W11D-CR22-0187933-S **W11D-MV22-0269307-S**	:	**SUPERIOR COURT**
STATE OF CONNECTICUT	:	**Windham J.D.**
v.	:	**At Danielson**
GERALDO M. ALVAREZ	:	**October 29, 2022**

DEFENDANT'S MOTION TO DISMISS CHARGE AND FOR A BRIEFING SCHEDULE AND HEARING DATE

Pursuant to Practice Book §§ 41-7 and 41-8, the Defendant, Geraldo M. Alvarez, hereby moves to dismiss one of the charges against him in Docket W11D-CR22-0187933-S – Carrying a Pistol Without a Permit in violation of Conn. Gen. Stat. § 29-35(a) – on the grounds that Conn. Gen. Stat. § 29-35(a) is unconstitutional under the Second Amendment, which was incorporated against the State by the Fourteenth Amendment in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). He submits that the Court can decide this motion without a trial of the general issue. Pursuant to Practice Book § 41-6, Alvarez also certifies to the Court that he has not previously presented this motion to the Court in these matters and the Court has not previously ruled on the defense raised by this motion.

The basis for Alvarez's motion to dismiss comes from the United States Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (Jun. 23, 2022). *Bruen* abolished the use of tiers of "means-end" scrutiny – e.g., strict scrutiny – that American courts have habitually used to assess constitutional rights claims since the famous footnote four of *United States v. Carolene Products Co.*, 304 U.S. 144 (1938), and it replaced it with a textual and historical analysis.

Conn. Gen. Stat. § 29-35(a) cannot survive constitutional muster under *Bruen*'s new historical analysis because there are no well-established historical analogues to

modern firearms permitting laws. Rather, the United States' historical tradition is one of requiring citizens to possess firearms and other arms, not conditioning their possession on the state's benevolent permission. Thus, as discussed at length below, Conn. Gen. Stat. § 29-35(a) is unconstitutional on its face and as applied to Alvarez.

Alvarez's other charges and clean criminal history make him a clear candidate for the Alcohol Education Program and the Accelerated Rehabilitation program. The charge under Conn. Gen. Stat. § 29-35(a) places a greater burden on him to show his qualifications for the Accelerated Rehabilitation program, and it places him at the risk of a one-year mandatory minimum period of incarceration. Thus, Alvarez respectfully asks the Court to set a timely briefing schedule for the state to respond to this motion pursuant to Practice Book 41-7 and to schedule a hearing date, and he seeks a speedy decision on this motion as it will affect his ability to pursue diversionary programs and, if necessary, effectively plea bargain with the State.

FACTUAL BACKGROUND[1]

I. Trooper Daryl G. Manbeck's Report:

On August 31, 2022 at approximately 7:54 P.M., Connecticut State Trooper Daryl G. Manbeck responded to the scene of a one car roll over in Pomfret, Connecticut. Upon his arrival, Manbeck observed EMS treating Defendant Alvarez – the operator – in an ambulance.

[1] To the extent that the undersigned provides a factual background on behalf of Mr. Alvarez for purposes of this motion to dismiss, he partially relies on the information contained in Trooper Daryl G. Manbeck's investigation report dated September 1, 2022. Defendant Alvarez does not concede the truth of everything that Trooper Manbeck reports, and he will dispute some of Trooper Manbeck's allegations if his case proceeds to trial.

Without stopping to talk to Alvarez, Manbeck proceeded to Alvarez's car to obtain his registration and insurance information. He found a holstered handgun on the front passenger seat. He immediately secured the firearm in his cruiser and subsequently learned that Alvarez had a valid Massachusetts pistol permit, but that he did not a Connecticut pistol permit.

Manbeck claims that Alvarez told him that he was carrying the firearm on his person at the time of accident, but that it flew off during the accident. For purposes of this motion to dismiss, Alvarez does not dispute Manbeck's claim, but he reserves his right to dispute the claim in further proceedings.[2]

Upon further observation, Manbeck observed the smell of alcohol emanating from Alvarez just prior to Alvarez being transported to Day Kimball Hospital for injuries. Manbeck followed Alvarez to the hospital and administered field sobriety tests that Alvarez allegedly failed. He also collected a urine sample for testing, which the undersigned has submitted a written request for and has not yet received.

The State subsequently charged Alvarez with four charges: (1) Carrying a Pistol Without a Permit in violation of Conn. Gen. Stat. § 29-35(a); (2) Illegal Carrying of a Firearm While Under the Influence in violation of Conn. Gen. Stat. § 53-206d(a); (3) Illegal Operation Of a Motor Vehicle While Under the Influence in violation of Conn. Gen. Stat.

[2] Alvarez has submitted a written discovery request for any bodycam footage recorded by Trooper Manbeck or other officers that may contain his on-scene statements. The undersigned has not yet received those from the State, nor has he received a representation that none exist. Thus, the undersigned is unable to evaluate the viability of suppressing those statements even though he does contemplate such a motion once he has sufficient information.

§ 14-227a; and (4) Failure to Drive In the Proper Lane in violation of Conn. Gen. Stat. § 14-236.

II. Defendant Alvarez's Troubled Night:

Every criminal case requires context. Alvarez's case is no different. Alvarez lives and works in Massachusetts. His domestic life has recently become embroiled in turmoil. He, his wife, and their children had been living with Alvarez's in-laws. Due to an argument that did not escalate beyond words and in which no threats were made, Alvarez's in-laws informed him that he was no longer welcome in the family home. Alvarez subsequently made arrangements to stay with a friend until he landed on his feet – a development that initially started several weeks before the events that bring him before the Court occurred.

After his day's work as a security guard, Alvarez went to a bar/restaurant to contemplate his domestic situation – a stressful and heartbreaking tragedy for anyone. He does not recall how many drinks that he had before leaving, but he does recall that he did not feel drunk before leaving the bar. The stress of Alvarez's situation had severely clouded his brain, and he decided to take a drive to meditate and find order in his thoughts regarding his domestic situation. Lost in thought, he did not realize that he had driven into Connecticut until his accident and Connecticut emergency personnel including Trooper Manbeck responded to assist him.

Alvarez fully cooperated with both Trooper Manbeck and the emergency personnel at the scene.

III. Conn. Gen. Stat. § 29-35:

Conn. Gen. Stat. § 29-35(a) prohibits any person from carrying a pistol or revolver upon his person, except when he is within his dwelling place or his place of business,

without a permit. A violation of § 29-35(a) is a class D felony, which carries a mandatory minimum sentence of one year unless there are mitigating circumstances that a court must specifically articulate. *See* Conn. Gen. Stat. § 29-37(b). A conviction for an offense under § 29-35(a) renders a person ineligible to possess any firearms or ammunition in the future. *See* 18 U.S.C. § 922(g)(1).

LEGAL STANDARD

"[A] motion to dismiss effectively challenges the jurisdiction of the court, asserting that the state, as a matter of law and fact, cannot state a proper cause of action against the defendant…." *State v. Kallberg*, 326 Conn. 1, 13 (2017). Since this is not a sufficiency of the evidence or a probable cause motion to dismiss, but rather one of strictly legal vintage, the applicable legal standard is the substantive Second Amendment standard established in *Bruen* and discussed in detail below.

ARGUMENT

To the best of the undersigned's knowledge, this motion to dismiss presents an issue of first impression for Connecticut courts. Neither the Connecticut Supreme Court nor the Appellate Court have ever considered whether Conn. Gen. Stat. § 29-35 violates the Second Amendment since the statutory provision was first adopted in 1949. The undersigned's research efforts also unveiled a similar dearth of consideration of Conn. Gen. Stat. § 29-35's constitutionality by federal courts.

If Alvarez had been charged prior to June 23, 2022 and filed this motion to dismiss, the lack of controlling precedent from the Connecticut Supreme Court and the Connecticut Appellate Court would have likely led the Court to consult with the United States Supreme Court's Second Amendment decisions as well as those of the federal

circuit courts of appeals to decide Alvarez's motion to dismiss. Since the United States Supreme Court's Second Amendment precedents did not clearly establish that it had changed the standard for evaluating Second Amendment claims, the Court would have likely followed the consensus view among the federal circuit courts as to the appropriate test to decide Alvarez's motion to dismiss.

New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S.Ct. 2111 (Jun. 23, 2022) abolished the consensus view and replaces it with an entirely new test that is somewhat foreign to the way lawyers have become accustomed to view constitutional questions. The State cannot prevail under *Bruen*'s new standard, and the Court should hold Conn. Gen. Stat. § 29-35(a) unconstitutional on its face and as-applied to Alvarez.

I. *Bruen* Replaces The Circuit Courts' "Two Step" Test With A Textual And Historical Analysis Under Which The State Bears The Heavy Burden Of Proof.

In overruling the consensus view in *Bruen*, the United States Supreme Court reversed the United States Court of Appeals for the Second Circuit's decision upholding the constitutionality of New York's discretionary "pistol permit" issuance regime. The Second Circuit's expression of the "two step" test is, in counsel's opinion, the most suitable illustration of the consensus view. *See New York State Rifle and Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 254 (2d Cir. 2015) (noting that the Third, Fourth, Fifth, Six, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits all followed the same general approach).

Under the previous "two step" test, courts first considered whether the law at issue "burdens conduct protected by the Second Amendment." *Id*. at 254. If the law did not implicate conduct that the Second Amendment protects, the law survived. *Id*. at 254. If,

however, the law burdened conduct protected by the Second Amendment, courts then assessed the appropriate level of scrutiny to apply. *Id*. at 254.

The first step of the test was "arms" based. Courts looked at whether the types of arms at issue were "in common use" and "typically possessed by law-abiding citizens for lawful purposes." *Id*. at 254-55.

Under the second step of the test, courts assessed "how close the law comes to the core of the Second Amendment right" and "the severity of the law's burden on the right." *Id*. at 258. If a law did not burden the core of the Second Amendment's protections, courts applied intermediate scrutiny, but, if it did, courts applied strict scrutiny. *Id*. at 258-61.

Bruen explicitly rejects the "two step" test and "means-end" scrutiny as being inconsistent with *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010):

> Despite the popularity of this two-step approach, it is one step too many. Step one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history. But *Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context.

Bruen, 142 S.Ct. at 2127. Instead, *Bruen* holds that, under *Heller* and *McDonald*, "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*.

Bruen's analysis starts with the Second Amendment's text: "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id*. at 2126. The individual conduct that the Second Amendment's plain text protects is "the individual right to possess and carry weapons in case of

confrontation that does not depend on service in the militia." *Id*. at 2127 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008)) (internal quotation marks omitted). As *Bruen* indicates, the Second Amendment's text and history left "no doubt" that the "Second Amendment confers an individual right to keep and bear arms." *Id*. at 2127 (quoting *Heller*, 554 U.S. at 595) (internal quotation marks omitted).

Relying on *Heller*, *Bruen* then turned to the historical understanding and tradition. It acknowledged that the Second Amendment does not confer unlimited rights, and it cited the fact that, "[f]rom Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id*. at 2128 (quoting *Heller*, 554 U.S. at 626) (internal quotation marks omitted). In establishing this limiting principle, the United States Supreme Court did not leave courts without guiding principles. It identified a non-exhaustive series of presumptively lawful firearms regulations in *Heller*:

> nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Heller, 554 U.S. at 626-27; *see also Heller*, 554 U.S. at 627 n.26 ("We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive").

Pistol permitting regulations are not one of the presumptively lawful firearms regulations identified in *Heller*.

Even if pistol permitting regulations were a presumptively lawful firearms regulation of the vintage that *Heller* enumerates, nothing in *Bruen* indicated that their presumptive

lawfulness relieves the State of its historical burden. The language that *Heller* used to delineate the presumptively lawful regulatory measures – "longstanding prohibitions" – reinforces the State's burden under *Bruen*. If pistol permitting regulations are indeed presumptively lawful, the State should not have any difficulty meeting its historical burden.

Bruen provides poignant guidance on how courts are to hold the State to its burden. The now-deceased "means-end" scrutiny test gave courts the power to "make difficult empirical judgements about the cost and benefits of firearms restrictions…" – judgments that they are ill-suited to make "especially given their lack of expertise in the field." *Id*. at 2130 (quoting *City of Chicago v. McDonald*, 561 U.S. 742, 790-791 (2010)) (internal quotation marks and alterations markings omitted). *Bruen* plainly forbids this type of interest balancing:

> If the last decade of Second Amendment litigation has taught this Court anything, it is that federal courts tasked with making such difficult empirical judgments regarding firearm regulations under the banner of "intermediate scrutiny" often defer to the determinations of legislatures. But while that judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here. The Second Amendment "is the very *product* of an interest balancing by the people" and it "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms" for self-defense. *Heller*, 554 U.S. at 635, 128 S.Ct. 2783. It is this balance—struck by the traditions of the American people—that demands our unqualified deference.

Id. at 2131 (emphasis in original).

Bruen requires courts to assess "whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding" through "reasoning by analogy – a commonplace task for any lawyer or judge." *Id*. at 2131, 2132. It contemplates two types of cases: the straightforward cases and "other cases implicating unprecedented societal concerns or dramatic technological changes." *Id*. at 2131-32.

Bruen describes the straightforward cases as follows:

> For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional. And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality.

Id. at 2131.

When a court considers "modern regulations that were unimaginable at the founding," however, *Bruen* requires the State to identify "a well-established and representative historical analogue…" to its modern regulations. *Id.* at 2133. To determine whether the analogue is representative and "relevantly similar under the Second Amendment," *Bruen* provides courts with "at least two metrics" that "are [the] central considerations when engaging in an analogical inquiry" from *Heller* and *McDonald*: "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id*. at 2132-33 (internal quotation marks and citations omitted) (emphasis in original).

Bruen indicates that the historical inquiry must focus on the scope of constitutional rights that "they were understood to have *when the people adopted them*." *Id*. at 2136 (internal quotation marks and citations omitted) (emphasis in original). It cautions courts to focus on common law practices that "prevailed up to the period immediately before and after the framing of the Constitution" and contemporary history in the immediate postenactment period. *Id*. at 2136-37 (internal quotation marks and citations omitted). In particular, *Bruen* cautions courts "against giving postenactment history more weight than

it can rightly bear," and it describes mid-to-late 19th century evidence as confirmation of the original public meaning instead of being of independent significance. *Id*. at 2136-37.

Bruen closes its instructions on these more complex cases with two cautions to courts. First, it expressly forbids courts from entertaining or engaging in "independent means-end scrutiny under the guise of an analogical inquiry." *Id.* at 2133 n.7. Second, while *Bruen* does not require the State to "identify… a historical twin" or "a dead ringer" as a historical analogue, it also does not permit courts to "uphold every modern law that remotely resembles a historical analogue… because doing so risks endorsing outliers that our ancestors would never have accepted." *Id.* at 2133 (internal quotation marks, citations, and alteration marks omitted) (emphasis in original).

II. The Second Amendment's Plain Text Clearly Covers Alvarez's Conduct, Thus Satisfying The First Part Of The *Bruen* Test.

As discussed above, the individual conduct that the Second Amendment's plain text protects is "the individual right to possess and carry weapons in case of confrontation that does not depend on service in the militia." *Id*. at 2127 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008)) (internal quotation marks omitted).

There is no question that Alvarez possessed and, for purposes of this motion to dismiss,[3] was carrying a pistol in case of confrontation. He works as a private security guard for a legal cannabis facility in Massachusetts, and he holds a valid Massachusetts pistol permit. Even though Alvarez's employer does not require him to carry a firearm while on the job, Alvarez carries one so he can protect the people who he is responsible to protect in case of a confrontation.

[3] *See* n.1 supra.

There is also no meaningful question that the Second Amendment's plain text protects Alvarez's right to keep and bear a pistol – a right *Heller* clearly established and *Bruen* placed beyond all question. Nothing in the Second Amendment's plain text would give any reasonable reader notice that he must go and seek the State of Connecticut's permission before exercising his Second Amendment rights. Rather, the Second Amendment is consistent with the other provisions of the Bill of Rights. It codifies a right, not a privilege that a citizen must seek the benevolent permission of the State to exercise.

To interpret the plain text of the Second Amendment otherwise would render it inconsistent with the other provisions of the Bill of Rights. Would Alvarez have to seek the State's permission to voice a controversial political opinion in Bushnell Park? Would he have to seek the State's permission to go to a Connecticut church? Affirmative answers to those questions would be ludicrous and intolerable in the face of the First Amendment's plain text. Conn. Gen. Stat. § 29-35 is equally ludicrous in the face of the Second Amendment's plain text.

The Court, however, does not need to embrace the ludicrous principle to apply *Bruen* in Alvarez's favor. The State has not accused Alvarez of carrying a pistol into Connecticut for the purpose of using it in an unlawful manner. It has absolutely no evidence supporting such an allegation, and the presumption of innocence would require the Court to make short work of such a suggestion in the absence of significant evidence to the contrary. Thus, the Court should have no difficulty concluding that Alvarez was carrying a pistol for a lawful purpose protected by the Second Amendment's plain text.

III. The State Cannot Supply The Well-Established And Representative Historical Analogue That *Bruen* Requires It To Supply To Demonstrate Conn. Gen. Stat. § 29-35's Constitutionality.

Bruen, as discussed previously, defines two types of cases: the straightforward ones and the more complex ones. Alvarez submits to the Court that this case is a fairly straightforward one, but the same evidence that makes it a relatively straightforward case also overwhelmingly forecloses any attempt by the State to supply the well-established and representative historical analogue to Conn. Gen. Stat. § 29-35 that *Bruen* requires.

A. Colonial and antebellum firearms permitting laws were racially discriminatory, and none of them applied to citizens entitled to either common law rights or constitutional rights.

The Virginia Colony enacted the first law in America requiring government permission to possess a firearm in 1619. The law had two features. First, it generally prohibited all Blacks and Indians who were "not house-keepers, nor listed in the militia" from bearing arms. William Waller Hening, 4 *The Statutes At Large; Being A Collection Of All The Laws Of Virginia, From The First Session of The Legislature, In The Year* 1619, at 131 (1823). Second, it permitted Blacks and Indians who lived on frontier plantations to possess arms if they were granted a government license "to keep and use guns, powder, and shot…." *Id*.

In 1715, Maryland enacted a licensing law, which read in relevant portion as follows: "[t]hat no Negro or other slave, within this Province, shall be permitted to carry any Gun or any offensive Weapon, from off their Master's land, without Licence from their said Master…." 75 *Archives of Maryland* 268 (William Hand Browne ed., 1885) (enacted 1715).

In 1740, South Carolina followed Maryland's example, enacting a law that required a master's written permission for a black person to possess a firearm. *An Act for the better Ordering and Governing Negroes and other Slaves in this Province*, Act of May 10, 1740, no.695, § 23, in 1 731-1743 S.C. PUB. LAWS 163, 168-69. Even the written permission came with severe limitations as South Carolina prohibited licensed blacks from carrying firearms from sundown Saturday to sunrise Monday. *Id*. Blacks could also possess a firearm for purposes of hunting if they were doing so under the supervision of a white person sixteen or older. *Id*.

In 1755, Georgia adopted a functionally identical model to South Carolina, and it reenacted the law in 1768. *The Colonial Records of the State of Georgia* 76-78, 117-18 (Allen D. Candler ed., 1904).

All of these pre-constitutional licensing regimes targeted people – Native Americans and Blacks – who were not considered citizens entitled to the rights that white citizens enjoyed. There is no evidence from the colonial period that licensing regimes were imposed on those who the colonies considered citizens.

After the Constitution and the Bill of Rights were adopted in 1791, similar licensing regimes arose. In 1799, Mississippi's territorial legislature enacted a law stating "[n]o negro or mulatto shall keep or carry any gun, powder, shot, club or other weapon whatsoever, offensive or defensive." *A Law for the regulation of Slaves,* 1799 Laws of the Miss. Terr. 112, 113 (Mar. 30, 1799). The general prohibition, however, came with two exceptions: (1) Militia commanders could grant free blacks a twelve-months license to own and carry arms, and (2) slave owners could apply for a license for their slaves to carry firearms if they showed "sufficient cause… why such indulgence should be granted."

Id. Mississippi subsequently added a third form of licensing with no limitations on the period for which they were valid in 1822, giving licensing powers to justices of the peace to license slaves and to county courts to license free blacks. *An Act to reduce into one, the several acts, concerning Slaves, Free Negroes, and Mulattoes*, 1822 Miss. Laws 179, 181-83, §§ 10, 12 (June 18, 1822). It subsequently repealed this licensing scheme and replaced it with a general prohibition in 1852. *An Act to prohibit Magistrates from issuing license to negroes to carry and use firearms*, ch. 206, 1852 Miss. Laws 328 (Mar. 15, 1852).

In 1806, Maryland prohibited "any negro or mulatto within this state [from] keep[ing] any dog, bitch, or gun." *An Act to restrain the evil practices from negroes keeping dogs, and to prohibit them from carrying guns or offensive weapons*, ch. 81, §§ 1-2, 1806 Md. Laws (Jan. 4, 1807). A free "negro or mulatto," however, could apply to a justice of the peace for a one-year license to keep one dog or to possess and carry a firearm. *Id*.

Louisiana's 1806 Black Code prohibited slaves from possessing firearms, but it allowed them to hunt on their owners' plantations if they had, and were carrying, written permission from their owner. *Act of June 7, 1806*, ch.33, § 19, 1806 La. Acts 150, 160. Free blacks, however, had to carry "a certificate of a justice of the peace, attesting their freedom," or they forfeited their firearms. *Act of June 7, 1806*, ch.33, §§ 19, 21, 1806 La. Acts 150, 160-62, 164.

In 1819, South Carolina prohibited slaves from possessing firearms unless the slave was "in the company and presence of some white person" or with "a ticket or license in writing from his owner or overseer." *An Act to provide for more effectual performance of Patrol Duty*, 1819 S.C. Acts 29, 31.

Delaware's 1827 slave code took a narrower view, prohibiting slaves from carrying arms "without special permission of his or her master or mistress." *An Act concerning certain crimes and offences committed by slaves, and for the security of slaves properly demeaning themselves*, ch. 50, § 8, 1827 Del. Laws 125, 125-26.

Florida enacted a short-lived licensing regime in 1828 for free "negros" and "mulattoes" to obtain licenses from justices of the peace, but it repealed the licensing law in 1831. *An Act Relating to crimes and misdemeanors committed by slaves, free negroes and mulattoes*, § 9, 1828 Fla. Laws 174, 177; Act of Jan. 12, 1828, § 9, 1827 Fla. Laws 97, 100; *An Act to amend an act relating to Crimes and Misdemeanors committed by slaves, free negroes and mulattoes*, 1831 Fla. Acts 30 (1831).

North Carolina established the foundation for the United States Supreme Court's ultimate indirect characterization of these laws in 1844. The North Carolina Supreme Court rejected a constitutional challenge to North Carolina's 1841 requirement that all free persons of color were required to obtain an annual license from the Court of Pleas and Quarter Sessions to own or carry firearms, swords, daggers or bowie knives. *See State v. Newsom*, 27 N.C. (5 Ired.) 250 (1844); *see also An Act to prevent Free Persons of Colour from carrying Fire-arms,* ch. 30, 1840-41 N.C. Laws 61-62 (1841). The North Carolina Supreme Court minced no words regarding how it did not consider people of color to be citizens entitled to the full privileges enjoyed by the community: "free people of color have been among us, as a separate and distinct class, requiring, from necessity, in many cases, separate and distinct legislation." *Newsom*, 27 N.C. (5 Ired.) at 252.

The rationale for these laws rang its clearest in *Dred Scott v. Sanford*, 60 U.S. 393 (1856), which unequivocally held that free blacks were not United States citizens. In

reaching that decision, the United States Supreme Court relied heavily on Connecticut law and the Connecticut Supreme Court's decision in *Crandall v. State*, 10 Conn. 339 (1834). The United States Supreme Court explained its reliance on Connecticut law as follows:

> We have made this particular examination into the legislative and judicial action of Connecticut, because, from the early hostility it displayed to the slave trade on the coast of Africa, we may expect to find the laws of that State as lenient and favorable to the subject race as those of any other State in the Union; and if we find that at the time the Constitution was adopted, they were not even there raised to the rank of citizens, but were still held and treated as property, and the laws relating to them passed with reference altogether to the interest and convenience of the white race, we shall hardly find them elevated to a higher rank anywhere else.

Dred Scott, 60 U.S. at 415.

In particular, the United States Supreme Court noted the *Crandall* decision in which the Connecticut Supreme Court held that blacks "were not citizens of a State, within the meaning of the word citizen in the Constitution of the United States, and were not therefore entitled to the privileges and immunities of citizens in other States." *Dred Scott*, 60 U.S. at 415. Thus, the United States Supreme Court adopted the Connecticut Supreme Court's conclusion in *Dred Scott* and concluded that free blacks could not be considered citizens.

Of the ills that *Dred Scott* enumerated would happen if free blacks were declared citizens was that free blacks would become entitled to the "privileges and immunities of citizens…," including the right to "carry arms wherever they went." *Id*. at 417. The *Dredd Scott* Court was undoubtedly aware of the licensing schemes described above, and it indirectly indicates through its cataloguing of ills that it did not think that those laws could survive constitutional scrutiny if free blacks were considered citizens.

Alvarez submits to the Court that the colonial and antebellum history are clear. The only firearms licensing schemes present in the colonies, the states, and the territories were for those who were not considered citizens: blacks and Native Americans. The implementation of licensing regimes for citizens appears to have been unthinkable – both at the common law and in the state constitutional traditions of the period. Thus, no well-established and representative licensing schemes exist in the most critical period of history that the State must supply a historical analogue from.

B. The firearms licensing schemes enacted during the Reconstruction Era were exclusively Black Code remakes of colonial and antebellum laws that the Thirteenth Amendment precluded.

Although the Thirteenth Amendment abolished slavery through its full ratification in 1865 and the former Confederate States subsequently accepted it as a condition of their reconciliation to the Union, its text did not explicitly place newly freed people of color on the same footing of equality in terms of rights and citizenship as their white contemporaries.[4] The former Confederate States took full advantage of the ambiguity through the Black Codes, which specifically targeted firearm ownership by free blacks. *See McDonald*, 561 U.S. at 771 (noting the Southern States' "systematic efforts" to disarm blacks); *see also* S. Exec. Doc. No. 43, 39th Cong., 1st Sess., 8 (1866) ("Pistols, old muskets, and shotguns were taken away from [freed slaves] as such weapons would be wrested from the hands of lunatics")

Florida's first legislative session following the Confederate defeat in the Civil War yielded a law that made it unlawful "for any negro, mulatto, or other person of color, to

[4] The United States Supreme Court did not interpret the Thirteenth Amendment as giving Congress the power to abolish the "incidents" of slavery until 1883. *See Civil Rights Cases,* 109 U.S. 3, 4 (1883).

own, use or keep in his possession or under his control, any Bowie-Knife, dirk, sword, fire-arms or ammunition of any kind." *An Act prescribing additional penalties for the commission of offenses against the State and for other purposes*, ch. 1,466, no. 3, § 12, 1865 Laws of Fla. 25 (1865). Similar to colonial and antebellum laws, the law had an exception to permit probate judges to issue licenses based on "the recommendation of two respectable citizens of the county certifying the peaceful and orderly character of the applicant." *Id*. at 27.

Mississippi followed suit in even more drastic fashion, requiring free people of color to obtain a license from the county board of police. *An Act to punish certain Offences therein named, and for other purposes*, ch.23, § 1, 1865 Miss. Laws 165. If a free person of color was caught with a firearm, they were subject to a substantial fine, and the county sheriff could forcibly place them in service with a white person who would pay their fine for them in exchange for their labor, essentially placing them back into slavery. *An Act to punish certain Offences therein named, and for other purposes*, Ch. 23, § 5, 1865 Miss. Laws 165, 166-67.

Since these licensing regimes arose before the Fourteenth Amendment and *Barron ex rel. Tiernan v. Mayor of Baltimore*, 7 Pet. 243, 250–251, 8 L.Ed. 672 (1833)'s decision that the Bill of Rights only applied to the federal government remained binding precedent, the onus was on Congress to act. Congress did act forcefully. In 1866, Congress passed the Second Freedmen's Bureau Act over President Andrew Johnson's veto, which ordered him to use military force to ensure that "negroes, mulattoes, freedmen or any other persons…" were guaranteed "the full and equal benefit of all laws and proceedings for the security of person and estate *including the constitutional right to bear*

arms... on account of race, color, or any previous condition of slavery or involuntary servitude." 14 Stat. 173, 176-77 (1866) (emphasis added).

Congress subsequently took a second step by enacting the Civil Rights Act of 1866, which provided a statutory cause of action for any violations of the Bill of Rights. 14 Stat. 27 (1866). The Civil Rights Act of 1866 led directly to the Fourteenth Amendment, which sought to guarantee the protections of the Bill of Rights to all citizens regardless of their race or color. The lack of United States Supreme Court precedent striking down the Black Codes' firearms licensing provisions did not result from merits determinations as to whether the Second Amendment permitted them, but rather a practical reason and a doctrinal error of epic proportions.

The practical reason as to why the United States Supreme Court never reached the Second Amendment merits of the Black Codes' firearms licensing provision was that Congress took the issue out of its hands by using martial law during the Reconstruction Era to quash the Black Codes. Since Congress chose to use force rather than law, the United States Supreme Court never had the opportunity to apply the law.

The doctrinal error came in *United States v. Cruikshank*, 92 U.S. 542 (1875). In *Cruikshank*, the United States Supreme Court declined to apply both the First and Second Amendments against the states, citing *Barron v. Baltimore* as having settled that question. *Cruikshank*, 92 U.S. at 552-53. *Cruikshank* flatly dismissed the Fourteenth Amendment as being nothing more than a equal protection provision rather than constraining the states to the guarantees established by the Bill of Rights. *Id*. at 554-55. The United States Supreme Court did not correct its error regarding the First Amendment's incorporation

until 1925 in *Gitlow v. New York*, 268 U.S. 652 (1925) and the Second Amendment's incorporation until 2010 in *McDonald v. City of Chicago, IL.*, 561 U.S. 742 (2010).

The common theme, however, that runs through colonial America, antebellum America, and Reconstruction America is that a firearms licensing scheme would have been unconscionable had it been applied to people – white people – who possessed all of the privileges of citizenship. *Dred Scott*, 60 U.S. at 417 (cautioning that free blacks would become entitled to the "privileges and immunities of citizens…," including the right to "carry arms wherever they went" if it recognized them as equal citizens). Nothing in the history of colonial America, antebellum America, or Reconstruction America even hints that people who enjoyed full civil rights had to request and obtain government permission before obtaining a firearm. Rather, such licensing schemes were limited to inferior members of society who were not entitled to the rights of normal citizens.

The bottom line is that the State cannot show a well-established and representative historical analogue from the Reconstruction era either. Rather, the history favors Alvarez's contention here. The Reconstruction Era history shows that Congress – the voice of the people – expressed its view as to the Second Amendment's protections meant in no uncertain terms. It twice overrode presidential vetoes from President Johnson – an unprecedented action at the time – to put a stop to treating the newly freed people of color as inferior citizens, and Congress explicitly targeted licensing restrictions on people of color that it viewed as unconscionable if they were imposed on whites who enjoyed the full privileges of citizenship.

C. So-called neutral firearms licensing laws first arose on a sporadic basis in the early 1900s well after *Cruikshank* immunized them from Second Amendment review.

New York enacted the first general firearms licensing law in the United States in 1911. *Sullivan Dangerous Weapons Act*, 1911 N.Y. Laws ch. 195, sec. 1, § 1897 (codified as amended at N.Y. Penal Law §§ 265.01(1), 265.20(a)(3)). It required a government permit for handgun possession, purchases, and the carrying of any pistol or revolver. *Id*. Contemporary evidence, however, indicates that the Sullivan Act was not as general as it appeared, but rather was a targeted crackdown on legal immigrants, particularly Italians. *See* Robert J. Cottrol & Raymond T. Diamond, "*Never intended to be applied to the white population": Firearms regulation and racial disparity--The redeemed south's legacy to a national jurisprudence?*, 70 CHI.-KENT L. REV. 1307, 1334 (1995) ("[T]he Sullivan Law was aimed at New York City, where the large foreign born population was deemed peculiarly susceptible and perhaps inclined to vice and crime"); *see also Editorial, Concealed Pistols*, N.Y. TIMES (Jan. 27, 1905), http://query.nytimes.com/gst/abstract.html?res=9C03E4D8163DE733A25754C2A9679C946497D6CF [http://perma.cc/XMJ8-9GVB] (touting a proposal similar to the Sullivan Act as "corrective and salutary in a city filled with immigrants and evil communications, floating from the shores of Italy and Austria-Hungary").

New York's Sullivan Act served as a model for several other laws in the early 1900s. Oregon enacted a 1913 law that made it illegal "to sell at retail, barter, give away, or dispose" of a handgun unless the purchaser produced a licensed from a municipal judge, city recorder, or county judge. *An Act Forbidding the sale, barter, giving away, disposal of or display for sale of pocket pistols and revolvers, and fixing a penalty for*

violation thereof, ch.256, § 1, 1913 Or. Laws 497. To obtain a permit, the applicant had to present two affidavits signed by "reputable freeholders" attesting to his "good moral character." Ch. 256, § 2, 1913 Or. Laws 497. Oregon subsequently repealed its permit law in 1925. *An Act to control the possession, sale and use of pistols and revolvers, to provide penalties*, ch. 260, 1925 Or. Laws 468.

North Carolina followed suit in 1919, enacting the law that forms the basis of its current permitting law. It required a purchaser to obtain a permit from the clerk of the superior courts before purchasing or receiving as a gift any pistol, so-called pump gun,255 bowie knife, dirk, dagger or metallic knucks." *An Act to Regulate the Sale of Concealed Weapons in North Carolina*, ch. 197, § 1, 1919 N.C. Sess. Laws, 397, 397 (1919).

Missouri enacted a more expansive licensing law in 1921. Its permitting law was straightforward: "No person… shall directly or indirectly buy, sell, borrow, loan, give away, trade, barter, deliver or receive" any handgun to a person without a permit. *See An Act to provide for the public safety by requiring each pistol, revolver, or other firearm of a size which may be concealed upon the person, to be stamped with the description of the same, and a record of all sales thereof to be kept by all dealers therein, and regulating the buying, selling, borrowing, loaning, giving away, trading, bartering, delivering or receiving of such weapons, and prescribing punishments for the violation thereof, and with an emergency clause*, § 2, 1921 Mo. Laws 691, 692 (Apr. 7, 1921). Missouri, however, repealed this law in 2007.

Arkansas took the strangest approach in 1923. It required all handgun owners to obtain an ownership permit that they were required to renew on an annual basis. *An Act to regulate the Ownership of Pistols and Revolvers*, Act 430, 1923 Ark. Acts 379 (1923).

It, however, repealed the law in 1925 because, as one of its commissioners stated, the law "proved a complete failure, that scarcely anybody registered his pistols and it was realized that it worked an injustice to the few who did so." *Third Report of the Committee on a Uniform Act to Regulate the Sale and Possession of Firearms, in Handbook of the National Conference of Commissioners On Uniform State Laws And Proceedings Of The Thirty-Sixth Annual Meeting Denver, Colorado, July 6-12, 1926*, at 571, 572 (1926).

Cruikshank flatly foreclosed any federal judicial review of these laws on Second Amendment grounds, and state constitutional challenges appear to have been non-existent because people simply chose to ignore the laws as happened in Arkansas. In any event, these laws cannot supply the well-established and representative historical analogue that *Bruen* requires for several reasons. First, the lack of federal judicial review on Second Amendment grounds sheds no light on the scope of the Second Amendment's protections. Second, the laws are outliers in the American legal system rather than indicia of a well-established and widely accepted regulatory practice. *See Bruen*, 142 S.Ct. at 2153 (rejecting New York's contention that two state statutes and several state court decisions affirming those statutes in the face of Second Amendment grounds were sufficient to establish a well-established and representative historical analogue). Third, *Bruen* characterized late nineteenth century laws' "temporal distance from the founding" as a serious flaw militating against relying on them to interpret the Second Amendment. *Id*. at 2153-54. Laws of the Sullivan Act era suffer from the same serious flaw, and *Bruen* forecloses reliance on them.

Additionally, early 20th century history shows that the Sullivan Act model became an outlier in its own era. The United States Revolver Association viewed the Sullivan Act

model as carrying serious constitutional concerns precisely because of its permitting system. Karl T. Frederick, *Pistol Law* (1964). To combat the spread of the Sullivan Act model, the United States Revolver Association drafted its own model gun control law – which eliminated pistol permitting schemes – and promoted it across the United States as the Revolver Association Act.[5] *Id*. North Dakota became the first state to adopt the Revolver Association Act in 1923. *An Act To Control the Possession, sale, and use of pistols and revolvers, to provide penalties, and for other purposes*, ch. 266 § 5, 1923 N.D. Laws 379, 380. Oregon quickly replaced its 1913 adoption of the Sullivan Act model with the Revolver Association Act in 1925. *See An Act to control the possession, sale and use of pistols and revolvers, to provide penalties*, ch. 260, 1925 Or. Laws 468. In 1926, the National Conference of Commissioners on Uniform State Laws adopted the Revolver Association Act as the Uniform Firearms Act, and it became the predominant model of firearms regulation in the early 20th century. Charles V. Imlay, *The Uniform Firearms Act*, 12 A.B.A. J. 767, 767 (1926).

Thus, even if the Court can properly consider it under *Bruen*, early 20th century history also fails to supply the State with the well-established and historical analogue required by *Bruen*.

D. Colonial and antebellum history reveals a well-established and representative tradition of compulsory firearms ownership, not a tradition of government benevolence.

The colonial and Founding Era attitude toward firearms did not manifest itself in a system of government benevolence that forced individuals to obtain government

[5] The Revolver Association Act went through a number of names including the Uniform Revolver Act and the Uniform Firearms Act.

permission to keep and bear firearms. Rather, both the colonial and Founding Era history are replete with example of governments compelling, by duly enacted law, citizens to keep, maintain, and bear firearms.

The United States Supreme Court itself recognized this history in *Heller*: "Many colonial statutes required individual arms bearing for public safety reasons – such as the 1770 Georgia law that 'for the security and *defence of this province* from internal dangers and insurrections' required those men who qualified for militia duty individually 'to carry fire arms' 'to places of public worship.'" *Heller*, 554 U.S. at 601 (quoting 19 Colonial Records of the State of Georgia 137–139 (A. Candler ed.1911 (pt. 1)) (emphasis in original).

Professor Robert H. Churchill enumerates some of these laws, including Connecticut's own version:

> While some states limited this individual duty of keeping arms to those subject to militia training, others did not. Connecticut's earliest militia law ordered that all persons exempt from militia duty "shall yet in all respects provide, keep and maintain in constant readiness, compleat arms." In 1684, New York passed a similar provision, ordering that all persons "freed from training by the law, yet that they be obliged to keep convenient arms and ammunition in their houses as the law directs to others." Delaware law ordered that "every freeholder and taxable," even those exempt from training, provide himself with arms and "shall be obliged to keep such arms and ammunition by him." Virginia's militia law provided that "every person" exempt from mustering "shall always keep in his house or place of abode such arms, accoutrements, and ammunition, as are by the said act required to be kept by the militia of this colony."

Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 148 (2007) (collecting statutes).

These laws took on a national character one year after the ratification of the Second Amendment when Congress enacted the Uniform Militia Act. *See* Act of May 8, 1792, 1 Stat. 271. The Uniform Militia Act required every able-bodied white male citizen between the ages of 18 and 45 to be enrolled in the militia, and it required him to "provide himself with a good musket or firelock" and

> a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle and a quarter of a pound of powder.

Id.

As discussed previously, no colony prior to the Founding required a citizen to obtain the government's permission before keeping and bearing a firearm. No state imposed a similar requirement in the antebellum period. Instead, the colonies, the states, and the federal government *actually made firearms ownership, possessing, and bearing compulsory*.

Thus, even though it is not Alvarez's burden to show a well-established and representative historical tradition, the history that he does present shows that modern pistol permitting laws are impossible to square with America's history. The right to keep and bear arms did not depend on government benevolence in the colonies and in the antebellum period. The Second Amendment still does not permit the government to condition the exercise of the right the Constitution guarantees on government benevolence.

IV. It Is Not Justice To Saddle Mr. Alvarez With A Felony Conviction That Deprives Him Of His Second Amendment Rights Forever And Will Hamstring A Just Resolution Of This Case.

Alvarez submits that the law overwhelmingly favors him in this motion, but he also asks the Court to consider what justice should look like in this case. He is a thirty-eight-year-old father of two daughters with no prior criminal record, and he is currently the sole provider for his family because his wife is on medical leave from work. By virtue of his valid Massachusetts pistol permit, he meets all of the federal qualifications to lawfully possess and carry a pistol. There is no indication that he would not meet the same requirements under Connecticut law.

At the heart of this case is the story of life. Alvarez and his family has encountered one of those rough patches in life where there is significant tension in their familial relationships. No one could experience such tension without feeling hurt and despair. Lost in his troubles and attempting to drive to relax and gain clarity in his thoughts, he unwittingly crossed the Massachusetts-Connecticut border carrying a pistol – an occurrence that could happen to anyone coping with the same trouble as he was.[6]

He now faces a mandatory one-year period of incarceration for carrying a pistol without a permit and a felony conviction unless the Court specifically finds mitigating circumstances to sentence to him to a lower period of incarceration. Conn. Gen. Stat. § 29-37(b). Alvarez's conduct does not even remotely approach the conduct that the well-established and representative firearms regulations of the colonial and antebellum eras addressed. There is no just reason to saddle him with a felony conviction for it.

[6] *See* n.1 supra.

Additionally, if the Court dismisses Alvarez's Conn. Gen. Stat. § 29-35(a) charge, Alvarez is an ideal candidate for the Pretrial Alcohol Education Program (AEP) for his drunk driving charges and Accelerated Rehabilitation (AR) for carrying a firearm under the influence of alcohol. Those dispositions would leave him without a criminal record and in full possession of his constitutional rights.

The United States Supreme Court has recognized that pleas and pretrial resolutions count for nearly 97% of all federal criminal convictions and 94% of all state criminal convictions. *See Missouri v. Frye*, 556 U.S. 134, 143 (2012). In other words, the criminal justice system "is for the most part a system of pleas, not a system of trials." *Id*. at 143 (internal quotation marks and citations omitted). Thus, "[t]o a large extent… horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it *is* the criminal justice system." *Id*. at 144 (internal citations and quotation marks omitted) (emphasis and alterations in original). It is "the negotiation of a plea bargain" or a pretrial disposition, "rather than the unfolding of a trial," that is "almost always the critical point for a defendant." *Id*. at 144.

Connecticut's pretrial "horse trading" implicates additional due process considerations. Plea negotiations do not simply occur between defense counsel and a prosecutor. Practice Book § 39-11 expressly provides for "disposition conferences" – "judicial pretrials" as they have become known in Connecticut practice. The purpose of a "judicial pretrial" is to assist the prosecuting authority and defense counsel to reach a plea agreement, and it necessarily requires the Court's participation. Practice Book § 39-14.

The nature of the Court's participation depends on the pretrial judge and local idiosyncrasies.[7] In some jurisdictions such as the Litchfield Judicial District, the Court prefers that the State and defense counsel attempt to reach an agreement first before requesting a judicial pretrial. In other jurisdictions such as the New London Judicial District, the Court often entertains judicial pretrial-like proceedings from the first court appearance in serious felony cases.

Like jurisdictions, judges take different approaches to judicial pretrials. The undersigned has appeared in judicial pretrials where the judge has simply listened as both sides present the information and arguments that they wish the Court to consider and then either provided a court offer or an opinion on what justice should look like in the particular case. He has also appeared in judicial pretrials where the judge has taken a more active role in the discussions, asking questions of both the State and defense counsel and adding personal brands of humor and philosophical insights to the proceedings.

No one disputes that judicial pretrials serve important – indeed, indispensable – purposes in Connecticut's criminal justice system, but they also raise additional due process considerations under both the Fourteenth Amendment and Article First, §§ 8, 9, and 10 of the Connecticut Constitution. The often-repeated principle that Connecticut judges and defense counsel learn very quickly in criminal practice is that "the State controls the charges, and the Court control the sentence or disposition within the

[7] While the undersigned has never had the pleasure of engaging in a pretrial conference with the Court and brother/sister counsel for the State from the Windham Judicial District, he has spent a year and a half of "horse trading" cases throughout Connecticut, and he has acquired some familiarity with the process.

parameters allotted by law." In other words, judicial pretrials create a three-way bargaining or disposition system, not a two-way bargaining or disposition system, and the Court plays a significant role in persuading a defendant to waive his panoply of constitutional rights pursuant to a plea bargain by offering a more lenient sentence or granting a pretrial diversionary program disposition.

Every so often, however, a case arises where the Court, by law, does get a say on the viability of the charges. In those case, the due process requirements of the Fourteenth Amendment and Article First, §§ 8, 9, and 10 of the Connecticut Constitution operate to prohibit the Court from presiding over and participating in a plea bargaining or pretrial disposition process that leverages the uncertainty of the Court's decision on the merits of a timely motion to dismiss against a defendant in an effort to persuade him to waive his constitutional rights. Rather, these great due process principles require the Court to deliver its decision first before embarking on discussions as to a pretrial disposition.

In this case, this motion places the parameters of the "horse trading" squarely in the Court's hands. If the Court grants the motion to dismiss, Alvarez is likely to receive the pretrial diversionary programs that Connecticut has established to give good people like him who have had a bad moment a second chance. If the Court defers ruling on the motion or denies it, Alvarez will be forced to apply for AEP and AR at a significant disadvantage, and he may very well be forced to plea bargain where the likely outcome will be a felony conviction and a period of incarceration that his family can ill afford.

The merits of this case, the heavy burden that the State bears under *Bruen*, the due process requirements contained in the Fourteenth Amendment and Article First, §§ 8, 9, and 10 of the Connecticut Constitution, and the reality of the American criminal

justice overwhelmingly favor the Court speedily deciding this motion to dismiss so that this case can proceed in the manner that best fulfills the goal of justice in a manner consistent with the United States Constitution. At the same time, both Alvarez and the undersigned recognize that the State will need time to assess its burden under *Bruen* and present its position in this case. Thus, Alvarez respectfully asks the Court to quickly set a briefing deadline by which time the State is required to respond to this motion and a hearing date for this motion to dismiss.

CONCLUSION

"The Second Amendment is the very *product* of an interest balancing by the people and it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms for self-defense…. It is this balance – struck by the traditions of the American people – that demands our unqualified deference." *Bruen*, 142 S.Ct. at 2131 (internal citations and quotation marks omitted) (emphasis in original).

The State bears the burden under the Second Amendment and *Bruen* of demonstrating to the Court a well-established and representative historical analogue to Conn. Gen. Stat. § 29-35(a). Because modern public policy rationales play no role in such an analysis, Alvarez submits that the State cannot meet its burden and that Conn. Gen. Stat. § 29-35(a) is unconstitutional – both on its face and as-applied to him in this case.

To promote this case's speedy and just resolution, Alvarez respectfully requests the Court to set a briefing deadline for the State to respond to this motion and a hearing date.

The Defendant

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on the foregoing date upon the following parties/counsel of record:

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/s/ Cameron L. Atkinson /s/

W11D-CR22-0187933-S **W11D-MV22-0269307-S**	:	**SUPERIOR COURT**
STATE OF CONNECTICUT	:	**Windham J.D.**
v.	:	**At Danielson**
GERALDO M. ALVAREZ	:	

ORDER

The Defendant's motion to dismiss and for a briefing schedule and a hearing date, having been duly heard and considered, it is hereby ordered:

GRANTED / DENIED

Dated: _____

_____
Hon.
Judge, Connecticut Superior Court