

To Be Argued By:
Jonathan Corbett

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New York Supreme Court

APPELLATE DIVISION – FIRST DEPARTMENT

JONATHAN CORBETT,
Petitioner-Appellant

v.

CITY OF NEW YORK,
THOMAS M. PRASSO,
Respondent-Appellees

ON APPEAL FROM THE SUPREME COURT, NEW YORK COUNTY

BRIEF OF PETITIONER-APPELLANT JONATHAN CORBETT

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
QUESTIONS PRESENTED	3
STATEMENT OF FACTS	4
I. Corbett’s Pistol Permit Application	4
II. Corruption Within NYPD Licensing Division.....	8
III. Corbett’s Public Records Request.....	13
IV. Proceedings in the Court Below	14
ARGUMENT	16
I. The U.S. Supreme Court Has Overruled New York’s “Privilege Not a Right” Position on Gun Ownership	16
II. Continuing Corruption Within the NYPD Makes the “Proper Cause” Requirement Unconstitutional As-Applied	19
III. Regardless of the Standard of Scrutiny, “Questions 11 – 13” Cannot Withstand It	21
IV. The Records Sought by Appellant Are Not Exempt from New York’s Public Records Law.....	25
CONCLUSION.....	29
CERTIFICATE OF COMPLIANCE.....	30
N.Y. CPLR § 5531 STATEMENT	31
EXHIBIT A – CORBETT DECLARATION	32
EXHIBIT B – THE RICH, THE FAMOUS, THE ARMED.....	33
EXHIBIT C – CAPTAIN SUSPENDED IN GUN AUTHORIZATION	39
EXHIBIT D – GUN LICENSING BOSS SUSPENDED BY NYPD	42
EXHIBIT E – AEROSMITH “GOT A GUN” SCANDAL	44
EXHIBIT F – ...NYPD BRIBES FOR PISTOL PERMITS	46
EXHIBIT G – 4 NYPD ... CHARGED IN CORRUPTION PROBE	50
EXHIBIT H – ...ARRESTED IN GUN PROBE	58

TABLE OF AUTHORITIES

Cases

<i>Campbell v Kelly</i> , 85 A.D.3d 446 (1 st Dept. 2011).....	19
<i>Clark v. Jeter</i> , 486 U.S. 456, 461 (1988).....	18
<i>Delgado v. Kelly</i> , 127 A.D.3d 644 (1 st Dept. 2015)	18
<i>District of Columbia v. Heller</i> , 554 U.S. 570, 576 (2008)	19
<i>Hecht v. Monaghan</i> , 307 N.Y. 461, 469 (1954)	21
<i>Kachalsky v. Cacace</i> , 14 N.Y.3d 743 (2010).....	16
<i>Kohler-Hausmann v. NYPD</i> , 133 A.D.3d 437, 437 (1 st Dept. 2015).....	25
<i>McDonald v. City of Chicago</i> , 561 U.S. 742, 750 (2010)	19
<i>Moore v. Madigan</i> , 702 F.3d 933, 936 (7 th Cir. 2012).....	18
<i>Schweiker v. McClure</i> , 456 U.S. 188, 195 (1982)	21
<i>Tolliver v. Kelly</i> , 41 A.D.3d 156, 158 (1 st Dept. 2007).....	19
<i>United States v. Chovan</i> , 735 F.3d 1127, 1137 (9 th Cir. 2013).....	17, 24
<i>United States v. Skoien</i> , 614 F.3d 638, 641 (7 th Cir. 2010).....	17, 24
<i>Windsor v. United States</i> , 699 F.3d 169, 183 (2 nd Cir. 2012),	18
<i>Wrenn v. D.C.</i> , No. 16-7025 (D.C. Cir., July 25th, 2017).....	17, 18

Statutes

42 U.S.C. § 1320d(4)7
N.Y. Pub. Off. Law § 8424
N.Y. Pub. Off. Law § 8725, 26

Constitutional Provisions

U.S. CONST., Amend. II *passim*
U.S. CONST., Amend. XIV20

PRELIMINARY STATEMENT

New York City is one of the few remaining jurisdictions in this state to read the “proper cause” requirement of New York’s gun licensing statutes, N.Y. Pen. Law § 400.00(2), to require that an individual demonstrate a “need” to carry a handgun that is greater than that of the average citizen. At present, the New York Police Department’s (“NYPD”) licensing division is given nearly absolute discretion over which citizens have so demonstrated, resulting in rampant corruption within the division and a system where the rich and connected may exercise their constitutional right to bear arms while the remainder of the citizenry remains disarmed and disenfranchised.

Petitioner-Appellant Jonathan Corbett (hereafter, “Corbett”) is an upstanding U.S. citizen who has never committed a crime, has passed the NYPD’s background check, has been licensed to carry firearms in other states for nearly a decade, and has responsibly exercised his rights under those licenses for that time. Notwithstanding, Corbett’s gun license application was declined because he failed to demonstrate “proper cause” and refused to answer three questions on the NYPD application that are irrelevant to whether or not he is qualified to possess a handgun. Weeks later, the same NYPD official who denied Corbett’s license was transferred out of the licensing division, and at least four of his subordinates arrested, for handing out gun licenses to street mobsters in exchange for cash. This, of course, is not the first such incident of

corruption in the licensing division; indeed, such corruption has been found regularly over the last 100 years.

The court below ignored Corbett's arguments regarding his federal constitutional rights, regarding the recent U.S. Supreme Court precedent that overrules New York's long standing assertion that gun ownership is "a privilege, not a right," and regarding the rampant corruption within the licensing division, and summarily concluded that the NYPD's decision to deny Corbett's license was rational, even though "rational basis" is not the right standard of review. That court additionally refused Corbett's request to compel the NYPD to turn over documents under the state's Freedom of Information Law ("FOIL") without any evidence that an exemption was met.

For these reasons, Corbett respectfully requests that this Court re-consider his arguments and reverse the decision of the court below.

QUESTIONS PRESENTED

1. Has the U.S. Supreme Court's pronouncement of an individual right to bear arms in *District of Columbia v. Heller*, 554 U.S. 570 (2008), invalidated New York's "privilege not a right" stance on guns?
2. In light of the continuing corruption within the New York Police Department's Licensing Division, have Corbett's Second and Fourteenth Amendment rights been violated as applied?
3. Does conditioning a license approval upon answering "Questions 11 – 13" on the New York City pistol permit application pass constitutional muster?
4. Are pistol permit applications compiled for "law enforcement purposes" pursuant to the N.Y. Freedom of Information Law?
5. Is an agency attorney's assertion, unsupported by evidence in the form of declarations or otherwise, that the releasing of records "would interfere with law enforcement investigations" sufficient to carry a motion to dismiss on a N.Y. Freedom of Information Law claim?

STATEMENT OF FACTS

I. Corbett's Pistol Permit Application

In December 2015, Corbett appeared at the NYPD Licensing Division and submitted an application for a permit to own, and carry on his person outside his home, a concealed weapon¹. Record on Appeal A056 – A067. Such a license is known in NYPD parlance as a “business carry” permit, despite the fact that it may be issued to individuals unrelated to a business need. There exists no other permit type by which a civilian New York City resident may carry a handgun in public, whether openly or concealed (i.e., there is no “personal concealed carry” license, nor any variety of “open carry” license, available to civilians). *Id.* at A056 (*see* checkboxes); N.Y. Pen. Law. § 400.00(2).

During Corbett's appearance at the Licensing Division, Corbett provided to the Licensing Division the following: (1) three-page application, (1) letter of necessity, (1) letter of explanation for checkboxes on the application that specify that they require additional explanation, (1) notarized affidavit certifying that Corbett does not have a roommate, (1) notarized affidavit from someone willing to take possession of Corbett's

¹ Both statutes and the law interchangeably use the words “pistol permit,” “gun license,” and similar combinations. All herein refer to the application at Record on Appeal A056.

weapons upon his death or disability, (2) “passport-style” photos, (1) New York identification card, (1) U.S. passport, (1) social security card, (1) copy of Corbett’s business tax return, (1) set of fingerprints, and, \$429.75. Corbett’s application was accepted for processing. *Id.* at A056 – A067.

On December 24th, 2015, NYPD Police Officer Thomas Barberio mailed to Corbett a letter advising that Corbett needed to schedule an in-person interview and provide the following additional documents: (3) letters of recommendation, notarized and signed by people who know Corbett for at least 5 years but are not family members, (1) letter from a doctor describing any mental illness Corbett has ever suffered, (6) months of bank withdrawal slips, (1) copy of Corbett’s out-of-state gun license, (1) statement describing any handguns Corbett owns out-of-state and how they are stored, (1) affirmation of familiarity with New York’s laws regulating use of deadly force, (1) affirmation that Corbett has never had any “orders of protection” issued against him, any original court records for any interaction with criminal courts whatsoever, including driving infractions (e.g., “failure to wear a seatbelt” would be sufficient to require additional records), pictures of Corbett’s “business,” inside and out, and numerous additional tax records and other records related to the businesses Corbett owns. Record on Appeal A068 – A070.

Corbett expeditiously provided these documents to P.O. Barberio to the best of his ability and scheduled an interview, and on April 7th, 2016, Corbett met with P.O.

Barberio for the requested interview. The interview consisted of verifying that all documents were in order. No substantial “investigatory” questions were asked. Exhibit A, Corbett Decl., ¶ 3. Corbett was advised by P.O. Barberio at that time that the NYPD’s background check results on him were clear of any issues. *Id.*, ¶ 4. Corbett was also advised by P.O. Barberio that the officer who would be taking over his application from P.O. Barberio was unlikely to grant it because Corbett did not show a sufficient “need” to carry a firearm. *Id.*, ¶ 5.

On April 18th, 2016, NYPD Deputy Inspector Michael Endall wrote to Corbett a letter with a decision regarding his permit application. Record on Appeal A093, A094. D.I. Endall did not find any problems with Corbett’s “good moral character.” Indeed, Corbett has never been accused of, let alone convicted of, a crime. Exhibit A, ¶ 6. Notwithstanding Corbett’s good moral character, the letter stated that Corbett’s license would not be approved for two reasons. First, Corbett declined to answer Questions 11, 12, and 13 on the 3-page application. These questions ask whether Corbett has ever been “discharged from employment,” “used narcotics or tranquilizers” (including under the care of a doctor), or “ever been subpoenaed to, or testified at, a hearing or inquiry conducted by any executive, legislative, or judicial body.” Record on Appeal A057. Corbett’s application stated the following regarding Questions 11 – 13: “I refuse to answer questions 11, 12, and 13 because they are entirely irrelevant as to whether I am qualified to carry a handgun. Additionally, I refuse to answer question 12 because

a) nearly every adult in the U.S. has been prescribed, at some point, a narcotic pain reliever or tranquilizer, and therefore I believe this question is used as subterfuge to allow the NYPD to unlawfully deny licenses, and [b]) the NYPD does not have the qualifications, nor any appropriate procedure, to determine if the usage of such medication is an indicator that a license should not be granted.” Record on Appeal A061. Corbett’s assertion that the NYPD had no medical qualifications, written procedures (including any bases for determining whether a particular disclosure would be disqualifying, as well as any system of protecting Protected Health Information as defined by the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d(4) and 45 CFR § 160.103) has not been disputed.

Second, D.I. Endall alleged that Corbett did not show “proper cause” – a “good reason” to exercise his Second Amendment rights. Record on Appeal A093. For the purposes of this appeal, Corbett concedes that he did not show “proper cause” the way the NYPD interprets it: as a showing of need greater than that of the ordinary citizen. This appeal instead challenges the lawfulness of that NYPD interpretation.

Corbett filed a timely agency appeal on May 6th, 2016, stating that under evolving law, the NYPD’s position regarding “proper cause” is an unconstitutional restraint on his Second Amendment rights, and re-iterating his position, described *supra*, that Questions 11 – 13 are irrelevant. Record on Appeal, A095, A096. On May 31st, 2016, Respondent-Appellee Prasso wrote to Corbett advising him that his appeal

had been denied, re-iterating the NYPD's position described by D.I. Endall. Record on Appeal A098.

II. Corruption Within NYPD Licensing Division

It is well-known in New York City that political connection is sufficient – and often necessary – to procure a pistol permit. Exhibit B – McGinty, Jo Craven. “The Rich, the Famous, the Armed.” New York Times (Feb. 18th, 2011) (list includes Martha Stewart's daughter, well-known lawyers, doctors, *etc.*). This corruption is far from a one-off occurrence: literally since the passing of the original gun license statutes in this state, corruption has been the norm. A brief historical review of the propriety of gun licensing in this state is in order.

The Sullivan Act was passed in 1911, beginning New York's era of gun control in an attempt to stem of mob violence. But, by the 1920s, it became quite clear that pistol permits were regularly granted to mafia men, a trend which did not stop in the '30s before the start of the war. Critchley, David. “The Origin of Organized Crime In America: The New York City Mafia, 1891-1931,” p. 285, n. 81. Routledge (2009); Reppetto, Thomas. “American Mafia: A History of Its Rise to Power.” Henry Hold & Co. (2004); Feder, Sid & Joesten, Joachim, “The Luciano Story,” pp. 53 – 54. Literary Licensing, LLC (1994). Nor did the trend stop after the war, as in the 1950s, it created public outrage when it was revealed that a group of New York crime bosses held valid

New York gun licenses. Albanese, Jay. "Organized Crime in Our Times," pp. 141, 142. Routledge (2011); Behr, Edward. "Prohibition: Thirteen Years That Changed America," pp. 240, 241. Arcade Publishing (1996).

By the end of the 1960s, corruption within the NYPD became so intolerable that the mayor of New York City ordered a commission to investigate the matter and report findings and recommendations. Relevant to gun licensing, the infamous Knapp Commission found as follows:

The Commission received several allegations that applicants for pistol permits have made payments to the appropriate precinct captain in order to get permits. The fee was usually reported to be \$100, requested by the clerical officer to expedite approval of the application for a permit, with the understanding that the money would be passed on to the precinct commander.

One man who has a pistol permit told the Commission that when he applied for it at the local precinct, the clerical man told him that the fee for the permit was \$20, but that he would have to pay another \$100 for the captain when approval came through. He made the payment to the clerical man, and said he was later able to confirm that the captain did, indeed, receive the money.

Another Commission informant, who was a police officer before he was dismissed from the force, told the Commission that in every precinct he had worked in it was common knowledge that applicants had to pay the commander in order to get a pistol permit.

A New York City gun dealer confirmed that one must pay \$100 to the precinct commander to get a pistol permit, and added that gun dealers must make payoffs to the Police Department's Pistol License Bureau when renewing the various permits required for operating a gun business in the City. He said that the official costs for the necessary licenses amount to about \$150, but that the actual costs total between \$400 and \$450 a year. He also reported that he paid an extra \$100 every January to a bagman from the Pistol Bureau. He said that these costs are not reflected in his books, and he doubted that other gun dealers' books would have such entries.

Knapp Commission. “The Knapp Commission Report on Police Corruption.”
George Brazille (Pub.) (1973).

After the commission’s report, the NYPD cleaned house, but the corruption in gun licensing never ceased; instead, a plethora of NYPD officers have been charged with accepting bribes (euphemistically known as “favors”) or for inexplicably issuing permits to individuals whom an honest law enforcement official would never even consider:

- In 1973, NYPD Capt. Salvatore Salmieri was suspended for issuing a gun license to a mafia chauffer. Exhibit C – Narvaez, Alfonzo. “Captain Suspended in Gun Authorization.” New York Times (Nov. 17th, 1973). <http://www.nytimes.com/1973/11/17/archives/captain-suspended-in-gun-authorization-facts-were-in-file.html>.
- In 1997, the head of the licensing division, Henry Krantz, was disciplined for, again, picking out individuals for whom the usual process did not apply: “Krantz was charged with providing ‘preferential treatment to individuals or entities,’ as well as ‘wrongfully directing’ other cops to grant the favors and failing to supervise his staff.” Exhibit D – Marzuli, John. “Gun Licensing Boss Suspended by NYPD.” N.Y. Daily News (Jan. 23rd, 1997). <http://www.nydailynews.com/archives/news/gun-licensing-boss-suspended-nypd-article-1.766993>.

- In 2002, a former head of the licensing division, D.I. Benjamin Petrofsky, was accused of (and later demoted for) helping famous rock-and-roll musicians receive a pistol permit in exchange for VIP concert tickets and after-party admission. Exhibit E – Messing, Philip. “NYPD Under Fire in Aerosmith ‘Got a Gun’ Scandal.” New York Post (Nov. 24th, 2002). <http://nypost.com/2002/11/24/nypd-big-under-fire-in-aerosmith-got-a-gun-scandal/>. He allegedly went as far as to fingerprint the musicians *inside Madison Square Garden*. Wiederhorn, Jon. “Janie’s Got A Gun Permit? Aerosmith Flap Lands Cop in Hot Water.” MTV (2002). <http://www.mtv.com/news/articles/1459226/janies-got-gun-permit.jhtml>.
- The media has regularly reported on the doling out of license to minor and major celebrities. *See, e.g.*, Exhibit B.

But perhaps the biggest scandal came to a head just as the NYPD was deciding on Corbett’s license application. As it would turn out, D.I. Endall, the commanding officer who denied Corbett’s application, would be removed from his position as commander of the NYPD Licensing Division about 2 weeks after writing his letter to Corbett. The reason for D.I. Endall’s transfer to “desk duty” was that several of his subordinates were caught by federal authorities accepting cash in exchange for approval of pistol permit applications. Exhibit F – Eustachewich et al. “Orthodox Jewish leader allegedly bragged about NYPD bribes for pistol permits.” N.Y. Post

(Apr. 18th, 2016). <http://nypost.com/2016/04/18/shomrim-leader-busted-amid-nypd-corruption-probe/>. At least 1 officer under D.I. Endall’s supervision has so far pled guilty to accepting cash for gun licenses, and others have been charged. Exhibit G – CBSNews. “4 NYPD Officers, 2 Others Charged in Corruption Probe.” June 20th, 2016. <http://newyork.cbslocal.com/2016/06/20/nypd-corruption-probe-arrests/>.

According to court papers, the trading of gun licenses for bribes stretched from at least 2010 to 2016. Exhibit H – Neumeister, Larry. “Former NYC police, lawyer arrested in gun licensing probe.” Associated Press (Apr. 25th, 2017). <https://www.apnews.com/f2dfccc592ea43558daa200a346c07bb>. In return for approval of gun licenses without meeting New York’s qualifications, D.I. Endall’s officers “solicited and accepted food, alcohol, parties, dancers and prostitutes.” *Id.* Several of the gun licenses bought through the corrupt members of D.I. Endall’s office caught in this sting went to street vigilantes who were known for beating a man on the street so badly he is permanently blind in one eye². In the meantime, the application by Corbett, who the NYPD concedes had no character issues, was denied.

² Winston, Hella. “Meet the Shomrim—the Hasidic Volunteer ‘Cops’ Who Answer to Nobody.” The Daily Beast (May 15th, 2016). <http://www.thedailybeast.com/meet-the-shomrimthe-hasidic-volunteer-cops-who-answer-to-nobody>.

III. Corbett's Public Records Request

After Corbett's application was denied, and in order to investigate the NYPD's licensing process, he sent the NYPD a FOIL request for, *inter alia*, all pistol permit applications within a 3-month window and their decisions:

1. Any application to carry a concealed firearm submitted between October 1st, 2015 and December 31st, 2015 (all dates inclusive). You may redact addresses, phone numbers, identification numbers (social security numbers, etc.), dates of birth, and any medical information for the privacy of the applicants.
2. Any documents indicating a decision on the applications described above, including but not limited to letters of approval/disapproval, generated between October 1st, 2015 and May 6th, 2016.
3. Any documents showing the process, rationale, investigation, deliberations, or other any other reasons behind that decision for any of the applications described above, generated between October 1st, 2015 and May 6th, 2016.

Record on Appeal A021. The documents Corbett requested would shed light on the opaque process by which the NYPD makes gun licensing decisions, and therefore their release would be of significant public interest. Additionally, these documents would show whether or not applications were judged uniformly based on their merits, or if rather some applications were judged on a different standard, thus providing additional evidence of arbitrary and capricious review. Corbett explicitly requested that the NYPD redact any personally-identifying information from any responsive records such that there would be no privacy concerns.

NYPD Lt. Richard Mantellino processed Corbett's request and wrote to Corbett on May 27th, 2016, denying his request in full citing "interference with law enforcement

investigation or judicial proceedings.” Record on Appeal A022. On June 6th, 2016, Corbett sent the NYPD an agency appeal of the denial of his FOIL request on the grounds that releasing redacted records clearly cannot cause interference with police matters. Record on Appeal A102. The NYPD never responded to Corbett’s FOIL appeal. Record on Appeal A038.

IV. Proceedings in the Court Below

This case was originally filed as a hybrid complaint and Article 78 petition in the New York County Supreme Court on September 30th, 2016. Record on Appeal A001. Alleged in the pleading were three core claims: 1) that the “proper cause” requirement violated Corbett’s constitutional rights as applied (either via the NYPD’s strict interpretation of the “proper cause” requirement or as a result of NYPD corruption), 2) that requiring an answer to “Questions 11 – 13” on the application was unconstitutional, and 3) that the NYPD unlawfully denied, and then ignored the appeal of, a Freedom of Information Law request. *Id.*

Respondent-Appellees immediately moved to dismiss. Record on Appeal A031. As relevant to this appeal, that motion argued that: 1) There is no constitutional right to carry a concealed weapon, 2) the appropriate standard of review for Corbett’s gun license claims is therefore rational basis, 3) “Questions 11 – 13” are “substantially related” to the government’s interest in public safety, 4) As a result, their decision to

deny Corbett's license application was "rational," and 5) That because the NYPD had not yet responded to his administrative appeal regarding his FOIL request, the Court should remand to the agency. *Id.* at 124 – 139.

Corbett filed an opposition to the motion to dismiss. Record on Appeal A141. In his opposition, Corbett argued that *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010) foreclose the NYPD's argument that it may completely abrogate the right of the average citizen to carry a weapon, and expressly re-iterated that Corbett was not seeking the right to carry a *concealed* weapon, but to carry a weapon *at all* (whether openly or concealed). *Id.* at 144 – 149. He argued that the appropriate standard for deciding Corbett's challenge was not a mere rational basis test, and that the NYPD failed to meet any standard at all. *Id.* at 149, 150. And he argued that the NYPD's failure to respond to a FOIL appeal, then 227 days after the appeal, was a constructive denial of the appeal. *Id.* at 151.

On February 7th, 2017, the lower court granted the motion to dismiss. Record on Appeal A158 – 160. In that order, the lower court agreed with Respondent-Appellees on all points and disagreed with Corbett on all points with two exceptions. First, while Respondent-Appellees asked that court to remand Corbett's FOIL appeal to the agency, the Court went even further than asked and decided that the requested documents were exempt without remanding to the agency, finding that the City of New York had adequately demonstrated that the records were exempt compilations made

for “law enforcement purposes” that would “interfere” with investigations or court proceedings. *Id.* at 160. Second, the court below appeared to agree with Corbett that the correct standard for his gun license challenge was not the rational basis test, although, notwithstanding, it seemed to apply a rational basis test anyway (discussed *infra*).

ARGUMENT

I. **The U.S. Supreme Court Has Overruled New York’s “Privilege Not a Right” Position on Gun Ownership**

In the wake of *Heller* and *McDonald*, it is unfortunate that the New York Court of Appeals refused to hear *Kachalsky v. Cacace*, which asked the Court to apply the new law of the nation to the existing laws of the state. *Kachalsky v. Cacace*, 14 N.Y.3d 743 (2010) (apparently taking issue with the filing of the appeal as-of-right). As a result, the Appellate Division and courts below are left with a patchwork of case law, some parts of which have clearly been invalidated by *Heller* and *McDonald*, and other parts up for debate.

One of the clearer results is that substantial restrictions by the state on Second Amendment rights can no longer be judged using a rational basis test. *Heller* at n. 27

“If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect.”); *United States v. Chovan*, 735 F.3d 1127, 1137 (9th Cir. 2013), *cert. denied*, 135 S. Ct. 187 (2014) (“In *Heller*, the Supreme Court did not specify what level of scrutiny courts must apply to a statute challenged under the Second Amendment. The *Heller* Court did, however, indicate that rational basis review is not appropriate.”); *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (United States as appellee concedes heightened scrutiny required to enforce federal gun law; court applies intermediate scrutiny). While the contours of the level(s) of scrutiny to be applied to such regulation have still not been clearly delineated by the U.S. Supreme Court, Corbett submits to this Court that the most congruent argument would be that “core” protections of the Second Amendment must be judged by strict scrutiny, while more “peripheral” protections may only need to meet an intermediate standard. *Wrenn v. D.C.*, No. 16-7025 (D.C. Cir., July 25th, 2017). Notwithstanding, if the restriction is a “total ban” on a right, it is *per se* invalid without requiring the application of any balancing test whatsoever. *Id.*, p. 26, *citing Heller*.

Given that the “core” of the Second Amendment is the right to “keep and bear” arms, New York City’s flat refusal to allow the vast majority of its citizens to bear³

³ What does it mean to “bear” arms? In order for the word “keep” preceding “bear” from being superfluous, “bear” must mean something more than mere possession. “The right to ‘bear’ as distinct from the right to ‘keep’ arms is unlikely to refer to the

arms is an affront to the core protections of the right, and therefore triggers strict scrutiny. Since “a law banning possession by everyone but that small minority” is a “total ban,” the “proper cause” requirement should be declared *per se* invalid. *Id.*, p. 24. But, certainly under strict, and probably also under intermediate scrutiny, New York City’s licensing scheme still cannot stand. That debate aside, one thing is for sure: rational basis scrutiny will not do.

What level did the court below apply? The lower court’s decision cited with approval case law from this Court requiring “intermediate scrutiny” for challenges similar to Corbett’s. Record on Appeal A160, *citing Delgado v. Kelly*, 127 A.D.3d 644 (1st Dept. 2015). Intermediate scrutiny requires the government to show that its regulation is “substantially related to an important government interest.” *Windsor v. United States*, 699 F.3d 169, 183 (2nd Cir. 2012), *quoting Clark v. Jeter*, 486 U.S. 456, 461 (1988). Notwithstanding the lower court’s understanding that a higher level of scrutiny was necessary, it clearly applied a rational basis test. Record on Appeal A159 (“...may overturn such an administrative determination⁴ only if the record reveals no

home. To speak of ‘bearing’ arms within one’s home would at all times have been an awkward usage. A right to bear arms thus implies a right to carry a loaded gun outside the home.” *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012).

⁴ Nor can the lower court’s decision be justified on the grounds of agency deference. A court reviewing an agency decision may defer to facts within the agency’s area of expertise, but certainly may not defer to its legal conclusions regarding the constitutionality of its own decisions.

rational basis for it...”), A160 (“...the respondent had a rational basis for denying petitioner’s application”).

Part of the confusion in the court below is perhaps due to the hesitance of the New York courts to explicitly overrule the past adage that “possession of a handgun is a privilege, not a right.” *Tolliver v. Kelly*, 41 A.D.3d 156, 158 (1st Dept. 2007); Record on Appeal A159. Even this Court has invoked the expression as recently as 2011, three years after *Heller* clarified that gun possession is a right, not a privilege, and one year after *McDonald* clarified that right must be respected by the states. *Campbell v Kelly*, 85 A.D.3d 446 (1st Dept. 2011); *Cf. Heller* at 576 (2008) (“It held that the Second Amendment protects an individual right to possess firearms...”); *McDonald* at 750 (2010) (“...we hold that the Second Amendment right is fully applicable to the States.”). Accordingly, Corbett respectfully invites the Court to disentangle this outmoded precedent by explicitly overruling it, and then to either: 1) remand to the court below to apply the correct test, whatever that may be, or 2) follow the lead of the D.C. Circuit and declare the proper cause requirement to be a *per se* unconstitutional total ban.

II. Continuing Corruption Within the NYPD Makes the “Proper Cause” Requirement Unconstitutional As-Appiled

The fact that Second Amendment rights are up for any sort of “discretion” of a public official is intrinsically absurd and tolerated for no other constitutional right by

the courts or the people. Instead of meaningful standards like nearly every other state in the country – and nearly every other county in New York (where “proper cause” does not require a showing of “need”) – a citizen of New York City can carry a handgun only at the pleasure of local officials.

The problem with the NYPD’s interpretation of New York’s “proper cause” requirement as meaning “whenever the police think you need have a need for a gun” – as opposed to objective standards such as age, citizenship, criminal record, *etc.* – is that it is difficult to apply evenly even without corruption. The door is left wide-open to impermissible judgments, perhaps based on race, sex, or simply the mood of the licensing official who reviews the application.

But, whenever government officials are given unfettered discretion, the door is also opened to bribery and corruption. For a full century, the NYPD has proven that it is entirely incapable of keeping its licensing division free from officers who take money in exchange for the exercise of their discretion in favor of those who line their pockets. When citizens are willing to shell out \$18,000, not to mention commit a crime, to gain the approval of their license, the temptation, it appears, is simply too great. Exhibit F.

After one hundred years of New Yorkers receiving gun licenses if and only if they gain the favor of the NYPD – often through cash payments – it is well past time for the courts of this state to step in and declare the NYPD’s implementation of the “proper cause” requirement to be unconstitutional as applied, as an infringement not

just on Corbett’s Second Amendment rights, but upon his Fourteenth Amendment procedural due process rights. Procedural “due process demands impartiality on the part of those who function in judicial or quasi-judicial capacities.” *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); *see also Hecht v. Monaghan*, 307 N.Y. 461, 469 (1954) (In licensing case, “the administrative act is of a judicial nature since it depends upon the ascertainment of the existence of certain past or present facts upon which a decision is to be made and rights and liabilities determined.”). Officers on the lookout for bribes are *per se* not impartial.

It is understood that the courts are hesitant to make such a declaration, but the person who denied Corbett’s application *was literally booted from his job for overseeing a department that pervasively took cash for approvals*. If review by officers proven to engage regularly in corruption constitutes due process, then respectfully, due process is meaningless.

III. Regardless of the Standard of Scrutiny, “Questions 11 – 13” Cannot Withstand It

“Questions 11 – 13” present challenges distinct from the “proper cause” requirement and their propriety is a question of first impression for this Court. Since they do not represent a “total ban,” the Court should subject them to strict scrutiny

given that these questions are asked not just of those seeking a concealed carry permit, but also of those seeking merely to possess a handgun in their home.

Taken at face value, these questions seem to be designed to embarrass or invade the privacy of the applicant, discourage the completion and submission of an application, and/or create an “excuse” for non-issuance of a license at any point when the NYPD would prefer not to issue one (or, considering the corruption, at any point when the NYPD has not been paid a bribe). Although in theory these questions “could” reveal information that may be relevant to the prudence of issuing a gun license, they are not *at all* tailored to exclude entirely irrelevant information, but are significantly likely to require the disclosure of embarrassing and highly prejudicial information.

Question 11 reads, “Have you ever been discharged from any employment?” Record on Appeal A057. Answer choices are “yes” or “no,” with an instruction to explain in writing a “yes” answer. *Id.* It is, obviously, entirely irrelevant to whether or not one is qualified to carry a handgun if they have ever, *e.g.*, been laid off from a job. To the extent that the NYPD can possibly justify this question on a basis of, “perhaps one who just got fired from a job might be seeking armed revenge,” that possibility is nullified by the lengthy waiting period between license application and decision, as well as the fact that if one is planning on going on a murder spree inside of their former place of employment, ensuring that they are properly licensed to carry their murder weapon will obviously not be a high consideration. For any possible

remaining value this question may have, the failure to tailor the question at all (*e.g.*, to any time period whatsoever) makes conditioning a license approval on the answering of this question to be not “*substantially related* to an important government interest.” *Windsor* at 183 (*emphasis added*).

Question 12 reads, “Have you ever used narcotics or tranquilizers? List doctor’s name, address, telephone number, in explanation.” Record on Appeal A057. Answer choices are “yes” or “no,” with an instruction to explain in writing a “yes” answer. *Id.* This question fails to be probative of qualification to carry a handgun because virtually the entire country would be required to answer “yes.” Anyone who has ever had a wisdom tooth pulled, tonsils removed, or any other minor (or major) surgery would be required to answer “yes” to this question because the sedation used by their doctor would qualify as a tranquilizer and the pain killers prescribed post-procedure would qualify as a narcotic⁵. Obviously, possession of tonsils is not related to possession of handguns, and so it is clear that the question is mere subterfuge to generate a “reason,” even if entirely inapposite, to deny an application. If the NYPD actually intended to, *e.g.*, determine if the applicant was addicted to drugs, they could have tailored the

⁵ Even the choice of the word “narcotic,” typically used by law enforcement, in place of “opioid,” typically used in the medical community, is a telling indicator that the NYPD’s intent is to entrap applicants into admitting something that can be used, however unjustly, against them.

question to do so, *e.g.*, by asking if the applicant's use is regular, has resulted in an addiction, or is without the supervision of a doctor⁶.

Question 13 reads, "Have you ever been subpoenaed to, or testified at, a hearing or inquiry conducted by any executive, legislative, or judicial body?" Record on Appeal A057. Answer choices are "yes" or "no," with an instruction to explain in writing a "yes" answer. *Id.* It is entirely unclear to Corbett how this could possibly be probative as to one's qualification to possess a concealed weapon. As with questions 11 and 12, question 13 fails to utilize any tailoring whatsoever.

The opinion of the court below concluded, without any further explanation, that "the refusal of [Corbett] to answer certain questions [amounted to] a rational basis for denying" Corbett's application. Record on Appeal A160. But, as discussed *supra*, the denial of the right to bear arms must be subject to at least intermediate, if not strict, scrutiny. *Chovan; Skoien*. On this basis, the lower court must be overturned, but Corbett also submits that even under the rational basis test, it was error to conclude that, *e.g.*, it was rational for Corbett to be required to list each time he had a wisdom tooth pulled.

⁶ As a further anomaly, one legitimately prescribed one of these medications for a legitimate medical condition would feel obligated to check "yes," while a heroin abuser would simply check "no," because there are no records of his or her drug use and therefore no incentive to be truthful.

IV. The Records Sought by Appellant Are Not Exempt from New York's Public Records Law

New York's Freedom of Information Law sets a general policy that documents in the possession of the government are to be made available to the public absent an enumerated exception. N.Y. Pub. Off. Law § 84 (“The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions.”). Absent an enumerated exception, the government may not hide documents from the public. *Id.*

Corbett's FOIL request contained 3 distinct requests: 1) gun license applications within a 3-month window, 2) decisions on those applications, and 3) any documents explaining their decision-making for those application – all with personally-identifying information redacted. Record on Appeal A021. The court below ruled: 1) that despite 8 months having passed as of the date of the ruling, the agency appeal had “not yet been decided,” and 2) notwithstanding, the records are exempt under the law enforcement records exception of N.Y. Pub. Off. Law § 87(2)(e)(i). Record on Appeal A160.

First, New York's public records law allows the NYPD ten business days to respond to an appeal. N.Y. Pub. Off. Law § 87(4)(a). “Failure by an agency to conform to the provisions of paragraph (a) of this subdivision shall constitute a denial.” N.Y. Pub. Off. Law §87(4)(b).

Completely ignoring an appeal for 8 months is what courts have referred to as a “constructive denial.” *Kohler-Hausmann v. NYPD*, 133 A.D.3d 437, 437 (1st Dept. 2015) (“By failing to respond for months after that deadline, NYPD constructively denied the FOIL request”); *Empire Ctr. for Pub. Policy, Inc. v. NYC Office of Payroll Admin.*, 2017 NY Slip Op 50099(U), ¶ 3 (N.Y. County Sup. Ct. 2017). The court below therefore erred in concluding that Corbett’s request had not been “denied,” because the NYPD’s failure to timely respond results in a denial by operation of law.

Second, the records requested by Corbett do not meet the qualification for exemption from FOIL requests: “are compiled for law enforcement purposes and which, if disclosed, would: i. interfere with law enforcement investigations or judicial proceedings; ii. deprive a person of a right to a fair trial or impartial adjudication; iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures.” N.Y. Pub. Off. Law § 87(2)(e). By the plain language of the statute, this means that in order to meet the exemption, the records must first be “compiled for law enforcement purposes,” and, second, cause one of the enumerated four harms.

At the outset, gun license applications are not “compiled for law enforcement purposes.” Just as applying for a license with the Department of Motor Vehicles would not create a “law enforcement” record (even though such a record may be “useful” to

law enforcement), applying for a license to carry a weapon does not either. The fact that the NYPD is the agency who processes such requests in New York City does not mean the record suddenly transforms into a law enforcement record.

But, second, the court below cited the first of the four harms: interference with law enforcement investigations or judicial proceedings. Record on Appeal A160. The basis for the lower court's decision was the following argument of Appellee: "To date, Corbett's appeal has not been decided by the Department. There is no dispute of the highly publicized, on-going investigation by the United States Attorney's office of public corruption in the handling of carry license applications in the License Division, which coincides with the time period of Corbett's FOIL request. See Petition, ¶¶ 32, 33. As a result, the process of reviewing this matter and related legal issues is time-consuming. In addition, recent changes in the Department's personnel, specifically the Records Access Appeals Officer, have also delayed a response to Corbett's FOIL request." Record on Appeal A038. In other words, although the NYPD employee who initially denied Corbett's FOIL request had alleged, without explanation, that releasing the documents would result in interference with an investigation⁷, Appellee conceded

⁷ Any assertion that releasing the documents Corbett requested would interfere with an investigation also strains credulity because: a) Corbett requested anonymized versions of the documents, b) those under investigation clearly already know what is in those documents, and c) the investigation has already resulted in massive public discussion and arrests. There is simply no chance at anyone being "tipped off" to anything.

that the agency had made no such final determination because they had not yet processed his appeal.

With this in mind, the lower court simply parroted the words *of the NYPD employee who initially denied Corbett's FOIL request*, ignoring the fact that the agency was saying it had not yet made that final determination. Record on Appeal A160. And, even if the NYPD *had* made such a determination, the court below would have merely rubber-stamped it without requiring a shred of evidence to support it. Not even a single declaration prepared for this case alleged personal knowledge of the contents of the documents Corbett requested or any "investigation" with which there would have been interference. In other words, if the NYPD wants to allege in court that documents are exempt from FOIL, they must actually produce evidence (which, of course, would have been *excluded from consideration* because this was a motion to dismiss, not a motion for summary judgment). Deference to agency judgment is one thing, but blind acceptance of an agency's position makes a mockery of due process.

CONCLUSION

A fair reading of the opinion of the court below demonstrates that one level of review was stated, but a lower level of review was applied. Further, for the reasons stated *supra*, the court below erred in determining that the public records sought by Corbett were exempt from disclosure.

For these reasons, the order should be reversed and Corbett's case remanded.

Dated: New York, NY
July 26th, 2017

Respectfully submitted,

Jonathan Corbett

Petitioner, *Pro Se*

228 Park Ave. S. #86952

New York, NY 10003

E-mail: jon@professional-troublemaker.com

CERTIFICATE OF COMPLIANCE

Pursuant to 22 NYCRR § 670.10.3(f)

I, Jonathan Corbett, *pro se* Petitioner in the above captioned case, hereby affirm that this Petition contains approximately 7,600 words according to the word count function of the computer program used to prepare the document.

Dated: New York, NY
July 26th, 2017

Respectfully submitted,

Jonathan Corbett

Petitioner, *Pro Se*

228 Park Ave. S. #86952

New York, NY 10003

E-mail: jon@professional-troublemaker.com

N.Y. CPLR § 5531 STATEMENT

This case was Index No. 158273/2016, commenced in the New York County Supreme Court on Sept. 30th, 2016 (served on all parties: Oct. 12th, 2016). The names of the parties have not changed during this proceeding and thus match those in the caption of this brief. The nature of the action was a request for a review of a denied pistol permit application and for the production of public records under the N.Y. Freedom of Information Law. The appeal is from a final order dismissing the action in full by Judge Carol R. Edmead entered on Feb. 7th, 2017. The appeal is presented upon reproduction of the full record of the proceedings below.

EXHIBIT A – CORBETT DECLARATION

1) My name is Jonathan Corbett, I am a U.S. citizen, and I am above the age of 18 years.

2) I am the author of the attached brief and it is true to the best of my knowledge and belief.

3) During my interview with P.O. Barberio, it appeared to me that no substantial "investigative questions" were asked. That is, the interview appeared to be more of a procedural formality than an attempt to learn more about me or my application.

4) During my interview with P.O. Barberio, I was informed that my background was checked and that there were no problems found.

5) During my interview with P.O. Barberio, I was informed that it was unlikely that the officer who would be taking over my application from that point would approve it because I did not show a sufficient "need" to carry a firearm.

6) I have never been either arrested for or convicted of any crime beyond minor traffic infractions.

Affirmed under penalty of perjury:

Jonathan Corbett, 07/26/2017

EXHIBIT B – “THE RICH, THE FAMOUS, THE ARMED”

The Rich, the Famous, the Armed

By JO CRAVEN MCGINTY FEB. 18, 2011



Shooting targets at the West Side Pistol Range, in Manhattan. Emily Berl for The New York Times

MEN and women. Democrats and Republicans. Doctors, lawyers, merchants and moguls. A remarkable, if relatively small, cross-section of New Yorkers legally own handguns, according to public records obtained by The New York Times.

Among the more than 37,000 people licensed to have a handgun in the city are dozens of boldface names and public figures: prominent business leaders, elected officials, celebrities, journalists, judges and lawyers.

Some expressed pride in their gun ownership, like the renowned divorce lawyer [Raoul Felder](#), who readily posed with his .38-caliber Smith & Wesson. Others, including David Breitbart, Yetta Kurland and Walter Mack, all well-known lawyers, were irked to learn they would be included in an article based on the public records. And there were a few conflicted souls, like [Alexis Stewart](#), co-host of “[Whatever With Alexis and Jennifer](#)” on SiriusXM radio and the Hallmark Channel.

“I don’t believe people should be allowed to have guns in America,” Ms. Stewart, daughter of Martha, said in an interview, explaining that she bought a .357 Magnum after 9/11 — but would be happy to give it up if handguns were banned. “Having a swimming pool is way more dangerous than having a gun,” she added.

Getting a handgun legally in New York is a two-step process. First, applicants must obtain a license, which costs \$340, takes about 12 weeks to process, is good for three years and requires a background check by the New York Police Department. In addition, fingerprinting costs about \$100.

RELATED COVERAGE

Boldface Names With Guns FEB. 18, 2011



A Gun Around the House FEB. 18, 2011

Those who pass that hurdle then must get a purchase authorization from the police for the particular weapon they intend to buy. One handgun license may list up to 25 weapons (so far, no one has tried to register more than that, officials said), but buyers must wait 90 days between purchases.

The 41,164 handguns registered with the Police Department as of Jan. 14 include those owned by more than 2,400 people who live outside the city but have permission to bring their weapons here — people like Roger E. Ailes, the president of Fox News, whose license lists an address in New Jersey; John J. Mack, the chairman of Morgan Stanley, who lives in Westchester County; and Sean Hannity, the conservative talk-show host, who lives on Long Island.

There are eight kinds of handgun licenses in New York, one of which is for dealers. The most common restricts the weapon to the owner's home, but others allow license holders, including security guards, gun custodians and people who demonstrate a need for protection, to carry weapons with them.

Nearly 4,000 license holders — those who have a “carry business,” “limited carry” or “special carry” license — can legally conceal their weapons. The Times obtained the database of handgun owners from the Police

Department after filing a Public Records Act request and a lawsuit; the police released ZIP codes but omitted street addresses. The database also did not include the 14,602 retired police officers who are licensed to have weapons.

The Police Department issues a separate license for long guns: about 52,000 shotguns and rifles are registered, but the owners' names and addresses are not public records.

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There are no comprehensive statistics available on gun ownership nationally because most states do not require licenses or permits. But an annual survey by the Pew Research Center suggests that about one-third of the nation's homes have a gun. In comparison, at most, about 1 percent of New York City's households have a licensed gun.

(It's impossible to know how many illegal guns are circulating in the city, but in 2010, the Police Department seized 5,318, including 2,984 pistols, 1,402 revolvers, 403 rifles and 349 shotguns.)

At [Westside Pistol and Rifle Range](#), in Manhattan's Flatiron district, the owner, Darren Leung, said that there was a surge of new members after 9/11, but that the number had since fallen slightly, to 1,500. About 20 or 30 members a day come by to take classes or to practice with paper targets in one of 16 enclosed 50-foot stalls. On the sidewalk outside on West 20th Street, the sound of gunshots from the basement range is not audible.

“In a weird way, it's a kind of stress reliever,” said William Rosado, an illustrator who regularly visits the range to fire his 9-millimeter Smith &

Wesson. "It's something completely different than what I do for a living."

Most gun owners interviewed said they had never drawn their weapons in self-defense. But [John A. Catsimatidis](#), the owner of the Red Apple Group and Gristedes supermarket chain, recalled a chilling episode from the mid-1980s, when he intercepted a robber fleeing one of his stores in the Bronx.

"The first guy comes out with a sawed-off shotgun, goes right by me and says, 'Be cool, man,' " said Mr. Catsimatidis, who has owned a gun for at least 35 years. "The second guy comes out with a sawed-off shotgun, goes by me and says, 'Be cool, man.' The third guy comes out with a sawed-off shotgun, and I intertwine my arm into his arm, and I put my gun to his head, and I say, 'Drop your gun, or I'll blow your head off.' "

When the police arrived, they arrested the man, and examined Mr. Catsimatidis's weapon — a Walther PPK/S 9-millimeter pistol.

"The sergeant says to me, 'You couldn't have shot the guy anyway: your safety is still on,' " Mr. Catsimatidis recalled. "The sweat started dripping off my head.

"I'm not going to do anything stupid like that again."

A version of this article appears in print on February 20, 2011, on Page MB1 of the New York edition with the headline: The Rich, The Famous, The Armed. [Order Reprints](#) | [Today's Paper](#) | [Subscribe](#)

EXHIBIT C – CAPTAIN SUSPENDED IN GUN AUTHORIZATION

ARCHIVES | 1973

Captain Suspended in Gun Authorization

By ALFONSO A. NARVAEZ NOV. 17, 1973

A city police captain with 22 years on the force was suspended without pay yesterday for authorizing the issuance of a pistol permit for the, chauffeur of Thomas Eboli, the slain organized-crime figure, the Police Department reported.

The captain, Salvatore M. Salmieri, who was chief executive officer for the 90th Precinct in Brooklyn, was suspended early yesterday following a departmental trial late Thursday at Police Headquarters before Deputy Police Commissioner Philip R. Michael.

Captain Salmieri was charged with “failure to conduct a proper and thorough investigation” into the background of the chauffeur, Joseph Sternfeld, to determine his fitness to continue as a pistol license holder in March, 1971.

He was also charged with wrongfully reporting in April, 1971, that Sternfeld had briefly known Eboli in 1952, “whereas in truth and in fact a long and close association did exist between those individuals for period of 19 years immediately prior to this investigation.”

Facts Were in File

The charges say that Captain Salmieri could have ascertained the facts of the continuing relationship from documents in case files that had been available for his use.

Commissioner Michael said that the department had received new information concerning Sternfeld's background and that Captain Salmieri had been requested to investigate whether the pistol permit should be continued.

“He made his investigation and recommended no change,” the Commissioner declared. He said that the maximum penalty the captain faced was dismissal from the force, but that he would probably be permitted to retire and retain his pension.

Sources in the Police Department said that Sternfeld was originally given the pistol permit in 1966 and that it was temporarily suspended following his arrest on charges of having pornographic material in his possession. The permit was reinstated when the charges were dismissed. The sources said Sternfeld had applied for a continuance of the permit early in 1971.

Sternfeld was Eboli's chauffeur at the time Eboli was gunned down in an apparent gangland slaying on July 16, 1972, as he left his girl, friend's Brooklyn home. Eboli was said to have been a lieutenant in the crime “family” headed by the late Vito Genovese.

The pistol-permit incident occurred shortly before Captain Salmieri was removed from his post as commanding officer of the Sixth Precinct station, 233 West 10th Street, after eight officers in his command were suspended for stealing cartons of meat from a local meat-packing plant.

The captain and seven superior officers in the precinct were transferred following the disclosure of the thefts by investigators of the Knapp Commission, who saw the officers loading cartons of meat into the trunks of radio cars from the Great Plains Packing Company, Inc., 449 West 13th Street.

Captain Salmieri, who is 45 years old has spent his entire police career in the uniformed branch. He became a patrolman in 1951, was promoted to sergeant in 1959, became a lieutenant in 1962 and rose to captain in 1966.

The TimesMachine archive viewer is a subscriber-only feature. This article is also available separately as a high-resolution PDF for \$3.95.

We are continually improving the quality of our text archives. Please send feedback, error reports, and suggestions to archive_feedback@nytimes.com.

A version of this archives appears in print on November 17, 1973, on Page 25 of the New York edition with the headline: Captain Suspended in Gun Authorization.

EXHIBIT D – GUN LICENSING BOSS SUSPENDED BY NYPD

GUN-LICENSING BOSS SUSPENDED BY NYPD

BY JOHN MARZULLI ALICE MCQUILLAN

NEW YORK DAILY NEWS Thursday, January 23, 1997, 12:00 AM

Internal affairs cops bounced the commander of the NYPD's gun-licensing office yesterday, accusing him of granting favors to people applying for pistol permits. Deputy Inspector Henry Krantz, 55, a 30-year veteran, was suspended without pay and slapped with seven administrative charges in an ongoing probe. Sources say a captain, two lieutenants, a sergeant and a police officer will likely be transferred from the licensing office today in a widening scandal over the handling of more than 3,000 new gun permit applications each year. Cops were seen in tears yesterday as probers swooped down on the license division at 1 Police Plaza and carted out boxes of documents. Maintenance workers padlocked the office, which sources said will now be run by internal affairs staffers. Krantz was charged with providing "preferential treatment to individuals or entities," as well as "wrongfully directing" other cops to grant the favors and failing to supervise his staff. The alleged favoritism took place from mid-1995 to the end of last year, said Inspector Michael Collins, a police spokesman. Collins said there is no evidence Krantz took kickbacks for arranging the favors, and no criminal charges were filed against him. Sources said Krantz was set to retire tomorrow, so investigators had to move quickly and serve him with administrative charges, which could jeopardize his pension. The Internal Affairs Bureau was embarrassed late last year by failing to serve charges on a deputy inspector suspected of receiving trips and favors from a Manhattan gun dealer. That deputy inspector, Charles Luisi, was able to retire with his pension intact before the IAB could find him, although he remains under investigation by the Manhattan district attorney. Luisi's gun dealer friend, Michael Zerins, is also being investigated, for alleged violations of the assault weapons ban.

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EXHIBIT E – AEROSMITH “GOT A GUN” SCANDAL

NEWS

NYPD BIG UNDER FIRE IN AEROSMITH 'GOT A GUN' SCANDAL

By Philip Messing

November 24, 2002 | 5:00am

A top NYPD official is being probed for helping rockers Steven Tyler and Joe Perry obtain pistol licenses in return for alleged VIP treatment at an Aerosmith concert and ritzy after-party, The Post has learned.

Deputy Inspector Benjamin Petrofsky, the former head of the NYPD License Division, is the target of two probes into the circumstances that enabled Tyler and Perry to receive "carry permits," which allow the rockers to legally possess concealed handguns in the Big Apple.

The NYPD Internal Affairs Bureau is trying to determine if Petrofsky violated departmental regulations when he cut through red tape to help Tyler and Perry, sources said.

The Manhattan district attorney's office is reportedly examining whether or not, in return, Petrofsky got "illegal benefits" – a ticket to the show, backstage access and a limo ride to the Rock 'n' Roll Hall of Famers' post-concert party.

Petrofsky, reached by The Post on Friday, declined to comment on the allegations, except to insist he had done nothing improper.

Sources said the flap arose in the fall of 2001 when Tyler, Aerosmith's lead singer, and Perry, the band's lead guitarist, approached the NYPD License Division for gun permits, sources said.

At the time, the rockers – whose fame and wealth has attracted stalkers over the years – already held gun licenses in Massachusetts and several other states, a source said.

Most applicants are required to show up at Police Headquarters to detail why they deserve a license, demonstrating they carry large sums of cash, work in dangerous jobs or had been the brunt of credible threats.

But insiders say some celebrities and other powerbrokers have quietly had the bureaucratic process streamlined for them.

On Nov. 12, 2001, Petrofsky, then a captain, allegedly traveled to Madison Square Garden with another cop to fingerprint the duo before an Aerosmith concert that night.

Both rockers were soon issued carry permits, though an NYPD spokesman declined to say what guns they're licensed to carry.

The Internal Affairs probe was jump-started when a sergeant in the unit, Steve Oteri, secretly recorded the co-worker who accompanied Petrofsky bragging about their momentous night out, a source said.

Petrofsky was reassigned to the Intelligence Division when the investigation began, but since then has been promoted to deputy inspector.

He later admitted to investigators that he attended the Aerosmith concert, but only after paying an acquaintance for his ticket. The acquaintance, whose name is being withheld, spoke with The Post, insisting Petrofsky did not take a limousine ride nor attend a party.

"He's a family man with five lovely kids, and the suggestion that he did anything improper is absolutely preposterous," said another friend, Bo Dietl, a former NYPD detective.

EXHIBIT F – ...NYPD BRIBES FOR PISTOL PERMITS

METRO

Orthodox Jewish leader allegedly bragged about NYPD bribes for pistol permits

By Lia Eustachewich, Larry Celona and Bruce Golding

April 18, 2016 | 1:33pm | Updated



Shaya Lichtenstein (center) leaves Federal Court.
Matt McDermott

NYPD cops pocketed cash bribes to “expedite” pistol permits for members of the Orthodox Jewish community — and a Boro Park Shomrim patrol leader offered another officer a near \$1 million payday to keep the scheme going, the feds charged Monday.

A cop in the NYPD’s License Division allegedly confessed to the FBI that he and a supervisor accepted payments he called “lunch money” from Alex “Shaya” Lichtenstein, who was hauled into court Monday on bribery and conspiracy charges

Court papers say Lichtenstein was secretly recorded last week bragging about how he had secured 150 gun licenses through his connections in the division but needed a new hookup there following a crackdown.

He then offered a whistleblowing cop \$6,000 a pop to continue the scheme, using a calculator to show that another 150 permits would be worth \$900,000 in payoffs, court papers say.

Lichtenstein said his arrangement had been derailed by the License Division's commanding officer, Deputy Inspector Michael Endall, for fear that people would think Endall "had his hand in the cookie pot," according to the feds.

The complaint says Lichtenstein spent time at the License Division "on a near daily basis" from 2014 and was regularly spotted sitting near the desk of a supervisor, identified by sources as Sgt. David Villanueva.

Villanueva told his colleagues at the License Division early this year that Endall had "banished Lichtenstein because of the money Lichtenstein was making selling gun licenses," the complaint says.

Villanueva claimed that Lichtenstein "charged his customers \$18,000 per gun license."

During questioning Sunday by the FBI, another License Division cop — identified by sources as Officer Richard Ochetal — admitted he knew Lichtenstein and had processed permit applications for him, the papers say.

"When asked if Lichtenstein paid cash bribes to [Villanueva] or [Ochetal], [Ochetal] was silent for several seconds and then said that Lichtenstein would give [Villanueva] 'lunch money' for [Villanueva] and [Ochetal]," the complaint says.

"Asked how much 'lunch money' he would receive, [Ochetal] responded 'a hundred dollars.'"

No charges have been filed against Endall, Villanueva or Ochetal.

But less than half an hour before the Lichtenstein complaint was unsealed, the NYPD announced that all three had been bounced from the License Division.

Police Commissioner Bill Bratton said Endall "is being reassigned to an administrative position pending further review," while Villanueva and Ochetal were both stripped of their badges and guns and also transferred.

The moves brought to nine the number of cops who have been publicly demoted since The Post revealed this month that the FBI was investigating a gifts-for-favors scheme involving top NYPD brass and two businessmen, Jona Rechnitz and Jeremy Reichberg.

The joint probe with the NYPD has also enveloped Mayor de Blasio's 2013 campaign-finance operation, and Bratton last week told The Post that it was the department's worst scandal he has seen since the Knapp Commission's revelations of widespread police graft in the early 1970s.

"This investigation will continue to go where the leads take us," Bratton said in a statement Monday.

Lichtenstein, 44, was busted by the feds Sunday morning at his home in Pomona, Rockland County, where he lives with his wife and a teenage son.

He was hauled into a packed Manhattan federal courtroom Monday afternoon. Wearing a gray golf shirt, black pants and a black yarmulke, he appeared scrawny and pale as he sniffled loudly and wiped away tears.

Prosecutor Kan Nawaday asked to have Lichtenstein held without bail as a "danger to the community."

"He was no less than an arms dealer for the community in New York City," Nawaday said.

"Our case is very strong. Just last week, this defendant was recorded trying to bribe an NYPD officer to obtain a permit for his clients."

Nawaday also said that the feds seized two handguns during Lichtenstein's arrest and that he had a shotgun stashed in his home.

US Magistrate Judge Henry Pitman rejected the government's request and set bond at \$500,000.

"I don't think dangerousness has been shown here. I think the government's characterization of him as an arms dealer is somewhat hyperbolic," Pitman said.



Alex "Shaya" Lichtenstein is shielded from press while heading out of court.

Matthew McDermott

Lichtenstein, whose lawyer described him as a "self-employed businessman" making \$80,000 a year, posted the bond and was sprung at around 5:30 p.m.

He declined to comment on his way out of the courthouse but gave a thumbs-up to photographers.

A source in the Borough Park Orthodox community said some of the pistol permits Lichtenstein obtained may have been legitimate, but many were not.

"It's just a prestige thing. It shows you're hooked up in the Police Department and you have important, high-ranking friends," the source said.

Additional reporting by Shawn Cohen

Approved: 16 MAR 25 41
 RUSSELL CAPONE / KAN M. NAWADAY / MARTIN S. BELL
 Assistant United States Attorneys

Before: HONORABLE HENRY B. PITMAN
 United States Magistrate Judge
 Southern District of New York

-----x
 UNITED STATES OF AMERICA : COMPLAINT
 - v. - : Violations of
 : 18 U.S.C. §§ 666, 371 &
 : 2
 ALEX LICHTENSTEIN, :
 a/k/a "Shaya," : County of Offense:
 : New York
 Defendant. :
 -----x

SOUTHERN DISTRICT OF NEW YORK, ss.:
 JOSEPH DOWNS, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE
(Bribery)

1. In or about April 2016, in the Southern District of New York and elsewhere, ALEX LICHTENSTEIN, a/k/a "Shaya," the defendant, willfully and knowingly did corruptly give, offer, and cause to give a thing of value to a person, with intent to

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FILED UNDER BRIBERY, CORRUPTION, NYPD, NYPD CORRUPTION SCANDAL

EXHIBIT G – 4 NYPD ... CHARGED IN CORRUPTION PROBE

4 NYPD Officers, 2 Others Charged In Corruption Probe

June 20, 2016 10:00 PM

Filed Under: [Bill Bratton](#), [Juliet Papa](#), [Marla Diamond](#), [NYPD](#), [Preet Bharara](#)

NEW YORK (CBSNewYork) — Four NYPD officers and two others have been charged in connection with an [ongoing city corruption investigation](#).

On Monday, U.S. Attorney Preet Bharara said the alleged conduct “violates the basic principle that public servants are to serve the public, not help themselves to cash and benefits just for doing their jobs.”

“It is heartbreaking to see police officers who have taken the oath to serve and protect allegedly bring dishonor to an institution and profession deserving of the greatest honor,” he said.

NYPD Deputy Chief Michael Harrington and Deputy Inspector James Grant were each charged with conspiracy to commit honest services wire fraud, authorities said.

Sgt. David Villanueva, who was assigned to the gun license bureau, was charged with conspiracy to commit bribery, authorities said.

A fourth officer who worked in the licensing department, Richard Ochethal, previously pleaded guilty to one count of bribery and one count

of conspiracy to commit bribery and is cooperating with the investigation, authorities said.

READ COURT DOCUMENTS: [Grant, Harrington & Reichberg](#) | [Villanueva & Lichtenstein](#) | [Ochetal](#)

A Brooklyn businessman, Jeremy Reichberg, was also charged with conspiracy to commit honest services wire fraud for allegedly bribing NYPD officials.

Bharara said Reichberg exchanged bribes for “cops on call.”

“They got in effect a private police force for themselves and their friends,” Bharara said, as reported by WCBS 880’s Rich Lamb.

In an email to The Associated Press, Susan Necheles, Reichberg’s lawyer, said “Mr. Reichberg did not commit a crime.”

She said her client’s “only mistake” was befriending a government cooperator “who is desperately trying to get others in trouble in order to curry favor with prosecutors and save his own skin.”

Authorities said Reichberg offered gifts and trips to Grant and Harrington in exchange for various favors.

The gifts to Grant allegedly included hotels rooms for a vacation in Rome, a luxury watch and home repairs, a video game system for his kids and jewelry for his wife, according to the complaint, CBS2's Christine Sloan reported.

The complaint also alleges that Grant was given tickets to the Super Bowl in 2013 during an all-expense paid trip to Las Vegas where a prostitute was arranged to stay in Grant's hotel room, WCBS 880's Marla Diamond reported.

Harrington allegedly received lavish dinners, tickets to basketball and hockey games, hotel rooms for a family trip to Chicago and \$75,000 in payments to a security company run by Harrington's family, CBS2's Tony Aiello reported.

The gifts were all allegedly paid for by Reichberg and another businessman, identified in the complaint as "cooperating witness 1," who has been previously identified as businessman Jona Rechnitz, CBS2's Marcia Kramer reported.

Bharara said Reichberg and Rechnitz "invested" over \$100,000 in exchange for all kinds of demands from their friends at the top of the NYPD food chain.

In exchange for the gifts, the two received favors like police escorts, assistance with private disputes, security at religious sites, VIP access to parades and other events, the ability to get out of tickets and other favors, the complaint alleges.

According to the complaint, the alleged bribery also gave Reichberg “considerable influence over internal NYPD affairs, including personnel decisions such as the promotion of certain favored NYPD officers.”

“They got, in effect, a private police force for themselves and their friends effectively got cops on call,” Bharara said.

The feds claim Reichberg got help getting a gun permit and even used NYPD resources to investigate civil matters. When his jewelry business had problems with customers and competitors, he allegedly asked for and got help from Harrington.

The feds added that Reichberg thought of himself as so powerful, he called police brass to make promotion recommendations. In Grant’s case, he asked a certain chief to make him the commanding officer of the 19th Precinct. According to the complaint, the chief put Reichberg and Rechnitz “on the phone with Grants ... to be able to tell Grant he was being promoted.”

“Reichberg didn’t allegedly provide these gifts just to get his friends out of tickets, he was grooming Grant and Harrington to be his pawns,

attempting to insure his ability to assert undue influence over high-ranking officials in the NYPD and officers to come,” Diego Rodriguez, head of the New York FBI Field Office, said.

The feds also have testimony that Reichberg even got the cops to close down one lane of the Lincoln Tunnel and provide an escort to a businessman visiting the U.S.

CBS2’s Kramer reported Reichberg and Rechnitz gave generously to Mayor Bill de Blasio and served on his inauguration committee. Reichberg raised \$35,000 for the New York City mayor during a fundraiser at his home.

Rechnitz and his wife donated to \$9,900 to de Blasio’s 2013 election campaign. He also reportedly collected another \$41,600 from others; gave \$50,000 to de Blasio’s non-profit campaign for One New York; and anted up over \$100,000 for de Blasio’s 2014 effort to defeat Senate Republicans.

The mayor’s office said in a statement, “The Mayor and Commissioner Bratton are both committed to ensuring that the NYPD maintains the integrity and trust that the public expects from its Police Department, and the NYPD is conducting a joint investigation with the FBI to discover all the facts. The Mayor is fully supportive of these investigations.”

Harrington’s lawyer, Andrew Weinstein, told the AP his client “is a loyal and devoted family man who has an unblemished record and has spent the last three decades working tirelessly to keep New York City safe.”

“One would be hard-pressed to find a straighter arrow in their quiver,” he said.

Both Reichberg and Rechnitz gave generously to Mayor Bill de Blasio’s campaign and were on his inauguration committee. De Blasio has not been implicated in any wrongdoing.

Rechnitz was also a cooperating witness in the recent charges brought against [Correction Officers’ Union President Norman Seabrook](#) and hedge fund operator Murray Huberfeld.

Reichberg's lawyer defended her client.

"My client did nothing wrong," lawyer Susan Necheles said.

A second set of complaints charges Villanueva and Ochetal in connection with bribes for gun permits without doing background checks or providing justification for owning a gun, 1010 WINS' Juliet Papa reported.

It also charges [Alex "Shaya" Lichtenstein](#) of Brooklyn, who allegedly claimed he paid bribes up to \$6,000 for as many as 150 permits.

In addition to cash bribes, the complaint says Villanueva also received bottles of liquor and free limo rides, among other things.

Authorities said Villaneuva and Ochetal were able to secure licenses for Lichtenstein's clients "often within weeks, whereas the process normally takes months to, in some instances, over a year."

Police Commissioner Bill Bratton said Harrington, Grant and Villaneuva are being suspended.

"Chief Harrington and Inspector Grant had previously filed notices of retirement, which are effective this week," he said. "Although the department cannot prevent their retirement, they will do so under suspension and therefore, not in good standing."

While the four cops named Monday are the first to face federal charges, nearly a dozen have been disciplined in some way by the NYPD in the last few months.

EXHIBIT H – ...ARRESTED IN GUN PROBE

Police New York Arrests U.S. News

Former NYC police, lawyer arrested in gun licensing probe

By LARRY NEUMEISTER
Apr. 25, 2017



NEW YORK (AP) — A former New York Police

Department lieutenant, two former police officers and a lawyer who once worked as a prosecutor were arrested in a federal gun licensing probe Tuesday as authorities said police employees traded speedy handling of gun permits for paid vacations, jewelry, catered parties, cash and visits to strip clubs.

According to court papers, the trading of gun licenses for bribes stretched from at least 2010 to 2016. Authorities said members of the NYPD License Division solicited and accepted bribes from individuals who charged customers thousands of dollars in fees to secure gun licenses.

At a news conference, NYPD Commissioner James P. O'Neill said he was "absolutely appalled" at what happened and promised that changes have been made to prevent a recurrence. He said more than 100 gun licenses have been revoked as the department reviews over 400 license applications to ensure they were properly processed.

Acting Manhattan U.S. Attorney Joon H. Kim said bribes resulted in licenses being awarded to people with substantial criminal histories, including convictions for crimes involving weapons or violence.

"They sold their duty to do their jobs," Kim said. "They allegedly got more audacious as time went on."

Among those charged was Paul Dean, 44, of Wantagh, a police lieutenant and the second-highest ranking member of the License Division when he retired in January 2016. He supervised about 40 uniformed police employees and had ultimate authority to approve or reject licenses and upgrade requests, authorities said.

A criminal complaint in Manhattan federal court said Dean sought and obtained from gun license applicants free restaurant meals, free liquor, free car repairs and free entertainment,

including trips to strip clubs.

Abe George, an attorney for Dean, said his client was a “dedicated public servant” for over two decades.

“He is presumed innocent under the law and looks forward to his day in court,” George said.

Also charged was John Chambers, 62, a Manhattan attorney who worked from 1983 to 1985 as an assistant district attorney in the Brooklyn district attorney’s office.

Prosecutors say Chambers marketed himself to potential clients as the “Top Firearms Licensing Attorney in NY,” boasting he specialized in everything related to gun licenses.

The complaint said he gave members of the NYPD License Division tickets to Broadway shows and sporting events, sports memorabilia, an \$8,000 watch and cash hidden in magazines. The lawyer had clients on Long Island.

Others arrested Tuesday included a retired police officer who worked in the licensing bureau from 2011 through 2016 and a retired police detective who retired in 1999 but sought gun permits for others as he operated a gun store. All were charged with conspiracy to commit bribery, among other offenses.

Attorney Barry Slotnick, representing Chambers, said Chambers will plead not guilty to the charges, which include conspiracy.

“He’s an excellent lawyer. We do believe that he has not done anything inappropriate or wrong,” Slotnick said.

The arrests are part of an ongoing probe that led to a shakeup of the NYPD License Division last year.