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VIA ECF

March 12, 2026

Honorable Natasha C. Merle
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: John DiSalvo, et al. v. The City of New York, et al., 1:26-cv-274 (NCM)(PK)

Your Honor:

I am Assistant Corporation Counsel in the Office of Steven Banks, Corporation Counsel of the City of New York, one of the attorneys for defendants City of New York (“City”) and Jessica S. Tisch as Commissioner of the New York City Police Department (“NYPD”) (collectively “Defendants”) in the above-referenced action. Defendants write pursuant to Section III.A of Your Honor’s Individual Practice Rules to respectfully request a pre-motion conference for their anticipated motion to dismiss the First Amended Complaint (“FAC,” Docket Entry No. 8) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Background

The NYPD License Division (“License Division”) is responsible for reviewing applications for handgun licenses in the City. The License Division reviews applications in accordance with the New York Penal Law, the New York City Administrative Code, and the Rules of the City of New York, which require that licensees have “good moral character.” See, e.g., Penal Law § 400.00(1)(b). Accordingly, the License Division must make an individualized assessment of each applicant based on, inter alia, the information in their application, required supporting documents, and a background check. Ultimately, a decision on each application is made by either the Commanding Officer or Executive Officer of the License Division.

Plaintiffs commenced this action pursuant to 42 U.S.C. § 1983 alleging that Defendants deprived them of their Second Amendment and procedural due process rights. Plaintiffs allege that they have been harmed by purported delays in the process to review and issue determinations on their firearm license applications and to issue licenses. As set forth below, the FAC should be dismissed because the facts alleged therein are insufficient to establish liability against the City.

Plaintiffs Fail to Allege Facts Sufficient to Establish Municipal Liability

Although municipal liability is denominated as a separate cause of action in the FAC, establishing municipal liability is a prerequisite to maintain each of plaintiffs’ Section 1983 claims against defendants. See Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 690 n.55 (1978).¹ It is well settled that Section 1983 does not impose vicarious liability on municipalities; rather, “Municipal liability under § 1983 attaches where—and only where—a deliberate choice to follow a course of action is made among various alternatives” City of Canton v. Harris, 489 U.S. 378, 389 (1989) (quoting Pembaur v. City of Cincinnati, 475 U.S. 469, 483 (1986)(internal quotation marks omitted)(plurality)). Municipalities, therefore, may be held liable only where a policy or custom directly caused a deprivation of a constitutional right. A policy may be made by a legislative body or government officials with final policymaking authority in a particular area or on a particular issue. McMillian v. Monroe Cty., 520 U.S. 781, 785 (1997); see Vives v. City of New York, 524 F.3d 346, 350 (2d Cir. 2008).

The allegations in the FAC are insufficient under any theory of Monell liability. A plaintiff can plead a policy or custom by alleging facts to “show[] [1] the existence of a formal policy, [2] a practice sufficiently widespread to constitute a custom, or [3] a policymaker’s deliberate indifference to rights violations by his subordinates.” See O’Kane v. Plainedge Union Free Sch. Dist., 827 F. App’x 141, 142 (2d Cir. 2020); see also Iacovangelo v. Corr. Med. Care, Inc., 624 F. App’x 10, 13 (2d Cir. 2015). Under each of these three theories, the conduct must be such that it was sanctioned, expressly or implicitly, by a policymaking official or otherwise the deliberate choice of the municipality. See Amnesty Am. v. Town of W. Hartford, 361 F.3d 113, 126 (2d Cir. 2004). “[T]o survive a motion to dismiss, a plaintiff must allege ‘sufficient factual detail’ and not mere ‘boilerplate allegations’ that the violation of the plaintiff’s constitutional rights resulted from the municipality’s custom or official policy.” Isaac v. City of New York, No. 19-4729, 2018 U.S. Dist. LEXIS 132995, *49 (E.D.N.Y. 2018) (quoting Ying Li v. City of N.Y., 246 F. Supp. 3d 578, 636 (E.D.N.Y. 2017)); see Plair v. City of New York, 789 F.Supp. 2d 459, 469 (collecting cases).

The FAC fails to identify any specific policy choice that caused plaintiffs’ alleged harms. Plaintiffs do not allege that defendants have a formal policy of delaying review of firearm license applications. Instead, plaintiffs generically aver that “deliberate decisions regarding staffing, budgeting, and administration of the firearms licensing regime” cumulatively caused their purported injuries. FAC ¶ 85. These alleged facts are insufficient to identify the policy that they purport to challenge, much less to show that it is unconstitutional. Nor do plaintiffs allege an unconstitutional practice so widespread as to constitute a custom. The allegations in the FAC are specific to the five plaintiffs’ own experiences. As the City receives and reviews tens of thousands of such applications each year, the alleged timelines for five applicants are insufficient to show an unconstitutional custom. The facts alleged in the FAC fail to establish a practice that is so “permanent” and “well settled” as to imply the acquiescence of senior policymaking officials. Davis v. City of N.Y., 75 F. App’x 827, 829 (2d Cir. 2003).

¹ Naming City officers in their official capacities as defendants does not change the relevant standard. See id. at 690 n.55. Nor does a different standard apply based on the type of relief sought against the City. See L.A. Cty. v. Humphries, 562 U.S. 29, 39 (2010).

The only theory of municipal liability directly cited by plaintiffs is that of deliberate indifference (see FAC ¶ 87), yet plaintiffs’ allegations remain legally insufficient on that theory as well. See Bd. of the Cnty. Cmm’rs v. Brown, 520 U.S. 397, 410 (1997) (“[D]eliberate indifference is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.”) (quotation marks omitted). Plaintiffs “must demonstrate that, through its *deliberate* conduct, the municipality was the ‘moving force’ behind the injury alleged.” Id. at 404 (emphasis in original). Further, they must allege that “the municipal action was taken with the requisite degree of culpability” and that there is “a direct causal link between the municipal action and the deprivation of federal rights.” Id. Plaintiffs do not allege deliberate indifference based on a failure to train or supervise employees, rather they contend that cumulative budget and staffing decisions caused their purported harms. These allegations cannot meet the requisite standard—that the City or its policymakers “disregarded a known or obvious consequence” of an action. See O’Kane, 827 F. App’x at 143. Nor do they plead facts sufficient to show that such decisions “actually caused” their alleged harm. See City of Canton, 489 U.S. at 391; see also McDowell v. Brown, 392 F.3d 1283, 1291 (11th Cir. 2004) (finding that a “generalized policy of understaffing” is insufficient to impose municipal liability).

Plaintiffs’ Procedural Due Process Claim Must Also Fail

Plaintiffs also raise a procedural due process claim that is utterly lacking in merit. To establish a procedural due process claim, a plaintiff must demonstrate (1) possession of a protected liberty or property interest and (2) “deprivation of that interest without constitutionally adequate process.” Tooly v Schwaller, 919 F.3d 165, 173 (2d Cir. 2019). The FAC does not plausibly allege these elements.

Plaintiffs make the conclusory assertion that they possess a liberty interest in the exercise of Second Amendment rights. See FAC ¶ 80. But, Plaintiffs have not alleged that they possess a liberty interest in a *pending* application for a firearm license. While the Second Circuit in Kuck v. Danaher, 600 F.3d 159, 164 (2d Cir. 2010), accepted that a stake in an existing *firearm license* is a liberty interest, at the time the FAC was filed, none of the Plaintiffs possessed a valid firearm license.

Plaintiffs also cannot satisfy the second element of a procedural due process claim for three distinct reasons. First, the concept of procedural due process presupposes that the government either has or is attempting to deprive a person of their liberty or property interest. At the time of the filing of FAC, the NYPD License Division had not denied any of the Plaintiffs’ applications; thus, without such a denial, there is no deprivation and the procedural due process claim must fail. Second, it is unclear how the License Division’s process is constitutionally inadequate. Indeed, Plaintiffs seem to want *less* process, as they complain about the License Division’s delay in adjudicating applications. Finally, any alleged administrative delay is not in and of itself sufficient to establish a procedural due process claim. See Furman v. Rich, No. 19-2748, 2020 U.S. Dist. LEXIS 123209, at *17 (E.D.N.Y. July 14, 2020) (“This Court is not aware of any case in this Circuit upholding a procedural due process claim based purely on administrative delay....”).

Respectfully submitted,

/s/ Kevin M. Rizzo

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(via ECF)

CC: Susan Chana Lask
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