

To Be Argued By:
Jonathan Corbett

New York County Clerk Index No. 158273/2016

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

RECORD ON APPEAL

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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 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, 2016. The appeal is presented upon reproduction of the full record of the proceedings below.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Jonathan Corbett,
Petitioner-Plaintiff

v.

The City of New York,
Respondent-Defendant
Thomas M. Prasso,
Respondent

Index No. _____

**VERIFIED ARTICLE 78
PETITION AND COMPLAINT**

Petitioner Jonathan Corbett (“Corbett”) challenges an order of the New York City Police Department (“NYPD”), a part of the City of New York, denying his agency appeal regarding his application for a pistol permit¹, as well as the denial of a public records request, and states as follows:

NATURE OF THE ACTION

1. As the Court is aware, the U.S. Supreme Court has declared that the right to keep and bear arms is guaranteed to the citizens by the United States Constitution, and that right has been held applicable to the states in *McDonald v. Chicago*, 561 U.S. 742 (2010).
2. Notwithstanding, the “worst-kept open-secret” in New York City is that to lawfully carry a handgun, one must be connected with the government or willing to pay a bribe; the *de facto* policy is that ordinary citizens may not bear arms in public. This is not mere hyperbole – the officer who denied Corbett’s gun license was removed from his post not 2 weeks later as a result of a federal corruption investigation whereby cash was accepted in exchange for approval of pistol permits. At least 2 officers so far were arrested and one has pled guilty.

¹ NYPD paperwork, state law, and case law interchangeably use the term “permit” and “license,” and also varyingly refer to the permit or license as a “concealed carry license,” “handgun license,” “pistol permit,” *etc.* Any reference to any such “permit” or “license” within this complaint is to one and the same: state permission to carry a concealed handgun on one’s person under N.Y. Penal Law § 400.00 *et. seq.*

3. It is of no surprise that a system in which a citizen must convince the government that he has a “good reason” to exercise a right results in unfair results at best, and pay-for-play at worst. In any other context, courts would never require “a good reason” to exercise a right – *e.g.*, the right to speak freely, to be entitled to counsel, to refuse to consent to a search, *etc.*, even when public safety may arguably be enhanced by doing so. While the state may place public safety restrictions on the right to keep and bear arms, a requirement of having “a good reason” to exercise one’s rights cannot stand.
4. As a result of *McDonald*, the previously oft-quoted saying that gun ownership in New York is a “privilege and not a right” can no longer be said to be true. It is now clearly a right and not a privilege, and it follows that judicial review of denials of license applications can no longer be subject to a mere “arbitrary and capricious” standard, especially when the policy itself, rather than the application of the policy, is challenged, and especially when the group to which the Court would otherwise give deference has shown itself to be unworthy of that trust.
5. Corbett seeks to vindicate his right to bear arms in public, **whether openly or concealed**², and hereby asks this Court to review a decision of the NYPD denying, despite having no objection to Corbett’s good moral character, his application for the only type of permit available that would allow him to carry a handgun in public.
6. Corbett further seeks to vindicate his right to own firearms at all, whether only in the home or together with the right to carry in public, without answering questions that have no basis other than as subterfuge for arbitrary and capricious denials.

² To be perfectly clear, Corbett is asking the Court to review the constitutionality of a regulatory scheme that simultaneously prohibits him from open *and* concealed carry. Corbett concedes, for the purpose of this litigation, that a state may ban the right to carry concealed weapons, or it may ban the right to openly carry weapons, but the question presented is whether it may ban *both*. As far as Corbett’s research has shown, this is a question of first impression in this jurisdiction.

7. Finally, Corbett also seeks review of the denial of a Freedom of Information Law³ (“FOIL”) request related to handgun applications within the City.

JURY TRIAL

8. As it is expected there will be few to zero disputed issues of fact in this matter, Corbett does not request a jury trial and consents to a bench trial for all issues so triable.

PARTIES

9. Petitioner-Plaintiff Corbett is a U.S. citizen residing in Miami-Dade County, Florida, and a part-year resident of New York County, New York⁴.
10. Respondent-Defendant City of New York (the “City”) is the city incorporated by and through the laws of the State of New York and is the entity responsible for its New York City Police Department. City of New York is a proper respondent for Corbett’s Article 78⁵ petition and the proper defendant for Corbett’s FOIL claim.
11. Respondent Thomas M. Prasso (“Prasso”) is the Director of the NYPD’s Licensing Division and issued the order denying Corbett’s intra-agency appeal of the denial of his application for a pistol permit. Mr. Prasso is sued in his official capacity and is a proper respondent for Corbett’s Article 78 petition.

JURISDICTION & VENUE

12. This Court has jurisdiction over Corbett’s Article 78 petition under N.Y. CPLR §§ 3001 and 7801 – 7806.

³ All references herein to “FOIL” are to N.Y. Pub. Off. Law §§ 84 – 90.

⁴ Part-year residence is sufficient under New York law for issuance of a pistol permit. *See Osterweil v. Bartlett*, 21 N.Y.3d 580 (2013).

⁵ All references herein to “Article 78” are to N.Y. CPLR §§ 7801 – 7806.

13. This Court has jurisdiction over Corbett's FOIL claim under N.Y. CPLR § 3001 and N.Y. Pub. Off. Law §§ 84 – 90.
14. This Court is the proper venue because the incident giving rise to the complaint occurred entirely within the County of New York, because the City exists within this County, and because Prasso works within in his official capacity within this County.

ALLEGATIONS OF FACT

15. 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 weapon.
16. 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.
17. 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 carry" license, nor any variety of "open carry" license, available to civilians).
18. During Corbett's appearance at the Licensing Division, Corbett provided to the Licensing Division the following:
 - a. (1) three-page application,
 - b. (1) letter of necessity,
 - c. (1) letter of explanation for checkboxes on the application that specify that they require additional explanation,
 - d. (1) notarized affidavit certifying that Corbett does not have a roommate,
 - e. (1) notarized affidavit from someone willing to take possession of Corbett's weapons upon his death or disability,
 - f. (2) "passport-style" photos,
 - g. (1) New York identification card,

- h. (1) U.S. passport,
- i. (1) social security card,
- j. (1) copy of Corbett's business tax return,
- k. (1) set of fingerprints, and,
- l. \$429.75.

19. Corbett's application was accepted for processing.

20. On December 24th, 2015, NYPD P.O. Thomas Barberio mailed to Corbett a letter advising that Corbett needed to schedule an in-person interview and provide the following additional documents:

- a. (3) letters of recommendation, notarized and signed by people who know Corbett for at least 5 years but are not family members,
- b. (1) letter from a doctor describing any mental illness Corbett has ever suffered,
- c. (6) months of bank withdrawal slips,
- d. (1) copy of Corbett's out-of-state gun license⁶,
- e. (1) statement describing any handguns Corbett owns out-of-state and how they are stored,
- f. (1) affirmation of familiarity with New York's laws regulating use of deadly force,
- g. (1) affirmation that Corbett has never had any "orders of protection" issued against him,
- h. 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),
- i. Pictures of Corbett's business, inside and out, and

⁶ Corbett is, and at all times relevant was, licensed to carry a concealed weapon in Florida and may lawfully carry a concealed weapon in at least 36 states. Additionally, he may "open carry" a weapon in a handful more. New York is among a shrinking count of less than 10 states that prohibit Corbett from carrying a firearm in any manner.

- j. Numerous additional tax records and other records related to the businesses Corbett owns.
21. Corbett expeditiously provided these documents to P.O. Barberio to the best of his ability and scheduled an interview.
 22. On April 7th, 2016, Corbett met with P.O. Barberio for the requested interview.
 23. The interview consisted of verifying that all documents were in order. No substantial “investigatory” questions were asked.
 24. Corbett was advised by P.O. Barberio at that time that the NYPD’s background check results on him were clear of any issues.
 25. Corbett was also advised by P.O. Barberio that the officer who would be taking over his application from Sgt. Barberio was unlikely to grant it because Corbett did not show a sufficient “need” to carry a firearm.
 26. On April 18th, 2016, NYPD D.I. Michael Endall wrote to Corbett a letter with a decision regarding his permit application.
 27. D.I. Endall did not find any problems with Corbett’s “good moral character.”
 28. Indeed, Corbett has never been accused of, let alone convicted of, a crime.
 29. Notwithstanding Corbett’s good moral character, the letter stated that Corbett’s license would not be approved for the following two reasons:
 - a. Corbett refused 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,” and

- b. Corbett did not show “proper cause” – a “good reason” to exercise his Second Amendment rights.
30. 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.”
31. As it would turn out, D.I. Endall would be removed from his position as commander of the NYPD Licensing Division about 2 weeks after writing his letter to Corbett.
32. 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, among other things, approval of pistol permit applications. *See* <http://nypost.com/2016/04/18/shomrim-leader-busted-amid-nypd-corruption-probe/>
33. At least 1 officer under D.I. Endall’s supervision has so far pled guilty to accepting cash for gun licenses, and another has been charged. *See* <http://newyork.cbslocal.com/2016/06/20/nypd-corruption-probe-arrests/>
34. 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.
35. On May 31st, 2016, Respondent Prasso wrote to Corbett advising him that his appeal had been denied, re-iterating the NYPD’s position described by D.I. Endall. *See* Exhibit A.

36. An Article 78 petition is timely if filed within 4 months of the date of a final decision; N.Y. CPLR § 217(1).
37. Prasso's letter was a final decision for the purposes of Article 78 and N.Y. CPLR § 217; therefore, this petition is timely, assuming the "clock" starts upon mailing of a final decision, if filed by September 30th, 2016.
38. As a result of Prasso's determination, Corbett cannot even be granted a "premises license" allowing him to keep a handgun in his home, but not carry it, because although the "proper cause" requirement cannot apply to a home license per *McDonald*, the NYPD still requires an answer to the objectionable Questions 11 – 13 as a condition of granting a home license.
39. Before filing his pistol permit application, Corbett filed a Freedom of Information Law request with the NYPD for any documents that demonstrate how pistol permit applications are evaluated⁷.
40. NYPD Lt. Richard Mantellino processed Corbett's request and attached 4 pages of documents, none of which identify criteria by which a license is approved or disapproved. See Exhibit B.
41. Based on the foregoing, the NYPD has no written internal standards for how they evaluate the questions answered on the pistol permit applications, and instead evaluate responses based on their own personal judgments.
42. Upon belief, the NYPD has no formal standard by which they evaluate if being fired from a job disqualifies an applicant.

⁷ This complaint discusses 2 FOIL requests: one filed before his application, and the second after. The one filed *before* his application was properly fulfilled and is discussed here as a means of showing that the NYPD's evaluation of gun license applications is arbitrary and capricious. The one filed *after* his application, discussed *infra*, was not properly fulfilled and is the FOIL request that Corbett asks the Court to review.

43. Upon belief, the NYPD has no medical staff to evaluate, and has never sought advice from medical staff as to, whether an applicant's use of doctor-prescribed narcotics or tranquilizers is a cause for concern regarding their ability to possess a handgun.
44. Upon belief, the NYPD has no means of securely storing Protected Health Information (PHI) as defined by the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d(4) and 45 CFR § 160.103, and therefore the NYPD is requiring those who wish to exercise their Second Amendment rights, even if only to possess a gun in one's home, to submit their PHI with no guarantees on its safe storage nor limits on its dissemination.
45. The notion that testifying in front of our government may be a basis for disqualification from one's Second Amendment rights is patently absurd.
46. Upon belief, the sole basis for Questions 11, 12, and 13 is to provide the reviewing officer an *excuse* to deny an application, not a reason.
47. Instead of an equitable and transparent system that relies to the minimum on the unfettered discretion of officers, pistol permit applications are, in practice and when not tainted by bribery, judged based on whether an individual has the "proper connections."
48. As an illustration, the New York Times has reported that pistol permit applications are routinely granted to well-known lawyers, radio DJs, doctors, and the like. *See* <http://www.nytimes.com/2011/02/20/nyregion/20guns.html>
49. After Corbett's application was denied, in order to investigate the veracity of the above, he sent the NYPD a FOIL request for, *inter alia*, all pistol permit applications within a 3-month window and their decisions. *See* Exhibit C.
50. Corbett explicitly requested that the NYPD redact any personally-identifying information from any responsive records such that there would be no privacy concerns. *Id.*

51. NYPD Lt. Richard Mantellino again 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." See Exhibit D.
52. 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.
53. The NYPD has not responded to Corbett's FOIL appeal to date, now approximately four months later.
54. The NYPD's total denial (or refusal to process the appeal of the denial, also known as "constructive denial") of Corbett's FOIL request is in especially bad faith given that it is clear that his FOIL request at least partially must be fulfilled thanks to *New York Times v. City of New York*, 103 A.D.3d 405 (1st Dept. 2013). See also *Gannett v County of Putnam*, 2016 N.Y. App. Div. LEXIS 5890 (2nd Dept., September 14th, 2016) (even if Corbett had requested identifying information, "names and addresses of pistol permit holders are, by statute, public records").
55. The documents Corbett requested would shed light on the opaque process with which the NYPD makes gun licensing decisions, and therefore their release would be of significant public interest.
56. Additionally, the documents would show whether or not the 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.

CLAIMS FOR RELIEF

Count 1 – Judgment Pursuant to CPLR §§ 7801-7806

("Proper Cause" Requirement)

57. Corbett re-alleges all of the preceding paragraphs and incorporates them by reference.

58. Given that open-carry is prohibited in this state, a refusal to grant a license to carry a concealed weapon subject to a “proper cause” requirement is an unconstitutional restriction on Second Amendment rights because it means that Corbett, under no circumstances, may “bear arms.”

59. N.Y. Penal Law § 400.00(2)(f) should therefore be declared facially unconstitutional under the Fourth Amendment to the U.S. Constitution, null, and void, as it pertains to the “proper cause” requirement, insofar as it is interpreted to mean that a citizen must demonstrate a need greater than that of the average citizen.

60. The NYPD’s basis for denial of “failure to show proper cause” should be reversed.

Count 2 – Judgment Pursuant to CPLR §§ 7801-7806

(“Questions 11 – 13” of the Pistol Permit Application)

61. Corbett re-alleges all of the preceding paragraphs and incorporates them by reference.

62. Denying an application based on Questions 11 – 13, given that the NYPD has no rational standard by which to judge them and that they are not rationally related to the government interest allegedly at play, fails the “arbitrary and capricious” test.

63. Further, denying an application based on Questions 11 – 13 is an unconstitutional infringement on Corbett’s Second Amendment rights under intermediate scrutiny.

64. A finding that the “proper cause” requirement is constitutional would not moot this issue since it stands in the way of Corbett being able to receive a home (“premises”) license.

65. The NYPD’s basis for denial based on Questions 11 – 13 should be reversed.

Count 3 – Judgment Pursuant to CPLR §§ 7801-7806

(Denial of Pistol Permit)

66. Corbett re-alleges all of the preceding paragraphs and incorporates them by reference.

67. After reversing the “proper cause” and “Questions 11 – 13” bases for denial, there exist no further bases for denial.

68. As such, the Court should order that the NYPD issue Corbett’s concealed carry pistol permit.

Count 4 – N.Y. Freedom of Information Law
(Refusal to Provide Non-Exempt Records)

69. Corbett re-alleges all of the preceding paragraphs and incorporates them by reference.

70. Corbett requested documents that are not exempt from disclosure under state law.

71. By failing to release such documents, narrowly time-bounded and limited in scope, the NYPD has unreasonably infringed on Corbett’s right to those documents under the state’s Freedom of Information Law.

72. As such, the Court should order that the NYPD provide Corbett with the documents requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- i. Declaratory relief stating that the “proper cause” requirement of N.Y. Penal Law § 400.00(2)(f) is facially unconstitutional, null, and void, insofar as it is interpreted to mean that a citizen must demonstrate a need greater than that of the average citizen, and in combination with the state’s blanket ban on open carry.
- ii. Declaratory relief stating that refusal to answer Questions 11 – 13 of the pistol permit application is not “substantially related” to the government’s interest in determining whether an individual is qualified to possess or carry a handgun, or is otherwise unconstitutional, and thus may not be the basis for a denial of that application.

- iii. An order, whether styled as a mandatory injunction, writ of *mandamus*, Article 78 relief, or similar, requiring the NYPD to issue to Corbett the license which he applied for.
- iv. Cost of the action.
- v. Reasonable attorney's fees, to the extent that state law allows a *pro se* litigant to collect attorney's fees, and in the event Corbett retains an attorney at a later point in this matter.
- vi. Any other such relief as the Court deems appropriate.

Dated: New York, New York
September 30th, 2016

Respectfully submitted,



Jonathan Corbett

Plaintiff, *Pro Se*

228 Park Ave. S. #86952

New York, NY 10003

E-mail: jon@professional-troublemaker.com



POLICE DEPARTMENT
License Division
One Police Plaza- Rm. 110A
New York, N.Y. 10038
Tel: (646) 610-5560

NOTICE OF DISAPPROVAL AFTER APPEAL

May 31, 2016

Jonathan Corbett
228 Park Ave. So. #86952
New York, N.Y. 10003

Appeal# 36/16
Disap.# 110/16

Dear Mr. Corbett:

I am writing to inform you that based on my review of the entire record, your appeal of the determination denying your Carry Business license is **disapproved** due to:

- **Your failure to complete your application by refusing to answer questions 11, 12 and 13. Refusing to answer a question contained in a proper application for a license does not meet the requirements of PL 400.00 (1), that all statements in a proper application are true. Your refusal to answer these questions constitutes a failure to cooperate with the License Division's investigation of your application, see PL 400.00 (4) and 38 RCNY 5-10 (m).**
- **You have not shown "proper cause" to be licensed to carry a concealed firearm in New York City. Your statement, in response to paragraph 1 of the Letter of Necessity, is conclusory and lacks specific information needed to evaluate your claim that you need to carry a concealed handgun, see PL 400.00 (2) (f) and 38 RCNY 5-03.**

You may appeal this determination by commencing an Article 78 proceeding in State Supreme Court within four months of the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tom Prasso', written over a horizontal line.

Thomas M. Prasso
Director

TMP:da

Record on Appeal A015



POLICE DEPARTMENT
LEGAL BUREAU
F.O.I.L. UNIT, ROOM 110C
ONE POLICE PLAZA
NEW YORK, NY 10038

October 10, 2013

Jonathan Corbett
382 NE 191 Street
Miami, Florida 33179

**RE: FREEDOM OF INFORMATION LAW
REQUEST: LB #13-PL-4104**

Dear Mr. Corbett:

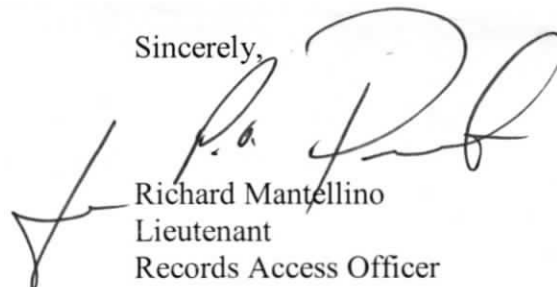
This letter is in further response to your FOIL request dated June 7, 2013, and pursuant to the August 15, 2013 determination of the Records Access Appeals Officer in which this matter was remanded to the undersigned.

Responsive to your request for "any document that provides guidance on how the NYPD and its officers decide whether to accept or reject pistol permit applications", four (4) pages have been located and are forwarded herewith. I also refer you to the laws which govern the licensing of pistol permit holders: New York State Penal Law, Article 400 and The Rules of the City of New York, Title 38, Chapter 5.

Please remit the copying fee for 4 pages, in the amount of \$1.00 to the New York City Police Department, noting the file number 13-PL-4104, on your payment to Records Access Officer, NYPD Document Production Unit, One Police Plaza, Room 110C, New York, New York 10038.

You may appeal this decision or any portion thereof. Such an appeal must be made in writing, within 30 days of the date of this letter, and must be forwarded to: Jonathan David, Records Access Appeals Officer, New York City Police Department, One Police Plaza, Room 1406, New York, NY 10038.

Sincerely,



Richard Mantellino
Lieutenant
Records Access Officer

COURTESY • PROFESSIONALISM • RESPECT

Record on Appeal A016

**POLICE DEPARTMENT
CITY OF NEW YORK**

November 29, 2010

From: Director, License Division
To: All Members of the License Division
**SUBJECT: REVISIONS TO TITLE 38 OF THE RULES OF THE CITY OF
NEW YORK**

Title 38 of the Rules of the City of New York was recently amended to simplify the application process and clarify rules for denial of license and permit applications. These revisions take effect on Monday, November 29, 2010.

Among the important changes taking effect are the following:

- Section 5-06 has been amended to eliminate the notarization requirement for new and renewal handgun license applications and replace it with a requirement that statements therein be affirmed in writing. False statements are punishable under the Penal Law and are grounds for denial. Other sections eliminate the notarization requirement in related documents.
- Sections 3-03 and 5-10 now contain a list of factors to be considered when determining the legal standards of "good moral character" and "no good cause exists for the denial" regarding license and permit applications. Sections 3-05 and 5-11 incorporate the factors listed in 3-03 and 5-10 and apply them to suspensions and revocations of permits and licenses.

The full text of these sections of the Rules as amended is attached to this memorandum and should be referred to for more complete information.

For your information.



Thomas M. Prasso
Director

REQUIRED ENTRIES IN CASE HISTORY SHEET *(all entries require date)*
PREMISE RESIDENCE CASE RECEIVED BEGINNING JANUARY 1, 2009

- Intake Unit – indicate whether all documents required at intake were provided, or list missing documents, and other notes.
- Supervisor indicates Investigating Officer (I/O) assigned.
- I/O mails introductory cover letter and checklist of documents needed to Applicant.
- >All messages and attempts to contact by both I/O and Applicant.
>Initial contact acknowledging receipt of introductory letter and list of documents needed *(note that if this does not occur within 2 weeks, a letter must be sent to the Applicant with warning regarding failure to contact and necessity of interview)*.
>All subsequent contact and attempts between I/O and Applicant. (Multiple entries throughout investigation)
- **2 week review**
(Entry by I/O indicating case provided to Supervisor at 2-week mark)
(Entry by Supervisor verifying that introductory cover letter and checklist of documents needed was mailed to Applicant by I/O; and any other notes by supervisor)
- Notes regarding special circumstance or unusual delay in obtaining required documents or information *(Attach relevant documents, such as letter(s) received or letter(s) sent to Applicant, and indicate on Enclosure Index)*.
- Entry at 4-week mark regarding scheduling of interview, if not already conducted.
- Interview of Applicant *(Attach Interview Sheet and indicate date on Enclosure Index)*.
- Entry between 6-week and 8-week marks **identifying outstanding documents or information** and detailing communication of same to Applicant *(Attach relevant documents, such as letter(s) to Applicant)*.
- **8 week review**
(Entry by I/O indicating case provided to Supervisor at 8-week mark)
(Entry by Supervisor verifying review of I/O's entry identifying outstanding documents or information and communication of same to Applicant).
- **14 week review** (if necessary) (separate entries by I/O and Supervisor)
- I/O submits completed case to Supervisor
- Supervisor returns for additional steps; or signs and submits case

REQUIRED ENTRIES IN CASE HISTORY SHEET *(all entries require date)*
PREMISE BUSINESS, CARRY BUSINESS, SPECIAL CARRY, LIMITED CARRY
CASES RECEIVED BEGINNING NOVEMBER 1, 2011

- Intake Unit – indicate whether all documents required at intake were provided, or list missing documents, and other notes.
- Supervisor indicates Investigating Officer (I/O) assigned.
- I/O mails introductory cover letter and checklist of documents needed to Applicant.
- >All messages and attempts to contact by both I/O and Applicant.
>Initial contact acknowledging receipt of introductory letter and list of documents needed *(note that if this does not occur within 3 weeks, a letter must be sent to the Applicant with warning regarding failure to contact and necessity of interview)*.
>All subsequent contact and attempts between I/O and Applicant. (Multiple entries throughout investigation)
- **3 week review**
(Entry by I/O indicating case provided to Supervisor at 3-week mark)
(Entry by Supervisor verifying that introductory cover letter and checklist of documents needed was mailed to Applicant by I/O; and any other notes by supervisor)
- Notes regarding special circumstance or unusual delay in obtaining required documents or information *(Attach relevant documents, such as letter(s) received or letter(s) sent to Applicant, and indicate on Enclosure Index)*.
- Entry at 6-week mark regarding scheduling of interview, if not already conducted.
- Interview of Applicant *(Attach Interview Sheet and indicate date on Enclosure Index)*.
- Entry between 8-week and 10-week marks **identifying outstanding documents or information** and detailing communication of same to Applicant *(Attach relevant documents, such as letter(s) to Applicant)*.
- **10 week review**
(Entry by I/O indicating case provided to Supervisor at 10-week mark)
(Entry by Supervisor verifying review of I/O's entry identifying outstanding documents or information and communication of same to Applicant).
- **15 week review** (if necessary) (separate entries by I/O and Supervisor)
- I/O submits completed case to Supervisor
- Supervisor returns for additional steps; or signs and submits case

Jonathan Corbett

228 Park Ave S. #86952

New York, NY 10003

May 6th, 2016

To: New York Police Department
Attn.: Records Access Officer
FOIL Unit, Legal Bureau, Rm. 110-C
One Police Plaza
New York, NY 10038

To Whom It May Concern:

I hereby request, under all relevant public records laws, any records in the NYPD's possession that meet any of the following criteria:

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.

Please include in your response any handwritten or typed notes, photographs, e-mails, and any other types of documents in your possession, whether or not they are stored electronically. Please exclude: tax returns, DMV abstracts, identification documents (copies of drivers licenses, *etc.*), and criminal history records (except my own criminal history, should the NYPD have any such documents as part of my application for a gun license, which should be included).

If documents contain information that cannot be released under state law, it is requested that the information be redacted rather than the entire document withheld. Please list all documents withheld and the reasons therefor.

I may be reached at (646) 316-4524. Thank you very much for your time.

Sincerely,

Jonathan Corbett



POLICE DEPARTMENT
LEGAL BUREAU
F.O.I.L Unit, Room 110C
One Police Plaza
New York, NY 10038

05/27/16

Mr. Jonathan Corbett
228 Park Ave S.
86952
New York, NY 10003

FOIL Req #: 2016-PL-5156
Your File #:
Re: concealed firearm

Dear Sir or Madam:

This is in response to your letter dated 05/06/16, which was received by this office on 05/10/16, in which you requested access to certain records under the New York State Freedom of Information Law (FOIL).

In regard to the documents(s) which you requested, I must deny access to these records on the basis of Public Officers Law Section 87(2)(e)(i) as such records/information, if disclosed would interfere with law enforcement investigations or judicial proceedings.

You may appeal this decision or any portion thereof. Such an appeal must be made in writing within thirty (30) days of the date of this letter and must be forwarded to: Jonathan David, Records Access Appeals Officer, New York City Police Department, One Police Plaza, Room 1406, New York, NY 10038. Please include copies of the FOIL request and this letter with your appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard Mantellino".

Richard Mantellino
Lieutenant
Records Access Officer

COURTESY • PROFESSIONALISM • RESPECT

Record on Appeal A022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

<p style="text-align: center;">Jonathan Corbett, <i>Petitioner-Plaintiff</i></p> <p style="text-align: center;">v.</p> <p style="text-align: center;">The City of New York, <i>Respondent-Defendant</i> Thomas M. Prasso, <i>Respondent</i></p>

Index No. _____

NOTICE OF PETITION

PLEASE TAKE NOTICE, that upon the annexed Verified Petition, Petitioner Jonathan Corbett will move this Court at an Article 78 Term at the New York County Courthouse at 60 Centre St, New York, NY 10007, on November 30th, 2016, at 9:30 AM, or as soon as thereafter Petitioner may be heard, for an order modifying a decision of the New York Police Department, Licensing Division, denying Petitioner’s application for a pistol permit, for costs, and for other such relief as detailed in the annexed Verified Petition.

Dated: New York, New York
September 30th, 2016

Respectfully submitted,

Jonathan Corbett
Plaintiff, *Pro Se*
228 Park Ave. S. #86952
New York, NY 10003
E-mail: jon@professional-troublemaker.com

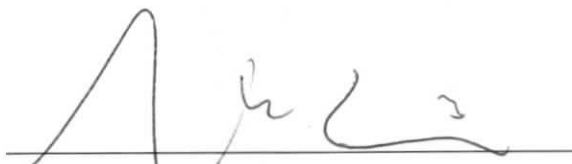
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

<p>Jonathan Corbett, <i>Petitioner-Plaintiff</i></p> <p>v.</p> <p>The City of New York, <i>Respondent-Defendant</i></p> <p>Thomas M. Prasso, <i>Respondent</i></p>
--

Index No. _____

VERIFICATION

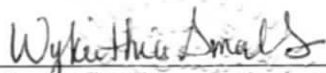
I, Jonathan Corbett, being duly sworn deposes and says: I am the *pro se* Petitioner-Plaintiff in the above captioned action. I have reviewed the contents of the foregoing petition and complaint. The information therein is true to my knowledge except for those matters stated to be alleged on information and belief, and as to those matters, I believe the information to be true.



Jonathan Corbett

Sworn to before me this

29th day of September, 2016.



 Notary Public

WYKEITHIA SMALLS
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01SM6335153
 Qualified in New York County
 My Commission Expires 01-04-2020

REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (7/2012)

New York Supreme COURT, COUNTY OF New York

Index No: Date Index Issued:

CAPTION: Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

Jonathan Corbett

Plaintiff(s)/Petitioner(s)

For Court Clerk Use Only:

IAS Entry Date

Judge Assigned

RJI Date

-against-

City of New York, Thomas M Prasso

Defendant(s)/Respondent(s)

NATURE OF ACTION OR PROCEEDING: Check ONE box only and specify where indicated.

MATRIMONIAL

Contested

NOTE: For all Matrimonial actions where the parties have children under the age of 18, complete and attach the MATRIMONIAL RJI Addendum. For Uncontested Matrimonial actions, use RJI form UD-13.

TORTS

- Asbestos, Breast Implant, Environmental, Medical, Dental, or Podiatric Malpractice, Motor Vehicle, Products Liability, Other Negligence, Other Professional Malpractice, Other Tort

OTHER MATTERS

- Certificate of Incorporation/Dissolution, Emergency Medical Treatment, Habeas Corpus, Local Court Appeal, Mechanic's Lien, Name Change, Pistol Permit Revocation Hearing, Sale or Finance of Religious/Not-for-Profit Property, Other

COMMERCIAL

- Business Entity (including corporations, partnerships, LLCs, etc.), Contract, Insurance (where insurer is a party, except arbitration), UCC (including sales, negotiable instruments), Other Commercial

NOTE: For Commercial Division assignment requests [22 NYCRR § 202.70(D)], complete and attach the COMMERCIAL DIV RJI Addendum.

REAL PROPERTY: How many properties does the application include?

- Condemnation, Mortgage Foreclosure (Residential/Commercial), Property Address, Tax Certiorari - Section/Block/Lot, Tax Foreclosure, Other Real Property

SPECIAL PROCEEDINGS

- CPLR Article 75 (Arbitration), CPLR Article 78 (Body or Officer), Election Law, MHL Article 9.60 (Kendra's Law), MHL Article 10 (Sex Offender Confinement-Initial/Review), MHL Article 81 (Guardianship), Other Mental Hygiene, Other Special Proceeding

STATUS OF ACTION OR PROCEEDING: Answer YES or NO for EVERY question AND enter additional information where indicated.

YES NO

- Has a summons and complaint or summons w/notice been filed? (Yes/No), Has a summons and complaint or summons w/notice been served? (Yes/No), Is this action/proceeding being filed post-judgment? (Yes/No)

Record on Appeal A025

NATURE OF JUDICIAL INTERVENTION:

Check ONE box only AND enter additional information where indicated.

- Infant's Compromise
- Note of Issue and/or Certificate of Readiness
- Notice of Medical, Dental, or Podiatric Malpractice Date Issue Joined:
- Notice of Motion Relief Sought: Return Date:
- Notice of Petition Relief Sought: Article 78 (Body or Officer) Return Date: 11/30/2016
- Order to Show Cause Relief Sought: Return Date:
- Other Ex Parte Application Relief Sought:
- Poor Person Application
- Request for Preliminary Conference
- Residential Mortgage Foreclosure Settlement Conference
- Writ of Habeas Corpus
- Other:

RELATED CASES:

List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases. If additional space is required, complete and attach the **RJI Addendum**. If none, leave blank.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case

PARTIES:

For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in space provided. If additional space is required, complete and attach the **RJI Addendum**.

Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
	List parties in caption order and indicate party role(s) (e.g., defendant; 3rd-party plaintiff).	Provide attorney name, firm name, business address, phone number and e-mail address of all attorneys that have appeared in the case. For unrepresented litigants, provide address, phone number and e-mail address.		
<input type="checkbox"/>	Name: Corbett, Jonathan Role(s): Plaintiff/Petitioner	Jonathan Corbett, 228 Park Ave. S. 86952, Miami, FL 33179-3317, jon@professional-troublemaker.com	NO	
<input type="checkbox"/>	Name: City of New York Role(s): Defendant/Respondent	NYC Law Department, 100 Church St., New York, NY 10007	NO	
<input type="checkbox"/>	Name: Prasso, Thomas M. Role(s): Defendant/Respondent	NYC Law Department, 100 Church St., New York, NY 10007	NO	
<input type="checkbox"/>	Name: Role(s):			
<input type="checkbox"/>	Name: Role(s):			

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 09/30/2016

Jonathan Corbett
SIGNATURE

Jonathan Corbett

ATTORNEY REGISTRATION NUMBER

PRINT OR TYPE NAME

Record on Appeal A026

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

X

Jonathan Corbett

Plaintiff(s)/Petitioner(s),

**AFFIDAVIT OF SERVICE
OF INITIATING PAPERS**

- vs -

Index No.: 158273/2016

City of New York, Thomas M. Prasso

Defendant(s)/Respondent(s).

X

STATE OF NEW YORK)
COUNTY OF) ss.:

I, Elise Domyan, being duly sworn, depose and say:

I am over eighteen (18) years of age, am not a party to this action, and reside at:

279 Lee Ave, Brooklyn, NY 11206

That on 10/12, 2016, at 1 a.m. p.m., I served a copy of the within Verified Petition
Complaint, Notice, RJF on City of New York + Thomas M. Prasso. The address of the place
where the papers were served is: 100 Church St., New York, NY

I served the papers in the manner indicated below (check 1, 2 or 3):

1. **Individual**

By delivering a true copy thereof to _____ personally. I
knew the person served to be the person named in those papers because:

2. **Corporation**

By serving the above on City of New York + Thomas M. Prasso, a domestic
corporation, by delivering a true copy thereof to Receptionist at NYC Law Dept.,
who is the authorized process recipient. I knew the corporation to
be that listed in the papers served and I knew the title of the person named above and
that he/she was authorized to accept service.

3. **Substituted Service**

By delivering a true copy thereof to _____, a person of
suitable age and discretion, at the actual place of business, dwelling house, or usual
place of abode in the state, and mailing, as indicated below.

Mailing (use with 3 above)

I also enclosed a copy of the above papers in a postpaid, sealed envelope properly addressed to Defendant's last known residence or actual place of business, located at:

I deposited the envelope in a post office depository under the exclusive care and custody of the United States Postal Service within New York State.

Description (use with 1, 2, or 3 above)

The individual I served had the following characteristics (check the appropriate boxes):

- | | | | |
|--|---|--|--|
| Sex: | Age: | Height: | Weight: |
| <input type="checkbox"/> Male | <input type="checkbox"/> 21 - 34 years | <input type="checkbox"/> Under 5' | <input type="checkbox"/> Under 100 lbs. |
| <input checked="" type="checkbox"/> Female | <input type="checkbox"/> 35 - 50 years | <input type="checkbox"/> 5'0" to 5'3" | <input type="checkbox"/> 100-130 lbs. |
| | <input checked="" type="checkbox"/> 51 - 61 years | <input checked="" type="checkbox"/> 5'4" to 5'8" | <input type="checkbox"/> 131-160 lbs. |
| | <input type="checkbox"/> Over 61 yrs. | <input type="checkbox"/> 5'9" to 6'0" | <input checked="" type="checkbox"/> 161-200 lbs. |
| | | <input type="checkbox"/> Over 6' | <input type="checkbox"/> Over 200 lbs. |

Color of skin (describe): black

Color of hair (describe): black & white

Other identifying features, if any (describe): _____

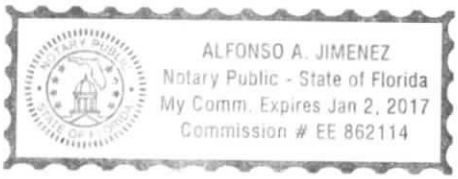
Military Service

~~I asked the person to whom I spoke whether the Defendant was in the military of the United States or New York State in any capacity and was told that he/she was not. Defendant did not wear a military uniform. I state upon information and belief that the Defendant is not in the military service of the United States or New York State. The basis for my belief is the conversation(s) and observation(s) described above.~~

Elise Domyan
 Signature
 Elise Domyan
 Print Name

Sworn to before me this 14
 day of October, 2016.

 Notary Public



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

JONATHAN CORBETT,

Petitioner-Plaintiff,

**NOTICE OF CROSS-MOTION
TO DISMISS**

-against-

THE CITY OF NEW YORK,

Index No. 158273/2016

Respondent-Defendant,

THOMAS M. PRASSO,

Respondent.

----- X

PLEASE TAKE NOTICE that upon the annexed affirmation of Jonathan David, dated January 19, 2017, the exhibits annexed thereto, the accompanying memorandum of law, and all prior pleadings and related proceedings heretofore had herein, respondents the City of New York and Thomas M. Prasso,¹ will move this Court before the Hon. Carol Edmead, in the Submissions Part, Room 130 at the courthouse located at 60 Centre Street, New York, New York on the 1st day of February, 2017, at 9:30 A.M., or as soon as counsel can be heard, for an order:

- (i) dismissing the First Claim of the petition/complaint pursuant to CPLR § 3211(a)(1) and 7804 on grounds that the petitioner-plaintiff failed to notify the New York State Attorney General of the action pursuant to CPLR § 1012(b) and Executive Law §71(1);

¹ Thomas M. Prasso retired on August 2, 2016, before this lawsuit was commenced; he was named in his official capacity as Director of the License Division of the New York City Police Department.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

JONATHAN CORBETT,

Petitioner-Plaintiff,

-against-

THE CITY OF NEW YORK,

Respondent-Defendant,

THOMAS M. PRASSO,

Respondent.

**AFFIRMATION OF
JONATHAN DAVID
IN SUPPORT OF CROSS-
MOTION TO DISMISS**

Index No. 58273/2016

----- X

JONATHAN DAVID, an attorney duly admitted to practice law before the courts of this state, affirms the truth of the following under the penalties of perjury pursuant to Rule 2106 of the New York Civil Practice Law and Rules (“CPLR”):

1. I am the Director of the License Division of the New York City Police Department (“License Division” or “the Department”).¹ I have been employed as an attorney with the Department’s Legal Bureau for more than twenty years. As the Director of the License Division, I oversee and administer, among other things, the licensing of handgun licenses in New York City. As part of my duties and responsibilities, I review and decide appeals of license applications. I am familiar with the facts set forth herein based upon my review of records and files maintained by the City of New York and the Department, and upon statements made by employees, officers and agents of the City and the Department.

¹ I succeeded respondent Thomas M. Prasso, as Director of the Department’s License Division, who retired from city service on August 2, 2016.

2. This affirmation is submitted in support of respondents-defendants' cross-motion to dismiss all of the claims asserted in the hybrid Article 78 petition and complaint filed in this case, which was denominated "Verified Article 78 Petition and Complaint" (hereinafter "petition"). A copy of the petition (without exhibits) is annexed as Exhibit "A."

3. Petitioner-plaintiff Jonathan Corbett ("Corbett") challenges the denial of a business carry handgun license application, and also seeks review of a pending request for the production of business carry license application files, pursuant to the New York Freedom of Information Law ("FOIL"). The facts related to the denial of Corbett's license application, and the pendency of Corbett's FOIL request, are provided herein, and the administrative record is annexed herewith.

A. Corbett's Application for a Carry Business Handgun License

4. By application dated December 22, 2015, Corbett applied for a "Carry Business" handgun license. A copy of Corbett's application and documents accompanying the application are annexed as Exhibit "B."²

5. The application form contains, among other things, a series of questions that seek to elicit information necessary to investigate and determine the applicant's fitness to carry a concealed handgun for business. Applicants are required to answer questions 11 through 20. Corbett did not answer questions 11,³ 12,⁴ and 13,⁵ and offered his explanation for the

² Exhibits are redacted in order to exclude personal information such as dates of birth, social security numbers, criminal history, bank account information and tax information.

³ Question 11 asks "Have you ever . . . [b]een discharged from any employment?"

⁴ Question 12 asks "Have you ever . . . [u]sed narcotics or tranquilizers? List doctor's name, address, telephone number, in explanation."

⁵ Question 13 asks "Have you ever . . . [b]een subpoenaed to, or testified at, a hearing or inquiry conducted by an executive, legislative or judicial body?"

unanswered questions. In an addendum to the application, entitled "Detailed Explanation," Corbett stated

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 2) the NYPD does not have the qualification, nor any appropriate procedure, to determine if the usage of such medication is an indicator that a license should not be granted.

Ex. B at 6.

6. Included with Corbett's application was a Letter of Necessity, which requires the applicant to answer questions about the nature of his employment and to explain a business need to carry a handgun. In response to the question why his employment requires the carrying of a concealed handgun, Corbett responded:

Applicant conducts business as a civil rights advocate. In order to exercise his civil rights fully, he needs a carry license.

Ex. B at 4. Corbett offered no further explanation despite further inquiry by the License Division.

7. In accordance with the License Division's procedures, and as part of its evaluation of Corbett's application, the License Division conducted an investigation into Corbett's background. During its review of the application, Corbett was sent a "Notice of Request of Additional Documents," dated December 24, 2015, to provide additional information and documentation. In particular, Corbett was specifically directed: "Please provide a detailed

letter of necessity demonstrating proper cause for a carry license as required by law.” A copy of this notice is annexed as Exhibit “C.”

8. In a letter to the License Division, dated March 15, 2016, Corbett provided additional documentation, and information. In response to the request for a more detailed letter of necessity, Corbett responded: “A letter of necessity was attached to my original handgun license application.” A copy of Corbett’s March 15, 2016 letter and document response is annexed as Exhibit “D.”

9. On April 7, 2016, Corbett was interviewed by the License Division. Additional records relating to the application, including other communications between Corbett and the License Division, are annexed as Exhibit “E.”

10. By Notice of Disapproval, dated April 18, 2016 (annexed hereto as Exhibit “F”), the License Division informed Corbett that his application for a Business Carry License was disapproved. The letter stated, in pertinent part

Your application for a Handgun License has been
DISAPPROVED for the following reasons:

* * *

Title 38 of the Rules of the City of New York § 5-05 (a) dictate that “The application form shall be completely filled out and submitted in person at the License Division.” By deliberately omitting the answers to Questions #11, #12, and #13 you have failed to meet this requirement.

* * *

Your letter of necessity, the required document to illustrate your "proper cause" as required by Title 38 of the Rules of the City of New York §5-03 is as follows (in its entirety):

“Applicant conducts business as a civil rights advocate. In order to exercise his civil rights fully, he needs a carry license.”

By submitting the preceding letter of necessity you have failed to demonstrate the “proper cause” required to carry a firearm.

Factors listed in Title 38 of the Rules of the City of New York § 5-10 (m), and (n) were taken into consideration regarding the eligibility requirements of “good moral character” and “no good cause exists for the denial of a license” in making the determination for the DISAPPROVAL of your application.

* * *

See Ex. F.

11. The Notice of Disapproval advised Corbett that he could appeal the determination by submitting to the Director of the License Division a sworn statement setting forth the grounds for appeal within thirty (30) days. See Ex. F.

B. Corbett’s Administrative Appeal and the Department’s Final Determination

12. In a notarized letter dated May 6, 2016, Corbett filed an appeal of the Notice of Disapproval (annexed hereto as Exhibit “G”). Corbett appealed the denial of his license application based on good cause by asserting that his refusal to answer questions on his application, combined with an explanation, “is not a failure to fill out a part of the application.” Alternatively, and citing to Kachalsky v. County of Westchester, 701 F.3d 81, 98 (2d. Cir. 2012) (“Kachalsky”), Corbett asserted that requiring him to answer questions 11, 12, and 13 of the application “is unconstitutional because it does not have a ‘substantial relationship’ to the city’s interest in [the] protection of the public.” See Ex. G.

13. Corbett also appealed from the denial of his license application based on a failure to demonstrate “proper cause” to carry a handgun for business. Corbett did not challenge

the fact that the information he provided in his Letter of Necessity was inadequate to establish “proper cause.” Rather, Corbett asserted that New York Penal Law § 400(2)(f)’s requirement of “proper cause” was unconstitutional. In this regard, Corbett stated,

I challenge the constitutionality of N.Y. Penal Law § 400(2)(f)’s requirement of “proper cause.” I am aware that the court in *Kachalsky, supra*, ruled the statute to be constitutional. However, other courts to consider the matter since *Kachalsky* have disagreed, See Moore v. Madigan, 702 F.3d 933 (7th Cir. 2012, Posner, J.); *Peruta v. San Diego*, 742 F.3d 1144 (9th Cir. 2014) (stayed pending en banc review). I believe that due to the split of authority on the matter in the Court of Appeals, the U.S. Supreme Court would hear the issue, and I look forward to litigating the issue should my appeal not be granted.

Ex. G (emphasis in original).

14. Corbett’s appeal was denied by the License Division in a Notice of Disapproval After Appeal from the then Director, Thomas M. Prasso, dated May 31, 2016. A copy of the Notice of Disapproval After Appeal is annexed hereto as Exhibit “G.” It states in pertinent part:

- Your failure to complete your application by refusing to answer questions 11, 12 and 13. Refusing to answer a questions contained in a proper application for a license does not meet the requirements of PL 400.00 (1), that all statements in a proper application are true. Your refusal to answer these questions constitutes a failure to cooperate with the License Division's investigation of your application, see PL 400.00 (4) and 38 RCNY 5-10 (m).
- You have not shown “proper cause” to be licensed to carry a concealed firearm in New York City. Your statement, in response to paragraph 1 of the Letter of Necessity, is conclusory and lacks specific information needed to evaluate your claim that you need to carry a concealed handgun, see PL 400.00 (2) (f) and 38 RCNY 5-03.

See Exhibit “H.”

15. The Notice of Disapproval After Appeal further advised Corbett that he had the right to challenge the denial by filing an Article 78 proceeding in New York State Supreme Court within four months from the date of the denial. See Exhibit "H."

C. Corbett's FOIL Request

16. In a letter dated May 6, 2016 to the Department's Records Access Officer, Corbett made the following request for records:

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 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.

A copy of Corbett's FOIL request is annexed as Exhibit "I."

17. In a letter dated May 17, 2016 from the Department's Records Access Officer (annexed hereto as Exhibit "J"), Corbett was notified his document requests was being reviewed.

18. In a letter dated May 27, 2016 from the Department's Records Access Officer (annexed hereto as Exhibit "K"), Corbett was notified that his document requests were denied "on the basis of Public Officers Law Section 87(2)(e)(i) as such records/information, if disclosed would interfere with law enforcement investigations or judicial proceedings."

19. In a letter to the Department's Records Access Officer dated June 6, 2016,

Corbett filed an appeal, stating in pertinent part:


. . . Lt. Mantellino's denial is hereby appealed on the grounds that: 1) revealing information about the applications and decisions surrounding them will not interfere with law enforcement, but rather shed light on a matter of significant public interest, and 2) even if some of the records requested contain data that cannot be released, a blanket denial is unnecessary in light of the specific statement in my FOIL request to redact sensitive data and provide what is remaining.

A copy of Corbett's June 6, 2016 letter is annexed as Exhibit "L."

20. 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.

WHEREFORE, it is respectfully requested that this Court dismiss the combined Article 78 petition and declaratory judgment complaint in its entirety, and grant such other and further relief as the Court deems appropriate, or if this motion is denied, that respondents be given a reasonable time in which to answer the petition.

Dated: New York, New York
January 19, 2017



Jonathan David

Index No.: 158273/2016

<p>SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK</p>	<p>JONATHAN CORBETT, Petitioner-Plaintiff, -against- THE CITY OF NEW YORK, Respondents-Defendants THOMAS M. PRASSO, Respondent.</p>
<p>AFFIRMATION OF JONATHAN DAVID IN SUPPORT OF CROSS-MOTION TO DISMISS</p> <p>ZACHARY W. CARTER <i>Corporation Counsel of the City of New York Attorney for Respondents 100 Church Street, Room 5-158 New York, N.Y. 10007</i></p> <p><i>Jerald Horowitz Tel: (212) 356-2185 LM No. 2016-039360</i></p>	

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Jonathan Corbett,
Petitioner-Plaintiff

v.

The City of New York,
Respondent-Defendant
Thomas M. Prasso,
Respondent

Index No.

158273/16

NOTICE OF PETITION

PLEASE TAKE NOTICE, that upon the annexed Verified Petition, Petitioner Jonathan Corbett will move this Court at an Article 78 Term at the New York County Courthouse at 60 Centre St, New York, NY 10007, on November 30th, 2016, at 9:30 AM, or as soon as thereafter Petitioner may be heard, for an order modifying a decision of the New York Police Department, Licensing Division, denying Petitioner's application for a pistol permit, for costs, and for other such relief as detailed in the annexed Verified Petition.

Dated: New York, New York

September 30th, 2016

Respectfully submitted,



Jonathan Corbett

Plaintiff, *Pro Se*

228 Park Ave. S. #86952

New York, NY 10003

E-mail: jon@professional-troublemaker.com

2016-039360

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Jonathan Corbett,
Petitioner-Plaintiff

Index No. 15873/16

v.

**VERIFIED ARTICLE 78
PETITION AND COMPLAINT**

The City of New York,
Respondent-Defendant
Thomas M. Prasso,
Respondent

Petitioner Jonathan Corbett (“Corbett”) challenges an order of the New York City Police Department (“NYPD”), a part of the City of New York, denying his agency appeal regarding his application for a pistol permit¹, as well as the denial of a public records request, and states as follows:

NATURE OF THE ACTION

1. As the Court is aware, the U.S. Supreme Court has declared that the right to keep and bear arms is guaranteed to the citizens by the United States Constitution, and that right has been held applicable to the states in *McDonald v. Chicago*, 561 U.S. 742 (2010).
2. Notwithstanding, the “worst-kept open-secret” in New York City is that to lawfully carry a handgun, one must be connected with the government or willing to pay a bribe; the *de facto* policy is that ordinary citizens may not bear arms in public. This is not mere hyperbole – the officer who denied Corbett’s gun license was removed from his post not 2 weeks later as a result of a federal corruption investigation whereby cash was accepted in exchange for approval of pistol permits. At least 2 officers so far were arrested and one has pled guilty.

¹ NYPD paperwork, state law, and case law interchangeably use the term “permit” and “license,” and also varyingly refer to the permit or license as a “concealed carry license,” “handgun license,” “pistol permit,” etc. Any reference to any such “permit” or “license” within this complaint is to one and the same: state permission to carry a concealed handgun on one’s person under N.Y. Penal Law § 400.00 *et. seq.*

3. It is of no surprise that a system in which a citizen must convince the government that he has a “good reason” to exercise a right results in unfair results at best, and pay-for-play at worst. In any other context, courts would never require “a good reason” to exercise a right – *e.g.*, the right to speak freely, to be entitled to counsel, to refuse to consent to a search, *etc.*, even when public safety may arguably be enhanced by doing so. While the state may place public safety restrictions on the right to keep and bear arms, a requirement of having “a good reason” to exercise one’s rights cannot stand.
4. As a result of *McDonald*, the previously oft-quoted saying that gun ownership in New York is a “privilege and not a right” can no longer be said to be true. It is now clearly a right and not a privilege, and it follows that judicial review of denials of license applications can no longer be subject to a mere “arbitrary and capricious” standard, especially when the policy itself, rather than the application of the policy, is challenged, and especially when the group to which the Court would otherwise give deference has shown itself to be unworthy of that trust.
5. Corbett seeks to vindicate his right to bear arms in public, whether openly or concealed², and hereby asks this Court to review a decision of the NYPD denying, despite having no objection to Corbett’s good moral character, his application for the only type of permit available that would allow him to carry a handgun in public.
6. Corbett further seeks to vindicate his right to own firearms at all, whether only in the home or together with the right to carry in public, without answering questions that have no basis other than as subterfuge for arbitrary and capricious denials.

² To be perfectly clear, Corbett is asking the Court to review the constitutionality of a regulatory scheme that simultaneously prohibits him from open *and* concealed carry. Corbett concedes, for the purpose of this litigation, that a state may ban the right to carry concealed weapons, or it may ban the right to openly carry weapons, but the question presented is whether it may ban *both*. As far as Corbett’s research has shown, this is a question of first impression in this jurisdiction.

7. Finally, Corbett also seeks review of the denial of a Freedom of Information Law³ (“FOIL”) request related to handgun applications within the City.

JURY TRIAL

8. As it is expected there will be few to zero disputed issues of fact in this matter, Corbett does not request a jury trial and consents to a bench trial for all issues so triable.

PARTIES

9. Petitioner-Plaintiff Corbett is a U.S. citizen residing in Miami-Dade County, Florida, and a part-year resident of New York County, New York⁴.
10. Respondent-Defendant City of New York (the “City”) is the city incorporated by and through the laws of the State of New York and is the entity responsible for its New York City Police Department. City of New York is a proper respondent for Corbett’s Article 78⁵ petition and the proper defendant for Corbett’s FOIL claim.
11. Respondent Thomas M. Prasso (“Prasso”) is the Director of the NYPD’s Licensing Division and issued the order denying Corbett’s intra-agency appeal of the denial of his application for a pistol permit. Mr. Prasso is sued in his official capacity and is a proper respondent for Corbett’s Article 78 petition.

JURISDICTION & VENUE

12. This Court has jurisdiction over Corbett’s Article 78 petition under N.Y. CPLR §§ 3001 and 7801 – 7806.

³ All references herein to “FOIL” are to N.Y. Pub. Off. Law §§ 84 – 90.

⁴ Part-year residence is sufficient under New York law for issuance of a pistol permit. *See Osterweil v. Bartlett*, 21 N.Y.3d 580 (2013).

⁵ All references herein to “Article 78” are to N.Y. CPLR §§ 7801 – 7806.

13. This Court has jurisdiction over Corbett's FOIL claim under N.Y. CPLR § 3001 and N.Y. Pub. Off. Law §§ 84 – 90.
14. This Court is the proper venue because the incident giving rise to the complaint occurred entirely within the County of New York, because the City exists within this County, and because Prasso works within in his official capacity within this County.

ALLEGATIONS OF FACT

15. 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 weapon.
16. 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.
17. 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 carry" license, nor any variety of "open carry" license, available to civilians).
18. During Corbett's appearance at the Licensing Division, Corbett provided to the Licensing Division the following:
 - a. (1) three-page application,
 - b. (1) letter of necessity,
 - c. (1) letter of explanation for checkboxes on the application that specify that they require additional explanation,
 - d. (1) notarized affidavit certifying that Corbett does not have a roommate,
 - e. (1) notarized affidavit from someone willing to take possession of Corbett's weapons upon his death or disability,
 - f. (2) "passport-style" photos,
 - g. (1) New York identification card,

- h. (1) U.S. passport,
- i. (1) social security card,
- j. (1) copy of Corbett's business tax return,
- k. (1) set of fingerprints, and,
- l. \$429.75.

19. Corbett's application was accepted for processing.

20. On December 24th, 2015, NYPD P.O. Thomas Barberio mailed to Corbett a letter advising that Corbett needed to schedule an in-person interview and provide the following additional documents:

- a. (3) letters of recommendation, notarized and signed by people who know Corbett for at least 5 years but are not family members,
- b. (1) letter from a doctor describing any mental illness Corbett has ever suffered,
- c. (6) months of bank withdrawal slips,
- d. (1) copy of Corbett's out-of-state gun license⁶,
- e. (1) statement describing any handguns Corbett owns out-of-state and how they are stored,
- f. (1) affirmation of familiarity with New York's laws regulating use of deadly force,
- g. (1) affirmation that Corbett has never had any "orders of protection" issued against him,
- h. 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),
- i. Pictures of Corbett's business, inside and out, and

⁶ Corbett is, and at all times relevant was, licensed to carry a concealed weapon in Florida and may lawfully carry a concealed weapon in at least 36 states. Additionally, he may "open carry" a weapon in a handful more. New York is among a shrinking count of less than 10 states that prohibit Corbett from carrying a firearm in any manner.

- j. Numerous additional tax records and other records related to the businesses Corbett owns.
21. Corbett expeditiously provided these documents to P.O. Barberio to the best of his ability and scheduled an interview.
 22. On April 7th, 2016, Corbett met with P.O. Barberio for the requested interview.
 23. The interview consisted of verifying that all documents were in order. No substantial “investigatory” questions were asked.
 24. Corbett was advised by P.O. Barberio at that time that the NYPD’s background check results on him were clear of any issues.
 25. Corbett was also advised by P.O. Barberio that the officer who would be taking over his application from Sgt. Barberio was unlikely to grant it because Corbett did not show a sufficient “need” to carry a firearm.
 26. On April 18th, 2016, NYPD D.I. Michael Endall wrote to Corbett a letter with a decision regarding his permit application.
 27. D.I. Endall did not find any problems with Corbett’s “good moral character.”
 28. Indeed, Corbett has never been accused of, let alone convicted of, a crime.
 29. Notwithstanding Corbett’s good moral character, the letter stated that Corbett’s license would not be approved for the following two reasons:
 - a. Corbett refused 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,” and

- b. Corbett did not show “proper cause” – a “good reason” to exercise his Second Amendment rights.
30. 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.”
31. As it would turn out, D.I. Endall would be removed from his position as commander of the NYPD Licensing Division about 2 weeks after writing his letter to Corbett.
32. 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, among other things, approval of pistol permit applications. See <http://nypost.com/2016/04/18/shomrim-leader-busted-amid-nypd-corruption-probe/>
33. At least 1 officer under D.I. Endall’s supervision has so far pled guilty to accepting cash for gun licenses, and another has been charged. See <http://newyork.cbslocal.com/2016/06/20/nypd-corruption-probe-arrests/>
34. 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.
35. On May 31st, 2016, Respondent Prasso wrote to Corbett advising him that his appeal had been denied, re-iterating the NYPD’s position described by D.I. Endall. See Exhibit A.

36. An Article 78 petition is timely if filed within 4 months of the date of a final decision; N.Y. CPLR § 217(1).
37. Prasso's letter was a final decision for the purposes of Article 78 and N.Y. CPLR § 217; therefore, this petition is timely, assuming the "clock" starts upon mailing of a final decision, if filed by September 30th, 2016.
38. As a result of Prasso's determination, Corbett cannot even be granted a "premises license" allowing him to keep a handgun in his home, but not carry it, because although the "proper cause" requirement cannot apply to a home license per *McDonald*, the NYPD still requires an answer to the objectionable Questions 11 – 13 as a condition of granting a home license.
39. Before filing his pistol permit application, Corbett filed a Freedom of Information Law request with the NYPD for any documents that demonstrate how pistol permit applications are evaluated⁷.
40. NYPD Lt. Richard Mantellino processed Corbett's request and attached 4 pages of documents, none of which identify criteria by which a license is approved or disapproved. See Exhibit B.
41. Based on the foregoing, the NYPD has no written internal standards for how they evaluate the questions answered on the pistol permit applications, and instead evaluate responses based on their own personal judgments.
42. Upon belief, the NYPD has no formal standard by which they evaluate if being fired from a job disqualifies an applicant.

⁷ This complaint discusses 2 FOIL requests: one filed before his application, and the second after. The one filed *before* his application was properly fulfilled and is discussed here as a means of showing that the NYPD's evaluation of gun license applications is arbitrary and capricious. The one filed *after* his application, discussed *infra*, was not properly fulfilled and is the FOIL request that Corbett asks the Court to review.

43. Upon belief, the NYPD has no medical staff to evaluate, and has never sought advice from medical staff as to, whether an applicant's use of doctor-prescribed narcotics or tranquilizers is a cause for concern regarding their ability to possess a handgun.
44. Upon belief, the NYPD has no means of securely storing Protected Health Information (PHI) as defined by the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d(4) and 45 CFR § 160.103, and therefore the NYPD is requiring those who wish to exercise their Second Amendment rights, even if only to possess a gun in one's home, to submit their PHI with no guarantees on its safe storage nor limits on its dissemination.
45. The notion that testifying in front of our government may be a basis for disqualification from one's Second Amendment rights is patently absurd.
46. Upon belief, the sole basis for Questions 11, 12, and 13 is to provide the reviewing officer an *excuse* to deny an application, not a reason.
47. Instead of an equitable and transparent system that relies to the minimum on the unfettered discretion of officers, pistol permit applications are, in practice and when not tainted by bribery, judged based on whether an individual has the "proper connections."
48. As an illustration, the New York Times has reported that pistol permit applications are routinely granted to well-known lawyers, radio DJs, doctors, and the like. *See* <http://www.nytimes.com/2011/02/20/nyregion/20guns.html>
49. After Corbett's application was denied, in order to investigate the veracity of the above, he sent the NYPD a FOIL request for, *inter alia*, all pistol permit applications within a 3-month window and their decisions. *See* Exhibit C.
50. Corbett explicitly requested that the NYPD redact any personally-identifying information from any responsive records such that there would be no privacy concerns. *Id.*

51. NYPD Lt. Richard Mantellino again 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." *See* Exhibit D.
52. 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.
53. The NYPD has not responded to Corbett's FOIL appeal to date, now approximately four months later.
54. The NYPD's total denial (or refusal to process the appeal of the denial, also known as "constructive denial") of Corbett's FOIL request is in especially bad faith given that it is clear that his FOIL request at least partially must be fulfilled thanks to *New York Times v. City of New York*, 103 A.D.3d 405 (1st Dept. 2013). *See also Gannett v County of Putnam*, 2016 N.Y. App. Div. LEXIS 5890 (2nd Dept., September 14th, 2016) (even if Corbett had requested identifying information, "names and addresses of pistol permit holders are, by statute, public records").
55. The documents Corbett requested would shed light on the opaque process with which the NYPD makes gun licensing decisions, and therefore their release would be of significant public interest.
56. Additionally, the documents would show whether or not the 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.

CLAIMS FOR RELIEF

Count 1 – Judgment Pursuant to CPLR §§ 7801-7806

("Proper Cause" Requirement)

57. Corbett re-alleges all of the preceding paragraphs and incorporates them by reference.

58. Given that open-carry is prohibited in this state, a refusal to grant a license to carry a concealed weapon subject to a “proper cause” requirement is an unconstitutional restriction on Second Amendment rights because it means that Corbett, under no circumstances, may “bear arms.”

59. N.Y. Penal Law § 400.00(2)(f) should therefore be declared facially unconstitutional under the Fourth Amendment to the U.S. Constitution, null, and void, as it pertains to the “proper cause” requirement, insofar as it is interpreted to mean that a citizen must demonstrate a need greater than that of the average citizen.

60. The NYPD’s basis for denial of “failure to show proper cause” should be reversed.

Count 2 – Judgment Pursuant to CPLR §§ 7801-7806

(“Questions 11 – 13” of the Pistol Permit Application)

61. Corbett re-alleges all of the preceding paragraphs and incorporates them by reference.

62. Denying an application based on Questions 11 – 13, given that the NYPD has no rational standard by which to judge them and that they are not rationally related to the government interest allegedly at play, fails the “arbitrary and capricious” test.

63. Further, denying an application based on Questions 11 – 13 is an unconstitutional infringement on Corbett’s Second Amendment rights under intermediate scrutiny.

64. A finding that the “proper cause” requirement is constitutional would not moot this issue since it stands in the way of Corbett being able to receive a home (“premises”) license.

65. The NYPD’s basis for denial based on Questions 11 – 13 should be reversed.

Count 3 – Judgment Pursuant to CPLR §§ 7801-7806

(Denial of Pistol Permit)

66. Corbett re-alleges all of the preceding paragraphs and incorporates them by reference.

67. After reversing the “proper cause” and “Questions 11 – 13” bases for denial, there exist no further bases for denial.

68. As such, the Court should order that the NYPD issue Corbett's concealed carry pistol permit.

Count 4 – N.Y. Freedom of Information Law

(Refusal to Provide Non-Exempt Records)

69. Corbett re-alleges all of the preceding paragraphs and incorporates them by reference.

70. Corbett requested documents that are not exempt from disclosure under state law.

71. By failing to release such documents, narrowly time-bounded and limited in scope, the NYPD has unreasonably infringed on Corbett's right to those documents under the state's Freedom of Information Law.

72. As such, the Court should order that the NYPD provide Corbett with the documents requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- i. Declaratory relief stating that the “proper cause” requirement of N.Y. Penal Law § 400.00(2)(f) is facially unconstitutional, null, and void, insofar as it is interpreted to mean that a citizen must demonstrate a need greater than that of the average citizen, and in combination with the state's blanket ban on open carry.
- ii. Declaratory relief stating that refusal to answer Questions 11 – 13 of the pistol permit application is not “substantially related” to the government's interest in determining whether an individual is qualified to possess or carry a handgun, or is otherwise unconstitutional, and thus may not be the basis for a denial of that application.

- iii. An order, whether styled as a mandatory injunction, writ of *mandamus*, Article 78 relief, or similar, requiring the NYPD to issue to Corbett the license which he applied for.
- iv. Cost of the action.
- v. Reasonable attorney's fees, to the extent that state law allows a *pro se* litigant to collect attorney's fees, and in the event Corbett retains an attorney at a later point in this matter.
- vi. Any other such relief as the Court deems appropriate.

Dated: New York, New York
September 30th, 2016

Respectfully submitted,



Jonathan Corbett

Plaintiff, *Pro Se*

228 Park Ave. S. #86952

New York, NY 10003

E-mail: jon@professional-troublemaker.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Jonathan Corbett,
Petitioner-Plaintiff


v.

The City of New York,
Respondent-Defendant
Thomas M. Prasso,
Respondent

Index No. 138273/16

VERIFICATION

I, Jonathan Corbett, being duly sworn deposes and says: I am the *pro se* Petitioner-Plaintiff in the above captioned action. I have reviewed the contents of the foregoing petition and complaint. The information therein is true to my knowledge except for those matters stated to be alleged on information and belief, and as to those matters, I believe the information to be true.



Jonathan Corbett

Sworn to before me this
29th day of September, 2016.


Notary Public

WYKEITHIA SMALLS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SM6335163
Qualified in New York County
My Commission Expires 01-04-2020



HANDGUN LICENSE APPLICATION
POLICE DEPARTMENT • CITY OF NEW YORK
PD 643-041 (Rev. 11-10)



LICENSE DIVISION
1 POLICE PLAZA
NEW YORK, N.Y. 10038



OFFICIAL USE ONLY

NYSID NUMBER

DATE

APPLICATION NUMBER

OLD LICENSE NUMBER

Handwritten: 20202781, 2115 11906
Printed: Rewritten. DO NOT MAKE ENTRIES IN SHADED AREAS. Necessary fee must accompany application. Make Bank Check, Certified Check or Money Order payable to the Police Department, City of New York. Payment may also be made by credit card. Not refundable if application is disapproved. (Administrative Code Sec. 10-131)

SECTION A
TO BE ANSWERED BY ALL APPLICANTS

CARRY BUSINESS CARRY GUARD/SECURITY RETIRED POLICE OFFICER
 LIMITED CARRY GUN CUSTODIAN PREMISES (Indicate Residence Business)
 SPECIAL (out of city validation.) CARRY

LICENSE NUMBER (Renewal Applicant) YEAR Do you possess any other NYC Handgun Lic.? If YES No
TYPE LIC. NO. Complaint No. Lost Mutilated

1. Last Name Corbett First Name Jonathan M.I. W Maiden Name/Alias Corp Code Cust Code

2. Legal Address (Street No.) Apt. # City or Town State NY Zip Code

3. Citizen Alien Registration Number Social Security Number Res. Pct. 9 OCC Code Total Guns Code

Home Phone No. Cell Phone No. Email Address jon@professional-troublemaker.com

4. Place of Birth - City, State, Country Dunkirk, NY, US Age 31 Date of Birth Hgt. (inches) 70 Wgt. 160 lbs. Sex M Color of Hair Blonde Color of Eyes Blue

EMPLOYMENT INFORMATION

5. Name of Business Jonathan Corbett Type of Business Civil Rights Advocacy Bus. Pct. 9

6. Business Address (Street No.) City or Town New York State NY Zip Code 10009

7. Bus. Telephone No./Day (646) 316-4524 Occupation (Owner - Employee - Gun Custodian) Sole Proprietor How many other persons in this business have N.Y.C. Handgun Licenses? 0

8. If applicable, list name, job title and license number of company gun custodian

VALIDATION OF OUT OF CITY LICENSE (Special Handgun License ONLY)

9. Basic License Number Issued By County Date Issued Expiration Date

LIST HANDGUNS FOR THIS APPLICATION ONLY

10. (ORIGINAL APPLICANT LEAVE BLANK)

MAKE	MODEL	GUN SERIAL NUMBER	CALIBER	TYPE R Revolver A Automatic	OWNER E Employer S Self	MAKE CODE
001						
002						

NOTICE

Pursuant to Penal Law Section 400.00(5), the name and address of any person to whom an application for any license has been granted, shall be a public record.

OFFICIAL USE ONLY Right Thumb

SIGNATURE OF PERSON PRINTED

SECTION B

Applicants must answer questions 10 through 24. Additionally questions 29 through 31 must be answered chronologically and in detail. If you have answered YES to question(s) 10 through 28 you MUST use the HANDGUN LICENSE APPLICATION ADDENDUM (PD 643-041A) to explain such answer(s) in complete detail. A FALSE STATEMENT SHALL BE GROUNDS FOR DENIAL OF A N.Y.C. HANDGUN LICENSE

HAVE YOU EVER...

- 10. Had or ever applied for a Handgun License issued by any Licensing Authority in N.Y.S.? Yes No
- 11. Been discharged from any employment? Yes No
- 12. Used narcotics or tranquilizers? List doctor's name, address, telephone number, in explanation. Yes No
- 13. Been subpoenaed to, or testified at, a hearing or inquiry conducted by any executive, * see Explanation for unanswered questions legislative or judicial body? Yes No
- 14. Been denied appointment in a civil service system, Federal, State, Local? Yes No
- 15. Served in the armed forces of this or any other country? Yes No
- 16. Received a discharge other than honorable? Yes No
- 17. Been rejected for military service? Yes No
- 18. Are you presently engaged in any other employment, business or profession where a need for a firearm exists? Yes No
- 19. Had or applied for any type of license or permit issued to you by any City, State or Federal agency? Yes No
- 20. Has any corporation or partnership of which you are an officer, director, or partner, ever applied for or been issued a license or permit issued by the Police Dept? Give type, year, license number, in explanation. Yes No
- 20a. Has any officer, director or partner ever applied for or been issued a license or permit issued by the Police Department? Give type, year, license number, in explanation. Yes No
- 21. Suffered from mental illness, or due to mental illness received treatment, been admitted to a hospital or institution, or taken medication? List Doctor's/Institutions, Name, Address, Phone #, in explanation .. Yes No
- 22. Have you ever suffered from any disability or condition that may affect your ability to safely possess or use a handgun? List Doctor's Name, Address, Phone #, in explanation. Yes No

NOTE: The following conditions must be listed: Epilepsy, Diabetes, Fainting Spells, Blackouts, Temporary Loss of Memory or any Nervous Disorder.

Before answering questions number 23 thru 26, read paragraph 7 of the instructions completely.

- 23. Been arrested, indicted, or summonsed for **ANY** offense other than Parking Violations, in **ANY** jurisdiction, federal, state, local or foreign? You must include cases that were dismissed and/or the record sealed. List the following: date, time, charge(s), disposition, court and police agency. (False statements are grounds for disapproval). Yes No
- 24. Have you ever, or do you now have an Order of Protection issued against you? Yes No
- 25. Have you ever, or do you now have an Order of Protection issued by you against a member of your household, or any family member? Yes No
- 26. Have you ever, or do you now have an Order of Protection issued by you against a person other than a member of your housold or family? Yes No

If you have answered yes to questions 24 - 26, you must indicate the following information:

- a. Court of Issuance
- b. Date of Issuance
- c. Complainant's Name, Address and Telephone Number
- d. Complainant's relationship to you
- e. Reason for issuance of Order of Protection

- 27. Have the police ever responded to a domestic incident in which you were involved? Yes No
- 28. Used any variation in spelling of your name or any other name used? (Alias), explain. Yes No

FROM (MONTH AND YEAR)	TO (MONTH AND YEAR)	LIST ALL PLACES OF RESIDENCE FOR PAST FIVE (5) YEARS RESIDENCE (Include State, County, Zip Code and Apt. No.)	PRECINCT
29. 2013	PRESENT	[REDACTED]	9
2012	PRESENT		n/a
2012	2013		9
2011	2012		n/a

FROM (MONTH AND YEAR)	TO (MONTH AND YEAR)	LIST ALL PLACES OF EMPLOYMENT FOR PAST FIVE (5) YEARS BUSINESS NAME AND ADDRESS (Include State, County, Zip Code and Apt. No.)	OCCUPATION	PRECINCT
2010	PRESENT	Self-employed as Civil Rights Advocate (address on p. 1)	President	9
2007	PRESENT	FourTen Technologies, Inc., 382 NE 191st St., Miami, FL 33179	President	n/a
2014	2015	Kapital, Inc., 31 W. 34th St., New York, NY 10001	Software Dev	MTS
2013	2014	OTG Management, 352 Park Ave. S., New York, NY 10010	Software Dev	13

30. How and where will handgun(s) be safeguarded when not in use? (Location outside of N.Y. State is unacceptable). At residence address, in a safe.
31. Give name, address, relation and telephone number of person who will safeguard handgun(s) in case of applicant's death or disability. Must be a N.Y. State resident. Elyse Romano, 306 Mott St., #3C, New York, NY 10010

The undersigned affirms that the statements made and answers given herein are accurate and complete, and hereby authorizes the New York City Police Department, License Division to make appropriate inquiries in connection with processing this application. **False written statements in this document are punishable** under Section 210.45 of the New York Penal Law (making a punishable false written statement) and also will be sufficient cause for denial of an application, license or permit by the New York City Police Department, License Division.

Date 11/23/2015 Signature [Signature]

INVESTIGATING OFFICER'S SIGNATURE PO J. Karaman DATE 4/14/16 TAX REGISTRY NO. 938024 APPROVAL DISAPPROVAL and REASON No PROP CAUSE / NOT COMPLETE

SUPERVISOR'S SIGNATURE [Signature] DATE 4/15/16 TAX REGISTRY NO. 314554 APPROVAL DISAPPROVAL and REASON Failed to show cause

C.O. INVEST. SECTION SIGNATURE _____ DATE _____ TAX REGISTRY NO. _____ APPROVAL DISAPPROVAL and REASON _____

C.O. LICENSE DIVISION SIGNATURE DI Michael Entell DATE 4/15/16 TAX REGISTRY NO. 897701 APPROVAL DISAPPROVAL and REASON _____

ADDITIONAL INSTRUCTIONS FOR CARRY LICENSE APPLICANTS

LETTER OF NECESSITY

All applicants for a carry license for use in connection with a business or profession must answer the following questions in the space provided. If additional space is necessary continue your letter on reverse side. In ALL CASES the form provided must be used.

1. A detailed description of the applicant's employment and an explanation of why the employment requires the carrying of a concealed handgun.

Applicant conducts business as a civil rights advocate. In order to exercise his civil rights fully, he needs a carry license.

2. A statement acknowledging that the handgun may only be carried during the course of and strictly in connection with the applicant's job, business or occupational requirements, as described herein.

I will only carry a handgun for the purposes of exercising my civil rights as a civil rights advocate.

3. A statement explaining the manner in which the gun will be safeguarded by the employer and/or applicant when not being used.

I will store any licensed firearms in a safe at the residence address when not in use.

4. A statement indicating that the applicant has been trained or will receive training in the use and safety of a handgun.

I have been licensed to carry a handgun in Florida, and have actively carried a handgun in Florida and other states that recognize my Florida license, since 2009. I took an NRA-approved pre-licensure course, I thoroughly review all operators instructions that have accompanied any firearms I own, and I regularly shoot at target ranges.

5. A statement acknowledging that the applicant's employer, or, if self employed, the applicant, is aware of its or his or her responsibility to properly dispose of the handgun and return the license to the License Division upon the termination of the applicant's employment or the cessation of business.

This self-employed applicant is aware of his responsibility to properly dispose of the handgun and return the license upon termination.

6. A statement indicating that the applicant, and if other than self employed, a corporate officer, general partner, or proprietor, has read and is familiar with the provisions of Penal Law Articles 35 (use of deadly force), 265 (criminal possession and use of a firearm) and 400 (responsibilities of a handgun licensee).

This self-employed applicant is a law student, and is aware of his rights and responsibilities under NY Penal Law.

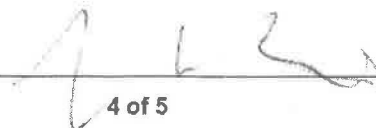
The Letter of Necessity is part of this application. Any false statement is an offense punishable as a Class A Misdemeanor pursuant to to Section 210.45 of the New York State Penal Law.

The undersigned affirms that the statements made and answers given herein are accurate and complete, and hereby authorizes the New York City Police Department, License Division to make appropriate inquiries in connection with processing this application. **False written statements in this document are punishable** under Section 210.45 of the New York Penal Law (making a punishable false written statement) and also will be sufficient cause for denial of an application, license or permit by the New York City Police Department, License Division.

Date

11/23/2015

Signature



4 of 5

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ADDITIONAL DOCUMENTATION TO BE PRESENTED AT PERSONAL INTERVIEW

At the time of your interview, you must also furnish the following documents, as they apply to you:

1. The two (2) most recent copies of the business's sales tax report (ST 100) submitted to the State of New York and Federal Tax Return submitted for the previous year. If the business is solely a wholesale operation, a copy of the Federal tax return submitted for the previous tax year must be submitted. All tax forms must bear notarized signatures.
2. When requested by your investigator, your personal income tax return for the previous tax year.
3. Daily bank deposit slips and corresponding bank statements for the six months preceding the date of your interview. (Photocopies will not be accepted.)
4. A statement from your bank setting forth the total amount of your payroll and the total amount of payroll checks cashed during the three months immediately preceding the date of your interview.
5. If you were the victim of a crime which occurred during the course of your business or professional activities during the previous two years, you must provide the complaint report number, date and the precinct of occurrence.

At the time of your interview, your investigating officer will advise you if any additional forms or documents are required.

NOTICE TO ALL APPLICANTS:

While the application is pending, the applicant shall make an immediate report to the License Division, Applicant Section at (646) 610-5551, of any of the following occurrences:

1. Arrest, indictment, or conviction in any jurisdiction; summons other than traffic infraction; suspension or ineligibility order issued pursuant to section 530.14 of the New York State Criminal Procedure Law or Section 842-a of the New York State Family Court Act.
2. Change of business or residence address.
3. Change of business, occupation or employment.
4. Any change in the circumstances cited by the applicant in their application.
5. Receipt of psychiatric treatment or treatment for alcoholism or drug abuse, or the presence or occurrence of any disability or condition that may affect the ability to safely possess or use a handgun.
6. Applicant is or becomes the subject or recipient of an Order of Protection or a Temporary Order of Protection.

The applicant may be required to provide additional documentation for any of the above occurrences to License Division personnel.



**HANDGUN LICENSE APPLICATION
ADDENDUM**
PD 643-041A (11-10)

This form is to be used to provide a detailed explanation for any "yes" answers to questions 10 through 28 on the **HANDGUN LICENSE APPLICATION (PD 643-041)**. This form may be reproduced if necessary.

Question Number	Detailed Explanation
11, 12, 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 2) 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.
19	FL CCW, Issued 2009, Exp. 2016
23	Minor traffic violations, see NY driving record

The undersigned affirms that the statements made and answers given herein are accurate and complete, and hereby authorizes the New York City Police Department, License Division to make appropriate inquiries in connection with processing this application. **False written statements in this document are punishable** under Section 210.45 of the New York Penal Law (making a punishable false written statement) and also will be sufficient cause for denial of an application, license or permit by the New York City Police Department, License Division.

Date 11/23/2015 Signature [Handwritten Signature]

Application for Jordan Corbett
No Co-Habitant

LIVES
ALONE



Affidavit of Co-Habitant

N/A

State of New York

County of New York ss.:

I, _____, residing at
(Name of person making affidavit)

(Address, including zip code)

in the City of New York, do hereby affirm that the applicant,

(Name of applicant)

currently resides with me at the above address.

My relationship to the applicant is _____
(Nature of relationship)

My telephone number is (H) _____

(C) _____

(W) _____

I understand that the applicant has applied for a rifle/shotgun permit or handgun license from the New York City Police Department, and I have no objection to him/her receiving a permit or license and storing firearms in my home.

I have no co-habitant.

[Signature]
(Signature)
Jordan Corbett

Sworn to before me this

24th day of Nov, 2015

[Signature]
Notary Public

DANIEL ISAAC ABRAMS
Notary Public - State of New York
NO. 01AB6283209
Qualified in New York County
My Commission Expires Jun 3, 2017



New York City Police Department

License Division
One Police Plaza
New York, NY 10038
(646) 610-5560



Acknowledgement of Person Agreeing to Safeguard Firearm(s)

Name of Applicant / Licensee: Jonathan Corbett

Application / License Number: _____

Instruction to Applicant / Licensee: Please ask the person you have designated to safeguard and surrender your firearm(s) in the event of your death or incapacity to complete the information below and sign this acknowledgement before a witness.
(The person you designate must be a New York State resident.)

Print Name: Romano Elyse L
Last First M.I.

Address: 306 Mod St. 3C New York NY 10010
Number & Street Name Apt City State Zip

Telephone Numbers: _____ 650 248 3255 _____
Home Cell Business

I, Elyse Romano
(Print name of person agreeing to safeguard firearms)

understand that the above-named applicant/licensee has designated me to safeguard and surrender his/her firearm(s) in the event that he/she dies or becomes incapacitated. I agree that upon learning of the death or incapacity of the licensee, I will immediately notify the New York City Police Department's License Division at (646) 610-5871 or (646) 610-5560, or by calling the local police precinct, and will follow their directions to safeguard and surrender his/her firearm(s).

Signature of person agreeing to safeguard firearm(s): Elyse Romano Date: 12/10/15

Witnessed by (signature) [Signature]

Witness' name (printed) Daniel Delphin

Please retain a copy of this document for your records

**SCHEDULE C-EZ
(Form 1040)**

Net Profit From Business
(Sole Proprietorship)

OMB No. 1545-0074

2014
Attachment
Sequence No. **09A**

Department of the Treasury
Internal Revenue Service (99)

▶ **Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B.**
▶ **Attach to Form 1040, 1040NR, or 1041. ▶ See instructions on page 2.**

Name of proprietor
Jonathan W Corbett

Social security number (SSN)
[REDACTED]

Part I General Information

**You May Use
Schedule C-EZ
Instead of
Schedule C
Only If You:**

- Had business expenses of \$5,000 or less.
- Use the cash method of accounting.
- Did not have an inventory at any time during the year.
- Did not have a net loss from your business.
- Had only one business as either a sole proprietor, qualified joint venture, or statutory employee.

And You:

- Had no employees during the year.
- Are not required to file **Form 4562**, Depreciation and Amortization, for this business. See the instructions for Schedule C, line 13, to find out if you must file.
- Do not deduct expenses for business use of your home.
- Do not have prior year unallowed passive activity losses from this business.

A Principal business or profession, including product or service
Civil Rights Advocacy

B Enter business code (see page 2)
▶ 8 1 3 0 0 0

C Business name. If no separate business name, leave blank.

D Enter your EIN (see page 2)
[REDACTED]

E Business address (including suite or room no.). Address not required if same as on page 1 of your tax return.
382 NE 191st St, Apt. 86952
City, town or post office, state, and ZIP code
Miami, FL 33179

F Did you make any payments in 2014 that would require you to file Form(s) 1099? (see the Schedule C instructions) Yes No

G If "Yes," did you or will you file required Forms 1099? Yes No

Part II Figure Your Net Profit

- 1** **Gross receipts. Caution.** If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see *Statutory employees* in the instructions for Schedule C, line 1, and check here
- 2** **Total expenses** (see page 2). If more than \$5,000, you **must** use Schedule C
- 3** **Net profit.** Subtract line 2 from line 1. If less than zero, you **must** use Schedule C. Enter on both **Form 1040, line 12**, and **Schedule SE, line 2**, or on **Form 1040NR, line 13** and **Schedule SE, line 2** (see instructions). (Statutory employees **do not** report this amount on Schedule SE, line 2.) Estates and trusts, enter on **Form 1041, line 3**

REDACTED -
IRRELEVANT

Part III Information on Your Vehicle. Complete this part **only** if you are claiming car or truck expenses on line 2.

- 4** When did you place your vehicle in service for business purposes? (month, day, year) ▶ _____
- 5** Of the total number of miles you drove your vehicle during 2014, enter the number of miles you used your vehicle for:
 - a** Business _____
 - b** Commuting (see page 2) _____
 - c** Other _____
- 6** Was your vehicle available for personal use during off-duty hours? Yes No
- 7** Do you (or your spouse) have another vehicle available for personal use? Yes No
- 8a** Do you have evidence to support your deduction? Yes No
- b** If "Yes," is the evidence written? Yes No



Customer service
Call us anytime 1-212-358-0900
Visit us at twc.com

Account number
[REDACTED]
Customer code 8822

Due date	Service period	Amount due
Nov 13, 2015	11/03 - 12/02	\$44.99

Service address
Jonathan Corbett
Account Phone [REDACTED]

Previous balance & payments

Balance last statement	34.99
Payments received as of Oct 23, 2015	-30.32
Unpaid balance	4.67

Current month

Monthly services	44.99
Credits and one-time charges	-4.67

Total due by Nov 13, 2015	\$44.99
----------------------------------	----------------

*PROOF
OF
ADDRESS
NYC [unclear]*

ENJOY TWC BETTER

Your promotion is ending this month, however because we appreciate your business we have automatically extended you another great promotional rate. Thank you for being a Time Warner Cable customer.

Upgrade and Save with limited time offers! From premium content to blazing fast Internet, Time Warner Cable can help you Enjoy Better. Call 1-855-552-1987, today to get more and save every month.

Now we can call you at your convenience to help answer your questions. Go to Talk to TWC under "Contact Us" in our free My TWC® app - we're standing by!

Unlimited calling to the U.S. and 34 countries around the world and now unlimited calling to all 28 countries in the European Union. Calls to landlines and mobile phones included.



41-61 KISSENA BLVD FLUSHING NY 11355-3189
8150 1000 NO RP 23 10242015 NNYNNNN 01 005630 0025

JONATHAN CORBETT
[REDACTED]



Payment due date
Nov 13, 2015

Account number
[REDACTED]

Please enclose this coupon with your payment.

**Please allow 7-10 days for delivery and payment processing. See reverse side for more convenient payment options.

Total amount due
\$44.99

Amount enclosed

TIME WARNER CABLE
PO BOX 11820
NEWARK NJ 07101-8120



815010004249126500044990

Record on Appeal A066

NYPD LICENSE DIV
1 POLICE PLZ RM 1016
NEW YORK, NY, 10038-1403
646 610 5660

Sale

xxxxxxxxxxxx1172

VISA

Entry Method: Swiped

Total: \$

429.75

12/22/15

14:39:51

Inv #: 000000009

Appr Code: 009538

Apprvd: Online

Customer Copy

NEW YORK

2015-3212



**New York City Police Department
Pistol Licensing Division
One Police Plaza, Room 110A
New York, NY 10038
Tel: (646) 610 - 5551
Fax: (646) 610 - 6399**

3/16/2016 2nd attempt

DATE: 12/24/2015	APPLICATION # 2015-3212
NAME: Mr. Corbett	INVESTIGATOR: P.O. Barberio

You must bring the original plus (1) copy of all documents requested and ALL statements you provide MUST be typed.

At your interview, you must provide your Investigator with the following checked items:

1. Proof of Birth (Birth Certificate, Alien Card, Naturalization Papers, or Valid US Passport).
2. Copy of your Social Security Card.
3. Non-Citizens residing in the USA for less than 7 years must submit a "Good Conduct Certificate".
4. Your Driver's License showing your current address. If the license does not show your current address, then you must submit the INTERIM LICENSE from the NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES. PO BOX addresses are NOT acceptable and must be changed to reflect your current address.
5. A current utility bill (Telephone, Con Edison, Cable) (ONLY) from your home and **business**, showing your current address and the **business address**, date and name. NOTE: If the bill is not in your name, you must submit a typed, NOTARIZED STATEMENT from the person whose name appears on the bill indicating that you reside/work with them and that they are aware you have applied for a pistol license, along with the original utility bill. You must also submit an article of mail in your name. (A cable bill is only accepted if there is a telephone connection also.)
6. If you are employed as a City/State/Federal employee, you must provide a typed statement from yourself indicating you will never bring the weapon(s) to your place of employment.
7. Copy of NYS Driver's License/Non-Driver ID - Security Guard License - Out of State Gun License - NYC Rifle/Shotgun License - Marriage License - Divorce Documents - Name Change Documents - Any Other City/State Issued License or ID Card. Also submit a typed statement indicating license number and expiration date for all licenses possessed. Include at the end of the statement "I affirm the above statement is true".
8. A typed statement listing all handguns/rifles/shotguns you possess and how and where they are safeguarded. If your firearms were disposed of, indicate to who (Name, Address, License State and Number) and provide proof (Bill Of Sale, Voucher, etc.). Include at the end of the statement "I affirm the above statement is true".
9. Three (3) NOTARIZED character reference letters, acknowledging that they are aware you are applying for a pistol license as well as attesting to your good character, written by anyone who has known you for five (5) or more years. Family members and non-citizens are excluded from providing the required letters on your behalf. If your letter is written by your employer, clergyman or any other prominent person, it must be on their letterhead. **ALL LETTERS MUST HAVE A PHONE NUMBER AND ADDRESS THAT THE WRITER CAN BE REACHED AT, ALONG WITH THE BEST TIME TO CONTACT THEM.**
10. A typed, NOTARIZED statement from your spouse/domestic partner, parent(s)/guardian(s), anyone over 18 living in the home attesting to the fact that they are aware of you applying for a pistol license and have no objections to a firearm in the home OR complete a CO-HABITANT FORM for all people living in your home who are over 18 years old.

copy

11. A typed, NOTARIZED statement from the person who is going to safeguard your firearm in case of your death or disability indicating that they are aware of their responsibilities. Their name, address and telephone number must be indicated on the letter OR have them complete a *SAFEGUARD FORM*.
12. A typed statement why the residence indicated on your application is different from the documents submitted. Include at the end of the statement "I affirm the above statement is true".
13. A typed statement indicating when you changed your residence. Include at the end of the statement "I affirm the above statement is true".
14. A typed statement about any information pertaining to ANY crimes against the business or the applicant, including dispositions, precinct of occurrence, dates and times. Include at the end of the statement "I affirm the above statement is true".
15. A typed statement indicating you have read and understand Penal Law Articles 35 (use of deadly force), 265 (criminal possession of a weapon), and 400 (responsibilities of a handgun licensee). This statement is in addition to the *AFFIRMATION OF FAMILIARITY WITH RULES AND LAW* form.
16. Original Court Disposition for ANY ARREST OR SUMMONS you were EVER involved in or received (Must Provide Original Seal on the Document).
17. A typed statement explaining in detail (who, what, where, when, why, how) the circumstances of ANY and ALL arrests/summons you were EVER involved in. Include at the end of the statement "I affirm the above statement is true".
18. Provide a copy of any past or present Orders of Protection placed against you or placed by you against someone else along with a typed statement detailing the circumstances in relation to the order of protection.
19. Military Paperwork (DD214). If discharge is anything other than Honorable, provide a typed statement indicating the reason why. If you served in the armed forces of any other country, provide any paper work you have and a typed statement indicating country and dates served along with your status upon discharge of service.
20. A letter from your Doctor on letterhead indicating the type of illness you have and his/her approval/medical clearance for you to possess a firearm.
21. Provide (2) photos of the safe and the surrounding area inside the business where the firearm is to be safeguarded when not in use and proof of purchase if possible.
22. A copy of your DMV Abstract if you have ever received a traffic summons other than parking violations. Include a statement indicating: Date, Time, Charge(s), Disposition, Court and Police Agency.
23. Original and photocopy of the Certificate of Incorporation.
24. Original and photocopy of the filing receipt from the SECRETARY OF STATE.
25. Original and photocopy of the latest minutes of the corporation meeting listing the name and titles of the officers of the corporation. It should be noted a corporate meeting must be held yearly.
26. Original and photocopy of the Business Certificate with receipt from the County Clerk's Office.
27. Original and photocopy of the assume name certificate for the business or the (DBA) Doing Business As Certificate.
28. Letter of Necessity (typed, signed and notarized) by the owner or an official Officer of the Corporation.
29. Copy of the latest Federal Corporate Taxes, filed with extension (if applicable).
30. Last two (2) copies of the sales tax report (ST 100's).
31. Employer's Quarterly Federal Tax Return (Form 941).

NOTE : ALL TAX FORMS MUST BE SIGNED BY THE OWNER, THE ACCOUNTANT WHO PREPARED THEM AND HIS/HER SIGNATURE MUST BE NOTARIZED.

32. Original and photocopy of 6 months of deposit/withdrawal (ATM businesses) slips and the corresponding bank statements. NOTE: DEPOSIT SLIPS MUST BE IN CHRONOLOGICAL DATE ORDER AND SPECIFY BETWEEN CASH OR CHECK TRANSACTIONS.
33. Letter from bank supporting cash deposits and/or cash payroll, must be on bank's letterhead and show branch location and contact info. NOTE: LETTER MUST ALSO STATE THEY ARE FAMILIAR WITH YOU AND THAT YOU HANDLE THE BANK TRANSACTIONS FOR YOUR BUSINESS.
34. Certificate of Authority for the business.
35. Photocopies of any license(s), registration(s), certificate(s), needed to operate your business.
36. Two (2) photos of the outside of your business, showing address and street name.
37. Copies of Deed(s) to ALL building(s) owned and/or at which you collect rent(s).
38. Letter from the Administrator of the hospital you are affiliated with stating they are aware you will possess a handgun and that you will safeguard it in the hospital facility while conducting business.
39. Letter from three (3) companies in NYC in which you do business with. Must be on company's letterhead with their name, address and telephone number indicated.
40. A typed statement explaining in detail ALL "YES" answers on your application. Include at the end of the statement "I affirm the above statement is true".
41. See Attached or Other:

Some items marked off my not apply to your business. If so, please disregard. Please provide a detailed letter of necessity demonstrating proper cause for a carry license as required by law.

***PRIVATE INVESTIGATORS OR WATCHGUARD APPLICANTS ONLY. SUBMIT THE FOLLOWING:**

1. Contract(s) or 3 letters of intent from customer(s) who currently or plan to use your services stating they intend to hire you for specified services that you will be performing for them in the NYC area which will require the carrying of a handgun.
2. Workmen Compensation Insurance VALUED AT ONE HUNDRED THOUSAND DOLLARS.
3. Surety Bond VALUED AT TEN THOUSAND DOLLARS.
4. Liability Insurance for the business.
5. Watch Guard and Patrol License OR Private Investigator License, showing current license.

***WHOLESALE DISTRIBUTOR APPLICANTS ONLY. SUBMIT THE FOLLOWING:**

1. List of at least five (5) customers to include name, address and telephone number.
2. Contract between yourself and the supplier or manufacturer.
3. Proof of purchase of route.
4. Vehicle registration and the insurance card.

FAILURE TO RESPOND TO THIS NOTICE OF REQUEST OF ADDITIONAL DOCUMENTS WILL RESULT IN DISAPPROVAL OF YOUR PISTOL LICENSE.

Jonathan Corbett

[REDACTED]
[REDACTED]
March 15th, 2015

To: New York City Police Department
Attn.: P.O. Barberio
One Police Plaza
New York, NY 10038
via USPS Certified Mail

Re: Handgun License Application for Jonathan Corbett, 2015-3212

Dear Officer Barberio:

Thank you for taking the time to review my application for a business carry license. I have received your document request dated 12/24/2015, and have prepared the documents you have requested, but I have tried calling your approximately one dozen times during the hours indicated and have not been able to reach you. I have also sent a fax to which I have not received a response. I therefore respond to your letter in writing as follows:

1. Copy of out-of-state gun license with statement – A copy of my Florida Concealed Weapons License # W2990562, exp. 07/30/2016, is attached. I affirm that this statement is true.
2. Statement listing all guns possessed – I possess the following handguns: (1) Sig Sauer P250 Subcompact chambered in 9mm, and (1) Sig Sauer P238 Liberty chambered in .380. I possess no other guns. These handguns are stored, locked, in Miami Gardens, Florida.
3. Three notarized character reference letters – A copy of 3 notarized character reference letters is attached.
4. A statement affirming law familiarity – I affirm that I have read and understand NY Penal Law Articles 35, 265, and 400.
5. Court dispositions and statements explaining all arrests/summons – I have never been arrested or issued a summons other than minor traffic citations many – perhaps 10+ – years ago. Any such

Jonathan Corbett · <http://www.professional-troublemaker.com/> · jon@professional-troublemaker.com

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summonses were paid or dismissed, and I have maintained full driving privileges in New York since being licensed as a teenager. As these minor traffic citations occurred many years ago, I do not recall the exact charges, locales, and/or dispositions, and instead refer you to my NY DMV Abstract. I affirm that this statement is true.

6. Statement regarding orders of protection – I have never been on either side of an Order of Protection. I affirm that this statement is true.
7. A letter from a doctor describing my illness – As I have never been diagnosed with, or treated for, any type of mental illness by a doctor, this does not apply to me.
8. Two photos of my safe and surrounding area – I will purchase a secure safe upon licensure but before possession of any firearms within the state.
9. A copy of my NY DMV Abstract – A copy of my NY DMV Abstract is attached.
10. Certificate of Incorporation – My business is a sole proprietorship, and therefore there is no certificate of incorporation.
11. Secretary of State Filing Receipt – My business is a sole proprietorship, and therefore no filing was made with the Secretary of State.
12. Corporate meeting minutes – My business is a sole proprietorship, and therefore there are no corporate meetings, nor “minutes” therefrom.
13. Business Certificate – My business is a sole proprietorship, and in neither the State of Florida, where it is headquartered, nor the State of New York is a business certificate required.
14. DBA Certificate – My business has not filed a DBA certificate.
15. Letter of Necessity – A letter of necessity was attached to my original handgun license application.
16. Federal corporate tax return – My business is a sole proprietorship, and therefore there is no corporate tax return. However, I have attached to my original handgun license application the form filed with the federal government last year to pay my business taxes.

17. Sales tax reports – My business does not sell taxable goods, and there are therefore no sales tax reports.
18. Employment tax return – My business does not have employees, and therefore there are no employment tax return.
19. Deposit & withdrawal slips – My business necessity does not rest upon the amount of cash that I have; therefore, this does not apply, and I refer you to my letter of necessity.
20. Letter from bank – My business necessity does not rest upon the amount of cash that I have; therefore, this does not apply, and I refer you to my letter of necessity.
21. Certificate of Authority – My business does not sell taxable goods, and therefore has no Certificate of Authority.
22. Business licenses – My business does not require a business license.
23. Photos of the outside of the business – My business is home-based; therefore, this does not apply.

Again, thank you for your review. If you would like to schedule an in-person interview or ask any questions, I may be reached at (646) 316-4524. Otherwise, I am happy to correspond in writing; you have my address.

Thank you,



Jonathan Corbett

Jonathan Corbett





January 27, 2016


To Whom It May Concern:

My name is [redacted], and I am writing in support of the New York City firearm license application of Jonathan Corbett. I am a U.S. citizen over the age of 18, and I am not related to Jonathan, but have known him for 28 years. In that time, I have not known him to have been arrested (or otherwise commit crime), to abuse drugs or alcohol, or to have mental health issues.


I have known him instead to be an upstanding citizen who is knowledgeable and respectful of the law, as well as possessing the maturity and safety-consciousness one would desire to see in an individual granted a license to carry a firearm.

I may be reached at the address or phone number below with questions.

Thank you,


Name: [redacted]
Address: [redacted]
Phone: [redacted]

Sworn to before me this 27
day of January, 2016


Notary Public



February 2, 2016


To Whom It May Concern:

My name is E. [REDACTED], and I am writing in support of the New York City firearm license application of Jonathan Corbett. I am a U.S. citizen over the age of 18, and I am not related to Jonathan, but have known him for 9 years. In that time, I have not known him to have been arrested (or otherwise commit crime), to abuse drugs or alcohol, or to have mental health issues.


I have known him instead to be an upstanding citizen who is knowledgeable and respectful of the law, as well as possessing the maturity and safety-consciousness one would desire to see in an individual granted a license to carry a firearm.

I may be reached at the address or phone number below with questions.

Thank you,


Name: E. [REDACTED]

Address: 

Phone: 

Sworn to before me this 2
day of February, 2016


Notary Public

SANDRA GUIFFRE
Notary Public, State of New York
No. 01GU6215063
Qualified in New York County
Commission Expires Dec. 16, 2017

A6/8

January 22, 2016

To Whom It May Concern:

My name is D [REDACTED] B [REDACTED], and I am writing in support of the New York City firearm license application of Jonathan Corbett. I am a U.S. citizen over the age of 18, and I am not related to Jonathan, but have known him for 8 years. In that time, I have not known him to have been arrested (or otherwise commit crime), to abuse drugs or alcohol, or to have mental health issues.

I have known him instead to be an upstanding citizen who is knowledgeable and respectful of the law, as well as possessing the maturity and safety-consciousness one would desire to see in an individual granted a license to carry a firearm.

I may be reached at the address or phone number below with questions.

Thank you,



Name: D [REDACTED] B [REDACTED]

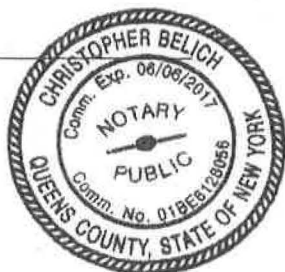
Address: [REDACTED]

Phone: [REDACTED]

Sworn to before me this 28
day of January, 2016



Notary Public



ABSTRACT OF DRIVING RECORD

Document # LWEB0228

PRINT DATE: 12/27/2015 TIME: 23:15:65 OPERATOR: WEB OFFICE: DAB

CORBETT, JONATHAN, W



CLIENT ID#: 934269130

DOB: [REDACTED] 1984 SEX: M

HEIGHT: 5-11 EYE COLOR: BLUE

COUNTY: NEWY

MI #: C15659 85565 023808-84

NAME ON LICENSE/ID: CORBETT
JONATHAN, W

ID-ONLY
NON-COMM. STATUS: SURRENDERED

EXPIRATION: 06/01/2024

CLASS CHANGE: 07/11/2003

DOCUMENT SURRENDERED ON: 12/18/2007 TO FL

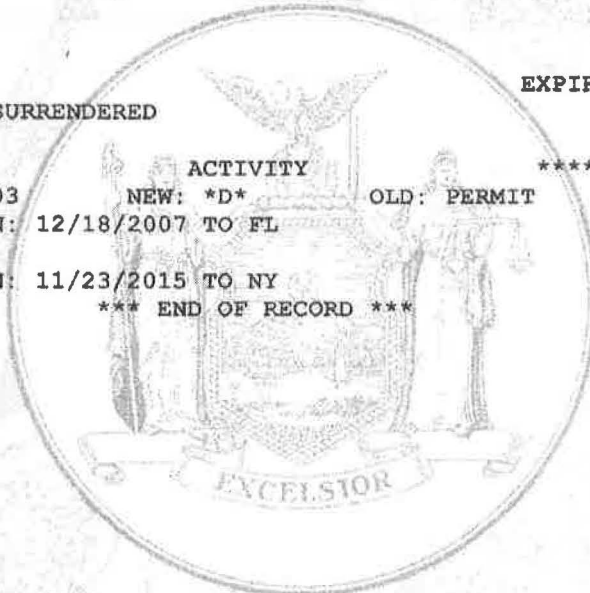
DOCUMENT SURRENDERED ON: 11/23/2015 TO NY

*** END OF RECORD ***

ACTIVITY

NEW: *D*

OLD: PERMIT




This is to certify that this document is a true and complete copy of an electronic record on file in the New York State Department of Motor Vehicles, Albany, New York. The record was made in regular course of New York State Department of Motor Vehicles daily business. It is the business of the New York State Department of Motor Vehicles to create and maintain the records of drivers in the state of New York. Entries in this document are made at the time the recorded transactions or events took place or within a reasonable time thereafter. The person who reports the information is under a business duty to do so accurately.

ABS-3 (07/16)

David L. Egan

A818

LICENSE DIVISION
 APPEAL WORKSHEET FOR DISAPPROVED APPLICATIONS

APPEAL NUMBER:	36/16	APPLICATION NUMBER:	2015-3212
DATE OF APPEAL:	05/10/16	DATE OF APPLICATION:	12/22/15
DATE OF DISAPPROVAL:	04/18/16	DISAP. #	110/16
LAST NAME:	CORBETT	FIRST NAME:	JONATHAN
ADDRESS:	[REDACTED]	BOROUGH:	NEW YORK
HOME/CELL TELEPHONE#:	[REDACTED]	ZIP CODE:	[REDACTED]
BUS./ATTY. NAME:	N/A	BUS./ATTY. ADDRESS:	
BOROUGH:		ZIP CODE:	
TYPE OF LICENSE:	CB	INVESTIGATOR'S NAME:	P.O. BARBERIO
REMARKS:	<p><i>Your failure to complete your application by refusing to answer questions 11, 12 + 13. Refusing to answer a question ^{contained} in a proper application for a license does not meet the requirements of PL 400.00(1). Your refusal to answer these questions constitutes a failure to cooperate with the LD's investigation of your application, PL 400.00(1)(b) 5-10(m). ^{PL 400.00(1)(b)} your statement, in response to paragraph 1 of the Letter of Necessity, is conclusory + lacks specific →</i></p>		
DISPOSITION:	APPROVED / <u>DENIED</u>		
DATE OF DISPOSITION:	5-27-16		
LICENSE TYPE APPROVED FOR:	PR PB <u>CB</u> CL SX CG SP R/S		
APPROVED BY:			

Not all statements in a proper application are true.

LICENSE DIVISION
APPEAL WORKSHEET FOR DISAPPROVED APPLICATIONS

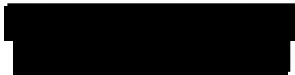
information needed to evaluate your
claim to ^{that you need to carry} require a concealed handgun, see
~~38 RC~~ PL 400.00 (2)(f) + 38 RCNY 5-03



New York City Police Department

License Division
One Police Plaza
New York, NY 10038
Tel: (646) 610-5551
Fax: (646) 610-6399

Mr. Corbett



Date: 12/24/2015

Applicant,

My name is Police Officer Barberio, and this letter is to inform you that I have recently been assigned to investigate your application for a handgun license with the New York City Police Department, License Division.

Attached you will find a list of all the necessary documents needed to proceed in the processing of your application.

Please give me a call after you have gathered **ALL** the required documents. We **must** set up an appointment for you to come into my office for an interview. You can contact me Monday through Friday from 9 AM to 2 PM at (646) 610-**5551**. Please schedule your interview before Friday February 12th, 2016.

Thank you for your cooperation.

Sincerely,

copy

Record on Appeal A083

Jonathan Corbett

[REDACTED]
[REDACTED]

February 11th, 2015

To: New York City Police Department
Attn.: P.O. Barberio
One Police Plaza
New York, NY 10038
via fax - (646) 610-6399

Re: Handgun License Application for Jonathan Corbett, 2015-3212

Dear Officer Barberio:

Thank you for notifying me that you are the investigator for my gun license application. You have requested that I call you M-F 9-2 to schedule an interview. I have tried at least 5 times, but have never been able to reach you.

Please reach me at [REDACTED] and we can schedule a time.

Thank you,



Jonathan Corbett



New York City Police Department

License Division
One Police Plaza
Room 110-A
New York, NY 10038
Tel: (646) 610-5551
Fax: (646) 610-6399



Second Attempt

Date: 3/16/2016

Mr. Corbett



Application # 2015-3212

Mr. Corbett,

It seems we are having a difficult time catching up with one another. I have sent you an email prompting you to look out for this letter via U.S.P.S. In an effort to keep your application moving along I'd like to set an interview date. In order to provide you with enough time to gather all requested/required documents, let's schedule your interview for Thursday April 7th 2016 at 11:00am. If you cannot attend this interview date I will do my best to accommodate one re-scheduled appointment. Since we have not been able to reach each other via phone, please contact me on my department email to confirm or reschedule this appointment.

The interview with your investigator is not only an integral part of the handgun license application process, it is mandatory.

Thank you in advance for your anticipated response and cooperation.

Police Officer Barberio

BARBERIO, THOMAS

3/16/16 10:40 PM

To: jor [REDACTED]
Subject: NYPD License Division

Mr. Corbett

It seems we have had a difficult time reaching one another.
I have sent another correspondence to your home address on file but thought I would try to reach you via email.
I would like to schedule your interview for March 31st, 2016 at 11:00am.
Please confirm or request a reschedule by weeks end to ensure your application process moves along seamlessly.
Regards,

Police Officer Thomas Barberio
New York City Police Department
License Division
One Police Plaza
New York, NY 10038
Room 110-A
Office 646-610-6489 / 5551
Fax 646-610-6399

CONFIDENTIALITY NOTICE: This email and any attachments may contain confidential and privileged information for the use of the designated recipient(s) named above. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, use or disclosure of it or its contents is prohibited and may violate laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of this communication.

BARBERIO, THOMAS

3/16/16 @ 11:45pm

To: jon [REDACTED]
Subject: NYPD CORRECTION

Please accept my apologies.
I will not be in the office that week.
I would like to change the interview date to Thursday April 7th at 11:00am
Please confirm at your convenience.
Regards,

Police Officer Thomas Barberio
New York City Police Department
License Division
One Police Plaza
New York, NY 10038
Room 110-A
Office 646-610-6489 / 5551
Fax 646-610-6399

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BARBERIO, THOMAS

3/18/16 @ 0958

To: Jon
Subject: RE: NYPD CORRECTION

I received the package you mailed this morning.
Our mail gets opened off site for security reasons, then forwarded to us.
Because of this, there is often a delay.
It looks as though you have provided a majority of what you feel is relevant to the investigation.
I must caution you however that your refusal to answer several questions on the application
may be cause for disapproval.
We can discuss this further on the day of the interview.
Also, your letter of necessity, at face value appears to fail to demonstrate "proper cause" as
required by New York State Penal Law 400.00 (2) (f)
Again, this is something we can discuss on the 7th.
Regards,

Police Officer Thomas Barberio
New York City Police Department
License Division
One Police Plaza
New York, NY 10038
Room 110-A
Office 646-610-6489 / 5551
Fax 646-610-6399

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From: Jon [mailto:jon@professional-troublemaker.com]
Sent: Thursday, March 17, 2016 1:43 PM
To: BARBERIO, THOMAS
Subject: RE: NYPD CORRECTION

Hi Ofc. Barberio,

Thank you for reaching out by e-mail to get this moving... much appreciated. 4/7 at 11am is just fine, I'll see you then.

Can you confirm that you have all my documents that I mailed on Monday and that there is nothing else I'll need to bring to the interview?

Thanks,

Jonathan Corbett

From: BARBERIO, THOMAS [mailto:THOMAS.BARBERIO@nypd.org]

Sent: Wednesday, March 16, 2016 11:45 PM

To: jon@[REDACTED]

Subject: NYPD CORRECTION

Please accept my apologies.

I will not be in the office that week.

I would like to change the interview date to Thursday April 7th at 11:00am

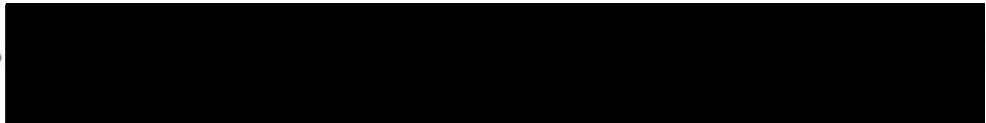
Please confirm at your convenience.

Regards,

Police Officer Thomas Barberio
New York City Police Department
License Division
One Police Plaza
New York, NY 10038
Room 110-A
Office 646-610-6489 / 5551
Fax 646-610-6399

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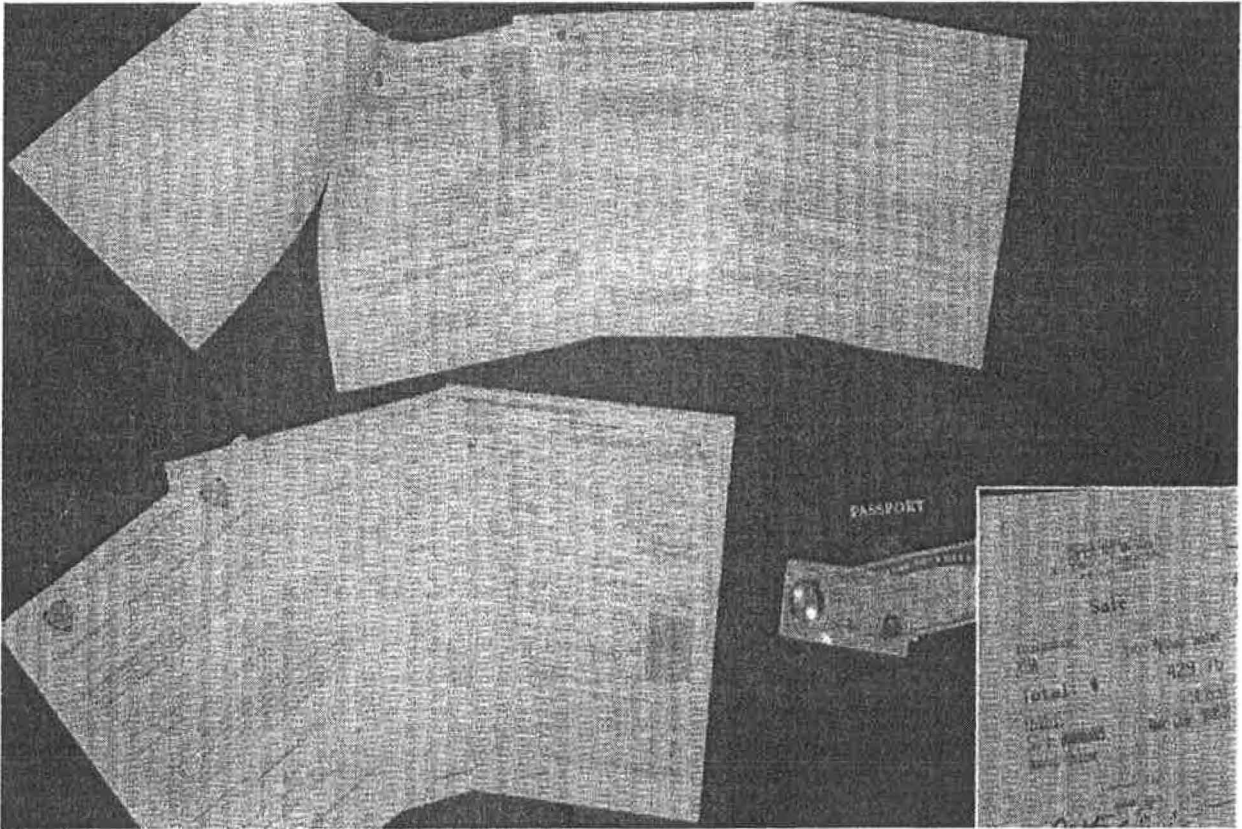
www.



3/16/16

Is It *Really* Impossible To Get A Gun License in NYC? (Part I)

If you ask a random person living in NYC how hard it is to get a gun license, they will probably tell you that if you want a license to carry a gun, you have to be a cop, work as a security guard, or “know someone” (*i.e.*, be rich and have donated to the right politician or organization). The thing is, I couldn’t find anyone who didn’t fit into one of those categories who had actually tried, and in light of semi-recent Supreme Court rulings that the 2nd Amendment is an individual right, not limited to “militias,” I figured it was about time to put it to the test.



What you need to apply for a NYC gun license — to start!

I gathered all the forms together, went down to “1 Police Plaza” — the NYPD headquarters in lower Manhattan, and was promptly told I could not apply because I didn’t have an ID card issued by the New York DMV. Apparently a Florida driver’s license, a social security card, and a U.S. passport were insufficient to prove who I am, even though all of those are sufficient to get the New York DMV to give me an ID card.

But, no problem. A New York ID lasting for 8 years turns out to be a \$12 investment. My complete, “accepted” (as in, they were willing to consider it) application is pictured above: 1 three-page application, 1 letter of necessity, 1 letter explaining any checkboxes you may have checked that need explanation (Ever had a speeding ticket? That needs to be explained!), 1 letter

CORBETT
2015-3212
APPLIED
12/24/15

from your roommate approving of your license or an affidavit that you have no roommate (My 2nd Amendment rights are contingent on my roommate's permission?), 1 affidavit from someone willing to take possession of my guns if I die, 2 photos, 1 New York ID, 1 U.S. passport, 1 social security card, and \$429.75. Oh, and a copy of my business tax return.

Business tax return? In order to apply to carry a firearm in New York City, you must provide a business reason. This seems likely to be ruled unconstitutional if challenged today in light of the new Supreme Court rulings, but I happen to run a business for which I have the necessity to get a gun license: I am a civil rights advocate, I need a license to exercise my civil rights, and thanks to your donations over the last 5+ years, I file a business tax return annually.

The application also asks a lot of extremely personal and seemingly irrelevant questions. Have you ever been fired from a job? Taken a sedative medication or pain killer (you're checking yes if you've ever had surgery)? Testified before Congress? The NYPD wants to know. If your answer to any of the above is yes, add that to your explanation form next to your speeding ticket explanation. For all of these questions, I checked no box and explained on the form that I refuse to answer because they are irrelevant.

But, apparently that's good enough to get the app in processing. After everything is paid for, fingerprints are taken (included in that \$429.75 fee, which, by the way, is non-refundable if you are denied a license, and lasts for only 2 years assuming you do). A few days later (shockingly promptly), I get a letter from the officer assigned to examine my case:

Corbett Gun License App Reply (.pdf)

The reply is a request for ***25*** more documents that the NYPD needs to complete my application. Some of the highlights include:

- 3 letters of recommendation, notarized and signed by people who know you for at least 5 years but are not family members
- The original court records for any of those speeding tickets you listed on your application
- A letter from your doctor describing your mental illness (funny, since I checked "no" on the "is a doctor treating you for a mental illness" box on the app)
- 6 months of bank withdrawal slips
- Pictures of your business, inside and out
- A whole lot of tax records

I'm really good at paperwork, so I compiled everything (or explained why I cannot, or will not, be getting them a particular document). The letter says that once I do that, I should call Police Officer Thomas Barberio, whose annual compensation is over \$93,000 despite still having the lowest rank an officer can have, to schedule an appointment.

So I called. And I called. And I called...

02/18/16, 1:30 PM	to NEW YORK/NY	(646) 610-5551
02/11/16, 12:27 PM	to NEW YORK/NY	(646) 610-5551
02/10/16, 1:34 PM	to NEW YORK/NY	(646) 610-5551
02/10/16, 1:30 PM	to NEW YORK/NY	(646) 610-5551
02/09/16, 1:31 PM	to NEW YORK/NY	(646) 610-5551
02/08/16, 1:55 PM	to NEW YORK/NY	(646) 610-5551

No less than 10 times on 7 different days. Officer Barberio is, it seems, never around. So I sent a fax. No reply.

For Part II of my journey, I head back to 1 Police Plaza to see if we can find Officer Barberio or his supervisor. Stay tuned.

Fighting for civil rights in court is expensive! Want to contribute to the fight against government assholery? Donate via PayPal, Venmo, Chace QuickPay, Bitcoin, or check



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

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

Jonathan Corbett



DATE:

App # 2015-3212
4-18-16

DISAPPROVAL#

110/16

NOTICE OF DISAPPROVAL

Mr. Corbett:

Your application for a Handgun License has been DISAPPROVED for the following reasons:

Upon submitting your application you deliberately failed to answer all of the required questions.

Question #11 "Have you ever been discharged from any employment?"

Question #12 "Have you ever used narcotics or tranquilizers? List doctor's name, address, telephone number, in explanation."

Question #13 "Have you ever been subpoenaed to, or testified at, a hearing or inquiry conducted by any executive, legislative, or judicial body?"

You initially provided the following written response for your omitted answers:

"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 2) 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."

You then submitted an amendment to explain your answers further. Your amendment, as thorough as it was, failed to address the above three questions.

Title 38 of the Rules of the City of New York § 5-05 (a) dictate that "The application form shall be completely filled out and submitted in person at the License Division." By deliberately omitting the answers to Questions #11, #12, and #13 you have failed to meet this requirement.

Additionally, Title 38 of the Rules of the City of New York § 5-03 dictate that "...an applicant seeking a carry or special handgun license shall be required to show "proper cause" pursuant to § 400.(2)(f) of the New York State Penal Law. Proper cause is determined by a review of all relevant information bearing on the claimed need of the applicant for the license."

Kachalsky v Cacace in the United States Court of Appeals for the Second Circuit decided:

[HN 12] "Given New York's interest in regulating handgun possession for public safety and crime prevention, it decided not to ban handgun possession, but to limit it to those individuals who have an actual reason (proper cause) to carry the weapon. In this vein, licensing is oriented to the Second Amendment's protections. Thus, proper cause is met and a license shall be issued when a person wants to use a handgun for target practice or hunting. N.Y. Penal Law § 400.00(2) (f). And proper cause is met and a license shall be issued when a person has an actual and articulable-rather than merely speculative or specious-need for self-defense. N.Y. Penal Law § 400.00(2) (f).

[HN13] "Restricting handgun possession in public to those who have a reason to possess the weapon for a lawful purpose is substantially related to New York's interests in public safety and crime prevention. It is not an arbitrary licensing regime no different from limiting handgun possession to every tenth citizen."

[HN 15] "...to regulate firearm possession in public, requiring a showing that there is an objective threat to a person's safety-a special need for self-protection-before granting a carry license is entirely consistent with the right to bear arms..."

Your letter of necessity, the required document to illustrate your "proper cause" as required by Title 38 of the Rules of the City of New York §5-03 is as follows (in its entirety):

"Applicant conducts business as a civil rights advocate. In order to exercise his civil rights fully, he needs a carry license."

By submitting the preceding letter of necessity you have failed to demonstrate the "proper cause" required to carry a firearm.

Factors listed in Title 38 of the Rules of the City of New York §5-10 (m), and (n) were taken into consideration regarding the eligibility requirements of "good moral character" and "no good cause exists for the denial of a license" in making the determination for the DISAPPROVAL of your application.

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

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

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

By direction of



Michael T. Endall
Deputy Inspector

Jonathan Corbett

[Redacted]

May 6th, 2016

To: New York Police Department
Attn.: Appeal Unit / Director of the License Division
One Police Plaza, Room 110
New York, NY 10038

Re: NOTICE OF APPEAL, App. # 2015-3212

To Whom It May Concern:

I have received your Notice of Disapproval for the above referenced license application. I hereby appeal on the following grounds:

1. You state that I have failed to comply with NYC Rules § 5-05(a), which require an application to be completely filled out, because I refused to answer 3 questions. This is incorrect because:
 - a. Refusing to answer a question, combined with an explanation of the refusal, is not a failure to fill out a part of the application. It is filling out the application by providing a refusal.
 - b. In the alternative, to the extent that city and/or state law requires me to answer questions 11, 12, and 13, that requirement is unconstitutional because it does not have a "substantial relationship" to the city's interest in protection of the public. See Kachalsky v. County of Westchester, 701 F.3d 81, 98 (2nd Cir. 2012) (explaining that gun regulations need "be substantially related to the state's important public safety interest.").
2. You state that I have failed to "illustrate" "proper cause." I challenge the constitutionality of N.Y. Penal Law § 400(2)(f)'s requirement of "proper cause." I am aware that the court in *Kachalsky, supra*, ruled the statute to be constitutional. However, other courts to consider the matter since *Kachalsky* have disagreed. See Moore v. Madigan, 702 F.3d 933 (7th Cir. 2012, Posner, J.); Peruta v. San Diego, 742 F.3d 1144 (9th Cir. 2014) (stayed pending *en banc* review). I believe that due to the split of authority on the matter in the Court of Appeals, the U.S. Supreme Court would hear the issue, and I look forward to litigating the issue should my appeal not be granted.

10 MAY 2016 12 19
POLICE DEPARTMENT
CITY OF NEW YORK

Appeal # 3616

I affirm that the above is true to the best of my knowledge and does not omit pertinent facts, and do so under penalty of perjury.

I may be reached at [REDACTED] Thank you very much for your time.

Sincerely,



Jonathan Corbett

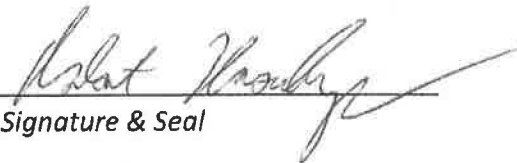
State of California

County of Los Angeles

This instrument was signed or acknowledged

before me on May 6th, 2016,

by Jonathan Corbett


Notary Signature & Seal



From: Joe [redacted]

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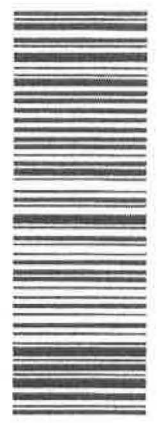
USPS® FIRST-CLASS MAIL®

0 lb. 0.60 oz.

SHIP TO: NYPD
Attn: Appeal Unit/Dir. of the License Div.
One Police Plaza, Rm. 110

NEW YORK NY 10007
38

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Document Mailer



POLICE DEPARTMENT
License Division
One Police Plaza- Rm. 110A
New York, N.Y. 10038
Tel: (646) 610-5560

NOTICE OF DISAPPROVAL AFTER APPEAL

May 31, 2016

Jonathan Corbett
[REDACTED]

Appeal# 36/16
Disap.# 110/16

Dear Mr. Corbett:

I am writing to inform you that based on my review of the entire record, your appeal of the determination denying your Carry Business license is **disapproved** due to:

- **Your failure to complete your application by refusing to answer questions 11, 12 and 13. Refusing to answer a question contained in a proper application for a license does not meet the requirements of PL 400.00 (1), that all statements in a proper application are true. Your refusal to answer these questions constitutes a failure to cooperate with the License Division's investigation of your application, see PL 400.00 (4) and 38 RCNY 5-10 (m).**
- **You have not shown "proper cause" to be licensed to carry a concealed firearm in New York City. Your statement, in response to paragraph 1 of the Letter of Necessity, is conclusory and lacks specific information needed to evaluate your claim that you need to carry a concealed handgun, see PL 400.00 (2) (f) and 38 RCNY 5-03.**

You may appeal this determination by commencing an Article 78 proceeding in State Supreme Court within four months of the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Prasso".

Thomas M. Prasso
Director

TMP:da

COURTESY • PROFESSIONALISM • RESPECT
Website: <http://nyc.gov/nypd>

Record on Appeal A098



POLICE DEPARTMENT
LEGAL BUREAU
F.O.I.L Unit, Room 110C
One Police Plaza
New York, NY 10038

05/17/16

Mr. Jonathan Corbett
228 Park Ave S.
86952
New York, NY 10003

FOIL Req #: 2016-PL-5156
Your File #:
Re: concealed firearm

Dear Sir or Madam:

This is in response to your letter dated 05/06/16, which was received by this office on 05/10/16, in which you requested access to certain records under the New York State Freedom of Information Law (FOIL).

Your request has been assigned to Police Officer Halk (646-610-6430) of this office. Before a determination can be rendered, further review is necessary to assess the potential applicability of exemptions set forth in FOIL, and whether the records can be located. I estimate that this review will be completed, and a determination issued, within ninety business days of this letter.

This is not a denial of the records you requested. Should your request be denied in whole or in part, you will then be advised in writing of the reason for any denial, and the name and address of the Records Access Appeals Officer.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard Mantellino".

Richard Mantellino
Lieutenant
Records Access Officer

COURTESY • PROFESSIONALISM • RESPECT

Record on Appeal A099



POLICE DEPARTMENT
LEGAL BUREAU
F.O.I.L Unit, Room 110C
One Police Plaza
New York, NY 10038

05/17/16

Mr. Jonathan Corbell
228 Park Ave S.
86952
New York, NY 10003

FOIL Req #: 2016-PL-5156
Your File #:
Re: concealed firearm

Dear Sir or Madam:

This is in response to your letter dated 05/06/16, which was received by this office on 05/10/16, in which you requested access to certain records under the New York State Freedom of Information Law (FOIL).

Your request has been assigned to Police Officer Halk (646-610-6430) of this office. Before a determination can be rendered, further review is necessary to assess the potential applicability of exemptions set forth in FOIL, and whether the records can be located. I estimate that this review will be completed, and a determination issued, within ninety business days of this letter.

This is not a denial of the records you requested. Should your request be denied in whole or in part, you will then be advised in writing of the reason for any denial, and the name and address of the Records Access Appeals Officer.

Very truly yours,

Richard Mantellino
Lieutenant
Records Access Officer

COURTESY • PROFESSIONALISM • RESPECT

Record on Appeal A100



POLICE DEPARTMENT
LEGAL BUREAU
F.O.I.L Unit, Room 110C
One Police Plaza
New York, NY 10038

05/27/16

Mr. Jonathan Corbett



FOIL Req #: 2016-PL-5156
Your File #:
Re: concealed firearm

Dear Sir or Madam:

This is in response to your letter dated 05/06/16, which was received by this office on 05/10/16, in which you requested access to certain records under the New York State Freedom of Information Law (FOIL).

In regard to the documents(s) which you requested, I must deny access to these records on the basis of Public Officers Law Section 87(2)(e)(i) as such records/information, if disclosed would interfere with law enforcement investigations or judicial proceedings.

You may appeal this decision or any portion thereof. Such an appeal must be made in writing within thirty (30) days of the date of this letter and must be forwarded to: Jonathan David, Records Access Appeals Officer, New York City Police Department, One Police Plaza, Room 1406, New York, NY 10038. Please include copies of the FOIL request and this letter with your appeal.

Very truly yours,

Richard Mantellino
Lieutenant
Records Access Officer

COURTESY • PROFESSIONALISM • RESPECT

Record on Appeal A101

LIB 5* 56/16

Jonathan Corbett

[REDACTED]
[REDACTED]
June 6th, 2016

To: New York Police Department
Attn.: Jonathan David
Records Access Appeals Officer
One Police Plaza, Room 1406
New York, NY 10038

Re: FOIL Appeal, 2016-PL-5156

To Whom It May Concern:

On May 6th, 2016, I requested, under all relevant public records laws, any records in the NYPD's possession that met several criteria related to applications for, and responses to, applications for concealed firearm licenses that were submitted within a 3-month period. I received a reply from Lt. Richard Mantellino, who denied my request in its entirety, stating that responding to my request would interfere with law enforcement investigations or judicial proceedings.

Mr. David, I've filed a handful of FOIL requests with the NYPD over the last decade, and it seems that every time I do so, the record is summarily denied by Lt. Mantellino, yet granted (at least in part) upon appeal. I believe that the Lt. has no good faith basis for these denials, and for this reason, I will be filing a complaint with the Civilian Complaint Review Board alleging abuse of authority for intentional failure to comply with the state's public record laws.

But I digress. Lt. Mantellino's denial is hereby appealed on the grounds that: 1) revealing information about the applications and decisions surrounding them will not interfere with law enforcement, but rather shed light on a matter of significant public interest, and 2) even if some of the records requested contain data that cannot be released, a blanket denial is unnecessary in light of the specific statement in my FOIL request to redact sensitive data and provide what is remaining.

I may be reached at [REDACTED]. Thank you very much for your time.

Sincerely,



Jonathan Corbett

Jonathan Corbett



USPS CERTIFIED MAIL



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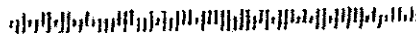
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Record on Appeal A103

Index No. 158273/2016

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JONATHAN CORBETT,

Petitioner-Plaintiff,

- against -

THE CITY OF NEW YORK,

Respondent-Defendant,

THOMAS M. PRASSO,

Respondent.

**RESPONDENTS-DEFENDANTS'
MEMORANDUM OF LAW IN SUPPORT OF
CROSS-MOTION TO DISMISS**

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Matter No. 2016-039360

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January 19, 2017

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

JONATHAN CORBETT,

Petitioner-Plaintiff,

-against-

THE CITY OF NEW YORK,

Respondent-Defendant, Index No. 158273/2016

THOMAS M. PRASSO,

Respondent.

----- X

**RESPONDENTS-DEFENDANTS’
MEMORANDUM OF LAW IN SUPPORT OF
CROSS-MOTION TO DISMISS
PRELIMINARY STATEMENT**

Pro se petitioner Jonathan Corbett challenges the New York City Police Department (“NYPD or the Department”) License Division’s final determination denying his application for a business carry concealed handgun license. The License Division disapproved Corbett’s application, based in part on his unwillingness to answer certain questions on his application, and his failure to particularize his need for the license – a requirement for the issuance of a concealed carry license.

Corbett administratively appealed from the License Division’s disapproval of his pistol license application. After the License Division denied Corbett’s administrative appeal in a final determination, Corbett commenced this hybrid Article 78 proceeding and declaratory judgment action, alleging that New York Penal Law 400.00(2)(f) on its face violates the Second

Amendment, made applicable by the Fourteenth Amendment of the United States Constitution (claim one), that questions 11, 12 and 13 of the license application, which he refused to answer, “fail the ‘arbitrary and capricious’ test and are “an unconstitutional infringement on Corbett’s Second Amendment rights” (claim two); and injunctive relief compelling NYPD to issue Corbett a carry pistol license (claim three). The fourth claim seeks an order directing NYPD to produce records requested by Corbett through the New York Freedom of Information Law (“FOIL”).

The claims asserted fail as a matter of law. As to the first claim, the Court should not reach the Second Amendment claim because there is no proof that Corbett notified the New York State Attorney General, as required by CPLR § 1012(b) and New York Executive Law § 71(1) to challenge the constitutionality of a state statute. In any event, the “proper cause” requirement of PL § 400.00(2)(f) does not run afoul of the Second Amendment; the right to bear arms is not absolute. Moreover, Corbett’s explanation that he seeks “to exercise his civil rights fully” does not demonstrate a special need to carry a concealed handgun in public. Similarly, as to the second claim, the refusal of Corbett to answer certain questions is not protected by the Second Amendment; it was lawful for the License Division to investigate the fitness of the applicant to carry a concealed handgun in public. Questions 11, 12, and 13 are reasonably related to determining an applicant’s fitness. Thus, it was reasonable and lawful for the License Division to deny Corbett’s license application based on his failure to cooperate with the License Division’s investigation, or demonstrate a need for self-protection distinct from the community. Accordingly, Corbett has not demonstrated a clear right to the issuance of a business carry license, and his third claim must fail. The fourth claim is not ripe for adjudication because Corbett has not exhausted his administrative remedies; his administrative appeal to the Department’s record officer is pending.

Accordingly, for the reasons set forth herein, the actions of respondents-defendants are in all respects rational, lawful and constitutional, and their cross-motion to dismiss the combined Article 78 petition and complaint for declaratory relief, should be granted.

STATUTORY FRAMEWORK

Handgun possession in the State of New York is governed by Article 400 of the Penal Law. The requirements for issuance of a handgun license are set forth under Penal Law §400.00(1), which provides in pertinent part as follows:

§ 400.00 Licenses to carry, possess, repair and dispose of firearms.

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) twenty-one years of age or older . . . (b) of good moral character; (c) who has not been convicted anywhere of a felony or a serious offense; (d) who has stated whether he has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness; (e) who has not had a license revoked or who is not under a suspension or ineligibility order issued pursuant to the provisions of section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act. . . . and (g) concerning whom no good cause exists for the denial of the license.

(emphasis added).

Section 10-131 of the New York City Administrative Code (“Administrative Code”) empowers the Police Commissioner with the authority to regulate handgun possession within the City of New York. The regulations promulgated by the License Division pertaining to the licensing of handguns in the City of New York are set forth under Title 38 of the Rules of the

City of New York (“RCNY”). Section § 5-02 of Title 38 mirrors the requirements of Penal Law §400.00(1), providing, in pertinent part, as follows:

The applicant shall:

- (a) Be of good moral character;
- (b) (b) Have no prior conviction for a felony or other serious offense . . .
- (c) Disclose whether s/he is or has been the subject or recipient of an order of protection or a temporary order of protection;
- (d) Have no prior revocation of a license nor be the subject of a suspension or ineligibility order . . .
- (e) Disclose any history of mental illness;
- (f) Be free from any disability or condition that may affect the ability to safely possess or use a handgun;
- (g) Reside or maintain a principal place of business within the confines of New York City;
- (h) Be an applicant concerning whom no good cause exists for the denial of such license;
- (i) Be at least 21 years old.

Section 5-08 of Title 38 of the Rules of the City of New York contains a list of the requirements for a pistol license application, including the requirement that applicants submit a notarized letter of necessity. Section 5-05 states, in relevant part, as follows:

§5-08 Application Form.

(b)(8) *Letter of necessity.* (i) A letter of necessity explains the need for the license.

(ii) Regardless of whether a handgun license was previously issued by the New York City Police Department or any other issuing authority, the letter of necessity shall contain the following information:

(A) A detailed description of the applicant's employment and an explanation of why the employment requires the carrying of a concealed handgun.

(G) At the time of the applicant's interview, the applicant shall be advised whether any additional forms or documents are required. Failure to provide the information requested may result in the disapproval of the applicant's application.

(Emphasis added.)

Penal Law section 400.00(4) requires the Police Department to investigate statements made in a pistol license application. It provides, in relevant part, as follows:

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made.

Licenses to Carry Concealed Handgun

Penal Law § 400.00(2) sets forth the various types of handgun licenses that the License Division may issue. Penal Law § 400.00(2)(f) provides for an unrestricted license, which allows the holder to carry a handgun concealed on the person without restriction to geographic area or employment (a “Carry License”). An applicant must demonstrate “proper cause” for issuance of such a license. Section 400.00(2) provides, in pertinent part, as follows:

2. Types of licenses.

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

(emphasis added).

Section 5-01 of Title 38 of the RCNY sets forth the different handgun licenses which NYPD may issue. It describes a Carry Business License as follows:

§ 5-01 Types of Handgun Licenses.

* * *

(b) *Carry Business License*. This is an unrestricted class of license which permits the carrying of a handgun concealed on the person. In the event that an applicant is not found by the License Division to be qualified for a Carry Business License, the License Division, based on its investigation of the applicant, may offer a Limited Carry Business License or a Business Premises License to an applicant.

See 38 RCNY § 5-01(b).

The “proper cause” requirement for the issuance of a Carry Business License is discussed under 38 RCNY § 5-03, which provides as follows:

In addition to the requirements in §5-02, an applicant seeking a carry or special handgun license shall be required to show "proper cause" pursuant to § 400.00(2)(f) of the New York State Penal Law. "Proper cause" is determined by a review of all relevant information bearing on the claimed need of the applicant for the license. The following are examples of factors which shall be considered in such a review:

(a) Exposure of the applicant by reason of employment or business necessity to extraordinary personal danger requiring authorization to carry a handgun.

Example: Employment in a position in which the applicant routinely engages in transactions involving substantial amounts of cash, jewelry or other valuables or negotiable items. In these instances, the applicant shall furnish documentary proof that her/his employment actually requires that s/he be authorized to carry a handgun, and that s/he routinely engages in such transactions.

(b) Exposure of the applicant to extraordinary personal danger, documented by proof of recurrent threats to life or safety requiring authorization to carry a handgun.

Example: Instances in which Police Department records demonstrate that the life and well-being of an individual is endangered, and that s/he should, therefore, be authorized to carry a handgun. The factors listed above are not all inclusive, and the License Division will consider any proof, including New York City Police Department records, which document the need for a handgun license. It should be noted, however, that the mere fact that an applicant has been the victim of a crime or resides in or is employed in a "high crime area," does not establish "proper cause" for the issuance of a carry or special handgun license.

(Emphasis added).

Title 38 RCNY § 5-10 sets forth various grounds for which a handgun license application may be denied. It states in relevant part:

In addition to other bases for disqualification pursuant to federal, state, and local law and this chapter, an application for a handgun license may be denied where it is determined that an applicant lacks good moral character or that other good cause exists for denial, pursuant to New York State Penal Law §400.00 (1). Such a determination shall be made based upon consideration of the following factors:

(m) The applicant fails to cooperate with the License Division's investigation of her/his application or fails to provide information requested by the License Division or required by this chapter.

...

(Emphasis added).

Pursuant to 38 RCNY § 5-07(e), if a handgun license application is denied, then the applicant “shall receive a written "Notice of Application Disapproval" from the License Division indicating the reason(s) for the disapproval.”

Title 38 RCNY § 5-07(e) sets forth the procedure for an applicant to appeal the denial of his handgun application. It states in relevant part:

(e) If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says

that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted.

Title 38 RCNY § 5-07(f) sets forth the procedure for the review and possible denial of an appeal. It states in relevant part:

(f) All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

STATEMENT OF FACTS

The Court is respectfully referred to the Affirmation of Jonathan David, dated January 17, 2017 ("David Aff."), and the exhibits annexed thereto, for a recitation of the facts relevant to this motion.¹

¹ The administrative record should be considered. "Generally, on a motion to dismiss brought pursuant to CPLR 3211, the court must 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible inference, and determine only whether the facts as alleged fit into any cognizable legal theory' . . . The court, however, is not required to accept factual allegations, or accord favorable inferences, where the factual assertions are plainly contradicted by documentary evidence." Bishop v. Maurer, 33 A.D.3d 497, 498 (1st Dep't 2006), aff'd on other grounds, 9 N.Y.3d 910 (2007). Also, the motion can be converted to summary judgment pursuant to CPLR § 3211(c).

ARGUMENT

POINT I

**THE CONSTITUTIONALITY OF PENAL
CODE 400.00(2)(f) CANNOT BE
CONSIDERED BY THIS COURT BECAUSE
PETITIONER FAILED TO NOTIFY THE
ATTORNEY GENERAL.**

Corbett’s constitutional challenge to the “proper cause” requirement of New York Penal Law 400.00(2)(f) cannot be considered by this Court because petitioner failed to notify the Attorney General of New York State of his constitutional challenge. Pursuant to CPLR § 1012, the New York State Attorney General is permitted to intervene as of right in an action where the constitutionality of a state law is at issue. Specifically, CPLR § 1012(b) states, “[w]hen the constitutionality of a statute of a state, or a rule and regulation adopted pursuant thereto is involved in an action to which the state is not a party, the attorney-general, shall be notified and permitted to intervene in support of its constitutionality.” Furthermore, pursuant to Section 71 of the New York Executive Law, when the constitutionality of a statute, rule, or regulation is brought into question during a civil proceeding, the party commencing the challenge is required to file proof of notice of such constitutional challenge on the New York State Attorney General. See N.Y. Exec. Law § 71(1).

It is well-settled that if a litigant fails to file such proof of notice upon the state Attorney General, the Court is precluded from considering the constitutional challenge. See McGee v. Korman, 70 N.Y.2d 225, 231 (1987) (denying judicial review of a constitutional challenge to a state statute when the Attorney General was not notified of the challenge) (citations omitted); Barrett v. Manton, 253 A.D.2d 503, 504 (2d Dep’t 1998) (same) (citations omitted); Checchia v. Tioga County Bd. of Elections, 231 A.D.2d 752, 753 (3d Dep’t 1996) (per curiam) (same) (citations omitted); 520 East 81st Street Assoc. v. Lennox Hill Hosp., 538

N.Y.S.2d 129, 132 (Sup. Ct., N.Y. Co. 1988), rev'd on other grounds, 77 N.Y.2d 944 (1991) (determining that due process challenge to state statute cannot be considered because the Attorney General was not notified).

Here, the first claim in the petition alleges that Penal Law § 400.00(2)(f) is unconstitutional on its face. Specifically, Corbett alleges, inter alia, that “[g]iven that open-carry is prohibited in this state, a refusal to grant a license to carry a concealed weapon subject to a “proper cause” requirement is an unconstitutional restriction on Second Amendment rights . . . N.Y. Penal Law § 400.00(2)(f) should therefore be declared facially unconstitutional under the Fourth [sic] Amendment to the U.S. Constitution . . .” See Petition, ¶¶ 58; 59.

However, Corbett has provided no proof that he has served notice upon the New York State Attorney General of his constitutional claim, whether in his petition or other filings with the Court. Therefore, petitioner’s purported constitutional claim against Penal Law § 400.00(2)(f) cannot be considered by this Court. See CPLR § 1012(b); NY Exec. Law § 71(1); McGee, 70 N.Y.2d at 231; Barrett, 253 A.D.2d at 504; Checchia, 231 A.D.2d at 753; 520 Easy 81st Street Assoc., 538 N.Y.S.2d at 132.

POINT II

THE SECOND AMENDMENT DOES NOT BESTOW AN ABSOLUTE RIGHT TO POSSESS A CONCEALED HANDGUN.

In the event the Court reviews the merits of the Second Amendment claim, the claim fails as a matter of law. See Delgado v. Kelly, 127 A.D.3d 644 (1st Dep’t 2015) (“good moral character” requirement did not infringe upon applicant’s Second Amendment right to have a firearm at home); In re Knight v. Bratton, 48 Misc.2d 536, 539-542 (Sup. Ct. N.Y. Co. 2015) (applying the controlling authority of Delgado, the Court found licensing scheme, including “proper cause” requirement, did not violate applicant’s Second Amendment rights in connection

with carry permit denial); Kachalsky v. County of Westchester, 701 F.3d 81, 81 (2d Cir. 2012), cert. denied, ___ U.S. ___, 133 S. Ct. 1806 (2013) (upholding New York State’s “proper cause” requirement for license to carry a concealed firearm); see also Mishtaku v. Espada, 2016 U.S. App. LEXIS 17734 (2d Cir. September 28, 2016) (New York “good moral character” requirement in licensing of handguns did not violate Second Amendment). Corbett asserts that the “proper cause” requirement of New York Penal Law Section 400.00(2)(f) taken together with New York’s prohibition against open carry of firearms, violates the Second Amendment. According to Corbett (Petition, ¶ 5, fn 2), New York has to offer open carry or concealed carry licenses, but it cannot prohibit both. This amounts to a contention that the “proper cause” requirement is so blatantly unconstitutional that it can be swept away “on its face.” Indeed, in his application, Corbett did not even attempt to demonstrate a need to carry a concealed handgun in public distinct from that of the general public, e.g., a showing of extraordinary personal danger. Rather Corbett’s explanation was that he “conducts business as a civil rights advocate. In order to exercise his civil rights fully, he needs a carry license.” See Ex. B at 4.

A similar assertion was made, and rejected, in Kachalsky. The Second Circuit found that the requirement that an applicant show that there is an articulable basis for believing they will need the weapon for self-defense before granting a concealed handgun license did not run afoul of the Second Amendment. Kalchalsky, 701 F.3d at 100. In Kalchalsky, four of the five plaintiffs applied for a full carry license but made no effort to comply with the “proper cause” requirement; like Corbett, they did not claim a special need for self-protection distinguishable from that of the general community. Kalchalsky, 701 F.3d at 87-88 (“Plaintiff Kalchalsky asserted among other things that the *Second Amendment* ‘entitles him to an unrestricted permit without further establishing ‘proper cause.’”) (emphasis in original).

The plaintiffs in Kalchalsky argued that the Second Amendment guarantees them a right to possess and carry weapons in public and that they should not be required to demonstrate proper cause to exercise that right, particularly when open carry licenses are prohibited. The Second Circuit Court of Appeals rejected that argument, noting that the “core” protection of the Second Amendment is the “right of law-abiding, responsible citizens to use arms in defense of hearth and home,” citing District of Columbia v. Heller, 554 U.S. 570, 634-35 (2008), and carrying firearms in public does not carry the same protection. Kalchalsky, 701 F.3d at 93. Although the Supreme Court in Heller concluded that the District of Columbia’s outright ban on the possession of handguns in the home violated the Second Amendment, the Court also expressly provided that certain regulations are “presumptively valid,” including prohibitions on possession by certain categories of people (such as felons and mentally ill persons) and laws imposing conditions or qualifications on the sale of firearms. Heller, 554 at 626-27. “Like most rights, the right secured by the Second Amendment is not unlimited.” Heller, 554 U.S. at 626. Specifically, the right embodied in the Second Amendment is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” Id.

Further, in McDonald v. City of Chicago, 561 U.S. 742, 750, 786 (2010), the Supreme Court, while applying the Second Amendment’s protections to the states, affirmed these presumptively lawful prohibitions. These “presumptively valid” regulations presume a licensing scheme to determine who meets the standards of fitness for a pistol license. Indeed, the Supreme Court in McDonald emphasized that the Second Amendment “limits, but by no means eliminates,” governmental discretion to regulate activity falling within the scope of the right, and the incorporation of the Second Amendment against the states “does not imperil every law regulating firearms.” McDonald, 561 U.S. at 786.

Because New York’s “proper cause” requirement merely restricts access to handguns for the subset of individuals who can demonstrate a special need to carry a concealed handgun-- and thus warrant something “less than strict scrutiny,” see Kachalsky, 701 F.3d at 93 - application of intermediate scrutiny is the appropriate standard of review. See, e.g., Kwong v. Bloomberg, 723 F.3d 160, 167-68 (2d Cir. 2013), cert. denied sub nom., Kwong v. DeBlasio, ___ U.S. ___, 134 S. Ct. 2696, 2696 (2014) (applying intermediate scrutiny to uphold New York City residential handgun licensing fee); Kachalsky, 701 F.3d at 96 (applying intermediate scrutiny to New York’s “proper cause” requirement for carry licenses); United States v. Reese, 627 F.3d 792, 800 (10th Cir. 2010), cert. denied, 563 U.S. 990 (2011) (applying intermediate scrutiny to statute prohibiting gun possession – even in the home – for those who have an outstanding order of protection [as opposed to a criminal conviction]); United States v. Skoien, 614 F.3d 638 (applying intermediate scrutiny to law prohibiting the possession of firearms by any person convicted of misdemeanor domestic violence crime); United States v. Oppedisano, 2010 U.S. Dist. Lexis 127094 (E.D.N.Y. Nov. 30, 2010) (applying intermediate scrutiny to challenge of federal statute prohibiting persons convicted of certain crimes from possessing firearms). “To withstand intermediate scrutiny, a statutory classification must be substantially related to an important governmental objective.” Clark v. Jeter, 486 U.S. 456, 461 (1988).

Though Corbett acknowledges that the state “may place public safety restrictions on the right to keep and bear arms, a requirement of having ‘a good reason’ to exercise one’s rights cannot stand.” Petition, ¶¶ 3-5. Implicit in Corbett’s claim is that *any* discretion in licensing determinations, particularly determinations as to what constitutes “proper cause,” impinges on his Second Amendment rights. This view is contrary to McDonald (see 561 U.S. at 786), and later in Kachalsky. As the Second Circuit found in Kalchalsky,

Restricting handgun possession in public to those who have a reason to possess the weapon for a lawful purpose is substantially related to New York's interests in public safety and crime prevention. It is not, as Plaintiffs contend, an arbitrary licensing regime no different from limiting handgun possession to every tenth citizen.

Id. at 98. New York's interest in public safety and crime prevention are substantial. See Schulz v. State of N.Y. Exec., 134 A.D.3d 52 (3d Dep't 2015), appeal dismissed, 26 N.Y.3d 1139 (2016), recons. denied, 27 N.Y.3d 1047 (2016) (New York Secure Ammunition and Firearms Enforcement Act, which banned certain assault weapons and ammunition loaders, did not violate Second Amendment); see also New York State Rifle & Pistol Ass'n v. Cuomo, 804 F.3d 242 (2d Cir. 2015), cert. denied, Shew v. Malloy, 136 S. Ct. 2486 (2016) (upholding legislation in New York and Connecticut to prohibit assault weapons in the wake of mass shootings based on the states' substantial, indeed compelling, interest in public safety and crime prevention).

Since Heller and McDonald, other circuits have also upheld the authority of state and local ordinances that prohibit entirely or to limit substantially the carrying of concealed or concealable firearms. See Peruta v. County of San Diego, 824 F.3d 919 (9th Cir. 2016) (en banc) (upheld "good cause" requirement to carry concealed firearm, which required a particularized reason why an applicant needs a concealed firearm for self-defense)²; Peterson v. Martinez, 707 F.3d 1197 (10th Cir. 2013) (right to carry concealed weapons does not fall within the Second Amendment's scope); Woollard v. Gallagher, 712 F.3d 865 (4th Cir.), cert. den'd, 134 S. Ct. 422 (2013) (Maryland requirement that handgun carry permits be issued only to individuals with "good and substantial reason" to wear, carry, or transport a handgun does not violate Second

² The Ninth Circuit upheld San Diego and Yolo counties' "good cause" requirement for a concealed firearm carry license even though California's licensing scheme changed to prohibit open carry (loaded and unloaded) licenses.

Amendment); Drake v. Filko, 724 F.3d 426, 429-30 (3d Cir. 2013) (New Jersey “justifiable need” restriction on carrying handguns in public “does not burden conduct within the scope of the Second Amendment’s guarantee”);. United States v. Skoien, 614 F.3d 638 (7th Cir. 2010) (*en banc*), cert. denied, 562 U.S. 1303 (2011) (upholding law prohibiting the possession of firearms by any person convicted of misdemeanor domestic violence crime).

Thus, Corbett’s claim that he has does not have to demonstrate “proper cause” to carry a concealed handgun in public is without merit.

POINT III

**INVESTIGATORY QUESTIONS
PROPOUNDED IN THE LICENSE
APPLICATION DO NOT VIOLATE THE
SECOND AMENDMENT OR ARE
OTHERWISE IRRATIONAL.**

Corbett’s Second Amendment challenge to questions 11, 12, and 13 on the license application form fail for the same reasons that Corbett’s facial challenge to New York “proper cause” requirement fails. Corbett did not answer questions 11,³ 12,⁴ and 13,⁵ and asserted that the questions were irrelevant to whether he was qualified to carry a handgun. Ex. B at 6. Questions 11, 12 and 13, as are all questions on the application form, are designed to elicit information necessary to determine the applicant’s fitness to be granted a license, and are authorized by 38 RCNY § 5-10 and New York Penal Law § 400.00(1).

³ Question 11 asks “Have you ever . . . [b]een discharged from any employment?”

⁴ Question 12 asks “Have you ever . . . [u]sed narcotics or tranquilizers? List doctor’s name, address, telephone number, in explanation.”

⁵ Question 13 asks “Have you ever . . . [b]een subpoenaed to, or testified at, a hearing or inquiry conducted by an executive, legislative or judicial body?”

To the extent that Corbett claims that the License Division violated his rights under the Second Amendment when it denied his application based on his unwillingness to cooperate in its investigation for a pistol license pursuant to some of the factors set forth in 38 RCNY § 5-10 and Penal Law § 400.00(1), his claim fails under an intermediate scrutiny level of review. In New York City, the License Division is responsible for processing and issuing residential handgun licenses, as well as verifying that each applicant is eligible to receive such a license. See Kwong, 723 F.3d at 161; see also Penal Law § 400.00(1), (4); 38 RCNY §§ 5-01(a), 5-02. Every application for a pistol license “triggers a local investigation by police into the applicant’s mental health history, criminal history, moral character...” Kachalsky, 701 F.3d at 87; see also Penal Law §§ 400.00(1)-(4). New York Penal Law Article 400 is the “exclusive statutory mechanism for the licensing of firearms in New York State.” Kachalsky, 701 F.3d at 85 (citations omitted). The law authorizes handgun permits for persons who, among other things, are at least twenty-one years old, are “of good moral character,” do not have a history of mental illness or serious crime, and “concerning whom no good cause exists for the denial of the license.” Penal Law § 400.00(1). Before issuing a handgun license, the local police undertake an investigation into the applicant’s history and character. Penal Law § 400.00(4).

Title 38 RCNY contains similar provisions. Specifically, 38 RCNY § 5-10 sets forth the factors to consider when denying an application for a pistol license. Such factors include whether “an applicant lacks good moral character or that other good cause exists for denial, pursuant to New York State Penal Law § 400.00(1).” The relevant factors include, among other considerations: (1) the applicant’s history of arrest; (2) indictment or conviction for any crime except minor traffic violations; (3) the applicant’s history of domestic violence; (4) the applicant’s demonstrated failure to comply with rules, laws, and safety measures regarding

firearms; (5) if the applicant “has or is reasonably believed to have” a condition or disability that “may affect the ability to safely possess or use a handgun”; and (6) “[o]ther information [that] demonstrates an unwillingness to abide by the law.” 38 RCNY § 5-10; see also 38 RCNY § 5-02 (requirements for premises licenses).

The questions in issue here are substantially related to the government’s goals in enacting those regulations in the first place. See Kwong v. Bloomberg, 723 F.3d at 168 & n.16 (applying intermediate scrutiny because the regulation at issue “does not ban the right to keep or bear arms but only imposes a burden on that right” and thus “strict scrutiny is not appropriate”). As noted in Point II above, “New York has substantial, indeed compelling, governmental interests in public safety and crime prevention.” Kachalsky, 701 F.3d at 97; see also Kwong, 723 F.3d at 168-69 (upholding handgun licensing fees as part of the New York City’s “licensing scheme, which is designed to promote public safety and prevent gun violence”). The licensing laws at issue serve this interest by limiting the issuance of handgun permits to those individuals who are deemed able to safely possess a firearm.

Both 38 RCNY § 5-10 and Penal Law § 400.00(1) provide a basis for denying a pistol license when an “applicant lacks good moral character or that other good cause exists for denial.” These provisions are designed to prevent gun violence and gun-related crimes, in light of New York’s substantial and compelling governmental interests in public safety and crime prevention. Kachalsky, 701 F.3d at 97; see Schall v. Martin, 467 U.S. 253, 264 (1984); Hodel v. Virginia Surface Mining & Reclamation Association, 452 U.S. 264, 300 (1981); Kuck v. Danaher, 600 F.3d 159, 166 (2d Cir. 2010).

Questions 11, 12 and 13, which asks about a discharge from employment, use of narcotics and tranquilizers and prior testimony of the applicant, respectfully, are reasonably

related to information necessary to determine the applicant's character and fitness to carry a loaded handgun in public. Question 11, which asks about discharge from employment, may under certain circumstances demonstrate lack of good judgment or lack of good moral character. See 38 RCNY § 5-10 (j). Question 12, which asks about use of narcotics and tranquilizers, may elicit information that demonstrates the applicant's "[in]ability to safely possess or use a handgun, including but not limited to alcoholism, drug use or mental illness" or unlawful use of drugs. See 38 RCNY § 5-10(c) and (d). Question 13, which asks about prior testimony may elicit information that demonstrates "an unwillingness to abide by the law, a lack of candor towards lawful authorities . . . and/or other good cause for the denial of the license" based in part on "the number, recency and severity of incidents and the outcome of any judicial or administrative proceedings." See 38 RCNY § 5-10(n).

Thus, questions 11, 12 and 13, which are founded on Penal Law § 400.00(1) and 38 RCNY § 5-10, require an inquiry into a pistol license applicant's ability to possess a handgun safely, are substantially related to New York's public safety goals, and that there is a reasonable fit between these questions, the legal requirements they implement and the goals of the restrictions on handgun carry licenses. See Aron v. Becker, 48 F. Supp. 3d 347, 355, 369-71 (N.D.N.Y. 2014) (holding that "the requirements of Article 400 constitute[] a reasonable fit between New York's objective and the law," where licensing officer determined that the plaintiff's conduct indicated that she lacked the good judgment required to possess a handgun); cf. United States v. Chovan, 735 F.3d 1127, 1142 (9th Cir. 2013), cert. denied, ___ U.S. ___, 135 S. Ct. 187 (2014) (applying intermediate scrutiny in upholding federal ban on possession of firearms by persons convicted of misdemeanor domestic violence crimes); Drake v. Filko, 724

F.3d 426 (3d Cir. 2013), *cert. denied*, ___ U.S. ___, 134 S. Ct. 2134 (2014) (applying intermediate scrutiny in upholding regime for permits to carry a handgun in public).

The License Division’s determination denying Corbett’s application for a pistol license, which included a review of the factors set forth in 38 RCNY § 5-10 and Penal Law § 400.00(1), was constitutional as applied, and did not violate Corbett’s rights under the Second Amendment. See Delgado v. Kelly, 127 A.D.3d 644 (1st Dep’t 2015) (“The Licensing scheme at issue satisfies the requisite constitutional standard, intermediate scrutiny, as it serves a governmental interest in maintaining public safety”); People v. Perkins, 62 A.D.3d 1160, 1161 (3rd Dept 2009) (“New York’s licensing requirement remains an acceptable means of regulating the possession of firearms and will not contravene Heller so long as it is not enforced in an arbitrary and capricious manner”).

POINT IV

RESPONDENT’S DETERMINATION TO DENY PETITIONER’S APPLICATION FOR A SPECIAL CARRY HANDGUN LICENSE WAS RATIONAL AND REASONABLE.

A. Applicable Standard of Review

Administrative agencies exercise discretionary powers when making determinations on matters they are empowered to decide. Section 7803 of the CPLR provides for very limited judicial review of administrative actions. Section 7803 provides, in relevant part, the following:

The only questions that may be raised in a proceeding under this article are:

* * *

3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed;

In deciding whether an agency's determination was arbitrary, capricious, or an abuse of discretion, courts are limited to an assessment of whether a rational basis exists for the administrative determination and their review ends when a rational basis has been found. See Heintz v. Brown, 80 N.Y.2d 998, 1001 (1992) (citing Pell v. Bd. of Educ., 34 N.Y.2d 222, 230-31 (1974)); Sullivan County Harness Racing Ass'n v. Glasser, 30 N.Y.2d 269, 277 (1972); Barton Trucking Corp. v. O'Connell, 7 N.Y.2d 299, 314 (1959); Marsh v. Hanley, 50 A.D.2d 687 (3d Dep't 1975).

An action or determination is arbitrary if it was made without sound basis in reason and without regard to the facts. Heintz, 80 N.Y.2d at 1001. A court may overturn an administrative action only if the record reveals no rational and reasonable basis for it; and the reviewing court "may not substitute its own judgment of the evidence for that of the administrative agency, but should review the whole record to determine whether there exists a rational basis to support the findings upon which the agency's determination is predicated." Purdy v. Kreisberg, 47 N.Y.2d 354, 358 (1979). Unless the reviewing court finds that the agency acted in excess of its jurisdiction, in violation of a lawful procedure, arbitrarily, or in abuse of its discretion, the court has no alternative but to confirm the agency's decision. Pell, 34 N.Y.2d at 231; Sullivan County Harness Racing Ass'n, 30 N.Y.2d at 278 (holding that if acts of the agency find support in the administrative record, the agency determination is conclusive).

B. Respondents' Determination Satisfies the Standard of Review

The License Division reached its final determination to deny petitioner's application for a Carry Business License after a full review of all the facts and the applicable law. The determination denying petitioner's application for a Carry Business License was fair and reasonable – not arbitrary and capricious. In re Kachalsky v. Cacace, 65 A.D.3d 1045 (2d

Dep't 2009), appeal dismissed, 14 N.Y.3d 743 (2010) (denial of “full carry” license to petitioner who failed to demonstrate “proper cause” was not arbitrary or capricious).

Concealed handguns present an immediate and real danger to the public, see People v. Moore, 32 N.Y.2d 67, 72 (1973), and so, in processing an application for an unrestricted handgun license, the Legislature mandates that the licensing officer scrutinize such application not only for the qualifications that must be met to obtain a restricted license, but also to determine whether the applicant has demonstrated that “proper cause” exists for the applicant to carry a concealed handgun. See Penal Law §400.00(2)(f); see also, Bernstein v. Police Dept., 85 A.D.2d 574 (1st Dep’t 1981). An application for a license to carry a concealed handgun, such as a Business Carry License must be denied if the License Division determines that the documentation provided by the applicant does not demonstrate “proper cause.” See Hochreich v. Codd, 68 A.D.2d 424 (1st Dep’t 1979). See also Matter of Lederman v New York City Police Dept. Licensing Div., 2011 N.Y. Misc. LEXIS 1343 (N.Y. Sup. Ct. Mar. 31, 2011).

Pursuant to Penal Law §§ 400.00(1) and 265.10, the Police Commissioner is vested with the authority to regulate the possession of firearms within New York City. See Servedio v. Bratton, 268 A.D.2d 356 (1st Dep’t 2000); Matter of St.-Oharra v. Colucci, 67 A.D.2d 1104 (4th Dep’t 1979); see also Administrative Code § 10-131(a) (1).

Title 38 RCNY § 5-03 provides that an applicant seeking a license to carry a concealed handgun is required to show “proper cause” pursuant to § 400.00(2)(f) of the New York State Penal Law. Pursuant to 38 RCNY § 5-03, the License Division determines proper cause by reviewing all the relevant information submitted by the applicant bearing on the claimed reason the applicant seeks to carry a concealed handgun in the City. Specifically, the License Division must determine if the applicant’s employment or business exposes him to

extraordinary personal danger on a routine basis, or if he is engaged in some work assignment that is currently exposing him to extraordinary personal danger.

If seeking a license to carry a concealed handgun based on fear for one's life or safety, pursuant to 38 RCNY § 5-03, such an applicant must provide documented proof of recurrent threats to life or safety. The rules make clear that the mere fact that an applicant has been the victim of a crime or resides in or is employed in a "high crime area," does not establish the requisite "proper cause" for issuance of an unrestricted handgun license, and this interpretation of "proper cause" has been upheld by the courts. See 38 RCNY § 5-03(b); see also, Kaplan v. Bratton, 249 A.D.2d 199 (1st Dep't 1998); Williams v. Bratton, 238 A.D.2d 269 (1st Dep't 1997); Fondacaro v. Kelly, 234 A.D.2d 173 (1st Dep't 1996); Tartaglia v. Kelly, 215 A.D.2d 166 (1st Dep't 1995); Klenosky v. NYC Police Dept., 75 A.D.2d 793 (1st Dep't 1980), aff'd 53 N.Y.2d 687 (1981). An applicant must prove that she has a need for self-protection distinguishable from that of the general community or of persons engaged in the same profession. See Kaplan, at 201, citing, Klenosky. As Corbett failed to articulate any basis for self-protection distinct from the general public, he did not satisfy the "proper cause" requirement for the issuance of a carry license.

The denial of Corbett's carry handgun license was a reasonable exercise of licensing authority. Corbett did not demonstrate that "no good cause exists for the denial of the license," as set forth in Penal Law § 400.00(1)(n); he failed to cooperate with the License Division's investigation by refusing to answer Questions 11, 12, and 13 on his application. See PL § 400.00(4) and 38 RCNY § 5-10(m) (as grounds for denial, "The applicant fails to cooperate with the License Division's investigation of her/his application or fails to provide information requested by the License Division or required by this chapter.") Corbett also failed to

demonstrate “proper cause,” pursuant to Penal Law § 400.00(2)(f) in that he offered no explanation in his Letter of Necessity of a need for self-protection distinguishable from that of the general community. Instead, Corbett stated in conclusory fashion that he needs a license to carry a loaded handgun in public “to exercise his civil rights.” Ex. B at 4. Corbett’s approach appears designed to flout the requirements of 38 RCNY § 5-03, which require documentary proof to substantiate that his employment routinely exposes him “to extraordinary personal danger.”

Based on the foregoing, the License Division’s determination was rational and reasonable and not arbitrary and capricious and should be upheld by this Court.⁶

POINT V

CORBETT’S FOIL CLAIM IS NOT RIPE FOR ADJUDICATION; ADMINISTRATIVE REMEDIES HAVE NOT BEEN EXHAUSTED.

Corbett’s failure to exhaust his administrative remedies is fatal to and precludes consideration of his fourth claim in this hybrid Article 78 proceeding for the production of documents pursuant to New York Public Officers Law § 89 (known as the Freedom of Information Law (“FOIL”)). Slater v. Gallman, 38 N.Y.2d 1, 3-4 (1975); see also CPLR § 7801(1). The well-established doctrine of exhaustion requires a party to pursue all avenues for obtaining review from an administrative body before resorting to a judicial proceeding. Young

⁶ The relief sought by Corbett of mandamus is not appropriate. Mandamus may be used only to enforce a ministerial administrative act required to be done by a provision of law, not acts that are discretionary. See In the Matter of Perazzo, v. Lindsay, 30 A.D.2d 179, 180 (1st Dept.), aff’d, 23 N.Y.2d 764 (1968) (citing Walsh v. La Guardia, 269 N.Y. 437 (1935)); Morrison v. New York State Div. of Hous. & Community Renewal, 241 A.D.2d 34 (1st Dept. 1998). The issuance of a carry license is reserved to the sound discretion of the License Division. See Kaplan v. Bratton, 249 A.D.2d 199, 201 (1st Dep’t 1998).

Men's Christian Ass'n v. Rochester Pure Waters Dist., 37 N.Y.2d 371, 375-76 (1975); Watergate II Apartments Buffalo Sewer Auth., 46 N.Y.2d 52, 57 (1978).

The exhaustion doctrine serves a number of important purposes, such as allowing agencies to function efficiently in their areas of expertise, with the opportunity to prepare a record and correct their own mistakes. Young Men's Christian Ass'n, 37 N.Y.2d at 375-76; Watergate II Apartments, 46 N.Y.2d at 57; Hudson River Valley, LLC v. Empire Zone Designation Bd., 115 A.D.3d 1035, 1035-38 (3d Dep't 2014); Starrs v. Tully, 67 A.D.2d 784, 785 (3d Dep't 1979).

A. Corbett's Foil Request Should be Remanded to the NYPD

Corbett contends that NYPD failed to act timely on his administrative appeal of the denial of his FOIL request, and that he should, therefore, be provided with all the records he requested access.

FOIL was enacted to provide individuals with the means to access governmental records, to assure accountability and to thwart secrecy. Public Officers Law § 84; Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 493 (2007); Matter of Buffalo News, Inc. v. Buffalo Enter. Dev. Corp., 84 NY2d 488, 492 (1994). Under FOIL, an agency "must make available for public inspection and copying all records" unless the requested documents fall within a specified exemption in the Public Officers Law. See Public Officers Law §§ 87[2], 89[3]; Data Tree, LLC, 9 N.Y.2d at 494.

In the FOIL context, it is well-settled that administrative remedies are considered exhausted only after the agency has completed the FOIL request and has rendered a final adverse determination of any administrative appeal of that request. See Braxton v. Comm'r, 283 A.D.2d 253 (1st Dep't 2001); Matter of Hernandez v. Kelly, 2014 N.Y. Misc. LEXIS 188 (Sup. Ct. N.Y. Co. Jan. 16, 2014) (Article 78 proceeding filed before a final determination by the Records

Access Appeals Officer was dismissed). Moreover, even a “substantial delay” in an agency’s appeal determination does not negate the requirement to wait for that determination before commencing an Article 78 proceeding. Yonamine v. New York City Police Dept., 2011 N.Y. Misc. LEXIS 775 (Sup. Ct. N.Y. Co. Mar. 1, 2011), appeal denied as moot sub nom., Matter of Yonamine v. Schoenfeld, 82 A.D.3d 650 (1st Dep’t 2011) (citing Carty v New York City Police Department, 41 AD3d 150, 150, 837 N.Y.S.2d 135 (1st Dept 2007)).

Here, Corbett’s claim is premature, and should be dismissed. Corbett’s FOIL request for various carry license application files was timely denied on grounds that if the records were disclosed they “would interfere with law enforcement investigations or judicial proceedings” pursuant to Section 87(2)(e)(i) of Public Officers Law. See Ex. L. Corbett timely filed an appeal on or about June 6, 2016, and acknowledges that NYPD had not responded to his appeal. See Petition, ¶ 53. NYPD’s review of the appeal is pending due to issues related to the on-going investigation and recent personnel change of the Department’s Records Access Appeals Officer. See David Aff., ¶ 20. Though NYPD failed to respond to the administrative appeal within 10 days, as required to do so by Public Officers Law § 89 (4) (a), the appropriate remedy for the failure to do so is to remand for NYPD to comply. See Alvarez v. Vance, 139 A.D.3d 459 (1st Dep’t 2016); Matter of Molloy v. New York City Police Dept., 50 A.D.3d 98 (1st Dep’t 2008).⁷

⁷ Corbett’s reliance (Petition, ¶ 54) on New York Times Co. v. City of New York, 103A.D.3d 405 (1st Dep’t 2013) is misplaced. Corbett has not demonstrated that a determination of his administrative appeal would be futile or cause irreparable injury. NYPD is reviewing his appeal, and has not “made clear” it would deny the appeal.

CONCLUSION

For the reasons set forth above, the respondents-defendants respectfully request that this Court grant their cross-motion to dismiss the combined Verified Petition and complaint in its entirety, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
 January 19, 2017

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

Jonathan Corbett,
Petitioner-Plaintiff

Index No. 158273/2016

v.

The City of New York,
Respondent-Defendant
 Thomas M. Prasso,
Respondent

**OPPOSITION TO CROSS-
 MOTION TO DISMISS**

I. Introduction

Petitioner Jonathan Corbett (“Corbett”) petitioned this Court to review the City of New York’s denial of his pistol permit application on September 30th, 2016, alleging, *inter alia*, that the City’s application of a “proper cause” requirement, as well as the requirement of answering certain questions on the application form, is unconstitutional. In response to his Motion for Judicial Intervention filed contemporaneous with the Petition & Complaint, Respondent-Defendants cross-moved the Court to dismiss on January 19th, 2017.

For the following reasons, Respondent-Defendants’ motion to dismiss should be denied and they should be ordered to file an answer.

II. Standard of Review

Respondent-Defendants memorandum in support of its motion to dismiss unfortunately does not make clear the sections of the law under which they seek relief, and we are left to parse that information from their notice of motion and apply it to their memorandum. It appears that

their challenge is primarily that Corbett has failed to state a claim and that they have provided a defense based on documentary evidence.

The legal standard to be applied in evaluating a motion to dismiss pursuant to N.Y. CPLR § 3211(a)(7) (failure to state a claim) is well-settled. In determining whether a complaint is sufficient to withstand a motion to dismiss pursuant to § 3211(a)(7), the sole criterion is whether the pleading states a cause of action. If, from the four corners of the complaint, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, a motion to dismiss will fail. *511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 N.Y.2d 144, 152 (N.Y. 2002). The court's function is to "accept ... each and every allegation forwarded by the plaintiff without expressing any opinion as to the plaintiff's ability ultimately to establish the truth of these averments before the trier of the facts." *219 Broadway Corp. v Alexander's, Inc.*, 46 N.Y.2d 506, 509 (1979). The pleading is to be liberally construed and the pleader afforded the "benefit of every possible favorable inference." *511 West 232nd Owners* at 152.

A plaintiff may rest upon the matter asserted within the four corners of the complaint and need not make an evidentiary showing by submitting affidavits in support of the complaint. So long as the allegations are sufficient to state all of the necessary elements of a cognizable cause of action, "the plaintiff will not be penalized for not making an evidentiary showing in support of the complaint." *Kempf v Magida*, 37 A.D.3d 763, 764 (N.Y. 2nd Dept. 2007); see also *Jetro Holdings, LLC v Mastercard Intl., Inc.*, 38 N.Y.S.3d 831 *18 (N.Y. 9th Dept. 2016).

Conversely, a defendant attaching evidence to a motion to dismiss pursuant to § 3211(a)(1) on the grounds of a defense founded on documentary evidence will only be successful if the documentary evidence that forms the basis of the defense is such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim. *AG Cap. Funding*

Partners, L.P. v State Street Bank and Trust Co., 5 N.Y.3d 582, 590-591. To qualify as “documentary,” the evidence relied upon must be unambiguous and undeniable, such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, and contracts. Letters, affidavits, notes, and deposition transcripts are generally not documentary. See David D. Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3211:10 at 22.

III. Argument

A. To The Extent That Petitioner-Plaintiff Was Required to Notify the Attorney General, He Has Done So

Respondent-Defendants allege that Corbett was required to notify the N.Y. Attorney General of this lawsuit pursuant to N.Y. CPLR § 1012. Cross-Mot. to Dismiss, p. 10. At the outset, it should be noted that this notice is only required if Corbett challenges *state* – and not local – law. Respondent-Defendants admit that it is the Rules of the City of New York that define “proper cause.” Cross-Mot. to Dismiss, pp. 6, 7. And the majority of the counties in New York do not define “proper cause” as requiring a need greater than that of the ordinary citizen as New York City does, which is the heart of the claim at bench¹. As Corbett’s challenge could fairly be described as aimed at the City of New York’s interpretation of the state’s proper cause requirement, and not the proper cause requirement itself, such notice may not be necessary at all.

¹ It appears that only those counties in New York City plus Nassau, Suffolk, Westchester, Rockland, Saratoga, Genesee, and Tompkins counties view “proper cause” in a way that prevents ordinary citizens from obtaining a permit. The other 50 counties in the state do not.

However, to the extent that Corbett is challenging state law and was required to notify the Attorney General, he has now done so. *See* Exhibit A, Decl. of Jonathan Corbett; Exhibit B, Notice to N.Y. Attorney General. Given that the plain language of § 1012 requires notice before the Court “consider[s]” the matter – and not before a party may file initiating pleadings – Corbett’s notice is timely and sufficient to allow this case to proceed. When the legislature wants to make notice a pre-requisite to suit, rather than a pre-requisite to a court ruling, it uses appropriate language to do so. *Cf.* N.Y. G.M.U. § 50-e(1)(a) (notice “a condition precedent to the commencement of an action”) to N.Y. C.P.L.R. § 1012 (notice required before Court can “consider any challenge”).

B. Petitioner-Plaintiff Is Not Arguing for an “Absolute Right to Possess a Concealed Handgun”

Respondent-Defendants spend the plurality of their motion on a section labeled “Point II – The Second Amendment Does Not Bestow an Absolute Right to Possess a Concealed Handgun.” Corbett agrees – and is bewildered at how his Petition & Complaint were interpreted by defense counsel as suggesting such a point. Corbett argues no such thing.

As a preliminary matter, Corbett is not arguing as to whether his right to bear arms allows him to carry in a concealed fashion. Page 2, paragraph 5 of the Petition & Complaint state using bold and underlined text that he is seeking his right to bear arms in public “**whether openly or concealed.**” If the state were to allow Corbett to carry *either* openly *or* concealed, this lawsuit would not exist. Unfortunately, the state allows neither.

To Respondent-Defendants’ more salient point, Corbett is not asking the Court to grant to all who enter the state an “absolute right” to do anything whatsoever. Corbett does not challenge

the state's requirement that a permit be obtained before one may possess a handgun. He does not challenge the state's limitation on the age, criminal background, citizenship, or most other requirements to obtain that permit. His challenge is precisely limited to:

1. Whether the state may place a blanket ban on the carrying of handguns, open or concealed, by ordinary citizens, and,
2. Whether the state may make the right to bear arms contingent on providing the information requested by "Questions 11 – 13" of the NYC pistol permit application.

Dispensing with the Respondent-Defendants' assertion that Corbett is asking the Court for "an absolute right to possess a concealed handgun," we may focus on the two issues Corbett actually challenged.

C. Kachalsky Should Be Re-Considered In Light of Recent Decisions by the U.S. Supreme Court and the U.S. Court of Appeals

"Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008). The Supreme Court's extensive review of that historical understanding in *Heller* led it to the conclusion that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *Id.* at 592; see also *id.* at 628 ("the inherent right of self-defense has been central to the Second Amendment"). This Court need not – indeed, must not – revisit historical facts determined by the U.S. Supreme Court.

The Second Amendment secures the right not only to "keep" arms but also to "bear" them. While the Court went on to note that "the need for [self-defense] is most acute" in the

home, the Court found the right to bear arms for self-defense itself, not the place where one exercises it, “central to the Second Amendment.” *Id.* The Supreme Court has already defined “bear,” which is to “wear, bear, or carry... upon the person or in the clothing or in a pocket, for the purpose... of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Heller* at 584.

There is no doubt that in *Kachalsky*, a challenge made to the proper cause requirement for those who wish to bear arms was denied. However, there are several reasons why *Kachalsky* is in need of a second look at this time.

First, *Kachalsky* was filed in 2009 and completed its journey through the state court system with a denial of review by the N.Y. Court of Appeals on Feb. 16th, 2010. *Kachalsky v Cacace*, 14 N.Y.3d 743. This was before the U.S. Supreme Court declared that the Second Amendment is fully applied against the states. *McDonald v. City of Chicago*, 561 U.S. 742 (June 28th, 2010). Respondent-Defendants frame *McDonald* as supporting their position because *McDonald* allows states to continue to enforce many restrictions on gun ownership. Cross-Mot. to Dismiss, p. 13. But, the words of Justice Alito are more precise:

“As evidence that the Fourteenth Amendment has not historically been understood to restrict the authority of the States to regulate firearms, municipal respondents and supporting *amici* cite a variety of state and local firearms laws that courts have upheld. But what is most striking about their research is the paucity of precedent sustaining bans comparable to those at issue here and in *Heller*.”

McDonald at 786. Additionally, the U.S. Supreme Court surveyed a list of restrictions that were indeed shot down as unconstitutional in *Heller*. *Heller* at 629. And, some members of the high court have expressed a desire to strike down many more. *Jackson v. City & Cnty. of San*

Francisco, 135 S. Ct. 2799 (dissenting opinion expressing desire to strike down a law requiring gun locks as “burden[ing] the core component of the Second Amendment”).

With this background, in order to take advantage of *McDonald*, Respondent-Defendants would be obligated to persuade the Court that the restrictions challenged by Corbett are commonly upheld. But, as discussed *supra*, prohibiting the ordinary citizen from carrying a firearm is not even common in the State of New York, with 50 counties holding a more liberal view, nor is it common across the country, with only a handful of states placing such restrictions and that number rapidly dropping over the last three decades. *See* Exhibit C, “Growth chart of right to carry.” Washington Post. Feb. 17th, 2014.

Of the few jurisdictions that have maintained blanket bans on carrying by the ordinary citizen in this millennia, some have indeed had their bans struck down. Not surprisingly, of the 63 cases in Respondent-Defendants’ Table of Authorities, *Moore v. Madigan* is conspicuously absent. *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2013). In *Moore*, the U.S. Court of Appeals for the Seventh Circuit considered Illinois’ nearly identical ban on the carrying of handguns by ordinary citizens. In an opinion penned by legendary jurist Richard Posner, circuit judge, that court explicitly considered such a ban in light of *McDonald*, and found that “[t]o confine the right to be armed to the home is to divorce the Second Amendment from the right of self-defense described in *Heller* and *McDonald*.” *Id.* at 937. The shaky leg upon which Respondent-Defendants’ rely is their interpretation of *Heller* to apply only in the home. *See* Cross-Mot. to Dismiss, p. 13. But while “[b]oth *Heller* and *McDonald* do say that ‘the need for defense of self, family, and property is most acute’ in the home ... that doesn't mean it is not acute outside the home.” *Moore* at 935.

Second, courts faced with challenges to bans similar to New York have struggled with the level of scrutiny to apply, and *Kachalsky* was no exception. Although all courts considering the issue, including *Kachalsky*, have concluded that at least intermediate scrutiny should apply, there is growing reason to think that strict scrutiny should be applied. Respondent-Defendants would prefer the Court to view “New York’s ‘proper cause’ requirement” as one that “merely restricts access to handguns for the subset of individuals who can demonstrate a special need to carry a concealed handgun.” Cross-Mot. to Dismiss, p. 14. But, that language doesn’t make the issue clear: Corbett is categorically barred from carrying a handgun in New York City on the grounds that he is a mere “ordinary citizen.” Corbett’s fundamental right to *bear* arms is not simply “restricted” or “regulated,” but rather, it has been entirely voided by Respondent-Defendants’ interpretation of New York’s proper cause requirement. Imagine, for a moment, if New York had banned all political speech, but exempted from this restriction particular people (like current or former political figures), particular places (like private property), and particular situations (like the week before an election). This would not be thought of as a mere “regulation,” but the outright ban that it is, at least as applied to those who are not the “particular people” that the state deemed worthy of being able to exercise their rights. Back in the context of gun licensing, courts such as the *Moore* Court have refused to settle on intermediate scrutiny in this scenario (although in *Moore*, that court found that such a ban passed neither strict nor intermediate scrutiny). Corbett submits that intermediate scrutiny is insufficient given the extent of the prohibition on his rights.

Third, *Kachalsky* should be reviewed because the New York Court of Appeals did not take up the matter, stating that they did not see a “substantial constitutional question.” *Kachalsky v Cacace*, 14 N.Y.3d 743 (N.Y. 2010); *see also* dissenting opinion at 745 (noting that

“it might make sense to wait to see how the Supreme Court decides *McDonald*”). In light of the fact that *McDonald*, decided four months later, affirmed that there was such a substantial constitutional question, the N.Y. Court of Appeals should re-consider the issue.

D. The Challenged Application Questions Do Not Further an Important Government Interest By Means Substantially Related to That Objective

Corbett’s petition challenged the propriety of 3 questions on his pistol permit application (“Questions 11 – 13”). Under even an intermediate scrutiny test, which Corbett re-iterates he does not stipulate is the correct test to use, Respondent-Defendants must show that an automatic, blanket denial of gun license applications when an applicant refuses to answer Questions 11 – 13 “serves important governmental objectives and that the [rights-violating] means employed are substantially related to the achievement of those objectives.” *United States v. Virginia*, 518 U.S. 515, 533 (1996) (*internal citation and quotation marks omitted*). The burden of showing the justification for a law for which the intermediate scrutiny test applies is on the government. *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982). The government must also show that they could not have accomplished their purpose with a more narrowly-tailored means. *McCullen v. Coakley*, 134 S. Ct. 2518 (2014) (requiring narrow tailoring while applying an intermediate level of scrutiny).

Corbett submits that Respondent-Defendants will never be able to carry that burden, and they certainly may not carry it in a motion to dismiss. A determination that a policy serves

important governmental objectives² and that it is substantially related to the achievement of those objectives will depend on a factual record that Corbett has not yet placed before the Court and Respondent-Defendants are not entitled to place before the Court in a motion to dismiss. Corbett is entitled to discovery to show any process by which Respondent-Defendants developed the challenged policy and is entitled to submit evidence of his own when this case reaches the summary judgment or trial stage, but may not be penalized for failing to do so in response to a motion to dismiss. *Kempf*.

This is especially so since Respondent-Defendants make some quite fantastic claims: in effect, they allege that an applicant must disclose to them, for example, whether they have ever been laid off from a job, been prescribed a pain killer after having their wisdom tooth removed, or attended a town hall meeting at which they provided testimony in favor of a new zoning law. See Cross-Mot. to Dismiss, p. 16, fn. 3 – 5. If having knowledge of such facts has a legitimate relation to whether one is likely to cause gun violence, Respondent-Defendants are obliged to do better than the half-page paragraph of argument defending them, *see* Cross-Mot. to Dismiss, pp. 18, 19, and Corbett is entitled to challenge these assertions. The issue is especially important given that the same questions are asked of those who merely wish to keep arms in their home, and therefore Corbett has been prohibited not only from carrying a handgun, but from ownership of one altogether.

² To be clear, this challenge does not allege that the state does not have a compelling interest in regulating guns *in general*. The question is whether compelling a pistol permit applicant to answer Questions 11 – 13, in particular, is important and substantially related.

E. The City of New York's Delay in Processing Corbett's FOIL Appeal Is Not Justified by The Explanation Provided

Respondent-Defendants admit that they received a proper FOIL appeal from Corbett on or about June 6th, 2016, and admit that by law they had 10 days to respond to it. *See* Cross-Mot. to Dismiss, p. 26; *see also* N.Y. Pub. Off. Law. 89(4)(a). They also admit that they have not yet replied to it, as of the date of their January 19th, 2017 motion. *Id.* A calendar demonstrates that 227 days have elapsed between those two dates, meaning that the NYPD missed not one period of 10 days, not two periods of 10 days, but 22 periods of 10 days have elapsed.

Notwithstanding, Respondent-Defendants argue that this is perfectly reasonable because they are in the middle of a corruption probe and there has been personnel change. *Id.* While rooting out corruption is a lofty goal, it should be noted that: a) the corruption probe is being run by the federal government, not by the NYPD, and b) none of the evidence provided by Respondent-Defendants demonstrates why these occurrences have added *hundreds of days* to the response time allowed by law.

Finally, Corbett notes that in consideration of a motion to dismiss, the Court must rule on his pleadings, not on evidence provided by Respondent-Defendants. If Respondent-Defendants would like a motion for summary judgment on the matter, they should file for one, but Corbett has the right to discovery to gather facts relevant to Respondent-Defendants' failure to respond in 227 days.

IV. Conclusion

The Court is called upon to decide whether a responsible, law-abiding citizen has a right under the Second Amendment to carry a firearm in public for self-defense. For the foregoing reasons, Petitioner-Plaintiff should be allowed to argue his case. Accordingly, Respondent-Defendants' cross-motion to dismiss should be **denied**, and Respondent-Defendants should be **ordered** to file an answer within a time to be affixed by the Court.

Dated: New York, New York

January 30th, 2017

Respectfully submitted,



Jonathan Corbett

Plaintiff, *Pro Se*

228 Park Ave. S. #86952

New York, NY 10003

E-mail: jon@professional-troublemaker.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

<p>Jonathan Corbett, <i>Petitioner-Plaintiff</i></p> <p>v.</p> <p>The City of New York, <i>Respondent-Defendant</i></p> <p>Thomas M. Prasso, <i>Respondent</i></p>
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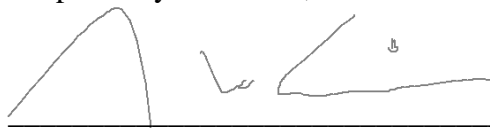
Index No. 158273/2016

**DECLARATION OF JONATHAN
CORBETT**

I, Jonathan Corbett, affirm the following is true to the best of my knowledge under penalty of perjury:

1. My name is Jonathan Corbett, I am over the age of 18, and I am a United States citizen.
2. I am the author of the Petition and Complaint, as well as my opposition to Respondent-Defendants' cross-motion to dismiss, and affirm their truthfulness.
3. On January 28th, 2017, I served the notice attached as "Exhibit B" upon the N.Y. Attorney General via USPS first-class mail.
4. Were it not for "Questions 11 – 13," I would immediately apply for a permit to own a handgun in my home, but cannot because my application would automatically be denied for refusal to answer these questions.

Dated: New York, New York
January 30th, 2017

Respectfully submitted,


Jonathan Corbett
Plaintiff, *Pro Se*
228 Park Ave. S. #86952
New York, NY 10003
E-mail: jon@professional-troublemaker.com

Jonathan Corbett

382 N.E. 191st St. #86952

New York, NY 10003

January 28th, 2017

To: Office of the Attorney General
The Capitol
Albany, NY 12224-0341
via USPS First Class Mail

Re: Notice Pursuant to CPLR § 1012

To Whom It May Concern:

Notice, as required by N.Y. CPLR § 1012, is hereby given that I have challenged N.Y. Penal Law § 400.00(2) (“proper cause” requirement for pistol permit) in *Corbett v. City of New York*, Index No. 158273/2016, in the Supreme Court of the State of New York, County of New York.

Thank you,

Jonathan Corbett

Growth chart of right to carry

By [David Kopel](#) February 17, 2014

The chart below shows how Shall Issue laws for the licensed carrying of firearms for self-defense have become the American norm.

As of 1986, slightly less than 10% of the U.S. population lived in states where there were objective and fair procedures for the issuance of concealed handgun carry permits. About a third of the population lived in states where there was not even a process to apply for a permit. The majority of the population lived in states where issuance in permits was highly discretionary, and many issuing authorities refused to issue to ordinary law-abiding citizens.

By 2014, the percentage of people living in the Red states, with no possibility of even applying for a permit, has declined to zero. Illinois' 2013 reforms ended the problem of states not even having a process theoretically available. (The problem persists in DC, but this chart is only for states.)

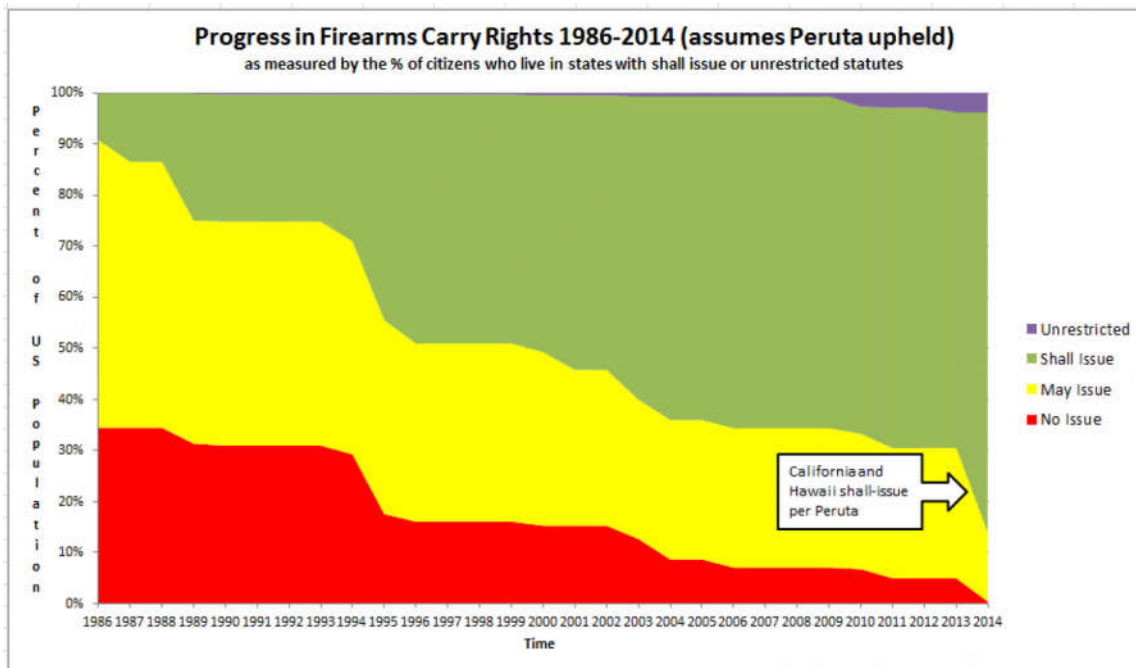
As of January 2014, about 2/3 of the population lived in a Green state, with a Shall Issue licensing statute.

Purple states (concealed carry is allowed without need for a permit) have increased from Vermont

only in 1986 to several states comprising about 4% of the population. Currently, the Purple states are Alaska, Arizona, Arkansas, Vermont, and Wyoming (residents only).

The Yellow states (arbitrary permitting) were the national norm in 1986, but they are now outliers. Unless the 9th Circuits' decision in *Peruta* is overturned, California and Hawaii will have to become Shall Issue states.

This will leave Yellow states at less than 1/7 of the U.S. population.



Moreover, some parts of the Yellow “may issue” states are already issuing permits as if they were Green. In New York, Massachusetts, Rhode Island, and Delaware, permits are issued by local authorities, and in some jurisdictions, local authorities issue in a manner consistent with respect for the right to bear arms. Permits are rarely issued in Maryland, and are extremely rare in New Jersey.

The six hold-out states are increasingly isolated. Not counting tiny Rhode Island and Delaware, the four larger hold-out states each are all bordered mainly by Green states. (Mass. by upper New England and Connecticut; NY by Penn., Vt., and Conn.; NJ by Penn.; Maryland by Penn., Vir., and WV). It should also be noted that in two of Delaware's three counties, permit issuance is often approximately what a Green state would do.

Rhode Island is *sui generis*. There are two licensing statutes: a "may issue" statute for the Attorney General, and a "shall issue" state for municipalities. Getting a municipality to follow the statute and issue a permit may require great persistence, and even that is not always successful.

It is interesting to compare the above chart to the [map](#) showing the demise of laws against "sodomy" (oral or anal sex), between 1970 and 2003. On the eve of *Lawrence v. Texas*, there were still 13 states which had sodomy statutes.

Thanks to Rob Vance for gathering the data and producing the chart.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. CAROL R. EDMEAD
J.S.C.

PRESENT:

PART 35

Justice

Index Number : 158273/2016
CORBETT, JONATHAN
vs.
CITY OF NEW YORK ET AL
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO.
MOTION DATE 2/1/17
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).

Answering Affidavits — Exhibits No(s).

Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

In this Article 78 proceeding challenging the denial of petitioner’s application for a pistol license, upon review of the submissions, the petition and cross-motion is decided as follows:

Petitioner Jonathan Corbett (“petitioner”) challenges the New York City Police Department’s (“NYPD”) denial of his appeal regarding his pistol permit application and the denial of his Freedom of Information Law (“FOIL”) public records request. In the Petition, petitioner seeks a declaration that (1) the “proper cause” requirement is an unconstitutional restriction on Second Amendment, warranting reversal of the NYPD’s denial of his permit application; (2) denying his application based on his failure to answer questions 11 – 13 on the application was irrational and arbitrary and unconstitutional; (3) directing the NYPD to issue his a concealed carry pistol permit; and (4) the NYPD provide Corbett with the documents requested under FOIL, and attorney’s fees and costs.

In response, respondent cross-moves (1) to dismiss petitioner’s First Claim of the petition/complaint pursuant to CPLR § 3211(a)(1) and 7804 for petitioner’s failure to notify the New York State Attorney General of the action pursuant to CPLR § 1012(b) and Executive Law §71(1); (ii) to dismiss petitioner’s Fourth Claim on the grounds that the Court lacks subject matter jurisdiction based on petitioners failed to exhaust administrative remedies prior to the commencement of this proceeding; (iii) to dismiss all claims for failure to state a cause of action; and (iv) for summary judgment in favor of respondents on all claims pursuant to CPLR § 3211(c).

In opposition, petitioner argues that a liberal reading of the petition demonstrates that it states a cause of action. Also, notice to the Attorney General is only required if petitioner

Dated: , J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

challenges state law, and petitioner herein does not challenge state law.¹ In any event, petitioner has notified the Attorney General. And, recent decisions by the U.S. Supreme Court and the U.S. Court of Appeals support petitioner's claims, and the Questions petitioner refused to answer do not further an important government interest by means substantially related to that objective. And, respondents' excuse for its delay in producing FOIL records, to wit: they are in the middle of a corruption probe and there has been personnel change, is unreasonable.

"The possession of a handgun is a privilege, not a right, that is subject to the broad discretion of the New York City Police Commissioner" (*Tolliver v. Kelly*, 41 A.D.3d 156, 837 N.Y.S.2d 128 [1st Dept 2007] citing *Matter of Papaioannou v. Kelly*, 14 A.D.3d 459, 460, 788 N.Y.S.2d 378 [2005]; *Sewell v. City of New York*, 182 A.D.2d 469, 472, 583 N.Y.S.2d 255 [1992], lv. denied 80 N.Y.2d 756, 588 N.Y.S.2d 824, 602 N.E.2d 232 [1992]). "A court may overturn such an administrative determination only if the record reveals no rational basis for it, and may not substitute its own judgment for that of the agency (*Tolliver v. Kelly, supra, citing Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 313 N.E.2d 321 [1974]).

It is noted that the following questions petitioner refused to answer are:

Question 11: Have you ever . . . [b]een discharged from any employment?"

Question 12: Have you ever. . . [u]sed narcotics or tranquilizers? List doctor's name, address, telephone number, in explanation."

Question 13: "Have you ever. . . [b]een subpoenaed to, or testified at, a hearing or inquiry conducted by an executive, legislative or judicial body?"

In response to these questions, petitioner explained:

I refuse to answer questions 11, 12, and 13 because they are entirely irrelevant as to whether I am qualified to carry a handgun. . . .

Further, in connection with petitioner's application, he submitted a Letter of Necessity, to address the inquiry into the nature of his employment and the business need to carry a handgun. Petitioner explained:

Applicant conducts business as a civil rights advocate. In order to exercise his civil rights fully, he needs a carry license.

In denying petitioner's application, respondent explained that, *inter alia*, that petitioner failed to comply with the requirement under Title 38 of the Rules of the City of New York §5-05 (a) that the application be "completely filled out" and that petitioner failed to demonstrate the "proper cause" required to carry a firearm.

A review of the submissions demonstrate that "given the totality of the information

¹ "When the constitutionality of a State statute is in question, notification of the Attorney General is required" (*Strongin v. Nyquist*, 54 A.D.2d 1031, 388 N.Y.S.2d 683 [3d Dept 1976]). It is uncontested the petitioner does not challenge a state statute, and that he nevertheless notified the Attorney General of this proceeding.

submitted in connection with the application” and the refusal of petitioner to answer certain questions on the application, the respondent had a rational basis for denying petitioner’s application (*Delgado v. Kelly*, 127 A.D.3d 644, 8 N.Y.S.3d 172 [1st Dept 2015]). Further, the “licensing scheme at issue satisfies the requisite constitutional standard, intermediate scrutiny, as it serves a governmental interest in maintaining public safety” (*Delgado v. Kelly, supra*).

As to petitioner’s FOIL challenge, it is uncontested that petitioner’s appeal of respondent’s FOIL determination has not yet been decided by the Department Records Access Officer due to the nature of the pending investigation into the alleged corruption surrounding the issuance of pistol permits (*see Taylor v. New York City Police Dept. FOIL Unit*, 25 A.D.3d 347, 806 N.Y.S.2d 586 [1st Dept 2006] (rejecting petitioner’s claim that respondent’s untimeliness in responding to his FOIL request excused his obligation to exhaust administrative appeal remedies prior to filing his petition)).

In any event, “Public Officers Law § 87(2)(e)(i) exempts from disclosure records that ‘are compiled for law enforcement purposes and which, if disclosed, would ... interfere with law enforcement investigations or judicial proceedings.’” (*Time Warner Cable News NY1 v. New York City Police Dept.*, 53 Misc.3d 657, 36 N.Y.S.3d 579 [Supreme Court, New York County 2016] (“This provision broadly permits an agency to make ‘a generic determination’ that disclosure of a record would interfere with a judicial proceeding against a particular individual”). Thus, as the documents sought relate to an ongoing criminal investigation against an individual, such documents may be withheld.

The remaining contentions of the petitioner are insufficient to merit the relief he seeks.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the petition is denied and this proceeding is dismissed; and it is further

ORDERED that respondents’ cross-motion (1) to dismiss petitioner’s First Claim of the petition/complaint pursuant to CPLR § 3211(a)(1) and 7804 for petitioner’s failure to notify the New York State Attorney General of the action pursuant to CPLR § 1012(b) and Executive Law §71(1); (ii) to dismiss petitioner’s Fourth Claim on the grounds that the Court lacks subject matter jurisdiction based on petitioners failed to exhaust administrative remedies prior to the commencement of this proceeding; (iii) to dismiss all claims for failure to state a cause of action; and (iv) for summary judgment in favor of respondents on all claims pursuant to CPLR § 3211(c) is granted solely to the extent that (1) the Fourth Claim is dismissed for failure to exhaust administrative remedies; (2) all claims are dismissed for failure to state a cause of action; and (3) summary dismissal of the petition is warranted; and it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry upon all parties within 20 days of entry. And it is further

ORDERED that the Clerk may enter judgment dismissing the petitioner accordingly.

This constitutes the decision and order of the Court.

Dated 2/6/17

ENTER:  J.S.C.

HON. CAROL R. EDMEAD

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION J.S.C.

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

<p>Jonathan Corbett, <i>Petitioner-Plaintiff</i></p> <p>v.</p> <p>The City of New York, <i>Respondent-Defendant</i></p> <p>Thomas M. Prasso, <i>Respondent</i></p>
--

Index No. 158273/2016

NOTICE OF APPEAL

Please take notice that Petitioner-Plaintiff Jonathan Corbett hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from the final judgment in the above captioned matter dated February 6th, 2017 and docketed the day thereafter, dismissing Petitioner-Plaintiff's Petition & Verified Complaint.

Dated: New York, New York

March 1st, 2017

Respectfully submitted,



Jonathan Corbett

Plaintiff, *Pro Se*

228 Park Ave. S. #86952

New York, NY 10003

E-mail: jon@professional-troublemaker.com

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. CAROL R. EDMEAD
J.S.C.

PRESENT:

PART 35

Justice

Index Number : 158273/2016
CORBETT, JONATHAN
vs.
CITY OF NEW YORK ET AL
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO.
MOTION DATE 2/1/17
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).

Answering Affidavits — Exhibits No(s).

Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

In this Article 78 proceeding challenging the denial of petitioner’s application for a pistol license, upon review of the submissions, the petition and cross-motion is decided as follows:

Petitioner Jonathan Corbett (“petitioner”) challenges the New York City Police Department’s (“NYPD”) denial of his appeal regarding his pistol permit application and the denial of his Freedom of Information Law (“FOIL”) public records request. In the Petition, petitioner seeks a declaration that (1) the “proper cause” requirement is an unconstitutional restriction on Second Amendment, warranting reversal of the NYPD’s denial of his permit application; (2) denying his application based on his failure to answer questions 11 – 13 on the application was irrational and arbitrary and unconstitutional; (3) directing the NYPD to issue his a concealed carry pistol permit; and (4) the NYPD provide Corbett with the documents requested under FOIL, and attorney’s fees and costs.

In response, respondent cross-moves (1) to dismiss petitioner’s First Claim of the petition/complaint pursuant to CPLR § 3211(a)(1) and 7804 for petitioner’s failure to notify the New York State Attorney General of the action pursuant to CPLR § 1012(b) and Executive Law §71(1); (ii) to dismiss petitioner’s Fourth Claim on the grounds that the Court lacks subject matter jurisdiction based on petitioners failed to exhaust administrative remedies prior to the commencement of this proceeding; (iii) to dismiss all claims for failure to state a cause of action; and (iv) for summary judgment in favor of respondents on all claims pursuant to CPLR § 3211(c).

In opposition, petitioner argues that a liberal reading of the petition demonstrates that it states a cause of action. Also, notice to the Attorney General is only required if petitioner

Dated: , J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

challenges state law, and petitioner herein does not challenge state law.¹ In any event, petitioner has notified the Attorney General. And, recent decisions by the U.S. Supreme Court and the U.S. Court of Appeals support petitioner's claims, and the Questions petitioner refused to answer do not further an important government interest by means substantially related to that objective. And, respondents' excuse for its delay in producing FOIL records, to wit: they are in the middle of a corruption probe and there has been personnel change, is unreasonable.

"The possession of a handgun is a privilege, not a right, that is subject to the broad discretion of the New York City Police Commissioner" (*Tolliver v. Kelly*, 41 A.D.3d 156, 837 N.Y.S.2d 128 [1st Dept 2007] citing *Matter of Papaioannou v. Kelly*, 14 A.D.3d 459, 460, 788 N.Y.S.2d 378 [2005]; *Sewell v. City of New York*, 182 A.D.2d 469, 472, 583 N.Y.S.2d 255 [1992], lv. denied 80 N.Y.2d 756, 588 N.Y.S.2d 824, 602 N.E.2d 232 [1992]). "A court may overturn such an administrative determination only if the record reveals no rational basis for it, and may not substitute its own judgment for that of the agency (*Tolliver v. Kelly, supra, citing Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 313 N.E.2d 321 [1974]).

It is noted that the following questions petitioner refused to answer are:

Question 11: Have you ever . . . [b]een discharged from any employment?"

Question 12: Have you ever. . . [u]sed narcotics or tranquilizers? List doctor's name, address, telephone number, in explanation."

Question 13: "Have you ever. . . [b]een subpoenaed to, or testified at, a hearing or inquiry conducted by an executive, legislative or judicial body?"

In response to these questions, petitioner explained:

I refuse to answer questions 11, 12, and 13 because they are entirely irrelevant as to whether I am qualified to carry a handgun. . . .

Further, in connection with petitioner's application, he submitted a Letter of Necessity, to address the inquiry into the nature of his employment and the business need to carry a handgun. Petitioner explained:

Applicant conducts business as a civil rights advocate. In order to exercise his civil rights fully, he needs a carry license.

In denying petitioner's application, respondent explained that, *inter alia*, that petitioner failed to comply with the requirement under Title 38 of the Rules of the City of New York §5-05 (a) that the application be "completely filled out" and that petitioner failed to demonstrate the "proper cause" required to carry a firearm.

A review of the submissions demonstrate that "given the totality of the information

¹ "When the constitutionality of a State statute is in question, notification of the Attorney General is required" (*Strongin v. Nyquist*, 54 A.D.2d 1031, 388 N.Y.S.2d 683 [3d Dept 1976]). It is uncontested the petitioner does not challenge a state statute, and that he nevertheless notified the Attorney General of this proceeding.

submitted in connection with the application” and the refusal of petitioner to answer certain questions on the application, the respondent had a rational basis for denying petitioner’s application (*Delgado v. Kelly*, 127 A.D.3d 644, 8 N.Y.S.3d 172 [1st Dept 2015]). Further, the “licensing scheme at issue satisfies the requisite constitutional standard, intermediate scrutiny, as it serves a governmental interest in maintaining public safety” (*Delgado v. Kelly, supra*).

As to petitioner’s FOIL challenge, it is uncontested that petitioner’s appeal of respondent’s FOIL determination has not yet been decided by the Department Records Access Officer due to the nature of the pending investigation into the alleged corruption surrounding the issuance of pistol permits (*see Taylor v. New York City Police Dept. FOIL Unit*, 25 A.D.3d 347, 806 N.Y.S.2d 586 [1st Dept 2006] (rejecting petitioner’s claim that respondent’s untimeliness in responding to his FOIL request excused his obligation to exhaust administrative appeal remedies prior to filing his petition)).

In any event, “Public Officers Law § 87(2)(e)(i) exempts from disclosure records that ‘are compiled for law enforcement purposes and which, if disclosed, would ... interfere with law enforcement investigations or judicial proceedings.’” (*Time Warner Cable News NY1 v. New York City Police Dept.*, 53 Misc.3d 657, 36 N.Y.S.3d 579 [Supreme Court, New York County 2016] (“This provision broadly permits an agency to make ‘a generic determination’ that disclosure of a record would interfere with a judicial proceeding against a particular individual”). Thus, as the documents sought relate to an ongoing criminal investigation against an individual, such documents may be withheld.

The remaining contentions of the petitioner are insufficient to merit the relief he seeks.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the petition is denied and this proceeding is dismissed; and it is further

ORDERED that respondents’ cross-motion (1) to dismiss petitioner’s First Claim of the petition/complaint pursuant to CPLR § 3211(a)(1) and 7804 for petitioner’s failure to notify the New York State Attorney General of the action pursuant to CPLR § 1012(b) and Executive Law §71(1); (ii) to dismiss petitioner’s Fourth Claim on the grounds that the Court lacks subject matter jurisdiction based on petitioners failed to exhaust administrative remedies prior to the commencement of this proceeding; (iii) to dismiss all claims for failure to state a cause of action; and (iv) for summary judgment in favor of respondents on all claims pursuant to CPLR § 3211(c) is granted solely to the extent that (1) the Fourth Claim is dismissed for failure to exhaust administrative remedies; (2) all claims are dismissed for failure to state a cause of action; and (3) summary dismissal of the petition is warranted; and it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry upon all parties within 20 days of entry. And it is further

ORDERED that the Clerk may enter judgment dismissing the petitioner accordingly.

This constitutes the decision and order of the Court.

Dated 2/6/17

ENTER:  J.S.C.

HON. CAROL R. EDMEAD

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKJonathan Corbett,
Petitioner-Plaintiff

v.

The City of New York,
Respondent-Defendant
Thomas M. Prasso,
Respondent

Index No. 158273/2016

PRE-ARGUMENT STATEMENT

1. The title of this action is Jonathan Corbett v. The City of New York, Thomas M. Prasso, assigned Index No. 158273/2016.
2. The full names of the parties are as listed in the title and no changes have been made to the parties.
3. Petitioner-Plaintiff represents himself and has a mailing address of: 228 Park Ave. S. #86952, New York, NY 10003.
4. The Defendant-Respondents are represented by Jerald Horowitz of the NYC Law Department, with a mailing address of: 100 Church St., New York, NY 10007.
5. Appeal is taken from a judgment of the Supreme Court of the State of New York, County of New York.
6. The Petition & Verified Complaint alleged that the City of New York violated his constitutional right to bear arms by denying his pistol permit application, and violated the New York Freedom of Information Law by failing to respond to an appeal of their denial of a public records request.
7. The Petition & Verified Complaint were dismissed.

8. Reversal will be sought on the grounds that the trial court failed to consider Petitioner-Plaintiff's constitutional arguments; that it applied an incorrect standard ("rational basis") given the constitutional questions presented; that the U.S. Supreme Court has effectively reversed New York precedent declaring that gun ownership is a "privilege and not a right;" and that even applying the incorrect standard, Defendant-Appellants still have not provided even a rational basis for their actions and therefore have acted in an arbitrary and capricious manner. Further, regarding the FOIL claim, the trial court incorrectly determined that the records requested were exempt from disclosure. There are no related cases pending.

Dated: New York, New York

March 1st, 2017

Respectfully submitted,



Jonathan Corbett

Plaintiff, *Pro Se*

228 Park Ave. S. #86952

New York, NY 10003

E-mail: jon@professional-troublemaker.com

E-FILE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
CORBETT, JONATHAN,

Petitioner,

For a Judgment Under Article 78 of the Civil Practice Law
and Rules,

-against-

CITY OF NEW YORK ET AL.,

Respondent.
----- X

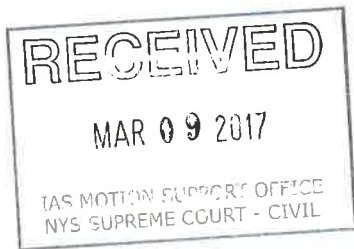
**NOTICE OF ENTRY OF
DECISION AND ORDER**

Index No. 158273/2016

PLEASE TAKE NOTICE that the within is a true copy of a Decision and Order signed by the Honorable Carol R. Edmead, dated February 6, 2017, which was duly entered and filed in the Office of the Clerk of the County of New York on February 7, 2017.

Dated: New York, New York
February 28, 2017

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for City Respondent
100 Church Street, Room 5-158
New York, New York 10007
(212) 356-2185



By: 
JERALD HOROWITZ
Assistant Corporation Counsel

To: Jonathan Corbett
Plaintiff, Pro Se
228 Park Avenue South, #86952
New York, NY 10003
E-mail: jon@professional-troublemaker.com

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. CAROL R. EDMOND
J.S.C.

PRESENT: Justice

PART 35

Index Number : 158273/2016
CORBETT, JONATHAN
vs.
CITY OF NEW YORK ET AL
SEQUENCE NUMBER : 001
ARTICLE 78

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MOTION DATE 2/1/17
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The remaining contentions of the petitioner are insufficient to merit the relief he seeks.

Conclusion


Based on the foregoing, it is hereby

ORDERED that the petition is denied and this proceeding is dismissed; and it is further ORDERED that respondents’ cross-motion (1) to dismiss petitioner’s First Claim of the petition/complaint pursuant to CPLR § 3211(a)(1) and 7804 for petitioner’s failure to notify the New York State Attorney General of the action pursuant to CPLR § 1012(b) and Executive Law §71(1); (ii) to dismiss petitioner’s Fourth Claim on the grounds that the Court lacks subject matter jurisdiction based on petitioners failed to exhaust administrative remedies prior to the commencement of this proceeding; (iii) to dismiss all claims for failure to state a cause of action; and (iv) for summary judgment in favor of respondents on all claims pursuant to CPLR § 3211(c) is granted solely to the extent that (1) the Fourth Claim is dismissed for failure to exhaust administrative remedies; (2) all claims are dismissed for failure to state a cause of action; and (3) summary dismissal of the petition is warranted; and it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry upon all parties within 20 days of entry. And it is further

ORDERED that the Clerk may enter judgment dismissing the petitioner accordingly. This constitutes the decision and order of the Court.

Dated 2/6/17

ENTER:  J.S.C.
HON. CAROL R. EDMOAD
J.S.C.

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Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

CORBETT, JONATHAN,

Petitioner,

AFFIDAVIT OF SERVICE

For a Judgment Under Article 78 of the Civil Practice Law
and Rules,

Index No. 158273/2016

-against-

Law Dept. #: 2016-039360

CITY OF NEW YORK ET AL.,

Respondent

----- X

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

CHERISE WINDLEY, being duly sworn, deposes and says that:

1. The deponent is not a party to the action and is 18 years of age or older.
2. On **March 6, 2017**, the deponent served the annexed **Notice of Entry of Decision and Order** upon the following person or persons:
JONATHAN CORBETT, PLAINTIFF PRO SE, 228 PARK AVENUE SOUTH, #86952, NEW YORK, NY 10003
3. The number of copies served on each of said person(s) was 1.
4. The method of service on each of said person(s) was:
 By mailing the papers to the person at the address designated by him or her for that purpose by depositing the same in a first class, postpaid, properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the State of New York pursuant to CPLR 2103(b)(2).

Cherise Windley

CHERISE WINDLEY

Sworn to before me this

^{8th} day of March, 2017

[Signature]

NOTARY PUBLIC



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Jonathan Corbett
Plaintiff, Pro Se
228 Park Ave South, #86952
New York, NY 10003

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NEW YORK 10007
Windley, C (A.C.)

Index No. 158273/16

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CORBETT, JONATHAN,

Petitioner,

For a Judgment Under Article 78 of the Civil
Practice Law and Rules,

-against-

CITY OF NEW YORK ET AL.,

Respondent.

**NOTICE OF ENTRY OF
DECISION AND ORDER**

ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for City Respondent
100 Church Street
New York, N.Y. 10007

Of Counsel: JERALD HOROWITZ
Phone #: (212) 356-2185
Law Manager No.: 2016-039360

Due and timely service is hereby admitted.

New York, N.Y., 2017. . .
..... Esq.

Attorney for