to determine that he had the requisite background and character that would have qualified him to obtain a concealed carry permit. Defendant argues that he met all baseline requirements and points out that he was issued a Florida gun license. New York's background check is more thorough, and this state has a strong commitment to gun safety. *See Cabrera*, 41 N.Y.3d at 51 (that New York has a more onerous gun licensing scheme than Florida does not necessarily mean it is unconstitutional). Indeed, the reasons defendant was ultimately denied a New York gun license in August 2022 undermine his claim that he would have been granted a license but for the delay in processing his application (*see* Judgment Roll: defendant's *Bruen* motion, Exhibit D; defendant's brief at 13-14). In any event, it is not the job of this Court to make such a determination.

Notably, this record does not reveal the cause of the delay. Defendant's application was deemed submitted after he presented it and paid the fee, which was December 29, 2021 (*see* Judgment Roll: defendant's *Bruen* motion, Exhibit C; *Bruen* decision at 3). *See* Penal Law § 400.00(4-b). The application was, thus, pending for 6 months and 12 days before defendant was arrested and prosecuted for unlicensed gun possession. Defendant was scheduled for fingerprint submission on March 7, 2022, which was necessary to conduct a background check (*see* Judgment Roll: defendant's

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Bruen motion, Exhibit C). It is unknown if the appointment was kept or delayed and, if delayed, who or what was the cause.

Further, defendant's application was ultimately denied, partly because he made false statements or failed to make a complete disclosure on his application (*see* Judgment Roll: defendant's *Bruen* motion, Exhibit D; defendant's brief at 13-14). Thus, defendant's own conduct complicated the evaluation process, which could explain the time it took to process his application. This Court does not have his application—defendant attached his Florida permit application to his *Bruen* motion but not his New York one (*see* Judgment Roll: defendant's *Bruen* motion, Exhibit B).

Additionally, it is unknown if there was ever written notice to defendant regarding a delay of the statutory period. *See* Penal Law § 400.00(4-b) (providing an exception to the six-month period for processing applications if the licensing officer provides the applicant with written notice of reasons for “good cause” delay).

Defendant failed to meet his burden to develop a sufficient record that would permit review. *See Cabrera*, 41 N.Y.3d at 51 (defendant's as-applied challenges that he would have been eligible for a New York license required development of the record thus precluding review); *see generally People v. Kinchen*, 60 N.Y.2d 772 (1983) (defendant has the burden to develop a record that is adequate for appellate review). This Court should not act as a de facto licensing board—a task that the criminal and appellate courts are not well situated to perform. This is true especially where, as here, defendant

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faced disqualifying factors that the licensing board, not this Court, could assess. *See* Penal Law § 400.00(1).

“[S]atisfying the unconstitutional proper-cause-licensing requirement” was not defendant’s “only path to immunity from criminal prosecution” (defendant’s brief at 10). Had defendant waited for a decision on his application, he could have lawfully sought redress if it had been denied. Defendant could have appealed that decision, and that factfinder would have had a complete record to make the determination that defendant now belatedly asks this Court to make. *See* Penal Law § 400.00(4-a). The plaintiffs in *Bruen* did not short-circuit the process. They were civil litigants. Defendant’s chosen path short-circuited the lawful process.

If defendant believed that New York’s gun licensing scheme was unconstitutional, he should have followed a lawful process in attempting to vindicate his rights. If and when his license application was denied, he could have appealed. If his appeal was denied, he could have filed a civil suit challenging the determination—like the plaintiffs in *Bruen*. Instead, he took the law into his own hands. To countenance such lawless conduct endangers public safety and defies the state’s “reasonable, well-defined restrictions” on gun possession. *Bruen*, 597 U.S. at 70.

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B. The Supreme Court's Decision In *Bruen* Does Not Undermine Defendant's Conviction For Possessing An Unlicensed Firearm.

Even if defendant's Second Amendment claims were reviewable, they would fail. The Supreme Court has long held that states may require gun owners to obtain a license, and *Bruen* did not alter that rule. *Johnson*, 2025 WL 3259873, *6. Indeed, *Bruen* invalidated only one aspect of New York's scheme: the "proper cause" requirement for obtaining a concealed carry permit. The Court left the remainder of New York's gun licensing rules undisturbed. *Id.* Because defendant did not obtain a gun license, he was properly prosecuted for possession of a firearm without a license.

1. New York's Gun Licensing Scheme

Under New York law, it is illegal to possess an unlicensed firearm. The degree of crime depends on various factors, including whether the firearm is loaded, whether it is possessed outside one's home or place of business, and whether the defendant harbors the intent to use it unlawfully. *See* Penal Law § 265.01 *et seq.* Pertinent here, possession of a loaded firearm outside one's home or place of business constitutes a class C violent felony offense. Penal Law §§ 70.02(1)(b) and 265.03(3).

A person may avoid criminal liability for possessing a firearm if he or she has a valid New York gun license. Penal Law § 265.20(3). To obtain a license, an applicant must submit to an investigation, and the licensing officer must find that "all statements in a proper application for a license are true." Penal Law § 400.00(1). The applicant must be 21 years of age or older and of good moral character. Penal Law § 400.00(1)(a)-

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(b). An applicant may be disqualified if, among other things, he or she has a prior conviction for a felony or other serious offense, has an outstanding warrant for a felony or serious offense, is a fugitive from justice, has a history of mental illness, or has an outstanding order of protection. Penal Law § 400.00(1)(c)-(n). In addition, though no longer in effect today, an applicant could have been denied a license if “good cause” exists for denying the license. Penal Law § 400.00(1)(n) (2021).³

At the time of defendant’s permit application, but prior to his commission of the instant offense, to obtain a license authorizing the carrying of a concealed firearm outside one’s home or place of business, an applicant was required to show “proper cause” (*see* Penal Law § 400.00(2)(f) (former)), which was defined as “a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession.” *Matter of Klenosky v. New York City Police Dept.*, 75 A.D.2d 793 (1st Dept. 1980), *aff’d*, 53 N.Y.2d 685 (1981). Following *Bruen*, and defendant’s arrest here, the Legislature eliminated the “proper cause” requirement for obtaining a concealed carry permit and substituted other requirements. *See* Penal Law §§ 400.00(1)(o), (2)(f).

³ Defendant argues that the licensing official’s “resort” to the Rules of New York City to deny his application after *Bruen* invalidated the “proper cause” requirement demonstrates the government’s “sheer determination” to deny him a license (defendant’s brief at 14, 17, 19). But those rules are similar to the statutory requirements found in Penal Law § 400.00. It was defendant who demonstrated a determination to publicly carry a loaded pistol in New York without a license. Although he was spared a felony conviction and jail sentence by the very lenient plea bargain here, he then armed himself again and now faces new felony weapon charges (Bronx County Indictment Number 72675/2025).

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2. Bruen Did Not Invalidate New York’s Gun Licensing Scheme.

The Supreme Court has never held that a person has the right to possess an unlicensed firearm. In *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008), the Court held that the District of Columbia’s complete “ban on handgun possession in the home violate[d] the Second Amendment, as [did] its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.” In *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010), the Court applied this right to possess a firearm to the states.

Critically, in *Heller*, the Court made clear that “the right secured by the Second Amendment is not unlimited.” *Heller*, 554 U.S. at 626. Instead, the right to keep and bear arms is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* For instance, “nothing” in the *Heller* decision “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” *Id.* Further, the Second Amendment does not prohibit localities from enacting “laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 626-27. The *Heller* Court “identif[ied] these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.” *Id.* at 627 n.26; *accord McDonald*, 561 U.S. at 786.

Bruen did not disturb those holdings. The plaintiffs in *Bruen*—“law-abiding, adult citizens” of New York State—challenged the “proper cause” requirement for the

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issuance of a concealed carry permit. *Bruen*, 597 U.S. at 15. Both individual plaintiffs submitted to—and passed—background checks and were issued restricted licenses. But they were denied full concealed carry permits because they had not demonstrated a special need to carry a concealed weapon in public. *See id.* In a fact-specific ruling, the Supreme Court held that the Second Amendment protects the right to carry a weapon in public for self-defense, which may not be conditioned on “demonstrating to government officers some special need.” *Id.* at 70.

The Court did not disturb any other aspect of New York’s gun licensing scheme. In fact, it reiterated that the Second Amendment right was subject to “well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms.” *Bruen*, 597 U.S. at 38; *Johnson*, 2025 WL 3259873, *6. Instead, in invalidating New York’s “proper cause” requirement, the Court focused on the level of discretion conferred on licensing officers. It observed that 43 states issued “concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability.” *Bruen*, 597 U.S. at 13. The Court declared that nothing in its “analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes, under which a general desire for self-defense is sufficient to obtain a [permit].” *Id.* at 38 n.9 (internal quotation omitted). The Court emphasized that the regimes of the 43 other states, “which often require applicants to undergo a background check or pass a firearms safety course,”

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were not unconstitutional, as they were “designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” *Id.*, quoting *Heller*, 554 U.S. at 635.

Concurring in *Bruen*, Justice Kavanaugh (joined by the Chief Justice) observed that “the Court’s decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense.” *Bruen*, 597 U.S. at 79 (Kavanaugh, J., concurring). Justice Kavanaugh remarked that New York may continue to require licenses for carrying handguns for self-defense so long as it “employ[s] objective licensing requirements like those used by the 43 shall-issue States.” *Id.* at 80. Citing *Heller*, Justice Kavanaugh observed that “the Second Amendment allows a variety of gun regulations,” including “prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 81 (Kavanaugh, J., concurring) (internal quotation marks omitted).

Justice Alito echoed those sentiments, observing that the Court had not “disturbed anything that we said in *Heller* or *McDonald*...about restrictions that may be imposed on the possession or carrying of guns.” *Bruen*, 597 U.S. at 72 (Alito, J., concurring). Justice Alito added that the *Bruen* “holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun.” *Id.*

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Thus, the Supreme Court’s opinion in *Bruen*—along with concurring opinions joined by three of the six Justices in the *Bruen* majority—make clear that New York may continue to require that a person obtain a license to purchase or possess a firearm and a concealed carry permit to carry a handgun in public. The state merely may not require a concealed carry permit applicant to show a “special need” to carry a firearm for self-defense. In all other respects, the Court left New York’s licensing scheme undisturbed. *Johnson*, 2025 WL 3259873, *6.

3. Defendant’s Conviction Is Consistent With *Bruen*.

Hence, defendant wrongly asserts that *Bruen* rendered Penal Law § 265.03(3)—or the lesser-included offense to which he pled guilty—unconstitutional. Instead, *Bruen* invalidated only a small part of New York’s gun licensing scheme: the former “proper cause” requirement for obtaining a concealed carry permit. *Id.* That requirement was irrelevant to defendant’s conviction for weapon possession, for two reasons. First, that requirement had been excised from the statute by the Supreme Court’s holding in *Bruen* before defendant’s offense (and before he was denied a gun license); thus, it played no role in this case. Moreover, the “proper cause” requirement aside, defendant failed to establish that he met the threshold requirements for obtaining *any* sort of New York gun license, much less a concealed carry permit. Indeed, unlike the plaintiffs in *Bruen*, defendant never passed a background check.

In *Heller* and *Bruen*, the Supreme Court made clear that states can adopt gun licensing schemes that ensure only “law-abiding, responsible citizens” can legally bear

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arms. *Bruen*, 597 U.S. at 38 n.9; *Heller*, 554 U. S. at 635. While defendant claims he armed himself for self-defense, he “may not avoid the criminal possession charge by claiming that he possessed the weapon for his protection.” *People v. Williams*, 36 N.Y.3d 156, 163 (2020); *see also Rivera*, 237 A.D.3d at 481. Here, defendant armed himself without a license. Aside from his arrest here, he also has a sealed arrest, was named in five criminal summonses, three criminal complaint reports, five domestic violence reports, and sixteen moving vehicle violations (Judgment Roll: defendant’s *Bruen* motion, Exhibit D). He also failed to make complete disclosure on his gun license application (*id.*). Thus, defendant was not the “law-abiding, responsible citizen” contemplated in *Bruen*. He had no right to carry a loaded firearm in public—and the state had good reason to reject his license application—consistent with *Bruen*. *See* Penal Law § 400.00(1)(c); *United States v. Rahimi*, 602 U.S. 680, 702 (2024) (persons who pose a credible threat to the physical safety of others may be disarmed).

It is not enough for defendant to respond that these multiple prior incidents, including criminal complaints and domestic violence reports, were unproven (defendant’s brief at 15). In *Bruen*, the Court made clear that a state is entitled to conduct a background check to limit gun ownership to law abiding citizens. Defendant was required to be forthright with licensing authorities about this history and to show that these documented incidents did not give rise to a legitimate concern that he could pose a threat to others. Defendant never made that showing—and he certainly had no right

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to violate state law by carrying a loaded gun before a full background investigation was conducted and completed.

Thus, defendant's complaints about the Rules of the City of New York governing licensing applications (*See* Title 38, §§ 5-10) are irrelevant. Defendant was not prosecuted for violating a city rule. He was prosecuted for unlicensed possession of a firearm. The disapproval letter citing these rules was not issued until *after* defendant committed the charged crime.

Further, *Bruen* did not discuss, much less invalidate, these other restrictions on owning firearms. *Johnson*, 2025 WL 3259873, *6. In any event, the City's requirements are akin to requiring a showing of "good moral character," which has been upheld, because this Court has interpreted it narrowly as a proxy for being a law-abiding citizen. *See Caputo v. Kelly*, 117 A.D.3d 644, 644-445 (1st Dept. 2014). That, of course, is consistent with *Bruen*. *See Antonyuk v. James*, 120 F.4th 941, 981 (2d Cir. 2024) (upholding "good moral character" requirement as "a proxy for dangerousness"); *Sanicola v. City of New York*, 224 A.D.3d 578, 579 (1st Dept. 2024) (gun license applicant failed to establish good moral character in light of domestic violence incidents, orders of protection entered against him, and his "lack of candor and concern for the safety of others").

Simply put, *Bruen* merely held that the Second Amendment protects the rights of "law-abiding citizens" to obtain concealed carry permits without having to demonstrate "proper cause." *Bruen*, 597 U.S. at 71. It did not prevent the state from having a gun licensing scheme. Nor did it give defendant the right to carry an unlicensed firearm in

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public. Therefore, *Bruen* did not prevent defendant’s prosecution for the unlicensed possession of a loaded firearm.

Finally, like the former “proper cause” requirement, any of these allegedly unconstitutional individual provisions of the city rules would be severable from the remainder of the statutory licensing scheme. None is so integral to the comprehensive application procedure set forth in Penal Law § 400.00(1) that license applications could not proceed without it. The Legislature, following *Bruen*, already expressed its intent to maintain the remainder of the licensing scheme while excising any invalid provision. *Johnson*, 2025 WL 3259873, *7.

“Severability is . . . a matter of state law.” *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996). In New York, “severance does not depend upon the separation of the good from the bad by paragraphs or sentences in the text of the enactment.” *People ex rel. Alpha Portland Cement Co. v. Knapp*, 230 N.Y. 48, 60 (1920). Rather, the pertinent question is “whether the Legislature, if partial invalidity had been foreseen, would have wished the statute to be enforced with the invalid part excised, or rejected altogether.” *Id.* The answer “must be reached pragmatically, by the exercise of good sense and sound judgment, by considering how the statutory rule will function if the knife is laid to the branch, instead of at the roots.” *Id.*

Here, the valid and invalid portions of the gun licensing scheme are severable. Penal Law section 400.00(1)—which sets forth the requirements to acquire a gun license—is distinct from Penal Law section 400.00(2)(f)—which included the “proper

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cause” requirement to obtain a concealed carry permit. The remaining licensing requirements of section 400.00(1) are complete and capable of independent application without reference to the challenged provisions. Consequently, excision of the proper cause requirement does not preclude enforcement of the remainder of the statute. *Johnson*, 2025 WL 3259873, *7.

Indeed, the Legislature surely would have wanted New York’s remaining gun licensing regulations to survive. After all, if Penal Law section 400.00 is invalidated in its entirety, any individual—regardless of their criminal or mental health background—could carry a loaded firearm in public without consequences. That would pose a grave threat to public safety. Critically, the Legislature demonstrated its intent by swiftly amending the statute after *Bruen* to include new concealed carry regulations. Plainly, then, the Legislature wished for New York to maintain a robust gun licensing scheme. *Johnson*, 2025 WL 3259873, *6.

To the extent defendant is making a broad, facial challenge, that challenge should also be denied because defendant has failed to meet his burden to establish that the law is incapable of any valid application. “The party making a facial challenge must establish that a law is unconstitutional in every possible application.” *Johnson*, 2025 WL 3259873, *7. Defendant has failed to mount this “most difficult challenge.” *Id.* He has failed to establish that no set of circumstances exists under which New York’s licensing scheme would be valid. *See Id.*; *Rahimi*, 602 U.S. at 693. He has failed to show that “in any degree and in every conceivable application, the law suffers wholesale constitutional

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impairment.” *Id.* at *3, quoting *Cohen v. State*, 94 N.Y.2d 1, 8 (1999). Indeed, defendant does not contend that *Rahimi* (permitting the disarmament of those who pose a safety threat) was decided incorrectly. Rather, he attempts to distinguish his personal circumstances (*see* defendant’s brief at 15-17). That the Supreme Court has found such a provision lawful, as the Court of Appeals noted in *Johnson*, underscores that a facial challenge to New York’s entire scheme, with its “detailed and multi-faceted” provisions, including a provision barring convicted felons, would be a difficult, high bar, and one that defendant here has not reached. *Johnson*, 2025 WL 3259873, *7, *see also* *3.

In sum, contrary to defendant’s claim—which he lacks standing to raise—*Bruen* did not prevent defendant’s prosecution for possessing an unlicensed, loaded firearm. Indeed, defendant was not the law-abiding citizen contemplated in *Bruen*.

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CONCLUSION

This Court Should Affirm Defendant's Conviction.

Respectfully submitted,

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To be argued by

MATTHEW BOVA

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Appellate Division -First Department

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

v.

JASON PEGUERO, DEFENDANT-APPELLANT

New York County Ind. No. 73144-22

Appellate Case No. 2023-02642

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REPLY ARGUMENT

As the facially unconstitutional proper-cause provision tainted the indictment, the indictment should be dismissed.

Unlike the dozens of Second Amendment appeals this Court has reviewed since 2022 involving individuals convicted of unlicensed-weapon possession, this case is unique: Appellant applied for a firearms license. In turn, the State of New York sat on that application for over seven months. During that period, Appellant, who had a valid Florida license, was arrested in New York for unlicensed possession.

This case is unique for another reason too: there is a robust record that overwhelmingly demonstrates that there were no constitutional bases for disarming Mr. Peguero. *Unconstitutional* provisions, including the proper-cause provision invalidated by *NYSRPRA v. Bruen*, 597 U.S. 1 (2022), thus tainted the indictment and ultimate conviction. App. Br. 17-19.

Still, the State relies upon an appeal waiver, which it claims covers an “as-applied” challenge to a statute’s constitutionality. Resp. Br. 10-20. The State adds additional unpreserved and unreviewable arguments (C.P.L. 470.15(1)) that are ultimately meritless: (1) Appellant lacks

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standing; and (2) prior arrests and accusations can constitutionally disarm an American. Resp. Br. 21-37. These arguments fail to justify affirmance on this rather unique record.

A. The appeal waiver does not bar review under *People v. Johnson*.

Seizing on the nebulous distinction between “facial” and “as-applied” challenges,¹ the State draws an “as-applied” versus “facial” challenge distinction in the appeal-waiver context. Resp. Br. 10-13 (contending that, under *People v. Johnson*, __N.Y.3d__, 2025 WL 3259873 (November 24, 2025)), facial challenges to the constitutionality

¹ *E.g.*, *Am. Fed’n of State, Cty. & Mun. Emps. Council 79 v. Scott*, 717 F.3d 851, 865 (11th Cir. 2013) (“the line between facial and as-applied relief is a fluid one, and many constitutional challenges may occupy an intermediate position on the spectrum between purely as-applied relief and complete facial invalidation”); *Showtime Entm’t, LLC v. Town of Mendon*, 769 F.3d 61, 70 (1st Cir. 2014) (“[T]his case highlights the sometimes nebulous nature of the distinction between facial and as-applied challenges, for Showtime’s challenge does not fit neatly within our traditional concept of either type of claim.”); *Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 426 (5th Cir. 2014) (“the precise boundaries of facial and as-applied challenges are somewhat elusive—certain challenges can have characteristics of both”); Kreit, *Making Sense of Facial and As-Applied Challenges*, 18 William & Mary Bill of Rights J. 657, 659-60 (2010) (“important questions remain unanswered because categorizing constitutional cases into ‘facial’ and ‘as-applied’ challenges, and relying on these categories to shape doctrine and inform case outcomes, is an inherently flawed and fundamentally incoherent undertaking”).

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of the statute of conviction are non-waivable, while as-applied challenges are waivable). This argument is both irrelevant and legally defective.

Mr. Peguero *is* raising a “facial” challenge to the former proper-cause provision (Former Penal Law § 400.00(2)(f)), so this Court need not entertain a facial/as-applied appeal-waiver distinction. At the time of his arrest, the former proper-cause provision (Former Penal Law § 400.00(2)(f)), which *Bruen* facially invalidated, was incorporated into Penal Law Article 265 since a license is a defense to a criminal charge. *See Johnson* at *5 (citing Penal Law § 265.20(a)(3)). The former proper-cause standard is facially unconstitutional. *See* App. Br. 9-12. It is *always* unconstitutional to deny the Second Amendment right based upon the now-defunct “proper cause” standard. *See, e.g., Doe v. City of Albuquerque*, 667 F.3d 1111, 1123-27 (10th Cir. 2012) (“where a statute fails the relevant constitutional test, it can no longer be constitutionally applied to anyone—and thus there is ‘no set of circumstances’ in which the statute would be valid”) (parenthetical omitted) (citing Isserles, *Overcoming Overbreadth: Facial Challenges and The Valid Rule Requirement*, 48 American U. L. Rev. 359, 364 (1998)) (“*Salerno*’s ‘no set of circumstances’ is not a ‘test’ that prescribes an application-specific

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method of determining constitutional invalidity, but rather a descriptive claim about a statute whose terms state an invalid rule of law.”)); *United States v. Salerno*, 481 U.S. 739, 745 (1987). Thus, under the State’s own theory, Appellant’s challenge to the unconstitutional-proper-cause standard is non-waivable since it is a “facial” challenge.

True, the remaining question of whether the defendant is entitled to relief due to this facial defect rests on the particular facts of the case. After all, the facially invalid proper-cause provision only taints the indictment if no other lawful licensing standards would justify license denial, a record-based assessment. But the fact that entitlement to relief or appropriate remedy for a facial defect turns on the factual record does not change the reality that Appellant is raising a facial challenge to the licensing standards.

Alternatively, the proposed facial/as-applied taxonomy should not control. This Court should reject the State’s attempt to bog down this area of law with a nebulous “as-applied challenge” versus “facial challenge” distinction. Reply Brief n.1, *above*. Under this flawed distinction, if the State unconstitutionally “applies” statutes—*e.g.*, a disorderly-conduct statute is unconstitutionally applied to offensive

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political speech—the claim is waivable and the invalid conviction sticks. But if the Legislature enacts narrower statutes that are unconstitutional on their “face”—e.g., “it shall be disorderly conduct to engage in offensive political speech”—the appeal waiver fails and the defendant secures relief. That is so even if the defendant’s conduct at issue in both scenarios is identical. This formalism should not be the law of New York.

Johnson’s logic applies to so-called “as-applied” challenges. As *Johnson* explained, “we have held unenforceable waivers that ‘transcend the individual concerns of the defendant’ and ‘embrace the reality of fairness in the process itself.’” *Johnson* at *3 (quoting *People v. Seaberg*, 74 N.Y.2d 1, 9 (1989)). A “facial” challenge, *Johnson* held, “falls into the narrow class of non-waivable appellate claims.” *Id.*

“As-applied” challenges “embrace the reality of fairness in the process itself” just as much as “facial” ones. Whether the statute be unconstitutional “on its face” or “as applied,” punishing someone for conduct protected by the Constitution is a violation that goes to the heart of the criminal justice process. The importance of vindicating the constitutional right overwhelmingly outweighs whatever state interests

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are served by an appeal waiver, whether the challenge is styled “as-applied” or “facial.”

Johnson’s reasoning further supports the point. *Johnson* reasoned that, where a statute is facially invalid, “the State will lack authority to prosecute or punish the defendant or anyone else for the *conduct at issue*. In that key respect, a facial challenge goes squarely to the ‘fairness in the process itself’ and ‘transcends an individual defendant’s concerns to implicate ‘a larger societal interest in its correct resolution.’” *Id.* at *3 (emphasis added; citations omitted). That same logic applies to an as-applied challenge. In both scenarios, the State is targeting constitutionally protected “conduct.” *Id.* In both situations, appellate review is critical.

Johnson also noted “a well-placed concern about prosecuting and punishing someone for violating a law that, by definition, is impermissible in each and every one of its applications.” *Id.* at *4. That “concern” is not limited to facial challenges. There is an equally “well-placed concern” that the State not prosecute individuals, under a facially valid statute, who have engaged in constitutionally protected conduct. In

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both cases, the societal problem is the same: a person is being hauled into court for engaging in constitutionally protected conduct.

So, while *Johnson* contains passages that address the “facial” nature of the challenge and contrasted “facial” challenges with as-applied challenges, *id.* at *2-3, those passages are dicta. The as-applied-versus-facial-challenge was not before the *Johnson* Court. And, as explained above, a respect for constitutional liberty, *Johnson*’s logic, and the jurisprudential interest in avoiding formalistic line-drawing in the context of core liberty, all confirm that an as-applied challenge is not waivable.

B. A standing defense is not a barrier to relief either.

The State unpersuasively argues that Mr. Peguero lacks standing because, although he applied for a license, he did not wait (beyond the six-month delay) for a decision before exercising the fundamental right. Resp. Br. 20-21.

For one, this afterthought is unpreserved as the State did not assert this dubious claim below. Instead, in passing, the State asserted the factually incorrect claim that Mr. Peguero did *not* apply for the license and thus lacked standing—a point his opening papers explicitly

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contradicted. MTD, Def. Counsel's Aff. ¶ 14; Pros. Opp. Aff. 2. Appellant again corrected that claim in reply (Reply 4), and then the State said nothing else. The trial court did not even hint at such an argument either, instead finding that Mr. Peguero had a "colorable claim of standing" because he "had submitted a handgun license application." Decision 3. Accordingly, this new "no-standing-*despite-an-application*" theory is unpreserved and beyond this Court's jurisdiction under C.P.L. 470.15(1). *See People v. Concepcion*, 17 N.Y.3d 192, 195 (2011) (C.P.L. 470.15(1) is "legislative restriction on" appellate review of "issues either decided in an appellant's favor, or not ruled upon, by the trial court [in criminal cases]") (quoting *People v. LaFontaine*, 92 N.Y.2d 470, 474 (1998)); *People v. Hunter*, 17 N.Y.3d 725, 727-28 (2011) (standing must be preserved by the prosecution); *People v. Ozkaynak*, 203 A.D.3d 1616, 1617 (4th Dept. 2022) ("individual standing" to challenge a search was unreviewable where lower court did not reach it); *People v. Daniel*, 122 A.D.3d 401, 404 (1st Dept. 2014) (issue unreviewable and unpreserved where lower court did not reach it and prosecution did not raise it).

Recognizing that the trial court did not deny the motion to dismiss on standing grounds, the State tries to evade C.P.L. 470.15(1)'s mandate

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by casting standing as “jurisdictional.” Resp. Br. 21; *Concepcion*, 17 N.Y.3d at 199 (jurisdictional requirements are not subject to C.P.L. 470.15’s restrictions and can be considered by the appellate court at any time). While that theory may fly in the U.S. Supreme Court—which has misconstrued Article III’s “case or controversy” provision as rendering “standing” jurisdictional—that is not the law of New York. *See Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94-95 (1998) (standing is jurisdictional in federal court and thus non-waivable). Standing is *not* jurisdictional under New York law. *See, e.g., Johnson* at *4, *5 (“federal and state standing doctrines are distinct”; “federal concepts of standing . . . do not bind us”); *Hunter*, 17 N.Y.3d at 727-28 (standing is waivable and must be preserved by the prosecution); *United States Nat. Ass’n v. Tate*, 102 A.D.3d 859, 859-60 (2d Dept. 2013) (“an alleged lack of standing is not a jurisdictional defect”); *Dougherty v. City of Rye*, 63 N.Y.2d 989, 991-92 (1984) (standing is waivable).²

It is no wonder, therefore, that the only case the State cites to support a contrary theory (*Mental Hygiene Legal Servs. v. Daniels*, 33

² If a procedural defense is waivable, it is, by definition, not jurisdictional. *Manhattan Telecomms. Corp. v. H & A Locksmith, Inc.*, 21 N.Y.3d 200, 203-04 (2013).

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N.Y.3d 44, 48-50 (2019)) does not even address the jurisdictional nature of standing. Resp. Br. 21. If anything, *Daniels* holds the opposite as it declares that “if the issue of standing *is raised*, a party challenging governmental action must meet the threshold [standing] burden.” *Id.* at 50 (emphasis added).³ If standing were jurisdictional, it would be irrelevant whether it “is raised.”

This new standing argument fails under *Johnson* anyway. Mr. Peguero was indicted and convicted under a weapon-possession statute that punished unlicensed possession while conditioning a license on unconstitutional standards. He therefore “undoubtedly suffered a cognizable injury” under New York standing law. *Johnson* at *4-5 (finding standing to challenge licensing standards under New York law because, “[a]lthough the text of § 265.03(3) does not reference unlicensed possession of a firearm, a defendant may avoid prosecution under that provision by producing a valid firearm license. . . . And here, the only

³ Respondent says that *Daniels* (33 N.Y.3d at 48-50) did “not reach the issue underlying the appeal because it disagreed with both the Supreme Court and Appellate Division that petitioner had standing, which is a jurisdictional predicate.” Resp. Br. 21. *Daniels*, however, does not state that standing is a “jurisdictional predicate.”

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basis for the defendant's conviction was that he possessed a gun without a license.”).

As *Johnson* recently held too, “Guidance from the U.S. Supreme Court instructing that a defendant need not comply with what he alleges is an unconstitutional licensing scheme to challenge a criminal conviction reinforces our conclusion.” *Johnson* at *5. “[T]he failure to apply for a license under an ordinance which on its face violates the Constitution does not preclude review . . . of a judgment of conviction under such an ordinance.” *Id.* (quoting *Staub v. City of Baxley*, 355 U.S. 313, 319 (1958)). If a defendant need not “apply” for a license to retain the right to challenge the licensing ordinance, *id.*, the defendant certainly need not go the step further of *receiving* a decision to do so.

Respondent's reliance on federal-standing principles from cases like *United States v. Decastro*, 682 F.3d 160 (2d Cir. 2012), is misplaced. Whatever *DeCastro* says about standing to challenge so-called “personal ineligibility” rules versus other rules (Resp. Br. 21 [referring to *Johnson*'s discussion of *Decastro*]), *Decastro* rested on “federal concepts of standing, which do not bind us.” *Johnson* at *5.

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Appellant prevails anyway under *Decastro*, which was “really about ‘traceability.’” *Johnson* at *6. As *Johnson* explained, *DeCastro*’s federal traceability analysis aims to ensure that the unconstitutional-licensing standards are causally connected to the conviction. *Id.* at *6 (explaining that in *Decastro*, “there was no way to know whether the New York licensing scheme itself caused the defendant to buy a gun elsewhere and transport it across state lines, and thus the causal chain between his criminal conviction and the licensing scheme was too tenuous”). Here though, the record confirms the requisite “causal chain” between the unconstitutional licensing standards and the conviction since there are no other lawful bases for denying a license. Mr. Peguero applied and received a license denial after his indictment, creating a record of the likely bases for denial (all unconstitutional). *See App. Br.* 14-18. He asserted in his motion below that the only bases for license denial are unconstitutional standards and that other valid standards did not apply to him. Counsel’s Aff. ¶ 11-12; Def. Mem. 7-8, 14. In opposition, the State did not even try to show other bases, beyond the unlawful proper-cause standard, for denying a license. State’s Opp. 1-10. The record thus overwhelmingly demonstrates this indictment is “traceable” to the

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unconstitutional proper-cause standard and that the proper-cause standard thus taints the indictment.

C. The State’s attempt to sever the causal link between the invalid proper-cause requirement and the indictment by relying upon other unconstitutional licensing standards fails.

It is uncontested that Mr. Peguero was a 28-year-old student with no prior convictions at the time of his 2022 arrest here. The State does not identify any lawful basis for denying him a license during this pre-*Bruen* period. Accordingly, the State cannot sever the causal link between the unconstitutional licensing standards and his indictment.

To show that Mr. Peguero could have been lawfully denied a license under other constitutional licensing standards, the State again advances unpreserved and unreviewable arguments. The State claims that arrests, accusations, and “moving-vehicle” violations can justify disarmament under New York City licensing laws. Resp. Br. 33-34; 38 N.Y.C. Rules § 5-10(a) (prior arrest), (g) (“incident” of “domestic violence”), and (n) (“Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the license.”). The State adds that the

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N.Y.C. Rules are akin to “good moral character” rules. Resp. Br. 33-34. These arguments are also unpreserved as the State, yet again, never raised them below.

This theory is also just wrong. If one could be disarmed based upon an arrest, an accusation, or a moving violation, a giant swath of Americans would have no Second Amendment rights. Sure enough, the State does not advance any historical justification for this vague theory. *See also* App. Br. 14; *Bruen*, 597 U.S. 1 (under the Second Amendment, a firearm-licensing standard must be consistent with a national, founding-era tradition of firearm regulation).

The *former* “good moral character” standard (Former Penal Law § 400.00(1)(b)), which the State vaguely defends with a conclusory and unpreserved argument, Resp. Br. 34, is also plainly unconstitutional. There is no historical tradition of vesting licensing officials with the unbridled power to deny the fundamental right because they conclude, in their subjective wisdom, that the applicant lacks “good moral character.” At the time Mr. Peguero was arrested in 2022, the Legislature had not limited the scope of the “good moral character” provision, as it did post-*Bruen* by confining that provision to a dangerousness inquiry. *See*

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Current Penal Law § 400.00(1)(b) (the applicant must show he is “of good moral character, which, for the purposes of this article, shall mean having the essential character, temperament and judgement necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others”). Instead, the former statute broadly permitted license denial because of an official’s assessment of one’s “good moral character” without any limiting definition. That provision’s plain meaning did not require a showing of dangerousness, as the new statute does. Instead, it permitted denial based on a finding that a person appears “[im]moral”—a highly subjective and undefined “standard” that is not backed by any historical tradition. *See also Antonyuk v. James*, 120 F.4th 941, 983 (2d Cir. 2024) (upholding the *newly* enacted “good moral character” provision which, unlike the provision in effect at the time of Mr. Peguero’s arrest, specifically defines “good moral character” to focus on dangerousness; holding that the Second Amendment permits statutory requirements that focus on whether the “applicant, if permitted to wield a lethal weapon, would pose a danger to himself, others, or to public safety”); *id.* at 981 (“Licensing that includes discretion that is *bounded by defined standards*, we conclude, is part of this nation’s

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history and tradition of firearm regulation and therefore in compliance with the Second Amendment.”) (emphasis added); *id.* at 1001. No founding-era statutes, at either the State or federal level, embraced such an unfettered power. *Bruen*, 597 U.S. at 39 n.9 (drawing a distinction between constitutional licensing standards that contain “narrow, objective, and definite standards’ guiding licensing officials” (quoting *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969)) and those “requiring the ‘appraisal of facts, the exercise of judgment, and the formation of an opinion’ (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940))—features that typify proper-cause standards like New York’s.”).

Finally, “severability” is irrelevant. Resp. Br. 35-37. Appellant’s position is not that the “entire scheme” is unconstitutional. Resp. Br. 35. Nor is he claiming that the proper-cause standard could not be “severed” from the other licensing standards. *Compare Johnson* at *7 (addressing that broader argument). Instead, although they are severable from the remainder of the licensing statute (such as a prior-felony bar), the unconstitutional proper-cause provision tainted his indictment. That unconstitutional provision is causally connected to the indictment as

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there are no other lawful bases for denying a license. “Severability” is simply irrelevant to Appellant’s position. *See, e.g., Shuttlesworth*, 394 U.S. at 151 (invalidating the conviction where the defendant did not submit to an unconstitutional speech-permitting standard even though the remainder of the statute was valid).

CONCLUSION

The indictment should be dismissed.

Respectfully submitted,

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