IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, NEWARK DIVISION

ISRAEL ALBERT ALMEIDA and MICHAEL R. TUMMINELLI Plaintiffs, v. THE HON. N. PETER CONFORTI, in his Official Capacity as Judge of the Superior Court of Sussex County; SHAINA BRENNER, in her Official Capacity as Sussex County Prosecutor; CHIEF ERIC DANIELSON, in his Official Capacity as Chief of Police of Andover Township; THE HON. CARMEN H. ALVAREZ, in her Official Capacity as Judge of Superior Court of New Jersey, Appellate Division; and THE HON. MARIE P. SIMONELLI in her Official Capacity as Superior Court of New Jersey, Appellate Division; MICHAEL S. RICHARDS in his Official Capacity as Chief of Police Newton, New Jersey; ROBERT LOUGY, in his Official Capacity as Acting Attorney General of New Jersey; SUSSEX COUNTY, New Jersey; and JOHN DOES 1-50 Defendants.	Case No._____

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COME Plaintiffs Israel Albert Almeida ("Almeida") and Michael R. Tumminelli ("Tumminelli"), by and through undersigned counsel, and allege as follows:

1. This action concerns the State of New Jersey's issuance of "Permit to Carry" handgun licenses pursuant to N.J. Stat. § 2C:58-4 and N.J. Admin. Code §§ 13:54-2.3, 13:54-2.4, 13:54-2.5, and 13:54-2.7 (the "Handgun Permit Laws"). Plaintiffs seek declaratory and injunctive relief, attorney's fees and costs.

2. It is a felony to possess a handgun without a Permit to Carry issued pursuant to the Handgun Permit Laws. N.J. Stat. § 2C:39-5(b). A private citizen who does not hold a Permit to Carry may possess a handgun only within the confines of the "exemptions" that are set forth at N.J. Stat. § 2C:39-6(e)-(g). These exemptions do not permit a person to carry an operable handgun, except within his or her home, real property, or place of business.

3. It does not matter if the method of carry is open or concealed; one must first obtain a permit.

4. In order to obtain a Permit to Carry, a private citizen must:

a. Complete an approved training course, N.J. Stat. § 2C:58-4(c)-(d) and N.J. Admin. Code § 13:54-2.4(b)(1);
b. Demonstrate familiarity with use-of-force laws, N.J. Admin. Code § 13:54-2.4(b)(3);
c. Submit qualification scores that show proficiency with the handgun that the person intends to carry, N.J. Admin. Code § 13:54-2.4(b)(2);
d. Provide fingerprints for a background check, N.J. Stat. § 2C:58-4(c);
e. Not be disqualified from gun ownership by reason of (for example) criminal history, age, or mental health condition, N.J. Stat. §§ 2C:58-3(c), 4(c)-(d); and
f. Show "a justifiable need to carry a handgun," N.J. Stat. § 2C:58-4(c)-(d), which is defined more particularly as "urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun," N.J. Admin. Code § 13:54-2.4(d).

5. N.J. Admin. Code § 13:54-2.4(d) adds the requirement, not included in the statute regarding permitting, that justifiable need means "specific threats or previous attacks which demonstrate a special danger to the *applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun*. (emphasis added). This additional requirement is ultra vires.

6. N.J. Admin. Code § 13:54-2.4(f) further states:

> (f) An application for a permit to carry a handgun shall be prioritized and be investigated on an expedited basis and approved or disapproved without undue delay, within 14 days if possible, under the following circumstances:

> 1. The applicant is a private citizen who applies for a permit to purchase a handgun and/or a firearm purchaser identification card contemporaneously with the application for a permit to carry a handgun or who has previously obtained a handgun purchase permit from the same licensing authority; and
>
> i. Has been the victim of an act of violence that resulted in the infliction of serious or significant bodily injury, or was credibly threatened with an act of violence that if carried out would result in the infliction of serious or significant bodily injury, or subjected to an incident in which the actor was armed with and used a deadly weapon or threatened by word or gesture to use a deadly weapon as defined in N.J.S.A. 2C:11-1.c against the applicant, and there is a substantial likelihood, based on the information presented in the applicant's State of New Jersey Request for Expedited Firearms Application form (S.P. 398), and any other information revealed in the investigation of the application, that the applicant will in the foreseeable future be subjected to another such incident; …
>
> 2. An applicant who meets the criteria in (f)1 i or ii above shall be deemed to have demonstrated justifiable need (as set forth in N.J.A.C. 13:54-2.3(a)3)[.]

7. To obtain a Permit to Carry, a private citizen must apply to either their chief police officer or to the state police superintendent, depending upon the circumstances, as mandated by N.J. Stat. § 2C:58-4(c). This police official has the discretion to determine whether the requirements, including justifiable need, have been met, and to approve or disapprove the application accordingly. *See* N.J. Stat. § 2C:58-4(c).

8. After the police official has approved or disapproved the application, a private citizen must then obtain the approval of an appropriate Superior Court judge. *See In re Preis,* 118 N.J. 564, 569, 573 A.2d 148, 151 (1990) (the Handgun Permit Laws "allow[] only a Superior Court judge to issue a permit, after applicants first obtain approval from their local chief of police"). Regardless of whether the police official approves or disapproves of the application, only a Superior Court judge can actually issue a Permit to Carry. *See* N.J. Stat. § 2C:58-4(e). However, if the police official has disapproved the application, then it will proceed no further unless the applicant requests consideration from an appropriate Superior Court judge. *See id.*

9. The Superior Court judge conducts his or her own review to determine whether the various statutory requirements, including justifiable need, have been met. *See* N.J. Stat. §2C:58-4(d). The Superior Court judge has discretion to deny a license application, or to limit or restrict a license. *See* N.J. Stat. § 2C:58-4(d); *see also* N.J. Admin. Code § 13:54-2.7(b).

10. A Superior Court judge deciding an application for a Permit to Carry acts as an "issuing authority" performing "functions which [a]re clearly nonjudicial in nature." *Siccardi v. State*, 59 N.J. 545, 553, 284 A.2d 533, 538 (1971); *see also In re Preis*, 118 N.J. 564, 569, 573 A.2d 148, 151 (1990) ("the Legislature has reposed what is essentially an executive function in the judicial branch").

11. A person who has been denied a license by the Superior Court judge upon the judge's consideration of a Permit to Carry application may appeal in accordance with the law and rules governing appeals in the state courts of New Jersey. N.J. Stat. § 2C:58-4(e).

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

13. In *Drake v. Filko*, 724 F.3d 426, 431 (3d Cir. 2013), the Third Circuit assumed, but did not hold, that the "Second Amendment individual right to bear arms [applied] beyond the home."

14. *Drake* held that "[t]o require applicants to demonstrate a 'justifiable need' is a reasonable implementation of New Jersey's substantial, indeed critical, interest in public safety." *Id*. at 438.

15. In *Siccardi v. State*, 284 A.2d 533, 540 (N.J. 1971), the Supreme Court of New Jersey stated that permits for carrying a handgun were limited to those "… who can establish an urgent necessity for carrying guns for self-protection. One whose life is in real danger, as evidenced by serious threats or earlier attacks, may perhaps qualify within the latter category but one whose

concern is with the safety of his property, protectible (sic) by other means, clearly may not so qualify."

16. The application of the Handgun Permit Laws is invalid as-applied to Plaintiffs as they have demonstrated justifiable need as will be set forth factually and specifically herein, yet Plaintiffs are unable to acquire a permit to carry a firearm due to the arbitrary and capricious nature of the permitting system and the unbridled discretion possessed by Defendants to deny Plaintiffs the ability to obtain a permit.

17. The Handgun Permit Laws as applied are in essence a de-facto ban against firearm carry as it operates as a licensing system that continues to deny Plaintiffs the right to carry a firearm for self-defense even though Plaintiffs meet the justifiable need threshold.

18. As the Third Circuit explained in *U.S. v. Barton*, 633 F.3d 168, 173 (3d Cir. 2011), even though the law may be "presumptively lawful … the Supreme Court implied that the presumption may be rebutted." (citation omitted). The distinct facts set forth for each Plaintiff demonstrate that the Handgun Permit Laws are unconstitutional as applied to each Plaintiff and the presumptively lawful justifiable need standard is unconstitutional as applied to each Plaintiff.

19. Governor Christie issued Executive Order 180 on June 29, 2015 which created a "New Jersey Firearm Purchase and Permitting Study Commission" ("the Commission"). See Exhibit "1."

20. On December 21, 2015, the Commission issued its report, titled "Report to Governor Christopher J. Christie from New Jersey Firearm Purchase and Permitting Study Commission Established Pursuant to Executive Order 180" ("the Report"). See Exhibit "2."

21. The Report analyzed justifiable need by looking to its history and conceded that "Justifiable need is not defined in the statute or legislative history." *Id.* at p. 13.

22. The Report bolsters the fact that justifiable need, as reflected in the Administrative Code is an incorrect interpretation of *Preis* as it stated "Although the *Preis* Court did not suggest that the standard for satisfying 'justifiable need' had been changed in any way, the New Jersey Administrative Code states that 'justifiable need' for a handgun carry permit means [t]he urgent necessity for self-protection, as evidenced by *specific* threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun." *Id*. at 15.

23. The Commission recommended the standard be amended to "make explicit what [they] believe has always been implicit: that the requirement be that the permit should issue where the dangers to the applicant's life cannot *reasonably* be avoided other than by issuance of the permit." *Id*.

24. The Commission also reported that the justifiable need standard will eventually be struck down and cast doubt on the "suggestion in *Drake* that the Second Amendment right might be limited to the home… as the *Wheeler* court itself notes." *Id*. at p. 20.

25. The Commission further cited *Wheeler* for the proposition that an applicant need only "show an objective reason … other than a generalized concern about becoming a crime victim to anticipate an attack necessitating the defensive use of a handgun" and that the *Wheeler* standard "allows for the sort of meaningful self-protection by a law-abiding applicant that we believe will be necessary (at a minimum) for our handgun permitting laws to survive constitutional scrutiny." *Id*. at 22.

PARTIES

26. Plaintiff Israel Albert Almeida is an adult male resident of the State of New Jersey, Township of Andover.

27. Plaintiff Michael R. Tumminelli is an adult male resident of the State of New Jersey, City of Newton.

28. Defendant the Honorable N. Peter Conforti (hereafter "Judge Conforti") is sued in his official capacity as Judge of the Superior Court of Sussex County, New Jersey, responsible for approving and issuing Permits to Carry pursuant to N.J. Stat. § 2C:58-4 and related regulations.

29. Defendant the Honorable Marie P. Simonelli ("Judge Simonelli") is sued in her official capacity as Judge of the Superior Court of New Jersey, Appellate Division, responsible for reviewing appeals for Permits to Carry pursuant to N.J. Stat. § 2C:58-4 and related regulations.

30. Defendant the Honorable Carmen H. Alvarez ("Judge Alvarez") is sued in her official capacity as Judge of the Superior Court of New Jersey, Appellate Division, responsible for reviewing appeals for Permits to Carry pursuant to N.J. Stat. § 2C:58-4 and related regulations.

31. As this Complaint relates to the conduct of the aforementioned judges, they acted and act as a licensing officer in a non-judicial capacity.

32. Defendant Shaina Brenner (hereafter "Brenner") is sued in her official capacity as the Prosecutor of Sussex County, responsible for the application of justifiable need for Plaintiff Almeida and acts so under color of law.

33. Defendant Chief Eric Danielson ("Chief Danielson") is sued in his official capacity as Chief Police Officer of Andover Township, responsible for approving applications for Permits to Carry pursuant to N.J. Stat. § 2C:58-4 and related regulations.

34. Defendant Chief Michael S. Richards ("Chief Richards") is sued in his official capacity as Chief Police Officer of Newton, New Jersey, responsible for approving applications for Permits to Carry pursuant to N.J. Stat. § 2C:58-4 and related regulations.

35. Defendant Acting Attorney General Robert Lougy is sued in his official capacity as the Acting Attorney General of the State of New Jersey, responsible for executing and administering the laws and policies at issue in this lawsuit.

36. Defendant Sussex County, New Jersey, is the County responsible for executing and administering the laws and policies at issue in this lawsuit.

37. John Doe defendants are persons unknown to Plaintiffs that are responsible for executing and administering the laws and policies at issue in this lawsuit.

JURISDICTION AND VENUE

38. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1367, 2201, 2202 and 42 U.S.C. § 1983.

39. This Court has personal jurisdiction over each of the Defendants because, *inter alia*, they acted under color of New Jersey state law and/or within the geographic confines of the State of New Jersey.

40. Venue is proper pursuant to 28 U.S.C. § 1391.

PLAINTIFF ISRAEL ALBERT ALMEIDA

41. Almeida was an Emergency Medical Technician in the City of Newark for 23 years. Almeida served as the lead medical tactical technician for the Newark Police SWAT team for over 15 years.

42. Almeida's responsibilities ranged from rendering medical aid not only to the general public and target subject if needed, and was part of the entry team and was made readily available for the SWAT officers if and when the need arose.

43. Almeida's continuous training involved various weapons safety training and tactics, including terrorism response and management.

44. Almeida trained with handguns, long guns, shotguns and even chemical and explosives training (certified by EMRTC in Socorro, New Mexico and Center for Domestic Preparedness in Alabama).

45. In 2010, Almeida retired from the public safety line of work and opened a firm involving Property Management services in the Newark and surrounding urban areas of New Jersey.

46. Almeida's job responsibilities include rental of property, evicting tenants for various reasons, including non-payment of rent and illegal activities.

47. Almeida also performs rent collections, mostly after-hours and in areas where the property is located, oftentimes in areas known for gang activity, drug sales and illegal weapons use.

48. Almeida is a clear target and his life is in danger while performing his job's responsibilities, including the collection of rent and eviction of tenants.

49. Almeida often carries large sums of cash, which is unavoidable, because his tenants are not able to pay rent with checks or other negotiable instruments.

50. Almeida sometimes must also confront the perpetrators of illegal activities at the managed properties because the tenants desire to live in crime free buildings.

51. In June of 2013, Almeida was forced to evict a tenant for nonpayment. This tenant was a career criminal that served prison time for aggravated assault and he was also known as a "Money, Murder, Sex" bloods gang member.

52. This subject took offense that Almeida evicted him and his family, so he threatened Almeida's life in various ways and on numerous occasions, including telling Almeida that "as long as [Almeida] in New Jersey, [Almeida] no longer safe, no matter how long it takes for him or his crew to kill [Almeida]." The subject told Almeida that he will have Almeida robbed, shot and dump his body on a dead end street to make it look like a robbery.

53. Almeida filed a terroristic threat police report which did nothing. See Exhibit "3." The subject then stated he would shoot the police if they came for him.

54. Around this time, Almeida was also the subject of an attempted carjacking.

55. Shortly after these incidents, Almeida applied for a New Jersey Handgun Permit with the local police and included the attached letter. See Exhibit "4."

56. This application was denied on October 24, 2013. See Exhibit "5."

57. Almeida appealed the denial to the Superior Court of New Jersey Law Division – Criminal Part, Sussex County, but it was denied by Judge Conforti "for the reasons stated on the record of June 18, 2014[.]" See Exhibit "6."

58. The transcript from the hearing is attached as Exhibit "7." Judge Conforti acknowledge that "An individual certainly has a right of self-defense. The question here is, is there a substantial threat of serious bodily harm in the carrying of a handgun is therefore is necessary to reduce the threat of unjustifiable – unjustifiable serious bodily harm." *Id*. at p. 33.

59. Judge Conforti stated, "… if anything, the presence of a handgun can in a certain sense cause the – an increase in terms of – of bodily harm. If individuals become aware as – and Mr. Almeida is indicating that everybody in the neighborhood knows what he's doing if they become aware that he's carrying a handgun there is the potential for an increase in violence in that context." *Id*. at p. 34.

60. Judge Conforti agreed with the prosecutor's, Defendant Brenner, suggestion that Almeida could receive rent through checks or money orders. Unreasonably, Judge Conforti held that "these means are available to him in terms of rent collection." *Id*.

61. Again, Judge Conforti acknowledged Almeida received a threat, but Judge Conforti stated that he "think[s] more has to be demonstrated to indicate a substantial threat exists without there having been any further contact by this person with [Almeida]." *Id*. at 36.

62. Judge Conforti then shifted the blame to the victim, Almeida, and stated "… generally speaking in electing to engage in this type of work and putting himself in – in this particular area, he's done the voluntarily (sic) of his own accord." *Id*. at 37.

63. The prosecutor, Defendant Brenner, stated that Almeida did not meet the justifiable need standard because "… there does need to be an urgent necessity for protection under the statute. Another part of that statute reads that – that such danger cannot be avoid by other means." *Id*. at 30.

64. Additionally, Brenner stated "... in this case, based on the testimony provided by Mr. Almeida, it's the State's position that this – these threats can be avoided. The manner in which the rents are collected by carrying large amounts of cash without stopping you know to deposit the money at a bank by not accepting checks or requiring tenants to pay by check or by mail, there are options in which the defendant has from other means." (sic). *Id*.

65. However, Almeida addressed Brenner's concerns regarding the acceptance of checks, when he testified that his tenants pay in cash because "[a] majority of the time it's because that's their – that's their lifestyle. That's their living condition. They do not have a bank account. They do not have a means of paying me any other way but with cash." *Id*. at 16.

66. Almeida was told that he had not met the justifiable need standard and that he had "options", which included to shut down his business; conduct his private business in a different manner; or hire a private armed security guard.

67. Almeida appealed that decision. See Exhibit "8."

68. The appellate judges, Judge Alvarez and Judge Simonelli, upheld the denial and added that "[w]e are satisfied that Almeida failed to establish a justifiable need for issuance of a permit to carry a handgun…. Almeida was never physically attacked, and except for one long-ago incident, there were no specific threats demonstrating a special danger to his life." See Exhibit "9."

69. The application of the law to Almeida is invalid as it requires him to suffer "a substantial threat of serious bodily harm…" which could include him being murdered, before he meets the arbitrary criteria for justifiable need.

70. Since Almeida's appeal was denied, Almeida has suffered numerous other credible threats of violence against his person, including death.

71. On December 21, 2015, Almeida was the subject of an attempted armed robbery outside of a property he managed.

72. In December 2015, Almeida's life was threatened by gang members due to Almeida clearing them from a managed property.

73. On January 6, 2016, a man pointed a gun to Almeida's face and told him that that next time he will shoot Almeida in the face.

74. On or about April 22, 2016, a property Almeida manages was vandalized with graffiti and Almeida advised that if he continued to call the police on the drug dealers and putting up security systems on properties, they would come back to "take [Almeida] out shooting" and burn the building down with Almeida in it, because Almeida was costing them money.

75. On or about May 2, 2016, one of Almeida's properties had a window shot out.

76. On or about May 3, 2016, one of Almeida's properties was tagged with graffiti, including the words "snitches get stiches" and the number "252" which is a locally known gang. It is

believed that this number is used when the gang is about to commit a shooting on its intended target. Almeida's name was also mentioned in the graffiti.

77. Attached as Exhibit "10" is a composite exhibit containing redacted police reports[1] of recent credible threats against Almeida along with various photographs of the graffiti and the shot-out window.

78. Almeida meets all requirements to be issued a permit to carry a handgun, including justifiable need, and but for the application of the Handgun Permit Laws to Almeida, he would be issued a permit.

79. Despite already being "deemed" to have demonstrated justifiable need per N.J. Admin. Code § 13:54-2.4(f), Almeida was not issued a permit to carry.

80. All Defendants, except Chief Richards, are responsible for the application of the Handgun Permit Laws to Almeida and, but for their application of the Handgun Permit Laws, Almeida would be able to receive a permit to carry a firearm.

81. Almeida desires to lawfully carry a firearm openly or concealed.

82. The application of the Handgun Permit Laws is invalid as-applied to Almeida.

PLAINTIFF MICHAEL R. TUMMINELLI

83. Tumminelli is currently a GS-13 employed by Department of Defense (Operations and Intelligence Program Manager to US Special Operations).

84. Tumminelli's former position requires the ability to travel with sensitive government information that supports Special Operations Task Force, as well as such departments as the Fire Department of New York City and the New York Police Department.

[1] Due to the sensitive nature of the police reports, certain information has been redacted. Almeida requests that if this Court requires filing of unredacted copies, Almeida be allowed to file under seal.

85. Currently Tumminelli's position is to instruct military units on new and emerging technologies to include operational reviews and tactics, techniques and procedures involving intimate knowledge of how US Military systems function in their rightful capacities.

86. Additional duties have Tumminelli involved with key Senior Leaders for conferences, briefings and operational planning to implement at the Joint Chief of Staff levels.

87. Tumminelli serves as primary liaison and between the Intelligence Communities and the Department of Defense, maintaining extensive knowledge in the areas of emerging threats for development of strategic operations plans and future technology requirements by working closely with other Federal and Military agencies and advising on foreign responses to national terror threats both within and outside of the United States.

88. Tumminelli is currently part of a team that is responsible for the overall training of various military units throughout the US Army.

89. Tumminelli is responsible for coordinating with all levels of National and Theater Level Commands, Theater Special Operations Command (TSOCs), Special Operations Forces (SOF) component commands to remain attributed to changes in policies and missions that support National policies. Additionally, he acts to initiate actions to ensure that implementation of new special programs are integrated in the organizations. These positions require Top Secret and compartmentalized caveat clearances that allow for highly sensitive information to be retained.

90. Tumminelli is responsible for safe-keeping highly classified documents which make him a target.

91. Tumminelli is left defenseless by the application of justifiable need and due to same, national security is put at risk should Tumminelli be attacked and/or robbed while transporting highly classified materials.

92. Tumminelli frequently travels within New Jersey and outside of New Jersey.

93. Outside of New Jersey, Tumminelli can legally carry a firearm in approximately thirty-six (36) states and has met both federal and state requirements to own, possess, and carry a firearm.

94. Tumminelli's employer does not issue him a firearm as he is a civilian employee.

95. As early as October 9, 2014, established threat assessments made by the Federal Bureau of Investigations (FBI), Department of Homeland Security (DHS), Department of Defense (DOD) along with the New Jersey Intelligence Data Fusion Center (NJSPIFC) located in West Trenton, New Jersey, have amassed numerous threat assessments and intelligence reports (unclassified) that have identified ISIS and the threats posed directly to US Military and Civilian Government personnel including those persons identified as US Military and Intelligence veterans. Limited unclassified reports and bulletins identify violent acts to be committed against said personnel, due to the sensitivity of collection methods, have identified a significant threat to all personnel and family members related to external National Security protocols and employment related identities.

96. On January 31, 2016, the Washington Post issued the headline: ISIS threatens feds, military after theft of personal data.[2]

97. Quoted from the Washington Post:

> On August 11, Junaid Hussain, "a known ISIL member" who received stolen information from Ferizi, reposted an Islamic State Hacking Division tweet, according to the FBI. The tweet linked to a 30-page document with a warning to the "Crusaders:"
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> "We are in your emails and computer systems, watching and recording your every move, we have your names and addresses, we are in your emails and social media accounts, we are extracting confidential data and passing on your personal information to the soldiers of the khilafah, who soon with the permission of Allah will strike at your necks in your own lands!"

[2] https://www.washingtonpost.com/news/federal-eye/wp/2016/01/31/isis-threatens-feds-military-after-theft-of-personal-data/ (last accessed June 6, 2016).

98. On October 8, 2015[3], the FBI Director, James B. Comey, gave a statement before the Senate Committee on Homeland Security and Governmental Affairs. Director Comey stated, in part, as follows:

> … we closely analyze and assess the influence groups like ISIL have on individuals located in the United States who are inspired to commit acts of violence. Whether or not the individuals are affiliated with a foreign terrorist organization and are willing to travel abroad to fight or are inspired by the call to arms to act in their communities, they potentially pose a significant threat to the safety of the United States and U.S. persons.
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> ***
>
> The targeting of U.S. military personnel is also evident with the release of names of individuals serving in the U.S. military by ISIL supporters. The names continue to be posted to the Internet and quickly spread through social media, depicting ISIL's capability to produce viral messaging. Threats to U.S. military and coalition forces continue today.

99. New Jersey's "Assessed Threat Level to New Jersey in 2016" lists Homegrown Violent Extremists, which are defined as "Individuals inspired by foreign terrorist organizations and radicalized in the countries in which they are born, raised or reside" as the highest threat, followed by ISIS.[4] [5]

[3] James B. Comey, *Testimony*, https://www.fbi.gov/news/testimony/threats-to-the-homeland (last accessed, June 6, 2016).

[4] State of New Jersey, *Assessed Threat Level to New Jersey in 2016*, http://static1.squarespace.com/static/54d79f88e4b0db3478a04405/t/569e86d740667a48116c38f4/1453229790301/Assessed+Threat+Level+to+New+Jersey+in+2016.pdf (last accessed June 6, 2016).

[5] These threats are chronicled through a variety of publicly available news reports, some of which follow: http://www.realcourage.org/2015/12/isis-in-usa-threat-usg-maryland/; http://www.mediaite.com/online/isis-hackers-post-personal-information-of-nj-transit-cops-call-for-long-wolf-attacks/; http://newyork.cbslocal.com/2015/04/17/army-picatinny-arsenal-suspicious-driver/; http://www.nj.com/morris/index.ssf/2015/04/picatinny_bomb_scare_suspect_a_czech_citizen_facin_1.html; http://www.washingtontimes.com/news/2015/aug/13/pro-isis-group-issues-threat-soon-well-behead-us-m/; http://www.dia.mil/News/SpeechesandTestimonies/ArticleView/tabid/11449/Article/653278/statement-for-the-record-worldwide-threat-assessment.aspx; http://www.rand.org/multi/homeland-security-and-defense/pubs/threat.html; http://www.cnn.com/2015/05/08/politics/force-protection-condition-level-bravo/;

100. Tumminelli applied for a permit to carry in early April 2015. Despite proving a justifiable need, Defendant Richards denied Tumminelli's application for a permit for "failing to demonstrate a justifiable need to carry a handgun…" See Exhibit "11."

101. Tumminelli's Director sent Defendant Richards a memorandum to "acknowledge that [Tumminelli] is an employee…" and that "… Tumminelli's sensitive position and his daily duties require him to work with multiple U.S. Law Enforcement and U.S. Special Operations Task Forces. Mr. Tumminelli will continue through the foreseeable future as a dedicated member to meet the U.S. National Security Mission." See Exhibit "12."

102. It is well known that terrorists target members of the government and military while planning and carrying out their attacks.

103. Tumminelli, due to his career, maintenance of highly classified materials, National Security obligations, training, and threat assessments from various governmental bodies, reasonably fears that he is a target.

104. Tumminelli is prohibited by the application of the justifiable need standard from being granted a permit and carrying a firearm to protect his life from these threats.

105. Tumminelli meets all requirements to be issued a permit to carry a handgun, including justifiable need, and but for the application of the Handgun Permit Laws to Tumminelli, he would be issued a permit.

106. Despite already being "deemed" to have demonstrated justifiable need per N.J. Admin. Code § 13:54-2.4(f), Tumminelli was not issued a permit to carry.

107. Tumminelli desires to lawfully carry a firearm openly or concealed.

108. Defendants Lougy and Richards are responsible for the application of the Handgun Permit Laws to Tumminelli and, but for their application of the Handgun Permit Laws, Tumminelli would be able to receive a permit to carry a firearm.

COUNT I – VIOLATION OF THE SECOND AMENDMENT

109. Plaintiffs incorporate each and every paragraph before as if specifically set forth herein.

110. N.J. Stat. § 2C:58-4(c)-(d), as implemented by N.J. Admin. Code § 2.4(d)(1), conditions the approval and issuance of a Permit to Carry on the existence of justifiable need, which is defined as an "urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun."

111. Plaintiffs meet justifiable need, as currently defined in the N.J. Administrative Code, and but for the application of the Defendants of justifiable need, Plaintiffs would be granted a permit to carry.

112. The application of the justifiable need standard infringe Plaintiffs' Second and Fourteenth Amendment rights and damage Plaintiffs in violation of 42 U.S.C. § 1983.

113. Plaintiffs' injuries are irreparable because Plaintiffs meet the justifiable need requirement and the Defendants' policies, procedures and discretion operate as a bar for Plaintiffs to exercise their right of self-defense despite the justifiable need proven by Plaintiffs.

COUNT II – PROCEDURAL DUE PROCESS VIOLATION

114. Plaintiffs incorporate each and every paragraph before as if specifically set forth herein.

115. While New Jersey has the appearance of due process regarding permits to carry, in actuality, the Defendants application of justifiable need is a foregone conclusion when it comes to issuing permits to carry. As such, appealing a denial of a permit to carry, even in light of actual

credible threats, corroborated by police reports and threats of terrorist activity issued by the United States government, is futile.

116. Plaintiffs' injuries are irreparable because Plaintiffs meet the justifiable need standard and the Defendants' policies, procedures and discretion operate as a mere facade of due process in violation of Plaintiffs' Due Process rights.

COUNT III – ULTRA VIRES

117. Plaintiffs incorporate each and every paragraph before as if specifically set forth herein.

118. N.J. Admin. Code § 13:54-2.4(d) adds a requirement, not included in the statute regarding permitting, that justifiable need means "specific threats or previous attacks which demonstrate a special danger to the *applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun* (emphasis added).

119. This addition, not present in the statute, is inconsistent with the plain language of the statute, N.J. Stat. § 2C:58-4, which merely requires the following: that the applicant "is not subject to any of the disabilities set forth in 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun."

120. The words "avoided by means other than by issuance of a permit to carry a handgun" provides unfathomable reasoning which suggests Plaintiffs avoid danger by simply staying home, quitting one's job, hiring armed security guards twenty-four hours a day for around-the-clock protection, moving to another state and abandoning a chosen livelihood, or other unreasonable means.

121. Because this provision is ultra vires, and an unreasonable and impermissible construction of the statute, Plaintiffs are injured irreparably by this ultra vires action and application of the administrative code.

COUNT IV - ULTRA VIRES APPLICATION BY SUSSEX COUNTY

122. Plaintiffs incorporate each and every paragraph before as if specifically set forth herein.

123. Additionally, the county is requiring that Defendants "show a substantial threat of serious bodily harm…" before issuance of a permit, which is not required either under the administrative code or the New Jersey statutes.

124. For this reason, the "substantial threat of serious bodily harm" requirement implemented by Sussex County is ultra vires.

125. Because this provision is ultra vires, and an unreasonable and impermissible construction of the statute, Plaintiffs are injured irreparably by this ultra vires action and application of the administrative code.

COUNT V – ULTRA VIRES APPLICATION BY THE COURT

126. Plaintiffs incorporate each and every paragraph before as if specifically set forth herein.

127. The Court, sitting an executive branch entity, is requiring that Defendants "show a substantial threat of serious bodily harm…" before issuance of a permit, which is not required either under the administrative code or the New Jersey statutes.

128. The Court however, sitting as an executive branch entity in approving and/or denying permits, is usurping the power of the legislative branch by adding additional requirements and qualifications to the issuance of a firearm carry permit that are not in the statute nor in the administrative code.

129. As such, the "substantial threat of serious bodily harm" requirement implemented by the court is ultra vires.

130. Because this provision is ultra vires, and an unreasonable and impermissible construction of the statute, Plaintiffs are injured irreparably by this ultra vires action and application of the administrative code.

COUNT VI – VIOLATION OF THE SECOND AMENDMENT TO SUSSEX COUNTY

131. Plaintiffs incorporate each and every paragraph before as if specifically set forth herein.

132. Sussex County impermissibly restricts the issuance of permits to carry a firearm by adding additional requirements and qualifications within the statute regulating the issuance of a permit to carry a firearm.

133. Sussex County's application of the Handgun Permit Laws are invalid as applied against Plaintiffs in that both Plaintiffs have established a justifiable need for issuance of a permit to carry, but have been impermissibly denied permits to carry.

COUNT VII – VIOLATION OF THE SECOND AMENDMENT – FACIAL CHALLENGE

134. Plaintiffs incorporate each and every paragraph before as if specifically set forth herein.

135. Plaintiffs reserve a facial challenge on whether or not justifiable need is constitutional in light of *Heller* and *McDonald* for Third Circuit Court of Appeals review en banc, and/or the United States Supreme Court.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for the following relief:

a) declaratory judgment that N.J. Stat. § 2C:58-4(c)-(d) and N.J. Admin. Code § 13:54-2.4(d)(1) are invalid as-applied to Plaintiffs under the Second and Fourteenth Amendments because the application of justifiable need impermissibly restricts the approval of permits to carry a handgun;

b) declaratory judgment that Plaintiffs Almeida and Tumminelli have a right to carry, either openly or concealed, a handgun of their choosing for self-defense;

c) an injunction directing Chief Richards and Chief Danielson to approve the application for Permits to Carry of Tumminelli and Almeida for Permits to Carry;

d) an injunction permanently restraining Defendants Chief Richards and Chief Danielson, and their officers, agents, servants, employees, and all persons in concert or participation with them who receive notice of this injunction, from enforcing the justifiable need standard so as to deny, restrict, or limit Permits to Carry or applications for same for any reason other than those reasons specifically codified in the statutes and regulations of the State of New Jersey;

e) an injunction permanently restraining Defendants Chief Richards and Chief Danielson and Attorney General Lougy, and their officers, agents, servants, employees, and all persons in active concert or participation with them who receive notice of this injunction, from enforcing the Handgun Permit Laws so as to deny, restrict, or limit Permits to Carry or applications for same on the ground that an applicant does not have justifiable need as defined in the New Jersey administrative code which is ultra vires;

f) an injunction permanently restraining Defendants Sussex County, Judge Conforti, Judge Simonelli, Judge Alvarez and prosecutor Brenner and their officers, agents, servants, employees, and all persons in active concert or participation with them who receive notice of this injunction, from applying the Handgun Permit Laws so as to deny, restrict, or limit Permits to Carry or applications for same on the ground that an applicant does not have justifiable need as defined in the New Jersey administrative code which is ultra vires;

g) such other and further relief, including injunctive relief, against all Defendants, as may be necessary to effectuate the Court's judgment, or as the Court otherwise deems just and equitable;

h) attorney's fees and costs pursuant to 42 U.S.C. § 1988; and

i) any other relief that this Court in its discretion deems just and appropriate.

This, the 13th day of June, 2016.

Respectfully submitted,

_/s/ Ryan S. Watson_____
RYAN S. WATSON

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VERIFICATION

I, Israel Albert Almeida, declare as follows:

1. I am a Plaintiff in the present case and a citizen of the United States of America.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing *Verified Complaint for Declaratory and Injunctive Relief*, and if called on to testify, I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Verified Complaint for Declaratory and Injunctive Relief* concerning myself, my activities and my intentions are true and correct.

Executed on June 9, 2016

ISRAEL ALBERT ALMEIDA

VERIFICATION

I, Michael R. Tumminelli, declare as follows:

1. I am a Plaintiff in the present case and a citizen of the United States of America.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing *Verified Complaint for Declaratory and Injunctive Relief*, and if called on to testify, I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Verified Complaint for Declaratory and Injunctive Relief* concerning myself, my activities and my intentions are true and correct.

Executed on June 9, 2016

MICHAEL R. TUMMINELLI

EXECUTIVE ORDER NO. 180

WHEREAS, the responsible use of firearms has been a part of our Nation's fabric since before the founding; and

WHEREAS, the Second Amendment to the United States Constitution codifies the pre-existing individual right to possess and carry firearms including for the purpose of self-protection against confrontation, declaring that it shall not be infringed; and

WHEREAS, the Supreme Court of the United States has recognized that an individual right to bear arms for defensive purposes is a core and fundamental guarantee; and

WHEREAS, the lawful exercise of a fundamental constitutional right may not be unduly burdened by State or local regulations, or government agencies implementing such provisions; and

WHEREAS, New Jersey's laws and regulations impose significant restrictions on an individual's ability to purchase, transport, carry, and use firearms within the State; and

WHEREAS, on June 3, 2015, a New Jersey resident was tragically killed in a horrific act of violence perpetrated at her home; and

WHEREAS, this victim previously sought and received the protection of a Domestic Violence Restraining Order and subsequently submitted an application for a permit to purchase a handgun, which application remained pending beyond the applicable thirty-day statutory deadline at the time of her killing; and

WHEREAS, any needless or unreasonable delay in processing permit applications hinders the lawful and responsible exercise of a constitutional right and the ability of individuals to bear arms for protection and self-defense; and

WHEREAS, we must ensure that the laws and regulations surrounding the responsible use of firearms and handguns reflect the appropriate level of government regulation of this fundamental, individual right to self-protection; and

WHEREAS, a review of state laws and regulations as well as the procedures employed by state and local law enforcement agencies may identify appropriate modifications to remove unnecessary restrictions that interfere with the exercise of rights under the Second Amendment while maintaining public safety;

NOW, THEREFORE, I, CHRIS CHRISTIE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby created a "New Jersey Firearm Purchase and Permitting Study Commission" (hereinafter the "Study Commission").

2. The Study Commission shall consist of three (3) members appointed by the Governor who shall serve at his pleasure. The Governor may select a chairperson from among the members of the Study Commission. The Study Commission shall consist of members with expertise in criminal law. All members of the Study Commission shall serve without compensation. The Study Commission shall organize as soon as practicable after the appointment of its members.

3. The Study Commission is charged with conducting a review of New Jersey laws, regulations, and procedures pertaining to the ownership and possession of firearms.

4. The Governor's Office shall provide staff support to the Study Commission. The Study Commission shall be authorized to call upon any department, office, division, or agency of

this State to supply it with any information, personnel, or other assistance available as the Study Commission deems necessary to discharge its duties under this Order. Each department, office, division, and agency of this State is hereby required, to the extent not inconsistent with law, to cooperate fully with the Study Commission within the limits of its statutory authority and to furnish the Study Commission with such assistance on as timely a basis as is necessary to accomplish the purposes of this Order. The Study Commission may consult with experts or other knowledgeable individuals in the public or private sector on any aspect of its mission.

5. The Study Commission may report to the Governor from time to time and shall issue a final report to the Governor setting forth the Study Commission's recommendations pursuant to this Order no later than 90 days after organizing. The Study Commission shall expire upon issuance of its final report.

6. This Order shall take effect immediately.

GIVEN, under my hand and seal this 29th day of June, Two Thousand and Fifteen, and of the Independence of the United States, the Two Hundred and Thirty-Ninth.

[seal]

/s/ Chris Christie

Governor

Attest:

/s/ Paul B. Matey

Deputy Chief Counsel to the Governor

Firearms Purchase & Permitting in New Jersey

Report to Governor Christopher J. Christie from the New Jersey Firearm Purchase and Permitting Study Commission Established Pursuant to Executive Order 180

Commissioners:

Adam J. Heck, Esquire

Eric H. Jaso, Esquire

Erik Lillquist

December 21, 2015

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Firearms Purchase & Permitting in New Jersey

I. Introduction

On June 3, 2015, Carole Bowne was stabbed to death in her driveway in Berlin, New Jersey by her ex-boyfriend, against whom she had a restraining order. At the time, Ms. Bowne had a pending application for a permit to purchase a handgun that she had submitted on April 21, six weeks earlier. She reportedly checked on the status of her permit application just two days before she was murdered.

This tragic incident laid bare some vulnerabilities in New Jersey's stringent firearms laws, including the standard to obtain a firearm permit and an application process that is unevenly applied and often takes more than two months to complete. On June 29, Governor Chris Christie responded by issuing Executive Order 180, establishing this "New Jersey Firearm Purchase and Permitting Study Commission," which is charged with conducting a review of New Jersey laws, regulations, and procedures pertaining to the ownership and possession of firearms, and making recommendations to the Governor.

Under Executive Order 180, this Commission's mandate is limited. We were charged to conduct "a review of New Jersey laws, regulations, and procedures pertaining to the ownership and possession of firearms" in light of recent events, and in particular, the tragic death of Ms. Bowne. Executive Order 180 directed that we must ensure the proper balance between an individual's right to self-protection while ensuring the responsible use of firearms and handguns.[1]

Consistent with this limited mandate, the Commission has been reviewing New Jersey's firearms regulatory regime and has identified several issues on which we offer recommendations to improve laws, regulations and procedures that will enable law-abiding New Jersey residents to exercise their Second Amendment right of self-defense, while still maintaining a regulatory structure that enhances public safety by preventing criminals, the psychologically unstable, and other potentially dangerous persons, as well as minors, from purchasing or otherwise obtaining firearms legally.

II. Executive Summary

The Commission has focused its attention on impediments to the lawful and responsible exercise of New Jersey citizens' constitutional right to bear arms for self-defense. Our consideration of the statutes, regulations, case law and procedures concerning the possession of

[1] At the same time, the New Jersey Attorney General's Office issued a new regulation, calling for the expedited processing of firearms purchaser identification card and handgun purchase permit applications – within 14 days, if possible – for applicants who are victims of domestic violence and under the protection of a restraining order.

firearms in our state led us to concentrate on three specific issues where bringing further clarity to the application of the law could ease burdens on lawful gun ownership without undermining public safety. Our report and recommendations thus focus on three specific issues: (1) permitting; (2) the "justifiable need" standard for the issuance of carry permits; and (3) transporting firearms within New Jersey.

With respect to permitting, we considered reports that the statutory requirements for obtaining firearm purchaser identification cards, handgun purchase permits and handgun carry permits are being applied unevenly across New Jersey townships. Unnecessary delays in processing applications and the imposition of unauthorized requirements in the application process violate the law and introduce arbitrariness to the exercise of a fundamental right. Accordingly, to ensure that the law is applied consistently throughout the state, we recommend that the Attorney General of New Jersey issue a Directive to local police departments and the State Police identifying a uniform set of criteria for the consideration and processing of firearm permit applications, consistent with current state law.

We also recommend increasing transparency of the permitting process through the collection and publication of processing times by municipality and State Police barracks. Finally, because timely consideration of firearm applications is particularly important in domestic violence cases, we recommend that the State Police formally adopt its pending regulation expediting consideration of applications in cases where the victim is under the protection of a restraining order, and also that the Judiciary be urged to expedite its consideration of carry permit applications and appeals in those cases presenting a heightened risk to domestic violence victims.

Next, the Commission carefully considered the requirements for issuance of concealed carry permits in New Jersey. Specifically, we focused on the statutory requirement that an applicant must demonstrate a "justifiable need" to carry a handgun. Our analysis led us to conclude that the current regulation establishing the standard for meeting the statutory requirement can be broadened to align more closely with the Supreme Court of New Jersey cases from which it is derived. Accordingly, we recommend that the applicable regulation be amended so individuals who can demonstrate an urgent necessity for self-protection by articulating serious threats, specific threats, or previous attacks which demonstrate a special danger to the applicant's life that cannot reasonably be avoided by other means could obtain a carry permit if they otherwise qualify.

We also have considered whether the "justifiable need" requirement remains consistent with the Second Amendment in light of the U.S. Supreme Court's *Heller* and *McDonald* decisions. Notwithstanding several recent cases that have upheld this requirement, we explain why it ultimately may not survive future court scrutiny. In the absence of guidance from the U.S. Supreme Court or the Supreme Court of New Jersey on the contours of the Second Amendment right outside the home, however, we have limited our recommendation to the regulatory change described above.

Finally, this report addresses two scenarios regarding the transporting of firearms within New Jersey that can become traps for the unwary, with serious criminal consequences.

Occasionally, out-of-state residents enter or pass through New Jersey with a firearm that they lawfully possess in their home state, completely unaware that they are breaking New Jersey law. Nevertheless, these visitors are subject to criminal prosecution and a substantial jail sentence for unlawful possession of a firearm. Previous action by the Acting Attorney General encouraging prosecutors to exercise prosecutorial discretion and to consider pretrial intervention in appropriate cases and Governor Christie's judicious use of his pardon power have ameliorated the harsh consequences of these unintentional violations of New Jersey law.

However, in cases of intra-state transport of firearms, where owners are required to go directly from point-to-point (i.e., work-to home or home-to-the range) subject only to deviations that are "reasonably necessary," there is no guidance from the statute, regulations or case law to guide gun owners, law enforcement or prosecutors as to what constitutes a "reasonably necessary" deviation. The absence of such criteria is a source of much confusion (and fear) for firearm owners that they might unintentionally violate the law by, for example, stopping for gas while transporting their firearm from place to place. Moreover, without defined standards, there is also a risk of inconsistent prosecutions for unlawful possession from county to county. Accordingly, we recommend that the Attorney General issue a Directive providing guidance, including specific examples, for what constitutes a "reasonably necessary" deviation while transporting a firearm.

III. Process for Obtaining a Gun Permit in New Jersey

A. Firearms Purchaser Identification Card and Purchase Permit

New Jersey law places significant restraints upon who can purchase a firearm in this state, and how and when such purchases can be made. As an initial matter, no person can purchase a rifle or shotgun without first obtaining a firearms purchaser identification card ("FID card").[2] The process for obtaining the FID card begins with the submission of an application for an FID card to the local police chief. Applicants must be fingerprinted, give consent to obtain their mental health records, and provide two references. An applicant must prove that she is a person of "good character and good repute in the community in which [she] lives," and she must not be subject to any of the disabilities set forth in the law, which include: age (under 18), prior criminal conviction, drug addiction, alcohol addiction, mental disease, or being subject to a domestic violence restraining order.[3] An FID card is valid indefinitely unless the holder becomes subject to any of the disqualifying conditions or changes her address. The holder may purchase multiple rifles or shotguns using that FID card.

The purchase of a handgun requires all of the above but is more restricted under the laws of our state. Someone wishing to purchase a handgun must submit an application for a handgun purchase permit.[4] The holder of a handgun purchase permit may purchase only one handgun

[2] *N.J.S.A.* 2C:58-3b.
[3] *N.J.S.A.* 2C:58-3c.
[4] *N.J.S.A.* 2C:58-3a.

every thirty days, and a separate permit is required for each handgun.[5] Long-guns (rifles and shotguns) are not subject to the "one gun per month" law and require only the possession of a valid FID card.

Both FID cards and purchase permits "shall" be issued by the police chief to qualified applicants within thirty days.[6] Any applicant denied an FID card or a purchase permit is entitled to review by the Superior Court of New Jersey, and a hearing on that application shall take place within thirty days of receipt of the request for review.[7] Regardless of how quickly the handgun purchase permit application is approved, no one may purchase a handgun unless at least seven days have passed since the applicant submitted her permit application (of course, as we note below, processing the application may take up to thirty days, and sometimes longer).[8]

Accordingly, assuming the application process advances in the course established by the statute, a person seeking to obtain a firearm must wait up to thirty days to receive an FID card and/or purchase permit. This thirty-day time limit is not permissive; the statute states that the licensing authority, "unless good cause for the denial [of the permit] appears, shall grant the permit or the identification card, or both, . . . within thirty days from the date of receipt of the application . . . ."[9] In reality, though, it appears that in many jurisdictions in this state, the review process is often delayed well beyond what is permitted under the law. The Commission has been provided with scores of contemporaneous complaints from permit applicants submitted to the Association of New Jersey Rifle and Pistol Clubs, describing delays, many of them lengthy delays, in the processing of their permits in approximately 100 different jurisdictions. *See* Appendix A. Some examples of these reports include:

- An applicant in East Hanover wrote that he applied for an FID card and handgun purchase permit together on May 13, 2013, that he was fingerprinted on May 17, and that his references had returned their documents by the end of May. On April 9, 2014, this applicant reported that he contacted the Police Department towards the end of February, and they confirmed that they had his paperwork, but as of April 9 – eleven months after he submitted his applications – his applications had still not been addressed. This was one of several complaints about the processing time in East Hanover. One applicant claimed that he waited 18 months for two permits to be approved, and another reported on May 10, 2014 that he had been waiting since the end of January (more than three months earlier) for a purchase permit.

- An applicant in Edison reported two different instances where action on his applications took seven months or more. He wrote that his initial application for an FID card and purchase permit in late 2012 took 7 months to be approved, and that he

[5] *N.J.S.A.* 2C:58-3i. A similar restriction was recently struck down as unconstitutional by the D.C. Circuit in *Heller v. District of Columbia*, 2015 U.S. App. LEXIS 16632 (D.C. Cir. September 18, 2015).
[6] *N.J.S.A.* 2C:58-3d
[7] *N.J.S.A.* 2C:58-3d, f.
[8] *N.J.S.A.* 2C:58-2a(5).
[9] *N.J.S.A.* 2C:58-3f. The time limit is longer (forty-five days) for nonresident applicants.

applied for two additional handgun permits around Christmas 2014. As of August 10, 2015, he reported that he still had not received his permits.

- A veteran and retired police officer reported that as of April 1, 2014, he had been waiting over six months for the Parsippany Police Department to act on his FID card and handgun permit applications. He wrote that a detective had called him after five months and asked him a few questions about his background but then another month passed without any action being taken on his applications.

- The written application procedures used by the Wanaque Police Department for FID card applicants warns applicants that "it may take up to 6 months to receive your ID Card due to the volume of applications through the NJSP," and also directs applicants not to call the police department to check on the status of their applications.

We are sure that some delays involve "good cause", such as a delay in receiving information from the FBI or SBI, as was the case in *Adler v. Livak*,[10] or the need to follow up on questions that arise during background checks. However, delays of the length noted above and others we reviewed of up to a year in length without any information being provided to the applicants appear to us to be simply unnecessary for the full and proper vetting of gun permit applications, particularly given modern technology and the relative ease of accessing pertinent information about an applicant. Criminal background checks, including fingerprinting, are often completed within a week. As Governor Christie recognized in Executive Order 180, "[n]eedless and unreasonable delay in processing permit applications hinder the lawful and responsible exercise of a constitutional right and the ability of individuals to bear firearms for protection and self-defense."[11] To increase transparency in the permitting process, we will suggest that the Superintendent of the State Police collect and publish annual statistics from municipalities and the State Police concerning the length of time they are taking to process applications for FID cards and firearm permits.

Not only does it appear that some local jurisdictions have not been following the statute's clear commands as to the time for review of FID card and purchase permit applications, but the Commission has also learned that many municipalities across the state do not appear to properly apply the standards for issuance of FID cards and purchase permits, with some imposing additional requirements that, besides being burdensome and unreasonable, violate the law.

New Jersey's firearm permitting statute plainly states: "There shall be no conditions or requirements added to the form or content of the application, or required by the licensing authority for the issuance of a permit or identification card, other than those that are specifically set forth in this chapter."[12] However, we have reviewed complaints that some municipalities have imposed extra requirements such as:

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[10] 705 A.2d 1218 (N.J. App. Div. 1998) (finding "good cause" to extend the time for consideration of an FID or purchase permit when the delay was from a failure to receive fingerprints from the FBI and SBI).
[11] Exec. Order No. 180 (June 29, 2015).
[12] *N.J.S.A.* 2C:58-3(f).

- Requiring spousal consent
- Demanding a letter of reference from the applicant's employer
- Conducting a "home visit" to the applicant's home
- Requiring proof of employment
- Requiring credit card statement
- Requiring that reference letters be notarized
- Requiring references to not be related to or living with the applicant

Such deviation from the law is exemplified in recent undercover videos released by an advocacy group that appear to show police officers responsible for processing FID card and permit applications in the townships of Orange and Edison misrepresenting the process, discussing unauthorized standards and outright discouraging applicants from seeking an FID card or permit. Over the course of two videotaped encounters with prospective applicants reportedly occurring on October 15 and November 17, 2015, the Orange police sergeant responsible for processing gun permits made numerous misstatements of the gun permit law and blatantly imposed impediments to obtaining permits. For example, in October, the officer said it would be "at least three to six months" for the applicant to obtain a handgun permit, and in November, he told the prospective applicant that he would not even be accepting any applications for two months, because the holidays were coming up and he had other year-end business to attend to, as well as a number of vacation days scheduled. In both encounters, he informed the prospective applicants categorically that they could not obtain a carry permit unless they were employed by a security agency that offers armed security. The officer told one of the applicants, who said he was employed as a baker and wanted the carry permit for self-defense, that he could not even apply – "the application is not for you. . . . In New Jersey, no way, no how, it's just not possible." The officer blamed it on the Legislature.[13]

The Edison Police Department also raised unauthorized roadblocks to a prospective permit applicant, according to an encounter reportedly videotaped surreptitiously on November 16, 2015. This township apparently requires applicants to provide their work experience and educational background to obtain a carry permit, and when asked, the department representative responded that "That's what the court and the judge wants." The representative disavowed any role for the Department except "processing" a carry permit application, claiming the Superior Court "are the only ones that have something to do with it." She also asked this prospective applicant, "What do you want a carry permit for?" to which he replied, "For self-defense." The representative then said, "For self-defense? Then you're not gonna get it. But you can apply. I'm just being honest with you – you are not probably [*sic*] gonna get it."

[13] The sergeant also said that elderly people "wouldn't be approved . . . for a handgun," and indicated that he did not approve a woman who was small in size for that reason alone. The sergeant further pressed one of the prospective applicants on why he wanted a firearm and "why now?" and indicated that he would not approve the applicant because he said he had suffered a spinal cord injury in the past, apparently intending to discourage him from even applying. Finally, this officer said that he had recommended against one applicant because he had been treated by a psychiatrist, noting that there is a "fine line between confined to a mental institution [disqualifying] and seeing a psychiatrist for a significant amount of time [not disqualifying]."

Such ultra vires requirements and the misrepresentation of New Jersey's Firearms Permit Law depicted on the videos introduce arbitrariness to the approval process, impose unreasonable burdens, increase the time it takes for an applicant to submit a complete application, and create the possibility for discrimination in the approval process. That such additional requirements violate the law is without question, as the New Jersey courts have found. Recently, in *In re Perez*, the Appellate Division stated

> The statute plainly precludes the . . . Police Department from imposing burdens on an applicant not required by statute and, therefore, from denying an applicant a purchaser identification card or a permit to purchase a handgun based on the applicant's failure to complete special forms adding to the burden that it has devised. The Department must use applications in the form prescribed by the superintendent as required by *N.J.S.A.* 2C:58-3e. Moreover, the Department may not deny applications based on any condition or requirement not specifically set forth in Chapter 58 of Title 2C. *N.J.S.A.* 2C:58-3f precludes that.[14]

Accordingly, the court reversed the denial of Mr. Perez's FID card and purchase permit applications by the Paterson Police Department, which had created its own form and imposed the following requirements not authorized by the Firearms Permit Law: a color passport photo; a notarized statement from the applicant attesting to the absence of specified disqualifying conditions; and proof of residence shown by an electric bill, landline phone bill or W-2 form.[15]

B. Purchase Permits and Domestic Violence

The need for self-protection may be greatest in cases of domestic violence, as the tragic death of Carol Bowne demonstrates. To be granted a final restraining order under the Prevention of Domestic Violence Act, a victim must prove an act of domestic violence enumerated in the statute has been committed against her by the abuser, and that a restraining order is necessary to protect the victim from an immediate danger or to prevent further abuse.[16]

Notwithstanding the finding of a violent act against the victim of domestic violence and the court's finding of the potential for future abuse, such a victim must still wait at least seven days after applying for an FID card before purchasing a handgun, even if she intends to keep it only in her home.[17] As noted, the processing of the purchase permits may (permissibly) take up to a month and in many local jurisdictions may take even longer than that. This puts such victims seeking to protect themselves at greater risk, as illustrated by Ms. Bowne's case.

To address this issue in the short term, the Attorney General introduced new regulations to expedite the processing of firearms applications for domestic violence victims. Additionally, while expedited processing may be required to ensure that domestic violence victims who may

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[14] No. A-0498-12T2 (N.J. App. Div. January 8, 2014), at 6.
[15] *Id.*
[16] *See N.J.S.A.* 2C:25-19a); *Silver v. Silver*, 387 N.J. Super. 112, 125-27 (App. Div. 2006).
[17] N.J.S.A. 2C:58-2a(5)(a).

be particularly vulnerable to the violent acts of others receive their permits quickly enough to protect themselves against those threats, all of New Jersey's law-abiding and eligible citizens who apply for FID cards and purchase permits should receive them in a reasonable amount of time and without undue burdens, impermissible additional requirements or unnecessary delay.

C. Permit to Carry a Handgun

Legal ownership of a handgun in New Jersey does not mean that a person can carry that handgun in public. To be allowed to carry a handgun, either openly or concealed, a person must obtain a separate carry permit.[18] An applicant may apply for an FID card, a permit to purchase a handgun and a carry permit all in the same day, although each application likely will be processed on a different schedule, with the permit to carry taking the longest. Once an application for a carry permit is submitted to the local police chief or superintendent of the State Police, law enforcement will have 60 days to approve or deny the application, unless the applicant agrees to an extension.[19] Because only a Superior Court judge may issue a permit to carry a handgun, after the initial law enforcement approval, the application then must be filed with the Superior Court, extending the process beyond two months.[20]

The law reflects a presumption *against* issuing a carry permit, making approvals the exception, not the rule, in New Jersey. Specifically, the law states that "No application should be approved . . . unless the applicant demonstrates that [she] is not subject to any of the disabilities set forth in 2C:58-3c, that [she] is thoroughly familiar with the safe handling and use of handguns and that [she] has a *justifiable need* to carry a handgun."[21] Very few applications are granted, and many people are likely discouraged from seeking to obtain a permit because the standard is so high.

The procedures governing the issuance of a carry permit must be consistent with the case law that has evolved defining a "justifiable need" to carry a handgun. We will discuss the standard at length below, but since a permit to carry requires the "urgent necessity for self-protection,"[22] police departments should expedite, and at a minimum not delay, decisions on a carry permit application. After all, anyone who does meet the justifiable need standard by definition has an urgent and well-founded need to carry a handgun. Delay in processing the applications of a person with a justifiable need places her at unnecessary and unjustifiable risk of death or serious injury. Furthermore, undue delay by police departments can, by itself, mislead the Superior Court to wrongly conclude that there is in fact no urgent necessity for the carry permit. This problem can be addressed through adoption of the pending regulations and through uniform procedural rules established and enforced by the Attorney General that will ensure the streamlined investigation and resolution of carry permit applications. An Attorney General

[18] New Jersey does not distinguish between concealed carry and open carry of handguns, so all applicants who intend to carry their handguns in public, whether openly or concealed, must submit the application.
[19] *N.J.S.A.* 2C:58-4c.
[20] *N.J.S.A.* 2C:58-4d.
[21] *N.J.S.A.* 2C:58-4c (emphasis added).
[22] N.J.A.C. 13:54-2.4(d).

Directive should also establish criteria to enable law enforcement to determine which situations warrant expedited consideration of a firearm application.

After the police department approves an application for a permit to carry a handgun, the applicant must present it to the Superior Court, which as noted must ultimately approve or deny the permit. Thus, the courts also bear an important responsibility to review applications promptly. In appropriate cases, the Judiciary should order emergent proceedings for the consideration of a person's application to carry a handgun.

Recommendations

In light of the foregoing, we recommend:

(1) that the State Police adopt its regulation directing licensing authorities to expedite applications for FID cards, purchase permits and carry permits for applicants who identify specific threats of serious bodily injury that demonstrate a special danger to the applicant's life and have a substantial likelihood to recur, or who had been the victim of a domestic violence incident resulting in serious injury;

(2) that the Attorney General prepare and issue a Directive requiring all police departments to follow uniform procedures explained in that Directive. These procedures would adopt best practices and control each aspect of the process to ensure streamlined, consistent application of the governing statutes and regulations, and should require jurisdictions processing firearm applications to inform applicants about the cause of any delays beyond the relevant statutory time limit;

(3) that the Administrative Office of the Courts be urged to expedite Superior Court hearings on applications in appropriate domestic violence and other cases requiring a determination of justifiable need, regardless of whether the local licensing authority recommended a denial or approval of the application; and

(4) that the Superintendent of the State Police collect and publish annual statistics from municipalities and the State Police concerning the length of time they are taking to process applications for FID cards and firearm permits.

IV. The "Justifiable Need" Standard for a Carry Permit

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."[23]

The right to keep and bear arms articulated in the Second Amendment was recently reaffirmed by the Supreme Court in *Heller v. District of Columbia*[24] and *McDonald v. City of Chicago*.[25] In *Heller*, the Court concluded the Second Amendment "confer[s] an individual right to keep and bear arms,"[26] while *McDonald* applied that right to the states through the Fourteenth Amendment.

The Supreme Court has not explored the contours of the Second Amendment's protections for possessing firearms outside the home, but has clearly signaled that some protection exists, concluding in *Heller* that the Second Amendment "guarantee[s] the individual right to possess *and carry* weapons in case of confrontation."[27] In the absence of Supreme Court guidance, there is a split among the federal courts as to whether and to what extent *Heller* and *McDonald* apply in this context.[28]

The regulatory structure governing the possession of firearms in New Jersey has been in place essentially unchanged for nearly a century. While there have been cases subsequent to *Heller* and *McDonald* that have considered the applicability of those cases to New Jersey law, it is open to challenge whether New Jersey's procedures and standards governing the possession of firearms, and particularly handguns, are consistent with the Supreme Court's recognition of an individual right to gun ownership for self-protection.

As noted, New Jersey law reflects a presumption that the acquisition and possession of firearms is unlawful. Notwithstanding this general presumption, New Jersey law contains a broad exemption permitting a person to possess a gun at her home or business, and to transport the handgun between the two (or to and from a firing range) without a carry permit. As a practical matter, therefore, the statutory presumption against lawful gun ownership is most pronounced in the context of handgun carry permits. The law states that "any person who

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[23] U.S. Const. amend. II, § 1.
[24] 554 U.S. 570, 128 S.Ct. 2783 (2008).
[25] 561 U.S. 742, 130 S.Ct. 3020 (2010).
[26] 554 U.S. at 595.
[27] *Id.* at 592 (emphasis added). *See also, id.* at 628 (". . . the need for defense of self, family, and property is *most acute*" in the home) (emphasis added); *McDonald*, 561 U.S. at 780 (". . . our central holding in *Heller*: that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, *most notably* for self-defense within the home.") (emphasis added).
[28] Compare *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013); *Kachalsky v. Cnty. Of Westchester*, 701 F.3d 426 (2d Cir. 2012); and *Woolard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013), *cert denied*, -- U.S. --, 134 S.Ct. 422 (2013); with *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), *reh'g en banc denied*, 708 F.3d 901 (7th Cir. 2013); *Peruta v. San Diego County*, 771 F.3d 570 (9th Cir. 2014), *vacated and reh'g en banc granted*, 781 F.3d 1106 (9th Cir. 2015); *Wrenn v. District of Columbia*, No. 1:15-CV-162, 2015 U.S. Dist. LEXIS 71383 (D.D.C. May 18, 2015), *vacated*, No. 15-7057 (D.C. Cir. Dec. 15, 2015).

knowingly has in his possession any handgun . . . without first having obtained a permit to carry the same . . . is guilty of a crime of the second degree."[29]

A. The Development of the Justifiable Need Standard under New Jersey Law

The New Jersey Handgun Permit Law establishes a process for permits to "carry" handguns, but this process reflects a strong presumption against issuing a permit, stating:

> No application shall be approved . . . unless the applicant demonstrates that he is not subject to any of the disabilities set forth in 2C:58-3c, that he is thoroughly familiar with the safe handling and use of handguns, and that he has a *justifiable need* to carry a handgun.[30]

"Justifiable need" is not defined in the statute or legislative history. Rather, the standard was developed by the Supreme Court of New Jersey in the 1971 case of *Siccardi v. State*.[31] In *Siccardi*, the court upheld the denial of a handgun permit to the manager of a Plainfield theater who was required to carry large sums of cash to a bank depository late at night, in an area that had experienced recent incidents of street crime. The Plainfield police chief concluded that there was an insufficient showing of need, because Siccardi lived close to the theater and his house had never been broken into, he had never been assaulted in twenty years of managing the theater and walking to and from the bank and his house, and the Plainfield Police Department provided police escorts upon request. The court upheld the decision, affirmed by the Superior Court, to deny Mr. Siccardi a carry permit.[32]

Siccardi, it should be noted, was decided on its particular facts. The court did not articulate a firm standard for an applicant to demonstrate "need" (as the statute was worded at the time) for a carry permit, noting "'[n]eed' is a flexible term which must be read and applied in the light of the particular circumstances and the times."[33]

The court did, however, write approvingly of a policy established by Assignment Judges within the Superior Court that confined carry permits

> to persons specifically employed in security work and to such other limited personnel who can establish an urgent necessity for self-protection. One whose life is in real danger, as evidenced by serious threats or earlier attacks, may perhaps qualify within the latter category but one whose concern is with the safety of his property, protectable by other means, clearly may not so qualify.[34]

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[29] *N.J.S.A.* 2C:39-5b(1). A second-degree crime carries a penalty of 5-10 years in prison. *N.J.S.A.* 2C:43-6a(2).
[30] *N.J.S.A.* 2C: 58-4c (emphasis added).
[31] 284 A.2d 533 (N.J. 1971).
[32] *Id.* at 540.
[33] *Id.* at 539.
[34] *Id.* at 540.

In upholding the denial of Mr. Siccardi's application, the court wrote, "So far as the suggested threats to his life are concerned, we accept the view of the local Chief of Police that they were not serious in nature and did not call for police action."[35]

Siccardi was followed 19 years later by *In re Preis*,[36] which considered whether employees of a private security agency could obtain carry permits in connection with their work providing security to a tugboat company that was engaged in a labor dispute. The Supreme Court of New Jersey decided that the employees had not made a showing that they were entitled to the permits.

The court began by pointing out that *Siccardi* had interpreted the statutory standard to require the private security employee to demonstrate "an urgent necessity for protection of self or others – as, for example, in the case of one whose life is in danger as evidenced by *serious threats or earlier attacks*."[37] After reviewing the facts, and noting that the trial court had found that "there was 'no evidence of any great need of armed guards'"[38] in this matter, the court turned to the legal issues in the case, which it framed this way:

> The question in this case is whether the policy stated in *Siccardi* in favor of issuing permits to persons employed in security work justifies the generalized issuance of a permit *without demonstrable need to carry guns for self-protection from dangers either to self or to others.*[39]

In other words, the *Preis* court was clear that there had been no showing of any particularized need for a handgun in the case, and that the real issue was whether involvement in security alone would justify the issuance of a carry permit.

Applying *Siccardi*, the court answered the question no, emphasizing that "[g]eneralized fears for personal safety are inadequate, and a need to protect property alone does not suffice."[40] However, while expressly citing what it described as the "*Siccardi* rule," the court articulated it thusly: "[t]he requirement is of *specific* threats or previous attacks demonstrating a special danger to the applicant's life that cannot be avoided by other means."[41] The *Siccardi* court never required "specific threats"; instead that decision described the standard as "an urgent need for

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[35] *Id.*
[36] 573 A.2d 148 (N.J. 1990). Between *Siccardi* and *Preis*, the statutory standard for issuance of a handgun permit had been altered slightly to require "justifiable need" instead of "need" as part of the general revision of the criminal law of New Jersey in 1978. We have not found any legislative history suggesting that the insertion of "justifiable" was meant to change the standard for issuance of a handgun carry permit, and the *Preis* court decided the case assuming that the change in language made no practical change in the standard. Indeed, the *Preis* court was explicit in stating that "the most relevant definition of 'justifiable need' was set forth in *Siccardi*," even though that case was decided under the earlier statutory language. 573 A.2d at 151; *see also Drake v. Filko,* 724 F.2d 426, 48 (3d Cir. 2013) (Hardiman, J., dissenting) (noting that the "New Jersey courts have not ascribed any significance to [the] change in phrasing").
[37] *Id.* at 149 (emphasis added).
[38] *Id.* at 150.
[39] *Id.* at 152 (emphasis added).
[40] *Id.* at 152 (citing *Siccardi*).
[41] *Id.* at 152 (emphasis added).

self-protection" for someone whose life is in "real danger" as evidenced by "*serious* threats or earlier attacks", and affirmed the denial of the permit because the nature of the threats alleged by the applicant were not "serious in nature."[42] The *Preis* court did not explain its use of the term "specific threat," or signal an intent to change the standard.[43]

In the absence of any stated intention to change the standard in *Preis*, we are left with the problem of understanding what the *Preis* court meant by its slightly modified articulation of the "*Siccardi* rule". In our view, the court was articulating how the standard of a serious threat could be met: by, for example, evidence of specific threats or of previous attacks. But the ultimate standard for "justifiable need" remains the same: a demonstration that there is an urgent necessity for protection of self or others.[44]

Although the *Preis* court did not suggest that the standard for satisfying "justifiable need" had been changed in any way, the New Jersey Administrative Code states that "justifiable need" for a handgun carry permit means

> [T]he urgent necessity for self-protection, as evidenced by *specific* threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun.[45]

The standard of "justifiable need" reflected in the Administrative Code has become embedded in New Jersey jurisprudence concerning applications for handgun carry permits. But in the absence of a clear signal from the New Jersey Supreme Court in *Preis* that it intended to change the standard articulated in *Siccardi,* the regulation establishes a standard that is more restrictive than the governing precedents of our state's Supreme Court.

The Commission also recommends that the standard ought to be amended to make explicit what we believe has always been implicit: that the requirement be that the permit should issue where the dangers to the applicant's life cannot *reasonably* be avoided other than by issuance of the permit. Without this change, the regulation appears to suggest that if there is anything the applicant could do to avoid the danger—including move to another state or even another country—the permit should not issue. But it defies our imagination to believe that this is what the Legislature intended by requiring "justifiable need." Instead, as in so many other areas

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[42] 284 A.2d at 540 (emphasis added).

[43] The *Pries* court did cite two other cases, *Reilly v. State*, 284 A.2d 541 (N.J. 1971), and *In re Application of X*, 284 A.2d 530 (N.J. 1971). Both of these cases were companion cases that had been argued to the Supreme Court with *Siccardi* that merely apply the *Siccardi* decision to their facts, and neither case mentions the word "specific."

[44] We note that there are two possible constructions to the "urgent necessity" requirement – one procedural and once substantive. Specifically, "urgent necessity" could refer either to the need to have a permit issued immediately (because the threat to the applicant potentially is imminent) or to the applicant's need to act "urgently" when the potentially life-threatening threat emerges at an unknown time. Under the second interpretation, a stalking victim need not show that she will be attacked imminently; it should suffice to meet the urgent necessity standard for the applicant to demonstrate a serious or specific threat of a life-threatening attack in the near future.

[45] N.J.A.C. 13:54-2.4(d) (emphasis added).

of the law, what we believe the Legislature and our Supreme Court intended was for the applicant to show that she could not take other *reasonable* steps to avoid the danger.

Based on the foregoing, the Commission believes that the standard of justifiable need as reflected in the regulation and routinely applied by police chiefs and courts considering carry permit applications should be modified in a manner that is both consistent with the statutory requirement of justifiable need and with the standard as articulated and applied by our Supreme Court. We therefore recommend revising the regulation to require an applicant to demonstrate:

> [T]he urgent necessity for self-protection, as evidenced by *serious threats, specific threats, or previous attacks* which demonstrate a special danger to the applicant's life that cannot *reasonably* be avoided by means other than by issuance of a permit to carry a handgun.

These changes, we believe, harmonize the decisions in *Siccardi* and *Preis*. While some may believe that these are merely cosmetic changes, we view them as important ones, as demonstrated by the recent case of *In re Racanelli*.[46] Joseph Racanelli is an emergency room doctor with offices in New York and New Jersey who was mugged by a gunman and had his car stolen on a Newark street on May 8, 2013. Three weeks later, he submitted an application for a carry permit to his local police chief, and informed the chief that he had an office in Newark and also referred to the recent robbery. The police chief denied his application on two grounds – that he had not demonstrated that he was thoroughly familiar with the safe handling and use of firearms, and because he had not demonstrated a justifiable need. Much of the opinion of the Superior Court upholding the police chief's decision centered on the safe handling issue. However, the court's discussion of justifiable need underscores that the standard, as currently set forth in the regulation, is misleading.

Although the regulation states that the "urgent need for self-protection" can be demonstrated by evidence of previous attacks, the court discounted the attack on this physician three weeks before he applied for his permit in 2013 because, at the time of the decision in June 2015, two years had passed without him having been assaulted again. Thus, the court credited the prosecutor's argument that Dr. Racanelli showed only "an unsubstantiated generalized fear, insufficient to justify the permit."[47]

Clarifying the regulation in the way we propose could allow persons like Dr. Racanelli to obtain a carry permit, assuming, of course, they meet the other statutory conditions, i.e., that they are not subject to a statutory disability and that they are familiar with the safe handling and use of firearms. Recall that, at the time of his application, Dr. Racanelli had a need to travel at odd hours, into a high crime area in which – at the time of his application – he had recently been robbed. While he may not have faced a *specific* threat of danger to his person, he surely had an

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[46] No. A-3584-13T2, 2015 N.J. Super. Ct. App. Div. Unpub. LEXIS 1518, at *7 (June 23, 2015), *cert. denied*, 122 A.3d 991 (N.J. 2015).

[47] *Id.* at 14. Of course, courts rarely have the benefit of hindsight from a process that in Dr. Racanelli's case lasted two years to be resolved, and in our view, the threat to the applicant should be evaluated as of the time the application is submitted.

urgent need for self-protection, which after all is the ultimate standard, both because he faced a *serious* threat of danger and because he had been mugged.

The recommended change to the regulation also potentially would allow for the approval of a carry permit in the following scenarios where there would be a serious threat of death or serious bodily harm, but not a specific threat, to the applicant:

(1) A hate group with a history of inspiring racially/religiously-motivated violent attacks posts a picture of a particular house of worship on its website. The posting states, "We know who you are. We've followed you home. We've followed you to work. We've followed you when you take your kids to school. And we're going to kill you." A week later, five cars had their tires slashed in the parking lot of the house of worship, and the hate group's initials were scratched onto each car's hood. Pictures of the cars were posted on the group's website with the caption, "This time we came for your cars. Next time we're coming for you. None of you is safe from us." The carry permit applicant is a member of this house of worship.

(2) The handgun carry permit applicant is one of several eyewitnesses to a murder committed in broad daylight on a public street. The murder suspect, who has been arrested and charged for the crime, is reported to be a high-ranking member of a violent street gang. This particular gang has a reputation for witness intimidation. Law enforcement authorities have reported that within the past two years, at least two other people had been shot, one fatally, as part of the gang's modus operandi to obstruct justice by eliminating witnesses. In fact, the very murder that the applicant witnessed was described in court by an assistant prosecutor to have been committed in retaliation for cooperation that the victim had provided to law enforcement.

(3) The handgun carry permit applicant is a taxi driver who often works the night shift in a particular precinct. In recent months, one or more armed assailants have flagged down cabs in this area after dark and robbed the drivers at gunpoint. These robberies have occurred on at least six occasions in the past four months. Two drivers were shot in these brutal attacks; one was killed and the other seriously wounded. The surviving victim reported that he was shot even though he had complied with the assailant's demand to turn over cash.

B. The Justifiable Need Standard and the Second Amendment

Clearly the standard of "justifiable need," in existence for nearly a century,[48] places a substantial burden on the applicant for a handgun carry permit, and recent cases have maintained this high bar.[49] Several state and federal cases decided since *Heller* and *McDonald* have addressed the constitutionality of this regulatory structure, and to date, all have upheld it.[50] We believe, however, that there is a significant possibility that some provisions of existing New Jersey law will eventually be struck down, and in particular the "justifiable need" standard.

The two primary cases addressing the constitutionality of the justifiable need standard post-*Heller* and *McDonald* are *Drake v. Filko* (a 2-1 decision by the Third Circuit),[51] and *In re Wheeler*, by the New Jersey Appellate Division.[52] The courts in both *Drake* and *Wheeler* began their analyses by questioning whether the Second Amendment right even applies outside the home, although both ultimately concede for argument's sake that the right does extend into public places.[53]

In *Drake*, the court next turned to a related question: if the Second Amendment does apply outside the home, is there a right to carry a handgun outside the home? As articulated by the court, the question was "whether or not the requirement that applicants demonstrate a 'justifiable need' to publicly carry a handgun for self-defense burdens conduct within the scope of that Second Amendment guarantee."[54] The court noted that the Supreme Court in *Heller* had identified some "longstanding prohibitions on the possession of firearms" to be presumptively lawful.[55] Although neither the justifiable need standard nor its equivalent in a few other states was included in the list of *Heller*, the Third Circuit nonetheless found that it was such a longstanding prohibition and therefore "regulated conduct falling outside the scope of the Second Amendment's guarantee."[56]

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[48] *See Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013).

[49] *See, e.g.*, *In re Pantano*, 60 A.3d 507 (N.J. App. Div. 2013) (upholding conclusion that the applicant, a landscaper, had not demonstrated a justifiable need to carry a handgun despite his concerns that strangers often knew he carried large sums of cash and his father had been a victim of an armed robbery while running a similar business; applicant had not identified any specific, imminent threats to himself, and had the option of retaining private security guard); *Racanelli* (upholding denial of handgun permit to emergency room physician who worked odd hours in Newark, and who had been robbed of his car by gunmen three weeks before submitting his application, and noting that "no one with a firearm had confronted him" since that 2013 robbery); *Drake* (upholding denials by New Jersey courts of handgun permits to, among others, (1) an FBI employee who received information about a specific threat against him; (2) an applicant who operates a business that restocks ATM machines with cash; (3) a Reserve Sheriff's Deputy who sought a gun for protection when he was off-duty); and (4) an individual who sought to carry a handgun after being attacked and kidnapped by a criminal gang).

[50] *See, Drake,* 724 F.3d 426 (3d Cir. 2013); *In re Wheeler*, 81 A.3d 728 (N.J. App. Div. 2013); *Pantano*, 60 A.3d 507 (N.J. App. Div. 2013), *appeal dismissed as improvidently granted*, 2014 N.J. LEXIS 904 (May 22, 2014).

[51] 724 F.2d 426 (3d Cir. 2013).

[52] 81 A.3d 728 (N.J. App. Div. 2013). The Appellate Division also addressed the constitutionality of the justifiable need standard in *Pantano*, but with a much more limited discussion and analysis than in *Wheeler*, so we only address *Wheeler* in our report.

[53] *See Drake*, 724 F.3d at 430-31; *Wheeler*, 81 A.3d at 747-49.

[54] *Drake*, 724 F.3d at 431.

[55] *Id.* at 432 (citing *Heller*, 554 U.S. at 574).

[56] *Id.* at 434.

While the *Wheeler* court also discussed whether the "justifiable need" standard was a presumptively lawful regulation, its decision did not ultimately turn on this analysis.[57] Instead, the *Wheeler* court assumed that there was an existing right to carry a handgun in public places for defensive purposes, and then asked whether the justifiable need standard improperly burdens that right.[58] In addressing this question, the Appellate Division relied in part upon the majority opinion in *Drake*, which had addressed this same issue, albeit as an alternative holding to its central decision that there was not a Second Amendment right in these circumstances.

The key issue in deciding whether the justifiable need standard impermissibly burdens the Second Amendment right is the proper level of scrutiny to apply to such claims: strict scrutiny or intermediate scrutiny.[59] Both the *Wheeler* and *Drake* courts concluded that the correct standard to apply was intermediate scrutiny, which requires that the government have a significant, substantial or important interest, and that the fit between the legislation and that interest be reasonable, such that the legislation does not burden the exercise of the right more than is reasonably necessary.[60]

Both the *Wheeler* and *Drake* courts found that the justifiable need standard survived such intermediate scrutiny review. The *Drake* court began by noting that the State of New Jersey has a substantial interest in "protecting its citizens' safety," so the real question was whether there was "a 'reasonable fit' between the interest in safety and" the justifiable need standard;[61] the *Wheeler* court reached a similar conclusion.[62] The two courts then went on to find that the fit between the justifiable need standard and the interest in protecting the citizens was reasonable. The *Drake* court acknowledged that there was little evidence to show how the standard fit with the state's need to protect the safety of citizens, but the court overlooked the absence of legislative history to support the "predictive judgment" because "New Jersey's legislators could not have known that they were potentially burdening protected Second Amendment conduct."[63]

The *Wheeler* court took a slightly different approach. The Appellate Division noted that the justifiable need standard was part of a larger group of exceptions to the general prohibition on the public possession of firearms in this state and that it worked with other requirements, such as that of firearms training, to ensure the public's safety. In particular, the Appellate Division noted that the justifiable need provision serves the same purpose of ensuring safety as those exceptions for carrying related to particular professions (such as being a law enforcement officer) by allowing "those who can show an objective reason . . . other than a generalized concern about becoming a crime victim to anticipate an attack necessitating the defensive use of a handgun can obtain a carry permit tailored to their showing of need."[64]

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[57] *See Wheeler*, 81 A.3d at 752.
[58] *Id.*
[59] As the court noted in *Wheeler*, "the [Supreme Court] effectively narrowed the potentially applicable standards . . . by concluding that the rational basis test 'could not be used to evaluate the extent to which a legislature may regulate a specific, enumerated right [including] the right to bear arms.'" *Id.* at 753 (quoting *Heller*, 554 U.S. at 628.
[60] *Drake*, 724 F.3d at 436; 81 A.2d at 756.
[61] 724 F.3d at 437.
[62] 81 A.3d at 757.
[63] 724 F.3d at 438.
[64] 81 A.3d at 759.

It is prudent to consider whether the *Wheeler* and *Drake* decisions will stand up as the law on the Second Amendment evolves. We note that in *Siccardi*, the Supreme Court of New Jersey observed that "'[n]eed' is a flexible term which must be read and applied in the light of the particular circumstances and the times."[65] Certainly, the suggestion in *Drake* that the Second Amendment right might be limited to the home seems highly dubious, as the *Wheeler* court itself notes. Furthermore, it seems unlikely to us that the Supreme Court will ultimately conclude that the justifiable need standard is the sort of longstanding regulation of firearms that falls outside of the scope of the Second Amendment. Restrictions of the sort that New Jersey has on both open and concealed carry of handguns are both relatively rare in the United States, and are generally a phenomenon of the twentieth century.

Instead, we believe that the ultimate question will be whether the justifiable need standard can survive intermediate scrutiny. We note that the United States District Court for the District of Columbia, in *Wrenn v. District of Columbia*, recently enjoined enforcement of the District of Columbia's regulation governing the issuance of handgun carry permits that had a "good reason/proper reason" requirement that was strikingly similar to New Jersey's justifiable need regulation.[66] Specifically, the D.C. regulation stated that the police chief "may" issue a license to a person to carry a pistol "if it appears that the applicant has good reason to fear injury to his or her person or property or has any other proper reason for carrying a pistol and that he or she is a suitable person to be so licensed."[67] This provision further required the District's police chief to issue rules establishing criteria for "good reason," specifically by requiring the applicant to demonstrate

> a good reason to fear injury to his or her person, which shall at a minimum require a showing of a special need for self-protection distinguishable from the general community as supported by evidence of specific threats or previous attacks that demonstrate a special danger to the applicant's life.[68]

While recognizing that the District has had a longstanding "good reason-type" requirement that was presumptively lawful under *Heller*, the court nevertheless concluded that "the 'longstanding' inquiry is irrelevant" because the "'good reason/proper reason' requirement has more than a 'de minimis' effect on their rights."[69] Further,

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[65] 284 A.2d at 539.

[66] *See Wrenn v. District of Columbia*, No. 1:15-CV-162, 2015 U.S. Dist. LEXIS 71383 (D.D.C. May 18, 2015), *vacated*, No. 15-7057 (D.C. Cir. December 15, 2015). On December 15, 2015, the Court of Appeals for the District of Columbia vacated the district court's decision on jurisdictional grounds, because of a technical defect in the designation of the District Judge hearing the case: Judge Scullin, who ordinarily sits in the Northern District of New York, had been properly designated to hear a related case in the District Court of the District of Columbia, but that designation was not extended to cover the *Wrenn* case. The D.C. Circuit's decision did not address the merits of the Judge Scullin's opinion.

[67] *Id.* at *4, quoting D.C. Code § 22-4506(a).

[68] *Id.* Notably, the specified criteria also provides for approval when the applicant has "demonstrated any other proper reason for carrying a concealed pistol, which shall at a minimum include types of employment that require the handling of cash or other valuable objects that may be transported upon the applicant's person."

[69] *Id.* at *14.

> Plaintiffs, as well as the vast majority of law-abiding citizens, who fail to satisfy the District of Columbia's "good reason/proper reason" requirement because they cannot "show a special need for self-protection distinguishable from the general community" . . . are unable to exercise their fundamental right to bear arms for self-defense under the Second Amendment.[70]

Having thus concluded that this standard impinges upon the plaintiffs' Second Amendment right, the court next considered whether it *unlawfully* burdens that right, applying the intermediate scrutiny test.[71]

The District defended its regulation by asserting its interest in preventing crime and protecting public safety (the same interest advocated by our state), which it argued is advanced by reducing the number of concealed weapons in public. The court credited the District's interest in safety, but found that it "failed to demonstrate that there is any relationship, let alone a tight fit, between reducing the risk to other members of the public and/or violent crime and the District of Columbia's 'good reason/proper reason' requirement."[72] Citing the dissent in *Drake*, which as we have discussed considered New Jersey's almost identical justifiable need standard, the *Wrenn* court explained

> The fact that an individual may be able to demonstrate a greater need for self-protection, and therefore meets the "good reason/proper reason" requirement, does not indicate, in any way, whether that person is less likely to misuse handguns or be less dangerous. . . . The fact that a person may have a greater need for self-protection says nothing about how limiting the carrying of handguns to such individuals would result in a reduction of risk to other members of the public or reduce violent crime. Is the Court to conclude that people who do not have a heightened need for self-protection are more likely to commit violent crimes? . . . Moreover, isn't it possible that even persons who cannot manifest a present need for self-protection are just as likely to be victims of a violent crime[?][73]

As the *Wrenn* case illustrates, there is ample reason to question whether New Jersey's "justifiable need" requirement for approval of a carry permit – as set forth generally in the statute and as amplified in the Administrative Code – comports with the Second Amendment, particularly in light of the split of authority and the absence of guidance from the highest courts in our State or our nation. Nevertheless, the Commission is mindful that, at least for now, the statutory "justifiable need" requirement is the law of the State. Given the uncertainty in the case law, which inevitably will be clarified through further litigation, a legislative proposal would appear to be premature. The Commission thus recommends making the modest, but meaningful adjustment to the Administrative Code provision described above, which falls easily within the

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[70] *Id.* at *15-16.
[71] *Id.* at *16 (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1258 (D.C. Cir. 2011)).
[72] *Id.* at *23-24.
[73] *Id.* (citing *Drake*, 724 F.3d at 454 (Hardiman, C.J., *dissenting*)).

statutory requirement and aligns directly with the Supreme Court of New Jersey cases from which the regulatory standard is derived.

We conclude by noting that *Wheeler* itself appears to suggest that our proposed regulatory change should make it more likely that the justifiable need standard will survive future constitutional challenges. By emphasizing that an applicant need only "show an objective reason . . . other than a generalized concern about becoming a crime victim to anticipate an attack necessitating the defensive use of a handgun," the *Wheeler* court standard allows for the sort of meaningful self-protection by a law-abiding applicant that we believe will be necessary (at a minimum) for our handgun permitting laws to survive constitutional scrutiny. Maintaining the Administrative Code's present misreading of *Siccardi* and *Preis* that an applicant must demonstrate a "specific threat" in order to obtain a carry permit seems likely to result eventually in a successful constitutional challenge to the justifiable need standard.

Recommendation

Based on the foregoing discussion, the Commission recommends that the State Police revise its regulation describing "justifiable need" to require, as noted above:

> [T]he urgent necessity for self-protection, as evidenced by serious threats, specific threats, or previous attacks which demonstrate a special danger to the applicant's life that cannot reasonably be avoided by means other than by issuance of a permit to carry a handgun.[74]

V. Transporting Firearms

Enforcement of New Jersey laws governing the transport of firearms has led to situations where otherwise law-abiding citizens have been charged and convicted of illegal possession of a firearm when that possession unwittingly violates sometimes vague and confusing statutes. Additionally, penalties for these crimes carry harsh mandatory minimum prison sentences normally reserved for the use of a firearm during the commission of other serious crimes. Two sets of circumstances illustrate this issue and the potential for unjust application: (a) possession of a weapon in New Jersey by persons licensed to carry a firearm in another state, and (b) the deviation from direct travel between two locations where a person may legally transport their firearms.

Firearm laws, and particularly carrying laws, can vary dramatically from state to state. Occasionally, out-of-state residents enter or pass through New Jersey with a firearm that they lawfully possess in their home state, completely unaware that they are breaking New Jersey law. Nevertheless, these visitors are subject to criminal prosecution and a substantial jail sentence for unlawful possession of a weapon under N.J.S.A. 2C:39-5. Governor Christie has brought attention to these harsh consequences in public comments and through several pardons in cases

[74] *See* N.J.A.C. 13:54-2.4(d).

where the individuals traveled through New Jersey with a firearm lawfully owned in their home state and without any criminal intent.

In 1981, the Legislature passed the Graves Act, requiring the imposition of a minimum term of imprisonment and parole ineligibility for certain gun-related crimes.[75] Persons convicted of a crime governed by the Graves Act are not eligible for pre-trial diversionary programs, except very limited circumstances.[76]

At the time the Graves Act was passed, the minimum term was only applicable in cases where a person was convicted of possession or use of a firearm while in the course of committing certain crimes, or possession of a firearm for an unlawful purpose, in violation of N.J.S.A. 2C:39-4(a). In 2008, however, the Graves Act was expanded to include more gun-related crimes, including simple unlawful possession of a handgun, which was elevated to a second-degree crime.[77] At that time, the Attorney General issued a directive to county prosecutors to ensure uniform enforcement of the Graves Act.[78] The 2008 Directive encouraged a strict enforcement of the presumption of ineligibility for the pretrial intervention program ("PTI") in Graves Act cases. Under the Graves Act, persons convicted of unlawful possession of a firearm generally must serve 42 months in prison before being eligible for parole.

In 2014, New Jersey's Acting Attorney General issued a memo to the Director of the Criminal Division and to county prosecutors clarifying the 2008 Directive, specifically addressing cases involving out-of-state residents arrested for gun possession in New Jersey who were legally carrying their weapon according to the laws of their state.[79] The memo encouraged the use of prosecutorial discretion to consent to PTI in out-of-state gun owner cases where there are no aggravating factors, to mitigate the harsh effect of the Graves Act. The memo sets forth a list of factors to be considered by the prosecutor when determining whether to consent to PTI, including whether the gun-possession offense was isolated, whether there was minimal exposure of the firearm to New Jersey residents, whether the owner volunteered the presence of the firearm, and whether the owner surrendered the unloaded firearm for safe keeping, among other factors. Thus, out-of-state citizens who are charged with unlawful possession and face significant jail time for carrying a firearm that they lawfully possess in their home state can now be offered PTI, subject to the prosecutor's discretion.

Explaining his willingness to grant pardons to the out-of-state travelers facing a gun possession charge in New Jersey, Governor Christie said, "we should have certain respect for folks who have permits in other states." Governor Christie has pardoned several out-of-state individuals who were charged with possession of a firearm in New Jersey but who lawfully

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[75] *N.J.S.A.* 2C:43-6c.
[76] *N.J.S.A.* 2C:39-5h.
[77] *See P.L.* 2007, *c.* 342.
[78] *Attorney General Directive to Ensure Uniform Enforcement of the "Graves Act" (Oct. 23, 2008), updated by Correction to "Graves Act" Directive Regarding Extended Term Eligibility* (Nov. 25, 2008), available at http://www.state.nj.us/lps/dcj/agguide/pdfs/Graves-Act-Oct23-2008.pdf.
[79] *Clarification of "Graves Act" 2008 Directive with Respect to Offenses Committed by Out-of-State Visitors From States Where Their Gun-Possession Conduct Would Have Been Lawful* (Sept. 24, 2014), available at http://www.nj.gov/oag/dcj/agguide/directives/Graves-Act-clarification-2014.pdf.

possessed their guns in their home state and posed no threat to anyone. The recipients of these pardons included Brian Lee Fletcher, a resident of North Carolina who was arrested while in Hamilton Township where he was performing emergency storm-related utility repairs after he voluntarily told an officer he had a handgun in his vehicle. Similarly, Shaneen Allen, a Pennsylvania woman, was arrested outside Atlantic City after disclosing her firearm to police officers during a traffic stop. Elizabeth Jane Griffith, of Daytona Beach, Florida, and Todd Doering from Lansdale, Pennsylvania, were also pardoned after being charged with unlawful possession of a weapon when carrying their legally-owned guns in New Jersey.

Of course, responsible gun owners should be held accountable for knowing the laws of any state or other jurisdiction into which they are transporting a gun, even when they lawfully own and carry the firearm in their home state. Nevertheless, the law in New Jersey can impose unduly harsh consequences upon firearm owners who transport their otherwise-legal guns into New Jersey inadvertently and with no ill intent, and thus the 2014 Directive and the use of the Governor's pardon power have had a salutary effect in avoiding unjust penalties in such cases.

There is another situation, however, where a lack of clarity in the law can ensnare law-abiding individuals transporting firearms within the state in an unlawful possession charge. N.J.S.A. 2C:39-6 creates a number of exemptions from the definition of unlawful possession of a firearm. One of these exemptions relates to transporting a firearm within New Jersey. The exemption applies to point-to-point travel (e.g., business to home) with the firearm unloaded and properly secured with "only such deviations as are reasonably necessary under the circumstances."[80] The statute, however, does not define what constitutes a "reasonably necessary" deviation, and this creates uncertainty for firearm owners and the risk of arbitrary or inconsistent prosecutions for unlawful possession if, for example, they stop for gas or take-out food, or encounter an emergency on their way from point-to-point.

A bill specifically aimed at clarifying this provision has stalled in the Legislature, but the Commission does not believe that legislation is needed. In the absence of a statutory definition of a "reasonable necessary deviation" or case law that has developed a standard, we believe the Attorney General can bring clarity and consistency to the application of N.J.S.A. 2C:39-6g by providing guidance to police and prosecutors though an Attorney General Directive. This Directive would establish standards for what constitutes a "reasonably necessary deviation" from point-to-point travel while transporting a lawfully-owned firearm and thus create a higher degree of predictability in charging decisions and clarity for firearm owners seeking to comply with the transport provision.

Recommendation

The Commission recommends that the Attorney General issue a Directive or similar guidance to state law enforcement officers and prosecutors providing guidance on what constitutes a "reasonably necessary" deviation in point-to-point travel while transporting an unloaded firearm within New Jersey, that would include, but not necessarily be limited to such

[80] *N.J.S.A.* 2C:39-6g.

examples as picking up and dropping off passengers, purchasing food, fuel, medicine and other supplies, using a restroom, or contending with an emergency situation.

VI. Conclusion

Firearm statutes and regulations must strike a balance between protecting society and respecting the right of law-abiding persons to possess firearms. New Jersey's laws are among the most restrictive in the country, and the tragic case of Carol Bowne, and other recent injustices apparent in certain firearms prosecutions demand action to ensure both the constitutionality and practicality of this stringent regulatory regime in light of *Heller* and *McDonald*. The Commission's recommendations reflect actions that could be taken to improve conditions in New Jersey that prevent law-abiding citizens from exercising a fundamental right. This is especially important when those citizens are or may be the targets of domestic violence and other criminal acts.

APPENDIX A

Reported Delays by Municipalities

Town/PD	Type of permit applied for	Date of application
East Hanover	FID, Handgun Purchase Permit	5/13/2013
East Hanover	Handgun Purchase Permit	
East Hanover	Pistol Purchase Permit	1/31/2014
Hoboken	FID	11/30/2012
Harrison	Handgun Purchase Permit	12/8/2014
Harrison	FID, Pistol Purchase Permit	9/8/2014
Edison	FID, Handgun Permits	10/29/2014
Edison	Handgun Permit	9/19/2014
Edison	Handgun Purchase Permit	5/16/2014
Edison	FID, Handgun Permit	12/23/2014
Neptune	Firearms Permit	
Neptune	FID change of address	3/22/2013
Garfield	FID, Handgun Permits	12/9/2013
Garfield	FID, Handgun Permits	3/27/2014
Wallington	FID, Handgun Purchase Permit	10/1/2012
Wallington	FID change of address, Pistol Permit	5/18/2013
Parsippany	Purchase Permit	11/14/2014
Parsippany	FID, Pistol Permit	
Parsippany	Pistol Permits	12/12/2014
Parsippany	Handgun Permit	10/28/2014
Parsippany	Handgun Permit	10/16/2013
Wanaque	Pistol Permit	
Elizabeth	Handgun Permit	
Elizabeth	Handgun Permit	November 2013
Little Falls	Handgun Purchase Permit	8/15/2013
Little Falls	FID change of address	10/15/2013
Woodland Park	Handgun Purchase Permit	4/9/2014
Woodland Park	Handgun Permit	
Woodland Park	Pistol Purchase Permit	2/1/2014
Bogota	Purchase Permit	4/11/2014
Bogota	FID, Handgun Purchase Permit	1/28/2014
Middletown	Pistol Purchase Permits	April 2014

Reported Delays by Municipalities

Middletown	Pistol Permit	3/7/2014
Middletown	Handgun Permit	October 2014
Lodi	FID, Handgun Purchase Permit	1/20/2014
Lodi	Purchase Permit	11/20/2014
Lodi	Pistol Permit	
Clifton	Handgun Permit	
Clifton	Handgun Purchase Permit	3/20/2014
Clifton	Name change on FID, permits	November 2013
Sparta	Handgun Permits	October 2013
Sparta	Handgun Permit	12/30/2013
Sparta	Handgun Purchase Permit	6/10/2014
Bloomfield	Handgun Permits	10/23/2014
Bloomfield	Handgun Permits	1/7/2015
Bloomfield	Handgun Permits	
Ringwood	FID, Handgun Permits	5/22/2014
Ringwood	Handgun Purchase Permit	6/26/2014
East Brunswick	Permit extension	
Glassboro	Handgun Permits	
Glassboro	Pistol Permits	7/28/2014
Glen Rock	Pistol Permit	
Allamuchy	FID	February 2013
Andover	Handgun Purchase Permit	12/4/2013
Atlantic Highlands	Pistol Permit	
Basking Ridge	FID, Handgun Purchase Permit	5/18/2014
Bayonne	Handgun Purchase Permits	8/20/2014
Bayville	Handgun Permit	
Beachwood	Handgun Permit	
Bayville	Handgun Permit	
Boonton	Handgun Purchase Permit	1/21/2014
Boonton	FID, Pistol Permit	
Brick Township	Handgun Purchase Permits	1/10/2014
Caldwell	Handgun Purchase Permits	2/23/2014
Camden City	Change of Address	
Clark	Handgun Permit	
Dumont	FID change of address	12/26/2013
East Orange	Handgun Permit	2/18/2014
Little Egg Harbor	Handgun Permit	1/16/2015
Elmwood Park	Handgun Permit	

Reported Delays by Municipalities

Evesham	FID change of address, Pistol Purchase Permit	9/18/2014
Evesham	Handgun Purchase Permit	
Fair Lawn	Pistol Permit	12/31/2013
Fairview	FID, Pistol Permit	
Florham Park	Handgun Permit	3/28/2012
Florham Park	Handgun Permit	1/3/2013
Florham Park	Handgun Permit	6/11/2013
Florham Park	Handgun Permit	1/7/2014
Franklin Township	Handgun Purchase Permit	1/18/2014
Franklin Township	Pistol Purchase Permit	12/3/2014
Galloway Township	Initial Firearms Purchaser Card, Handgun Permit	2/20/2014
Glen Ridge	FID, Pistol Purchase Order	2/15/2014
Hackensack	Pistol Permits	July 2014
Howell	P2P	
Jackson	Handgun Permit	
Jefferson Township	Pistol Purchase Permits	2/18/2014
Keyport	FID, Handgun Permit	
Lacey Township	FID change of address	
Madison	Handgun Permit	
Manalapan	FID	8/7/2013
Manchester	Handgun Permits	December 2014
Medford	Handgun Purchase Permit	8/28/2014
Middlesex Borough	FID, Handgun Purchase Permit	8/14/2013
Middlesex Borough	FID, Handgun Purchase Permit	8/14/2013
Plainsboro	FID, Pistol Purchase Permit	3/28/2013
Millburn	FID, Handgun Permits	12/17/2014
Millville	P2P	12/18/2014
Montclair	FID	11/15/2013
Montville	Pistol Permit	3/3/2014
Mt. Arlington	FID, Pistol Permits	February 2013
Mount Holly	FID, P2P	February 2013
Mullica Hill	Change of Address, Pistol Permits	11/23/2015
New Brunswick	Handgun Purchase Permits	11/28/2014
Nutley	FID, Handgun Purchase Permit	June 2012
Oak Ridge	Pistol Permits	12/10/2013
Oakland	Handgun Permits	7/28/2015
Old Bridge	Pistol Purchase Permits	April 2013
Paramus	Pistol Permit	
Paterson	FID	
Pennsauken	Handgun Purchase Permit	
Phillipsburg	Pistol Permits	

Reported Delays by Municipalities

Gloucester Township	FID	September 2010
Gloucester Township	P2P	
Plainsboro		3/28/2013
Point Pleasant Boro	Pistol Purchase Permits	
Rahway	Pistol Permit	
Rutherford	FID	
Scotch Plains	FID	10/31/2014
Scotch Plains	FID, Handgun Purchase Permit	5/5/2014
Scotch Plains	FID, Handgun Purchase Permit	4/4/2014
Summit	Handgun Permit	
Vernon	Pistol Purchase Permits	
Wall Township	FID, Handgun Purchase Permit	12/20/2013
Washington Township	Pistol Purchase Permits	4/25/2014
Waterford Township	Handgun Permit	1/5/2015
Wayne	FID change of address, Pistol Purchase Permit	7/22/2013
Wayne	Pistol Purchase Permit	12/22/2013
Weehawken	Handgun Purchase Permit	12/12/2014
West Deptford Township	Pistol Purchase Permit	
West Milford	FID	September 2012
Wood-Ridge	Pistol Purchase Permit	

Reported Delays by Municipalities

Email sent/Permit dated	Length of delay	Reason (if any given)	Permit issued? (Y/N)
4/9/2014	331 days		N
	18 months		Y
5/10/2014	99 days		N
2/28/2013	90 days		Y
4/24/2015	137 days	State police had not returned criminal record check; Hudson County had not returned mental health reacord check	N
11/21/2014	74 days		N
1/21/2015	84 days		N
1/13/2015	116 days		N
8/14/2014	90 days		N
8/10/2015	7 months		N
	10 months		N
7/23/2013	123 days		Y
2/26/2014	79 days		N
4/27/2014	31 days		N
3/11/2014	526 days	Officer said he was swamped	N
12/4/2013	200 days	Told to reapply for FID card	N
2/6/2015	84 days	State police did not get info to township	Y
6 months			N
1/13/2015	32 days		N
1/11/2015	75 days		N
3/4/2014	139 days		Y
1/8/2015	6 months		N
7/9/2014	6 months		N
3/9/2014	4 months		N
2/28/2014	197 days	Waiting on paperwork from health department	N
2/26/2014	134 days		N
5/28/2014	49 days		N
2/26/2014	2 months	Waiting on paperwork from health department	N
7/25/2014	174 days	Mental health check	N
5/14/2014	33 days	References never received forms	N
5/5/2014	97 days	Fingerprint records lost	N
1/7/2015	12 weeks		

Reported Delays by Municipalities

4/11/2014	35 days		N
2/10/2015	4 months		N
5/20/2014	4 months		Y
12/30/2014	40 days	Waiting on mental health check	N
1/8/2015	16 weeks		Y
3/18/2014	8 months		Y
3/20/2014	Told 2 months		N
February 2014	3 months		Y
January 2014	3 months		Y
2/25/2014	57 days	Told 4 months	N
9/8/2014	91 days		Y
1/9/2015	78 days		N
4/29/2015	112 days		Y
4/15/2015	8 weeks		N
8/29/2014	99 days		N
8/14/2014	49 days		N
3/6/2014	12 weeks		
4/15/2014	60 days		N
10/28/2014	92 days	Claimed the state was the problem	N
1/20/2015	10 weeks	Claimed the state was the problem	N
August 2013	7 months	Failed to send mental health consent form	Y
3/13/2014	99 days		N
2/28/2014	13 months	Said they were backed up	Y
8/26/2014	100 days		N
10/1/2014	42 days		N
1/24/2015	2 months		N
6/1/2015	5 months		N
1/24/2015	2 months		N
2/17/2014	27 days		Y
1/9/2014	8 months		Y
2/25/2014	Told 5 months		N
3/29/2014	34 days		N
7/19/2015	1 year		N
9/25/2015	3 months		
3/3/2014	67 days		N
3/7/2014	17 days		N
2/25/2015	40 days		N
2/28/2015	4 months		Y

Reported Delays by Municipalities

1/26/2015	4 months		N
1/10/2015	3-4 months		
3/1/2014	60 days		N
3/30/2014	2-3 months		
5/30/2012	2 months		Y
4/29/2013	4 months		Y
11/1/2013	5 months		Y
2/28/2014	52 days		N
3/28/2014	69 days		N
1/19/2015	47 days		N
3/20/2014	28 days		N
4/14/2014	58 days		N
1/5/2015	9 business days		Y
7/14/2015	2 months		N
2/25/2014	90 days		
3/25/2014	35 days		
1/5/2015	1 year		Y
1/27/2015	12 weeks		N
12/4/2015	Over 30 days		N
11/15/2013	100 days		Y
3/16/2015	3 months		N
11/16/2014	80 days		N
5/23/2014	282 days		Y
February 2014	7 months		Y
7/16/2013	110 days		Y
2/18/2015	63 days		N
2/25/2015	69 days		N
3/14/2014	119 days		N
4/7/2014	35 days		N
3/6/2014	1 year		N
4/15/2013	2 months		Y
1/12/2016	50 days	Could not make appointment to sign forms	N
1/27/2015	60 days		N
April 2013	10 months		Y
3/6/2014	86 days		N
9/24/2015	58 days		N
2/27/2014	4 months		Y
1/23/2015	3 months		N
1/6/2015	8 months		Y
2/27/2014	3 months		N
1/22/2015	3 months		Y

Reported Delays by Municipalities

September 2011	1 year		Y
2/25/2014	90 days		Y
7/16/2013	110 days		Y
1/11/2015	3 months		Y
2/25/2014	90 days		
10/21/2014	9 months		Y
1/6/2015	67 days	Missing form	N
6/5/2014	31 days		N
6/9/2014	66 days		N
3/5/2014	2 months		N
3/4/2014	2-3 months	State police caused delay	Y
7/8/2014	200 days		N
7/17/2014	83 days		N
2/8/2015	34 days		N
12/10/2013	141 days		Y
1/24/2014	33 days		Y
2/5/2015	55 days		N
4/23/2014	3 months	State police caused delay	N
11/21/2012	2 months		Y
4/22/2014	52 days		Y

NEWARK POLICE — INCIDENT REPORT

FILL OUT, COMPLETE REPORT WHEN LISTED IN CLASSIFICATION LIST AND REPORT GUIDE AS 802 (NO ASTERISK).
DO NOT FILL OUT SHADED PORTION WHEN LISTED 802* (WITH ASTERISK).

1. VICTIMS OR COMPLAINANTS NAME	2. TELEPHONE	17. STATUTE OF ORDINANCE	18. SECTOR	19. COMMAND	20. CENT COMPLT NO
[redacted]	[redacted]	2C:12-3	216	NORTH	C13036208

3. RESIDENT NUMBER (STREET) (FLOOR OR APT)	21. REPORTING OFFICER (NAME)	ID NO	(COMMD)
[redacted] NWK, NJ APT#5	DET BRADBURY, VERNON	7109	2ND

4. SEX	5. RACE/ETHNICITY	6. AGE	7. OCCUPATION	8. INJURY	22. INCIDENT	22A.
M	W	39	EMS	☐ YES ☑ NO	TERRORISTIC THREATS	OCC ON PUB. HOUS. PROP? ☐ YES ☑ NO

9. SOBRIETY OF VICTIM	10. CAN VICT IDENT OFFENDER	23. LOCATION	GANG RELATED
☑ SOBER ☐ HAD BEEN DRINKING ☐ INTOXICATED	NO	[redacted] NEWARK NJ	☐ YES ☑ NO

11. PERSON REPORTING CRIME	12. TELEPHONE NO
ALMEIDA, ALBERT	[redacted]

13. RESIDENCE OF PERSON REPORTING CRIME
[redacted] NWK.

24. TIME OF OCCURRENCE (ON OR BET)	HOUR	DAY OF WEEK	MONTH	DAY	YEAR
	14:16	Tue	06	11	2013
	14:51	Tue	06	11	2013

25. WAS FORCE USED? ☐ YES ☑ NO ☐ NOT KNOWN

26. WAS A WEAPON USED? ☐ YES ☑ NO ☐ NOT KNOWN

14. MONTH DAY YEAR	15. TIME REPT	16. OCCURRED ON VIEW	27. TYPE OF PREMISES OR PROPERTY ATTACKED
06/11/2013	19:30	☐ YES ☑ NO	Housing

28. HOW ATTACKED	29. MEANS OF ATTACK
Threatening - no weapon	Firearm

30. OBJECT OF ATTACK (IF VEHICLE ANTI-THEFT DEVICE INSTALLED:) ☐ YES ☐ NO ☐ UNK	31. MODUS OPERANDI

32. VEHICLE INVOLVED IN CRIME ☐ STOLEN ☐ USED BY OFFENDER	YEAR	MAKE	MODEL	LIC NUMBER	STATE	COLOR	BODY TYPE	VEHICLE VIN NUMBERS

33. NAME OF SUSPECT	(ALIAS)	(RESIDENCE)
[redacted]		[redacted]

SEX	RACE / ETHNICITY	AGE	HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES	DESCRIBE CLOTHING WORN AND PECULIARITIES
M	B						

EVENT #	CAMERA VISIBLE?
P13170219	☐ YES ☐ NO

34. ADDITIONAL INFORMATION (DO NOT REPEAT INFORMATION LISTED IN NUMBERED BLOCKS)

VICTIM STATED THAT ON THE ABOVE DATE AND TIME HE CALLED THE TENANT AND WAS REQUESTING THAT HE WAS ON HIS WAY TO PICK UP THE RENT MONEY, WHEN THE SUSPECT STATED " I'LL CALL YOU LATER" WITH THE MONEY".

AT THIS TIME THE VICTIM THEN CALLED BACK LATER AND ONCE AGAIN REQUESTED THE MONEY, WHEN THE SUSPECT STATED " I'M NOT GIVING YOU SHIT" THAT'S WHEN THE VICTIM INFORMED HIM THAT HE WAS GOING TO START THE...

34A. STRANGER TO STRANGER CRIME	34B. DOMESTIC VIOLENCE RELATED	34C. REPORT SOURCE ☐ OTHER ☐ DISPATCH ☐ PHONE ☐ WALK-IN	34D. VEHICLE INSURANCE COMPANY & POLICY NUMBER

35. ESTIMATED VALUE BY TYPE OF PROPERTY	A. CURRENCY	B. JEWELRY	C. FURS	D. CLOTHING	E. LOCAL AUTOS	F. MISCELLANEOUS	G. TOTAL

36. OTHER OFFICERS AT SCENE (NAME) RANK:	VEH NO	COMMAND	(I.D NO)

37. OTHER REPORTS SUBMITTED
☐ DP 1 152 PROPERTY
☐ DP 1 152-1 AUTO
☐ DP 1 225A STATEMENT
☐ DP 1 800 ARREST
☐ DP 1 795 CONT

38. PERSONS ARRESTED (NAME)	CENT. ARR. NO.	39. WITNESSES (NAME AND RESIDENCE)	(TELEPHONE NO)

40. TELETYPE ALARM NUMBER	41. NAME OR DETECTIVE NOTIFIED	42. SIGNATURE OF REPORTING OFFICER
		DET BRADBURY, VERNON 7109

43. STATUS OF OFFENSE ☐ UNFOUNDED ☐ CLEARED BY ARREST ☐ NOT CLEARED ☐ EXCEPTIONAL CLEARANCE	44. CLEARED BY ARREST OF (CHECK APPROPRIATE BOX OR BOXES) ☐ ADULT ☐ JUVENILE ☐ ADULT AND JUVENILE ☐ NARCOTIC OFFENDER

45. STATUS OF CASE ☐ PENDING ACTIVE ☐ PENDING INACTIVE ☐ CLOSED	46. CLASS	47. RE CLASS	48. KEY PUNCHED BY	49. VERIFIED BY

50. SUPERVISOR APPROVING & CLASSIFYING	(DATE)	51. TIME APPROVED	52. INDEXED BY	53. NUMBER OF PAGES
6884 LT SAYRE, SCOTT	6/11/2013	18:39		

DPI 802 REV 6/84 75M

Exhibit "3"

NEWARK POLICE INCIDENT REPORT

C13036708 Event#: P13170219

EVICTION PROCESS, WHEN THE SUSPECT STATED " I'M GOING TO PUT A BULLET IN YOUR HEAD IF YOU COME AROUND HERE, I WILL SHOOT YOU THRU THE DOOR".

VICTIM ADVISED THE SUSPECT THAT HE WAS GOING TO MAKE A POLICE REPORT AGAINST HIM, WHEN HE STATED " GO AHEAD CALL THE POLICE I"LL SHOOT THEM TOO.

VICTIM FEARING THAT THE SUSPECT MAKE FOLLOW THRU WITH HIS THREATS RESPONDED TO THE 2ND DESK TO FILE A FORMAL COMPLAINT.

VICTIM IS THE NEW PROPERTY MANAGEMENT AS OF JUNE 1, 2103.

June 12, 2013

Chief Gil Taglialatela
Andover Twp. Police Department
134 Newton Sparta Road
Newton, NJ 07860

Re: NJ Handgun Carry permit application/Letter of need

Dear Chief Taglialatela,

My name is Israel "Albert" Almeida, I am a resident of Andover Township, NJ since 2003. A proud father of two beautiful young daughters (2 and 4 years old) and happily married to [redacted] who is a [redacted] for the past fifteen years. I am a retired Emergency Medical Technician out of Newark, NJ (serving since 1992). My position during the last fifteen years of my tenure with U.M.D.N.J. was Rescue Specialist, Senior Tactical Medical Team member with the Newark Police Department Emergency Response Team. My areas of responsibility were to provide direct medical care to any Tactical Police officer if needed during a high risk warrant execution or STAT response to any operation that required the ERT Team. With the responsibility I had since the medical team was part of the initial entry team and not a stand-by unit at a designated staging area, came the responsibility of Tactical training, safe weapon securing operations, risk assessment and weapons training.

Unfortunately, due to a severe right shoulder and left wrist injury that both required several surgeries, I was forced to make a decision if I would continue this line of work or make a career change. I chose to listen to the advice of my surgeons and make a career change because I was destined to be back under their care in the future if I did not. I started my own business in Real Estate Management, it is something I have been doing for several years prior to retiring and I understand the risks associated with such. Throughout my years as an EMT in Newark NJ, I had seen my fair share of violence, gun related crimes and innocent victims falling prey to the evil acts of a few. With my new line of work the majority of my customers are in Essex County (Newark to be specific). I have a fear of falling victim to the criminal prey because they know that I am either collecting cash rental payments or with the assumption that I may have large amounts of cash in my possession since I am the Property Manager. With my new line of work, I can have large amounts of cash in my possession during rent collection times and because of this I am also a prime target for other criminals that may want to rob me of this.

This fear has become reality on June 11, 2013. A live-in boyfriend of a tenant has threatened my life in fourteen different ways; he has stated that if I show up at his door he will shoot me through it. I advised him that was a serious threat and I will be filing a police report and his response was "I don't give a FUCK about the police; I will put shots in them also". He went on to say I am a dead man, he will put a cap in my head and steal my rent money, he knows I have to collect rent from other tenants in the area so he will be looking out for me. He stated he is a "STREET NIGGA" (his words) and he will get me as long as he

Exhibit "4"

lives in Newark and I am around. I have several other threats he has made to me over the phone, but to place them all on here is irrelevant after the first few serious threats. I filed a Police report the same day with Newark Police, Central Complaint #13036208 but as you and I know, a report is only a piece of paper and if this person is serious about his threats, he will act on them or will find someone to act on them for him.

Chief Taglialatela, I am no Batman, I am no hero trying to be a tough guy with a CCW and I do not want to be a hero or a tough guy just because I have a gun. My years on the streets made me a bit wiser than to have that attitude. But what I am, is a loving husband and a great father to 2 beautiful little girls that run to me, to tell me how much they love me every time they see me, 2 little girls that make a grown man tear from joy each and every time . Now all I think about is will this be the last night they see me alive (Just like you and every other Police officer thinks about when they walk out of their home). I am now a moving target by an individual that has made several promises in taking my life and money just because I advised him he was late on rent and I mentioned that I may have to file for an eviction and police report due to his threats. I need to protect myself and my family and unfortunately we all know that many times in this situation, a gangster does not respect the law or human values and will act on their threats.

I ask that you please take this application for a NJ carry permit in to consideration for approval. As a responsible Gun owner, I understand the laws in NJ and the process in receiving an approval. I am providing my FID card, Florida CCW I.D # and my NJ firearms training I.D # for your review. Additionally, I am willing to meet any further requirements imposed by you or the NJ Courts in order to facilitate this process and meeting any further requirement's that you may have.

1. NJ Firearms FID # [redacted]
2. NRA Pistol training Certificate
3. NJ Hunter Education # [redacted]
4. Florida CCW License# [redacted]

Name:
Israel Albert Almeida
[redacted]
Direct phone: [redacted]
[redacted]

Sincerely,

Israel Albert Almeida

Paula Nalon

PAULA NALON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 1/9/2017

ANDOVER TOWNSHIP POLICE DEPARTMENT

LAKE ILIFF ROAD
ANDOVER TOWNSHIP, New Jersey

Mailing Address
134 Newton-Sparta Road
Newton, New Jersey 07860

A. Taglialatela
Chief of Police
(973) 383-5544
Fax (973) 383-6124

October 24, 2013

SUSSEX COUNTY
SUPERIOR COURT
2013 NOV 22 PM 2:50
CRIMINAL DIVISION

Mr. Israel Almeida
[redacted]
Newton, NJ 07860

Re: Denial of Permit to Carry a Handgun

Dear Mr. Almeida:

In reference to your application for a Permit to Carry a Handgun, please be advised that your application has been denied due to lack of justifiable need. According to statute 2C:58-4e, if you wish to appeal this denial, you may do so by writing a letter, within 30 days, to the Sussex County Superior Court to request a hearing on the denial. If you choose to appeal the denial, you must notify us in writing.

If you have any questions, please call.

Sincerely,

Achille Taglialatela
Chief of Police

AT:jem

Certified Mail: 7010 3090 0003 6738 2337

DAVID J. WEAVER, ESQ.
SUSSEX COUNTY PROSECUTOR
19 – 21 HIGH STREET
NEWTON, NEW JERSEY, 07860
(973) 383-1570

FILED
JUL 30 2014
N. Peter Conforti, J.S.C., retired & via on recall
Judge's Chambers
Sussex County Superior Court

IN THE MATTER OF THE APPEAL OF ISRAEL ALBERT ALMEIDA FROM THE DENIAL OF HIS APPLICATION FOR A PERMIT TO CARRY

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CRIMINAL PART
SUSSEX COUNTY

Firearms Appeal No.: W-31-13

ORDER DENYING APPLICANT A PERMIT TO CARRY

THIS MATTER having been opened before this Court by way of Appeal from a denial of a request for a Permit to Carry, and Shaina Brenner, Assistant Prosecutor, appearing on behalf of the State of New Jersey, and Evan F. Nappen, Esq., appearing on behalf of the Applicant, Israel Albert Almeida, and the Court having reviewed the firearms application, the investigation and denial letter from the Andover Township Police Department and the submissions and testimony received from Applicant and the State;

IT IS on this 30 day of July, 2014

ORDERED that the Applicant's request for a Permit to Carry is denied for the reasons stated on the record of June 18, 2014;

AND FURTHER ORDERED that a copy of the within Order shall be served upon Evan F. Nappen, Esq., Israel Albert Almeida, and the Andover Township Police Department within seven (7) days of the date of receipt hereof.

HON. N. PETER CONFORTI, J.S.C.

Exhibit "6"

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
SUSSEX COUNTY
FIREARMS APPEAL NO. W31-13
A.D. #A-005505-13T1

IN THE MATTER OF:

ISRAEL ALBERT ALMEIDA FROM THE DENIAL OF HIS APPLICATION FOR A PERMIT TO CARRY

TRANSCRIPT
OF
HEARING

Place: Wilentz Justice Complex
212 Washington Street
Newark, NJ 07102

Date: June 18, 2014

BEFORE:

HON. N. PETER CONFORTI, J.S.C.

TRANSCRIPT ORDERED BY:

LOUIS P. NAPPEN, ESQ. (Law Office of Evan F. Nappen, PC)

APPEARANCES:

SHAINA BRENNER, ASSISTANT PROSECUTOR
Attorney for the State of New Jersey

EVAN F. NAPPEN, ESQ. (Law Office of Evan F. Nappen, PC)
Attorney for the Defendant

Transcriber Eileen M. Zakrzewski
G&L TRANSCRIPTION OF NJ
40 Evans Place
Pompton Square Plaza
Pompton Plains, NJ 07444

Audio Recorded
Recording Opr., Not Identified

I N D E X

Witnesses	Direct	Cross	Redirect	Recross
FOR THE DEFENDANT				
Israel Albert Almeida:	5	15		
By the Court:	22			
RECITATION OF FACTS:				
By the Court:	3			

EXHIBITS:	Ident.	Evid.
A-1 Police Report dated June 11, 2013	9	26
S-1 Chief of Police Denial Letter		26

CLOSING ARGUMENT:	
By Mr. Nappen:	27, 32
By Ms. Brenner:	29
THE COURT:	
Decision:	33

THE COURT: All right. The Almeida matter. Mr. Almeida made a -- as I understand it, was denied a permit to carry a handgun by the Andover Township Police Chief on October 24, 2013 because of the department's position or the Chief's position. Mr. Almeida had not demonstrated justifiable need consistent with the case law. I've received the letter from Mr. Almeida's counsel dated April 1 and the State's response, their letter of May 23, 2014. I've also had the chance to review, I guess, what is discovery material concerning Mr. Almeida's request and he submitted, I believe a couple of letters to the Andover Township Police Chief outlining history invovling himself that in his view supports the justifiable need criteria. I don't think I'm dealing with a constitutional issue since I think that's been pretty much addressed in the federal courts. So, I'm really viewing this on the basis of a question of justifiable need. Are you Mr. Gilbert?

MR. NAPPEN: Mr. Nappen.

THE COURT: Oh, Mr. Nappen.

MR. NAPPEN: Hi there.

THE COURT: I didn't recognize you.

MR. NAPPEN: I know, Judge, it has been a little bit.

THE COURT: You look a little different.

MR. NAPPEN: I do.

THE COURT: I probably do too.

MR. NAPPEN: Yes. First of all, good morning, Your Honor.

THE COURT: Good morning.

MR. NAPPEN: Second of all, I apologize for the delay even building in 45 minutes of extra time, 287 North did not let me down and required double that amount of time.

THE COURT: You and your client can have a seat --

MR. NAPPEN: Thank you.

THE COURT: -- you don't have to stand up.

MR. NAPPEN: But Your Honor, is right. The Constitutional argument was argued and preserved as far as I'm concerned in the brief so that it's there. But today, we will -- our -- our presentation is focused on justifiable need and why Mr. Almeida does qualify under the traditional approach of justifiable need.

THE COURT: Okay.

MR. NAPPEN: Thank you, Your Honor.

THE COURT: Did you wish to have --

MR. NAPPEN: I would --

THE COURT: -- your client testify?

MR. NAPPEN: -- yes, I do. Thank you, Your Honor.

THE COURT: All right.

MR. NAPPEN: If I may.

THE COURT: Mr. Almeida, if you'll come up to the witness stand over there. If you could -- there should be a Bible there. If you could place your left hand on the Bible, raise your right hand.

I S R A E L A L B E R T A L M E I D A DEFENDANT, SWORN

THE COURT: Have a seat. Just begin by stating your full name, for the record.

MR. ALMEIDA: Israel Albert Almeida.

THE COURT: Mr. Nappen.

MR. NAPPEN: Thank you, Your Honor. May I please the Court.

DIRECT EXAMINATION BY MR. NAPPEN:

Q. Okay. Mr. Almeida, if you could -- first start, tell us what -- what is your employment. What do you do?

A. I own and operate a small business, it's a property management fir -- business. It deals with property management, obviously, construction, tenant rent collection, lease management.

Q. And, what do you do in regards to those

issues, what is the actual physical work that you do?
A. The primary function is lease management, tenant management and rental collection.
Q. So, what's involved in that? What do you actually to -- to do?
A. Interviewing tenants, placing them in -- in housing, collecting rents, disbursing the funds to my customers, which are the apartment of home owners. They -- they are my customers. Lease management would be also dealing with any tenant related issues, any apartment related or home related issues. Those issues can be maintenance, dealing with vacant property, securing them.
Q. And, where are these properties located?
A. Overwhelming majority of them are in Essex County, Newark and Irvington. I would say 99 percent of them are located in that area.
Q. Okay. And about how may tenants do you have that you service?
A. Approximately 40 to 60 units.
Q. And could you describe the areas where these tenants' properties are?
A. Officially or unofficially?
Q. No, just in your experience. In your observations.

A. They are -- a majority of them are in rough areas. Areas that are high crime areas. High -- high crime areas, low income, section 8 tenants. Those are the majority of the areas that I -- that I deal with. A gang -- a lot of gang related crimes in the area.

Q. Now, you understand that one of the criteria for obtaining a license -- a permit to carry is what's called justifiable need, right?

A. That's correct.

Q. And you understand that that entails regarding threats to your personal safety, et cetera, right?

A. Correct.

Q. Have you experienced anything in line of threats to your person?

A. Yes, I have.

Q. Okay. Could you talk about any examples of that?

A. There are multiple examples. The main example is why are we here today, because of an incident that I did have with a tenant about a year ago who is an admitted gang member, a career criminal who served prison time for aggravated assault. The threatened my life. He threatened my life as long as I live in New Jersey. He stated that, you know, he'll get me

regardless of how long it takes and if it's not him it will be his street crew because he -- he admitted that he was a -- a street gang member.

Q. What's his name? What is the individual's name?

A. It should be in the police report. I believe there should be two names there including an alias. And -- but besides that incident there have been several other incidents. More suggestions when I approach the area, I am accosted by individuals asking me what am I doing in the area. If I can give them some money because they know that I'm carrying money. They know that I'm there to collect rents. Just recently in the last week of April I was scheduled to respond to one of my properties for a maintenance issue. A few minutes before my arrival there was a shooting out front, an attempted robbery of an individual and they ran into the back yard of my property where they continued shooting at the individual attempting to rob him. That was only within 15 minutes of -- before my arrival. There have been, you know, several remarks made, better -- what you got in there, what kind of mon -- how much money you got, let me get some of that money.

MR. NAPPEN: Let me show counsel the police

report. Thank you. Your Honor, my I approach --

THE COURT: Yes.

MR. NAPPEN: -- and have this marked? Thank you.

THE COURT: I guess it can be marked A-1.

BY MR. NAPPEN:

A. Also, I'd like to add that --

THE COURT: Hold on.

MR. NAPPEN: Thank you.

BY MR. NAPPEN:

Q. Mr. Almeida, I'd like you to take a look at what's been marked A-1. Do you recognize that document?

A. Yes, I do.

Q. What is that?

A. This is the police report that I filed the day of the -- the threats made against me.

Q. And what date was that?

A. It was in June and it should be stamped June 11, 2013.

Q. Okay. And, do you remember who you spoke to at the police?

A. It was -- it was the officer that was at the desk there at the north district.

Q. And -- and what did you go there specifically

to file a complaint about -- file a report about, sorry?

A. I -- because I took those death threats against my life serious and I advised the tenant that I was going to file a death threat report. And his response to me was go ahead. I'll shoot the police also. So, I took this individual very serious due to my former line of work and the exposure that I've had with this -- these type of incidents. So, I went immediately to the Newark Police Department which is the north district not too far from this -- from this residence to file this police report.

Q. What were the specific threats that were made against you?

A. There were several. I believe only one or two of them made it onto the police report. I assume it's because they did not have enough space. But there was about 15 of them and --

Q. What were they? Say them specifically that were made against you. What were they?

A. Specifically were I will -- "I am going to put a cap in your head, you white fag." Excuse my language, but I'm just -- what was directly stated to me. "I will get you on a dead end street where the police don't come around and no one will see it." "I will

make it look like a robbery and dump your body on the dead end street and nobody will catch me." Also, several references of putting a bullet -- bullet in my head. And also several references made "I know where you have to go collect the rents. I know what type of vehicle you drive. I know what you got to do out here. As long as you live in New Jersey you're no longer safe. And if I don't get you, my boys will." And then he went on to say "you messed with the wrong street nigger. And I'm a gangster. And you will get yours eventually."

Q. What -- do you know what lead him to make these threats against you?

A. We had taken over the property. The customer is -- lives out in New York. We had taken over the property the first week of June, June 1st, I believe. And I went over there to introduce myself as the new property manager and that we -- any problems with the property, he would be dealing with me directly. Giving him basically my information, phone number, emergency contact number. And then we discussed the lease. We discussed the rent. He advised he that he did not have the rent money to give him a few days. I said okay, not a problem. We'll give you a few -- you know, a few days. On the fifth of the month which was June 5th, I

reached out to the individual again. Hey, how -- how are you doing with the rent? And that's when he started getting aggravated 'cause I already had called him a second time on the third which was the third contact that I had with the individual was on June 11th and I advised him the lease states you have to pay up to the fifth. The customer and because of the lease we have to file for an eviction any time rent is not paid after the fifth. And we could always cancel the eviction as long as the rent is paid. And that is when he started with his threats. And I advised him what the eviction process did if he does not cooperate, we will have to file for a warrant or removal. I basically was explaining the steps to him on the eviction process. And that is when he proceeded with "well, go ahead. I'll put a bullet in your head." And that's when I advised him, I took that threat serious so I'm gonna notify the police.

Q. No, you -- you said based on your former experience or employment, what was that former experience or employment --

A. I served --

Q. -- you referenced?

A. -- I served the City of Newark as an emergency medical technician since 1989. I am no longer

certified as an EMT. But I was an emergency medical technician since 1989 and 15 of those years I served as the lead medic on emergency response team with the Newark Squad team.

Q. So, you dealt with how many individuals as you say --

A. I've dealt with many individuals. I've seen everything out there that evil, you know, an do to an in -- innocent bystander. I've seen shootings, stabbings not only of adults but of children, two weeks old. I've been a victim of crime myself even during, you know, the work. We've been shot at in the ambulance. We've been -- I've been personally stabbed on an emergency call in the mid '90's because of a domestic dispute that we walked into for an emergency call. The 15 years that I served as the lead medic for the emergency response team which is the -- also known as the swat (phonetic) team for the Newark Police. The majority of that were high risk narcotic warrants and homicide suspects warrants.

Q. What is your family background, are you married, do you have children, what is your --

A. I'm married to [redacted] (phonetic) she is a [redacted] I have a

5 year old daughter, [redacted] (phonetic) and I have a 2 years old daughter, [redacted]

Q. Now, in addition to this threat you discussed that you filed, were there -- have there been other threats, other than that threat?

A. There have been suggestions made. There have been attempts of -- of car jackings made where I have been force to leave an area because I noticed the danger of the threat approaching. There have been basic verbal treats of, you know, I'm going to kick your ass, in that nature.

Q. So, do you think having a handgun would be necessary for you?

A. I deal in a very dough area. My -- my work area is like I -- I mentioned earlier the majority of it is Newark and Irvington. These areas are very high crime areas, well known for gang activity. Well know for narcotic activity. The overwhelming majority of my business requires either rental collection which could -- majority it's high -- deals with cash. It's not direct deposit or it's not with -- with checks or money orders. And because of that I am constantly viligent because the threat is out there. And I know that it is just a matter of time before I am attacked, robbed -- because they know what I'm doing there. They know the

business that I'm conducting in this area.

Q. And just for purpose of background, even though we're focusing on justifiable need, what is it -- what training or experience do you have with a firearm? You're qualified under the statute --

A. I have extensive experience -- I qualify. As you can see, I have the qualification's record there of one hundred percent. I have several NRA training certificates. I am also a certified range safety officer with the NRA as well.

MR. NAPPEN: Nothing further. Thank you, Judge.

THE COURT: Cross examination.

CROSS EXAMINATION BY MS. BRENNER:

Q. Good morning Mr. Almeida.

A. Good morning.

Q. Now you said that part of your responsibilities, as part of your line of work is rental collection. How do you go about collecting rent from your tenants?

A. We -- I collect rents, issue them receipts and the -- those rent collections are actual house calls to -- to the apartment -- to the tenant -- with the tenant.

Q. And you go door to door?

A. Yes.

Q. And, you said that the way that they paid was in cash?
A. The majority of it is in cash, correct.
Q. Do any of your tenants pay by mail?
A. No.
Q. Or by check?
A. Very little.
Q. And, why do the -- is the rents due in cash?
A. A majority of the time it's because that's their -- that's their lifestyle. That's their living condition. They do not have a bank account. They do not have means of paying me any other way but with cash.
Q. And have you ever required tenants to deposit the cash and make out a money order or a rent check?
A. We have attempted to get that done. We just find it extremely difficult. If we ask them to go to a bank and deposit it a majority of the time they do not do it and their excuse is they do not have the means to get to the bank. Or they do not have the means to -- to get a money order because they are either -- they have no transportation. They may be elderly, handicapped. They just do not have the means to pay any other way but with cash.
Q. And, if -- when they're paying cash are you

carrying the cash with you?

A. Absolutely.

Q. How much money are you carrying with you as you're going door to door, typically?

A. It could be anything between $5,000 to $13,000 -- $5,000 to 15 -- to $13,000.

Q. And do you carry that with you throughout the day, or do you go to the bank in between?

A. I installed a safety lockbox in my vehicle that I place the -- the cash. It would not be convenient to go to the bank after every single transaction just because of the distance and the time constraints.

Q. And, you said that you were threatened and you mentioned the specific incident in which you were threatened with this particular tenant. Did that tenant eventually pay the rent?

A. No.

Q. And, is he still currently a tenant at your ; one of your properties?

A. He is no longer at one of my properties, but he resides five houses down from another property that I manage.

Q. And have there ever been physical confrontations between you and any tenants who were -- any -- anyone in the surrounding vicinity?

A. I immediately withdraw myself from that situation.

Q. And after you were threatened by this particular individual, have you taken any precautions or changed the manner in which you collect rent in any way?

A. I do all the time just because of my past experience in -- in -- in -- in -- I -- but there are only so much that you can do. You could try to meet at different times of the day, but there's really no day that's -- hour of the day that's safe. I am always viligent and that is because of my past training. I know how to recognize danger. If I can avoid it, I will. It does not mean that I'll be successful all the time.

Q. So, what specific precautions have you taken?

A. If I see a large gathering in front of a property that I'm responding too, maybe I'll go around the block or come back another time, if possible -- if it's possible. That is one of the measures. I -- you know, avoid confrontation as much as possible. But at all times I avoid confrontations. It's not [sic] as much as possible every time.

Q. And have you considered at all hiring, I guess, some type of security in order to accompany you as you go to collect these payments?

A. In order to hire security I would have to increase my fees and increase the rents, that would put me out of business, ma'am.

Q. And as part of your precautions have you been -- have you changed any of the, I guess, as I might have stated before and as you stated before with regard to the manner in which rent is being paid and the payments are being made to you?

A. Again, it goes back to the beginning. It is up to the tenant how they -- they -- they pay. I cannot force them to go get a bank account. I cannot force them to go and drive to a bank and deposit. If they tell me they do not have that mean, they do not have that mean. I wish I could, but it's in -- there's restraints there and a majority of the time it's impossible.

Q. Huh hum.

A. So, I would have to accept what -- what is given.

Q. Now, have there been any recent threats? I know you mentioned there was something in April?

A. April 28th, there was a shooting in front of one of my properties, [redacted] Newark where they attempted to rob an individual that was walking in front of my property. This individual ran to the back yard of the property where two gunmen chased after him

and continued shooting at my property and at this individual attempting to rob him. Recently on the intersection of South 15th and 18th Avenue, I was sitting at a red light going to a home inspection appointment and five individuals on bicycles approached my vehicle laughing. One individual attempted to open up my door. I took that as a possible an attempt of car jacking where I was forced to run the red light and flee the area. And these individuals chased after me, I'd say maybe a hundred feet on their bicycles and obviously in my vehicle I took off.

Q. Now those individuals, did they recognize you?

A. I -- I -- I do not know.

Q. But they weren't tenant. You didn't recognize them as tenants?

A. No. They were individuals on bicycles.

Q. And those were the most recent threats. One was the incident where it happened in the vicinity that you were at but not specific to you, correct?

A. And then there are multiple times when I approached --

Q. Oh, I'm sorry, I just -- I just wanted to clarify that incident that -- that happened --

A. These two are --

Q. -- in the vicinity where you were --
A. -- the most recent ones, correct.
Q. -- that wasn't a threat to you?
A. I took it as a threat, absolutely.
Q. Oh, okay. So, they did make their presence known to you or -- or threaten you?
A. Five individuals --
Q. Did they speak with you?
A. -- approached me on bicycles, one individual attempted to --
Q. Oh, no, not that threat. I meant the -- I'm sorry. I -- I was getting confused. I meant the incident in which you stated that in April there was a shooting on the property near you?
A. That was -- I -- that was possible a random attempted robbery.
Q. Okay. I just wanted to clarify.
A. No.
Q. And then you were continuing saying --
A. It just happened to be that it occurred as I was in route to that -- that -- that facility for maintenance.

MS. BRENNER: Your Honor, I have no further questions.

THE COURT: Anything further, Mr. Nappen?

MR. NAPPEN: Nothing further. Thank you, Judge.

BY THE COURT:

Q. Mr. Almeida, with regard to this incident for which you filed the police report in June 11 of 2013, you've told us that this person has relocated. Did you evict that individual?

A. Yes. We did preform the eviction, correct.

Q. In other words you filed a -- a complaint in landlord tenant court in Essex County?

A. That's correct.

Q. Did the individual appear?

A. No, he did not.

Q. So, in order for possession or judgment of possession was granted and a warrant for removal --

A. That's correct.

Q. -- issued?

A. That's correct.

Q. And did the constable remove the individual?

A. That -- when we arrived the day of, actually I did not show because of the threat. The constable called me up on the phone and said the individual -- ah, they gained entry into the apartment and it appears that they abandoned the apartment. There was no signs of anyone else living in there.

Q. So, when the warrant was executed no one was there?

A. No one was there.

Q. And, do you know or recall off hand when it was that that warrant was executed?

A. It -- in Essex County it -- it's -- it's approximately a 2 -- 2 month waiting period just because of, you know, so many -- so many cases. It was mid August.

Q. Of 2013?

A. That's correct.

Q. All right. Since the warrant was executed, have you had contact with this person?

A. No, I have not had contact with this person. I am told that he resides five house away from another property at a different location. I am told that he has asked about me. If I have come around.

Q. Well --

A. But I have not --

Q. -- you were told that by somebody else I gather?

A. Someone else that's familiar with the -- with the incident, familiar with the in -- the individual?

Q. But there's been no direct contact by this person with you?

A. That's correct, no.

Q. And you say from your information he resides about five dwellings from where your property is located?

A. That is what I'm told, correct.

Q. This -- this would be the property that he was previously residing?

A. No, this is at a -- another location.

Q. Another location.

A. Correct.

Q. So, there's been no contact directly between you and this person since the incident in June of 2013?

A. That's correct. The Newark Police attempted to go locate him to -- to bring him in and they were not able to -- to make contact with the individual. And in fact, their exact words to me were, why do you not -- why don't you go to his house and pretend that you're gonna discuss the lease and if he's him call us back so we can go get him.

Q. But they know who it is?

A. I believe so. Correct.

Q. And, you have not pushed the incident any more with the police in trying to apprehend this person?

A. That is correct because I am told the last contact

I had with the detective was that they cannot locate him and they left it at that. They did not seem interested.

Q. But they -- did you let them know that he may be living five dwellings away from one of your --

A. Correct.

Q. -- properties?

A. Correct.

Q. But there's been no --

A. There's been no contact.

Q. -- no contact. And, have any other individuals approached you about this person?

A. Not about this individual, no.

Q. Okay. With the tenants that you do have, have there been any other incidents in which tenants have made similar threatening comments to you?

A. Not necessarily tenants. But I would assume they are family members or guests of tenants that are residing in the buildings. When I enter the building, they have said, here comes the money man. Let me get some of that cash. I know you have a lot of it. What are you doing around here, you know you don't belong here. Statements like that have been made.

Q. I see. All right. Thank you, Mr. Almeida, you can step down.

A. Thank you.

(Witness is excused)

THE COURT: Any other evidence to submit, Mr. Nappan?

MR. NAPPEN: Thank you, Your Honor. Nothing further, I just ask that A-1 be made into the record.

THE COURT: Any objection, Ms. Brenner?

MS. BRENNER: No objection, Your Honor.

THE COURT: All right. You can give it to the clerk to mark in evidence.

MR. NAPPEN: I will. Thank you, Your Honor.

THE COURT: Does the State have any evidence to present?

MS. BRENNER: No, Your Honor, although if there's no objection, I -- I have the letter of denial from the Chief of Police and that I would like to move into evidence, unless the Court already has a copy.

THE COURT: Well, I have the letter of October 24, 2013 --

MS. BRENNER: OH, that's the letter, Your Honor. Then I withdraw my application.

THE COURT: That could be considered by the Court as S-1 in evidence.

MR. NAPPEN: There would be no objection,

Your Honor, part of the process.

THE COURT: Mr. Nappen.

MR. NAPPEN: Thank you, Your Honor.

THE COURT: You can have a seat, Mr. Nappen.

MR. NAPPEN: I like to make losing argument. And that is, it's been said that a -- a gun is like a parachute because if you need one and don't have one, it's highly unlikely you'll ever need one again. And this is kind of the conundrum that presents itself in these cases. It's plain that he is subjected to threats and that he's in a dangerous area and has been given specific threats against him which are police record. That he's a target given the amount of money and cash and even his very presence in a place where he is challenged and yet has to be there to do his job. The standard for justifiable need was at -- is actually codified in the administrative code. And that it's N.J.A.C. 13:55-2.4 and it defined justifiable need as the urgent need of self protection due to specific threats or previous attacks posing at special danger to an applicant's life. The price criteria is actually applied to security guards and to private eyes, et cetera. The urgent necessity requirement has been the traditional requirement in New Jersey and it's that special danger in effect is the issue and that's

demonstrated by these threats. It's a special danger to him because of what he uniquely does. The position that he's in, in having to do it. To say that he would hire security is kid of funny in a way because that security would be armed and would have to have met New Jersey's standard. And to suggest that that's an alternative suggests that the standard is there for having the issuance of a license to him. Because if security is what's necessary and they're armed to protect him, they have to meet the standard as well.

He is responsible for his life. He has a family, et cetera. But beyond that, and I know in our brief we raise the Constitutional issue is that we're not -- that we were just preserving, but not arguing from that. But there is a point to the Constitutional issue that I think has not been raised much. And that is that Heller not only in finding a Second Amendment right to bear arms and the question of whether -- how it applies, you know, to the bearer part outside the home. Without getting into that, there's another element. And that is, the court also found there's a right to self defense. That's another part of Heller a right to self defense. Mr. Almeida has a right to self defense. And he as right then to the means of self defense which even in looking at New Jersey's

test, he's represented the danger, the threats and what he does in his special capacity, not an average citizen that may have to go to Newark, this is what he does. This is what he faces. He has these threats and he has a Constitutional right to self defense. He needs the means to be able to defend himself. Because this hearing today will stand in effect as a record of his attempt to do that very thing. And if he's denied his parachute and he needs one, how does the question get answered after that? What do we tell his daughters why he was denied the means? How do you answer that? I don't know. I don't know what -- it would be a very difficult thing to have to do and I hope we don't have to do that. He should be able to defend himself. He's trained. He faces the threats. He's met the standard and he has a Constitutional right to self defense. And I would ask that Your Honor grant this permit in the scope of the capacity of what he does. You know, it can be narrowly tailored, but make it so he has that ability during those times to do what he needs to do safely. Thank you, Your Honor.

THE COURT: Thank you, Mr. Nappen. Ms. Brenner.

MS. BRENNER: Thank you, Your Honor. I'll -- I'll rely on what was submitted to the Court in my

brief. However, just briefly I'll state that it's the State's position the defendant has not met the standard under justifiable need. Well, there does need to be an urgent necessity for protection under the statute. Another part of that statute reads that -- that such danger cannot be avoided by other means. And, in this case, based on the testimony provided by Mr. Almeida, it's the State's position that this -- these threats can be avoided. The manner in which the rents are collected by carrying large amounts of cash without stopping you know to deposit the money at a bank by not accepting checks or requiring tenants to pay by check or by mail, there are options in which the defendant has from other means.

THE COURT: What statute are you relying upon?

MS. BRENNER: Oh, just -- that's New Jersey statute -- it's the administrative code --

THE COURT: No --

MS. BRENNER: -- 13 -- 13:54-2.4(d)(1).

THE COURT: Well, that hasn't been submitted to me, but I have what Mr. Nappen cited on page 5 of his letter. But the other -- did you submit anything from the administrative code?

MS. BRENNER: I believe it's in my brief on

page three, Your Honor.

THE COURT: That was I think the provisions --

MS. BRENNER: It's the same provision as -- that's cited on page 5 of defense counsel's brief. Which again, I was just pointing to the part where it says cannot avoided by other means.

THE COURT: Oh, all right. I see what you're saying. Okay. So, basically the State's argument is there are -- there are alternatives for this individual given the nature of the work that he's elected to pursue?

MS. BRENNER: Yes, Your Honor. And that his occupation should not be considered -- or used to determine whether a carry permit should be issued in this case.

THE COURT: There were -- there was a case involving bail agents or some --

MS. BRENNER: Fugitive recovery agents, yes, Your Honor.

THE COURT: Fugitive recovery agents.

MS. BRENNER: Huh hum. And it's In re Borenski (phonetic), I believe that's also in my brief, Your Honor.

THE COURT: Where they were actually shot at?

MS. BRENNER: Yes, Your Honor, where they were shot at. They had been threatened with a variety of weapons and did carry a large amount of cash. I -- I referenced it briefly on page 4 of my brief.

THE COURT: Yeah, it's 363 New Jersey Super --

MS. BRENNER: 10.

THE COURT: -- page 10, an Appellate division --

MS. BRENNER: From 2003.

THE COURT: -- 2003 decision.

MS. BRENNER: Yes, Your Honor.

THE COURT: All right. Was there anything further you wanted to emphasize?

MS. BRENNER: No, Your Honor. The State rests.

MR. NAPPEN: Thank you, Judge.

THE COURT: Did you want to say --

MR. NAPPEN: I'd just point out that the alternate means argument of the State that's why I'm talking about if it's hiring security guards then they're already meeting the standard. So, there really is not an alternate means for him. And, I would point out that Borinski, Price, the others are pre Heller, they are cases that were decided under Burton v. Sills

(phonetic) where there was no recognition of a second amendment at all in New Jersey and it was deemed strictly a privilege. Heller has made it clear there's a right to self defense and whether or not New Jersey's test stands for -- Constitutionally or not is another issue for talking here, not actual threats from this individual meeting the administrative standard. Thank you, Judge.

THE COURT: All right. Well, I gather the Constitutional issue was settled so to speak by reason of a third circuit's decision in Drake vs. Filco at 724 F.3d 426 which -- for which there was a petition of *certiorari* to the United States Supreme Court which was denied. Now, there's always a right of self defense regardless of any of these cases. An individual certainly has a right of self defense. The question here is, is there a substantial threat of serious bodily harm in the carrying of a handgun therefore is necessary to reduce the threat of unjustifiable -- unjustifiable serious bodily harm. There are a couple of points that I would note here. Mr. Nappen is emphasizing the self defense argument because under the Price standard of justifiable need, I -- I dare say I find the argument lacking in terms of how a handgun will reduce the threat of unjustifiable serious bodily

harm. Because if anything, the presence of a handgun can in a certain sense cause the -- an increase in terms of -- of bodily harm. If individuals become aware as -- and Mr. Almeida is indicating that everybody in the neighborhood knows what he's doing if they become aware that he's carrying a handgun there is the potential for an increase in violence in that context.

So, I -- I question whether the second part of the Price standard is truly met. The administrative code which has been cited to the Court sug -- also indicates that the individual has to in -- employ means other than the issuance of a hand gun permit if that can be done. Here other methods are suggested in terms of the collection of rent through checks, through money orders. Through depositing of funds in a bank account. And as Mr. Almeida testifies, these are not especially convenient or profitable for him in terms of the nature of the business that he has chosen to pursue after leaving his prior employment. But there -- these means are available to him in terms of rent collection. And I can understand the practicalities of the situation because the -- the owners are looking to maximize their investments certainly. He's looking to maximize his profit so the question is how best to do that? That

is the least expensive way so to speak to accomplish those goals. And, it -- as it turns out its cash collection of rent in areas that he describes as being high crime areas, gang infiltrated areas. It's a risky business so to speak in terms of what he has chosen to pursue. But, still, the question becomes substantial threat of serious bodily harm. I guess the focus in terms of the first prong of the test is on the word substantial. I questioned him about this particular individual against whom he filed this police report which is A-1 in evidence. Apparently after these initial verbal threats were made to him, that individual, I gather was evicted as a result of a dispose action that he initiated and when the warrant for removal was executed, no one was there. Now, the question is, where is this person in terms of presenting a continuing threat to Mr. Almeida. Apparently, there's been no contact by this individual with the defendant for approximately a year. The defend -- Mr. Almeida indicates that he's heard that the individual is still looking for him. Or, that his gang, if you will, is still aware of Mr. Almeida's presence.

Frankly, it would help his case for specific -- rather for a substantial threat to have some

evidence that would address that particular issue. Because I think that would lend substance to what Mr. Almeida is arguing to the Court by this application. But, in term -- and the Court would also make note of the fact that Mr. Almeida has indicated with regard to other tenants in -- in these facilities, that these people are aware of what Mr. Almeida does, why he's there. In fact, they've told him, according to him, that he has no business being there.

So, while a threat was given to the -- Mr. Almeida, the question is, is it a substantial threat as apposed to an individual having been contacted three times by Mr. Almeida looking for payment of rent and then becoming frustrated apparently and verbally lashing out at him threatening to kill him, a he's described.

I think more has to be demonstrated to indicate a substantial threat exists without there having been any further contact by this person with Mr. Almeida. And secondly, I would note under the administrative code that's been cited, there are other means that he can employ they may not be the most profitable under the circumstances, but they do exist in terms of rent collection in which he's engaged.

And, generally speaking in electing to engage

in this type of line of work and putting himself in -- in this particular area, he's done the voluntarily of his own accord. But, in doing that he has to be mindful of the requirement of justifiable need for a per it to carry a handgun to be issued and if one -- if -- if a handgun was in his possession given his description of the neighborhood, the question exists as to whether that would really reduce the threat of unjustifiable -- unjustifiable serious bodily harm or potentially increase it.

So, for these reasons, the Court will deny the application and ask the State to submit the appropriate order.

MS. BRENNER: Yes, Your Honor.

THE COURT: The exhibit that Mr. Nappen submitted can be returned to him.

COURT CLERK: Should I make a copy of it Judge?

THE COURT: We have it in the file.

COURT CLERK: Okay.

(Off record)

Certification

I, Eileen M. Zakrzewski, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CD Rom, time from 10:04:47 a.m. to 10:51:42 a.m., is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

Eileen M Zakrzewski /kc

Eileen M. Zakrzewski, AOC NO. 529
G&L TRANSCRIPTION OF NJ

Date: August 18, 2014

SUPERIOR COURT OF NEW JERSEY – APPELLATE DIVISION
AMENDED NOTICE OF APPEAL

TITLE AS CAPTIONED BELOW

IN THE MATTER OF THE APPEAL OF
ISRAEL ALBERT ALMEIDA FROM THE DENIAL
OF HIS APPLICATION FOR A PERMIT TO CARRY

ATTORNEY OF RECORD

EVAN F. NAPPEN
ATTORNEY AT LAW, P.C.
21 Throckmorton Avenue
Eatontown, NJ 07724
Telephone No. 732-389-8888

ATTORNEY FOR Israel A. Almeida
ON APPEAL FROM
Sussex County Judicial Complex
TRIAL COURT DOCKET NO.
Firearms Appeal No. W-31-13
TRIAL COURT JUDGE
Honorable N. Peter Conforti, J.S.C.
Civil { } Criminal {X} Juvenile { }

Notice is hereby given that Israel A. Almeida appeals to the New Jersey Appellate Division, from the Judgment { } Order {X} entered in this action on July 30, 2014 in favor of the State of New Jersey.

If appeal is from less than the whole, specify what parts or paragraphs are being appealed: **N/A**

Are all issues as to all parties disposed of in the action being appealed? Yes {X} No { }

If not, is there a Certification of Final Judgment entered pursuant to R.4:42-2? Yes { } No {X}

Priority under R. 1:2-5? Yes { } No {X} Applicable sections under the Rule._____

In criminal, quasi-criminal, and juvenile cases… Not Incarcerated {X} Incarcerated { } Confined at _____

GIVE A CONCISE STATEMENT OF THE OFFENSE AND OF THE JUDGMENT, DATE ENTERED AND ANY SENTENCE OR DISPOSITION IMPOSED

On June 18, 2014, the Honorable N. Peter Conforti, J.S.C. denied Appellant's application for a New Jersey Permit to Carry a Handgun.

1) NOTICE OF APPEAL HAS BEEN SERVED ON:

TRIAL COURT JUDGE
Honorable N Peter Conforti, J.S.C. 7/24/2014 Regular Mail

TRIAL COURT CLERK/STATE AGENCY		N/A
ATTORNEY GENERAL Division of Criminal Justice - Appellate Bureau PO Box 086 Trenton, NJ 08625	7/24/2014	Regular Mail
GOVERNMENTAL OFFICE UNDER R. 2:5-1(h)	N/A	
OTHER PARTIES Shaina Brenner, Esquire Sussex County Prosecutor 19-21 High Street Newton, NJ 07860 Phone (973) 383-1570	7/24/2014	Regular Mail

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THIS NOTICE OF APPEAL ON EACH OF THE PERSONS REQUIRED AS INDICATED ABOVE.

EVAN F. NAPPEN
ATTORNEY AT LAW, P.C.

Dated: July 24, 2014

By: Louis P. Nappen, Esquire
For the Firm

PRESCRIBED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:

ADMINISTRATIVE OFFICE OF THE COURTS, CHIEF COURT REPORTING SERVICES		N/A
COURT REPORTER'S SUPERVISOR/CLERK OF THE COUNTY OR AGENCY		N/A
COURT REPORTER Joseph Tuttle Court Reporter Office Sussex County Judicial Center 43-47 High St. Newton, NJ 07860	7/24/2014	Regular Mail

I HEREBY CERTIFY THAT I SERVED THE PRESCRIBED COURT TRANSCRIPT REQUEST FORM ON EACH OF THE ABOVE PERSONS AND PAID THE DEPOSIT AS REQUIRED BY R. 2:5-3(d).

EVAN F. NAPPEN
ATTORNEY AT LAW, P.C.

Dated: July 24, 2014

By: Louis P. Nappen, Esquire
For the Firm

2015 WL 6473282
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

In the Matter of the Appeal of Israel Albert ALMEIDA from the Denial of His Application for a Permit to Carry a Handgun.

Submitted June 23, 2015.
|
Decided Oct. 28, 2015.

On appeal from the Superior Court of New Jersey, Law Division, Sussex County, Docket No. W–31–13.

Attorneys and Law Firms

Evan F. Nappen, attorney for appellant Israel Albert Almeida (Louis P. Nappen, on the brief).

Francis A. Koch, Sussex County Prosecutor, attorney for respondent (Shaina Brenner, Assistant Prosecutor, of counsel and on the brief).

Before Judges ALVAREZ and SIMONELLI.

Opinion

***1** The opinion of the court was delivered by

SIMONELLI, J.A.D.

Appellant Israel Albert Almeida appeals from the June 18, 2014 Law Division order, which denied his application for a permit to carry a handgun pursuant to *N.J.S.A.* 2C:58–4(d). On appeal, Almedia contends the trial court erred in finding he had no justifiable need for carrying a handgun for self-defense, or alternatively, the justifiable need requirement violates the Second Amendment, *U.S. Const.* amend. II.

The justifiable need requirement of *N.J.S.A.* 2C:58–4(d) for issuance of a permit to carry a handgun for lawful defensive use in public places has been found constitutional by the federal court in *Drake v. Filco*, 724 *F.*3d 426 (3d Cir.2013), *cert. denied* in *Drake v. Jerejian*, —— *U.S.* ——, 134 *S.Ct.* 2134, 188 *L. Ed.*2d 1124 (2014), and by this court in *State v. Wheeler*, 433 *N.J.Super.* 560 (App.Div.2013). [1] Accordingly, we focus on whether Almeida established a justifiable need for a permit to carry a handgun. [2]

A person seeking to obtain a permit to carry a handgun must demonstrate that he "has a justifiable need to carry a handgun." *N.J.S.A.* 2C:58–4(d). To establish justifiable need, Almeida testified that he owns and operates a property management business. On June 1, 2013, he began managing properties located in Newark and Irvington, which he believed were high crime areas well-known for gang and narcotic activity. His duties included rent collection. He did not require that tenants pay their rent by check or money order through the mail because he found that manner of payment extremely difficult. Instead, he went door-to-door and collected payments in cash. As a result, he carried large sums of money, which he did not deposit in the bank throughout the day because it was inconvenient.

Almeida also testified that on June 11, 2013, a year before the hearing in this matter, [3] he tried to collect rent from a tenant he called "an admitted gang member" and "career criminal." According to Almeida, after advising the tenant that he could be evicted for non-payment, the tenant threatened his life stating, "I'll put a bullet in your head, ... as long as you live in New Jersey you're no longer safe. And if I don't get you, my boys will ... you will get yours eventually." Almeida took the threat seriously and filed a police report. The tenant was subsequently evicted, did not reside at any of the properties Almeida managed, and Almeida had no further contact with that person.

Almeida also testified that on other occasions, individuals approached him, asked what he was doing in the area, asked for money, and made "basic verbal threats" such as "I'm going to kick your ass." Almeida also mentioned a shooting incident that occurred at one of the properties fifteen minutes before he arrived and described what he believed was an attempted carjacking by individuals on bicycles who were not tenants and may not have known who he was.

***2** There were no other incidents similar to the June 2013 incident, and there were never any physical confrontations between Almeida and any tenants or individuals. Nevertheless, Almeida testified that a handgun was necessary for self-defense because he believed it was "just a matter of time" before he was attacked and robbed. Despite this fear, he had not hired security because it would be too costly, had not changed his methods of only accepting

Exhibit "9"

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cash payments, and had not made regular deposits of the cash he collected.

Citing *In re Preis*, 118 *N.J.* 564 (1990), the court concluded that Almeida failed to establish a justifiable need. The court found Almeida did not show a substantial threat of serious bodily harm or urgent need to carry a handgun for self-protection based on specific threats or previous attacks demonstrating a special danger to his life. The court also found that Almeida had other means by which he could collect rents to avoid any attacks. Accordingly, the court denied the application.

Findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence. *In re Application of Borinsky*, 363 *N.J.Super.* 10, 23 (App.Div.2003). However, we are not bound by the court's interpretation of the Constitution, *Wheeler, supra*, 433 *N.J.Super.* at 572, or the court's evaluation of whether an applicant met the "justifiable need to carry a handgun" standard of *N.J.S.A.* 2C:58–4, which we review de novo. *Borinsky, supra*, 363 *N.J.Super.* at 23–24.

In the case of a private citizen, such as Almeida, a permit to carry a handgun may "be issued only to those who can establish an urgent necessity for protection of self or othersas for example, in the case of one whose life is in danger as evidenced by serious threats or earlier attacks." *Preis, supra*, 118 *N.J.* at 566; *see also N.J.A.C.* 13:54–2.4(d)(1). "The requirement is of specific threats or previous attacks demonstrating a special danger to the applicant's life that cannot be avoided by other means." *Preis, supra*, 118 *N.J.* at 571 (citing *Reilly v. State*, 59 *N.J.* 559, 562 (1971); *In re Application of X*, 59 *N.J.* 533, 534–35 (1971)). The court must consider the justifiable need on a case-by-case basis. *Id.* at 576.

"Generalized fears for personal safety are inadequate, and a need to protect property alone does not suffice." *Id.* at 571 (citing *State v. Siccardi*, 59 *N.J.* 549, 557–58 (1971)). The perceived risk of robbery by businessmen who carry large sums of cash in high crime areas is also inadequate to establish justifiable need. *See, e.g., In re Application of X, supra*, 59 *N.J.* at 534; *Siccardi, supra*, 59 *N.J.* at 547, 558; *In re Pantano*, 429 *N.J.Super.* 478, 481 (App.Div.2013), *certif. dismissed as improvidently granted*, —— *N.J.* —— (2014). The applicant must show an objective need for the defensive use of a handgun to obtain a carry permit. *Wheeler, supra*, 433 *N.J.Super.* at 614.

***3** We are satisfied that Almeida failed to establish a justifiable need for issuance of a permit to carry a handgun. The evidence did not demonstrate an "urgent need" for protection or that his life was in danger as evidenced by serious threats. Almeida was never physically attacked, and except for one long-ago incident, there were no specific threats demonstrating a special danger to his life. Almeida has shown only a generalized fear for his personal safety, which is insufficient to establish justifiable need for issuance of a permit to carry a handgun for self-defense.

Affirmed.

All Citations

Not Reported in A.3d, 2015 WL 6473282

Footnotes

1 Almeida did not address *Drake* or *Wheeler* in his merits brief.

2 *N.J.S.A.* 2C:59–4(d) has two additional requirements. The applicant must establish that he (1) "is a person of good character who is not subject to any of the disabilities set forth in [*N.J.S.A.* 2C:58–3(c)]" and (2) "is thoroughly familiar with the safe handling and use of handguns." It was undisputed that Almeida established these two requirements.

3 The hearing was held on June 18, 2014.

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NEWARK POLICE — INCIDENT REPORT

FILL OUT COMPLETE REPORT WHEN LISTED IN CLASSIFICATION LIST AND REPORT GUIDE AS 802 (NO ASTERISK).
DO NOT FILL OUT SHADED PORTION WHEN LISTED 802* (WITH ASTERISK).

1. VICTIMS OR COMPLAINANTS NAME	2. TELEPHONE	17. STATUTE OF ORDINANCE	18. SECTOR	19. COMMAND	20. CENT COMPLT NO
[redacted]	[redacted]	2C:12-1B2	212	NORTH	C16000937

3. RESIDENT NUMBER (STREET) (FLOOR OR APT)	21. REPORTING OFFICER (NAME)	ID NO	(COMMD)
[redacted] NEWARK NJ	PO HERNANDEZ, GILBERT	9940	2ND

4. SEX	5.RACE/ETHNICITY	6. AGE	7. OCCUPATION	8. INJURY	22. INCIDENT	22A.
M	W H		[redacted]	☐ YES ☑ NO	AGG. ASSAULT WITH A DEADLY WEAPON	OCC ON PUB. HOUS. PROP? ☐ YES ☑ NO

9. SOBRIETY OF VICTIM	10. CAN VICT IDENT OFFENDER	23. LOCATION	
☑ SOBER ☐ HAD BEEN DRINKING ☐ INTOXICATED	UNKNOWN	[redacted] NEWARK NJ	GANG RELATED ☐ YES ☑ NO

11. PERSON REPORTING CRIME	12. TELEPHONE NO
ALMEIDA, ISRAEL ALBERT	[redacted]

13. RESIDENCE OF PERSON REPORTING CRIME
[redacted] NEWARK NJ

24. TIME OF OCCURRENCE (ON OR BET)

HOUR	DAY OF WEEK	MONTH	DAY	YEAR
11:00	Wed	01	06	2016
11:17	Wed	01	06	2016

25. WAS FORCE USED? ☑ YES ☐ NO ☐ NOT KNOWN

26. WAS A WEAPON USED? ☑ YES ☐ NO ☐ NOT KNOWN

14. MONTH DAY YEAR	15. TIME REP'T	16. OCCURRED ON VIEW	27. TYPE OF PREMISES OR PROPERTY ATTACKED
01/06/2016	11:17	☑ YES ☐ NO	Dwelling

28. HOW ATTACKED	29. MEANS OF ATTACK
Threatening with weapon	Firearm

30. OBJECT OF ATTACK (IF VEHICLE ANTI-THEFT DEVICE INSTALLED.)	31. MODUS OPERANDI
Unknown ☐ YES ☐ NO ☐ UNK	

32. VEHICLE INVOLVED IN CRIME ☐ STOLEN ☐ USED BY OFFENDER	YEAR	MAKE	MODEL	LIC NUMBER	STATE	COLOR	BODY TYPE	VEHICLE VIN NUMBERS

33. NAME OF SUSPECT (ALIAS) (RESIDENCE)
[redacted]

SEX	RACE / ETHNICITY	AGE	HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES	DESCRIBE CLOTHING WORN AND PECULIARITIES
M	B			200			BRAIDED HAIR/DREAD HAIR

EVENT #	CAMERA VISIBLE?
P16005272	☑ YES ☐ NO

34. ADDITIONAL INFORMATION (DO NOT REPEAT INFORMATION LISTED IN NUMBERED BLOCKS)

ON TODAY'S DATE, 1/06/16, THE UNDERSIGNED OFFICER ALONG WITH OFFICER P. TORRES (UNIT 213) AND OFFICER J. STEWART RESPONDED TO [redacted] NEWARK NJ ON A REPORT OF A SUSPICIOUS PERSON WITH A WEAPON.

UPON ARRIVING TO THE SCENE, OFFICERS MET WITH THE REPORTING PERSON, ISRAEL ALBERT ALMEIDA (PROPERTY MANAGER) WHO STATED THAT [redacted] WAS THREATENING WITH A FIREARM BY A MALE KNOWN TO...

34A. STRANGER TO STRANGER CRIME	34B. DOMESTIC VIOLENCE RELATED	34C. REPORT SOURCE	34D. VEHICLE INSURANCE COMPANY & POLICY NUMBER
Stranger	N	☑ DISPATCH ☐ PHONE ☐ WALK-IN ☐ OTHER	

35. ESTIMATED VALUE BY TYPE OF PROPERTY	A. CURRENCY	B. JEWELRY	C. FURS	D. CLOTHING	E. LOCAL AUTOS	F. MISCELLANEOUS	G. TOTAL

36. OTHER OFFICERS AT SCENE (NAME) RANK:	VEH NO	COMMAND	(I D NO)	37. OTHER REPORTS SUBMITTED
				☐ DP 1 152 PROPERTY
				☐ DP 1 152-1 AUTO
				☐ DP 1 225A STATEMENT
				☐ DP 1 800 ARREST
				☐ DP 1 795 CONT

38. PERSONS ARRESTED (NAME)	CENT. ARR. NO.	39. WITNESSES (NAME AND RESIDENCE) (TELEPHONE NO)

40. TELETYPE ALARM NUMBER	41. NAME OR DETECTIVE NOTIFIED	42. SIGNATURE OF REPORTING OFFICER
	SGT SARA, HUSSEIN	PO HERNANDEZ, GILBERT 9940

43. STATUS OF OFFENSE	44. CLEARED BY ARREST OF (CHECK APPROPRIATE BOX OR BOXES)
☐ UNFOUNDED ☐ CLEARED BY ARREST ☑ NOT CLEARED ☐ EXCEPTIONAL CLEARANCE	☐ ADULT ☐ JUVENILE ☐ ADULT AND JUVENILE ☐ NARCOTIC OFFENDER

45. STATUS OF CASE	46. CLASS	47. RE CLASS	48. KEY PUNCHED BY	49. VERIFIED BY
☑ PENDING ACTIVE ☐ PENDING INACTIVE ☐ CLOSED				

50. SUPERVISOR APPROVING & CLASSIFYING (DATE)	51. TIME APPROVED	52. INDEXED BY	53. NUMBER OF PAGES
6912 LT BRADY, WILLIAM 1/6/2016	13:33		

DPI 802 REV 6/94 75M

Exhibit "10"

NEWARK POLICE INCIDENT REPORT

C16000937 Event#: P16005272

1 OF 2

THE AREA AS [redacted] MR. [redacted] DECLINED TO PROVIDE OFFICERS DETAILS OF THE INCIDENT FOR FEAR OF RETALIATION, HOWEVER, DUE TO RECENT NARCOTIC ACTIVITY AND RECENT SHOOTINGS IN THE AREA, AN INCIDENT REPORT WAS FILED.

MR. ALMEIDA INDICATED THAT WHILE MR. [redacted] WAS IN FRONT OF THE PROPERTY, HE ADVISED THE MALES IN FRONT OF LOCATION TO CLEAR THE ENTRANCE/WALKWAY DUE TO NUMEROUS COMPLAINTS OF INDIVIDUALS LOITERING IN FRONT OF THE LOCATION. SOON AFTER, A BLACK MALE KNOWN AS [redacted] APPROACHED MR. [redacted] WITH A FIREARM AND STATED TO HIM "I'LL BE BACK FOR YOU AND HIM"; HIM SPECIFYING THE PROPERTY MANAGER.

[redacted] AND THE OTHER UNKNOWN MALES LEFT THE AREA UPON OUR ARRIVAL. CANVASS OF THE AREA PROVIDED NEGATIVE RESULTS.

MAJOR CRIMES, SGT. H. SARA WAS NOTIFIED. A VICTIM NOTIFICATION FORM WAS COMPLETED AND SUBMITTED.

NEWARK POLICE — INCIDENT REPORT

2

FILL OUT COMPLETE REPORT WHEN LISTED IN CLASSIFICATION LIST AND REPORT GUIDE AS 802 (NO ASTERISK).
DO NOT FILL OUT SHADED PORTION WHEN LISTED 802* (WITH ASTERISK).

1. VICTIMS OR COMPLAINANTS NAME	2. TELEPHONE	17. STATUTE OF ORDINANCE	18. SECTOR	19. COMMAND	20. CENT COMPLT NO
[redacted]		2C:12-1B	212	NORTH	C16021510

3. RESIDENT NUMBER (STREET) (FLOOR OR APT)	21. REPORTING OFFICER (NAME)	ID NO	(COMMD)
[redacted] NEWARK NJ 07107	PO GONZALEZ, EDGARDO	7695	NORTH

4. SEX	5.RACE/ETHNICITY	6. AGE	7. OCCUPATION	8. INJURY	22. INCIDENT	22A.
M	W H		OWNER	☐ YES ☑ NO	AGGRAVATED ASSAULT	OCC ON PUB. HOUS. PROP? ☐ YES ☑ NO

9. SOBRIETY OF VICTIM	10. CAN VICT IDENT OFFENDER	23. LOCATION	
☑ SOBER ☐ HAD BEEN DRINKING ☐ INTOX ICATED	NO	340 N 7TH ST, NEWARK NJ 07107	GANG RELATED ☑ YES ☐ NO

11. PERSON REPORTING CRIME	12. TELEPHONE NO
ALMEIDA, ALBERT	[redacted]

13. RESIDENCE OF PERSON REPORTING CRIME
[redacted] NEWARK, NJ 07104

24. TIME OF OCCURRENCE (ON OR BET)	HOUR	DAY OF WEEK	MONTH	DAY	YEAR
	09:00	Sat	04	30	2016
	09:00	Mon	05	02	2016

25. WAS FORCE USED?	26. WAS A WEAPON USED?
☑ YES ☐ NO ☐ NOT KNOWN	☑ YES ☐ NO ☐ NOT KNOWN

14. MONTH DAY YEAR	15. TIME REP'T	16. OCCURRED ON VIEW	27. TYPE OF PREMISES OR PROPERTY ATTACKED
05/03/2016	11:10	☐ YES ☑ NO	Commercial

28. HOW ATTACKED	29. MEANS OF ATTACK
Shooting	Firearm

30. OBJECT OF ATTACK (IF VEHICLE ANTI-THEFT DEVICE INSTALLED.)	31. MODUS OPERANDI
Unknown ☐ YES ☐ NO ☐ UNK	

32. VEHICLE INVOLVED IN CRIME ☐ STOLEN ☐ USED BY OFFENDER	YEAR	MAKE	MODEL	LIC NUMBER	STATE	COLOR	BODY TYPE	VEHICLE VIN NUMBERS

33. NAME OF SUSPECT (ALIAS) (RESIDENCE)
UNK.

SEX	RACE / ETHNICITY	AGE	HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES	DESCRIBE CLOTHING WORN AND PECULIARITIES
M	B U						DARK CLOTHING & SKI MASKS

EVENT #	CAMERA VISIBLE?
P16116124	☑ YES ☐ NO

34. ADDITIONAL INFORMATION (DO NOT REPEAT INFORMATION LISTED IN NUMBERED BLOCKS)

WHILE WORKING AS UNIT-212A AND USING MPU#227, THE BELOW LISTED OFFICER WAS DISPATCHED TO [redacted] A SHOOTING NO HIT CALL.

ONCE ON THE SCENE I WAS MET BY THE CALLER MR. ALBERT ALMEIDA WHO IS CONTRACTED TO MANAGE THE BUILDING BY THE OWNER. MR ALBERT ALMEIDA FURTHER STATES HE HAS HAD NUMEROUS PROBLEMS WITH THE DRUG DEALERS WHICH HANG OUT...

34A. STRANGER TO STRANGER CRIME	34B. DOMESTIC VIOLENCE RELATED	34C. REPORT SOURCE	34D. VEHICLE INSURANCE COMPANY & POLICY NUMBER
Stranger	N	☐ OTHER ☑ DISPATCH ☐ PHONE ☐ WALK-IN	

35. ESTIMATED VALUE BY TYPE OF PROPERTY	A. CURRENCY	B. JEWELRY	C. FURS	D. CLOTHING	E. LOCAL AUTOS	F. MISCELLANEOUS	G. TOTAL

36. OTHER OFFICERS AT SCENE (NAME)		VEH NO	COMMAND	(I D NO)
RANK: SGT SANCHEZ, ANGEL	8014	203	NORTH	8014
SGT BAKER, BARRY	7054	640	DETECTIVE BUREAU	7054
BROWN, RODERICK	7554	647	DETECTIVE BUREAU	7554

37. OTHER REPORTS SUBMITTED
☐ DP 1 152 PROPERTY
☐ DP 1 152-1 AUTO
☐ DP 1 225A STATEMENT
☐ DP 1 800 ARREST
☐ DP 1 795 CONT

38. PERSONS ARRESTED (NAME)	CENT. ARR. NO.	39. WITNESSES (NAME AND RESIDENCE) (TELEPHONE NO)
NONE		NONE

40. TELETYPE ALARM NUMBER	41. NAME OR DETECTIVE NOTIFIED	42. SIGNATURE OF REPORTING OFFICER
	DET PADILLA JR., FELIBERTO	PO GONZALEZ, EDGARDO 7695

43. STATUS OF OFFENSE	44. CLEARED BY ARREST OF (CHECK APPROPRIATE BOX OR BOXES)
☐ UNFOUNDED ☐ CLEARED BY ARREST ☐ NOT CLEARED ☐ EXCEPTIONAL CLEARANCE	☐ ADULT ☐ JUVENILE ☐ ADULT AND JUVENILE ☐ NARCOTIC OFFENDER

45. STATUS OF CASE	46. CLASS	47. RE CLASS	48. KEY PUNCHED BY	49. VERIFIED BY
☐ PENDING ACTIVE ☐ PENDING INACTIVE ☐ CLOSED				

50. SUPERVISOR APPROVING & CLASSIFYING (DATE)	51. TIME APPROVED	52. INDEXED BY	53. NUMBER OF PAGES
7054 SGT BAKER, BARRY 5/3/2016	15:09		

DPI 802 REV 6/94 75M

NEWARK POLICE — INCIDENT REPORT

2 OF 2

FILL OUT COMPLETE REPORT WHEN LISTED IN CLASSIFICATION LIST AND REPORT GUIDE AS 802 (NO ASTERISK).
DO NOT FILL OUT SHADED PORTION WHEN LISTED 802* (WITH ASTERISK).

1. VICTIMS OR COMPLAINANTS NAME	2. TELEPHONE	17. STATUTE OF ORDINANCE	18. SECTOR	19. COMMAND	20. CENT COMPLT NO
ALMEIDA, ISREAL	[redacted]	2C:15-1	212	NORTH	C15062262

3. RESIDENT NUMBER (STREET) (FLOOR OR APT)	21. REPORTING OFFICER (NAME)	ID NO	(COMMD)
[redacted] NEWTON NJ 07860	PO BATES, QUEEN	9804	NORTH

4. SEX	5. RACE/ETHNICITY	6. AGE	7. OCCUPATION	8. INJURY	22. INCIDENT	22A.
M	WH H	41	CONSTRUCT	☐ YES ☑ NO	ROBBERY	OCC ON PUB. HOUS. PROP? ☐ YES ☑ NO

9. SOBRIETY OF VICTIM	10. CAN VICT IDENT OFFENDER	23. LOCATION	
☑ SOBER ☐ HAD BEEN DRINKING ☐ INTOX ICATED	YES	[redacted] NEWARK NJ	GANG RELATED ☐ YES ☑ NO

11. PERSON REPORTING CRIME	12. TELEPHONE NO
ALMEIDA, ISREAL	[redacted]

13. RESIDENCE OF PERSON REPORTING CRIME
[redacted] NEWTON NJ 07860

24. TIME OF OCCURRENCE (ON OR BET)

HOUR	DAY OF WEEK	MONTH	DAY	YEAR
16:00	Fri	12	18	2015
17:00	Fri	12	18	2015

25. WAS FORCE USED? ☑ YES ☐ NO ☐ NOT KNOWN

26. WAS A WEAPON USED? ☐ YES ☑ NO ☐ NOT KNOWN

14. MONTH DAY YEAR	15. TIME REP'T	16. OCCURRED ON VIEW	27. TYPE OF PREMISES OR PROPERTY ATTACKED
12/21/2015	11:00	☑ YES ☐ NO	Street

28. HOW ATTACKED	29. MEANS OF ATTACK
Threatening - no weapon	No Physical Force

30. OBJECT OF ATTACK (IF VEHICLE ANTI-THEFT DEVICE INSTALLED.)	31. MODUS OPERANDI
Personal Gain ☐ YES ☐ NO ☐ UNK	SEE NARRATIVE

32. VEHICLE INVOLVED IN CRIME	YEAR	MAKE	MODEL	LIC NUMBER	STATE	COLOR	BODY TYPE	VEHICLE VIN NUMBERS
☐ STOLEN ☐ USED BY OFFENDER								

33. NAME OF SUSPECT (ALIAS) (RESIDENCE)

UNKNOWN

SEX	RACE / ETHNICITY	AGE	HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES	DESCRIBE CLOTHING WORN AND PECULIARITIES
M	B						

EVENT #	CAMERA VISIBLE?
P15398659	☐ YES ☐ NO

34. ADDITIONAL INFORMATION (DO NOT REPEAT INFORMATION LISTED IN NUMBERED BLOCKS)

THE ABOVE VICTIM WALKED INTO [redacted] STATING HE EXITED THE ABOVE LOCATION OF [redacted] STREET WHEN AN UNKNOWN MALE THAT HANGS OUT ALL THE TIME IN THAT AREA APPROACHED HIM AND STATED "GIVE ME YOUR SHIT" WHILE HOLDING A SCREW DRIVER. AT THIS TIME THE VICTIM PUSHED THE SUSPECT AND THE SUSPECT FLED THE SCENE ON 4TH AVE.
THE VICTIM STATES THAT THE SUSPECT SELLS NARCOTICS IN THAT AREA AND DOESN'T LIKE THE FACT THAT THE...

34A. STRANGER TO STRANGER CRIME	34B. DOMESTIC VIOLENCE RELATED N	34C. REPORT SOURCE ☐ OTHER ☐ DISPATCH ☐ PHONE ☑ WALK-IN	34D. VEHICLE INSURANCE COMPANY & POLICY NUMBER

35. ESTIMATED VALUE BY TYPE OF PROPERTY	A. CURRENCY	B. JEWELRY	C. FURS	D. CLOTHING	E. LOCAL AUTOS	F. MISCELLANEOUS	G. TOTAL

36. OTHER OFFICERS AT SCENE (NAME) RANK	VEH NO	COMMAND	(I.D NO)	37. OTHER REPORTS SUBMITTED
				☐ DP 1 152 PROPERTY ☐ DP 1 152-1 AUTO ☐ DP 1 225A STATEMENT ☐ DP 1 800 ARREST ☐ DP 1 795 CONT

38. PERSONS ARRESTED (NAME)	CENT. ARR. NO.	39. WITNESSES (NAME AND RESIDENCE) (TELEPHONE NO)

40. TELETYPE ALARM NUMBER	41. NAME OR DETECTIVE NOTIFIED	42. SIGNATURE OF REPORTING OFFICER
	DET RODRIGUEZ, GERARDO	PO BATES, QUEEN 9804

43. STATUS OF OFFENSE				44. CLEARED BY ARREST OF (CHECK APPROPRIATE BOX OR BOXES)			
☐ UNFOUNDED	☐ CLEARED BY ARREST	☑ NOT CLEARED	☐ EXCEPTIONAL CLEARANCE	☐ ADULT	☐ JUVENILE	☐ ADULT AND JUVENILE	☐ NARCOTIC OFFENDER

45. STATUS OF CASE			46. CLASS	47. RE CLASS	48. KEY PUNCHED BY	49. VERIFIED BY
☑ PENDING ACTIVE	☐ PENDING INACTIVE	☐ CLOSED				

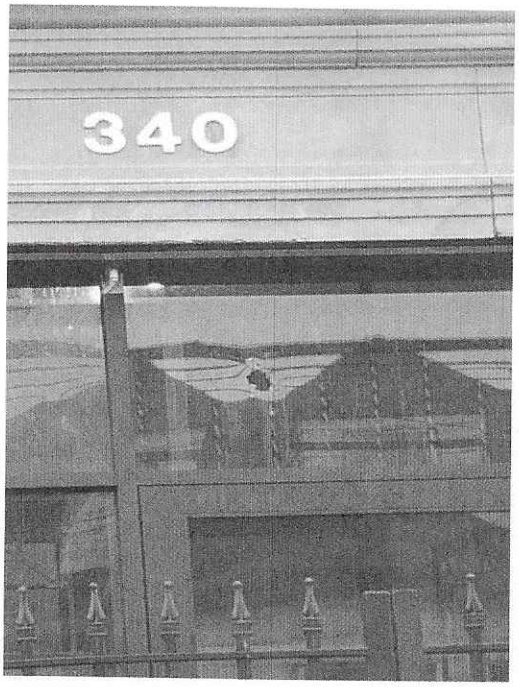
50. SUPERVISOR APPROVING & CLASSIFYING (DATE)	51. TIME APPROVED	52. INDEXED BY	53. NUMBER OF PAGES
7445 SGT FERREIRA, ILIDIO 12/25/2015	06:11		

DPI 802 REV 6/94 75M

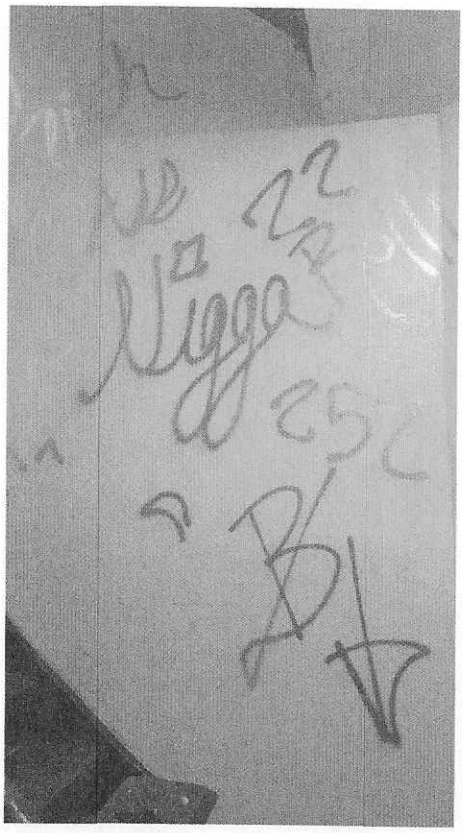
BUILDING THE VICTIM IS FIXING UP IS PREVENTING THE SUSPECT FROM HIDING NARCOTICS WHERE HE USUALLY HIDES IT (ALLEY WAY).
VICTIM STATED HE WAS TOLD TO WATCH HIS BACK.
SPOKE TO DET. RODRIGUEZ #9485 AT ROBBERY SQUAD.

These pictures are of the recent crime scene where I was tagged for harm by the gangs:

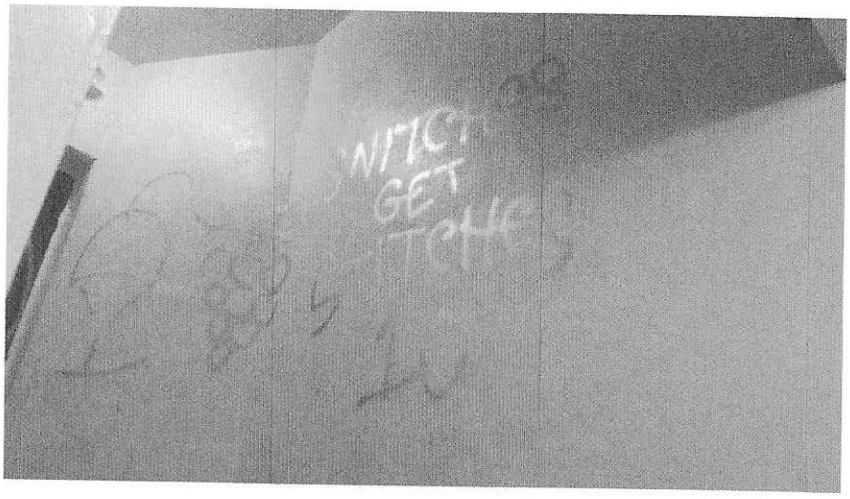
MULTIPLE BULLET HOLES



BLOODS GANG SYMBOLS AND ROLLING WITH 2 40'S REFERENCE (.40 CALIBER), B DOWN ARROW IS FOR "BEAT DOWN"



SNITCHES GET STICHES AND GRAPES FOR "CRIPS" SYMBOL, AND FOR ME CALLING THE COPS



Second location where my name is referenced. I am known as Al to them

Additional reference to my name directly:

Town of Newton

Council-Manager Plan Since 1956

POLICE DEPARTMENT
MICHAEL S. RICHARDS, *Chief*
TELEPHONE: 973-383-2525

39 TRINITY STREET
NEWTON, NEW JERSEY
07860

May 7, 2015

Mr. Michael R. Tumminelli
[redacted]
Newton, New Jersey 07860

Dear Mr. Tumminelli,

This letter is to inform you that, after meeting with you on April 23, 2015and careful review of the all the documentation you've provided, your application for a permit to carry a handgun has been denied in accordance with the criteria set forth in New Jersey Statute, specifically for failing to factually demonstrate a justifiable need to carry a handgun as described in N.J.A.C. 13:54-2.4 (d).

Pursuant to N.J.A.C. 13:54-2.8, you may request a hearing in the Superior Court of Sussex County. Such request must be made in writing within 30 days of denial of the application and copies of the request shall be served on the Superintendent of the NJ State Police, the Sussex County Prosecutor and the Chief of Police for the Town of Newton.

If you have any further questions, please contact me at Newton Police Headquarters.

Sincerely,

Michael S. Richards
Chief of Police

cc: Sgt. Steve Benson – Newton Police Department

Exhibit "11"

DEPARTMENT OF THE ARMY
US ARMY RESEARCH, DEVELOPMENT AND ENGINEERING COMMAND
ARMAMENT RESEARCH, DEVELOPMENT AND ENGINEERING CENTER
PICATINNY ARSENAL, NEW JERSEY 07806-5000

30 April 2015

Chief Michael S. Richards
Chief of Police - Newton
39 Trinity Street
Newton, NJ 07860

Dear Chief Richards:

This memorandum is to acknowledge that Mr. Michael R. Tumminelli is an employee of the Armament Research, Development and Engineering Center under the United States Army and the Department of Defense. Mr. Tumminelli's sensitive position and his daily duties require him to work with multiple U.S. Law Enforcement and U.S. Special Operations Task Forces. Mr. Tumminelli will continue through the foreseeable future as a dedicated member to meet the U.S. National Security Mission.

Sincerely,

John F. Hedderich, III
Director, ARDEC

Malcolm Baldrige National Quality Award 2007 Award Recipient

Exhibit "12"

Printed on Recycled Paper

JS 44 (Rev. 1/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Israel Albert Almeida; Michael R. Tumminelli

DEFENDANTS
Hon. Peter Conforti; Shaina Brenner; Chief Eric Danielson; Hon. Carmen Alvarez; Hon. Marie Simonelli; Chief Michael Richards; AG Robert Lougy; Sussex County; John Does 1-50

(b) County of Residence of First Listed Plaintiff Sussex
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Sussex
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, Email and Telephone Number)*
Law Offices of J. Scott Watson, P.C.;
24 Regency Plaza; Glen Mills, PA 19342
(610) 358-9600

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 USC 1983
Brief description of cause:
Civil Rights Violation regarding Permit to Carry under 42 USC 1983

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P. **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*: JUDGE _____ DOCKET NUMBER _____

DATE
06/10/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____