IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, JR., Plaintiff-Appellant, v. STATE OF HAWAII, et al., Defendants-Appellees,	No. 12-17808

PLAINTIFF-APPELLANT'S MOTION FOR SUMMARY REVERSAL

COMES NOW, Plaintiff-Appellant George K. Young, Jr., and files this, his Motion for Summary Reversal pursuant to Circuit Rule 3-6, and would show the Court the following:

On March 24, 2021, this Court in *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021), held that the Second Amendment to the United States Constitution was not violated by Hawaii's requirement to demonstrate an applicant has "an exceptional case" and/or "reason to fear injury to [his or her] person or property." HRS § 134-9(a). In other words, a heightened need requirement.

Mr. Young petitioned the Supreme Court for a writ of certiorari on May 11, 2021.[1] Mr. Young's petition was held pending a decision in the related case of *New York State Rifle & Pistol Ass'n. (NYSRPA) v. Corlett*. No.20-843, 2021, *cert. granted*, 141

[1] See https://www.supremecourt.gov/DocketPDF/20/20-1639/178667/20210511140056066_Young%20Cert%20v20%20FINAL%20B.pdf.

S.Ct. 2566 (2021). On June 23, 2022, the Supreme Court issued its decision in *Bruen*, striking down as unconstitutional New York's "proper cause" requirement for issuance of a permit to carry a handgun in public. *New York State Rifle & Pistol Association, Inc. v. Bruen*, --- S.Ct. ---, 2022 U.S. LEXIS 3055 (June 23, 2022). A copy of the Supreme Court's opinion is attached for the Court's convenience.

In so holding, the Supreme Court contrasted the 43 States with "shall issue" statutes, "where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability," with the six States which "have 'may issue' licensing laws, under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause or suitability for the relevant license." Slip op. at 4-5. Among these "may issue" states, the Court expressly identified Hawaii. *Id.* at 5. And the Court specifically cited "Haw. Rev. Stat. []134-9(a) (2011) ("exceptional case")," the very provision at issue in this case, as a "may issue" statute. *Id.* at 6 n.2.

The Court then went on to reject the "means-end," two step, intermediate scrutiny analysis used by the Ninth Circuit in *Young*, and by courts of appeal in other circuits, to sustain such "may issue" statutes, holding that "[d]espite the popularity of this two-step approach, it is one step too many." The Court ruled that the Court's decisions in "*Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context." Slip op. at 13 (*Heller* "did not invoke any means-end test

such as strict or intermediate scrutiny"); *Id.* at 14 (*Heller* "also specifically ruled out the intermediate-scrutiny test that respondents and the United States now urge us to adopt"); *Id.* at 15 ("We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.").

The Court explained that "[t]he test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." Slip op. at 17. Under this test, "the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 15. Applying that standard, the Court held that the Second Amendment protected "carrying handguns publicly for self-defense," and that "[t]o confine the right to 'bear' arms to the home would nullify half of the Second Amendment's operative protections." *Id.* at 23, 24. The Court then rejected New York's remaining arguments, concluding that a responsible law-abiding citizen may exercise this right to carry a firearm outside the home without "demonstrating to government officers some special need." *Id.* at 62-63. *Bruen* thus concluded: "New York's proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with

ordinary self-defense needs from exercising their right to keep and bear arms." *Id.* at 63.

Bruen is obviously controlling here. The Court has definitely rejected any "good cause" requirement for permits to carry, holding that citizens "with ordinary self-defense needs" have a constitutional right to bear arms outside the home. That decision is applicable to the "good cause" requirements imposed by any and all of the "may issue" state statutes identified by the Court, including the Hawaii statute specifically cited by the Court. *Bruen*, slip op. at 5-6 n.2. There is not an iota of material difference between New York's "proper cause" statute and Hawaii's "exceptional case" and "urgency or need" statute. The Supreme Court has directly overruled the lower courts' reliance on any "means-ends," intermediate scrutiny that had been used to sustain Hawaii's "exceptional case"/"urgency or need" statute in the past.

Both New York's "proper cause" statute and Hawaii's "exceptional case"/"urgency or need" statute impermissibly accord "discretion" to licensing officials to deny a carry permit "even when the applicant satisfies the statutory criteria." *Id.* at 5; *See also id.* at 24-25 n.8 ("we conclude…that a State may not prevent law-abiding citizens from publicly carrying handguns because they have not demonstrated a special need for self-defense"); *id.*, at 30 n.9 (rejecting any permitting scheme, like Hawaii's, that "require[d] the 'appraisal of facts, the exercise of judgment, and the formation of an opinion'") (citation omitted).

Mr. Young satisfied all of the requirements to be issued his permit and was only denied because "Hawai'i County police chief, Henry Kubojiri … determined that Young had neither shown an 'exceptional case[] or demonstrated urgency." *Young v. Hawaii*, 992 F.3d 765, 777 (9th Cir. 2021). And the Supreme Court has now held that the Second Amendment fully extends outside the home. *See Bruen*, slip op. at 24 ("To confine the right to "bear" arms to the home would nullify half of the Second Amendment's operative protections" and "confining the right to 'bear' arms to the home would make little sense given that self-defense is 'the central component of the [Second Amendment] right itself.'") (quoting *Heller*, 554 U. S., at 599) (emphasis the Court's).

Bruen has now made it very "plain" that "good cause" statutes in "may issue" states, like the "exceptional case"/"urgency or need" statute in Hawaii, are unconstitutional. That holding is, of course, controlling on this question of federal constitutional law. Nothing more is required to decide this case. In these circumstances, summary disposition is fully appropriate. There are no material factual disputes, and no need for a remand to further develop the record. *See Bruen*, slip op. at 25 n.8 (rejecting the dissent's view that further record development was necessary, holding that the unconstitutionality of the "proper cause" requirement "does not depend upon any of the factual questions raised by the dissent"). *See also id.* at 16-17 n.6 (noting that the application of the proper test posed "legal questions" suitable for judicial resolution).

The Supreme Court has now directly spoken directly on Mr. Young's petition: "Petition GRANTED. Judgment VACATED and case REMANDED for further consideration in light of *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. ___ (2022)." The Court should thus summarily reverse the decision of the district court, and remand the case to the district court for instructions to enjoin Hawaii's requirement for "exceptional case"/"urgency or need") and Mr. Young should receive his permit post haste.

This Court should not delay the relief Mr. Young seeks. Mr. Young has been on appeal in this court since 2012. He is 72 years old. Now that Mr. Young's rights have been vindicated by the Supreme Court of the United States, this Court should *immediately* grant this Motion and reverse with instructions to the district court to enjoin Hawaii's "exceptional case" or "urgency or need" statute and order to the Defendants to issue Mr. Young his permit *immediately*. He's waited long enough for relief.

Mr. Young's constitutional rights have been demonstrated to be violated by Defendants' actions. How much longer should he have to wait to have his case adjudicated and obtain his relief? This Court should stand up for people like Mr. Young, someone who fought bravely for his county in Vietnam, has led an exemplary life, and seeks to simply exercise his constitutional rights as guaranteed to him by the Constitution of the United States of America.

CONCLUSION

The Court should reverse the district court with instructions to enjoin the offending law and instruct the district court to order Defendants to issue Mr. Young his permit immediately.

Respectfully submitted, this the 30th of June, 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the type-volume, typeface, and type-style requirements of Federal Rule of Appellate Procedure 27 because it contains 1,431 words and was prepared using Microsoft Word 365 in Garamond 14-point font, a proportionally spaced typeface.

/s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I also hereby certify that the participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Stephen D. Stamboulieh
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