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VIA ECF
March 23, 2026

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

Re: 26-CV-274, DiSalvo, et al. v. The City of New York, et al.

Dear Judge Merle:

Plaintiffs respectfully submit this letter in opposition to Defendants' March 12, 2026 pre-motion letter seeking leave to move under Rule 12(b)(6). The request should be denied because the First Amended Complaint ("FAC") plausibly alleges prolonged and unjustified delays in the City's firearm-licensing regime that burden Plaintiffs' Second Amendment rights and deny timely process, and support a Monell claim for ongoing constitutional injury. Additionally, Defendants apply the wrong standard by treating the FAC as though Plaintiffs must prove municipal liability at the pleading stage, and it wrongly recasts the FAC as asserting a liberty interest in a license itself when the FAC alleges that the City's prolonged and standardless delays deprive Plaintiffs of timely access to the underlying constitutional right.

Defendants' Letter Improperly Relies on Facts Outside the FAC

Defendants' letter violates Rule 12(b)(6) by relying on factual assertions and characterizations not alleged in the FAC. On a Rule 12(b)(6) motion, the Court must confine itself to the four corners of the complaint, accept its factual allegations as true, and draw all reasonable inferences in plaintiffs' favor. *Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 425 (2d Cir. 2008); *Ruotolo v. City of New York*, 514 F.3d 184, 188 (2d Cir. 2008). The Court should therefore disregard Defendants' extraneous assertions.

The entire first paragraph of Defendants' "Background" section creates a description of how the License Division supposedly reviews applications, what materials it considers, and who makes final decisions, yet none of that is alleged in the FAC - which is why Defendants cite no FAC paragraphs for those assertions. Likewise, Defendants claim the City receives and reviews "tens of thousands" of applications each year, but the FAC pleads different publicly reported figures and specifically alleges that the NYPD has refused to disclose timely adjudication and

backlog data. FAC ¶ 46. It is improper to add this new factual matter through an unsworn letter by counsel.

It is equally improper for Defendants to claim Plaintiffs want "less process." The FAC says no such thing. Plaintiffs do not seek to eliminate background checks or individualized review. They seek timely adjudication and constitutionally adequate procedures that ensure timely adjudication of license applications and related post-approvals. FAC ¶ 90. *Bruen* itself assumed that objective licensing review may coexist with the Second Amendment, but only if it is not administered through abusive delay. 597 U.S. at 38 n.9.

The FAC Plausibly Pleads Municipal Liability Under Monell

Defendants improperly isolate FAC paragraphs 85 and 87, then argue that Plaintiffs fail to plead deliberate indifference, failure to train, or a widespread unconstitutional practice based on those two paragraphs. They also reduce the issue to the five named Plaintiffs. The FAC alleges far more.

It expressly pleads that constitutional violations were caused by "official policies, practices, and customs of the City of New York, including deliberate decisions regarding staffing, budgeting, and administration of the firearm licensing regime." FAC ¶ 85. It supports that allegation with facts showing chronic understaffing, ignored applicant inquiries, a dysfunctional application portal, repeated delays well beyond six months, public reports of continued post-*Bruen* delay, complaints from other constituents to City Councilmember Paladino, substantial fee revenue not used to resolve delay and understaffing, NYPD's own public admission that its process remains lengthy, policymaker awareness, and failure to take corrective action even as the violations continue after so-called initial adjudication. FAC ¶¶ 45-63, 77, 85-87. The FAC specifically alleges that City policymakers knew prolonged delays were preventing law-abiding citizens from exercising constitutional rights and failed to correct the problem. FAC ¶ 86. At the pleading stage, that plausibly alleges either a municipal practice or deliberate indifference by final policymakers to a known and obvious constitutional problem.

Defendants' reliance on general Monell formulations does not require dismissal. *O'Kane v. Plainedge Union Free Sch. Dist.*, 827 F. App'x 141 (2d Cir. 2020), *City of Canton v. Harris*, 489 U.S. 378 (1989), and *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397 (1997), recite familiar standards, but none holds that a plaintiff challenging a centralized municipal licensing regime must plead dozens of identical victims before discovery. The question is whether the alleged facts permit an inference of a conscious municipal choice rather than mere negligence. *Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 128-29 (2d Cir. 2004). In fact, Defendants cite *Amnesty* while omitting its holding that deliberate indifference occurs even by one act. *Amnesty* at 127. Repeated complaints followed by no meaningful effort to investigate or forestall further incidents support deliberate indifference. *Vann*, 72 F.3d at 1049. The FAC alleges exactly that: repeated delays, ignored inquiries, public notice of recurring problems, and no meaningful corrective action despite the City's statutory obligation to complete the process within six months. Penal Law § 400.00.

Nor does *Davis v. City of New York*, 75 F. App'x 827 (2d Cir. 2003), help Defendants. There, dismissal was affirmed because the plaintiff offered only conclusory assertions based on two incidents that could not show a widespread or well-settled custom. Here, by contrast, the FAC pleads concrete delays affecting multiple plaintiffs and others, identifies a centralized municipal regime, alleges repeated ignored inquiries and public notice of recurring delay, pleads City resource and staffing choices, and ties those facts to an ongoing burden on an enumerated constitutional right. That is far more than the boilerplate rejected in *Davis*.

Defendants also understate the Second Amendment claim. *Bruen* specifically warned that even a shall-issue licensing system may be unconstitutional where lengthy wait times in processing applications deny ordinary citizens their rights. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 38 n.9 (2022). Plaintiffs do not challenge objective licensing criteria in the abstract as defendants reframe this. They challenge the City's administration of the regime in a manner that leaves law-abiding applicants unable to exercise an enumerated constitutional right for a year or more.

Defendants Fail to Show That Plaintiffs' Due Process Claim Fails

Defendants try to narrow the case to whether there is a liberty interest in a pending application, rather than confront the actual claim: delay itself becomes an unconstitutional deprivation when it blocks timely access to the underlying right. The City's open-ended licensing delays burden the constitutional liberty interest that the license gates: the Second Amendment right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 628-35 (2008). *Bruen* made the point directly relevant here by warning that lengthy wait times may be unconstitutional. 597 U.S. at 38 n.9. That defeats Defendants' effort to reduce this case to a dispute over a pending administrative application divorced from the underlying constitutional right.

Defendants also misstate *Kuck*. *Kuck* (2d Cir. 2010) did not hold only that an already issued firearm license creates a liberty interest. It held that Connecticut's licensing scheme implicated a protected liberty interest and that unreasonable delay in the licensing process can violate due process because due process requires a meaningful opportunity to be heard at a meaningful time. That principle applies here. Once the City makes a license the mandatory gateway to exercising a fundamental right, it cannot evade due process by withholding action indefinitely while insisting no deprivation has occurred because no license has yet issued. See *Kraebel v. N.Y.C. Dep't of Hous. Pres. & Dev.*, 959 F.2d 395, 404-05 (2d Cir. 1992). Indeed, the FAC does not claim a liberty interest in bureaucratic paper; it alleges that the City's prolonged and standardless delays deprive Plaintiffs of timely access to the underlying constitutional right itself.

Accordingly, a pre-motion conference for a motion to dismiss should be denied.

Respectfully submitted,
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/s/ Susan Chana Lask
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