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ISSUES TO DEVELOP AT TRIAL

April 2026 - Bruen Series

Below is a template motion that we hope will help you in your Bruen litigation in the wake of the Court of Appeals' recent decision in People v. Johnson (Nov. 2025), which rejected the defendant's challenge that the unconstitutional "proper cause" licensing requirement invalidated his CPW2 conviction.

*Our template distinguishes between what Johnson decided and what remains open for argument. Johnson rejected a severability argument that, frankly, had little chance of success — that the unconstitutionality of the proper cause requirement doomed the entire licensing scheme. What Johnson didn't decide — and what remains open for you to argue (taking into account that the legislature amended the licensing scheme post-Bruen) — is a far stronger "causal-connection" argument: the charge must be dismissed where the unconstitutional statutory provision is the **only** thing standing between your client and a complete defense to the charge. The central theme of the litigation we propose is that a person cannot be prosecuted for failing to submit to an unconstitutional law. Channel that argument in your litigation of this issue!*

This template is housed on a [one-drive link](#) and routinely updated. For now, it generally includes the following arguments:

- 1. The post-Bruen good-moral-character standard (eff. 9/1/22) is unconstitutional and taints the indictment since there are no other lawful bases for denying the license.*
- 2. Depriving non-residents of the right to bear arms violates the Second Amendment, the right to travel, and the Privileges and Immunities Clause. If your client had a license from another state, you should plead that in your affirmation.*
- 3. The age bar is unconstitutional.*
- 4. The prior-felon bar is unconstitutional (as applied to non-violent offenses).*
- 5. Requiring disclosure of social-media account names as a condition of securing a license is unconstitutional.*

If your client is facing a charge based on the nature of the weapon, such as an assault-weapon charge or a large-capacity-ammunition-feeding device charge, you need to consider other arguments that are not listed here.

Please be aware of these caveats and considerations in incorporating this template into your litigation:

- This template applies to cases governed by the post-*Bruen* licensing scheme. If the alleged weapon possession occurred before that date, you need to use a different template (and your argument is easier).
- If your client applied for a license and was denied, this is NOT your template.
- Modify the template based upon the unique facts of your case. For example, there is a reference to “semi-automatic” handguns in fn. 2 of the memorandum. Make sure to eliminate or modify that according to the facts of your case.
- Make sure to cite check and edit before filing. Blank spaces (“XXX” or “XXXX”) have been highlighted so you can insert your client’s name.
- **Many of the arguments below will not apply to your case. Only raise the arguments below that apply to your case. Some lines that may not apply to your client have been highlighted.**
- **Provide Notice to Attorney General (attached too). If you do not do that, you risk denial of the motion with prejudice.**

Please contact Matthew Bova (mbova@cfal.org) if you notice any errors/typos in the template or have any questions.¹

¹ DISCLAIMER: The information in these materials is intended to provide support to trial, appellate, and post-conviction counsel providing legal representation in New York. Use of the Center for Appellate Litigation’s website or these materials does not create an attorney-client relationship between the Center for Appellate Litigation and the user. These materials are not intended as legal advice and not guaranteed to be correct, complete, or current. Before taking and/or refraining from action, the user should verify any content through independent legal research. If you notice any errors, please contact mbova@cfal.org.

Supreme Court of the State of New York
XXXXXX County: Criminal Term Part XXXX

The People of the State of New York,

Respondent,

-against-

XXXX,

Defendant.

Ind. No. XXXX

**Notice of Motion to Dismiss
the Indictment**

PLEASE TAKE NOTICE that, upon the affirmation of counsel, and the prior proceedings in this case, the undersigned will move this Supreme Court, Criminal Term, Part __, on the __ day of __, 2026, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order dismissing the indictment under the Second and Fourteenth Amendments and the Privileges and Immunities Clause of the United States Constitutions as well as the due-process and equal-protection clauses of the United States and New York Constitutions. C.P.L. § 210.20(1)(a), (h), and § 210.25(3).

Dated: New York, New York
XXXXXXXX

XXXXXX

TO: XXXX, XXXXX County District Atty.
Attn: ADA _____

Clerk of the Supreme Court, XXXX County
Criminal Term

Supreme Court of the State of New York
XXXXXX County: Criminal Term Part XXXX

The People of the State of New York,

Respondent,

-against-

XXXXXX,

Defendant.

Ind. No. XXXXX

Affirmation of Counsel

XXXXXX, an attorney duly admitted to practice law in New York State, affirms the following to be true under penalty of perjury:

1. I represent XXXXX in the above-captioned case. I am familiar with the facts of this case and the prior proceedings held in it.
2. This affirmation is made in support of XXXX's Motion to Dismiss.
3. Unless otherwise indicated, all allegations of fact are based upon my inspection of the record in this case or initial investigations of the facts and circumstances surrounding the incident, and are made on information and belief.
4. [Briefly summarize the indictment and factual allegations].
5. The prosecution has alleged that, at the time of XXXX's

arrest, XXXX had not applied for, and did not have, a firearms license under New York Law.

6. New York licensing laws prohibit New Yorkers from acquiring a license to publicly carry a firearm—and thus a defense to a weapon-possession charge—unless they establish “good moral character,” defined as the “essential character, temperament and judgment necessary to be entrusted with [safe use of] a weapon.” Penal Law § 400.00(1)(b); L. 2022, ch. 371, § 1, 26 (eff. September 1, 2022); Penal Law § 265.20(a)(3).

7. As shown in the attached memorandum of law, that good-moral-character licensing standard violates the Second Amendment.

8. The remaining constitutional licensing provisions would not have prevented XXX from obtaining a license and thus the indictment is traceable to the good-moral-character provision. See Penal Law § 400.00(1) (listing the license-eligibility requirements).

9. XXXXX was over 21 and was a United States citizen. Penal Law § 400.00(1)(a),(f).

10. [CLIENT] had never been convicted anywhere of a misdemeanor or felony (§ 400.00(1)(c)), was not a fugitive from justice (§ 400.00(1)((d)), was not an unlawful user of or addicted to any controlled

substance (§ 400.00(1)(e)), had never been dishonorably discharged from the Armed forces (§ 400.00(1)(g)), had not ever “stated whether he . . . has ever suffered from any mental illness” (§ 400.00(1)(h)), had never been involuntarily committed or civilly confined in a secure treatment facility (§ 400.00(1)(j)), had never had his gun license revoked nor was under a suspension or ineligibility order issued under the CPL or the Family Court Act (§ 400.00(1)(k)), and had never had a guardian appointed (§ 400.00(1)(m)).

11. Accordingly, the indictment for unlicensed weapon possession is directly traceable to the unconstitutional good-moral-character standard.

12. That standard tainted the indictment since it is causally connected to the defendant’s lack of license and thus to the lack of a defense to these weapon-possession charges. Penal Law § 265.20(a)(3).

13. [ONLY ADD IF APPICABLE]. XXXX is indigent and could not, since at least **X date**, afford the \$340 fee that New York City charges to secure a license. **NYC Code § 10-131..**

14. [ONLY ADD IF APPICABLE]. **XXXX had social media accounts on X and Y and used anonymous nicknames on those sites when**

posting information, including political and social commentary.

15. As the attached Memorandum of Law sets forth, the charges contained in the indictment accusing XXX of criminal possession of a weapon violate the Second and Fourteenth Amendments on their face and as applied to XXX, and [if applicable] violate equal protection, due process and the Privileges and Immunities Clause of Article IV of the U.S. Constitution.

16. Accordingly, as the statutes “defining the offense[s] charged” are unconstitutional (C.P.L. §§ 210.20(1)(a),(h), 210.25(3)), the indictment must be dismissed, or, in the alternative, a hearing ordered.

17. As this motion implicates the constitutionality of, among other provisions, Penal Law § 400.00(1)(b) (to obtain a license, one must show “good moral character”), incorporated by Penal Law § 265.20(a)(3) (a license confers immunity from weapon-possession prosecution under Article 265), a copy of this motion with notice of constitutional challenge has been served upon the Attorney General. *See* Ex. A; Under C.P.L.R § 1012(b) and Executive Law § 71,

DATED: New York, New York
XXXXXX

XXXXXXXXXX

Supreme Court of the State of New York
XXXXXX County: Criminal Term Part XXXX

The People of the State of New York,

Respondent,

-against-

XXXX,

Defendant.

Ind. No. XXXXX

MEMORANDUM OF LAW

The State lacks the constitutional authority to punish XXXX for unlicensed weapon possession where the licensing standards are themselves unconstitutional. *See NYSRPA v. Bruen*, 597 U.S. 1 (2022); *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969). Accordingly, this Court should dismiss the weapon-possession charges because there is a “jurisdictional or legal impediment to conviction” for the charged offenses and “[t]he statute[s] defining th[ose] offense[s]” are “unconstitutional or otherwise invalid.” C.P.L. § 210.20(h), 210.25(3).

I. Core Principles

The Second Amendment guarantees the right to “keep and bear Arms.” U.S. Const. Amend. II. This “fundamental right” is “necessary to our system of ordered liberty.” *United States v. Rahimi*, 602 U.S. 680,

690 (2024) (quoting *McDonald v. Chicago*, 561 U.S. 742, 778 (2010)). “Derived from English practice and codified in the Second Amendment, the right secures for Americans a means of self-defense.” *Id.* (citing *Bruen*, 597 U.S. at 17). “As a leading and early proponent of emancipation observed, ‘Disarm a community and you rob them of the means of defending life. Take away their weapons of defense and you take away the inalienable right of defending liberty.’” *Id.* (citing *McDonald v. City of Chicago*, 561 U.S. 742, 771-76 (2010)) and quoting Cong. Globe, 40th Cong., 2d Sess., 1967 (1868) (statement of Rep. Stevens)). “‘One of the ordinary modes, by which tyrants accomplish their purposes without resistance, is, by disarming the people, and making it an offence to keep arms, and by substituting a regular army in the stead of a resort to the militia.’” *District of Columbia v. Heller*, 554 U.S. 570, 608-09 (2008) (quoting Joseph Story, *A Familiar Exposition of the Constitution of the United States* § 450 (reprinted 1986)).

For decades, American courts applied a means-end scrutiny to Second Amendment claims, considering whether certain firearm regulations satisfied “intermediate scrutiny,” that is, whether they were narrowly tailored to advance a public-safety interest. *E.g.*, *People v.*

Hughes, 22 N.Y.3d 44, 51 (2013). Under that approach, the government almost always prevailed—the Second Amendment right had no real value. *See Duncan v. Bonta*, 19 F.4th 1087, 1165, 1167 n.8 (9th Cir. 2021) (VanDyke, J., dissenting) (noting the Ninth Circuit's “super-pliable test” and the government’s “undefeated, 50 - 0 record against the Second Amendment”); *see also Bruen*, 597 U.S. at 26 (“[F]ederal courts” reviewing “firearm regulations under the banner of ‘intermediate scrutiny’ often defer[red] to the determinations of legislatures.”).

In 2022, *Bruen* rejected “means-end” scrutiny and instead held that a firearm regulation is only constitutional if the State can establish that the regulation is “consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 34. The State bears the burden of establishing an analogous regulatory tradition firmly rooted in our nation’s legal framework at the time of the Second Amendment’s ratification in 1791. *Id.* at 37, 46.

Bruen categorically invalidated, as lacking an historical analogue, New York’s former statutory requirement that, to obtain the license necessary to gain immunity, the individual had to prove “proper cause” to keep and bear arms in public. Former Penal Law § 400.00(2)(f). In so

holding, *Bruen* reiterated that the “constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” *Bruen*, 597 U.S. at 70 (quoting *McDonald*, 561 U.S. at 780 (plurality opinion)); *McDonald*, 561 U.S. at 790 (“[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table. . . . The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon”) (quoting *Heller*, 554 U.S. at 636).²

Bruen did not hold that States lack the power to require licensure. Nor did *Bruen* hold that New York’s “*entire* licensing scheme” is unconstitutional because the proper-cause provision (or other provisions) is not “severable” from the licensing statute’s remainder. *See People v.*

² The right applies to semi-automatic handguns as much as muskets and rifles. The fact that this case involves a semi-automatic does not change the analysis. *Heller*, 554 U.S. at 581 (“Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.”) (internal citations omitted).

Johnson, __ N.Y.3d __, 2025 WL 3259873, *6 (Nov. 24, 2025) (addressing that severability argument and that argument alone). Defendant presses neither of those broad claims here.

Instead, *Bruen* held that discrete licensing provisions that are not firmly rooted in an American tradition of firearm regulation violate the Second Amendment. *Bruen*, 597 U.S. at 34, 46; *Wilson v. Hawaii*, 145 S.Ct. 18, 22 (2024) (Gorsuch, J., respecting the denial of certiorari) (“[T]he [Hawaii] court simply asserted, ‘States retain the authority to require that individuals have a license before carrying firearms in public.’ That much is surely true. But it’s just as true that state licensing regimes can sometimes be so restrictive that they violate the Second Amendment. And the court never analyzed whether Hawaii’s law crossed that line in this case.”) (internal quotation marks omitted).

Where the State conditions access to a defense to a criminal charge on an unconstitutional requirement, such as an unconstitutional licensing standard, the charge itself is unconstitutional. *Shuttlesworth*, 394 U.S. at 151 (where the applicable licensing statute is unconstitutional, a conviction for unlicensed conduct is void; “a person faced with such an unconstitutional licensing law may ignore it and

engage with impunity in the exercise of free expression for which the law purports to require a license”); *People v. Sovey*, 77 Misc.3d 518, 522 (N.Y. Sup. Ct. 2022) (defendant “should not be prosecuted if he is able to demonstrate, as the defense alleges, he would have met the remaining constitutional standards for gun possession.”); *Magnus v. United States*, 11 A.3d 237, 242-43 (D.C. 2011) (government cannot prosecute for unlicensed weapon possession under an unconstitutional licensing restriction unless the “defendant was disqualified from exercising his Second Amendment rights”).

Here, under Penal Law § 265.20(a)(3), a license is an absolute defense to an Article 265 weapons-possession charge. The criminal-possession statute here is thus just like a statute declaring that the lack of a license is an element of the offense itself (e.g., “A defendant is guilty of second degree weapon possession if the defendant knowingly possesses a loaded firearm without first demonstrating good moral character to a licensing agent”). If the licensing requirements are unconstitutional, the unlicensed-possession charge is too. *Johnson, above*, at *5 (“[Our] laws prohibit only *unlicensed* possession of handguns. And here, the only basis for [the] conviction was that [defendant] possessed a gun without a

license.”).

Not all defendants charged with unlicensed weapon-possession can secure relief because licensing standards are unconstitutional. A defendant is not harmed by unconstitutional licensing requirements—and may be prosecuted—if the licensing statute contains other *lawful* bases for criminalization that justified disarming the defendant. *See United States v. Miselis*, 972 F.3d 518, 547 (4th Cir. 2020) (conviction upheld because record “establishes conclusively that the defendants’ [] conduct falls under the statute’s surviving purposes”). A 14-year-old defendant, for example, would not be harmed by an unconstitutional proper-cause standard since their age provided a lawful basis for prosecution independent of the proper-cause requirement.

II. Penal Law § 400.00(1)(b)’s Good-Moral-Character Requirement Violates the Second Amendment and Taints the Indictment.

Under *Bruen*, the good-moral-character licensing standard (Penal Law § 400.00(1)(b)) is unconstitutional. The State cannot establish a founding-era tradition of blocking the fundamental right because, in a government official’s subjective opinion, the applicant lacks the “essential character, temperament and judgment necessary to be

entrusted with [safe use of] a weapon.” Penal Law § 400.00(1)(b). Like the “proper cause” standard struck down in *Bruen* (Former Penal Law § 400.00(2)(f)), an arbitrary requirement that a New Yorker show he has the “essential character, temperament and judgment necessary” to safely exercise a constitutional right vests virtually unfettered disarmament power in the government. *Bruen*, 597 U.S. at 39 n.9 (distinguishing constitutional licensing standards that contain “narrow, objective, and definite standards’ guiding licensing officials” (quoting *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969)) from those “requiring the ‘appraisal of facts, the exercise of judgment, and the formation of an opinion’ (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940))—features that typify proper-cause standards like New York’s.”).

No founding-era statutes, at either the state or federal level, embraced such an unfettered and subjective power to disarm people who lack “moral character.” See *Range v. Attorney General*, 124 F.4th 218, 228 (3d Cir. 2024) (rejecting a “devolv[ing] authority to legislators to decide whom to exclude from ‘the people’” by exercising “unreviewable power to manipulate the Second Amendment by choosing a label”) (int. quotation marks omitted). As *United States v. Rahimi* held, it is unconstitutional

to disarm those whom the government deems “not responsible,” which is precisely what the “good moral character” standard purports to do. 602 U.S. 680, 701-02 (2024); Penal Law § 400.00(1)(b) (applicant lacks the “essential character, temperament and judgment necessary to be entrusted with [safe use of] a weapon”).

The historical record confirms the good-moral-character provision’s unconstitutionality. Discretionary “[l]icensing schemes were a post-Civil War phenomenon” and thus post-dated the Fourteenth Amendment’s ratification in 1868. *See Antonyuk v. James*, 120 F.4th 941, 992 (2d Cir. 2024) (“many licensing schemes originated in the cities of the post-Civil War period”); *id.* at 993 (“[L]icensing regimes . . . were not enacted until after the Civil War.”); *id.* at 989 n.40 (“Licensing schemes were a post-Civil War phenomenon.”); *id.* at 988 n.37 (citing Patrick J. Charles, *The Faces of the Second Amendment Outside the Home, Take Two: How We Got Here and Why It Matters*, 64 Clev. St. L. Rev. 373, 419 n.245 (2016) (cataloguing licensing restrictions that emerged during the Reconstruction era and beyond)). As there is no founding-era tradition of disarming Americans based on a bureaucrat’s arbitrary assessment of

their “character, temperament, and judgment,” the moral-character provision violates the Second Amendment. *Bruen*, 597 U.S. at 34, 37, 46.

This Court should reject the Second Circuit’s decision in *Antonyuk*, which upheld the good-moral-character standard. As *Antonyuk* acknowledged, there is no founding era tradition of discretionary-licensing standards, such as a “spongy” good-moral-character standard that is “susceptible to abuse.” 120 F.4th at 986. Nevertheless, *Antonyuk* approved New York’s good-moral-character provision by relying upon post-Civil-War licensing provisions (largely from the 1880’s and beyond) that gave local officials discretion to determine whether a license was appropriate. *Id.* at 987-88. From that premise, the Second Circuit reasoned that the Fourteenth Amendment, which incorporated the Second Amendment, absorbed this discretionary-licensing tradition when it was ratified in 1868.

Antonyuk—and the First Department decisions that have, with zero analysis, adopted *Antonyuk* in “alternative holdings”—got it wrong. *See People v. Rosavong*, ___ A.D.3d ___, 2026 WL 88648, *1 (Jan. 13, 2026); *People v. Martinez*, 238 A.D.3d 423, 424 (1st Dept. 2025).³

³ An “alternative holding” is “[un]necessary to the [ultimate] decision” and is

Contrary to *Antonyuk*'s theory, it's the tradition in place in 1791, not 1868, that controls. See *Bruen*, 597 U.S. at 34, 37, 46; *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 482 (2020) ("a tradition [that] arose in the second half of the 19th century . . . cannot by itself establish an early American tradition."). While there may be a "scholarly debate" on whether 1791 or 1868 is the controlling date in the Fourteenth Amendment context, there has never been a real debate about that issue in the only place it matters: the United States Supreme Court. *Bruen*, 597 U.S. at 37 ("[W]e have made clear that individual rights enumerated in the Bill of Rights and made applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government."); see also, e.g., *Virginia v. Moore*, 553 U.S. 164, 168 (2008) ("We look to the statutes and common law of the founding era to determine the norms that the Fourth Amendment was meant to preserve."). *Antonyuk*'s contrary theory would result in an arbitrary patchwork of constitutional law that defines the *same* Amendments

thus non-binding dictum. *People v. Palumbo*, 79 A.D.2d 518, 518 (1st Dept. 1980). To the extent this Court disagrees, [CLIENT] raises, for appellate-preservation purposes, the contention that *Rosavong* was wrongly decided and should be overruled.

differently based on whether the state or the federal government is acting.

In any event, there was no well-established tradition of discretionary licensing in 1868. *Antonyuk* itself recognized that discretionary-licensing standards emerged *after* 1868. 120 F.4th at 987-94 (discussing Reconstruction-era statutes from the 1870’s and beyond). A new statutory approach that was the “result of changes in [post-Civil-War] American society in the [19th] century, including urbanization” and the “greater concern” that “city people” purportedly have “about interpersonal violence” cannot retroactively modify the Second or Fourteenth Amendment’s scope. *Id.* at 992. The “post-Civil War world” may have been “transformed by rapid urbanization.” *Id.* But such “urbanization” cannot retroactively transform the meaning of the Second or Fourteenth Amendment.

III. As XXX’s path to immunity from prosecution required him to satisfy an unconstitutional good-moral-character standard, the weapon-possession charges are unconstitutional.

A. The State cannot prosecute XXX for failing to submit to an unconstitutional good-moral-character standard.

As the unconstitutional good-moral-character requirement was

XXX's path to immunity from criminal prosecution (Penal Law § 265.20(a)(3)) and no other lawful bases for disarmament exist, see *Aff. At* [REDACTED], the weapon charges are unconstitutional. Where the only statutory provision standing between the defendant and a complete defense from prosecution is an unconstitutional licensing provision, that unconstitutional provision infects the indictment. *See, e.g., Shuttlesworth*, 394 U.S. at 151 (where the applicable licensing statute is unconstitutional, a conviction for unlicensed conduct is void); *Sovey*, 77 Misc.3d at 522. Under those circumstances, the State is unlawfully prosecuting XXXX for failing to submit to an unconstitutional licensing standard. *See, e.g., id.* The State cannot, consistent with the Constitution, do that any more than it can prosecute someone for failing to submit to an unconstitutional marriage-license standard (e.g, a person must show “good cause to wed”) or an unconstitutional professional-licensing requirement (an attorney must join a “national political party” to secure a law license).

Again, to be clear, [CLIENT] is not raising a challenge to the “entire licensing scheme” as the defendant did in *Johnson. Johnson* at *6 (rejecting that broad challenge and that broad challenge alone). Instead,

[CLIENT's] challenge is narrower: the *good-moral-character* provision is facially unconstitutional and taints the indictment since no other lawful bases would have justified license denial.

Similarly, whether the good-moral-character provision is “severable” from the rest of the licensing provisions—including the prior-violent-felony bar—is irrelevant. *See Johnson* at *6 (addressing that argument since Appellant challenged the entire scheme). Although the good-moral-character provision *is* severable from the remainder of the statute, that provision is nevertheless unconstitutional and is causally connected to the absence of a license—and thus the lack of a defense to a criminal charge—here.

B. Standing is not a valid defense for the State.

“Standing” rules are no barrier to relief either. XXX has standing under state and federal standing law even though he did not apply for a license and seek to satisfy the unconstitutional good-moral-character standard.

The Court of Appeals’ state-law-standing holding in *Johnson* controls. There, the Court of Appeals held that defendant Johnson had standing under New York standing law to challenge the unconstitutional

licensing standards even though he did not seek a license first because Johnson was “directly affected by his criminal prosecution and conviction” and “therefore has standing to challenge the licensing scheme even though he did not apply for a firearm license.” *Johnson*, 2025 WL 3259873, at *1. A defendant, such as [CLIENT] here, who is facing criminal prosecution for unlicensed gun possession has “undoubtedly suffered a cognizable injury.” *Id.* at *5. The accused has standing under New York law because he has, and is currently enduring, an “injury in fact” that falls within the ‘zone of interests sought to be promoted or protected by the” licensing-defense statute relied upon. *Id.* at *4 (quoting *Stevens v. New York State Div. of Criminal Justice Servs.*, 40 N.Y.3d 505, 515 (2023)). Like the defendant in *Johnson*, [CLIENT] has an “actual legal stake” in avoiding prosecution and conviction and is enduring a ‘sufficiently concrete and particularized” harm. *Id.* at *5 (quoting *Stevens*, 40 N.Y.3d at 515).

[CLIENT] has standing under federal law too. As the Court of Appeals explained in *Johnson*, its standing analysis was “reinforce[d]” by Supreme Court cases—such as *Shuttlesworth* and *Staub*—holding that a “defendant need not comply with what he alleges is an unconstitutional

licensing scheme to challenge a criminal conviction.” *See id.* (citing *Staub*, 355 U.S. at 319 and *Shuttlesworth*, 394 U.S. at 151). *Staub* and *Shuttlesworth* are, *Johnson* held, materially “indistinguishable” from the Second Amendment context here. *Id.* The “Second Amendment,” the Court of Appeals reminded us, “is not a ‘second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” *Id.* (quoting *Bruen*, 597 U.S. at 70). Federal law thus confers standing upon those prosecuted under unconstitutional firearms-licensing standards even though they did not first comply with, and then challenge (through Article 78 or 42 U.S.C. § 1983), those standards. *See id.*; *see Staub*, 355 U.S. at 319 (“the failure to apply for a license under an ordinance which on its face violates the Constitution does not preclude review . . . of a judgment of conviction under such an ordinance”); *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940); *see also Smith v. Cahoon*, 283 U.S. 553, 562 (1931) (same; substantive-due-process context). That is true even if the accused’s “conduct could be proscribed by [some other] properly drawn statute.” *Freedman v. Maryland*, 380 U.S. 51, 56 (1965).⁴

⁴ *See also Coates v. City of Cincinnati*, 402 U.S. 611, 616 (1971) (“The details of the offense could no more serve to validate this ordinance than could the details of an offense charged under an ordinance suspending unconditionally the right of assembly and free speech.”); *City of Chicago v. Morales*, 527 U.S. 41, 71 (1999) (Breyer, J.,

XXX has standing under federal and state law. *Johnson, above*, at *5; *Staub*, 355 U.S. at 319.⁵

C. Even if an application were generally required to maintain standing, that theory fails here because **XXXX was categorically ineligible due to [X factor], thus rendering an application futile.**

[ONLY USE THIS ARGUMENT IF APPLICABLE]

XXXX was categorically ineligible for a license because, as shown further below (**Section XXX**), he was not even a part-time resident of New York. *Osterweil v. Bartlett*, 21 N.Y.3d 580, 582, 587 (2013); Penal Law § 400.00(3)(a) (license applications must be made in the “city or county” of

concurring) (“Chicago [can] apply some *other* law to the defendants in light of their conduct. But [it] may no more apply *this* law to the defendants, no matter how they behaved, than it could an (imaginary) statute that said, ‘It’s a crime to do wrong,’ even to the worst murderers.”) (parenthetically citing and quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) (“If on its face the challenged provision is repugnant to the due process clause, specification of the offense intended to be charge would not serve to validate it.”)).

⁵ As this is a challenge to the licensing ordinance and not the manner in which licensing agents have enforced it, [CLIENT] did not have to seek “Article 78” relief to preserve the right to challenge the constitutionality of the licensing standard (or standards) as a defense to a criminal charge. (quoting *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 179 (1968)); 2 Smolla & Nimmer on Freedom of Speech § 15:73 (April 2023 update) (“The contrast between disobedience of a court order and disobedience of a criminal law is vividly demonstrated by the contrasting result in” *Shuttlesworth and Walker*). Americans do not have to seek judicial review of unconstitutional statutes to preserve the argument that their prosecution under those statutes is unconstitutional. *Shuttlesworth*, 394 U.S. at 151. Instead, they are free to raise those defenses for the first time after they are charged with the offense. *Id.*

New York “where the applicant *resides*”) (emphasis added). As a licensing application for XXX, a non-resident, would have been futile, XXXX has standing to challenge the licensing laws even though he did not apply. *People v. Archibald*, 225 A.D.3d 548 (1st Dep’t 2024) (defendant has standing to challenge a “complete ban” on “large capacity ammunition feeding devices” even if he had not applied for a license); *United States v. Decastro*, 682 F.3d 160, 164 (2d Cir. 2012) (futility excuses the absence of an application) (citing *Bach v. Pataki*, 408 F.3d 75, 82-83 (2d Cir. 2005) (challenge to residency restriction was justiciable despite plaintiff’s failure to apply for a license because he was statutorily ineligible for a license and therefore submitting an application would have been a “futile gesture” (internal quotation marks omitted))).

IV. The possession-with-intent-to-use-unlawfully charge is also tainted by the unconstitutional licensing standard.

As New York law immunizes public possession with intent to use unlawfully if the person possesses a license, that charge is tainted by the good-moral-character standard. Penal Law § 265.20(a)(3), 400.00(17); *People v. Parker*, 52 N.Y.2d 935 (1981), *rev’g for reasons stated in dissent below*, 70 A.D.2d 387, 391-94 (1st Dep’t 1979). Accordingly, the intent-to-

use-unlawfully count must be dismissed for the same reasons (outlined above) that the simple possession count must be too.

In any event, there is no historical tradition of punishing possession simply because an individual who is exercising the right has a particular state of mind. *See Bruen*, 597 U.S. at 55-59. As *Bruen* confirmed, the American historical tradition justifies regulating the *manner* of possession—that is, the offensive display of the weapon in a manner likely to lead to the “breach of the peace”—not simply a state of mind. *Id.* (citing 1795 Mass. Acts and Laws ch. 2, at 436, in Laws of the Commonwealth of Massachusetts). “Then, even on such a showing, the surety laws did not *prohibit* public carry in locations frequented by the general community. Rather, an accused arms-bearer ‘could go on carrying without criminal penalty’ so long as he ‘post[ed] money that would be forfeited if he breached the peace or injured others—a requirement from which he was exempt if *he* needed self-defense.’” *Id.* at 56-57 (quoting *Wrenn v. District of Columbia*, 864 F.3d 650, 661 (D.C. Cir. 2017)).

As a matter of common sense, a thought—developing an intent to use a firearm unlawfully—does not determine whether a fundamental

right exists. An otherwise valid speech demonstration, for instance, does not lose First Amendment protection because participants happen to develop “a desire to riot” during the protest. *See Brandenburg v. Ohio*, 395 U.S. 444, 448-49 (1969) (striking down statute that did not distinguish between “advocacy” and “incitement to imminent lawless action”). The government cannot abrogate a longstanding historical tradition by switching the right to bear arms on and off simply because the individual happens to form a particular state of mind while exercising the right. Instead, the historical tradition demonstrates the State can punish the unlawful *attempted use* of a firearm—not simply an “intent to use” it unlawfully. *See id.* In other words, the government is not without recourse to prosecute offenses that cause, or come dangerously close to causing, harm. But, open menacing or other *conduct* demonstrating dangerous use—not mere thought—is required.

V. The indictment violates the Second Amendment as applied to XXX and [X’s] rights to equal protection and travel because New York law unconstitutionally bars non-residents from securing a license.

When charged here, XXX was a resident of XXX who had met all the requirements of his home state to publicly carry a gun. The indicted

charges violate the Second Amendment as applied to XXX because he was neither a New York resident nor part-time property owner and thus could not secure immunity through licensure.

Under Penal Law § 400.00(3)(a), license “[a]pplications shall be made . . . to the licensing officer in the city or county, as the case may be, where the applicant *resides*, is principally employed or has his principal place of business as merchant or storekeeper” (emphasis added). This statute requires, at a minimum, part-time residency in New York. See *Osterweil v. Bartlett*, 21 N.Y.3d 580, 582, 587 (2013) (applicant who “owns a part-time residence in New York but makes his permanent domicile elsewhere is eligible for a New York handgun license in the city of county where his part-time residence is located.”).

XXX, whose permanent domicile was [STATE], did not reside in New York, even on a part-time basis; and he neither owned nor rented property here. Therefore, he was categorically ineligible for a license under Penal Law § 400.00(3)(a).

As New York’s licensing scheme disarmed XXX as a non-resident, the charges lodged against him are unconstitutional under the Second Amendment, unless the prosecution can establish some historical

analogue justifying disparate treatment of nonresidents. *Bruen*, 597 U.S. at 27. It cannot. There is no draconian founding-era tradition of disarmament because of a discriminatory non-resident ban.

Federal courts agree. The Northern District of New York has held, in enjoining enforcement of New York’s residency requirement, that “there is a lack of historical tradition to support the notion that states can exclude out-of-state applicants.” 795 F.Supp.3d 307, 341 (N.D.N.Y. 2025); *accord Hoffman v. Bonta*, 789 F.Supp.3d 995, 1004 (S.D. Cal. 2025) (“The provisions barring nonresidents from applying for CCW licenses violate the Constitution.”).

The charges also violate equal protection and XXXX’s fundamental right to travel under the Privileges and Immunities Clause, which states that the “the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.” CITE. That Clause protects the right of citizens to travel, and, specifically, the “right to be treated as a welcome visitor rather than as an unfriendly alien when temporarily present in [a] second State.” *Saenz v. Roe*, 526 U.S. 489, 501 (1999). XXX, a [STATE] license holder, should not have become a felon merely because he travelled to New York. He should have been able to get a license, the

same as any New York resident, unless otherwise disqualified under lawful criteria.

In sum, because XXX was a law-abiding resident of XXX who held a valid concealed carry license from his home state, he could not lose that right and become a felon simply by traveling into New York. The indictment should be dismissed or, alternatively, a hearing ordered.

V. The State violated XXX’s Second Amendment rights by classifying possession of a weapon outside home or place of business—a mere *licensing* infraction—as a C-violent felony while imposing a drastically lesser sanction for in-home possession.

Post-*Bruen*, classifying the public possession of a weapon (outside home or place of business) as a C-violent felony—with a mandatory minimum prison sentence of 3.5 years and a maximum of 15 years—while sparing in-home possession that harsh treatment, violates the Second Amendment. *Bruen*, 597 U.S. at 29, 57 (examining whether a proposed historical analogue restricted similar conduct *and* whether it imposed a “comparable burden”); *Heller*, 554 U.S. at 632-33 (founding-era laws regulating “the firing of guns . . . provide no support for” constitutionality of in-home-disarmament statute at issue since they punished such conduct with “a small fine and forfeiture of the weapon” not “a year in

prison”); *see Hughes*, 22 N.Y.3d at 51-52 (“We assume without deciding that the punishment imposed on defendant is subject to Second Amendment scrutiny.”).

The State cannot meet its burden of showing a historical tradition for punishing public possession (C-violent felony) far more seriously than in-home possession, an offense that is at most an E felony, has no mandatory prison sentence, and has a maximum of four years. Penal Law § 265.01-b; Penal Law § 265.01(1).

Bruen put in-home and public-carry possession on equal constitutional footing, expressly reaffirming that the Second Amendment protects the public possession of a firearm. The Second Amendment does not allow any distinction to be made between in-home possession and public carry. 597 U.S. at 32 (“Nothing in the Second Amendment’s text draws a home/public distinction with respect to the right to keep and bear arms.”). As the right to bear arms for self-defense is “the *central component* of the [Second Amendment] right itself,” confining the right to “bear” arms to the home would “make little sense.” *Id.* at 32-33, quoting *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008) (emphasis in original); *id.* at 33 (“[M]any Americans hazard greater danger outside

the home than in it.”).

Given *Bruen*’s rejection of any constitutional distinction between in-home and public carry, classifying public carry as a “violent” offense—in the absence of any actual use or threatened use of the gun—levies a presumptively impermissible burden on the exercise of Second Amendment rights beyond the State’s lawful regulatory power. This statutory scheme punishes public-possession drastically higher than public possession because in-home possession is merely an E-non-violent felony, while public possession is a C-violent felony. There is no historical tradition justifying those drastic sentencing distinctions.

VI. The Second Amendment guarantees those over the age of 18 but under 21 the right to bear arms, rendering Penal Law § 400.00(1) unconstitutional.

The government cannot meet its burden of showing that disarming individuals over the age of 18, but under 21, “is consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 34; *id.* at 34, 37, & 46. On the contrary, as every federal circuit court to address the issue has held, there is a clear founding-era tradition of *allowing* those 18 and over to possess firearms. *See District of Columbia v. Heller*, 554 U.S. 570, 596 (2008) (recognizing historical assumption

that all able-bodied men, at least 18 years of age, would possess a firearm and, in that way, be available for conscription); *Lara v. Comm’r Pennsylvania State Police*, 125 F.4th 428, 445 (3d Cir. 2025) (“[T]he Second Militia Act is good circumstantial evidence of the public understanding at the Second Amendment’s ratification as to whether 18-to-20-year-olds could be armed, especially considering that the [State] cannot point us to a single founding-era statute imposing restrictions on the freedom of 18-to-20-year-olds to carry guns . . . [A] reasonable debate can be had over allowing young adults to be armed, but the issue before us [is whether the age bar] is consistent with the principles that underpin founding-era firearm regulations, and the answer to that is no.”); *Worth v. Jacobson*, 108 F.4th 677, 688-98 (8th Cir. 2024) (same); *Firearms Policy Coalition v. McCraw*, 623 F.Supp.3d 740, 756 (N.D. Tex. 2022); *Jones v. Bonta*, 34 F.4th 704, 721 (9th Cir. 2022), *vacated and remanded in light of Bruen*, 47 F.4th 1124; *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 5 F.4th 407, 429 (4th Cir. 2021), as amended (July 15, 2021), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021); *Firearms Policy Coalition v. McCraw*, 623 F.Supp.3d 740, 756 (N.D. Tex., Aug. 25, 2022).

New York statutory history confirms the point. New York only

enacted the 21-year-old-age requirement in 2000. Before that, New York law contained no explicit age requirement at all. Instead, licensing officials considered age in their general discretion but exercised that discretion to deny licenses to those *under 18*—not those under 21. *See* Penal Law § 400.00(1)(a) (enacted by L. 2000, ch. 189, § 18 (adopting a 21-year-old-age requirement)); *id.*, Governor’s Program Bill Memo. p. 8 (explaining that “New York law is currently silent” regarding an age requirement and that, “in practice, . . . a licensing officer who must determine an applicant’s eligibility generally will not license an individual under the *age of 18*”) (emphasis added); *People v. Rivera*, 41 N.Y.3d 937, 941 (2023) (Rivera, J., concurring) (discussing New York’s (21-year-old requirement) and federal law (18 years old) and concluding that a 17-year-old has no right to possess a firearm under *Bruen*). The fact that New York only adopted a 21-year-old requirement in 2000, centuries after the founding, only confirms the absence of founding-era tradition of disarming those between 18 and 20.

VII. The serious-crime (misdemeanor) and non-violent felon bar are unconstitutional.

State law unconstitutionally disarmed XXX and deprived him of a license because of his XXXX [date] conviction for YYYYY. Penal Law §

400.00(1)(c) (all felony convictions, regardless of their nature, result in disarmament). There is no historical tradition of disarming individuals—for *life* no less—because of a prior misdemeanor or a non-violent-felony conviction. *Range v. Att’y Gen. United States*, 124 F.4th 218, 222 (3d Cir. 2024) (en banc). The State cannot show otherwise. As the Third Circuit has persuasively held in holding that a felony fraud offense could not justify disarmament:

Rahimi did bless disarming (at least temporarily) physically dangerous people. The law that it upheld required “a finding that [the defendant] represents a credible threat to [someone else’s] physical safety.” It did so “because the Government offer[ed] ample evidence” of a tradition of disarming people who “pose[] a clear threat of physical violence to another.” But the Government does not try to justify disarming Range on this ground, and with good reason: it has no evidence that he poses a physical danger to others or that food-stamp fraud is closely associated with physical danger. It conceded as much the first time this Court heard the case en banc.

124 F.4th at 230 (cleaned up).

Accordingly, prosecution of XXX for unlicensed weapon possession is unconstitutional since the basis for XXX’s lack of a license is an unconstitutional prior-felony bar.

VIII. New York law unconstitutionally conditions a firearm licensing on an individual relinquishing the anonymity of their public internet posts, in violation of the First and Second Amendments.

Penal Law § 400.00(1)(o)(iv) conditions the right to bear arms on an individual “submit[ting] . . . a list of former and current social media accounts of the applicant from the past three years to confirm the information regarding the applicant[']s character and conduct.” Penal Law § § 400.00(1)(o)(iv). This provision required XXX to relinquish the anonymity of his social-media postings and to government agents no less.

The Second Circuit has already held that this provision violates the Second Amendment because it compels an individual to, through speech, sacrifice the anonymity of their social-media postings. *Antonyuk v. James*, 120 F.4th 941, 1002-04 (2d Cir. 2024). As the Circuit recognized, the statute places a tremendous burden on applicants, because nearly all social media handles are pseudonymous. *Id.* There is no historical analogue for this sweeping disclosure requirement. To the contrary, the founders cherished the right publish “virulent political pamphlets” and

other “controversial writings” anonymously. Section 400.00(1)(o)(iv) cannot, therefore, violate the Second Amendment. *Id.*⁶

Penal Law § 400.00(1)(o)(iv) violates XXX’s Second Amendment rights as it required him to sacrifice the anonymity of his social-media postings to exercise that fundamental right. *See AFF*. As XXX cannot be prosecuted because he refused to submit to this unconstitutional law, the indictment must be dismissed.

IX. New York City law unconstitutionally taxes—with a \$340 fee—the Second Amendment right.

[TO BE ADDED]

CONCLUSION

WHEREFORE, the undersigned requests that the foregoing motion be granted and such other and further relief as this Court may deem just and proper.

⁶ For similar reasons, as this statute requires one to sacrifice the First Amendment right to anonymous speech in order to exercise another fundamental right, it violates the First Amendment and Article I § 8 of the N.Y. Constitution. The statute also imposes an unconstitutional condition—indeed a tax—on the exercise of the Second Amendment right to bear arms by forcing people to relinquish speech rights as a condition of exercising Second Amendment rights. *See Griffin v. California*, 380 U.S. 609, 613-15 (1965) (the State cannot impose a “penalty” for “exercising a constitutional privilege”; doing so “cuts down on the privilege by making its assertion costly.”)

DATED: XXXX, New York
Date

XXXXXXXXXX

[PROVIDE NOTICE TO THE ATTORNEY GENERAL BY MAILING THESE PAPERS AND A NOTICE OF CONSTITUTIONAL CHALLENGE TO THE AG AND ATTACHING PROOF OF SUCH SERVICE, ALONG WITH THE NOTICE ITSELF AS AN EXHIBIT. THE SERVICE ADDRESS CHANGES BASED UPON THE LOCATION OF THE TRIAL COURT. TO CONFIRM THE SERVICE ADDRESS: <https://ag.ny.gov/libraries-documents/opinions/appeals-opinions-resource-center/notification-constitutional>

XXXXXXXXXXXXX

The People of the State of New York,

Respondent,
-against-

CLIENT,
Defendant.

X Cty. Ind. No. #####

NOTICE OF CONSTITUTIONAL CHALLENGE

Please take notice that, under CPLR § 1012(b) and Executive Law § 71, Defendant hereby notifies the Attorney General of the State of New York that, in his motion before X County Supreme Court, in the above matter, he asserts, among other constitutional challenges, that Penal Law

§ 400.00(1)(b), as incorporated by Penal Law § 265.20(a)(3) and Penal Law 265.03(1)(b), violate the Second Amendment to the United States Constitution. A copy of defendant's **motion** in this matter is attached.

New York, New York

DATE

Yours, etc.,
XXXXXXXXXX

TO: Office of the Attorney
General
Division of Appeals & Opinions
28 Liberty St.
New York, NY 10005

XXXXXXXXXXXX

The People of the State of New York,

Respondent,

-against-

CLIENT,

Defendant.

X Cty. Ind. No. ####

**AFFIRMATION OF SERVICE UPON THE ATTORNEY
GENERAL**

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

XXXXXX, an attorney admitted to practice law in this State, affirms under penalty of perjury:

1. I am not a party to this action, am over 18 years of age, and I am associated with XXXX.

2. On XXXXXX, the enclosed **MOTION TO DISMISS THE INDICTMENT** and **NOTICE OF CONSTITUTIONAL CHALLENGE** were served upon the Attorney General of New York by mailing these documents to the Attorney General at: Office of the Attorney General Division of Appeals & Opinions, 28 Liberty St., New York, NY 10005, the

address designated for such service, by depositing these documents in a first class, postpaid, properly addressed wrapper, in a depository under the exclusive care and custody of the United States Postal Service within the State of New York. These documents were also e-mailed to Ira Feinberg, Deputy Solicitor General for Criminal Matters at ira.feinberg@ag.ny.gov.

Dated: XXX, New York
XXXX
