U.S. Department of Justice

United States Attorney
Eastern District of New York

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Brooklyn, New York 11201

AB/ADG:RSB
F. #2023R00146

March 1, 2024

By ECF and Email

The Honorable Nicholas G. Garaufis
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Robert Homer
Criminal Docket No. 23-CR-00086 (NGG)

Dear Judge Garaufis:

The government respectfully submits this motion for reconsideration of the Court's February 5, 2024 Memorandum and Order granting the defendant's motion to suppress. (See ECF No. 53 ("Mem. and Order" or the "Court's Decision")).[1] As explained below, the Court should reconsider its decision so that it may evaluate certain overlooked material facts and controlling law, as well as to correct clear errors of law. In the alternative, the government respectfully requests the opportunity to present evidence to the Court regarding licensing for firearms in New York City, which information is critical to both assumptions on which the Court's Decision is based and the government's ability to meet its burden under the Court's articulated probable cause standard for a firearm arrest.

I. Background

A. Offense Conduct

The following pertinent facts were established at the October 26, 2023 suppression hearing:

[1] Unless otherwise indicated, all ECF references refer to Criminal Docket Number 23-00086 (NGG).

On February 14, 2023, at 2:21 a.m., in Queens, New York, New York City Police Department ("NYPD") Detective Nicholas Conte watched a live-feed of ARGUS video surveillance and observed the defendant sitting in the front driver's seat of a parked, but operable, minivan, with two female passengers in the car.[2] [3] (GX 1 at 2:21:14 - 2:21:30 a.m., Tr. 16:7-12, 18-23, 17:6-15, 18:7-17, 25:24-25, 26:1-7, 31:11-13). The defendant was in a high-crime area where Detective Conte had investigated numerous violent crimes, including frequent shootings. (Tr. 16:13-17, 25:2-7, 31:8-9). For that reason, in the approximate year leading up to the defendant's arrest, Detective Conte reviewed this specific ARGUS camera daily. (Tr. 17:14-25, 18:1-6). On February 14, 2023, as clearly captured on the video footage, the detective watched the defendant grab from the rear center of the minivan a large semiautomatic pistol, which he shoved into his right, front pants pocket. (GX 1 at 2:21:46 - 2:22:00 a.m., Tr. 18:7-13). The defendant then exited the minivan and walked with another male from the parked car to immediately outside a deli on the public sidewalk. (GX 1 at 2:23:01 a.m., Tr. 25:1-7, 33:2). The defendant, still armed with the gun, then stood with the other male in front of the deli and, looking down the block, appeared to gesture to another person or thing off camera. (GX 1 at 2:23:11 - 2:24:36 a.m.).

Detective Conte relayed this critical information to Police Officer Anthony Lombardi, who was working a patrol assignment that evening. (Tr. 18:23-25, 19:1-4). Officer Lombardi responded to the scene minutes later with other officers. (GX 1 at 2:25:47 a.m., GX 3 at 2:25:47 a.m.). In the interim, the defendant had returned to his car with the firearm. (GX 1 at 2:24:36 a.m., Tr. 33:23-25, 34:3-6). The police officers carefully approached the defendant and began to remove him from the operable minivan. (GX 1 at 2:25:47 - 2:25:52 a.m., GX 3 at 2:25:47 - 2:25:52 a.m.). Once he was out of the vehicle, the officers recovered a loaded, operable .45 caliber semiautomatic Glock pistol from the defendant's right, front pants pocket, exactly where Detective Conte saw the defendant shoving it. (GX 3 at 2:26:11 a.m.). Just after the police officers recovered the gun, the defendant started screaming that the police had planted a gun on him. (Id.). The entirety of the incident, including the defendant's stop, the recovery of the gun, and the defendant's arrest, was captured on video.

The defendant was arrested based on probable cause that he committed the following crimes: Criminal Possession of a Weapon in the Second Degree in violation of New York State ("NYS") Penal Law ("PL") Sections 265.03(1) and 265.03(3), Criminal

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[2] Citations to "Tr." refer to the transcript of the hearing on October 26, 2023. Citations to "GX" refer to government exhibits admitted during the hearing.

[3] ARGUS cameras are NYPD cameras placed in high-crime areas to capture dangerous incidents that might occur. (Tr. 19:17-18). On February 14, 2023, Detective Conte had access to the ARGUS camera referenced herein and was able to zoom in and out, and toggle the camera left, right, up and down. (Tr. 20:13-20). On the night of the arrest, Detective Conte, at various points, manually controlled the camera. (GX 1, Tr. 25:2-3, 24-25, 26:1-6, 12-13, 24-25, 27:1-2, 28:12-14, 47:6-12).

Possession of a Weapon in the Third Degree in violation of NYS PL Section 265.02(8), and Criminal Possession of a Weapon in the Fourth Degree in violation of NYS PL Section 265.01(1). The defendant was later charged with Criminal Possession of a Weapon in the Third Degree in violation of NYS PL Section 265.02(1), which would have only had been added as a charge after the police determined he had a prior conviction.[4]

B. Relevant Procedural History

Following his arrest, on February 14, 2023, the defendant was charged by a federal criminal complaint with being a felon in possession of a firearm, in violation of Title 18, United States Code, Section 922(g)(1). (ECF No. 1).[5] On February 24, 2023, he was indicted for the same offense by a grand jury sitting in the Eastern District of New York. (ECF No. 6).

On July 11, 2023, the defendant moved to suppress "all physical evidence recovered from Mr. Homer on February 14, 2023, including a .45 mm Glock semiautomatic pistol and ammunition and all evidence recovered as fruit of his unlawful arrest…." (ECF

[4] The elements of Criminal Possession of a Weapon ("CPW") in the Second Degree in violation of NYS PL Section 265.03(1) are: (1) that the defendant possessed a firearm; (2) he did so knowingly; (3) the firearm was loaded and operable; and (4) the defendant possessed the loaded firearm with the intent to use it unlawfully against another person. The elements of CPW in the Second Degree in violation of NYS PL Section 265.03(3) are the same as to the first three elements. The fourth element under this subsection is that such possession did not take place in the defendant's home or place of business.

The elements of CPW in the Third Degree in violation of NYS PL Section 265.02(1) are the same as in the Second Degree as to the first two elements. The third element is that the firearm was operable, and the fourth element is that the defendant had previously been convicted of a crime. The elements of CPW in the Third Degree in violation of NYS PL Section 265.02(8) are: (1) that the defendant possessed a large capacity ammunition feeding device, and (2) that the defendant did so knowingly.

Finally, the elements of CPW in the Fourth Degree in violation of NYS PL Section 265.01(1) are the same as in the first three elements of CPW in the Third Degree under Section 265.02(1). However, the defendant need not have been previously convicted of a crime.

[5] On September 13, 2016, the defendant was convicted in Queens County for Sex Trafficking, in violation of NYS PL Section 230.34(5), a class B violent felony, and Promoting Prostitution in the Third Degree, in violation of NYS PL Section 230.25(1), a class D felony. On October 25, 2016, the defendant was sentenced to a term of imprisonment of 30 to 90 months for the sex trafficking offense, and 1 to 3 years for the promoting prostitution offense.

No. 23 ("Def. Mot.") at Notice of Motion to Suppress, at 1). The defendant primarily argued in his motion and reply brief that the government had not demonstrated that there was probable cause to arrest the defendant because it never established (1) whether Detective Conte conveyed what he observed on the ARGUS camera to the arresting officers (Def. Mot. at 7-8; ECF No. 30 ("Def. Reply") at 2-3), and (2) whether Detective Conte actually watched the surveillance footage of the defendant when he handled his firearm (Def. Reply at 2). In the defendant's motion, he referenced the Supreme Court's decision in New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022), only once in passing, by citing to a federal district court opinion from Connecticut, United States v. Gaskin, 2023 WL 3998329, *6 (D. Conn. June 14, 2023), which stated that "an individual cannot be presumed to be carrying a firearm unlawfully simply because of their possession of a firearm." (Def. Mot. at 7). In his reply brief, the defendant renewed the argument again citing Gaskin. (Def. Reply at 3).

On October 26, 2023, the Court held a suppression hearing. At the hearing, the government presented evidence germane to the issues raised in the defendant's suppression motion and sufficient to demonstrate probable cause as understood in the Second Circuit for many years. Detective Conte testified to, among other things, the above-listed facts, including that he saw the defendant with a firearm exit an operable minivan onto a public sidewalk in a high-crime area after 2:00 a.m. The defense did not ask a single question, or make any argument, about New York City gun licenses post-Bruen.

In post-hearing briefing, the defendant briefly mentioned the same argument, again citing Gaskin, which cites to Bruen. (ECF No. 44 ("Def. Br.") at 6). The government briefly responded to the defendant's citation to Gaskin, stating that the defendant did not ask a single Bruen-related or licensing question at the hearing, Bruen had nothing to do with establishing probable cause, having a license for a firearm is an affirmative defense to criminal possession of a firearm in New York and it is still a crime in New York to possess a firearm even if the defendant did not have a prior felony conviction. (ECF No. 46 ("Govt. Br.") at 9-10).

On February 5, 2024, the Court issued a 15-page decision suppressing the firearm and ammunition and announcing a new legal standard for probable cause pertaining to gun arrests in New York. (See Mem. and Order). It held that, post-Bruen, before an officer has probable cause to arrest an unidentified individual in possession of a firearm in New York, the officer must first confirm whether the individual has a license to carry the firearm (the "February 5th New Rule"). (See id. at 10). While the Court acknowledged that, in a pre-Bruen world, Detective Conte would have likely had probable cause to arrest the defendant (id. at 9), it concluded that, post-Bruen, probable cause did not exist because gun licenses are "significantly more accessible" due to the "dramatic expansion" of permissible conduct under the Constitution (id. at 10). The Court ended the decision by "noting the steps that Officer Lombardi and his fellow arresting officers did not take." (Id. at 14). Among those steps, the Court noted that the officers had the option to conduct a Terry stop, pursuant to Terry v. Ohio, 392 U.S. 1, 30 (1968), "when seeing someone they suspect has a gun. *See United States v. Hagood*, 78 F.4th 570, 577 (2d Cir. 2023)." (Id. at 14). During such a

detention, the Court suggested that the police should have determined whether the defendant had a gun license. (Id.). In granting the defendant's motion, the Court suppressed not only the recovered firearm and ammunition, but the defendant's identity and his status as a felon.[6] (See id. at 1, 15, n.3).

II. Argument

As explained further below, reconsideration of the Court's Decision is appropriate here, as the decision relied on factual assumptions that were inaccurate; overlooked or discounted the significance of pertinent facts; and did not consider certain controlling Second Circuit authority. In short, the Court overlooked important legal and factual considerations "that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). It also committed "clear error" in its discussion of certain cases. United States v. Basciano, 03-CR-929 (NGG), 2008 WL 905867, at *1 (E.D.N.Y. Mar. 31, 2008). In the instant case, the government "can point to controlling decisions [and] data that the court overlooked." United States v. Rice, No. 96-CR-407 (SJF), 2015 WL 7459925, at *1 (E.D.N.Y. Nov. 24, 2015) (internal quotation mark omitted) (quoting Shrader, 70 F.3d at 257). The Court should thus reconsider its February 5th New Rule and its decision to suppress the evidence in this case. The February 5th New Rule also creates practical difficulties for thousands of police officers during street encounters, endangers officers and members of the public and leaves unanswered questions for situations it does not contemplate.

First, the Court's February 5th New Rule rests on several assumptions: that because Bruen invalidated one of the requirements for acquiring a concealed carry license for a firearm, there must have been a meaningful increase in licenses issued in New York City, or at least access to these licenses, such that there must be more firearms carried lawfully in New York City and, therefore, the probable cause calculus must be altered for a police officer of reasonable caution. However, the data on firearm licenses in New York City shows that the overall number of issued concealed carry licenses for firearms before Bruen and at the time of the defendant's arrest nearly eight months later was largely unchanged. In addition to not considering these and other pertinent facts, the Court also erred in its treatment of cases that make clear that the February 5th New Rule is contrary to Second Circuit law, even post-Bruen. Further, the Court committed clear error in its analysis of whether the licensing exception is as an affirmative defense under New York law.

Second, even using the Court's February 5th New Rule, the Court did not consider certain pertinent facts established at the suppression hearing that demonstrate that

[6] As discussed below, the Court held in a footnote that, while "the parties did not raise this issue," the defendant's motion to suppress was written broadly enough to cover a request to suppress his identity and "status as a felon." (Id. at n.3). Thus, in granting the motion, the Court also suppressed the defendant's identity and status as a felon without discussion or briefing. (Id. at 1, 15, n.3).

officers had probable cause to arrest the defendant—including the defendant's spontaneous shouts that the police were planting a gun on him immediately after they recovered the gun.

Third, the February 5th New Rule is unworkable and would endanger police officers and members of the public because it would require an officer who could not quickly confirm the unlicensed status of a stopped individual with a firearm to release the individual following the Terry stop and allow him to leave with the gun.

Finally, even if the Court still were to grant the defendant's motion to suppress physical evidence, its decision to also suppress both the defendant's identity and status as a felon was a remedy broader than what the defendant requested (and therefore issues the government never had the opportunity to litigate) and contrary to both Second Circuit law and the Tenth Circuit case upon which it relied.

A. Applicable Legal Standard

"The standard for granting [a motion to reconsider] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader, 70 F.3d at 257; Basciano, 2008 WL 905867, at *1 (adopting Shrader standard in criminal cases); see also Fan v. United States, 710 F. App'x 23, 24 (2d Cir. 2018) (quoting Shrader, 70 F.3d at 257). "The major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Basciano, 2008 WL 905867, at *1 (quoting United States v. Morrison, 04-CR-699 (DRH), 2007 WL 4326796, at *1 (E.D.N.Y. Dec. 7, 2007)). A court may grant reconsideration if a party "can point to controlling decisions…that the court overlooked…that might reasonably be expected to alter the conclusion reached by the court." Shrader, 70 F.3d at 257.

B. The Court's February 5th New Rule Requiring an Officer to Determine if an Unidentified Individual Has a Gun License Before Having Probable Cause to Arrest is Flawed

i. The Court's February 5th New Rule Does Not Consider NYPD Licensing Data Demonstrating Minimal Change in Lawful Guns Since *Bruen*

The Court held that although prior to Bruen police officers likely had probable cause to arrest an unknown individual "in a high crime area at night with a firearm," they no longer do without first determining whether the individual has a concealed carry license. (Mem. and Order at 9). The Court reasoned that because of Bruen "the practical effect of the [New York State amendment to the gun licensing statute post-Bruen] is to make gun licenses for public carry significantly more accessible." (Id. at 10). In other words, the Court assumed that the new gun licensing regime adopted in New York permits substantially

greater accessibility to concealed carry gun licenses, and therefore many more New Yorkers could lawfully carry a concealed firearm. This difference was significant enough, in the Court's view, to alter the probable cause calculation for police officers when they observe an unidentified person with a firearm in public. Moreover, the Court concluded that this was true even when additional attendant circumstances evincing criminality are present, such as, in this case, the defendant's utter lack of discipline in handling the gun, his statements about being framed and the fact that he was seen in an area plagued by frequent shootings and gang violence, to name a few. The data undermines these assumptions and the basis for the Court's ruling.

As an initial matter, Bruen did not address probable cause or New York's criminal gun statutes. In Bruen, the Supreme Court struck down a New York law that required residents to demonstrate "proper cause" to obtain a license to carry a handgun outside the home on the ground that the law was not supported by "th[e] Nation's historical tradition of firearm regulation." Bruen, 142 S. Ct. at 2122, 2126.

Since Bruen did not address probable cause or New York's criminal gun laws, it could have theoretically only altered the probable cause analysis for a gun arrest in New York City if the Supreme Court decision had resulted in such an expansion of guns lawfully possessed that it were no longer *probable* that a person possessing a firearm in public is committing a crime under New York State law. However, according to NYPD data, there was a negligible increase in the number of issued concealed carry licenses following the Bruen decision.

As was true prior to Bruen, there are three types of concealed carry firearm licenses in New York City. (Affidavit of NYPD Sergeant David Blaize, dated February 29, 2024 ("Blaize Aff.") at ¶¶ 3, 5). These are: the "carry business license;" "special carry license;" and "limited carry business license." (Blaize Aff. at ¶ 5). The "carry business license" is an "unrestricted" concealed carry license issued to the licensee to "have and carry concealed, without regard to employment or place of possession subject to the restrictions of state and federal law." NYS PL § 400.00(2)(f); (Id.). The "special carry license" is a license that is issued to a particular name, address and handgun listed on the license itself, and is issued to individuals who have a valid unrestricted carry county license – i.e., issued by a New York State county outside of the five boroughs of New York City. (Blaize Aff. at ¶ 5). An individual who is issued a "special carry license" has the same rights and privileges as that of a "carry business license" holder. (Id.). The "limited carry business license" is a restricted license only permitting the licensee to carry the handgun in accordance with the specific limitations listed thereon, and at all other times, the handgun must be safeguarded within the confines of the address listed on the front of the license, either concealed on the licensee's person in a proper holster or stored unloaded in a locked safe. (Id.). These are the only possible concealed carry licenses the defendant could have theoretically had, but of course did not. Based on the full set of circumstances, including the still very low level of

lawful gun ownership in New York City and the defendant's location and conduct, there was probable cause that his gun possession was not lawful.

According to the NYPD, the sole concealed carry licensing authority for New York City, on June 23, 2022—the date Bruen was decided—the number of issued firearm concealed carry licenses in New York City was 7,384. (Blaize Aff. at ¶ 6a). On February 14, 2023—the date the defendant was arrested and eight months after Bruen—the number of issued firearm concealed carry licenses in New York City was 7,621. (Blaize Aff. at ¶ 6b). In other words, the number of such licenses increased by a mere 237 licenses. This minuscule increase in the amount of concealed carry licenses cannot reasonably justify a change as to the probability calculus for a police officer as to whether an unidentified person with a firearm on a New York City sidewalk possesses a firearm unlawfully.[7]

Another way to contextualize the data for probable cause purposes would be to compare the pre- and post-Bruen numbers to the population of New York City. As of July 1, 2022, there were approximately 6.61 million residents of New York City over the age of 18.[8] UNITED STATES CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST045222 (last visited February 21, 2024). That means that on June 23, 2022, the date Bruen was decided, approximately 0.111 percent of New York City residents could have lawfully carried a firearm. And that on February 14, 2023, the date of the defendant's arrest, nearly the exact same percentage, 0.115 percent of New York City residents, could lawfully have carried a firearm. If, as the Court acknowledged, a 0.111 percentage was sufficient for an NYPD officer to have probable cause to arrest a person with a firearm under the facts of the case, there is no basis to conclude that 0.115 percent would not be.

The above data "might reasonably be expected to alter the conclusion reached by the court," Shrader, 70 F.3d 255 at 257. In the alternative, the Court should hold a

[7] According to one news article from July 2023, "the NYPD approved fewer new licenses to people requesting permits" in 2022 despite Bruen. See Gwynne Hogan and Suhail Bhat, *NYPD Granting Fewer Gun Permits After Supreme Court Ruled It Had To Grant More, Data Shows*, THE City, July 24, 2023, https://www.thecity.nyc/2023/07/23/nypd-gun-permit-approvals-bruen-supreme-court-ghost/ (explaining that as of July 23, 2023, over one year after Bruen was decided, the percentage of gun permits issued by the NYPD actually decreased relative to pre-Bruen rates).

[8] A person must be 21 years or older to lawfully carry a concealed firearm. (Blaize Aff. at ¶ 5). Since the census data captures the percentage of the population under 18 years old, the total of age-eligible New York City residents is even lower.

hearing so that the government may present these and other facts relevant to whether the Court's February 5th New Rule is justified by existing facts.

ii. The Court's February 5th New Rule is Contrary to Second Circuit Authority on the Plain View Doctrine and Probable Cause

The long-established standard of probable cause is as follows: "Probable cause to arrest exists 'when the [arresting officers] have knowledge or reasonably trustworthy information of facts and circumstances that are sufficient in themselves to warrant a person of reasonable caution in the belief that (1) an offense has been or is being committed (2) by the person to be arrested.'" United States v. Herron, 18 F. Supp. 3d 214, 221 (E.D.N.Y. 2014) (Garaufis, J.) (quoting United States v. Ceballos, 812 F.2d 42, 50 (2d Cir. 1987)). Probable cause is assessed under the totality of the circumstances, based on the "practical, nontechnical conception" of the officers. Illinois v. Gates, 462 U.S. 213, 230-31 (1983). Further, the Plain View Doctrine provides that "an officer is 'entitled to seize evidence revealed in plain view in the course of [a] lawful stop.'" United States v. Fuller, No. 07-CR-276 (NGG), 2007 U.S. Dist. LEXIS 75403, at *1 (E.D.N.Y. Oct. 10, 2007) (quoting United States v. Hensley, 469 U.S. 221, 235 (1985)).

In reaching its February 5th New Rule for firearm arrests, the Court erred in its review of precedent. Perhaps most significantly is the Court's citation to United States v. Hagood, 78 F.4th 570, 577 (2d Cir. 2023), for the proposition that New York City police officers still have the option to conduct a Terry stop, instead of an arrest, post-Bruen, when they observe an unknown person with a firearm in a high-crime neighborhood. (Mem. and Order at 14). While the case does indeed reaffirm the appropriateness of Terry stops in gun cases where reasonable suspicion of a gun crime exists, more significantly, it demonstrates that the Second Circuit, post-Bruen, did not conclude that Bruen requires an officer to verify the existence or lack of a gun license to have probable cause to arrest.

In Hagood, police officers, on facts less compelling than those present here, saw Hagood in plain view early in the morning standing next to a car in public. Hagood, 78 F.4th at 572. He appeared nervous and wore a fanny pack that appeared to contain a bulging object in the shape of a handgun. Id. Based on this observation, the officers conducted a Terry stop; they stopped and frisked Hagood and found a loaded semi-automatic pistol in the fanny pack. Id. Upon confirming that he indeed possessed a firearm, the officers arrested him. Id. The issue in the case was whether the police had reasonable suspicion for the Terry stop. Id. at 572, 575. The Court affirmed the district court's decision that the police acted properly stopping Hagood; and, once the possession of the firearm was confirmed, the Court took no issue with the propriety of the defendant's arrest. Id. at 577-79. The officers did not check whether the defendant had a concealed carry license before arresting him; nor did they determine his identity. Once the police clearly saw a gun, they had probable cause to arrest Hagood. See id. at 575.

And this result was not simply because the Court did not think to consider Bruen. During oral argument in Hagood, the Court specifically considered whether Bruen

should affect the calculus of a police officer who believes he or she observes the unlawful possession of a firearm. United States v. Hagood, 22-588 Oral Argument at 7:56 - 10:13 (2d Cir. Apr. 19, 2023). Panel members even considered what it would mean for a police officer if, hypothetically, post-Bruen, the probability that an individual carrying a gun did so illegally dropped by half. Id. at 18:39 - 21:27.

The Second Circuit's approval of the police officers' actions, even after considering the potential impact of Bruen during oral argument, makes apparent that the Circuit does not believe anything further is necessary for establishing probable cause for a gun possession crime. In other words, Hagood makes clear that the long-existing probable cause standard remains unchanged following Bruen, and therefore the Court's February 5th New Rule is erroneous.

The Court likewise committed clear error in its treatment of other cases involving arrests for criminal possession of a firearm. In prior briefing, in support of the government's argument that a police officer's observation of an individual with a firearm in plain view in public is sufficient to arrest, the government cited United States v. Vasquez, 864 F. Supp. 2d 221, 237-38 (E.D.N.Y. 2012) (Govt. Br. at 9 (citing Vasquez, 864 F. Supp. 2d at 237-38)). In Vasquez, police officers saw the defendant standing in the entranceway to a building in a drug-prone area holding "a silver handgun in his right hand" and after the police ordered him to drop the firearm, the "defendant dropped his handgun to the ground and was placed under arrest." Id. at 223-24, 240. "After he was arrested, defendant stated that he was 'on parole.'" Id. at 223. The defendant, on the other hand, had claimed that he was in fact arrested inside an apartment without a warrant. Id. at 228. The district court credited the police officers' testimony and denied the motion to suppress. Id. at 225. The court held that the police had "reason to believe that a criminal offense had been or was being committed, namely criminal possession of a weapon, and had probable cause to arrest the defendant and seize the handgun that was in plain view." Id. at 239-40.

The Court in the instant matter sought to distinguish Vasquez by stating that "during the arrest and prior to the recovery of the firearm, the defendant stated that he was on parole." (Mem. and Order at 6). The Court reasoned that because the officers knew Vasquez was on parole, they had probable cause to arrest him because he would have been a felon in possession as a result of his parolee status. Id. However, the court in Vasquez stated that only "[a]fter he was arrested, defendant stated that he was 'on parole.'" Vasquez 864 F. Supp. 2d at 223. The court held only that the officer's observation of the defendant with the firearm in public and in a high-crime area was sufficient to support the officer's probable cause determination. Id. at 240. It was incorrect to conclude that the defendant's parole status played any role in the review of the probable cause determination in Vasquez. Furthermore, as in the instant case, Vasquez was not arrested for being a felon in possession

of a firearm, but for criminal possession of a firearm under state law. Therefore, Vasquez, like Hagood, undermines the Court's February 5th New Rule.

iii. The Court Committed Clear Error in Analyzing New York State Law on Affirmative Defenses

In reaching its February 5th New Rule, the Court also erred in holding that possession of a concealed carry firearm license is not an affirmative defense to New York criminal gun possession statutes, but rather that lack of such a license is an element that the State must prove. This holding is contrary to New York State and federal law.

In post-hearing briefing, the government explained that under New York State law, where the defining criminal statute does not contain an exception to the offense, the exception is an affirmative defense to be raised by the defendant. (Govt. Br. at 10). For at least the past 30 years, this included the firearm licensing exception to prosecution under New York gun laws. People v. Washington, 209 A.D. 2d 162, 163 (1st Dep't 1994) (holding that where "[t]he statutory exemption of [a] licensed person from prosecution for criminal possession of a weapon is not found in the [] sections of the Penal Law defining criminal possession of a weapon…" the exemption of a licensed person from prosecution is an affirmative defense to be advanced by the defendant). In Washington, the defendant was charged by New York State with criminal possession of a weapon in the third and fourth degrees (crimes for which police arrested the defendant here) and moved to dismiss the indictment because he claimed no evidence was presented to the grand jury about whether or not he had a license to carry a firearm.[9] Id. The Washington court held that the licensing exemption is found in NYS PL § 265.20(a)(3), outside the defining statue for the gun crimes, and was an affirmative defense. Id. Therefore, under longstanding New York law, having a license is an affirmative defense that must be raised by the defendant, not a fact about which a police officer must have certainty prior to making an arrest.

The Court's Decision concluded that New York state courts have misunderstood affirmative defenses under New York State law. It stated that "the government places too much weight on the New York state court's decision in *People v. Washington*" (Mem. and Order at 7). The Court concluded that Washington erred in its reliance on People v. Kohut, 30 N.Y.2d 183, 187 (N.Y. 1972), which held that a statute of limitations violation was an affirmative defense to be raised by the defendant, explaining that "[e]ssential allegations [in indictments] are generally determined by the statute defining the crime" and "[] when the exception is found outside the statute, the exception generally is a matter for the defendant to raise in defense[.]." Kohut, 30 N.Y.2d at 187. (Mem. and Order at 7-8). The Court explained that it did not "find it appropriate to apply *Kohut's* rule

[9] Washington was affirmed by the New York Court of Appeals on different grounds. The Court of Appeals did not disturb the lower court's finding that "evidence concerning a license was unnecessary" in the grand jury. People v. Washington, 86 N.Y.2d 853 (N.Y. 1995).

concerning statute of limitations to the licensing exception to prosecution created under N.Y. Penal Law §265.20(a)(3)" because statute of limitations offenses are unique in nature. (Id. ("A rule created for statutes of limitations does not automatically apply to all exceptions, despite the broad language in *Kohut*.")). In other words, the Court reasoned, Kohut spoke more broadly than it meant to or should have, and Washington erred by relying on Kohut's language and some of its reasoning. Thus, in the Court's view, Washington and its progeny misinterpreted New York law.

Even assuming that the Court's interpretation of state court decisions and state penal laws is more reasonable than the interpretation adopted by New York state courts, the Court overlooked precedent that federal courts should defer to the state courts in such circumstances. United States v. Fernandez-Antonia, 278 F.3d 150, 162 (2d Cir. 2002) ("It is axiomatic, however, that when interpreting state statutes federal courts defer to state courts' interpretation of their own statutes."); Yoon v. Fordham Univ. Fac. & Admin. Ret. Plan, 263 F.3d 196 (2d Cir. 2001) ("it is well-established that the controlling interpretation of state laws should normally be given by state rather than federal courts.").

More significantly, the Court overlooked that other federal and state courts, including the Second Circuit, have long relied on Washington for this very same affirmative defense issue, finding it persuasive. See United States v. Sanchez-Villar, 99 F. App'x 256 (2d Cir. 2004) (Summary Order)[10] (following the holding in Washington that the licensing exception is an affirmative defense for the defendant to raise in an unlawful gun possession case); Tillery v. Lempke, No. 9:10-CV-1298 GTS, 2011 WL 5975068 *7 (N.D.N.Y. Nov. 29, 2011) ("Petitioner's claim that his conviction must be set aside because the prosecution failed to demonstrate that he lacked a license for the subject firearm is therefore without substance."); People v. Benitez, 167 Misc. 2d 99, 637 N.Y.S.2d 590 (City Ct. 1995) ("an indictment need not allege that the person did not have a license….[t]his allegation is not required because this exemption is found in another statute" (citing Washington)); Cf. Markman v. City of New York, 629 F. App'x 119, 122 (2d Cir. 2015) (holding that where an innocent possession of a weapon exemption was "not undebatably applicable, the arresting officers had at least arguable probable cause to arrest [the defendant] and initiate prosecution"); see also Torraco v. Port Auth. of New York & New Jersey, 615 F.3d 129 (2d Cir. 2010) (holding probable cause existed for the arrest of gun owners even where gun

[10] The Court rules by summary or other non-precedential order when the law is clear. See, e.g., Da Silva v. Kinsho Int'l Corp., 229 F.3d 358, 364 (2d Cir. 2000); United States v. DiNome, 954 F.2d 839, 842 (2d Cir. 1992) (noting that the panel disposed of meritless issues in an accompanying summary order). Further, "'[d]enying summary orders precedential effect does not mean that the court considers itself free to rule differently in similar cases.'" United States v. Payne, 591 F.3d 46, 58 (2d Cir. 2010) (quoting Order dated June 26, 2007, adopting 2d Cir. Local R. 32.1).

owners claimed they were compliant with a federal law that permitted the transportation of a firearm in a checked bag).

Not only have New York State and federal courts long viewed possession of a concealed carry license as an affirmative defense under New York law, but so too have multiple district attorney's offices, over 30,000 active NYPD officers and countless state and federal grand juries. To upend precedent and gun arrests across New York based on the Court's view of a 1972 state case not only overlooks the aforementioned case law but would have dramatic practical consequences.[11]

iv. The Court Overlooked Second Circuit Law Holding That Innocent Explanations for Conduct Generally Do Not Vitiate Probable Cause

The Court's February 5th New Rule is also contrary to longstanding Second Circuit precedent that officers need not investigate all possible explanations of innocence to have probable cause that a person is committing a crime. See Panetta v. Crowley, 460 F.3d 388, 395-96 (2d Cir. 2006) ("[t]he fact that an innocent explanation may be consistent with the facts alleged…does not negate probable cause,…and an officer's failure to investigate an arrestee's protestations of innocence generally does not vitiate probable cause" (citing United States v. Fama, 758 F.2d 834, 838 (2d Cir. 1985)); Fama, 758 F.2d at 838 ("The fact that an innocent explanation may be consistent with the facts alleged, however, does not negate probable cause."); United States v. Webb, 623 F.2d 758, 761 (2d Cir. 1980) ("nor can the arrest be held unconstitutional simply because Webb proffered innocent explanations for most of her actions at the airport"); see also United States v. Falso, 544 F.3d 110, 128 (2d Cir. 2008) (citing Fama); United States v. Cancelmo, 64 F.3d 804, 808 (2d Cir. 1995) (same).[12] Therefore, even if the lack of a firearm license was an element of all New York gun offenses, a police officer would not be required to rule out every possible defense before making a gun arrest. Rather, a police officer of reasonable caution must believe that a person

[11] If the Court holds a hearing, the government would present evidence that the NYPD has for decades understood possession of a concealed carry license to be an affirmative defense and has trained tens of thousands, if not hundreds of thousands, of NYPD officers accordingly in reliance on established state and federal law.

[12] In the instant case, as discussed below, the defendant did not protest that he had a license to carry a firearm, but instead shouted that the police were planting a gun on him. In light of all the facts here, there was no reason for the police officers to believe that the defendant was licensed to carry a gun.

is probably committing an offense. Herron, 18 F. Supp. 3d at 221. A police officer is not required to rule out all innocent possibilities and the Court erred in requiring that here.

v. The Court's Suggestion to Use a Terry Stop in All Circumstances is Impracticable and Leaves Open Questions Not Contemplated by the February 5th New Rule

The Court noted that the officers still have the option to conduct a Terry stop "when seeing someone they suspect has a gun." (Mem. and Order at 14). During such a detention, the Court suggested that the police could investigate whether the defendant had a gun license. However, this rule would be impracticable for law enforcement officers in a variety of circumstances when approaching individuals with a gun. In crowded locations, where officers are outnumbered by perpetrators or even citizens gathering to watch, it would be unsafe and unworkable to isolate an individual for the period of time it would take to investigate and confirm whether he or she has a gun license. Additionally, in situations where an individual does not present identification, or gives a fake identification or fake pedigree information, it is unclear how an officer would meaningfully verify if that person actually has a gun license. In that scenario, under the February 5th New Rule, the officer would be required to let the individual go free with the firearm. Finally, if the officer were to ask the individual whether he or she has a license for the firearm, such questioning might later invite motions to suppress the response for violation of the Fifth Amendment's protection against self-incrimination depending on whether the circumstances suggested that the individual was "in custody" for Fifth Amendment purposes.

C. Even Under the Court's February 5th New Rule, the Court Overlooked Material Facts Presented at the Hearing That Amount to Probable Cause

Even under the Court's February 5th New Rule, the Court overlooked pertinent facts relevant to a probable cause determination, including whether it was likely that the defendant had a concealed carry license in light of the statutory requirements for an individual to obtain such a license. As an initial matter, the Court considered certain facts but did not give them their appropriate weight. These facts included: (1) the defendant was in the driver's seat of the minivan (Mem. and Order at 1, 12); (2) the minivan was associated with a local gang (id.); (3) the defendant had no firearm discipline (id. at 2, 13); (4) the defendant was in a high crime area (id. at 12); and (5) it was past 2:00 a.m. (id. at 1, 2). Despite these facts, the Court concluded that "Officer Lombardi lacked probable cause to arrest Mr. Homer." (Id. at 13). Even under the Court's February 5th New Rule, these facts are sufficient for a reasonable officer to conclude that there was probable cause that the defendant possessed the gun illegally and did not have a license.

However, there were additional facts presented at the hearing but overlooked by the Court that further support a finding of probable cause. First, the minivan had two additional passengers when the defendant grabbed a loose semi-automatic firearm and shoved it in his pocket. A reasonable officer could have concluded that there was probable cause that the defendant possessed the gun illegally and did not have a license, because

someone with good moral character, a requirement of the gun licensing statute described below, and who is trained in firearm discipline, including proper storage of a firearm, would not have a loose semi-automatic firearm in the car in a way that might endanger two passengers.

Second, the defendant only reached for the weapon and shoved it in his pants when another vehicle arrived on the scene. And only after that vehicle arrived did the defendant, now armed with a gun in his pants and accompanied by the other car's driver, exit the minivan and walk to the sidewalk.[13] The two appeared to know each other and stood together outside the deli, while the defendant appeared to gesture to another person or thing off camera. Given these circumstances, it was reasonable for an officer to conclude that the defendant armed himself in that moment to use or potentially use the gun on the sidewalk, and therefore unlawfully. Specifically, the defendant only armed himself after his acquaintance arrived, and immediately after he armed himself, he exited the car to stand with the acquaintance while they gestured down the block as if anticipating some person or event.

Third, the defendant, seconds after the recovery of the gun and prior to his arrest,[14] immediately began shouting that the police planted a gun on him and that they were framing him, and continued insisting that was the case for several minutes thereafter. Even assuming arguendo that there was not probable cause up until this point, the defendant's protestations that the officers planted a gun on him strongly suggested that the defendant did not possess a license for the gun. A licensed gun owner would not proclaim that he did not have a gun at all; rather (as detailed below), a licensed gun owner, pursuant to required training, would explain that he or she had a license to carry the gun. This further supports a finding of probable cause considering the totality of the circumstances. Even under the

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[13] The Court also overlooks at least a portion of Government's Exhibit 1. The Court claimed that the defendant went to "order something at the deli." (Mem. and Order at 2). A review of Government Exhibit 1, at approximately 2:23:11 - 2:24:36 a.m., shows that the defendant did not go into the deli, and there is certainly no evidence that he ordered anything. The video is nonetheless consistent with the testimony from Detective Conte at page 33, line 2, who testified that "I told [Officer Lombardi] he's out of the car and at the deli." In other words, the defendant did not go into the deli "to order something" (Mem. and Order at 2), but rather loitered outside the business with a gun while gesturing to someone or something down the street.

[14] The moment of arrest is a legal determination not predicated on an officer's subjective intent or belief. United States v. Vargas, 369 F.3d 98, 101 (2d Cir. 2004) (citing Arkansas v. Sullivan, 532 U.S. 769, 771 (2001); United States v. Bayless, 201 F.3d 116, 133 (2d Cir. 2000). Exhibit 3 shows that Officer Lombardi recovered the gun and approximately eight seconds later, the defendant began shouting that the officer planted a gun on him. (GX 3 at 2:26:11 a.m.). Even under the Court's suggested use of a Terry stop, the gun should not be suppressed as the officers certainly had probable cause to arrest him after he began to shout.

Court's February 5th New Rule (and its proposed Terry stop detention alternative), this fact made clear to the officers that the defendant had no license, to the extent that fact was not already probable.

Finally, the Court's Decision overlooked that Detective Conte served on a long-term investigation into the SNOW gang, which was precipitated by a murder, and that Detective Conte knew that the SNOW gang operated in that area. The fact that Detective Conte had knowledge and experience in the area as a law enforcement officer combatting gun violence, and several other incidents of violence with that specific gang, adds to the calculus of what Detective Conte reasonably believed was the likelihood that someone would be unlawfully carrying a gun in that manner at that time. In light of the defendant's actions and Detective Conte's knowledge of the area and training and experience, Detective Conte had probable cause to believe the defendant possessed the gun unlawfully.[15]

Additionally, while the Court did consider that the defendant "did not handle the firearm carefully, placing it directly in his pants pocket" and that "a lack of firearm discipline is inconsistent with the training that one would have to undergo to acquire a license to carry a firearm," (Mem. and Order at 13), the Court did not consider the gun licensing statute's extensive requirements for a person in New York City to lawfully acquire a concealed carry license for a firearm. For example, the statute requires that the applicant demonstrate good moral character before being issued a license. The licensing regime defines good moral character as having the "essential character, temperament and judgment necessary to be entrusted with a weapon and to use it in a manner that does not endanger oneself and others." N.Y. Penal Law § 400.00(1)(b). As discussed above, the defendant acted in a matter that could endanger others by grabbing a loose semi-automatic pistol with two passengers in the minivan. While the Court referenced the sixteen-hour training, (Mem. and Order at 5), it did not consider what that training entails. Among multiple other topics required by the statute, the training must include how to store firearms properly, how to handle firearms, how to interact with law enforcement when you have a gun, conflict de-escalation, and state and federal gun laws. N.Y. Penal Law § 400.00(19). But the defendant did not store or handle his gun consistent with these trainings, and did not interact with law enforcement officers in a way that would de-escalate a conflict or advise them that he had a concealed carry license. Given the licensing requirements, the police could and did conclude

[15] Although perhaps not relevant to probable cause, the Court also overlooked other facts pertinent to the state of mind of Detective Conte and the arresting officers, and their actions and the dangerousness of the situation. First, the minivan was operable, as demonstrated by the ARGUS footage. (See GX 1 at 2:21:14 – 2:21:30 a.m.). This made the defendant significantly more dangerous, as he could use the minivan to evade the police, leading to a chase on a public thoroughfare in New York City while armed with a gun. It was not just a high-crime area; it was a high crime area made more dangerous by the defendant having a gun in an operable vehicle. This fact also increased the dangers to the officers and others had they stopped the defendant, asked him whether he had a concealed carry license and then took the time to verify the answer, if it were even possible for them to do so.

from the defendant's actions that there was probable cause that he was not a licensed gun owner.[16]

D. Suppression of Identity is Unwarranted Given it Was Not Requested, and Even Under the Tenth Circuit's Holding in *Olivares-Rangel*, Suppressing the Defendant's Identity is Clear Error

Even if suppression of the physical evidence were warranted, the Court's ruling, in a footnote, suppressing the defendant's identity and status as a felon was not requested by the defendant and was inconsistent with the case cited by the Court, United States v. Olivares-Rangel, 458 F.3d 1104, 1112 (10th Cir. 2006). (Mem. and Order at 3-4, n.3).

First, the Court held that the defendant's motion was "broad enough" to cover a request to suppress the defendant's identity. (Mem. and Order at 3-4, n.3). It was not. The defense stated in its Notice of a Motion to Suppress that it was moving to suppress physical evidence. (Def. Mot. at Notice of Motion to Suppress, at 1). The government could not have concluded from the motion papers or the hearing that suppression of identity was an issue.[17] Thus, the government did not at the hearing elicit any facts relevant to how or when the police determined the defendant's identity or status as a felon.

Second, the Court justified the unrequested suppression of the defendant's identity and the fact that he was a felon by citing to Olivares-Rangel, 458 F.3d at 1112 (holding that "the Supreme Court's statement that the 'body' or identity of a defendant are

[16] If the Court were to hold a hearing, the government could call as a witness a certified trainer to testify about the strictures of gun safety and how the defendant's actions did not comport with the training required to receive a gun license.

[17] References to a remedy sought by the defendant throughout his briefings were as follows: Defendant's motion at page 1, paragraph one reads: "Suppressing all physical evidence recovered from Mr. Homer on February 14, 2023 including a .45 mm Glock semiautomatic pistol and ammunition and all evidence recovered as a fruit of his unlawful arrest…". Defendant's motion at page 2, the Cover Page, reads "Motion to Suppress Physical Evidence & to Compel Discovery." Defendant's motion at page 3, in Preliminary Statement reads "Mr. Homer moves for an order suppressing all fruits obtained as a result of his unconstitutional arrest." Defendant's motion at page 6, the title of argument one, reads "All Fruits of Mr. Homer's Unconstitutional Arrest Must be Suppressed Under the Fourth Amendment." Defendant's motion at page 8, in the body of the argument, reads "Because the arrest and search of Mr. Homer were unconstitutional, all evidence obtained in connection with the stop, seizure and arrest must be suppressed. This evidence includes the firearm recovered from Mr. Homer's pocket." It is not reasonable from the defendants' motions' focus on physical evidence for the government to have foreseen that identity would be at issue given the motions read in their entirety.

'never suppressible'" does not apply "to cases in which the defendant only challenges the admissibility of the identity-related evidence"). In that case, the Tenth Circuit was explaining its understanding of the Supreme Court's decision in Immigration and Naturalization Service v. Lopez-Mendoza, 468 U.S. 1032 (1984), which held that "[t]he 'body' or identity of a defendant…in a criminal…proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search or interrogation occurred." Lopez-Mendoza, 468 U.S. at 1039. The Tenth Circuit explained that the language in Lopez-Mendoza meant "that the defendant [could not] suppress the entire issue of his identity…[however a] defendant may still seek suppression of specific pieces of evidence (such as, say, fingerprints or statements) under the ordinary [exclusionary] rules[.]" Olivares-Rangel, 458 F.3d at 1111.

The Tenth Circuit continued that identity evidence (i.e., fingerprints or photographs), as opposed to identity itself, could in certain circumstances be suppressed, but that determination turned on "the original purpose" of obtaining the identity evidence—in that case, the fingerprinting—and the nexus to the unlawful arrest. Id. at 1110, 1116. The Tenth Circuit explained that if the identity evidence were generated during routine police processing, then the identity evidence should not be suppressed. Id. at 1112-13. If, however, the identity evidence was obtained "as a result of an unconstitutional governmental investigation" (i.e., arresting and fingerprinting an individual, in part, "for the purpose of obtaining unauthorized fingerprints so Defendant could be connected to additional alleged illegal activity"), then there was a factual nexus between the illegal conduct and the identity evidence warranting suppression. Id. at 1112, 1116.

In the instant case, it is unclear what identity evidence is being suppressed. To the extent that it is fingerprints, the Court would first need to determine, under the Tenth Circuit's holding, whether the fingerprints were taken as part of routine police processing for the supposed unlawful arrest or to connect the defendant to additional crimes. It is important to note that the defendant was arrested for many state crimes that did not require prior convictions. To the extent the Court is suppressing his status as a felon, his prior convictions existed independent of the arrest and would not be suppressible under either the Olivares-Rangel standard or Second Circuit law, as explained below.

In Reyes-Basurto v. Holder, the defendant cited Olivares-Rangel in requesting that the court suppress the defendant's identity and identity records (Border Patrol records and an I-140), which were "linked" to him following his arrest. 477 F. App'x 788, 789 (2d Cir. 2013). The Second Circuit held that there was no indication that the government acquired the identity records as a result of getting his fingerprints following the unlawful arrest and so there was no nexus between the identity records (which existed prior to the arrest) and the fruits of the unlawful arrest (i.e., the fingerprints). Id. at 789. Accordingly, the Circuit found that "the agency did not err in finding that the Border Patrol records and I-140 constituted independent evidence of Reyes-Basurto's alienage that was not subject to suppression." Id. at 790.

Therefore, the Court committed clear error in suppressing evidence of the defendant's identity and status as a felon. Moreover, the suppression constituted a remedy unrequested by the defense and not litigated by the parties.

III. Conclusion

For the aforementioned reasons, the government respectfully requests the Court reconsider its decision granting the defendant's motion to suppress and instead deny the motion. In the alternative, the government requests that the Court reopen the hearing to permit the government to present additional evidence.

Respectfully submitted,

BREON PEACE
United States Attorney

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Cc: Clerk of the Court (NGG) (via Email)
Marissa Sherman, counsel for defendant (via ECF and Email)

Affidavit of NYPD Sergeant David Blaize, February 29, 2024

AB/ADG:RSB
F.#2023R00146

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA — AFFIDAVIT

- against - — 23-CR-00086 (NGG)

ROBERT HOMER,

Defendant.

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DECLARATION IN SUPPORT OF A MOTION TO RECONSIDER

I, David Blaize, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am employed by the New York City Police Department ("NYPD") and have been so employed for approximately 12 years. I am currently a Sergeant assigned to the License Division as the Premise Residence Supervisor and have been since December 2021.

2. My current duties and responsibilities as the Premise Residence Supervisor include reviewing firearms license applications for approval or denial, and supervising a team of investigators, whose role is to conduct the background investigation and make recommendations to the licensing official to approve or deny the applications. In that capacity, I have the ability to search the New York City firearms database for any and all information related to the firearms licensing.

3. The following information has been true since on or about June 2022 through present.

4. The Police Commissioner of the NYPD is the sole firearms licensing officer for the City of New York. The Police Commissioner has delegated this authority to the Commanding Officer of the License Division. The NYPD is responsible for processing all firearms applications in New York City and maintains a database of all such firearms licenses. The License Division, as delegated by the NYPD Commissioner is the sole authority to review, approve, or deny firearms licensing applications in New York City.

5. There are three different types of concealed carry firearms licenses in New York City: the "carry business license" ("CB"); a "special carry license" ("SC"); and a "limited carry business license" ("LC"). The "carry business license" is an "unrestricted" conceal carry license, which permits the licensee to "have and carry [a handgun] concealed, without regard to employment or place of possession, subject to the restrictions of state and federal law, by any person[.]" New York State Penal Law Section 400.00(2)(f). The "special carry license" is a license that is issued to a particular name, address, and handgun listed on the license itself, and is issued to an individual who has a valid unrestricted carry county license – i.e., issued by a New York State county outside of the five boroughs of New York City. An individual who has a "special carry license" has the same rights and privileges as an individual who holds a "carry business license." The "limited carry" is a restricted license only permitting the licensee to carry the handgun in accordance with the specific limitations listed thereon, and, at all other times, the handgun must be safeguarded within the confines of the address listed on the front of the license, either concealed on the licensee's person in a proper holster or stored unloaded in a locked safe. The applicant must be 21 years old to apply for any of these concealed carry licenses.

6. On or about February 8, 2024, I searched the firearms database maintained by the NYPD and determined that:

a. On June 23, 2022, the date of the Supreme Court Decision in New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022), the total number of issued[1] concealed carry licenses was 7,384. Specifically, the number of issued CB firearms licenses in New York City was 3,809; the number of issued SC firearms licenses in New York City was 2,380; and the number of issued LC firearms licenses in New York City was 1,195.

b. On February 14, 2023, the number of issued concealed carry firearms licenses in New York City was 7,621. Specifically, the number of issued CB firearms licenses in New York City was 4,023; and the number of issued SC firearms licenses in New York City was 2,402; and the number of issued LC firearms licenses in New York City was 1,196.

c. When a license has been "issued" the individual has a physical license with one or two authorized firearms listed on it.

I declare under penalty of perjury that the foregoing is true and correct.

David Blaize
Sergeant, NYPD

Dated: FEB 29, 2024
New York, New York

[1] As used herein, the term "issued" refers to licenses that have been issued by the NYPD as of the date indicated.