NO. 26-5726

In the Supreme Court of the United States

MATA BALOGH,

PETITIONER,

V.

NEW YORK,

RESPONDENT.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

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

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

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INTRODUCTION

In August 2022, police officers found petitioner on the streets of the Bronx carrying a loaded, nine millimeter handgun. The gun had a laser sight, unfinished frame, and no serial number. The barrel was threaded and capable of receiving a silencer, flash suppressor, barrel extender, or forward handgrip. Petitioner claimed that he was "just trying to protect [him]self."

A grand jury indicted petitioner for felony unlicensed weapon possession and related charges. Petitioner moved to dismiss the indictment, contending that this Court's June 2022 invalidation, in *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1 (2022), of New York's "proper cause" eligibility requirement for an unrestricted concealed carry license rendered the state's entire firearm licensing scheme facially unconstitutional. The motion court disagreed. Pet. App. 6-9. To avoid a potential 15-year prison term, petitioner pled guilty to attempted felony weapon possession and waived his right to appeal, in exchange for a five-year probationary sentence.

Subsequently, the New York Court of Appeals (Court of Appeals) decided *People v. Omar Johnson*, 46 N.Y.3d 65, 2025 WL 3259873 (N.Y. Ct. App., Nov. 24, 2025). Like petitioner, Johnson claimed that *Bruen* had rendered New York's entire gun-licensing scheme invalid. Applying state law, the Court of Appeals found that the "proper cause" requirement was severable and did not infect the remainder of the licensing scheme. The Court of Appeals also found that Johnson had not shown that there was no set of circumstances in which the scheme would be constitutionally valid.

On appeal, the Appellate Division of the Supreme Court of the State of New York, First Department (Appellate Division), rejected petitioner's challenge. Citing *Johnson*, the Appellate Division concluded that petitioner had failed to establish that the indictment was unconstitutional under *Bruen*. Pet. App. 2.

Meanwhile, the defendant in *Johnson* sought certiorari to this Court making arguments almost identical to petitioner's. This Court denied certiorari. *Johnson v. New York*, __ U.S. __, 146 S. Ct. 2745 (2026). This Court should deny certiorari in this case for the same reasons.

First, this Court has no jurisdiction to review petitioner's constitutional challenge. Petitioner lacks Article III standing to bring the challenge because he was not subject to the "proper cause" requirement. The provision was no longer in effect at the time of his crime. The severability of a state statute is, as this Court has oft stated, a question of state law. Thus, the Appellate Division's implicit reliance on the Court of Appeals's holding in *Johnson* that the New York Legislature would have intended that the invalid "proper cause" requirement be severed is unreviewable by this Court.

Second, there is no split of authority on whether severability is a permissible methodology for assessing a criminal defendant's facial Second Amendment challenge to a gun law. Rooted in the separation of powers, the doctrine is uniformly applied by courts across the nation.

Third, the case is a poor vehicle for deciding whether the "proper cause" requirement rendered the entire licensing scheme unconstitutional because (1) it was

resolved on an alternative ground independent of the severability question and (2) can be resolved on two additional such grounds. Petitioner failed to show that there was no set of circumstances under which the licensing scheme would be constitutionally valid. Moreover, petitioner expressly waived appellate review of the issue in exchange for a beneficial plea bargain. In addition, the record does not establish that petitioner was eligible for an unrestricted concealed carry license under criteria unrelated to the "proper cause" requirement.

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

STATEMENT OF THE CASE

I. Legal Background

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

To obtain a gun license in New York, an applicant must submit to an investigation, and the licensing officer must find that all statements in the application are true. N.Y. Penal Law § 400.00(1). The applicant must be at least 21 years old and of good moral character. § 400.00(1)(a)-(b). An applicant may be

disqualified if, among other things, he or she has a prior conviction "anywhere" for a felony or other serious offense, is a fugitive from justice, has a history of mental illness, has an outstanding order of protection, or if other "good cause" exists for denying the license. § 400.00(1)(c)-(n). Each applicable license eligibility criterion must be independently satisfied. § 400.00(1).

New York issues several types of gun licenses, including one for concealed public carry. § 400.00(2). In August 2022, an applicant for such a license would have had to meet most of the § 400.00(1) eligibility criteria. Prior to June 23, 2022, they also would have had to demonstrate "proper cause." § 400.00(2)(f) (effective through June 23, 2022). This was defined as "a special need for self-protection distinguishable from that of the general community." *See Klenosky v. New York City Police Dep't*, 75 A.D.2d 793, 428 N.Y.S.2d 256 (1st Dep't 1980), *aff'd*, 53 N.Y.2d 685, 421 N.E.2d 503 (1981).

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

The Court stressed that its analysis was not a "regulatory straightjacket." *Id.* at 30. It did not "suggest the unconstitutionality" of the "shall-issue" licensing regimes of then-43 States. *Id.* at 38, n.9; *accord id.* at 79 (Kavanaugh, J., concurring). Those regimes often required background checks and firearms safety courses "to

ensure only that those bearing arms ... are, in fact, 'law-abiding, responsible citizens.'" *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)).

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

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

Two years later, in *United States v. Rahimi*, this Court resolved a facial challenge to a conviction under a federal statute prohibiting firearm possession by subjects of civil protection orders who pose credible physical threats to others (18 U.S.C. § 922(g)(8)). 602 U.S. 690, 698 (2024). Reaffirming that bearing arms was always "subject to regulations," the Court explained that, "[s]ince the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms." *Id.* at 690-91.

The Court underscored that a facial challenge is the "'most difficult'" type to mount successfully: the challenger must show that "'no set of circumstances exists under which the Act would be valid.'" *Id.* at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). To defeat the challenge, the Government must show only that a statute "is constitutional in some of its applications." *Id.* The Court chided the Fifth Circuit for disregarding its admonition that, "'[w]hen legislation and the

Constitution brush up against each other, [a court's] task is to seek harmony, not to manufacture conflict.'" *Id.* at 701 (quoting *United States v. Hansen*, 599 U.S. 762, 781 (2023)).

II. Factual Background

A. The Crime

On August 1, 2022, more than a month after the Court struck down the "proper cause" requirement, police officers apprehended petitioner with a nine-millimeter, semi-automatic handgun in his pocket, outside 2359 Valentine Avenue in the Bronx. Resp. App. 1. Petitioner had no license for the gun. Resp. App. 2-3. Further inspection determined: that the weapon was loaded and operable; that the gun had been fitted with a laser sight; that the gun had an unfinished frame and no serial number; and that the barrel was threaded and capable of receiving a silencer, flash suppressor, barrel extender, or forward handgrip. Resp. App. 6, 23. Petitioner told officers that he was "just trying to protect [him]self." Resp. App. 3.

A grand jury charged petitioner with two counts Criminal Possession of a Weapon in the Second Degree (N.Y. Penal Law § 265.03(1)(b), (3)), including one alleging an intent to use the gun unlawfully against another, which carried a potential prison sentence of 15 years (*id.* at § 70.02(3)(b)), and lesser weapon offenses, including possession of a firearm that had been defaced for the purpose of concealing a crime or disguising the provenance of the weapon (*id.* at § 265.02(3)). Resp. App. 5-8.

B. The Dismissal Motion

Petitioner moved to dismiss the charges, arguing that, in *Bruen*, this Court "struck down" New York's entire firearm "licensing scheme as violating the Second Amendment" and that he had been charged "for no other reason than he allegedly possessed a firearm without a license to carry such a firearm under an unconstitutional scheme." Pet. App. 15, 22, 24-25. Petitioner did not allege or submit proof that he met any of the remaining licensing criteria. Pet. App. 20-25.

The court denied the motion, holding that *Bruen* "did not find the entire firearm licensing scheme, nor any of the Penal Law sections that criminalize firearm possession, unconstitutional" and, thus, did not prevent petitioner from being prosecuted for unlicensed weapon possession. Pet. App. 7-8. The court further found that petitioner had "not shown that he could have overcome the constitutionally permissible restrictions left standing by the Court in *Bruen*." Pet. App. 9.

C. The Plea And Appeal Waiver

In exchange for a promised sentence of five years' probation, petitioner pled guilty to the reduced charge of attempted second-degree weapon possession and agreed to waive his right to appeal. The court had petitioner and his attorney review a written waiver of appeal. Resp. App. 12. The court placed petitioner under oath, and he stated that he was satisfied with counsel's representation. Resp. App. 12-13. Petitioner further said he understood the court's explanation that he was relinquishing many rights associated with going to trial, which the court enumerated. Resp. App. 13-15.

The court then explained the appeal waiver as follows:

> Ordinarily a defendant retains the right to appeal after pleading guilty. So, the waiver of a right to appeal is separate and distinct from the waiver of a trial and other rights by a plea of guilty.
>
> In this case, you're asked to waive your right to appeal. An appeal is a proceeding before a higher court. We call it Appellate court.
>
> If you could not afford the costs of an appeal or a lawyer, the state would pay them. On appeal you could argue normally through your lawyer that an error took place in this court requiring reversal or modification of the conviction. A reversal would require new proceedings in the court or a dismissal.

Petitioner averred that he understood. Resp. App. 15. The court continued:

> When you waive your right to appeal, you do not give up your right to take an appeal by filing a notice of appeal with the court and the District Attorney within 30 days of sentence.
>
> But if you take an appeal with this waiver, you are giving up your right to have that Appellate court consider most claims of error and to consider whether the sentence is excessive or should be modified. Essentially, it means the plea, conviction and sentence is normally final.

Petitioner swore that he understood. Resp. App. 15-16.

The court added that "[c]ertain claims survive the waiver of the right to appeal and they include the voluntariness of the plea, the validity and voluntariness of the waiver, the legality of the sentence and the jurisdiction of the court"; petitioner averred that he understood this as well. Resp. App. 16.

In response to questions from the court, petitioner swore: that he had spoken to his attorney about waiving his right to appeal; that he had signed a written waiver of appeal; and that he "voluntarily waived" his "right to appeal in return for the plea and sentence promised[.]" *Id.*

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

> I, Mata Balogh, the defendant ..., in addition to pleading guilty, hereby waive my right to appeal. I understand that my right to appeal is separate and distinct from the rights automatically forfeited upon a guilty plea. I understand that the right to appeal would have allowed me, with the assistance of an attorney, to have a higher court review my conviction and sentence, particularly the excessiveness of my sentence, the resolution of any suppression motion that I may have made, and whether my statutory right to a speedy trial has been violated. I am waiving that right to appeal as a condition of this plea. I also understand that, despite this waiver, I will nevertheless retain my right to raise certain limited issues on appeal, including: constitutional speedy trial; the legality of the sentence; my competency to stand trial; the court's failure to determine whether I am an eligible youth entitled to youthful offender status; the validity of my guilty plea; and the validity of this waiver.
>
> I have had an opportunity to discuss these matters with my attorney and any questions I may have had have been answered to my satisfaction. I further understand that if the waiver of my right to appeal has not been explained to my satisfaction by the Court, I am free to ask for further clarification from the Court or my attorney ... or both, before signing this document.

Resp. App. 20.

D. The Pre-Sentence Report And Sentence

A pre-sentence investigation recorded that petitioner's gun had a laser sight attached, was built on an unfinished frame with no serial number, and had a threaded barrel capable of accepting a silencer, flash suppressor, barrel extender, or forward handgrip. Resp. App. 23. Petitioner reported that he was "subject to mental abuse (delusions) growing up[,]" and his father opined that he believed petitioner "may have anxiety." Resp. App. 25. The Probation Department concluded that petitioner would "benefit from a further assessment for mental health...." *Id.*

On June 21, 2023, the court sentenced petitioner to the promised five-year term of probation. Resp. App. 29-31.

E. The Appeal

On appeal, petitioner reasserted that the State could not penalize him for failing to comply with a licensing regime that included the "proper cause" requirement invalidated by *Bruen* and that his conviction was supposedly traceable to the stricken "proper cause" requirement. Pet. App. 80-87.

Before the Appellate Division ruled on petitioner's case, the Court of Appeals decided *Johnson*, 46 N.Y.3d at 65, 2025 WL 3259873. Ruling unanimously, the court found that—as a matter of state law—an appeal waiver did not bar review of a facial challenge to a statute under which a defendant was prosecuted. *Id.*, 46 N.Y.3d at 74-76, 2025 WL 3259873 at **4-6. The court further held, again as a matter of state law, that a defendant need not have applied for a license to have standing to make a facial challenge to the state's gun-licensing laws. *Id.*, 46 N.Y.3d at 70-74, 2025 WL 3259873 at **2-4. Turning to the merits, the court explained that the defendant had made "only one" argument before the trial court: that *Bruen*'s invalidation of the "proper cause" provision rendered New York's entire licensing scheme, on which his conviction hinged, facially unconstitutional. *Id.*, 46 N.Y.3d at 76-79, 2025 WL 3259873 at *6. It then rejected that challenge on two independent grounds.

First, it found under state law that the "proper cause" requirement was severable and did not infect the remainder of the licensing scheme. *Johnson*, 46 N.Y.3d at 77-78, 2025 WL 3259873 at **7. The court also found, based on *Rahimi*, that the defendant had not shown that there was no set of circumstances in which

the scheme would be constitutionally valid. *Id.* Three judges concurred in the result but would have found that the defendant's appeal waiver barred review. *Id.* at *8-13.

About two months later, the Appellate Division decided petitioner's appeal. The court found that petitioner "validly waived his right to appeal." Pet. App. 2. However, citing *Johnson*, the court held that, as a matter of state law, petitioner's waiver did not bar his Second Amendment challenge and he had standing to bring that claim. *Id.* Nonetheless, also citing *Johnson*, the court held that petitioner had "failed to establish that the instant indictment is unconstitutional under" *Bruen*. *Id.*

REASONS FOR DENYING THE PETITION

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

This Court lacks jurisdiction to review petitioner's claim that New York's gun licensing regime is facially unconstitutional. First, petitioner lacks standing because his claim rests on a false factual predicate—that his prosecution was "directly traceable" to the "proper cause" requirement. *See* Pet. 7, 9, 14-16, 19. In fact, the "proper cause" requirement had no bearing on his indictment because it had been struck down and was not in effect at the time he committed the crime. Second, as petitioner acknowledges, the Appellate Division decision implicitly turned on the severability of the "proper cause" requirement. Pet. 15-16. Thus, the state court decision represented an application of the state's severability doctrine. Accordingly,

the judgment rests on an independent and adequate state law determination that is beyond this Court's review.

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

Article III of the Constitution limits this Court's jurisdiction to cases and controversies. A party must thus establish standing to challenge a statute in federal court. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013); *accord Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Standing is "a federal question which does not depend on the party's prior standing in state court." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985). This is because "state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability." *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 617 (1989). To establish standing in this Court, a party must show that they (1) suffered an "injury in fact," (2) that is "fairly traceable" to the challenged action, and (3) that is redressable by a favorable ruling. *Spokeo*, 578 U.S. at 338.

Here, petitioner cannot meet this burden because he was not subject to the "proper cause" requirement when he publicly possessed a concealed, unlicensed gun. The provision was invalidated on June 23, 2022, more than a month before petitioner's August 1, 2022, crime and arrest. *Bruen*, 597 U.S. at 70-71. It thus did not prevent him from obtaining a license in that intervening month.

Because petitioner's prosecution is not traceable to the "proper cause" requirement, he lacks standing to challenge it. This is true, despite the state court's finding of standing. *See Waller v. Georgia*, 467 U.S. 39, 43 n.3 (1984) (holding that

despite state court's finding of standing, convicted defendants lacked standing to challenge warrantless seizure provisions of state statute in federal court since all trial evidence was obtained via warrants).

To be sure, respondent did not press this specific standing argument in state court, relying instead on petitioner's failure to apply for a gun license. Pet. App. 41, 47-48, 140-44. And the Court of Appeals subsequently ruled that, as a matter of state law, a defendant has standing to raise a facial challenge to a statute under which he is prosecuted. *See Johnson*, 46 N.Y.3d at 76, 2025 WL 3259873 at **6. In doing so, the court noted that New York's standing doctrine is "distinct" from that of the federal courts and does not encompass the federal traceability requirement. *See id.* 46 N.Y.3d at 74, 2025 WL 3259873 at **4. And Article III standing is a limitation on this Court's jurisdiction that "cannot be waived or forfeited." *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 662-63 (2019). In short, arguments based on evolving state law cannot confer standing where there is none under federal law. Accordingly, on this basis alone, certiorari should be denied.

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

This matter is also unreviewable because the state court judgment turned on the application of New York law. As petitioner acknowledges, the Appellate Division implicitly relied on the *Johnson* court's ruling on severability. Pet. 15-16. He could hardly do otherwise. The intermediate court was, of course, bound by the determination of the state's highest court, and the Appellate Division's rejection of petitioner's claim reflects a recognition that the flaw in the "proper cause"

requirement did not invalidate the rest of the licensing scheme. However, the reliance on severability places the state court ruling beyond this Court's review.

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

"Severability is of course a matter of state law." *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996) (*per curiam*); *accord Hooper v. Bernalillo Cnty. Assessor*, 472 U.S. 612, 624 (1985) ("It is for the New Mexico courts to decide, as a matter of state law, whether the state legislature would have enacted the statute without the invalid portion."). The doctrine is rooted in separation of powers. *See Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006) ("we try not to nullify more of a legislature's work than is necessary"). Therefore, this Court has long employed a "presumption ... in favor of severability." *Regan v. Time*, 468 U.S. 641, 653 (1984); *accord Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 508 (2010) ("partial, rather than facial, invalidation is the required course"); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985).

In *Johnson*, the Court of Appeals found the "proper cause" provision severable from the remainder of the licensing scheme. It assessed the statute's text and structure to determine whether, if partial invalidity had been foreseen, the Legislature would have wanted the statute to be invalidated altogether or enforced without the unconstitutional provision. 46 N.Y.3d at 77, 2025 WL 3259873 at **7 (citing *CWM Chem. Servs., L.L.C. v. Roth*, 6 N.Y.3d 410, 423, 846 N.E.2d 448, 455 (2006) and *People ex rel. Alpha Portland Cement Co. v. Knapp*, 230 N.Y. 48, 60, 129 N.E. 202, 207 (1920)).

The court characterized § 400.00 as "detailed and multi-faceted; the 'proper cause' provision was just one aspect of a much broader scheme that includes a variety of distinct requirements"—many of which were retained in the post-*Bruen* amendments. *Johnson*, 46 N.Y.3d at 77, 2025 WL 3259873 at **7.

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

Johnson, 46 N.Y.3d at 78. 2025 WL 3259873 at **7. The court found it "implausible" that the Legislature would have intended that all the other provisions be invalidated just because the "proper cause" requirement was found unconstitutional. *Id.* The Court of Appeals's determination of the New York Legislature's intent is conclusive. *See Leavitt*, 518 U.S. at 139.

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

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

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

Petitioner asks the Court to reject the "illogical" severability doctrine of the New York courts, Pet. 15-16, but as just demonstrated the ruling is definitive. Nonetheless, he suggests that New York, California, and Massachusetts are outliers in rejecting Second Amendment defenses on severability grounds following partial invalidity findings. *Id.* at 10-12. Yet there is no split of authority about whether severability is a permissible methodology for assessing a facial challenge. On the contrary, there is broad consensus that it is.

State severability law is "remarkably uniform." Michael C. Dorf, *Facial Challenges to State and Federal Statutes*, 46 STAN. L. REV. 236, 285 (1994). Every jurisdiction but Tennessee and Virginia employs a presumption of severability, absent a nonseverability clause. *Id.* 285, 295; Eric S. Fish, *Severability As Conditionality*, 64 EMORY L.J. 1293, 1352 (2015) (citing Dorf's survey as still accurate). This includes the District of Columbia, which has codified its severability doctrine. *See* D.C. Code § 45-201(a) (2001); *see also Conley v. United States*, 79 A.3d 270, 280-81 (D.C. 2013) (discussing applicability of severability analysis to Second Amendment challenge). The District's Court of Appeals did not conduct a severability analysis in *Ward v. United States* (*see* Pet. 10) and make findings of fact pertinent to that analysis because the Government consented to a remand to allow the trial court to address a post-conviction *Bruen* challenge. 318 A.3d 520, 529, 532 (D.C. 2024).

Nor do *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969), *Staub v. City of Baxley*, 355 U.S. 313 (1958), or *Smith v. Cahoon*, 283 U.S. 553 (1931), counsel against employment of the severability doctrine (*see* Pet. 11, 13). They merely illustrate the settled proposition that not all invalid statutes are susceptible to severability. *See Railroad Retirement Bd. v. Alton R. Co.*, 295 U.S. 330, 362 (1935) (courts may not "rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole").

Shuttlesworth concerned a challenge to an ordinance which conferred unfettered discretion to deny a parade permit—to a Black minister marching for civil rights—based on subjective and indefinite notions of "public welfare, peace, safety,

health, decency, good order, morals or convenience." *Id.* at 149-52. Because the invalidity infected the entire ordinance, the Alabama Court of Appeals performed "a remarkable job of plastic surgery" and held that a permit "must be granted" upon a finding that public convenience would not be unduly disturbed. *Id.* at 153-54. But, given the ordinance's broad language, this "severely narrowing construction" could not have been anticipated. *Id.* at 155-56. Moreover, a week before the march, the minister's efforts to seek a permit had been rebuffed, making "indisputably clear" the futility of any future attempted compliance. *Id.* at 157-58 (discussing *Walker v City of Birmingham*, 388 U.S. 307 (1946)).

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

Although some Justices of the Court have opined that a criminal defendant may always assert unconstitutionality when an attempt is made to enforce the penalties of a facially invalid statute (*see* Pet. 4), that proposition, if adopted by the full Court, would merely confer standing to raise the challenge—assuming traceability to the challenged provision could be established. *See Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (statement of Thomas and Alito, J., respecting cert. denial)

(questioning whether state standing law may constitutionally restrict a defense to a firearm charge); *Staub*, 355 U.S. at 319 (finding that failure to apply for license under facially invalid ordinance did not bar review). It does not, however, prevent a court from employing a severability analysis to reject the challenge on its merits.

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

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

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

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

This case is a poor vehicle for addressing the question presented because the judgment rested on an alternate ground independent of the severance issue. In *Johnson*, the Court of Appeals applied this Court's settled precedent to determine that the defendant had not shown that there was no set of circumstances under which

the licensing scheme would be constitutionally valid. *See Johnson*, 46 N.Y.3d at 78, 2025 WL 3259873 at **7. So too, here, the state courts recognized that petitioner had failed in his facial challenge. *See* Pet. App. 2, 8-9. Thus, a reversal based on the severance issue would not impact petitioner's conviction.

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

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

Here, petitioner failed to meet his heavy burden of showing that the licensing scheme was invalid in all its applications. For instance, the statute forbids gun possession by convicted felons and the mentally ill, and this Court has recognized

such restrictions as valid. *See Rahimi*, 602 U.S. at 693 ("the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others"); *Heller*, 554 U.S. at 627 ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill ..."); *see also Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring) (reiterating that felon-in-possession bans are presumptively lawful).

Because there is a basis for affirmance independent of the question presented, review of the severability issue would be an academic exercise.

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

This case is also unsuitable for review because petitioner expressly waived his right to appeal in exchange for a very favorable plea bargain. This is so despite the state law that a facial challenge to a charging statute is nonwaivable in New York. *See Johnson*, 2025 WL 3259873 at *2-4. Whether a state prisoner has waived a federal constitutional right is a question of federal law. *Brewer v. Williams*, 430 U.S. 387, 403-04 (1977) (citing *Brookhart v. Janis*, 384 U.S. 1, 4 (1966)).

A challenge to the constitutionality of a statute of conviction is non-jurisdictional. *United States v. Williams*, 341 U.S. 58, 66 (1951). It can thus be waived. *See, e.g., United States v. Miles*, No. 22-10932, 2024 WL 1827825, at *1 (5th Cir. Apr. 26, 2024) (finding Second Amendment challenge to federal gun statute waived), *cert. denied*, 145 S. Ct. 318 (2024); *Pollard v. United States*, No. 3:24-cv-169 (SRU), 2024 WL 4533745, at *4 (D. Conn. Oct. 21, 2024) (same), *certif. of appealability denied*, No. 24-3029, 2025 WL 4352663 (2d Cir. Dec. 15, 2025).

Although this Court has determined, in *Class v. United States*, that a guilty plea alone does not prevent a criminal defendant from challenging a statute of conviction, it has signaled that an appeal waiver does. 583 U.S. 174, 178, 182, 185 (2018) (underscoring that the petitioner had "neither expressly nor implicitly waived his right to appeal his constitutional claims"). And this is how the federal Circuits have understood *Class*. *See United States v. Trujillo*, No. 23-2080, 2023 WL 5093358, at *2 n.6 (10th Cir. Aug. 9, 2023) (*per curiam*) (*Class* did not hold that constitutional challenge to statute of conviction was non-waivable); *Khadr v. United States*, 67 F.4th 413, 420 (D.C. Cir. 2023) (same); *United States v. Mejia-Quintanilla*, No. 17-15899, 2022 WL 3278992, at *1 (9th Cir. Aug. 11, 2022) (same); *Oliver v. United States*, 951 F.3d 841, 846 (7th Cir. 2020) (same); *United States v. Lloyd*, 901 F.3d 111, 138 n.11 (2d Cir. 2018) (same). Indeed, even the double jeopardy protection may be expressly waived (see *Ricketts v. Adamson*, 483 U.S. 1, 8-10 (1987)), although it may not be forfeited by plea because it halts an unlawful prosecution at the courthouse door. *See Menna v. New York*, 423 U.S. 61, 62 (1975).

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

Here, the Appellate Division found that petitioner's appeal waiver was exactly that. Pet. App. 2. The plea offer afforded petitioner an excellent deal: a plea to a lesser offense and a sentence of probation rather than a 3½-to-15-year prison term.

The waiver was made orally and in writing following consultation with counsel and a lengthy colloquy detailing the trial rights forfeited by the plea and that the waiver was "separate" from them. Resp. App. 14-16, 20. And although the unrestricted waiver did not expressly reference a *Bruen* claim, because petitioner unsuccessfully litigated a *Bruen* challenge to his indictment (Pet. App. 15, 20-25)—and because that issue was not among those delineated as surviving the waiver (Resp. App. 15-16, 20)—petitioner plainly understood that the waiver encompassed it. The waiver was therefore valid. It should be enforced.

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

Review is also unwarranted because the question presented rests on the inaccurate factual predicate that petitioner could have secured a license absent the invalid "proper cause" requirement. As the motion court recognized, petitioner failed to demonstrate that he "could have overcome the constitutionally permissible restrictions in the licensing provisions left standing by the Court in *Bruen*." Pet. App. 9. Thus, answering the question presented would not impact the outcome of petitioner's case.

To decide a constitutional question, this Court requires a "sufficiently clear and specific" factual record. *Commonwealth of Mass. v. Painten*, 389 U.S. 560, 561 (1968). It does not review claims that are based on factual inaccuracies and demands that briefs in opposition identify any such misstatements. *See* S. Ct. Rule 15.2. And it routinely declines to review claims hinging on inadequately developed records. *See, e.g., Illinois v. Gates*, 462 U.S. 213, 221 (1983) (declining to address whether to fashion

good faith exception to exclusionary rule because record was bare as to subjective good faith of officers); *Johnson v. Comm. of Mass.*, 390 U.S. 511 (1968) (dismissing writ as improvidently granted because record was insufficient to permit decision on constitutional claims).

Here the record contradicts petitioner's assertion that his prosecution is "directly traceable" to the invalid "proper cause" requirement. *See* Pet. 7, 9, 14-16, 19. First, as discussed, the Court invalidated the provision a month before petitioner's crime.

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

Accordingly, even if petitioner had been subject to the invalid "proper cause" requirement, he still would have had to show that he could have satisfied the other applicable license eligibility criteria or, alternatively, that those criteria were also unconstitutional. *See* N.Y. Penal Law § 400.00(1) (effective through September 1, 2022). And because petitioner has not challenged the remaining licensing criteria, his only path to success is to show that he could have satisfied them. Contrary to petitioner's claims, as found by the state courts, he failed to do so. Pet. App. 9.

In moving to dismiss the indictment, he asserted that, at the time of his arrest, New York effectively had no gun-licensing laws. Thus, petitioner made no effort to prove that he qualified for a license, but for the "proper cause" requirement, which had been invalidated before his arrest. Unsurprisingly then, the record does not support his claims to have been eligible for a gun license, but for the "proper cause" requirement.

Petitioner claims that the record "establishes," and that it is "uncontested," that he armed himself for self-defense. Pet. App. 5-7, 15. However, because petitioner pleaded guilty, the credibility of his self-serving, exculpatory declaration at the time of arrest—that he had armed himself merely for "self-defense"—was untested. In fact, the gun had been defaced, suggesting an intent to conceal either a crime or the gun's origin or ownership and to make it hard for authorities to trace its provenance and lawful use. Along with the laser sight and the weapon's ability to readily-receive additional modifications, the fact that petitioner concealed the weapon on his person suggested an intent to use the weapon unlawfully against another. Indeed, the grand jury found there was sufficient evidence to support an indictment for those charges. *See* N.Y. Penal Law §§ 265.00(7) (defining a defaced weapon as one from which the serial number or other distinguishing mark had been removed), 265.03(1)(b) (possession of a firearm with the intent to use unlawfully), 265.02(3) (possession of a firearm defaced to conceal a crime or the weapon's "identity"); Resp. App. 5-8.

In any event, whether petitioner possessed the gun only for "self-defense" is beside the point because he did not apply for a gun license, thereby sidestepping the

State's lawful licensing scheme, which at a minimum required petitioner to provide truthful information to allow the State to conduct a constitutionally-permissible background check. As noted, a history of mental illness is a basis to deny a gun license. *See* Penal Law § 400.00(1)(h); *Heller*, 554 U.S. at 627 ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill ..."). Assuming petitioner made a truthful application, investigation might have looked into the delusions petitioner claimed to have had in the past or the anxiety that his father attributed to him. Resp. App. 25. And it is no substitute for petitioner to assure appellate courts that such an investigation would have revealed no impediment with regard to his mental health or any other requirement for a license. *See Bruen*, 597 U.S. at 38 n.9 (noting that states "often require applicants to undergo a background check or pass a firearms safety course"), 72 (Alito, J., concurring) ("Our holding decides nothing ... about the requirements that must be met to buy a gun"), 79 (Kavanaugh, J., concurring) ("the Court's decision does not prohibit States from imposing licensing requirements ..." (quotation omitted)).

In sum, petitioner is not a law-abiding citizen, but rather one who arrogated to himself the authority to conceal a firearm on his person and go about the streets of the Bronx without any effort to comply with the state's lawful standards for a license to do so. *Cf. Bruen*, 597 U.S. at 15-16, 71 (invalidating "proper cause" requirement because it prevented law-abiding citizens, like the license applicant-petitioner's, from exercising the right to bear arms). Thus, contrary to his contention, the record does

not establish that he could have secured a concealed public carry license, but for the "proper cause" requirement.

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

Finally, resolution of the circumstances under which the "proper cause" provision rendered prosecutions unconstitutional will affect a minute class of individuals who (1) were prosecuted prior to *Bruen* in New York or one of the six other jurisdictions with "proper cause" analogues (see *Bruen*, 597 U.S. at 13-15), and (2) had the foresight to preserve "*Bruen* challenges." *Cf. People v. Cabrera*, 41 N.Y.3d 35, 42-51, 230 N.E.3d 1082, 1087, 1093 (2023) (finding *Bruen* claim unpreserved); *People v. Pastrana*, 41 N.Y.3d 23, 31, 230 N.E.3d 447, 451 (2023) (same); *People v. David*, 41 N.Y.3d 90, 96, 231 N.E.3d 402, 405 (2023) (same). The District of Columbia's "proper cause" analogue was enjoined in 2017, so the class of defendants who would have preserved a *Bruen* challenge there is even smaller. *See Bruen*, 597 U.S. at 15. Accordingly, determination of the question presented will have a very limited prospective impact.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

DARCEL D. CLARK
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GINA MIGNOLA
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BY: _____
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November 9, 2026

APPENDICES

Appendix A

CR-013533-22BX

CRIMINAL COURT OF THE CITY OF NEW YORK
BRONX COUNTY

THE PEOPLE OF THE STATE OF NEW YORK v. 1. MATA BALOGH M/24 Arrest# B22626490 Defendant	STATE OF NEW YORK COUNTY OF THE BRONX

PO EDNISE SANCHEZRAMIREZ of 46 PCT, Shield# 3549, states that on or about August 1, 2022 at approximately 10:19 PM in front of 2395 Valentine Avenue, County of the Bronx, State of New York,

THE DEFENDANT COMMITTED THE OFFENSES OF:

1	(F) P.L. 265.03(1)(b)*	Criminal Possession of a Weapon 2^ DQO
2	(F) P.L. 265.03(3)*	Criminal Possession of a Weapon 2^ DQO
3	(F) P.L. 265.01-b(1)	Criminal possession of a firearm
4	(M) P.L. 265.01(2)	Criminal Possession of a Weapon 4^ DQO
5	(M) P.L. 265.01(1)	Criminal Possession of a Weapon 4^ DQO
6	(M) A.C. 10-131(i)(3)	Possession of Ammunition

IN THAT THE DEFENDANT DID: with intent to use the same unlawfully against another did possess a loaded firearm; possess a loaded firearm and such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this section if such possession takes place in such person's home or place of business; possess any firearm; possess any dagger, dangerous knife, dirk, machete, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another; knowingly and unlawfully possess any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, black jack, bludgeon, plastic knuckles, metal knuckles, chucka stick, sand bag, sandclub, wrist-brace type slingsshot or slungshot, shirken or "Kung Fu star" and not being authorized to possess a pistol or revolver within the City of New York to possess pistol or revolver ammunition provided that a dealer in rifles and shotguns may possess such ammunition.

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

Deponent states that, at the above time and place, she observed defendant to have, in his custody and control, in his right pants pocket, one (1) 9mm. semi-automatic pistol, loaded with one (1) round in the chamber and six (6) rounds in the magazine (each round is a metal casing topped with a metal projectile).

Deponent further states that, as a New York City Police Officer, she searched the New York City database DASLITE, which catalogues holders of valid permits and certificates of registration of firearms, shotguns, rifles, and

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Appendix A

related ammunition. Deponent further states that the database, which contains records made in the regular course of business and regularly made in the course of business within the reasonable time after the event or occurrence, is maintained by the NYPD for the purpose of determining whether a specific individual maintains a New York City permit and/or certificate of registration for said weapon/ammunition. Deponent further states that this search revealed that no such records exist, indicating that defendants do not maintain a New York City permit and/or certificate of registration for the above-described weapon/ammunition.

Deponent further states that defendant stated in sum and substance: I'M JUST TRYING TO PROTECT MYSELF YOU CAN'T PROTECT YOURSELF IF IT'S NOT LOADED.

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

8/2/2022 1322

DATE and TIME SIGNATURE



Appendix B

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

PREPARED BY A.D.A.: **Rachel Taverna** Date: **January 25, 2023**

Defendant
#1: MATA BALOGH

Docket No.
#1: CR-013533-22BX

Crime Date:,
#1: 8/1/2022

Approximate Time:
#1: 10:19 p.m.

Location:
#1: front of 2395 Valentine Avenue, Bronx NY

PLEASE TAKE NOTICE, pursuant to Section 710.30 of the Criminal Procedure Law, that during the trial of the indictment herein the People intend to offer evidence of a statement(s) made by the defendant, MATA BALOGH, to a public servant, POLICE OFFICER EDNISE SANCHEZ RAMIREZ, 46 PRECINCT, SHIELD NO. 3549, on 8/1/2022 at approximately 10:18 p.m., at front of 2395 VALENTINE AVENUE, BRONX NY, the substance of which was made NO JUST MY PHONE. I WANT TO ASK YOU A QUESTION. I DON'T HAVE A CRIMINAL RECORD. THEY'RE VERY TIGHT. CAN I PUT MY HANDS IN THE FRONT? I'LL HAVE AN ANXIETY ATTACK IN THE BACK. NO, I'M NOT FROM NEW YORK. NOW MY LIFE IS OVER. I CAN'T RELAX. I'M GOING TO LOST MY JOB, LOSE MY LIFE. I'M GOING TO BE A CONVICTED FELON. I WISH YOU COULD LET ME GO. I GUESS THAT'S NOT THE CASE. CAN I TEXT THE PEOPLE TO LET THEM KNOW I'M GONE. AM I GOING TO SPEND A NIGHT IN JAIL? CAN I TEXT SOMEBODY REAL FAST? MY HANDS ARE VERY TIGHT. I WORK TOMORROW. I'M A SUPER. BALOGH, B-A-L-O-G-H. MATA, M-A-T-A. 607 WEST 161ST STREET. APARTMENT 1E. WASHINGTON HEIGHTS. DECEMBER 19, 1997. 23 YEARS OLD. 347-986-6313.which statement was made orally and recorded on BODY WORN CAMERA.

PLEASE TAKE NOTICE, pursuant to Section 710.30 of the Criminal Procedure Law, that during the trial of the indictment herein the People intend to offer evidence of a statement(s) made by the defendant, MATA BALOGH, to a public servant, DETECTIVE RICHARD GARCIA, 46 DETECTIVE SQUAD, SHIELD NO. 18037, on 8/2/2022 at approximately 1:02 a.m., inside of the 46 NYPD PRECINCT DETECTIVE SQUAD, BRONX NY, the substance of which was made M-A-T-A B-A-L-O-G-H. A LITTLE. I'M IN A DAZE. I DON'T KNOW WHAT'S GOING ON. WASHINGTON HEIGHTS. MANHATTAN. NY. OVER 5 YEARS, UNDER MY NAME 1. I'M THE SUPER. YEAH. 347-986-6313. YEAH. I BELIEVE FOR ILLEGAL POSSESSION OF A FIREARM. VALENTINE AVENUE. YES SIR. I WAS JUST AT WORK. I HAD TO CHANGE 3 AIR CONDITIONERS. THEY WERE LIKE 150 POUNDS. I WAS TIRED. THEN I WOKE UP AND I WAS HUNGRY. I WAS GOING TO HOP ON MY SCOOTER, RIDING AROUND. HOPE TO SEE A LADY, YOU KNOW. I DON'T KNOW.I WAS JUST RIDING AROUND. FROM TIME TO TIME. WHEN I COME TO THE BRONX, ALWAYS. BUT IN MY OWN NEIGHBORHOOD, I DON'T. PEOPLE ROB PEOPLE, JUMP ON PEOPLE. I JUST WANTED TO DEFEND MYSELF. I'M FROM THE SOUTH SO. I WAS BORN IN THE SOUTH. IT WAS A LONG TIME AGO. YEAH. YES. GLOCK 19. POLYMER 80.

BUY THE PARTS AND PUT THEM TOGETHER. 2 FRONT. LASER SIGHT. YEAH , CUSTOM. ALL THE PARTS YOU ORDER ON THE INTERNET. BASICALLY IT'S A GLOCK. JUST SUPED UP. NOT TO MY KNOWLEDGE. THEY DON'T COME WITH SERIAL NUMBERS. I THINK IF YOU PAY ANOTHER $20 AND IT'LL GET SERIALIZED. MOST STATES ITS LEGAL. YOU DON'T NEED A SERIAL NUMBER. IT WAS LIKE 9:30. I WAS WALKING OUT THE BUILDING, AND SAW SOMEONE STARRING AT ME. I WAS JUST WALKING TO MY SCOOTER TO GO HOME. YEAH. RIGHT POCKET. NO IT DOESN'T COME LOADED. YEAH. 9MM. 7 ROUNDS. I BELIEVE IT WAS 7. 6 IN THE MAGAZINE, 1 IN THE CHAMBER. IF YOU HAVE TO DEFEND YOURSELF IT TAKES A FEW SECONDS TO LOAD IT. THAT'S WHY I ALWAYS KEEP IT LOADED. I HOPE I CAN GO HOME. I HAVE TO GO TO WORK. AS SOON AS POSSIBLE. I HOPE., which statement was recorded on an NYPD VIDEO STATEMENT.

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

PLEASE TAKE NOTICE, pursuant to Section 240.30 of the Criminal Procedure Law, that the District Attorney demands that each defendant charged in the indictment disclose and make available for inspection, photographing, copying or testing, subject to constitutional limitations, (a) any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test, experiment, or comparisons, made by or at the request or direction of, such defendant, if the defendant intends to introduce such report or document at trial, or if such defendant has filed a notice of intent to proffer psychiatric evidence and such report or document relates thereto, or if such report or document was made by a person, other than defendant, whom such defendant intends to call as a witness at trial; and (b) any photograph, drawing, tape or other electronic recording which such defendant intends to introduce at trial.

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

DARCEL D. CLARK
District Attorney
Bronx County

Appendix C

INDICTMENT

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX

PEOPLE OF THE STATE OF NEW YORK
AGAINST

(B) BALOGH, MATA - VFO
VIOLENT FELONY OFFENDER
DEFENDANT: CR-013533-22BX

INDICTMENT #: IND-70327-23
GRAND JURY #: 40217/2023

COUNTS

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

DATE 9/19/23
I hereby certify that the foregoing paper is a true copy of the original thereof filed in this office
County Clerk and Clerk of the Supreme Court Bronx County
NO FEE OFFICIAL USE

ORIGINAL

JAN 26 2023

C Panel
1st Term
JANUARY 25, 2023
A TRUE BILL

FOREPERSON

DARCEL D. CLARK
DISTRICT ATTORNEY

Appendix C

FIRST COUNT

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

THE DEFENDANT, MATA BALOGH, ON OR ABOUT AUGUST 1, 2022, IN THE COUNTY OF THE BRONX, DID POSSESS A LOADED FIREARM, THAT BEING A PISTOL, SUCH POSSESSION NOT BEING IN HIS HOME OR PLACE OF BUSINESS.

SECOND COUNT

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

THE DEFENDANT, MATA BALOGH, ON OR ABOUT AUGUST 1, 2022, IN THE COUNTY OF THE BRONX, DID POSSESS A LOADED FIREARM WITH INTENT TO USE IT UNLAWFULLY AGAINST ANOTHER.

THIRD COUNT

THE GRAND JURY OF THE COUNTY OF THE BRONX BY THIS INDICTMENT, ACCUSES THE DEFENDANT, MATA BALOGH, OF THE CRIME OF CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, MATA BALOGH, ON OR ABOUT AUGUST 1, 2022, IN THE COUNTY OF THE BRONX, DID KNOWINGLY POSSESS A FIREARM, THAT BEING A PISTOL, WHICH HAD BEEN DEFACED FOR THE PURPOSE OF CONCEALMENT OR PREVENTION OF THE DETECTION OF A CRIME OR MISREPRESENTING THE IDENTITY OF THAT WEAPON.

Appendix C

FOURTH COUNT

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

THE DEFENDANT, MATA BALOGH, ON OR ABOUT AUGUST 1, 2022, IN THE COUNTY OF THE BRONX, DID POSSESS ANY FIREARM, THAT BEING A PISTOL.

FIFTH COUNT

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

THE DEFENDANT, MATA BALOGH, ON OR ABOUT AUGUST 1, 2022, IN THE COUNTY OF THE BRONX, DID POSSESS A FIREARM.

SIXTH COUNT

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

THE DEFENDANT, MATA BALOGH, ON OR ABOUT AUGUST 1, 2022, IN THE COUNTY OF THE BRONX, DID POSSESS A FIREARM WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER.

DARCEL D. CLARK
DISTRICT ATTORNEY

GRAND JURY COURT

COUNTY: BRONX

INDICTMENTS# GRAND JURY # 40217/2023 FINDING: INDICTED

DEFENDANTS	CORRESPONDING DOCKETS
1. BALOGH, MATA	CR-013533-22BX

INDICTMENT CHARGES

CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE
P.L. 265.03(3)
CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE
P.L. 265.03(1)(b)
CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE
P.L. 265.02(3)
CRIMINAL POSSESSION OF A FIREARM
P.L. 265.01-b(1)
CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE
P.L. 265.01(1)
CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE
P.L. 265.01(2)

SCHEDULED ARRAIGNMENT DATE:

ARRAIGNMENT PART:

OTHER ASSOCIATED INDICTMENTS:

DATE COMPLETED: JANUARY 25, 2023

ADA: TAVERNA, RACHEL E

BUREAU: TRIAL BUREAU 40

FILED: APPELLATE DIVISION - 1ST DEPT 06/18/2024 10:54 AM 2023-03397
NYSCEF DOC. NO. 6 RECEIVED NYSCEF: 06/18/2024

SUPREME COURT OF THE STATE OF NEW YORK

BRONX COUNTY : CRIMINAL TERM : PART 17

THE PEOPLE OF THE STATE OF NEW YORK

-against-

MATA BALOGH,

Defendants.

Indictment No.
70327/2023

SENTENCE

May 5, 2023

Bronx Supreme Court
265 East 161st Street
Bronx, New York

B E F O R E:

HON. ALBERT LORENZO

J U S T I C E

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

DARCEL D. CLARK, ESQ.
District Attorney, Bronx County
BY: YINI ZHANG, ESQ.
Assistant District Attorney

THE BRONX DEFENDERS
Attorneys for the Defendant
BY: SAMANTHA TUCKER, ESQ.

FILED
SEP 28 2023
SUP COURT APP. DIV.
FIRST DEPT.

SCANNED
DATE: OCT - 3 2023
BY: S.L. Owens

CHRISTINE PLUSKOTA, R.P.R.
Senior Court Reporter

(Defendant is present before the Court.)

THE CLERK: This is number one on the calendar, Indictment 70327 of '23, Mata Balogh.

Appearance.

MS. TUCKER: Good morning, your Honor. Samantha Tucker for Bronx Defenders.

THE COURT: Good to see you, Miss Tucker.

MS. ZHANG: Yini Zhang for the office of Darcel D. Clark.

THE COURT: Good morning, as well.

It's what, COC again?

MS. ZHANG: Yes, your Honor, the People filed an ADF, COC and Statement of Readiness on January 30th of this year.

THE COURT: Why does it say it's on for a COC?

MS. TUCKER: I'm not sure, Judge.

THE COURT: Carol, can I see the file?

MS. TUCKER: There is a COC.

THE COURT: There is?

MS. TUCKER: Yes.

THE COURT: All right. Come on up.

(Whereupon, a discussion was held at the bench off the record between the Court and counsel.)

THE COURT: Second call.

(The matter was adjourned for a second call.)

(Whereupon, the following takes place in open court in the presence of all parties previously mentioned.)

THE CLERK: Recalling on calendar number one, Mata Balogh.

All parties are present. Defendant is present.

THE COURT: Appearance.

MS. TUCKER: Good morning again, your Honor. Samantha Tucker for Bronx Defender.

MS. ZHANG: Yini Zhang for the Office of Darcel D. Clark.

THE COURT: You could sit, as well, if you'd Luke.

All right. This is -- we have a disposition in this case. People, go ahead.

MS. ZHANG: Yes, your Honor. The People now have an offer to the attempted 265.03 sub 3, Probation and a waiver of the right to appeal.

THE COURT: And my understanding is it's based on the fact that the defendant has no criminal record.

He's working, correct, Miss Tucker?

MS. TUCKER: Yes, your Honor.

THE COURT: And based on your looking at the case and your supervisors and the A.D.A. involved, you feel that Probation -- five years Probation is appropriate, correct?

MS. ZHANG: Yes, your Honor.

THE COURT: That would be on the lesser included under the first count, correct?

MS. ZHANG: Yes, your Honor.

THE COURT: Okay. I'll take your -- with a waiver of the right to appeal?

MS. ZHANG: Yes, your Honor.

THE COURT: You can do the waiver and then we'll begin.

(Pause in the proceedings.)

THE COURT: Have you completed the waiver, Miss Tucker?

MS. TUCKER: Yes, your Honor.

THE COURT: I'll take your application.

MS. TUCKER: Thank you, your Honor.

My client has authorized me to withdraw his previously entered plea of not guilty and enter a plea of guilty to Penal Law 265.03 subsection 3, Attempted Criminal Possession of a Weapon with five years of Probation.

THE COURT: Okay. Let's swear him in.

THE CLERK: Please raise your right hand.

Do you solemnly swear or affirm the statements you give this Court will be the truth, the whole truth and nothing but the truth?

THE DEFENDANT: Yes, ma'am.

THE COURT: You can put your hand down.

Off the record.

(Whereupon, a discussion was held off the record between the Court and counsel.)

THE COURT: Does your client have any immigration issues?

MS. TUCKER: No, your Honor.

THE COURT: I have to warn you that if you were not a United States citizen, you could be deported do you understand that?

THE DEFENDANT: Yes, sir.

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

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand when you plead guilty you give up your right to remain silent and not to incriminate yourself?

THE DEFENDANT: Yes, sir.

THE COURT: Your attorney has indicated you wish to plead guilty in this case to Attempted Criminal Possession of a Weapon in the Second Degree. Is that what you wish to do?

THE DEFENDANT: Yes, sir.

THE COURT: It is, in essence, charged under the first count that on or about August 1st, 2022, here in the Bronx, you possessed a loaded firearm, a pistol, and this

possession was not in your home or place of business; is that true?

THE DEFENDANT: Yes, sir.

THE COURT: Did you have a license to carry the gun?

THE DEFENDANT: No, sir.

THE COURT: And do you, therefore, plead guilty to Attempted Criminal Possession of a Weapon in the Second Degree, Penal Law Section 110/265.03 sub 3?

THE DEFENDANT: Yes, sir.

THE COURT: When you plead guilty, you give up certain rights, including any rights you may have to move to suppress evidence. Do you understand that?

THE DEFENDANT: Yes, sir.

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

The right to be represented by an attorney; the right to confront and cross-examine the People's witnesses; the right to remain silent and not to incriminate yourself.

You have the right but are not required to call and present witnesses on your own behalf, and to testify yourself on your own behalf.

And you are presumed to be innocent and the People would have to prove your guilt beyond a reasonable doubt to a jury that must be unanimous in finding you guilty

beyond a reasonable doubt.

When you plead guilty you give up those rights, as well as any defense to these charges. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: This plea of guilty is the same as a verdict of guilty by a jury after trial. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You're also waiving your right to appeal. Ordinarily a defendant retains the right to appeal after pleading guilty. So, the waiver of a right to appeal is separate and distinct from the waiver of a trial and other rights by a plea of guilty.

In this case, you're asked to waive your right to appeal. An appeal is a proceeding before a higher Court. We call it Appellate Court.

If you could not afford the costs of an appeal or a lawyer, the state would pay them. On appeal you could argue normally through your lawyer that an error took place in this Court requiring reversal or modification of the conviction. A reversal would require new proceedings in the court or a dismissal. Do you understand so far?

THE DEFENDANT: Yes, sir.

THE COURT: When you waive your right to appeal,

you do not give up your right to take an appeal by filing a notice of appeal with the Court and the District Attorney within 30 days of sentence.

But if you take an appeal with this waiver, you are giving up your right to have that Appellate Court consider most claims of error and to consider whether the sentence is excessive or should be modified. Essentially, it means the plea, conviction and sentence is normally final. Do you understand that?

THE DEFENDANT: Yes, sir.

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

THE DEFENDANT: Yes, sir.

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

THE DEFENDANT: Yes, sir.

THE COURT: You voluntarily waived your right to appeal in return for the plea and sentence promised?

THE DEFENDANT: Yes, sir.

THE COURT: Other than what we've said in court, has anybody promised you anything else to get you to plead guilty?

THE DEFENDANT: No.

THE COURT: Anybody threaten you or force you to plead guilty.

THE DEFENDANT: No.

THE COURT: You're pleading guilty and voluntary because you are guilty, right?

THE DEFENDANT: Yes.

THE COURT: This conviction based upon this plea of guilty could be the basis for additional punishment in the future if you're convicted of another crime. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: There's only three things you have to do between now and sentence; meet with Probation, 'cause your promise is probation; come back to court and not get arrested. As long as you do that, I have to give you the five years Probation or allow you to withdraw the plea and go to trial.

The only way you can mess this up is disappear, don't come back, get arrested, and then you could go to state prison with post-release, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Plea acceptable?

MS. ZHANG: Yes, sir.

THE COURT: Let's enter it.

THE CLERK: Mata Balogh, do you now withdraw your previously entered plea of not guilty and do you now plead guilty to the Attempted Criminal Possession of a Weapon in the Second Degree, Penal Law Section 110/265.03 subsection 3 to cover Indictment 70327 of '23, is that what you wish to do?

THE DEFENDANT: Yes, ma'am.

THE CLERK: Thank you.

THE COURT: You'll get some paperwork. You might want to go today since it's early and get it over with to Probation.

Looking at around June 20th.

MS. TUCKER: June 20th, okay.

THE COURT: Anything thereafter. Is there a day -- you're working right? Is there a day of the week that's best for you?

THE DEFENDANT: The weekends.

THE COURT: What day?

THE DEFENDANT: Weekends.

THE COURT: That's a good answer.

MS. TUCKER: Can we do --

THE COURT: We can do it whatever day you want.

MS. TUCKER: The 21st, Judge?

THE COURT: You got it, June 21st.

MS. TUCKER: Thank you.

THE COURT: I'm glad you're working, though. We're not working weekends here.

THE DEFENDANT: Oh, okay. I'm sorry.

THE COURT: I wish you a lot of luck. I'll see you at sentence, all right?

THE DEFENDANT: All right.

MS. TUCKER: Thank you, your Honor.

(Whereupon, the matter was adjourned until June 21, 2023 for sentence.)

Certified to be a true and accurate transcript of the foregoing proceedings

Christine Pluskota

Christine Pluskota, R.P.R.

Appendix E

WAIVER OF THE RIGHT TO APPEAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 17

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Indictment or SCI #: 70327/23

Mateo Balcazar, Defendant

----------X

I, Mateo Balcazar, 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, Jonathan Tuttle, or both, before signing this document.

Dated:

5/5/23

Mateo Balcazar
Defendant

Attorney for Defendant

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

Dated:

5-5-23

J.S.C.

ALBERT LORENZO
JUDGE

(1/2020)

New York City Department Of Probation

Pre-Sentence Investigation Face Sheet

Report Type: PSI	Court: BRONX SUPREME	NYSID #: 15637501R	Case #: CCI-XS202306697
County: Bronx	FBI: 9ML32W9T5	PO: Sharon Harris	Sentence Promise: Probation
Conviction Dt.: 05/05/2023	Sentence/Return Dt.: 06/21/2023	Custody Status: ROR	Conviction: Plea

PERSONAL INFORMATION

Last Name:	Balogh	First Name:	Mata
True Name (if different)			

Current Address	Mailing Address	Resides with
Karoly Balogh [redacted]	Karoly Balogh 607 [redacted]	Father - Karoly Balogh

Primary Phone	[redacted]	SSN	[redacted]	Sex Assigned at Birth	Male
Cell Phone	[redacted]	Citizenship	USA	Race	Asian/Pacific Islander
Birth Date	[redacted]/1997	Alien Status		Ethnicity	Not Hispanic
Country of Birth	USA	Alien #		Height	5'10"
State if US	Mississippi	Visa Type		Weight	150
City of Birth	Vicksburg	Visa #		Eyes	Brown
Primary Language	English	Marital Status	Single (never married)	Hair	Brown
Speaks English?	Yes			Glasses	No
Interpreter?	No			Contacts	No
Identifiable Marks					
Law Actions	DNA				
Defendant Interview Date	05/05/2023				

PRESENT COURT PROCEEDING

#	DKT/IND #	Court Control #	Offense Date	Arrest Date	Final Charge(s)
1	Ind# 70327-23	70024927R	8/1/2022	08/01/2022	PL 265.03 03 D F 2 - ATT Crim Possess Weapon-2:Loaded Firearm-Other Than Person's Home/business - 1 ct(s)

Indict. Arrest Charges	

	Charge Description	Count	VO	JO	Covers Indict.
1	PL 265.03 03 D F 2 ATT Crim Possess Weapon-2:Loaded Firearm-Other Than Person's Home/business	0	True	False	

2	PL 265.03 01B C F 2 Criminal Possession Of A Weapon-2nd Degree: Loaded Firearm	0	True	False
3	PL 265.02 03 D F 3 Criminal Possession Weapon-3rd:Defaced For Concealment	0	False	False
4	PL 265.01-B 01 E F 0 Criminal Possession Of A Firearm - Possess A Firearm	0	False	False
5	PL 265.01 01 A M 4 Criminal Possession Weapon-4th:Firearm/Weapon	0	False	False
6	PL 265.01 02 A M 4 Criminal Possession Weapon-4th:Intent To Use	0	False	False

Conviction Charge Code		**Court Details**		**Additional Information**	
Law	PL	Judge	Hon. Alberto Lorenzo	ADA	Taverna, Rachel E.
Section	265.03	Part	BRONX SUPREME - 17	Phone #	(718)838-7557
SubDiv	03	Co-Defendants	No	Defense Counsel	Tucker, Samantha T.
Class/Offense	F	YO Eligible	Not Applicable	Phone #	
Attempted	1	Pending Charges	No	Address	
Degree	2	COR Eligible	Yes		

DETAILS SENTENCE PROMISE (cont. from Facesheet)			
Sentence Type	Probation	Duration	5 years
Details of Promise	5 years Probation		

PRESENT OFFENSE			
Circumstances of Arrest			
Offense Date(s)	8/1/2022	Arresting Officer	P.O. Ednise Sanchez Ramirez
Offense/Arrest Location	in front of 2395 Valentine Avenue, Bronx, New York	Arrest Number	B22626490
Arrest Date	08/01/2022	Shield	3549
The defendant was arrested	Yes		
Defendant influenced by substance at time of offense		No	

Appendix F

Description of Present Offense

The information below is based upon information provided by the Court documents and ADA Taverna's files.

Description of the Offense:

On or about August 1, 2022, at approximately 10:19pm in front of 2395 Valentine Avenue, Bronx, New York, Police Office Ednise Sanchez Ramirez of the 46th Precinct, Shield# 3549 stated that at the above time and place, she observed the defendant, Mata Balogh to have in his custody and control, in his right pants pocket, one 9mm semi-automatic pistol, loaded with one round in the chamber and six rounds in the magazine.

Police Officer Sanchez Ramirez stated, that as a New York City Police Officer, she searched the New York City database DASLITE, which catalogues holders of valid permits and certificates of registration of firearms, shotguns, rifles, and related ammunition. The database, which contains records made in the regular course of business and regularly made in the course of business within the reasonable time after the event or occurrence, is maintained by the NYPD for the purpose of determining whether a specific individual maintains a New York City permit and/or certificate of registration for said weapon/ammunition. The search revealed that no such records exist, indicating that defendant did not maintain a New York City permit and/or certificate of registration for the above-described weapon/ammunition.

Police Officer Sanchez Ramirez stated that the defendant stated in sum and substance, " I'm just trying to protect myself. You can't protect yourself. If it's not loaded".

Laboratory Report# 2022-027320 dated 8/5/2022, revealed that pistol (4) was test fired utilizing submitted and laboratory ammunition. Pistol (4) and the utilized submitted ammunition (5.1,
5.2, 5.3) were found to be OPERABLE.

A laser aiming device test has been conducted. The laser aiming device attached to Pistol (4) is OPERABLE in that it did emit a green and blue light that is generally used to aim the firearm onto a target area.

Pistol (4) is manufactured from an unfinished frame or receiver with no serial number.
Pistol (4) is a semi-automatic pistol that has an ability to accept a detachable magazine and has the following characteristic(s):

A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silence.

The defendant was subsequently arrested on 8/1/22 and he is presently at liberty awaiting sentencing.

SUMMARY OF DEFENDANT'S STATEMENT

On 5/5/23, the defendant was interviewed in person by the Department of Probation.

He admitted guilt in the offense. He reported that he possessed the weapon to protect his life. He was not under the influence of drugs or alcohol at the time of the offense.

ANALYSIS OF OFFENSE AND LEGAL HISTORY

The 25-year-old male defendant stands before the court on his 1st arrest and 1st felony conviction.

In the instant offense, the defendant was observed to have, in his custody and control, in his right pants pocket, one 9mm semi-automatic pistol, loaded with one round in the chamber and six rounds in the magazine.

FAMILY AND ENVIRONMENT

Name	Relation	Age	Residence	Profession
Balogh, Karoly	Father		Karoly Balogh [redacted]	
Balogh, Karen	Mother		, , MI	

Balogh, Sylvia	Sister			

As verified by his state of Mississippi Certificate of Birth# [redacted]. Mata Nicholas Balogh was born on [redacted],1997 in Vicksburg (Warren County), Mississippi to Karoly Balogh (69, truck driver, residing in Bronx County) and Karen Denise Savage (Balogh)(59, residing in Mississippi) and is therefore 25 years old. He indicated that he is the only child born to his parents legal union. He further indicated that his parents were married and are presently divorced. He was raised by his mother (who has mental health ailments) and he left at the in 2011 because his mother couldn't take care of him. He indicated that his father was driving trucks and was very rarely home. He was homeless for four years (age 8 to 13). He moved to New York with his father in 2011.

He informed that his mother, Ms. Balogh is residing in Mississippi. He has five maternal brothers and one sister. He indicated that he has no communication with them and he is unsure of their whereabouts. He has one paternal sister, Sylvia Balogh (40) and he has no contact with her either.

He is single and he has no children. He denied having any gang affiliations.

He reported that he is presently residing at the case address with his father. It is a one bedroom apartment. He provided documents addressed to his residence as verification of his address.

On 6/12/23, this Officer spoke with the defendant's father, Karoly Balogh via telephone and he corroborated the information provided by the defendant. He verified that the defendant is presently residing with him at the case address for the past seven years and prior to this, they were residing in another apartment in the building where he was the Superintendent. He verified that the defendant was homeless for four years, he was driving trucks in different states, etc and he took him in. He informed that his son is a good person and he taught himself four languages. He is good with the computers, he loves to read and he is doing a good job as the Superintendent of the building. He indicated that he was shocked when he heard about the offense, he felt his son made a stupid/bad decision. He was very upset when he went to Court and saw his son with the Officers. They are not residing in the best area, and the defendant may have been afraid. He has spoke with his son and he is supportive of him. He also indicated that his daughter, Sylvia Balogh is employed as a teacher and she is residing in Far Rockaway, Queens.

CURRENT RESIDENCE

Address	Apt #	City	State	Zip
[redacted]	[redacted]	New York	NY	10032

Type of Residence
Residential

CURRENT EDUCATION

High School Diploma

EDUCATION, EMPLOYMENT, AND MILITARY

He reported that he graduated from the New Jersey Job Corp in Edison, New Jersey in June 2018, unverified. The defendant's father verified that the defendant received a High School Equivalency diploma. He did not attend college.

He is presently employed by West 161st Street Associates LLC located at 291 Broadway- 19th fl, New York, New York 10007 as the Superintendent, earning $1,200.00 bi-weekly from January 2022 to present. He provided recent paystubs and his W-2 form for 2022 to verify this employment. He further indicated that he has prior "off the books" employment by Rockaway Autobody Shop, cleaning, earning $70 to $100 daily for three months in 2015, unverified. In addition to a Bodega in Far Rockaway as a cashier, earning minimum wage for four months in 2016, unverified.

His goals while on Probation is to keep making money, to take care of himself, start a business, attended HVAC training and building maintenance and to complete Probation successfully.

PHYSICAL HEALTH

He stands 5'10" tall, weighing 150 lbs. He indicated that his physical health is good.

He denied the use of drugs or alcohol.

Sex Assigned at Birth	Height	Weight	Race	Ethnicity	Hair	Eyes

Male	5'10"	150	Asian/Pacific Islander	Not Hispanic	Brown	Brown

SUBSTANCE ABUSE

Defendant reported no use of controlled substances and/or alcohol.

MENTAL HEALTH

He reported that he was subject to mental abuse (delusions) growing up, however, he has not been seen by a psychiatrist, diagnosed with any mental health ailments or presently taking medication.

PO asked him did he wish to be referred to counseling and PO discussed 1-800-NYC-WELL with him. He informed that he would think about it. The defendant's father informed that the defendant has not been evaluated for mental health, but he thinks he may have anxiety.

RESULTS OF NEEDS ASSESSMENT & EVALUATION

The defendant was assessed for substance abuse and mental health. He would benefit from a further assessment for mental health and referred is necessary. He would benefit from a mentorship program and additional vocational training. If any other needs arise, he will be referred and assessed.

EVALUATIVE ANALYSIS

The 25 year old male defendant stands before the Court on his 1st arrest and 1st felony conviction.

In the instant offense, the defendant was observed to have in his custody and control, in his right pants pocket, one 9mm semi-automatic pistol, loaded with one round in the chamber and six rounds in the magazine.

He reported that he graduated from Job Corp in New Jersey in June 2018, unverified. He did not attend college.

He is presently employed as a Superintendent, from January 2022 to present, verified. He further indicated that he has prior "off the books" employment, cleaning and as a cashier, unverified.

His goals while on Probation is to keep making money, to take care of himself, start a business, attended HVAC training and building maintenance and to complete Probation successfully.

He stands 5'10" tall, weighing 150 lbs. He indicated that his physical health is good.

He denied the use of drugs or alcohol.

He reported that he was subject to mental abuse (delusions) growing up, however, he has not been seen by a psychiatrist, diagnosed with any mental health ailments or presently taking medication. The defendant's father informed that the defendant has not been evaluated for mental health, but he thinks he may have anxiety.

He would benefit from additional vocational training in addition to being evaluated for mental health and referred if necessary. He would benefit from a mentorship program.

Appendix F

Attested By:

PROBATION OFFICER - Sharon Harris

Reviewed By:

SUPERVISING PROBATION OFFICER - Michele Waters

Submitted By:

SUPERVISING PROBATION OFFICER - Michele Waters

Appendix F

VERIFICATION GRID					
#	Verification Type	Verified?	Method/Source	By Whom	Date
1	Legal History	Yes	Viewed E-justice Report	Harris, Sharon	06/12/2023
2	Present Offense	Yes	Viewed Court Documents	Harris, Sharon	06/12/2023
3	Victim Impact Statement	No			
4	Date of Birth	Yes	Viewed NYS ID# 767-195-726	Harris, Sharon	06/12/2023
5	Current Address	Yes	Viewed documents addressed to him at the residence	Harris, Sharon	06/12/2023
6	Current or Most Recent School / Training Program	No			
7	Source of Other Income	Yes	Viewed recent paystubs & W-2 form	Harris, Sharon	06/12/2023
8	Military Service	No			
9	Current of Most Recent Treatment for Physical Illness/Disability	No			
10	Current of Most Recent Treatment for Psychiatric/Psychological	No			
11	Current of Most Recent Treatment for Alcohol/Drug Abuse	No			

Appendix F

New York City Department Of Probation

Departmental Sentence Recommendation

County Investigation Branch

Date	06/16/2023	Probation Case Number	XS202306697
To: Judge	Hon. Alberto Lorenzo	Court/Part	BRONX SUPREME/BRONX SUPREME - 17
Case Name	Balogh, Mata	County	Bronx

Sentence Details

Recommendations

The 25-year-old male defendant is before the court on his 1st arrest and 1st felony conviction.

In the instant offense, the defendant was observed to have in his custody and control, in his right pants pocket, one 9mm semi-automatic pistol, loaded with one round in the chamber and six rounds in the magazine.

In view of the circumstances, the defendant is engaging in deviant behavior with the potential for dangerous consequences to himself and the community and poses a potential risk to public safety. Hence, a split sentence is recommended at this time as he should be closely monitored.

We also require that a condition (Condition #28) to execute a warrantless search of this defendant and his home be provided for the safety of the officers making home visits and the community.

Michele Waters

SUPERVISING PROBATION OFFICER - Michele Waters

06/16/2023
Date

SUPREME COURT OF THE STATE OF NEW YORK

BRONX COUNTY: CRIMINAL TERM: PART: 17

----------x

PEOPLE OF THE STATE OF NEW YORK

-against-

Mata Balogh,

Defendant.

----------x

Indictment No. 70327-23

Sentence

Bronx Supreme Court
265 East 161st Street
Bronx, New York 10451
June 21, 2023

B E F O R E:

HONORABLE ALBERT LORENZO,
Justice

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

DARCEL D. CLARK, ESQ.,
District Attorney, Bronx County
BY: Brittany Richardson,
Assistant District Attorney

BRONX DEFENDERS
Attorney for the Defendant
BY: Samantha Tucker, Esq.

FILED
SEP 28 2023
SUP COURT APP. DIV.
FIRST DEPT.

Doreen Covington
Senior Court Reporter

THE CLERK: This is number three on the calendar, indictment 70327 of '23, Mata Balogh. Appearance.

MS. TUCKER: Good morning, your Honor. Samantha Tucker from the Bronx Defenders.

THE COURT: Good morning, Ms. Tucker.

MS. RICHARDSON: Brittany Richardson for the Office of the District Attorney.

THE COURT: Okay. Good morning.

All right, so we have an agreed upon sentence. It's a probationary sentence. I've reviewed the presentence report. Ms. Tucker you've viewed it?

MS. TUCKER: I did.

THE COURT: And your client stands ready for the promised sentence today?

MS. TUCKER: Yes, your Honor.

THE COURT: Anything from the People? You've reviewed the presentence, right?

MS. RICHARDSON: Yes.

THE COURT: Anything else?

MS. RICHARDSON: No.

THE COURT: Ms. Tucker, anything else?

MS. TUCKER: No.

THE COURT: Anything you'd like to say?

THE DEFENDANT: No.

THE COURT: Your sentence is five years probation.

You'll get paperwork. Once you get the paperwork you can go. There are surcharges. DNA and surcharges, victim assistance fee. I'll go out to December 22nd. You're young so pay it so it doesn't ruin your credit.

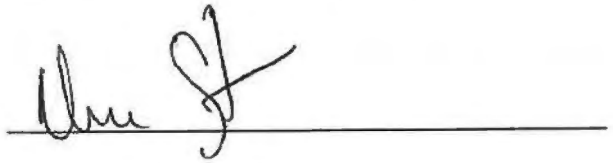
THE CLERK: Mr. Balogh, you have a right to appeal the judgment of the Court. If you do so it must be done within thirty days. And counsel your office will stay on the case for the statutory time?

MS. TUCKER: Yes.

THE CLERK: Let the record reflect that the defendant had been given his written notice of his right to appeal. Thank you.

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This is certified to be a true and accurate transcript of the foregoing proceedings.



DOREEN COVINGTON

Senior Court Reporter