IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM G. PALMER, et al.,	)	Case No. 09-CV-1482-FJS
	)	
Plaintiffs,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN REPLY TO
v.	)	DEFENDANTS' OPPOSITION TO
	)	PLAINTIFFS' MOTION FOR
DISTRICT OF COLUMBIA, et al.,	)	PERMANENT INJUNCTION
	)	
Defendants.	)	

COME NOW the Plaintiffs, Tom G. Palmer, George Lyon, Edward Raymond, Amy McVey, and the Second Amendment Foundation, Inc., by and through undersigned counsel, and submit their Memorandum of Points and Authorities in Reply to Defendants' Opposition to Plaintiffs' Motion for Permanent Injunction.

Dated: October 30, 2014

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PERMANENT INJUNCTION

PRELIMINARY STATEMENT

"[D]istrict courts clearly have the authority to enforce the terms of their mandates." *Fund for Animals* v. *Norton*, 390 F. Supp. 2d 12, 15 (D.D.C. 2005). No fewer than six times, Defendants claim that there is something "procedurally improper" about this motion because they can locate no precise rule of civil procedure for it. Opp., Dkt. 73, at 1, 6, 7, 8, 15, 18. But this Court "need [not] resolve" whether motions to enforce compliance with its judgments are styled under a "proper procedural vehicle" because "the Court clearly has the power" to bar the effect of new regulations that violate its existing judgment. See *A.N.S.W.E.R. Coalition* v. *Salazar*, No. 05-0071 (PLF), 2012 U.S. Dist. LEXIS 184422, at *15 (D.D.C. Mar. 5, 2012). Arguing about what to call this motion is pointless, since the Court's judgment remains perfectly valid. In any event, the procedure is proper.[1]

Parties often elevate form when they have no substance to discuss, and indeed, very little of Defendants' opposition asserts that their new/old licensing regime meets constitutional standards. Plainly, it does not. Instead, the Court is again treated to a blend of inapposite cases, flat-out error, and doublespeak. At the root of the problem, Defendants confuse the related concepts of ripeness, mootness, and standing, and get all three wrong. But perhaps worst of all, Defendants deny the power of federal courts to enforce compliance with their judgments.

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[1]"Courts grant motions to enforce judgments when a prevailing plaintiff demonstrates that a defendant has not complied with a judgment entered against it, even if the noncompliance was due to misinterpretation of the judgment." *Heartland Hosp*. v. *Thompson*, 328 F. Supp. 2d 8, 11 (D.D.C. 2004). As the Court's injunction did not require Defendants to "perform any . . . specific act," Fed. R. Civ. P. 70(a), and as minor technical changes were made in reverting D.C. Code § 22-4504(a) to its pre-2012 form, the correct vehicle is indeed to seek another injunction, in the event the first injunction does not cover the altered statute. Rule 65(d) authorizes motions for permanent injunction, as do the Court's inherent powers. The reporters are replete with cases adjudicating motions for permanent injunction.

Defendants apparently believe that litigation in this Court is some sort of game. Having been instructed that they may have relief upon enacting "appropriate legislation consistent with the Court's ruling," Order, Dkt. 53, at 2 (footnote omitted)—"a licensing mechanism consistent with constitutional standards enabling people to exercise their Second Amendment right to bear arms," Memorandum Decision & Order, Dkt. 51, at 16 (footnote omitted)[2]—Defendants believe that they may instead endlessly erect barriers, pretending that each barrier is a "new law" requiring not only litigation to start from scratch, but administrative exhaustion as well. None of this is correct.

Defendants' behavior is not new. Governmental resistance to federal court orders, and intransigence in the face of adverse decisions, has especially plagued the civil rights field. But it is a problem that this Court is well-equipped to address. Of course, as Plaintiffs have stated earlier, there is no need for a new injunction if the already-entered injunction suffices, as it has not been stayed or vacated. Plaintiffs seek another injunction in an abundance of caution, as minor technical changes were made to D.C. Code § 22-4504(a) during the pendency of this litigation, and the city has reverted that provision to its original form at the time of filing, but a statement of declaratory relief, clarifying to Defendants that the July injunction remains in force, might serve the same purpose.

Defendants should appreciate this motion, because it is *the Court's* role to determine whether or not the District's recent legislation complies with *the Court's* understanding of constitutional standards. To be safe, and mindful of the Court's role, Defendants should have at least moved for relief from the injunction if they felt that their recent legislation satisfied its standards. As this Court pointedly instructed Defendants at the last hearing, they would be taking a very serious risk in enforcing the enjoined D.C. Code § 22-4504(a) without first obtaining *the Court's* opinion

[2] The Court also extended Defendants an opportunity to seek a further stay of its judgment, which Defendants refused.

as to whether or not the new legislation satisfies *the Court's* judgment. At the November 20 hearing, the Court should inquire of the Defendants whether they have continued to enforce D.C. Code § 22-4504(a), notwithstanding the Court's order. If so, and if the Court agrees that the new legislation does not comply with its expectations, the prospect of a new injunction should be the least of Defendants' concerns.

SUMMARY OF ARGUMENT

Defendants' imprecise language makes difficult the task of untangling their various theories. The words "mootness" and "standing" are absent from Defendants' brief, which only barely mentions ripeness, but surely, these are the primary concepts that they meant to invoke in claiming that the controversy among the parties has ended. Defendants seem to claim that because they have amended their law, there is automatically a new controversy among the parties which demands new litigation and administrative exhaustion. What Defendants invite, but curiously avoid, is an examination into the Plaintiffs' standing. Standing has existed throughout this case, and indeed, has only become more obvious just last week.

Defendants' other arguments are specious. As Defendants (should) know, administrative exhaustion is *never* required in substantive Section 1983 cases. Indeed, exhaustion under an administrative process is not required to challenge the process itself. And courts do not require litigants to engage in futile acts to have standing, which Plaintiffs still have—especially in light of the manner in which Defendants have constructed the application process imposed upon Plaintiffs.

That *other* courts have determined that *other* defendants have complied with their orders in *other* cases, does not mean that this Court is required to so determine here, or that any legislative change to a challenged law automatically renders a case moot. On the contrary, federal courts have a storied tradition of retaining jurisdiction to enforce compliance with civil rights judgments.

The dispute here is not over. Plaintiffs had standing, and their case was ripe, when Defendants barred them from carrying handguns for self-defense. Nobody questioned this much. The Court found that Defendants had violated Plaintiffs' rights, and ordered that the violation cease. The question now is whether the violation has truly ceased— whether the basic injury of which Plaintiffs complained, and which the Court ordered remedied—persists. It does.

ARGUMENT

I. THE "NEW" LAW IS NOT NEW.

Before examining whether enactment of a new law moots a case, the Court should first ask whether the "new" law is new at all. On that ground alone, Defendants' assertion that the District's recent enactment ends the controversy defies credulity. Only weeks ago, Defendants stood before this Court, claiming that the Court *clearly erred* in its judgment because, inter alia, the total handgun carrying ban was indistinguishable from the District's allegedly "longstanding"1932 licensing standards.

"It is not entirely clear exactly *when* licenses for public carrying in the District of Columbia became practically unavailable . . . . The Act of July 8, 1932, Pub. L. No. 72-275, 47 Stat. 651, prohibited the public carrying of weapons in the District without a license." Reconsideration Br., Dkt. 63, at 10 (citation omitted). Defendants then quoted the D.C. Court of Appeals' well-known observation that such licenses are "virtually unobtainable," *id.* (citing *Bshara* v. *United States*, 646 A.2d 993, 996 n.2 (D.C. 1994)), and offered: "Thus, if the District's practical ban on obtaining licenses to carry handguns in public is of 'early 20th century' vintage, it is presumably constitutional, and hence no further analysis is necessary." *Id*. at 11.

"If?" On the preceding page, Defendants made clear, in their own words, that "licenses for public carrying in the District of Columbia became practically unavailable," and it was only "not

entirely clear *when*" that happened. *Id.* at 10. Surely, it happened under the 1932 enactment the District quoted—the same enactment that Defendants here revived. And if the 1932 law was not a "practical ban," *id.* at 11, why raise the matter at all?

When it suited Defendants, the 1932 law was a "longstanding," "practical ban." Now it suits Defendants to present the 1932 regime, copied verbatim in the 2014 law following a five year absence, as somewhat flexible. In a sense, Defendants are saying, "this time, trust us," claiming that "subsequent interpretation will be informed (and cabined) by relevant Second-Amendment case law—none of which existed in 1931." Opp., Dkt. 73, at 11 n.9. "[T]he District will now issue such licenses, where it did not before." *Id.* at 11. But Defendants do not suggest that they will issue licenses to *the Plaintiffs*, who obviously cannot meet the Defendants' new/old standards, so how is it that Plaintiffs' injury is resolved? Plaintiffs did not sue for an administrative adjudication, for the right to discover the police chief's opinion of whether they deserve to carry defensive handguns. That much was never a secret. Plaintiffs sued for a constitutional right.

Putting aside the erroneous claim that no Second Amendment precedent existed in 1931 (see, *e.g.*, *In re Brickey*, 8 Idaho 597, 70 P. 609 (1902); *Nunn* v. *State*, 1 Ga. 243 (1846)), the fact that the amendment itself has been binding since 1791, that the only Second Amendment precedents Defendants acknowledge are the cases holding that the Second Amendment does not require them to issue handgun carry licenses to anyone, and the absurd denial that the 2014 regime mirrors the 1932 regime where anyone can plainly see these are carbon copies, the "trust us" argument still cannot be credited. Courts do not "presume[] the [licensing official] will act in good faith and adhere to standards absent from the ordinance's face . . . . this is the very presumption that the doctrine forbidding unbridled discretion disallows." *City of Lakewood* v. *Plain Dealer Pub. Co.*, 486 U.S. 750, 770 (1988) (citation omitted). If the same law is at once a practical ban and a vehicle for

allowing the exercise of a constitutional right, depending on who the police chief is and the moment's litigation temperature, the law is arbitrary.

Of course, any suggestion that the individual plaintiffs, and SAF's membership at-large, might obtain handgun carry permits based on the constitutional interest in self-defense would be cynical. Mere days after filing their brief, Defendants released their handgun carry license application form, which require the submission of a "good" or "proper" reason under D.C. law, along with substantiating evidence. See Exh. A, at 3-4; Exh. B, at 4. Plaintiffs lack those attributes, see infra, so they cannot apply. Of course, this case has never been about the special privileges of favored individuals presenting rare circumstances. It is about whether ordinary, law-abiding, responsible citizens may carry handguns for self-defense. The "new" law does not allow for that.

Undaunted by the simple fact that the controversy remains, like Section 22-4504(a), materially unchanged, Defendants plow ahead, citing a variety of cases where truly new disputes required truly new litigation. For example, in *Fund for Animals*, a new rule could not be reached via an old judgment—but that was because the earlier judgment addressed defects in a rule-making *process*, not defects in the *rules* that process produced. Thus, even were those same rules re-enacted under appropriate procedures, there was no judgment addressing them. As this Court explained, "the Court order plaintiffs [sought] to 'enforce' was narrowly grounded on APA and NEPA violations regarding [an earlier] rule making process and did not reach plaintiffs' substantive legal challenges." 390 F. Supp. 2d at 15. Other courts understand this limitation of *Fund for Animals*:

> Importantly . . . the *Fund for Animals* court did not issue any injunctions, it only vacated the agency action. When the court vacated the action, it ended the case. In the present case, I issued injunctions and have continuing jurisdiction to enforce and modify them. At issue now is whether defendants have complied with the injunctions. This issue arises under the prior judgments and should be litigated within the prior suits.

Habitat Educ. Ctr., Inc. v. *Kimbell*, 250 F.R.D. 397, 401 n.8 (E.D. Wis. 2008); *cf. Conservation*

Northwest v. *Rey*, No. C-04-844P, 2007 U.S. Dist. LEXIS 88541, at *11 (W.D. Wash. Nov. 21, 2007) ("Defendants do not establish that the 2007 [record of decision] addresses the concerns of this Court other than to simply assert that it does"). The situation here is identical: the Court enjoined the ban on unlicensed carrying until an adequate licensing system is in place. The substantive issue—whether Defendants effectively bar Plaintiffs' Second Amendment rights—remains the same.

Completely inapposite is *Nat'l Mining Ass'n* v. *United States Dep't of Interior*, 251 F.3d 1007, 1011 (D.C. Cir. 2001), where a legislative change mooted a decision on appeal leading to vacatur, something Defendants do not suggest here. Also unhelpful is Defendants' reliance on *Queen* v. *Alvarez*, 979 F. Supp. 2d 845 (N.D. Ill. 2013), which did not involve a challenge to any "new" legislation. *Queen* arose after the Seventh Circuit had enjoined Illinois' handgun carry ban, but stayed its injunction to afford the legislature time to fashion a new law. *Moore* v. *Madigan*, 702 F.3d 933 (7th Cir. 2012). Two prosecutors arguably independent of the *Moore* defendants declared that they would ignore the Seventh Circuit's injunction upon expiration of the stay, prompting the *Queen* plaintiffs to sue against enforcement of the *already-invalidated* law. See Complaint, N.D. Ill. 13-cv-3483, Dkt. 1, ¶¶ 26-29. When the carry ban was repealed, there was nothing for the rogue prosecutors to enforce, mooting *Queen*.

Undersigned counsel is quite familiar with what happened in *Nat'l Rifle Ass'n* v. *Chicago*, 393 Fed. Appex. 390 (7th Cir. 2010) ("*NRA*") and *Shepard* v. *Madigan*, 958 F. Supp. 2d 996 (S.D. Ill.), *aff'd*, 734 F.3d 748 (7th Cir. 2013). The extremely brief, unpublished *NRA* order reflects only the view that the challenged provisions were repealed and replaced with entirely new and different laws. Apparently, the court viewed the litigation has having targeted only the handgun bans, which were, in fact, eliminated. All the plaintiffs obtained handguns under the new laws.

Defendants continue to misrepresent *Shepard*, and curiously, unlike on their motion to stay, no longer cite to the Seventh Circuit's opinion explaining that case. But the question in *Shepard* was whether the state had complied with *the Seventh Circuit's* order. *Shepard* was not at all a challenge to a "new" law, except insofar as the *Shepard* plaintiffs claimed that the law violated the Seventh Circuit's order as to how long the state had to start issuing licenses. While the Seventh Circuit had stayed its decision in *Moore* to allow time for the *enactment* of a licensing statute, *Shepard* plaintiffs claimed that the stay measured the time during which they could not carry handguns. When a compliant licensing system was enacted at the stay's expiration, but licenses were not instantly available, the NRA's *Shepard* attorneys complained. "The essence of plaintiffs' argument is that the new Act does not comport with the mandate of the Seventh Circuit because the Act has a 180-day plus period of time during which the State Police can get its procedures and mechanics into place for the issuance of concealed carry permits." *Shepard*, 958 F. Supp. 2d at 999-1000.

The result was predictable to anyone who could read the Seventh Circuit's order.[3] "[T]he Court of Appeals *did not* direct the State of Illinois to *both* pass new gun legislation *and* have the permitting or licensing processes operational before the expiration period of the stay of the mandate." *Id.* at 1001. The Seventh Circuit read its order the same way:

> The [*Shepard* Plaintiffs'] only basis for complaining about the district court's refusal to enjoin the old law immediately—and thus allow them (if they have a FOID card) to start carrying guns in public without complying with the new law—is that we ordered it and therefore the district court has violated our order. That is incorrect. We made no order regarding relief except to specify a deadline for the state to enact a new law. It met the deadline. Thus the district court did not violate our mandate and so there is no basis for the relief that the plaintiffs sought.

Shepard, 734 F.3d at 752.

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[3]Undersigned counsel was counsel for *Moore* plaintiffs, who refrained from joining the NRA attorneys in their *Shepard* misadventure because the Seventh Circuit's order was unambiguous.

Of course, Michael Moore and the other Illinois plaintiffs obtained their handgun carry licenses. Their case was truly over. But the result would have assuredly been quite different had the Illinois legislature responded in *Moore* the way that the D.C. City Council has responded here—not with a "shall issue" law that essentially respects the Second Amendment, but a "may issue" law that on its face disqualifies Plaintiffs and virtually the entire population. As unamused as the *Moore* panel was by the *Shepard* plaintiffs' stunt, it would probably not have warmed to a claim that a D.C.-style law provided plaintiffs all the relief contemplated by the *Moore* opinion, which may be why the Illinois legislature had the good sense to comply with the Seventh Circuit's order.

True, the Court here has "given plaintiffs *exactly* what they sought in this suit," Opp., Dkt. 73, at 13—including injunctive relief guaranteeing that Plaintiffs could practically access the right to bear arms. This Court absolutely did not, without more, "allow[] the District to develop such a [licensing] scheme based on the judgment of the elected bodies of the District, attuned to local conditions." *Id.* at 14. The Court ordered that the District's unlicensed carry ban be enjoined until the District developed a licensing scheme *based on the Constitution*.

Perhaps the most incredible aspect of Defendants' "new law" theory is their assertion that this Court should do nothing because the law is "temporary" and might change again. "[T]he legislature is still working on the permanent legislation and the legislative record is still being developed." Opp., Dkt. 73, at 8. This can describe any law at any time—including the Second Amendment. See U.S. Const. art. V. But the only provision enjoined by this Court has stood virtually unaltered for decades. And like the District's law, the Second Amendment is in effect *now*. There is no grace period for constitutional violations. If the "permanent" legislation changes the current system, Defendants can always seek a modification of or relief from the injunction.

II. PLAINTIFFS CONTINUE TO HAVE STANDING.

Jurisdiction is not optional. As Defendants are fond of pointing out, if standing does not exist, the case cannot be heard. But by the same measure, federal courts cannot refuse to decide an Article III case or controversy. "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). Ripeness and mootness are related doctrines that measure a controversy's initial and continuing presence, respectively. "The ripeness inquiry asks whether there's a pressing need for the court to act, whereas the mootness inquiry asks whether there's anything left for the court to do." *Wyo. Outdoor Council* v. *Dombeck*, 148 F. Supp. 2d 1, 8 (D.D.C. 2001) (quotation omitted).

Defendants' conduct plainly satisfies all three familiar aspects of standing: injury-in-fact, causation, and redressability. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The latter two elements are not at issue; Defendants do not deny that their regulations govern Plaintiffs' conduct, and they do not exactly claim that the Court is powerless to stop their behavior. The focus appears to be, where it usually is, on the Plaintiffs' injury-in-fact. Notably, Defendants have never—not even in seeking reconsideration—claimed that the Court lacked jurisdiction to decide this case. Defendants now assert only that the injury claimed in the Complaint is remedied by the passage of recent legislation. They claim mootness, in the sense that the injury has allegedly abated; and lack of ripeness, to the extent they assert that a challenge to the recent legislation is premature.

The only logical way to evaluate these arguments is to first examine the nature of Plaintiffs' Article III injuries, and second, ask whether these injuries persist today. From the case's inception, Plaintiffs suffered two forms of constitutional injury. Last week, Defendants added a third.

A. Defendants Injured Plaintiffs By Barring Them from Having Handguns for the Purpose of Self Defense in Public.

Defendants apparently refuse to discuss this issue, but it bears repeating that this case started when they denied Plaintiffs' requests to bring handguns into the District so that they might be carried in public for self-defense. The legal consequence of that behavior is identical to that of the salient fact, ultimately, in the case that became *District of Columbia* v. *Heller*, 554 U.S. 570 (2008). There, as here, "a distinction mentioned in appellants' complaint and pressed by them on appeal—is that appellant Heller has applied for and been denied a registration certificate to own a handgun . . . ." *Parker* v. *District of Columbia*, 478 F.3d 370, 376 (D.C. Cir. 2007), *aff'd sub nom Heller*. "The denial of the gun license is significant." *Id.* "We have consistently treated a license or permit denial pursuant to a state or federal administrative scheme as an Article III injury." *Id.* (citations omitted).

> Heller has invoked his rights under the Second Amendment to challenge the statutory classifications used to bar his ownership of a handgun under D.C. law, and the formal process of application and denial, however routine, makes the injury to Heller's alleged constitutional interest concrete and particular. He is not asserting that his injury is only a threatened prosecution, nor is he claiming only a general right to handgun ownership; he is asserting a right to a registration certificate, the denial of which is his distinct injury.

Id.

Likewise, here, Plaintiffs confronted a law that provided—exactly as it does today—that they may not carry a handgun unless they have a license to carry one. D.C. Code § 22-4504(a). While there was nothing on the books literally entitled "license to carry," there was a mechanism by which the police chief allowed, or disallowed, people to have handguns, depending on their intended use. When Plaintiffs averred that they would carry their handguns, Defendants denied Plaintiffs those registration certificates—certificates of the same type as was denied Heller.

Of course, the denial of the registration certificate was not the only injury that Heller had sustained. The D.C. Circuit has since cautioned against

> plac[ing] undue weight upon our statement there that the plaintiff was "asserting a right to a registration certificate, the denial of which [was] his distinct injury." 478 F.3d at 376. More fundamentally, as we explained, the plaintiffs there were "claim[ing] a right to possess ... 'functional firearms[]' ... for self-defense in the home." *Id.* at 374. That is, the right to possess, not the right to a permit or license, was the substance of their claim. One of those plaintiffs had standing because . . . he had "invoked his rights under the Second Amendment to challenge the statutory classifications used to bar his ownership of a handgun." *Id.* at 376.

Dearth v. *Holder*, 641 F.3d 499, 502 (D.C. Cir. 2011). Here, Plaintiffs invoked their Second Amendment rights to challenge the statutory classifications used to bar their ownership of handguns in the relevant setting of this case.

Defendants may have reorganized their law, and added some additional administrative trappings, but they have not offered Plaintiffs an avenue to getting handgun carry licenses—or to carrying handguns. They have merely formalized the process of denial and prohibition by requiring that which Plaintiffs do not have. If a license were truly now available to Tom Palmer, it would not have been too much to ask Defendants to explain exactly how he might obtain one considering his lack of "good" or "proper" "reason." The two *Parker* injuries—the lack of a license, and the inability to exercise a Second Amendment right—persist, and lack any solution in sight.

B. Defendants Injured Plaintiffs By Crafting An Application Form That They Cannot Truthfully Complete.

Assuming that the new/old regime somehow nullifies the injury Plaintiffs suffered by having their registration applications denied, that does *not* necessarily mean that Plaintiffs must re-apply and be re-denied under the new/old regime to be re-injured. Defendants might have misread *Parker* as requiring an actual denial to cause injury under a licensing scheme—an understandable error, unless one consults *Dearth* v. *Holder*, supra, 641 F.3d 499. *Dearth* controls here, and it simply repudiates Defendants' position. Worse for Defendants, *Dearth* confirms that in their efforts to make the application process as restrictive as possible, Defendants actually created *more* standing.

In *Dearth*, the lead plaintiff was an American citizen, residing abroad, stymied in his efforts to purchase firearms while visiting the United States. Federal law prohibited Dearth from acquiring a firearm for other than a sporting-purpose, and generally, from purchasing a firearm, on account of his foreign residence. See 18 U.S.C. §§ 922(a)(9), 922(b)(3). These restrictions were policed by the BATFE's Form 4473, required of every retail firearm transaction in the United States. Among other questions, Form 4473 asks for the purchaser's state of residence. Lacking a state of residence, Dearth could not truthfully complete the form, and accordingly, he could not buy guns. Joined by SAF, Dearth sued. This Court dismissed the case for lack of standing. The D.C. Circuit reversed:

> [Dearth] argues the Government denied him the ability to buy a firearm by requiring, via Question 13 on Form 4473, that he reside in a state as a condition of making such a purchase. We agree with Dearth that the Government has denied him the ability to purchase a firearm and he thereby suffers an ongoing injury. Dearth's injury is indeed like that of the plaintiff in *Parker* . . . .

Dearth, 641 F.3d at 502.

The Department of Justice made the same mistakes in *Dearth* that Defendants here make, asserting that *Parker* required an actual application denial to maintain standing, and that plaintiff should have asserted an interest in the paperwork itself. The D.C. Circuit rejected both claims:

> The Government nonetheless argues *Parker* does not control both because here it did not affirmatively deny Dearth's application to purchase a firearm and because Dearth does not claim he has a right to be issued a "permit" or "license" by the Government. As to the first distinction, we hold the Government cannot so easily avoid suit when it has erected a regulatory scheme that precludes Dearth from truthfully completing the application form the Government requires for the purchase of a firearm.

Id. at 502.

Likewise, here, the D.C. Government has erected a regulatory scheme that precludes Plaintiffs from truthfully completing the Government's application form. Dearth could not truthfully claim a state of residence in response to question 13—and Plaintiffs cannot truthfully check either of

the required "good reason"/"other proper reason" boxes on page 3 of Defendants' application form, nor truthfully submit the "Basis for Request for a Concealed Carry Pistol" form. See Exh. A; Exh B.; Palmer Decl., 10/29/14, at ¶¶ 3, 4, 6; McVey Decl., 10/29/14, at ¶¶ 3-5; Lyon Decl., 10/29/14, at ¶¶ 3-5; Raymond Decl., 10/30/14, at ¶¶ 3-5. But the provision of this information is absolutely not optional. Whatever Defendants might pretend about how they would go about policing "good" and "proper" reasons, they cannot seriously suggest that they are prepared to issue handgun carry licenses to people who fail to submit any reason at all for carrying handguns. And as noted supra, *Dearth* flatly rejected the theory that Plaintiffs must have an interest in the permit itself.

The concept of non-applicant standing is not new. "The Supreme Court has recognized that otherwise qualified non-applicants may have standing to challenge a disqualifying statute or regulation." *DKT Memorial Fund, Ltd.* v. *Agency for International Dev*., 810 F.2d 1236, 1238 (D.C. Cir. 1987) (citing *Vill. of Arlington Heights* v. *Metropolitan Housing Dev. Corp*., 429 U.S. 252 (1976)). "Certainty of success" in applying, but for the challenged disqualifying factor, "[is] not required." *West Virginia Ass'n of Community Health Centers, Inc*. v. *Heckler*, 734 F.2d 1570, 1575 (D.C. Cir. 1984) (footnote omitted). Here, each individual Plaintiff downloaded the application and instructions in order to apply for a handgun carry permit, reviewed the requirements, and determined that he or she is fully qualified but for the lack of "good" or "proper" "reason." Palmer Decl., 10/29/14, at ¶¶ 1-2; McVey Decl., 10/29/14, at ¶¶ 1-2; Lyon Decl., 10/29/14, at ¶¶ 1-2; Raymond Decl., 10/30/14, at ¶¶ 1-2. That completes, and ripens, standing.

C. Plaintiffs Face a Credible Risk of Arrest and Prosecution Should They Carry Handguns in Public Without a License.

Beyond the injuries stemming from the administrative denials and the new application form, there remains the simple fact that Plaintiffs only refrain from carrying handguns for self-defense

because Defendants would jail them for doing so. Plaintiffs' "predicament—submit to a statute or face the likely perils of violating it—is precisely why the declaratory judgment cause of action exists." *Mobil Oil Co.* v. *Attorney Gen. of Va.*, 940 F.2d 73, 74 (4th Cir. 1991).

Governmental actors create an actual case or controversy whenever their laws or policies cause reasonable people to forego behavior, their right to engage in which a competent court has the power to secure.

> [W]here threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced. *The plaintiff's own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution, but nonetheless does not eliminate Article III jurisdiction*

Medimmune, Inc. v. *Genentech, Inc.*, 549 U.S. 118, 129 (2007) (emphasis added).

In *Medimmune*, the Supreme Court reviewed its history of cases affirming the constitutionality of pre-enforcement standing, explaining, "[i]n each of these cases, the plaintiff had eliminated the imminent threat of harm by simply not doing what he claimed the right to do . . . That did not preclude subject matter jurisdiction because the threat eliminating behavior was effectively coerced." *Id*.

Plaintiffs are mindful that in Second Amendment cases, the D.C. Circuit grafted an "imminence" requirement into pre-enforcement standing doctrine, such that no injury may occur unless the government specifically issues a threat. *Parker*, 478 F.3d at 374-75. Under this rule, the city's criminal laws relating to guns are unreviewable in federal court (absent administrative issues as presented here), because the city need only refrain from issuing threats to avoid a civil case, and an actual prosecution would trigger abstention under *Younger* v. *Harris*, 401 U.S. 37 (1971).[4]

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[4]The District of Columbia is treated as a state for purposes of *Younger* abstention. *Worldwide Moving & Storage, Inc.* v. *District of Columbia*, 445 F.3d 422 (D.C. Cir. 2006).

Remarkably, the D.C. Circuit maintained this rule despite acknowledging that it contradicts not only the law of other circuits, and its own precedent in non-firearms cases, but "the unqualified language" of Supreme Court precedent. *Id.* at 375; see also *Seegars* v. *Gonzales*, 413 F.3d 1, 2 (D.C. Cir. 2005) (Williams, Senior Circuit Judge).

Alas, *Parker* was decided very shortly after, and without mentioning, the Supreme Court's pronouncement in *Medimmune*, which could not more clearly reject an imminence requirement for pre-enforcement standing. There is no need to quarrel with the imminence issues now, since Plaintiffs so clearly have standing based on their administrative denials and the impossible nature of the new application process. See *Dearth*, 641 F.3d at 503 n.*** (not reaching pre-enforcement issues). But Plaintiffs are confident that the Supreme Court would enforce its own unbroken line of precedent, and ultimately, that is the precedent that should control here. In any event, although jurisdictional issues cannot be waived, the matter is at least here preserved.

* * *

Having established the three forms of Article III standing presented in this case—administrative denial, *Parker*; non-applicant standing, *Dearth; DKT; Arlington Heights*; and pre-enforcement, *Medimmune*—the question becomes: which, if any of these, are moot or unripe? Defendants' mootness claim relates to the administrative and pre-enforcement injuries, which existed at the time this lawsuit was filed and are unrelated to the revival of the 1932 licensing scheme. Defendants claim that whatever injuries supported standing to this point are no longer pressing. Defendants' ripeness claim relates to non-applicant standing arising from the 1932 scheme's revival, with Defendants claiming that the challenge is premature.

Both lines of attack are without merit, and in some respects, actually frivolous.

III. PLAINTIFFS' NON-APPLICANT STANDING IS RIPE.

A. Administrative Exhaustion Is Not Required In Section 1983 Cases.

As Defendants (should) well-know, cf. 28 U.S.C. § 1927, it is simply beyond dispute that aside from procedural due process claims, the "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." *Patsy* v. *Board of Regents of the State of Fla*., 457 U.S. 496, 516 (1982); see also *Wright* v. *Roanoke Redev't & Hous. Auth.*, 479 U.S. 418, 427-28 (1987) ("the existence of a state administrative remedy does not ordinarily foreclose resort to § 1983"); *Heck* v. *Humphrey*, 512 U.S. 477, 483 (1994) ("§ 1983 contains no exhaustion requirement beyond what Congress has provided"); *Monroe* v. *Pape*, 365 U.S. 167, 183 (1961) (§ 1983 plaintiff need not exhaust state court remedies).

"When federal claims are premised on 42 U. S. C. § 1983 and 28 U. S. C. § 1343(3)—as they are here—we have not required exhaustion of state judicial or administrative remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights." *Steffel* v. *Thompson*, 415 U.S. 452, 472-73 (1974) (citations omitted). Exhaustion is a prudential, not jurisdictional doctrine, and the Supreme Court has spoken very clearly as to the lack of a general exhaustion requirement in Section 1983. The one exception to this rule lies in cases involving procedural due process claims. See *Zinermon* v. *Burch*, 494 U.S. 113, 125-26 (1990); *Hoey* v. *District of Columbia*, 540 F. Supp. 2d 218, 227 (D.D.C. 2008) ("ordinarily the case" that exhaustion not required, but "defendants [District of Columbia and Cathy Lanier] correctly point out that an exception to that principle applies where a plaintiff seeks to vindicate procedural due process rights"). None of Defendants' cited cases requiring administrative exhaustion were brought under Section 1983—save for one due process claim, *ABA, Inc.* v. *District of Columbia*, No. 14-550 (RMC), 2014 U.S. Dist. LEXIS 64126 (D.D.C. May 9, 2014).

B. Challenging a Licensing Scheme Does Not Require an Application.

Beyond the broad doctrine that administrative exhaustion is not required to initiate or maintain Section 1983 litigation for the security of substantive rights, the law does not require individuals who would question the constitutionality of a licensing scheme to first apply under the challenged provision. This, too, is crystal-clear.

"[O]ne need not apply for a benefit conditioned by a facially unconstitutional law." *United States* v. *Baugh*, 187 F.3d 1037, 1041 (9th Cir. 1999) (citations omitted). "The Constitution can hardly be thought to deny to one subjected to the restraints of [a licensing law] the right to attack its constitutionality, because he has not yielded to its demands." *Lakewood* , 486 U.S. at 756 (*quoting Jones* v. *Opelika*, 316 U.S. 584, 602 (1942) (Stone, C. J., dissenting), adopted *per curiam* on rehearing, 319 U.S. 103, 104 (1943)). "As the ordinance [providing for unbridled licensing discretion] is void on its face, it was not necessary for appellant to seek a permit under it." *Id.* (quoting *Lovell* v. *Griffin*, 303 U.S. 444, 452-53 (1938)); see also *Shuttlesworth* v. *City of Birmingham*, 394 U.S. 147, 151 (1969).

Plaintiffs are only required to submit to a licensing scheme prior to challenging its constitutionality when there is no facial defect in the law, and the law's application is uncertain. Rejecting an exhaustion requirement in a constitutional challenge, the Supreme Court explained an agency must be allowed to "correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Weinberger* v. *Salfi*, 422 U.S. 749, 765 (1975) (citation omitted). But when "the only issue is the constitutionality of a statutory requirement, a matter which is beyond [regulatory] jurisdiction to determine," and there are no other issues, submission to administrative process is not required. *Id.* "[W]e agree with other recent opinions dispensing with the exhaustion requirement in situations

where the very administrative procedure under attack is the one which the agency says must be exhausted." *Finnerty* v. *Cowen*, 508 F.2d 979, 982-83 (2d Cir. 1974).

Plaintiffs are challenging the constitutionality of the very administrative system Defendants claim must be exhausted. Plaintiffs' application would not develop facts or narrow issues. There is no question of what the application process requires. The issue is not whether Defendants are properly interpreting their "good reason"/"proper reason" requirement; the issue is whether that requirement, which on its face precludes Plaintiffs from carrying handguns, is unconstitutional—a decision that Defendant Lanier, unlike a federal court, is not qualified and not authorized to make.

C. Futile Acts Are Generally Not Required to Sustain Standing.

A corollary to the rule that one need not submit to a law in order to attack the law as constitutionally defective is the rule excusing litigants from performing ritualistic and pointless deeds in order to confirm that they are, in fact, injured by the law. If circumstances make clear that an administrative application is hopeless, a plaintiff need not go through the futile act of submitting paperwork. See*, e.g., Int'l Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, 365-66 (1977) (minority job applicants need not test a "whites only" sign before filing a Title VII claim); *Houghton* v. *Shafer*, 392 U.S. 639, 640 (1968) (per curiam) (inmate need not file hopeless administrative appeal to sustain a facial challenge); see also *Grid Radio* v. *FCC*, 278 F.3d 1314, 1319 (D.C. Cir. 2002).

The Second Circuit's decision in *Bach* v. *Pataki*, 408 F.3d 75 (2nd Cir. 2005), *overruled on other grounds, McDonald* v. *City of Chicago*, 130 S. Ct. 3020 (2010), is instrucive. In *Bach*, the plaintiff challenged that state's prohibition on the issuance of firearms carry permits to those who neither permanently reside nor work in the state. Because the prohibition clearly applied to the plaintiff, he did not bother applying for a firearms permit. Both the District Court and the Second

Circuit rejected a standing challenge:

> The State Police informed Bach that he was statutorily ineligible for a carry license. Bach had nothing to gain thereafter by completing and filing an application . . . . Imposing a filing requirement would force Bach to complete an application for which he is statutorily ineligible and to file it with an officer without authority to review it. We will not require such a futile gesture as a prerequisite for adjudication in federal court.

Id. at 82-83 (footnotes, citations and internal quotation marks omitted).

IV. THE RECENT LEGISLATION DID NOT MOOT THE CASE.

Defendants cite the general rule that "a government's substantial amendment or repeal of a stricken statute will end a trial court's constitutional challenge," Opp., Dkt. 73, at 11, but this is only half the law. Defendants ignore the rather obvious proposition, embodied boldly by the first case they cite on the topic, that they cannot "moot a case by repealing the challenged statute and replacing it with one that differs only in some insignificant respect." *Northeastern Fla. Chapter of Associated Gen. Contractors of Am.* v. *City of Jacksonville*, 508 U.S. 656, 662 (1993). Defendants offer no response to this argument at all. They offer only the various cases, discussed supra, where either no new laws were involved, or where the new laws differed radically from the subject matter encompassed by the previous judgment.

One can readily see why a replacement statute must not "differ[] only in some insignificant respect" from the enjoined statute. Today, one needs "good reason" to exercise the right. When that falls by the wayside, perhaps after another decade of litigation, the application fee would be raised to a million dollars. A decade later, only ambidextrous people can safely carry guns. A decade after that, Olympic medal marksmanship might be demanded. The list of "new laws" is bounded only by Defendants' imagination. Each time, supposedly, exhaustion and litigation would be required anew, but generations of plaintiffs would ever enjoy a meaningful *right*.

Perhaps a useful way to inquire as to whether the recent enactment addresses Plaintiffs' injury and thus moots the case, is to consider whether Defendants' response here would have passed muster in *Heller*. The city was no less upset about losing its total ban on the possession of handguns and functional firearms in that case as it is here. Had the city responded to its *Heller* loss by replacing the flat ban on handgun registration with a rule allowing handgun registration, but only to those with a "good" or "proper" "reason," along the lines required here, would the city seriously have been heard in claiming that Heller got all he asked for? Of course not: "Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home." *Heller*, 554 U.S. at 635.[5]

V. DEFENDANTS DO NOT SERIOUSLY ADDRESS THEIR SCHEME'S SUBSTANTIVE DEFECTS.

Defendants' opposition adds absolutely nothing to the discussion of whether their discretionary licensing scheme is constitutional. Primarily, they argue that the should win because

> Aside from *Peruta*, the only authority plaintiffs cite striking down a "good reason" licensing standard are a case from an Indiana intermediate appellate court from 1980, and a Michigan Supreme Court case from 1922. On the other side of the scale is [sic] *Drake*, *Woollard*, and *Kachalsky*, all decided in the last two years. Plaintiffs' arguments fail.

Opp., Dkt. 73, at 18 (citations omitted). Three of a kind beats two pair, but this is not a card game. Defendants might recall that when the *Heller* case was filed, the Fifth Circuit stood alone against eight other federal circuits in hewing to the individual rights model of the Second Amendment. *United States* v. *Emerson*, 270 F.3d 203 (5th Cir. 2001). Plaintiffs are comfortable that their supporting cases have the advantage of having been correctly decided.

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[5] Among the laws challenged in *Heller* was a requirement to obtain a license to carry a handgun *inside* one's home.

Beyond this, Defendants assert that the prior restraint doctrine is limited to the First Amendment, but the Supreme Court speaks of the doctrine as securing "freedoms which the Constitution guarantees," *Staub* v. *City of Baxley*, 355 U.S. 313, 322 (1958). Defendants' reliance upon *United States* v. *Salerno*, 481 U.S. 739 (1987), for the proposition that facial challenges outside the First Amendment area are subject to a "no set of circumstances" standard, *id.* at 745, requires only slightly more discussion.

Numerous violent felons and other irresponsible, dangerous people roam the streets of Washington, D.C. Surely, they may be denied access to handguns. But that does not mean that *Heller*, a facial challenge, was wrongly decided, because in *some* circumstances, it is constitutional to deny handgun permits. The Supreme Court has occasionally allowed a more permissive overbreadth test that upholds statutes only if they have a "plainly legitimate sweep." *United States* v. *Stevens*, 130 S. Ct. 1577, 1587 (2010); *Wash. State Grange* v. *Wash. State Repub. Party*, 552 U.S. 442, 450 (2008); *Washington* v. *Glucksberg*, 521 U.S. 702, 739-40 & n.7 (1997) (Stevens, J., concurring in judgments).

Laws denying everyone access to a constitutional right fall into this category. *Heller* is but one example. This case supplies another. Curiously, Defendants do not explain why some people should be subjected to their "good reason" or "proper reason" test, while others should be exempted from it. Plaintiffs agree that not *everyone* should be allowed to carry handguns, and submit that whatever qualifications are required to carry handguns, should be applied equally to all.

Indeed, "the *Salerno* principle has been controversial and does not apply to all facial challenges." *Ezell* v. *City of Chicago*, 651 F.3d 684, 698 n.8 (7th Cir. 2011) (quotation omitted). And like prior restraint, it, too, is not limited to the First Amendment. Abortion laws, for example,

are deemed facially invalid where they impose undue burdens on abortion access, not in *all* cases, but "in a large fraction of the cases." *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U.S. 833, 895 (1992). As recently as 2004, the Supreme Court listed "free speech, right to travel, abortion [and] legislation under § 5 of the Fourteenth Amendment" as rights "weighty enough" to be secured by overbreadth doctrine. *Sabri* v. *United* States, 541 U.S. 600, 609-10 (2004) (citations omited). There is no reason to suppose the Second Amendment would not be as weighty.

VI. THIS COURT CAN RETAIN JURISDICTION UNTIL THE DEFENDANTS COMPLY.

Finally, the notion that the Court can do nothing about a recalcitrant civil rights violator, except wait for the next case, contradicts some rather fundamental understandings of the power of the federal courts. See, *e.g.*, *Brown* v. *Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 301 (1955) ("During this period of transition, the courts will retain jurisdiction of these cases").

Defendants complain that they "are entitled to pursue an appeal in the Circuit of this Court's final rulings that have already been rendered in this case . . . encumbered" by what they claim to be "a premature challenge to an entirely different law . . . ." Opp., Dkt. 73, at 2. Not so. Defendants can have their appeal,[6] but unless a stay is entered, that has no impact on this Court's ability to police compliance with its judgment. *United States* v. *Bd. of Sch. Comm'rs of City of Indianapolis*, 503 F.2d 68, 81-82 (7th Cir. 1974); *Plaquemines Parish Commission Council* v. *United States*, 416 F.2d 952, 954 (5th Cir. 1969).

"Although the filing of [a] notice of appeal divests the district court of jurisdiction over any matters dealing with the merits of the appeal, the district court retains jurisdiction over any issues

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[6]Perry Stein, *D.C. Will Appeal Court Decision Overturning Concealed Carry Ban*, Washington City Paper, Oct. 27, 2014, available at http://www.washingtoncitypaper.com/blogs/citydesk/2014/10/27/d-c-will-appeal-court-decision-overturning-concealed-carry-ban/ (last visited Oct. 30, 2014).

relating to the enforcement of the judgment." *FDIC* v. *Bank of New York*, 479 F. Supp. 2d 1, 13 (D.D.C. 2007) (citations omitted). The Court has decided to enjoin D.C. Code § 22-4504(a) until such time as the city enacts a licensing system consistent with constitutional standards. It can continue to enjoin the city's attempts to evade this judgment, in whatever form, forever, unless stayed or reversed on appeal.

CONCLUSION

Plaintiffs should have meaningful access to the right to bear arms. That means a continuing injunction against the city's prohibition on unlicensed handgun carrying, until and unless a constitutional licensing system is in place.

Dated: October 30, 2014

Respectfully submitted,

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By: /s/ Alan Gura
Alan Gura
Attorney for Plaintiffs

Concealed Carry Pistol License Application

Metropolitan Police Department

Firearms Registration Section · 300 Indiana Avenue, NW · Washington, DC 20001 · 202-727-4275

Applicant Information

Last Name | *First Name* | *Middle Name*

Home Street Address | *City* | *State* | *ZIP Code*

Occupation /Name of Business

If Applying as a Business Owner: Business/Occupation Street Address | *City* | *State* | *ZIP Code*

Home Phone Number | *Work Phone Number* | *Email Address (Optional)*

Date of Birth (mm/dd/yyyy) | *Place of Birth*

Driver's License State & ID Number or Other Government-Issued Photo Identification Description & ID Number

Sex | *Race* | *Height* | *Weight* | *Eye Color* | *Hair Color*

Statement of Eligibility

Please answer each of the following questions by marking the appropriate box.

1. ☐Yes ☐No Have you ever been convicted of a crime of violence, weapons offense, any other violation of the Firearms Control Regulation Act of 1975, or a felony in any jurisdiction (including any crime punishable by imprisonment for a term exceeding one year)?
2. ☐Yes ☐No Are you under indictment for a crime of violence or a weapons offense?
3. ☐Yes ☐No Have you been convicted within the past five years for a narcotics or dangerous drug offense, a threat to do bodily harm, or for assault?
4. ☐Yes ☐No Have you been acquitted of any criminal charge by reason of insanity or adjudicated a chronic alcoholic by any court within the past five years?
5. ☐Yes ☐No Have you been voluntarily or involuntarily committed to any mental hospital or institution within the past five years?
6. ☐Yes ☐No Do you suffer from any physical defect that would make it unsafe for you to possess and use a firearm safely and responsibly?

7. ☐Yes ☐No Have you been found negligent in any firearm related mishap causing death or injury to another person?
8. ☐Yes ☐No Have you provided accurate and true facts on this application?
9. ☐Yes ☐No Have you ever been dishonorably discharged from the U.S. Armed Forces?
10. ☐Yes ☐No Were you a citizen of the United States who has renounced his or her citizenship?
11. ☐Yes ☐No Are you legally blind? (Legally blind means your vision is not impaired more than 20/200 visual acuity in the better eye, or your vision cannot be improved to be better than 20/200, or you do not have a loss of vision due wholly or in part to impairment of field vision or to other factors which affect the usefulness of vision to a like degree. If the Firearms Registration Section determines there are reasonable grounds to believe that the certification provided is not accurate, you may be required to obtain a certification from a licensed optometrist that you meet the vision requirements as stated above.)
12. ☐Yes ☐No Have you been convicted of two or more violations for driving under the influence within the past five years?
13. ☐Yes ☐No Have you been the subject of a civil protection order within the past five years?
14. ☐Yes ☐No Have you been convicted of a misdemeanor intrafamily offense?
15. ☐Yes ☐No Are you an alcoholic, addict, or habitual user of a controlled dangerous substance?

If you answer yes to any of the next five questions, you must attach the additional documentation as described on the Instructions form.

16. ☐Yes ☐No Are you seeking to register a pistol concurrently with this application?
17. ☐Yes ☐No Do you currently suffer – or have you suffered in the past five years – from any mental illness or condition that creates a substantial risk that you are a danger to yourself or others?
18. ☐Yes ☐No Do you have a bona fide residence in the District of Columbia?
19. ☐Yes ☐No Do you have a bona fide place of business in the District of Columbia?
20. ☐Yes ☐No Do you have a bona fide residence or place of business in the United States and are licensed to carry a concealed pistol by another State?

Firearms Training Background

1. Have you completed at least 16 hours of training from an MPD-certified firearms training instructor? ☐ Yes ☐ No
2. Have you completed at least two hours of range training from an MPD-certified firearms training instructor? ☐ Yes ☐ No
3. Have you completed training in District of Columbia laws on firearms and self-defense? (There is no exemption from this requirement.) ☐ Yes ☐ No

If you answered "Yes" to <u>all</u> three questions above, you can skip the next three questions.

4. Are you requesting an exemption from the firearms training course requirements in either Question 1 or 2 above? ☐ Yes ☐ No
5. Which requirement(s) are you requesting an exemption:
   ☐ 16 hours of firearms training ☐ 2 hours of range training
6. If you answered "No" to Question 4, do you intend to complete the firearms training requirements within 45 days if your application is preliminarily approved by MPD? ☐ Yes ☐ No

Basis for Request for a Concealed Carry Pistol

Under District law, an applicant must demonstrate that either they have good reason to fear injury to himself or herself or property or they have another proper reason for carrying a concealed pistol.

Please check the box below that is the basis of your application and attach the additional documentation as described on the Instructions form.

☐ **Good reason to fear injury to person or property**: You fear injury to yourself and can show a special need for self-protection, such as evidence of specific threats or previous attacks which demonstrate a special danger to your life.

☐ **Other proper reason to carry a concealed pistol**: Your employment requires that you handle large amounts of cash or valuables that you must transport on your person. Or you are the adult member of a family that needs to provide protection for a family member who is physically or mentally incapacitated to a point where he or she cannot act in defense of himself or herself or his or her property.

Authorization to Disclose Mental Health Records

If you checked "Yes" on Question 17 on page 2 of this application, you must authorize the D.C. Department of Behavioral Health, or any other similar agency or department of another state, to disclose to the Metropolitan Police Department information on whether you: (1) Suffer from a mental disorder and have a history of violence; or (2) Have been voluntarily or involuntarily committed to a mental health facility or an institution that provides treatment or services for individuals with mental disorders.

By signing here, you hereby make the authorization stated in the preceding paragraph.

Applicant's signature _____ Date _____

Applicant Affirmation

In signing this Concealed Carry Pistol License Application, I am affirming under oath each of the following declarations:

- I have provided true and accurate information in this document and any supporting documents attached to this application.
- I understand that any knowing material omission or false statement made by or provided by me as part of this application may be considered grounds for denial of a concealed carry license or revocation for a license falsely obtained.
- I understand that making a false statement is punishable by criminal penalties under D.C. Official Code § 22-2405.
- I am not prohibited under federal or District of Columbia law (or the law of the state of my residence) from possessing a firearm.
- I shall be responsible for compliance with all federal and District of Columbia laws, rules, regulations, and procedures that are applicable to a Concealed Carry Pistol License.

Applicant's signature _____ Date _____

Concealed Carry Pistol License Application

Basis for Request for a Concealed Carry Pistol

Metropolitan Police Department · Firearms Registration Section · 300 Indiana Avenue, NW
Washington, DC 20001 · 202-727-4275

Applicant Information

Last Name	*First Name*	*Middle Name*	
Home Street Address	*City*	*State*	*ZIP Code*

District of Columbia law requires you to demonstrate either that: (1) you have good reason to fear injury to yourself or your property; or (2) you have another proper reason for carrying a concealed pistol.

Demonstration of Good Reason to Fear Injury to Person or Property

To demonstrate a good reason to fear injury to yourself, you must:

- Show a special need for self-protection distinguishable from the general community, as supported by evidence of specific threats or previous attacks which demonstrate a special danger to your life.
- Allege serious threats of death or serious bodily harm, any attacks on yourself, or any theft of property from your person.
- Allege that the threats are of a nature that the legal possession of a pistol is necessary as a reasonable precaution against the apprehended danger.
- Provide all evidence of contemporaneous reports to the police of such threats or attacks, and disclose whether or not you made a sworn complaint to the police or the courts of the District of Columbia concerning any threat or attack.

Pursuant to District of Columbia law, the fact that you live or work in a high crime area shall not by itself establish a good reason to fear injury to yourself or your property for the issuance of a concealed carry license.

You can also include any supporting statements from third parties, **but the statements must be made under oath and before a notary**.

Demonstration of Other Proper Reason for a Concealed Carry License

This may include: (1) employment of a type that requires the handling of large amounts of cash or other highly valuable objects that must be transported on your person; or (2) the need for you to provide protection of a family member who is physically or mentally incapacitated to a point where that family member cannot act in defense of himself or herself, or his or her property. You can include any documents (such as police reports or court documents) and/or personal statements to demonstrate that you have a proper reason to be issued a Concealed Carry License.

You may provide a separate document with your personal statement or you may use the reverse side of this document. If you use the reverse side of this document to have a third party provide their statement, their statement must be made under oath, before a notary, and signed by the notary, including the notary's seal.

Statement

Name of person applying for a Concealed Carry Pistol License: _____

Name of Person providing this statement: _____

Signature of person providing this statement: _____

Date: _____

Instructions for Submitting an Application for a Concealed Carry Pistol License

Metropolitan Police Department · Firearms Registration Section
300 Indiana Avenue, NW · Washington, DC 20001 · 202-727-4275 · www.mpdc.dc.gov

Pursuant to recent amendments to the Firearms Regulations Control Act of 1975 (D.C. Act 20-447), anyone wishing to carry a concealed pistol must submit an application to the Metropolitan Police Department, including proof of firearms training and the basis for requesting a concealed carry pistol license.

The requirements for a concealed carry pistol license are found in Title 24, Chapter 23, Sections 2332-2346 of the District of Columbia Municipal Regulations (included in this package). Applicants for a Concealed Carry Pistol License should review the applicable regulations to understand District requirements.

Checklist for submission of a Concealed Carry Pistol License application:

1. Complete the Concealed Carry Pistol License Application, including signing and dating the form.
2. In the **Statement of Eligibility** section of the application:
   - If you checked "Yes" to Question 16, then you must also submit firearm registration Form PD-219 and accompanying documents. This is available at on our website or you may call the Firearms Registration Section for assistance. <u>You may apply to register one handgun at the same time that you submit your Concealed Carry Pistol License application and you will not be charged the $13.00 firearm registration fee.</u>
   - If you checked "Yes" to Question 17, then you must:
     - Sign and date the Authorization to Disclose Mental Health Records section of the application; and
     - Submit a report <u>notarized under oath</u> from a registered psychologist or psychiatrist, with whom you have a bona fide patient relationship, stating that the psychologist or psychiatrist has examined you within six months of your application submission date and found you to no longer be suffering from any mental illness or condition that creates a substantial risk that you are a danger to yourself or others.
   - If you checked "Yes" to Question 18, then you must provide <u>two</u> or more of the following types of documentation:
     - Voter registration with current residence address.
     - Motor vehicle license or registration with current residence address.
     - Withholding and payment of individual income taxes indicating the address of the residence, such as: copies of certified District or state income tax returns, and copies of certified federal tax returns filed with the IRS.
     - Certified deed, lease, or rental agreement for real property indicating the current residence address.
     - Cancelled checks or receipts for mortgage or rental payments.
     - Utility bills and payment receipts with current residence address.
     - Copies of credit card or brokerage account statements mailed to the applicant at the current residence address.
     - Copy of bank account statement in the name of the applicant at the current residence address.
     - Copies of automobile insurance statements mailed to the applicant at the current residence address.

- If you checked "Yes" to Question 19, you must provide documentation, such as a valid business license or certificate of occupancy, that shows the name and address of the business.
- If you answered "Yes" to Question 20, then you must provide the same types of documentation as required for Questions 18 or 19 and proof of concealed carry permit/license issued by another state.

3. In the **Firearms Training Background** section of the application:
   - If you answered "Yes" to Questions 1, 2, and 3, the MPD-certified firearms instructor must submit the Certificate of Completion to the Firearms Registration Section, skip Questions 4 through 6.
   - If you answered "No" to any of the first three questions, you must answer Questions 4 through 6 and provide supporting documentation.
   - If you answered "Yes" to Question 4, then you must check the applicable box(es) in Question 5. All applicants must be trained on District of Columbia law on firearms and self-defense; you cannot request an exemption from it.
     - If you are requesting an exemption to the firearms training course requirements, Section 2336.3 of the regulations requires you to provide supporting documentation, such as:
       - Firearms training provided by the National Rifle Association
       - Retired law enforcement officer credentials
       - Armed special police officer license
       - DD Form 214 if it shows special training for marksmanship
       - Hunting license
   - If you answered "No" to Question 4, then you must complete the firearms training course requirements – including training on District of Columbia law on firearms and self-defense – within 45 days if your Concealed Carry Pistol License application is preliminarily approved by the Metropolitan Police Department. Please answer "Yes" to Question 6 in this section to indicate you understand this requirement.
4. In the **Basis for Request for a Concealed Carry Pistol** section of the application, you must demonstrate that either you have good reason to fear injury to yourself or your property, or you have another proper reason for carrying a concealed pistol. You must submit a personal statement and any evidence or documentation that supports the basis for your request. If you include any statements from a third party, the statements must be made under oath and before a notary.

Bring all the items noted above to the Firearms Registration Section at 300 Indiana Avenue, NW, Room 3058, Washington, DC 20001. The hours of operation are Monday through Friday, 9 a.m. to 5 p.m. When you submit your application to the Firearms Registration Section, you will be photographed and fingerprinted (if your fingerprints are not already on file with the Metropolitan Police Department).

You may pay the $75 application fee by credit card, or a cashier's check, certified check, or money order payable to the D.C. Treasurer. If your fingerprints are not on file, you will be required to pay an additional $35. No personal checks or cash are accepted.

If you have any questions, please contact the Firearms Registration Section at 202-727-4275.

METROPOLITAN POLICE DEPARTMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief of the Metropolitan Police Department (Chief), pursuant to the authority under Section 910 of the Firearms Regulations Control Act of 1975 (Act), effective October 9, 2014 (D.C. Act 20-0447; 61 DCR 10765), and any substantially similar emergency, temporary, or permanent versions of this legislation, hereby gives notice of the adoption on an emergency basis of amendments to Chapter 23 (Guns and Other Weapons) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR). In addition, the Chief gives notice of the intent to take final rulemaking action to adopt these amendments in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Emergency rulemaking action is necessary to establish procedures for licensing by the Metropolitan Police Department (MPD) of persons to carry concealed firearms for self-defense. A recent court decision has determined that such a licensing scheme must be in place before the District of Columbia can enforce its criminal provisions against carrying firearms openly or concealed. As a result of the injunction issued in that decision, there is an immediate need to protect the health, safety, security, and welfare of District residents by having a licensing scheme immediately implemented, as further described in the License to Carry a Pistol Emergency Declaration Resolution, effective September 23, 2014 (Res. 20-615; 61 DCR 10491).

This emergency rulemaking was adopted on October 22, 2014, became effective immediately, and will remain in effect for up to one hundred twenty (120) days from the date of its adoption, until February 19, 2015, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*.

SUMMARY OF LICENSING SCHEME

The Act delegates rulemaking authority to the Chief to implement the concealed carry licensing scheme re-instituted by the Act. The Act permits the Chief to issue a concealed pistol carry license to a person who: 1) a) demonstrates: good reason to fear injury to his or her person or property; or b) has any other proper reason for carrying a pistol; and 2) is a suitable person to be so licensed. This rulemaking establishes standards by which the Chief will exercise the discretion the Act vests in him or her for each of the above requirements. The rulemaking also establishes application and investigation procedures. The rulemaking does not cover all regulations required by the Act for the licensing of concealed pistols. Future rulemakings will establish renewal procedures and a separate rulemaking issued by the Mayor will establish procedures for the Concealed Pistol Licensing Review Board.

Some of the standards the Chief will use to consider license applications were established in the Act by the Council of the District of Columbia (Council). The Council derived the standards found in similar "may issue" handgun licensing or permitting schemes in the States of Maryland (good and substantial reason standard), New Jersey (justifiable need standard), and New York (proper cause standard). All of these schemes have been sustained as constitutional by U.S. Courts of Appeals. Additionally, some of the standards in these regulations have been adapted from the above states and earlier MPD regulations. Many of the application and investigation procedures were adapted from Maryland regulations. Key portions of the rulemaking include:

Good Reason To Fear Injury To Person Or Property

These regulations include the Act's standards for "good reasons to fear injury to person or property" which includes "showing a special need for self-protection distinguishable from the general community as supported by evidence of specific threats or previous attacks which demonstrate a special danger to the applicant's life."

The requirement of "showing a special need for self-protection distinguishable from the general community as supported by evidence of specific threats or previous attacks" includes language from New Jersey regulations defining the term "justifiable need" as well as New York City's regulations defining the term "proper cause". The requirement that the threats or attacks "demonstrate a special danger to applicant's life" includes language contained in New Jersey regulations defining "justifiable need."

The standard that a high crime area by itself does not establish good cause is language that appeared in the District's prior concealed carry regulations and also appears in New York regulations.

Other Proper Reason for Carrying a Pistol

These regulations establish standards for "other proper reasons for carrying a pistol." One standard is employment of a type that requires the handling of large amounts of cash or other highly valuable objects that must be transported upon the applicant's person." This standard, in some form, is found in the laws or regulations of Maryland, New Jersey, and New York City. Another standard is "the need for a parent, son, daughter, sibling or other adult member of the immediate family to provide protection of a family member who is physically or mentally incapacitated to a point where he or she cannot act in defense of himself or herself, or his or her property." That standard was adapted from a similar standard that appeared in MPD's prior regulations.

Suitability To Obtain A Concealed Carry License

These regulations establish standards for suitability to obtain a concealed carry license, which include completion of a firearms safety and proficiency training course. Firearms safety and proficiency training courses are required by Maryland, New Jersey, Illinois, and many other states. The suitability standard excludes applicants who are addicts or habitual users of alcohol or controlled substances, exhibit a propensity for violence or instability, or suffer from mental illness of a type that should prevent the carrying of a pistol. All of these standards are present and applied in Maryland, New Jersey, and New York. They were also part of MPD's prior regulations. The Council has narrowed the mental health standard that was present in the prior regulations. The prior regulations required a showing of a "sound mind." Indications of an unsound mind included suffering from "any mental disorder" occurring during the previous five (5) years. The Act and this rulemaking limit the mental health determination to a mental illness, or condition that creates a substantial risk that an applicant is a danger to himself or others. The consideration of mental health issues creating a danger to self or others is found in some form in both Maryland and New York. Additionally, the Chief adapted language in the prior regulations to provide that an applicant with a mental health history that would otherwise render an applicant ineligible can submit a notarized report under oath from a registered psychologist or psychiatrist. The

applicant must have a bona fide patient relationship with the psychologist or psychiatrist, have been examined within six (6) months prior to submitting the statement, and have been found that he or she is no longer suffering from any mental disorder, illness, or condition that creates a substantial risk that he or she is a danger to himself or herself or others.

Preliminary Approval Option

These regulations establish three (3) methods for an applicant to satisfy the firearms training requirements established by the Act. An applicant may first obtain a certificate of completion for the required firearms training and submit the certificate as part of an application. The Act also provides certain circumstances under which an applicant may also submit a request for an exemption from the firearms training as part of the application. Lastly, the applicant may submit a statement of intent to complete firearms training after the Chief considers all other matters contained in the application and issues a preliminary approval. The last method was designed to allow an applicant to receive a determination of eligibility for a conceal carry license before he or she would have to expend time and money to complete the required firearms training.

Chapter 23 (Guns and Other Weapons) of Title 24 (Public Space and Safety) of the DCMR is amended as follows:

Section 2331 (Fees) is amended to read as follows:

2331 FEES

2331.1 The following fees shall be charged in connection with the services provided under this chapter:

(a) Accident reports – $3.00;

(b) Arrest records – $7.00;

(c) Fingerprints – $35.00;

(d) Firearm registration – $13.00;

(e) Firearms training instructor certification – $400.00;

(f) Transcript of records – $3.00; and

(g) License to carry a pistol – $75.00.

New sections 2332 through 2346 are added to read as follows:

2332 LICENSES FOR CONCEALED PISTOLS

2332.1 A person is eligible for issuance of a license to carry a concealed pistol (concealed carry license) only if the person:

(a) Is twenty-one (21) years of age;

(b) Meets all of the requirements for a person registering a firearm pursuant to the Firearms Control Regulations Act of 1975 (the Act), effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501.01 *et seq*. (2012 Repl. & 2014 Supp.));

(c) Possesses a pistol registered pursuant to the Act;

(d) Does not currently suffer nor has suffered in the previous five (5) years from any mental illness or condition that creates a substantial risk that he or she is a danger to himself or herself or others; provided that if the person no longer suffers such mental illness or condition, and that person has provided satisfactory documentation required under § 2337.3, then the Chief may determine that this requirement has been met;

(e) Has completed a firearms training course, or combination of courses, conducted by an instructor (or instructors) certified by the Chief;

(f) Has a bona fide residence or place of business:

(1) Within the District of Columbia;

(2) Within the United States and a license to carry a pistol concealed upon his or her person issued by the lawful authorities of any State or subdivision of the United States; or

(3) Within the United States and meets all registration and licensing requirements pursuant to the Act;

(g) Has demonstrated to the Chief good reason to fear injury to his or her person or property or has any other proper reason for carrying a pistol; and

(h) Is a suitable person to be so licensed.

2333 GOOD REASON TO FEAR INJURY TO PERSON OR PROPERTY

2333.1 A person shall demonstrate a good reason to fear injury to his or her person by showing a special need for self-protection distinguishable from the general community as supported by evidence of specific threats or previous attacks which demonstrate a special danger to the applicant's life.

2333.2 For the purposes of satisfying the specifications of § 2333.1, a person shall allege, in writing, serious threats of death or serious bodily harm, any attacks on his or her person, or any theft of property from his or her person. The person shall also allege that the threats are of a nature that the legal possession of a pistol is necessary as a reasonable precaution against the apprehended danger.

2333.3 The person shall provide all evidence of contemporaneous reports to the police of such threats or attacks, and disclose whether or not the applicant has made a sworn complaint to the police or the courts of the District of Columbia concerning any threat or attack.

2333.5 The fact that a person resides in or is employed in a high crime area shall not by itself establish a good reason to fear injury to person or property for the issuance of a concealed carry license.

2334 OTHER PROPER REASON FOR CONCEALED CARRY LICENSE

2334.1 A person may allege any other proper reason that the Chief may accept for obtaining a concealed carry license which may include:

(a) Employment of a type that requires the handling of large amounts of cash or other highly valuable objects that must be transported upon the applicant's person; or

(b) The need for a parent, son, daughter, sibling, or other adult member of the immediate family to provide protection of a family member who is physically or mentally incapacitated to a point where he or she cannot act in defense of himself or herself, or his or her property.

2335 SUITABILITY TO OBTAIN A CONCEALED CARRY LICENSE

2335.1 A person is suitable to obtain a concealed carry license if he or she:

(a) Meets all of the requirements for a person registering a firearm pursuant to the Act;

(b) Has completed a firearms training course, or combination of courses, conducted by an instructor (or instructors) certified by the Chief;

(c) Is not presently an alcoholic, addict, or habitual user of a controlled dangerous substance, unless the habitual use of a controlled dangerous substance is under licensed medical direction;

(d) Has not exhibited a propensity for violence or instability that may reasonably render the person's possession of a concealed pistol a danger to the person or another; and

(e) Does not currently suffer nor has suffered in the previous five (5) years from any mental disorder, illness or condition that creates a substantial risk that he or she is a danger to himself or herself or others, or if the Chief has determined that the person is suitable based upon documentation provided by the person pursuant to § 2337.3.

2336 FIREARMS TRAINING COURSE REQUIRMENTS

2336.1 To satisfy the firearms training eligibly requirement of § 2332.1(e), a person shall obtain a certificate of completion from an instructor (or instructors) certified by the Chief that includes at least sixteen (16) hours of training, and covers the following:

(a) Firearm safety, including firearm safety in the home, a discussion of prevention of access by minors, locking and storing of firearms, and use of safety devices such as secure lock boxes;

(b) Firearm nomenclature;

(c) The basic principles of marksmanship;

(d) The care, cleaning, maintenance, loading, unloading, and storage of pistols;

(e) Situational awareness, conflict management, and moral and ethical decisions on the use of deadly force;

(f) Defensive pistol and ammunition selection; and

(g) All applicable District and federal firearms laws, including the requirements of the Act, An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code § 22-4501 *et seq*.), and District law pertaining to self-defense.

2336.2 In addition to the requirements of § 2336.1, a person shall complete at least two (2) hours of range training, including shooting a qualification course of fifty (50) rounds of ammunition from a maximum distance of fifteen (15) yards (forty-five (45) feet), and receiving a qualifying score of seventy percent (70%) as certified by the instructor.

2336.3 The Chief may, on a case by case basis, exempt a person from the requirements of §§ 2336.1 and 2336.2 if the person submits evidence that he or she has received firearms training in the U.S. military or has otherwise completed firearms training conducted by a firearms instructor that, as determined by the Chief, is equal to or greater than that required by the Act.

2336.4 An applicant may submit to the Chief the application required under § 2337 without including the certificate of completion of training required by this section; provided that if the Chief preliminarily approves the application pursuant to § 2339, the applicant has forty-five (45) days to submit the certificate of completion and successfully complete the range training.

2337 CONCEALED CARRY APPLICATIONS

2337.1 A complete concealed carry license application shall be submitted to the Firearms Registration Section in the format and on forms prescribed by the Chief.

2337.2 The application shall include:

(a) The applicant's name, address, driver's license number or other government issued photo identification number, place and date of birth, height, weight, race, sex, eye and hair color, occupation, and home and work telephone numbers, and email (optional);

(b) If applying as a District resident or business owner, proof of a bona fide District residence or place of business;

(c) Evidence of completion or intent to complete the firearms training requirements in § 2336 by:

(1) Proof of the applicant's completion of a firearm training course within the past two (2) years in the manner prescribed by the Chief in § 2336;

(2) Support for the applicant's request for an exemption from the firearm training course requirement as permitted by the Act; or

(3) If the applicant chooses to seek a preliminary approval pursuant to § 2339, then the applicant shall certify that he or she will provide proof of completion of the firearms training requirements within forty-five (45) days of the Chief's provisional approval of the application pursuant to § 2339;

(d) A complete set of the applicant's fingerprints, taken and submitted in the manner prescribed by the Chief on the application;

(e) A declaration by the applicant as to whether or he or she currently suffers or has suffered in the previous five (5) years from any mental disorder, illness, or condition that creates a substantial risk that he or she is a danger to himself or herself or others. If the applicant attests to suffering from any mental disorder, illness, or condition, the applicant shall sign an authorization to disclose any treatment records related to those circumstances;

(f) An authorization by the applicant to the Department of Behavioral Health, or any other similar agency or department of another state to disclose to the Chief information as to whether the applicant:

(1) Suffers from a mental illness or condition and has a history of violence; or

(2) Has been voluntarily or involuntarily committed to a mental health facility or an institution that provides treatment or services for individuals with a mental illness or condition;

(g) Proof, including any documents, statements of third parties taken under oath and before a notary, or personal statements of the applicant to demonstrate to the Chief that the person has good reason to fear injury to his or her person or property or has any other proper reason for carrying a pistol;

(h) Any information reasonably required by the Chief, as part of the application form or materials, to complete an investigation required by § 2338;

(i) A declaration by the applicant that the applicant is not prohibited under federal or District law, or state law of the applicant's residence, from possessing a handgun;

(j) A declaration by the applicant, under the penalty of perjury, that all information in the application is true and accurate; and

(k) A declaration by the applicant acknowledging that the applicant shall be responsible for compliance with all federal and District laws, rules, regulations, and procedures that are applicable to this license.

2337.3 The Chief may find the applicant has satisfied the requirements of § 2331.1(d) if the applicant submits a notarized report under oath from a registered psychologist or psychiatrist, with which the applicant has bona fide patient relationship, stating that the psychologist or psychiatrist has examined the applicant within six (6) months prior to submitting the statement and found the applicant to no longer to be suffering from any mental illness or condition that creates a substantial risk that he or she is a danger to himself or herself or others.

2337.4 The application must be accompanied by the fees for Fingerprints and License to carry a pistol listed in §§ 2331.1(c) and (g), respectively.

2337.5 The Chief may waive some or the entire application fee for good cause shown on the application.

2337.6 Any knowing material omission or false statement made by or provided by the applicant may be considered grounds for denial of a conceal carry license, or revocation for a license falsely obtained, and may subject the person to criminal prosecution for perjury.

2338 INVESTIGATION OF APPLICATION

2338.1 The Chief shall conduct an investigation of every applicant within a reasonable period of time after receipt of a completed application.

2338.2 The following areas shall be a part of the investigation of every applicant and shall be considered by the Chief in determining whether a concealed carry license shall be issued:

(a) Age of the applicant;

(b) Occupation, profession, or employment of the applicant;

(c) Verification of the applicant's eligibility, including a firearms training course completion certificate from a certified trainer;

(d) Verification of the information supplied by the applicant in the application;

(e) Information received from personal references and other persons interviewed;

(f) Information received from business or employment references as may be necessary in the discretion of the investigator;

(g) Criminal record of applicant, including any juvenile record.

(h) Medical or mental health history of applicant as it may pertain to the applicant's fitness to carry, wear, or transport a handgun;

(i) Psychiatric or psychological background of the applicant as it may pertain to the applicant's fitness to carry, wear, or transport a handgun;

(j) The applicant's propensity for violence or instability that could reasonably render the applicant's wearing, carrying, or transporting of a handgun a danger to the applicant or to others;

(k) The applicant's use of intoxicating beverages or drugs;

(l) The reasons given by the applicant for carrying, wearing, or transporting a handgun, and whether those reasons demonstrate good cause;

(m) Whether the permit is necessary as a reasonable precaution for the applicant against apprehended danger; and

(n) Any other areas the Chief determines are reasonably necessary to determine if the applicant is eligible to obtain a concealed carry license.

2339 PRELIMINARY APPROVAL

2339.1 The Chief shall issue a preliminary approval to carry a concealed pistol or provide a written denial of the application within a reasonable time after receiving an application containing all required supporting documents, with the exception of proof of completion of the firearms training requirements. A reasonable period of time shall normally be within ninety (90) days; however, the time may be extended by the Chief for an additional ninety (90) days where there is good cause for additional time to complete the investigation and the applicant is so notified in writing.

2339.2 After completing the investigation of the application, the Chief shall either:

(a) Deny the application pursuant to § 2340; or

(b) Issue a preliminary approval of the application.

2339.3 If the Chief issues a preliminary approval of the application, it shall:

(a) Be in writing;

(b) Notify the applicant that he or she has forty-five (45) days from the date of the preliminary approval to provide proof of completion of the firearms training course requirements in §§ 2336.1 and 2336.2; and

(c) Notify the applicant that the Chief may deny the application pursuant to § 2340 if the applicant fails to provide the documentation required under subsection (b) within the allotted time.

2339.4 If the applicant provides the information required under § 2339.3(b), the application shall be deemed complete and the Chief shall issue the license pursuant to § 2340.

2340 ISSUANCE OR DENIAL

2340.1 The Chief shall issue a license to carry a concealed pistol or provide a written denial of the application within a reasonable time after receiving a completed application. A reasonable period of time shall normally be within ninety (90) days; however, the time may be extended by the Chief for an additional ninety (90) days where there is good cause for additional time to complete the investigation and the applicant is so notified in writing.

2340.2 A completed application shall satisfy all the requirements prescribed by the Chief including evidence that applicant has satisfied the firearms training requirements in § 2336;

2340.3 A written denial provided by the Chief shall contain the reasons the application was denied and a statement of the applicant's appeal rights.

2340.4 The Chief may limit the geographic area, circumstances, or times of the day, week, month, or year in which a license is valid or effective.

2340.5 Unless otherwise limited by the Chief, a concealed carry license expires two (2) years from the date of issuance.

2341 REVOCATION

2341.1 The Chief may revoke a concealed carry license on a finding that the licensee:

(1) No longer satisfies one or more of the concealed carry license qualifications set forth in the Act or any regulation authorized by the Act; or

(2) Failed to comply with one or more requirements or duties imposed upon the licensee by the Act or any regulation authorized by the Act.

2341.2 The Chief shall provide written notification to a person whose license is revoked.

2341.3 A written notice of revocation shall contain the reasons the license was revoked and a statement of the licensee's appeal rights.

2341.4 A person whose license is revoked shall return the license to the Firearms Registration Section within ten (10) days after receipt of the notice of revocation.

2342 APPEAL

2342.1 A person whose original or renewal permit application is denied or whose permit is revoked or limited may submit a written request to the Concealed Pistol Licensing Review Board (Board) to review the decision of the Chief within fifteen (15) days after receipt of the notice of denial, revocation, or limitation.

2343 AMMUNITION CARRIED BY LICENSEE

2343.1 A person issued a concealed carry license by the Chief, while carrying the pistol, shall not carry more ammunition than is required to render the pistol fully loaded, and in no event shall that amount be greater than ten (10) rounds of ammunition.

2343.2 A person issued a concealed carry license by the Chief may not carry any restricted pistol bullet as that term is defined in the Act.

2344 PISTOL CARRY METHODS

2344.1 A person issued a concealed carry license by the Chief shall carry any pistol in a manner that it is entirely hidden from view of the public when carried on or about a person, or when in a vehicle in such a way as it is entirely hidden from view of the public.

2344.2 A person issued a concealed carry license by the Chief shall carry any pistol in a holster on their person in a firmly secure manner that is reasonably designed to prevent loss, theft, or accidental discharge of the pistol.

2345 NON-RESIDENT APPLICATIONS FOR CONCEALED CARRY LICENSE

2345.1 A non-resident of the District, as defined by the Act, may apply to the Firearms Registration Section for a concealed carry license upon a showing that the applicant meets all of the eligibility requirements of § 2332.

2345.2 A non-resident may satisfy some or all of the firearms training requirements in § 2336 by providing proof of completion of a firearms training course in another state or subdivision of the United States.

2345.3 A non-resident shall obtain a certification from a firearms trainer that the applicant has received and completed training in District firearms law and the District law of self-defense.

2345.4 A non-resident must demonstrate to the Chief that he or she has a good reason to fear injury to his or her person or property, as defined by the Act and these regulations, by showing that the fear is from a cause that will likely be present in the District and is not a cause that is likely to be present only in another jurisdiction.

2345.5 A non-resident must demonstrate to the Chief that he or she has any other proper reason for carrying a pistol, as defined by the Act and these regulations, by showing that the other proper reason exists in the District.

2346 SIGNAGE TO PREVENT ENTRANCE BY CONCEALED CARRY LICENSEE ONTO NON-RESDIENTIAL PRIVATE PROPERTY

2346.1 Signs stating that the carrying of firearms is prohibited on any private property shall be clearly and conspicuously posted at any entrance, open to the public, of a building, premises, or real property.

2346.2 A sign shall be considered conspicuous if it is at least eight (8) inches by ten (10) inches in size and contains writing in dark ink using not less than thirty-six (36) point type.

New section 2348 is added to read as follows:

2348 SAFE STORAGE OF FIREARMS AT A PLACE OF BUSINESS

2348.1 No registrant shall store or keep any firearm on any premises under his or her control if he or she knows or reasonably should know that a minor or a person prohibited from possessing a firearm under D.C. Official Code § 22-4503 can gain access to the firearm.

2348.2 When not in storage, each registrant shall carry the firearm on his or her person or within such close proximity that he or she can readily retrieve or use it as if he or she carried it on his or her person; provided, that the firearm is entirely hidden from view of the public.

2348.3 If the firearm is stored at a place of business, it shall be stored in a gun safe, locked box, or other secure device affixed to the property.

Section 2399 (Definitions) is amended by adding the following definitions:

2399 DEFINITIONS

Place of business – means a business that is located in an immovable structure at a fixed location, as documented by a business license or certificate of occupancy, and that is operated and owned entirely, or in substantial part, by a firearm registrant.

Bona fide patient relationship – means a relationship between a psychiatrist or psychologist and a patient in which:

(a) A complete assessment of the patient's mental health history, current mental health condition, and a current mental health examination has taken place; and

(b) Where the psychiatrist or psychologist has responsibility for the ongoing care and mental health treatment of the patient.

Bona fide residence – means a dwelling place of a person that is documented by two (2) or more of the following:

(a) Voter registration indicating the address of the dwelling place;

(b) Motor vehicle registration indicating the address of the dwelling place;

(c) Motor vehicle driver permit indicating the address of the dwelling place;

(d) Withholding and payment of individual income taxes indicating the address of the dwelling place including:

(1) Copies of certified District or state income tax returns; and

(2) Copies of certified federal tax returns filed with the U.S. Internal Revenue Service;

(e) Certified deed or lease or rental agreement for real property indicating the address of the dwelling place;

(f) Cancelled checks or receipts for mortgage or rental payments;

(g) Utility bills and payment receipts indicating the address of the dwelling place;

(h) A copy of a bank account statement in the name of the applicant at the address of the dwelling place;

(i) Copies of credit card or brokerage account statements mailed to the applicant at the address of the dwelling place; or

(j) Copies of automobile insurance statements mailed to the applicant at the address of the dwelling place.

Section 2399 (Definitions) is amended by amending the definition of Chief to read as follows:

Chief – means the Chief of the Metropolitan Police Department or his or her designee.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM G. PALMER, et al.,	)	Case No. 09-CV-1482-FJS
	)	
Plaintiffs,	)	**DECLARATION OF**
	)	**TOM G. PALMER**
v.	)	
	)	
DISTRICT OF COLUMBIA, et al.,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF TOM G. PALMER

I, Tom G. Palmer, am competent to state, and declare the following based on my personal knowledge:

1. I want to obtain a District of Columbia license to carry a concealed handgun. To that end, I downloaded the application form for that license which was just made available by the Metropolitan Police Department, as well as the instructions for applying for the license.

2. Upon reviewing the requirements, it appears I am fully qualified to apply for the license, with one significant exception: I lack the "good reason" or "other proper reason" demanded on page 3 of the application. I cannot "show a special need for self-protection, such as evidence of specific threats or previous attacks which demonstrate a special danger to [my] life," my employment does not "require[] that [I] handle large amounts of cash or valuables that [I] must transport on [my] person," and I am not required to provide protection for a "family member who is physically or mentally incapacitated to a point where that family member cannot act in defense of himself or herself or his or her property."

3. Because I have neither the "good reason" or "other proper reason" as described on page 3, I cannot check off either of the required boxes on page 3 of the application form.

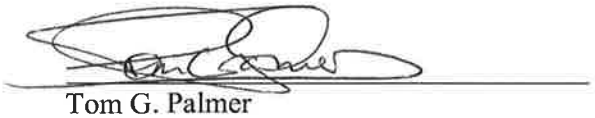
4. I also cannot complete the "Basis for Request for a Concealed Carry Pistol" form, because I do not have "a special need for self-protection distinguishable from the general community, as supported by evidence of specific threats or previous attacks which demonstrate a special danger to [my] life." I cannot "[a]llege serious threats of death or serious bodily harm, any attacks on yourself, or any theft of property from your person." I cannot "[a]llege that the threats are of a nature that the legal possession of a pistol is necessary as a reasonable precaution against the apprehended danger," and I have made no police or court reports in Washington, D.C. relating to such threats. I am aware that the instructions for this form indicate that "[i]n the **Basis for Request for a Concealed Carry Pistol** section of the application, you must demonstrate that either you have good reason to fear injury to yourself or your property, or you have another proper reason for carrying a concealed pistol."

5. Thirty-two years ago, in California, a group of men followed me on the street, shouting anti-gay epithets and threatening to kill me. I was able to successfully defend myself by displaying a handgun, which caused my assailants to flee. However, I do not have a reason to believe that those specific assailants are currently stalking me in the District of Columbia. What happened to me then could happen again, and it could happen to anyone. My experience demonstrates that I face the risk of being a crime victim, but I cannot say that my risk is higher than average owing to an outstanding specific, personalized threat. Accordingly, as I understand the application instructions and form, my experience does not fall within the District's understanding of a "good" or "proper" reason to carry a handgun.

6. Question 8 on the application form asks whether I have "provided accurate and true facts on this application?" The affirmation requires me to affirm that the application is being made under penalty of perjury. I am unwilling to falsely claim that I have a "good" or "other proper" reason under District of Columbia law to carry a handgun, although I believe I have a perfectly good reason—self-defense—secured to me by the Second Amendment.

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

Executed this the 29th day of October, 2014.



Tom G. Palmer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM G. PALMER, et al., Plaintiffs, v. DISTRICT OF COLUMBIA, et al., Defendants.	Case No. 09-CV-1482-FJS **DECLARATION OF AMY McVEY**

DECLARATION OF AMY McVEY

I, Amy McVey, am competent to state, and declare the following based on my personal knowledge:

1. I want to obtain a District of Columbia license to carry a concealed handgun. To that end, I downloaded the application form for that license which was just made available by the Metropolitan Police Department, as well as the instructions for applying for the license.

2. Upon reviewing the requirements, it appears I am fully qualified to apply for the license, with one significant exception: I lack the "good reason" or "other proper reason" demanded on page 3 of the application. I cannot "show a special need for self-protection, such as evidence of specific threats or previous attacks which demonstrate a special danger to [my] life," my employment does not "require[] that [I] handle large amounts of cash or valuables that [I] must transport on [my] person," and I am not required to provide protection for a "family member who is physically or mentally incapacitated to a point where that family member cannot act in defense of himself or herself or his or her property."

3. Because I have neither the "good reason" or "other proper reason" as described on page 3, I cannot check off either of the required boxes on page 3 of the application form.

4. I also cannot complete the "Basis for Request for a Concealed Carry Pistol" form, because I do not have "a special need for self-protection distinguishable from the general community, as supported by evidence of specific threats or previous attacks which demonstrate a special danger to [my] life." I cannot "[a]llege serious threats of death or serious bodily harm, any attacks on yourself, or any theft of property from your person." I cannot "[a]llege that the threats are of a nature that the legal possession of a pistol is necessary as a reasonable precaution against the apprehended danger," and I have made no police or court reports in Washington, D.C. relating to such threats. I am aware that the instructions for this form indicate that "[i]n the **Basis for Request for a Concealed Carry Pistol** section of the application, you must demonstrate that either you have good reason to fear injury to yourself or your property, or you have another proper reason for carrying a concealed pistol."

5. Question 8 on the application form asks whether I have "provided accurate and true facts on this application?" The affirmation requires me to affirm that the application is being made under penalty of perjury. I am unwilling to falsely claim that I have a "good" or "other proper" reason under District of Columbia law to carry a handgun, although I believe I have a perfectly good reason—self-defense—secured to me by the Second Amendment.

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

Executed this the 29 day of October, 2014.

Amy McVey

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM G. PALMER, et al.,	)	Case No. 09-CV-1482-FJS
	)	
Plaintiffs,	)	**DECLARATION OF EDWARD RAYMOND**
	)	
v.	)	
	)	
DISTRICT OF COLUMBIA, et al.,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF EDWARD RAYMOND

I, Edward Raymond, am competent to state, and declare the following based on my personal knowledge:

1. I want to obtain a District of Columbia license to carry a concealed handgun. To that end, I downloaded the application form for that license which was just made available by the Metropolitan Police Department, as well as the instructions for applying for the license.

2. Upon reviewing the requirements, it appears I am fully qualified to apply for the license, with one significant exception: I lack the "good reason" or "other proper reason" demanded on page 3 of the application. I cannot "show a special need for self-protection, such as evidence of specific threats or previous attacks which demonstrate a special danger to [my] life," my employment does not "require[] that [I] handle large amounts of cash or valuables that [I] must transport on [my] person," and I am not required to provide protection for a "family member who is physically or mentally incapacitated to a point where that family member cannot act in defense of himself or herself or his or her property."

3. Because I have neither the "good reason" or "other proper reason" as described on page 3, I cannot check off either of the required boxes on page 3 of the application form.

4. I also cannot complete the "Basis for Request for a Concealed Carry Pistol" form, because I do not have "a special need for self-protection distinguishable from the general community, as supported by evidence of specific threats or previous attacks which demonstrate a special danger to [my] life." I cannot "[a]llege serious threats of death or serious bodily harm, any attacks on yourself, or any theft of property from your person." I cannot "[a]llege that the threats are of a nature that the legal possession of a pistol is necessary as a reasonable precaution against the apprehended danger," and I have made no police or court reports in Washington, D.C. relating to such threats. I am aware that the instructions for this form indicate that "[i]n the **Basis for Request for a Concealed Carry Pistol** section of the application, you must demonstrate that either you have good reason to fear injury to yourself or your property, or you have another proper reason for carrying a concealed pistol."

5. Question 8 on the application form asks whether I have "provided accurate and true facts on this application?" The affirmation requires me to affirm that the application is being made under penalty of perjury. I am unwilling to falsely claim that I have a "good" or "other proper" reason under District of Columbia law to carry a handgun, although I believe I have a perfectly good reason—self-defense—secured to me by the Second Amendment.

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

Executed this the 30th day of October, 2014.

Edward Raymond

Edward Raymond

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOM G. PALMER, et al.,	)	Case No. 09-CV-1482-FJS
	)	
Plaintiffs,	)	**DECLARATION OF GEORGE LYON**
	)	
v.	)	
	)	
DISTRICT OF COLUMBIA, et al.,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF GEORGE LYON

I, George Lyon, am competent to state, and declare the following based on my personal knowledge:

1. I want to obtain a District of Columbia license to carry a concealed handgun. To that end, I downloaded the application form for that license which was just made available by the Metropolitan Police Department, as well as the instructions for applying for the license.

2. Upon reviewing the requirements, it appears I am fully qualified to apply for the license, with one significant exception: I lack the "good reason" or "other proper reason" demanded on page 3 of the application. I cannot "show a special need for self-protection, such as evidence of specific threats or previous attacks which demonstrate a special danger to [my] life," my employment does not "require[] that [I] handle large amounts of cash or valuables that [I] must transport on [my] person," and I am not required to provide protection for a "family member who is physically or mentally incapacitated to a point where that family member cannot act in defense of himself or herself or his or her property."

3. Because I have neither the "good reason" or "other proper reason" as described on page 3, I cannot check off either of the required boxes on page 3 of the application form.

4. I also cannot complete the "Basis for Request for a Concealed Carry Pistol" form, because I do not have "a special need for self-protection distinguishable from the general community, as supported by evidence of specific threats or previous attacks which demonstrate a special danger to [my] life." I cannot "[a]llege serious threats of death or serious bodily harm, any attacks on yourself, or any theft of property from your person." I cannot "[a]llege that the threats are of a nature that the legal possession of a pistol is necessary as a reasonable precaution against the apprehended danger," and I have made no police or court reports in Washington, D.C. relating to such threats. I am aware that the instructions for this form indicate that "[i]n the **Basis for Request for a Concealed Carry Pistol** section of the application, you must demonstrate that either you have good reason to fear injury to yourself or your property, or you have another proper reason for carrying a concealed pistol."

5. Question 8 on the application form asks whether I have "provided accurate and true facts on this application?" The affirmation requires me to affirm that the application is being made under penalty of perjury. I am unwilling to falsely claim that I have a "good" or "other proper" reason under District of Columbia law to carry a handgun, although I believe I have a perfectly good reason—self-defense—secured to me by the Second Amendment.

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

Executed this the 29th day of October, 2014.

George Lyon