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# ERIC W. FEINBERG, ESQ.

ATTORNEY AT LAW

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July 11, 2024

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STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff-Respondent	:	APPELLATE DIVISION
	:	APP. DIV. DKT NO.: A-713-23T4
	:	
v.	:	
	:	
	:	
JELUDY TAVAREZ-RODRIGUEZ,	:	Criminal Action
Defendant-Appellant	:	
	:	Sat Below: Hon. Christopher J.
	:	Garrenger, J.S.C.

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## **AMENDED LETTER BRIEF ON BEHALF OF** **DEFENDANT-APPELLANT**

Honorable Judges of the Appellate Division:

Pursuant to Rule 2:6-2(b), please accept this letter brief on behalf of defendant, Jeludy Tavaréz-Rodríguez, appealing her conviction.

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## **PROCEDURAL HISTORY AND STATEMENT OF FACTS<sup>1</sup>**

This case stems from a traffic stop on October 31, 2020 in Medford Township. Da 5. During the traffic stop, police are alleged to have retrieved a .380 caliber Glock from the floor of Ms. Tavarez-Rodriguez's car. Id. At the time, Ms. Tavarez-Rodriguez possessed a valid permit to carry a concealed weapon from Pennsylvania. Id.

Following the traffic stop, Jeludy Tavarez-Rodriguez was charged via Complaint Warrant W-2020-269-0321 with second-degree unlawful possession of a handgun. Da1.

On April 7, 2022, a Burlington County Grand Jury returned Indictment No. 22-4-566-I, charging Defendant with one count of unlawful possession of a weapon. Da8. Then, on March 23, 2023, Defendant filed a Motion to Dismiss the Indictment, or alternatively, to Compel Defendant's Admission into PTI. Oral argument was heard on May 30, 2023 and the motions were denied on June 21, 2023. Da 23. On July 24, 2023, Defendant plead guilty to unlawful possession of a handgun, reserving the right to appeal the denial of the motion to dismiss. Da 9. On September 22, 2023, Defendant was sentenced to three years of probation. Da 15.

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<sup>1</sup>Because the procedural history and statement of facts here are so intertwined, they are combined in a single section.

**LEGAL ARGUMENT**

**POINT I**

**THE STATE OF NEW JERSEY MUST  
RECOGNIZE CARRY PERMITS ISSUED BY  
PENNSYLVANIA. (DA 26)**

"Full Faith and Credit shall be given in each State to the public Acts . . . of every other State." U.S. Const. Art. IV, § 1. The United States Supreme Court has recognized that "full faith and credit does not automatically compel a forum state to subordinate its own statutory policy to a conflicting public act of another state." Hughes v. Fetter, 341 U.S. 609, 611 (1951). "On the one hand is the strong unifying principle embodied in the Full Faith and Credit Clause looking toward maximum enforcement in each state of the obligations or rights created or recognized by the statutes of sister states; on the other hand is the policy of [the forum state], as interpreted by its highest court, against permitting [its] courts to [enforce its own law]. In the present case, the issue presented is whether New Jersey must give full faith and credit to a Pennsylvania gun permit.

In Hughes v. Fetter, 341 U.S. at 611, the question was whether Wisconsin could enforce its statute creating a cause of action for wrongful deaths caused only in that state in a matter concerning an incident that occurred in Illinois. The Wisconsin statute prevented Wisconsin's state courts

from entertaining suits brought under other states' wrongful death laws. The Supreme Court concluded that Wisconsin's policy is "forbidden by the national policy of the Full Faith and Credit Clause." Id. at 613. The Court also noted that "[Wisconsin] has no real feeling of antagonism against wrongful death suits in general." Id. at 612.

In the present case, the issue is whether New Jersey must give full faith and credit to an out of state gun permit. Recently, the United State Supreme Court decided in N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 71 (2022) that New York's "proper cause requirement" violated the Second Amendment "in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms." The Court reasoned that it "know[s] of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need." Id. at 70. The Court also stated that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical

tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" Id. at 17. (citation omitted).

At the time Bruen was decided, New Jersey, along with New York, were among seven states with laws that had "may issue" statutes. Id. at 14-15. As a result of Bruen, New Jersey's statute at the time of Tavaréz-Rodríguez's arrest was invalidated, and New Jersey was required to institute a "shall issue" policy. The issue now remains whether New Jersey must now give full faith and credit to Pennsylvania gun permits, and the answer is yes.

**A. Prosecution of Defendant Violates the Full Faith and Credit Clause of the Constitution.**

The Court below held that the Full Faith and Credit Clause does not compel a state to "'substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate' and that 'New Jersey is certainly competent enough to legislate its own criminal code... which is unique to New Jersey and New Jersey alone.'" Da 28. The Court also stated that the "Full Faith and Credit Clause 'has no bearing on the current proceedings between the State of New Jersey and this Defendant.'" Da 27.

The Full Faith and Credit Clause applies to every public act of a State, and gun licenses are certainly public acts. In this case, the Commonwealth of Pennsylvania issued Defendant a license to carry a firearm in accord with a

law enacted by the state's legislature. It is undoubtedly a public act, and the very text of the Full Faith and Credit Clause ensures its application.

The Court below then focused on whether New Jersey's statute has sufficient contacts with New Jersey to create a state interest. Da 28. The Defense never argued that New Jersey's law was invalid. The Defense's argument is that New Jersey must recognize a permit issued by Pennsylvania.

To be clear, N.J.S.A. 2C:39-5(b) states that "[a]ny person who knowingly has in his possession any handgun, including any antique handgun, without first having obtained a permit to carry the same as provided in N.J.S.A. 2C:58-4, is guilty of a crime of the second degree." The issue here is whether an individual with a Pennsylvania carry permit satisfies the requirements of N.J.S.A. 2C:58-4.

Following the test set forth by the Supreme Court, the first question is whether there is any conflict between New Jersey's policy and Pennsylvania's policy. See Fetter, 341 U.S. at 611. The answer is no.

Pennsylvania, like New Jersey, has a complicated procedure that, among other requirements, mandates an applicant undergo a background check by the sheriff. 18 Pa. C.S. § 6109.

The next issue is whether New Jersey has a policy reason for enforcing its own laws over those of Pennsylvania, and the answer to this, again, is no.



In this case, the Defense is not asking New Jersey to disregard New Jersey law in favor of Pennsylvania law. It is asking New Jersey to recognize a license issued by a sister state. Also, the State is unable to identify any policy reason for not recognizing a Pennsylvania gun license. New Jersey does not have any “real feeling of antagonism against [carry permits] in general.” See Fetter, 341 U.S. at 612. In fact, New Jersey has a statute which specifically creates a procedure for obtaining a carry permit. N.J.S.A. 2C:58-4.

Further, New Jersey and Pennsylvania’s carry permit statutes are nearly identical. The one major difference between statutes is that Pennsylvania’s statute permits guns in the passenger compartments of cars.<sup>2</sup>

The present issue is no different than allowing drivers out-of-state drivers holding out of state licenses to drive their cars in New Jersey, it is just a different type of license. Unlike driving and other privileges that require individuals to obtain a license, carrying a gun is a right protected by the Constitution, and that right does not get diminished as one travels around the country. In fact, full faith and credit was a means of unifying the nation, not

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<sup>2</sup> In response to Bruen, New Jersey passed sweeping legislation that imposed a new set of requirements, which included a ban on guns in vehicles. This new requirement has been preliminary enjoined by the United States District Court for the District of New Jersey. Koons v. New Jersey, 22-7464 (Bumb, J. May 16, 2023). After a historical analysis, the district court concluded that the plaintiffs are “likely to prevail on the merits of their Second Amendment challenge to [the] prohibition on functional firearms in vehicles.” Da 46.

creating a disjointed system in which the strength of our rights is dependent upon where we live.

By not recognizing Pennsylvania gun licenses, New Jersey has created a disjointed system which seeks to criminalize the law-abiding. New Jersey is “prevent[ing] law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” Bruen, 597 U.S. at 71. Those who reside in Pennsylvania and follow the Pennsylvania procedure become criminals by simply crossing a bridge. Even worse, the law-abiding now risk becoming criminals simply because a flight gets diverted to New Jersey, or bad weather causes an individual to fly out of New Jersey instead of Philadelphia.

By choosing to honor only those carry permits issued by New Jersey, New Jersey is effectively relegating the right to carry to a state right, when in actuality it is a national right guaranteed by the Constitution. The right does not end, or change in any way, when an individual crosses from one state into another.

#### **B. Prosecution of Defendant Violates Bruen.**

In Bruen, the Supreme Court stated “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the

government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation.” Bruen, 597 U.S. at 17. The Second Amendment states that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. Amend. II.

The Court below did not even partake in a Bruen analysis. Instead, the Court below held that the Bruen holding is limited to the narrow issue regarding the “special need” restrictions that were invalidated. Da 28.

Since this case clearly deals with gun regulation and the text of the Second Amendment facially protects Defendant's conduct, the Constitution presumptively protects Defendant's right to carry. To clarify the regulation here, it is New Jersey's use of its criminal law to prevent those with out of state carry permits from carrying in New Jersey.

Pursuant to Bruen, the State has the burden of proving that this type of regulation is within the historical tradition of the United States. 597 U.S. at 17

During oral argument in the trial court, the State failed to identify how this type of regulation was within the historical tradition of the Nation.

Instead, the State argued that the historical perspective is “[every state has its own handgun scheme. We don't have a federal handgun scheme. And to say that it's a national right to carry without state imposed restrictions is the

opposite of what [] history as to handgun ownership in this county has been.”

T1:13-17 to 13-22. The State’s argument, essentially, was that the historical tradition of the Nation is that states are free to have their own handgun schemes. This argument fails for very obvious reasons. E.g., Bruen, 597 U.S. at 1; McDonald v. Chicago, 561 U.S. 742 (2010); District of Columbia v. Heller, 554 U. S. 570 (2008).

As stated by the Supreme Court:

The 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. In some cases, that inquiry will be fairly straightforward. 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.

Bruen, 597 U.S. at 26-27.

In this case, the State has not stated a societal problem that is addressed by not recognizing Pennsylvania’s, or any other state’s, carry permit and has not shown any legislation in our history to support its argument.

The issue in this case is quite similar to the one settled by the Supreme Court in Obergefell v. Hodges, 576 U.S. 644 (2015). In Obergefell, a same-sex couple residing in Ohio was married in Maryland, and Ohio would not recognize their marriage. Id. at 658. The question presented to the Court was whether the Due Process Clause and the Equal Protection Clause protected the fundamental right to marry for same-sex couples.

The Court held that “the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty.” Id. at 675. The Court further held that “same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold—and it now does hold—that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.” Id. at 680-81.

The present case is no different. Like same-sex marriage, the right to carry on one’s person is a right guaranteed by the Constitution. Like marriage, obtaining a carry permit is a public act by a state. It is the State’s burden to provide a lawful basis to refuse to recognize a lawfully obtained carry permit in another state, and it has not.

**CONCLUSION**

The defendant respectfully requests this Court reverse the decision of the trial court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric Feinberg". The signature is written in a cursive, flowing style.

Eric W. Feinberg, Esq.

**Superior Court of New Jersey**  
**APPELLATE DIVISION**  
**DOCKET NO. A-000713-23T4**

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CRIMINAL ACTION

STATE OF NEW JERSEY,	:	
	:	
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction
	:	of the Superior Court of New Jersey,
	:	Law Division, Burlington County.
v.	:	
	:	Sat Below:
JELUDY	:	Hon. Christopher J. Garrenger, J.S.C.
TAVAREZ-RODRIGUEZ,	:	
	:	
Defendant-Appellant.	:	

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BRIEF AND APPENDIX ON BEHALF OF THE STATE OF NEW JERSEY

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September 11, 2024

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Db - Defendant’s brief.  
Sa - State’s Appendix.

## PRELIMINARY STATEMENT

Defendant was convicted of carrying a handgun in New Jersey without a New Jersey-issued permit to carry a handgun (NJ Carry Permit), in violation of New Jersey law. She challenges her conviction as inconsistent with the Second Amendment and the Full Faith and Credit Clause of the U.S. Constitution solely on the ground that, at the time of her arrest in New Jersey, she possessed a Pennsylvania-issued license to carry a handgun (PA Carry License), which authorizes her lawfully to carry a handgun in Pennsylvania.

Neither of defendant's constitutional challenges has merit. First, as the U.S. Supreme Court held in N.Y. State Rifle & Pistol Ass'n v. Bruen and this Court confirmed in State v. Wade, the Second Amendment has always allowed States to require individuals obtain permits handguns before publicly carrying firearms within their borders, to impose public-safety-oriented conditions on the State's issuance of such permits, and to enforce those permitting requirements against those who violate them. Defendant's claim that she is, nonetheless, entitled to flout New Jersey's permitting requirements just because she meets the different carry requirements imposed by another State is flatly inconsistent with Bruen and Wade, case law from this Court, and bedrock principles of federalism and representative democracy. Further, accepting her argument would have the perverse result of forcing New Jersey to favor out-of-state

residents by effectively exempting them from its permitting laws, even as to the residents of States that allow individuals to carry firearms without any permit at all. Nothing in the Second Amendment requires this untenable result.

Second, defendant's conviction does not offend the Full Faith and Credit Clause. While the Clause requires state courts to apply the laws of sister states when applicable, such as when a lawsuit is brought in New Jersey concerning a contract governed by Delaware law, it has no bearing on defendant's conviction for carrying a handgun in New Jersey contrary to New Jersey's own law. Indeed, although defendant grounds her Full Faith and Credit Clause challenge in the fact that she possesses a PA Carry License, that license does not even purport to authorize her to carry a handgun in New Jersey. And precedent from this Court squarely rejects the proposition that the Full Faith and Credit Clause compels New Jersey to allow a person to possess a handgun in New Jersey just because that person may be authorized to possess a handgun in another state.

Because defendant's conviction is consistent with the Second Amendment and the Full Faith and Credit Clause, this Court should affirm.

### COUNTERSTATEMENT OF PROCEDURAL HISTORY

On April 7, 2022, a Burlington County Grand Jury returned Indictment 2022-04-0566-I, charging defendant with one count of unlawful possession of a weapon under N.J.S.A. 2C:39-5(b)(1), a crime of the second degree, for knowingly having in her possession, on or about October 31, 2020, in Medford Township, New Jersey, a “Glock 42 .380 caliber semi-automatic pistol” (serial number ACPU932) without first having obtained a permit to carry the same as provided in N.J.S.A. 2C:58-4. (Da8).

On July 15, 2022, defendant applied to the Pre-Trial Intervention (PTI) Program, despite a presumption against her admission due to the nature of the crime, see R. 3:28-1(d)(1). (Da25). On September 20, 2022, the State denied her application, explaining that defendant had failed to establish compelling reasons to overcome the presumption excluding her from PTI. Ibid.

On March 23, 2023, defendant moved to dismiss the indictment, arguing that her conviction violated the Second Amendment and the Full Faith and Credit Clause of the U.S. Constitution. (Da26-27). She also moved in the alternative to compel her admission into PTI. (Da26). On May 30, 2023, Judge Garrenger heard argument. (1T). On June 21, 2023, he denied both motions. (Da23). Judge Garrenger provided his reasons for the denial in a memorandum, in which he explained that the State had not abused its discretion in denying

defendant's PTI application, (Da30), and that neither the Second Amendment "nor the Full Faith and Credit Clause, alone or in conjunction, prevent[s] the State ... from prosecuting the Defendant ... for unlawful possession of a weapon in violation of N.J.S.A. 2C:39-5(b)(1)." (Da28).

On July 24, 2023, defendant pleaded guilty, while reserving her right to appeal the denial of the motion to dismiss the indictment. (Da9). On September 22, 2023, Judge Garrenger entered a judgment of conviction and sentenced defendant to three years of probation. (Da15). On November 6, 2023, defendant filed a notice of appeal. (Da18-21).

### COUNTERSTATEMENT OF FACTS

#### A. Legal Background.

N.J.S.A. 2C:58-4 lays out detailed requirements for obtaining New Jersey-issued handgun carry permit (NJ Carry Permit).<sup>1</sup> Carrying a handgun within the State without a NJ Carry Permit is a crime. N.J.S.A. 2C:39-5(b)(1).

To obtain a NJ Carry Permit, applicants must, among other requirements, provide multiple references who can speak to the applicant's fitness to carry a handgun, N.J.S.A. 2C:58-4(b), and pass a thorough background check by police,

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<sup>1</sup> The requirements to obtain a carry-permit have been amended since the time of defendant's arrest. See L. 2022, c. 131, § 3, eff. Dec. 22, 2022. But the requirements discussed below were all in effect at the time of defendant's arrest and not altered in relevant part by the 2022 amendments.

id. 2C:58-4(c). Applicants must have “satisfactorily completed a course of instruction approved by the superintendent [of police] in the lawful and safe handling and storage of firearms.” Id. 2C:58-3(c); see also id. 2C:58-4(c). And they must demonstrate that they are “not subject to any of the disabilities set forth in [N.J.S.C. 2C:58-3(c)].” Id. 2C:58-4(c). Those disabilities include, for example, having certain criminal convictions, id. 2C:58-3(c)(1), or a physical disability that impairs one’s ability safely to handle firearms, id. 2C:58-3(c)(3), or “where the issuance would not be in the interest of the public health, safety or welfare,” id. 2C:58-3(c)(5). NJ Carry Permits must be renewed every two years. Id. 2C:58-4(a).

B. Factual Background.

On Saturday, October 31, 2020, around 1:23 a.m., Officer Webb was on patrol in Medford, New Jersey when he saw defendant driving “a dark colored BMW ... [on] State Highway 70 at what appeared to be a high rate of speed.” (Da5; Da25).<sup>2</sup> Officer Webb employed his patrol vehicle radar unit and observed that the BMW’s speed was 64 miles-per-hour despite a posted speed limit of 40 miles-per-hour. (Da5). Officer Webb then observed the vehicle

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<sup>2</sup> These facts are drawn from the affidavit of probable cause for defendant’s arrest, (Da1-7), and from Judge Garrenger’s memorandum denying defendant’s motion to dismiss the indictment or compel her admission into PTI, (Da24-31).



travel over the center line of the road and increase its speed to 80 miles-per-hour. (Da5). He pursued the vehicle and effectuated a stop, (Da5), which was recorded by the officer's body-worn camera, (Da7).

While speaking with defendant, Officer Webb "detected a distinct odor of an alcoholic beverage emanating from the interior of the vehicle." (Da5, Da25). As Officer Webb asked her "to exit the vehicle in order to ... investigate the odor of alcohol," he "observed a Glock handgun on the driver side floor near [defendant's] left foot." (Da5, 25). Officer Webb "recovered the handgun and confirmed it was a Glock 42 (.380 caliber) handgun" with one round in the magazine. (Da5, 25). There was also "a plastic holster wedged between the driver seat and center console of the vehicle." (Da5, 25). After Officer Webb advised defendant of her Miranda rights, she explained that the handgun was hers and that she has a license to carry a handgun in Pennsylvania—though not a NJ Carry Permit. (Da5, 25). Defendant "had no explanation for why the gun was on the floor." (Da5).

As defendant lacked a NJ Carry Permit despite carrying a handgun in the State, she was indicted with one count of unlawful possession of a handgun in violation of N.J.S.A. 2C:39-5(b)(1). (Da8).

Defendant applied for PTI, which the State denied, (Da25), reasoning that defendant's conduct—including a prior conviction for driving under the

influence (DUI), a pending DUI charge in Ohio, and twice violating her conditions of release—indicated a “pattern of anti-social behavior” and undermined “the likelihood that [defendant’s] crime is related to a condition or situation that would be conducive to change through her participation in” PTI. (Da30). Judge Garrenger determined that the State had not abused its discretion, and denied defendant’s motion to compel her admission into PTI. (Da30-31).

Defendant also moved to dismiss the indictment as unconstitutional, arguing that it violated the Full Faith and Credit Clause and Second Amendment. (Da26-27). Judge Garrenger rejected the motion, observing that, “[n]othing in the Constitution ensures unlimited extraterritorial recognition of all statutes,” (Da27) (quoting Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 498 (1941)), and that the Full Faith and Credit Clause does not require “a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.” (Da 28) (quoting Franchise Tax Bd. of Cal. v. Hyatt, 538 U.S. 488, 494 (2003)). As “[t]he State of New Jersey is certainly competent enough to legislate its own criminal code,” Judge Garrenger held that the State could prosecute defendant for her violation of New Jersey law in New Jersey without offending the Clause. (Da28).

As for the Second Amendment, Judge Garrenger reasoned that N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen, 597 U.S. 1 (2022), invalidated a particular

condition on handgun carry permits—that the applicant show a “special need” to carry—but did not forbid States generally from requiring permits for the carry of handguns within their borders. (Da28) (citing Bruen, 597 U.S. at 71). The court concluded that “neither Bruen nor the Full Faith and Credit Clause, alone or in conjunction, prevent[s] the State of New Jersey from prosecuting the Defendant ... for unlawful possession of a weapon in violation of N.J.S.A. 2C:39-5(b)(1).” (Da28).

After her motions were denied, defendant pleaded guilty to having unlawfully possessed a handgun in New Jersey without a NJ Carry Permit, while reserving her right to appeal the denial of her motion to dismiss. (Da9; 15). She was sentenced to three years of probation, (Da15), and this appeal followed. (Da18-21).

## LEGAL ARGUMENT

### POINT I

#### DEFENDANT’S CONVICTION FOR CARRYING A HANDGUN IN NEW JERSEY WITHOUT A NEW JERSEY PERMIT IS CONSTITUTIONAL.

Defendant’s conviction under N.J.S.A. 2C:39-5(b)(1) does not violate the Second Amendment or Full Faith and Credit Clause. Her contrary arguments find no support in case law, contradict decisions of the U.S. Supreme Court and this Court, and are irreconcilable with foundational notions of federalism.

A. Defendant's Second Amendment Argument Fails.

The Second Amendment permits States to adopt and enforce permitting requirements before an individual may carry in the State—including as applied to individuals who lawfully carry in their home States, pursuant to those States' distinct laws. While defendant leans heavily on Bruen, that decision expressly confirmed that the States have such authority. And subsequent cases, including this Court's decision in State v. Wade, 476 N.J. Super. 490 (App. Div.), leave to appeal denied, 255 N.J. 492 (2023), reinforce the constitutionality of state licensing regimes—including as applied to out-of-state residents who can carry in their home States. Defendant does not cite a single decision granting the Second Amendment right she claims, and multiple cases—along with bedrock principles of federalism—are to the contrary.

Preliminarily, defendant does not dispute that New Jersey's carry permit requirement, as a general matter, is consistent with the Second Amendment and Bruen's interpretation thereof. Indeed, Bruen was emphatic that “nothing in [its] analysis should be interpreted to suggest the unconstitutionality of ... licensing regimes, under which ‘a general desire for self-defense is sufficient to obtain a [permit].’” Id. at 38 n.9 (quotation omitted). Bruen explained that States may, consistent with the Second Amendment, adopt licensing regimes aimed at ensuring “that those bearing arms in the jurisdiction are ... ‘law-

abiding, responsible citizens,” ibid. (quoting District of Columbia v. Heller, 554 U.S. 570, 635 (2008)), such as by conditioning permit issuance on applicants passing “a background check or ... firearms safety course.” Ibid.; see also id. at 80 (Kavanaugh, J., concurring) (explaining that licensing regimes that “require a license applicant to undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements ... are constitutionally permissible”). While Bruen invalidated one particular requirement for obtaining a license to carry a handgun—the requirement that applicants establish “some additional special need” to carry beyond a generic interest in self-defense, id. at 11, it cast no doubt on licensing requirements generally, id. at 38 n.9.

For this reason, this Court held in State v. Wade that New Jersey’s carry permit requirement is permissible under Bruen. See 476 N.J. Super. at 510 (“[t]he Supreme Court’s jurisprudence on the Second Amendment makes clear that carrying guns in public can still be regulated and subject to a permit requirement”). This Court further held that, although New Jersey previously had a requirement similar to the one Bruen invalidated, see N.J.S.A. 2C:58-4(c) (2018) (requiring that applicants establish a special “justifiable need” to obtain a carry permit); L. 2022, c. 131, § 3 (amending N.J.S.A. 2C:58-4 to remove the

“justifiable need” requirement in light of Bruen), because “the remaining provisions of N.J.S.A. 2C:58-4 (2018), as well as N.J.S.A. 2C:39-5(b)(1), were constitutional and enforceable,” prosecuting individuals for carrying without a NJ Carry Permit is constitutional. Wade, 476 N.J. Super. at 511. As this Court explained, “New Jersey’s gun-permit statutes were and continue to be constitutional [after Bruen] in requiring background checks to confirm that the applicant is not a convicted felon or does not have a mental disability and to ensure that the applicant has reasonable training in the safe handling of guns.” Ibid. (citing Bruen, 597 U.S. at 38 n.9; Bruen, 597 U.S. at 80 (Kavanaugh, J., concurring); Heller, 554 U.S. at 626-27). That New Jersey can require a permit for an individual lawfully to carry a handgun within the State’s borders—as Bruen makes clear and Wade confirms—disposes of defendant’s Second Amendment claim, as the conduct she claims is protected violates that straightforwardly constitutional carry permit requirement.

Indeed, defendant’s challenge does not really sound in the Second Amendment at all. She does not claim that any particular requirement for obtaining a NJ Carry Permit is impermissible. Contrast, e.g., Koons v. Platkin, 673 F. Supp. 3d 515, 562-71, 573-79 (D.N.J. 2023) (considering challenges to specific substantive and procedural components of State’s carry permitting regime—and determining each likely is consistent with historical tradition). She

does not claim that generally requiring a NJ Carry Permit is impermissible. Cf. (Db5) (“Defense [has] never argued that New Jersey’s law [i]s invalid”). Put otherwise, defendant implicitly concedes that N.J.S.A. 2C:39-5(b)(1) is facially consistent with the Second Amendment. She objects only to its particular application to her, as an out-of-state resident with a carry permit issued by her home State.

That objection speaks to the relationship among the states, rather than the right to bear arms itself. While defendant’s invocation of the Full Faith and Credit Clause also fails, see infra at 19-25, her objection is better addressed under that constitutional provision, which expressly governs inter-state conflict. This explains why case law addressing factually similar challenges analyzes them under the Full Faith and Credit Clause. See infra at 21-23 (reviewing cases rejecting Full Faith and Credit Clause challenges to a State’s refusal to permit an individual to carry despite that individual’s ability to do so in another State). It also explains why defendant has failed to produce any on-point case in support of her Second Amendment argument.

In any event, even if Bruen’s framework applies, defendant’s objection still fails. As explained above, supra at 9-11, requiring permits to carry firearms “is consistent with the principles that underpin our regulatory tradition.” United States v. Rahimi, 144 S. Ct. 1889, 1898 (2024) (citing Bruen, 597 U.S. at 26-

31). History shows that States may use licensing regimes to ensure that those carrying arms within the State do not pose a safety threat. See Bruen, 597 U.S. at 38 n.9; Rahimi, 144 S. Ct. at 1901 (explaining how historical surety and “going armed laws” support the general principle that the State may disarm those that pose a threat to public safety); Koons, 673 F. Supp. 3d at 562-71, 573-79 (determining that various aspects of New Jersey’s permitting regime are likely constitutional based on lengthy review of historical regulations); Frey v. Nigrelli, 661 F. Supp. 3d 176, 197 (S.D.N.Y. 2023) (similar); Baird v. Bonta, No. 2:19-cv-00617, 2023 WL 9050959, at \*24 (E.D. Cal. Dec. 29, 2023) (Sa20)<sup>3</sup> (“licensing systems fit comfortably within the historical tradition of firearm regulation”).

Further, inter-state regulatory variation is a hallmark principle of historical gun laws—and of our Nation’s regulatory tradition more broadly. Because legislatures need not “maximally exercise[] their power to regulate,” Rahimi, 144 S. Ct. at 1925 (Barrett, J., concurring), there is always a range of regulatory options constitutionally available to States, meaning that different States can adopt different gun laws—all consistent with the Second Amendment. See, e.g., Rahimi, 144 S. Ct. at 1900-01 (describing surety and “going-armed”

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<sup>3</sup> Consistent with Rule 1:36-3, the State has appended a copy of this unpublished opinion to this brief. It is unaware of any contrary unpublished opinion.



laws adopted by some, but not all states); Frey, 661 F. Supp. 3d at 197 (surveying diverse state and local regulations, including licensing requirements); Baird, 2023 WL 9050959, at \*24 (Sa20) (same); Koons, 673 F. Supp. 3d at 565-67 (overviewing various colonial disarmament laws). Indeed, the U.S. Constitution embraces the “worthy virtues of federalism and democracy,” including as to gun regulation. Bianchi v. Brown, 111 F.4th 438, 447 (4th Cir. 2024) (en banc); see also McDonald v. City of Chicago, 561 U.S. 742, 785 (2010) (Second Amendment does not eliminate State’s “ability to devise solutions to social problems that suit local needs and values”); Friedman v. City of Highland Park, 784 F.3d 406, 412 (7th Cir. 2015) (agreeing that “the Constitution establishes a federal republic where local differences are cherished as elements of liberty, rather than eliminated in a search for national uniformity”). A State may thus act “within the scope of its own police powers in responding to the demands of its own citizens.” Bianchi, 111 F.4th at 447 (“Nothing in our opinion foists the values of Maryland upon, say, South Carolina, or those of South Carolina upon Maryland.”); see also, e.g., Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 546 (1985) (adding that “[t]he essence of our federal system is that within the realm of authority left open to them under the Constitution, the States must be equally free to” adopt regulations “that their citizens choose for the common weal,” and to “serve as

laboratories for social and economic experiment”); see Reeves, Inc. v. Stake, 447 U.S. 429, 441 (1980) (barring States from the flexibility to adopt their own divergent state laws “may be fraught with serious consequences to the Nation.” (quoting New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting))). Under these federalism principles foundational to our Nation, Pennsylvania may no more instruct New Jersey regarding when public carry is permissible than New Jersey may bind Pennsylvania.

Yet that is the upshot of defendant’s argument, the consequences of which would be extraordinary. States have adopted a wide array of permitting requirements governing whether and when a resident may carry in their State. By defendant’s logic, any resident of those States may carry in any jurisdiction that they wish, no matter the State’s own laws, forcing every State to accept “the lowest common denominator of gun control among the various states.” Matter of Two Seized Firearms, 127 N.J. 84, 86 (1992); cf. Culp v. Raoul, 921 F.3d 646, 655 (7th Cir. 2019) (“Forcing the State to issue concealed-carry licenses to nonresidents despite” its inability to verify their mental health and criminal histories “would thrust upon Illinois a race to the bottom. Licenses would have to issue along eligibility standards ... below those established by the State legislature for its own residents.”).

The alarming consequences of accepting defendant's position are particularly stark when one considers that many States allow their residents to carry a firearm without any permit at all. See Bruen, 597 U.S. at 13 n.1 (observing that in 2022, twenty-five states allowed permitless carry); e.g., W. Va. Code, § 61-7-7(c). Under defendant's interpretation of the Second Amendment, New Jersey would have to allow the residents of these States to carry a handgun within its borders without any permit at all—which is directly contrary to Bruen's recognition that some states constitutionally require permits to carry handguns even while others do not, see Bruen, 597 U.S. at 13 n.1; id. at 38 n.9, and that such background checks may have value.

The same reasoning applies to the residents of States with different permit regimes who seek to carry in New Jersey. Just as the Second Amendment does not compel New Jersey to allow permitless carry within its borders by visitors from states that allow permitless carry, it likewise does not compel New Jersey to allow visitors with foreign carry permits (but not a NJ Carry Permit) to carry handguns within its borders. That is so notwithstanding defendant's cursory claim that there is no meaningful difference between the requirements to obtain a NJ Carry Permit and the requirements to obtain a PA Carry License, such that NJ lacks any "policy reason for not recognizing a Pennsylvania gun license." (Db5-6). To the contrary, each aspect of New Jersey's permitting scheme has

been crafted by our Legislature to “ensure that those who exercise the right to carry are responsible, law-abiding, and appropriately trained individuals who would not pose undue safety risks if armed in public places.” N.J.S.A. 2C:58-4.2; see also Wade, 476 N.J. Super. at 510 (“the Legislature designed the gun-permit statutes to address several safety concerns”).

Further, there are myriad differences between the two state’s regimes, each reflecting a policy decision by the respective state’s legislature. To note a few examples, NJ Carry Permits must be renewed every two years, N.J.S.A. 2C:58-4(a), whereas PA Carry Licenses need only be renewed every five years, 18 Pa. Stat. Ann. § 6109(f)(1), and NJ Carry Permits, but not PA Carry Licenses, require applicants to submit references with their applications, N.J.S.A. 2C:58-4(b), and to complete a State-approved firearm safety course, N.J.S.A. 2C:58-3(c). Contrast 18 Pa. Stat. Ann. § 6109. The Constitution allows Pennsylvania to make those policy choices, just as it allows West Virginia and New Jersey to make their own. Cf. State v. Hatch, 64 N.J. 179, 188 (1973) (regardless of whether defendant “had fulfilled the licensing and other requirements of his home state,” he could be charged with unlawful possession for carrying in New Jersey without a NJ Carry Permit because, “[w]hen he came into New Jersey, ... he subjected himself to New Jersey’s gun control regulations”). Adopting defendant’s view would undermine those policy choices by leaving New Jersey

able only to enforce its regime against its own residents, while forcing it to allow out-of-state residents to carry when in-state residents could not. This would be especially alarming given that New Jersey is “one of the most heavily traveled corridor states in the nation.” Matter of Two Seized Firearms, 127 N.J. at 89. Thankfully, the Second Amendment does not require this perverse result—a conclusion our Supreme Court reached decades ago, see ibid. at 85-86, and which Bruen has not altered since, see supra at 9-11.

Finally, defendant’s contrary argument is belied by Congressional understanding embodied in a longstanding federal statute. Under 18 U.S.C. § 926A, an individual may transport a firearm by vehicle from one location in which she “may lawfully possess and carry such firearm” to another, even if it involves traveling through a third location in which she may not carry such firearm, as long as “during such transportation the firearm is unloaded” and not “directly accessible from the passenger compartment.”<sup>4</sup> 18 U.S.C. § 926A; see Matter of Two Seized Firearms, 127 N.J. at 90-91. Because there would have been no reason for Congress to pass Section 926A if a constitutional right to

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<sup>4</sup> Defendant’s conviction is not affected by Section 926A because, at the time she was arrested, her gun was “on the driver side floor near [her] left foot,” and it was loaded. See (Da5, 25); cf. State v. Reininger, 430 N.J. Super. 517, 531–32 (App. Div. 2013) (“the federal exemption did not apply because ... the loaded handgun behind the driver’s seat w[as] ‘directly accessible’ to defendant.”).

carry in all States flowed from an individual's statutory right to carry under one State's laws, Section 926A shows that Congress has never understood the Second Amendment to require this result. Nor has defendant cited any authority that accords with her anti-federalism take on the Second Amendment.

In sum, that New Jersey requires permits to carry is consistent with the Second Amendment; that those requirements are different from Pennsylvania's is too. Thus, defendant's conviction for carrying a handgun in New Jersey without a NJ Carry Permit does not violate her Second Amendment rights, regardless of her possession of a PA Carry License.

B. Defendant's Conviction Is Consistent With The U.S. Constitution's Full Faith And Credit Clause.

Nor does the Full Faith and Credit Clause of the U.S. Constitution prohibit New Jersey from enforcing N.J.S.A. 2C:39-5(b)(1) against defendant merely because she holds a PA Carry License.

Defendant misunderstands the purpose and effect of the Full Faith and Credit Clause. It provides:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const., Art. IV § 1. In including this Clause, "the framers were concerned primarily with enforcement of money judgments." Borys v. Borys, 76 N.J. 103,

110 (1978). Specifically, “colonial legislatures had grappled with the problem of the effect to be given to foreign judgments.” Id. at 110 n.1. There was a concern, for example, that a debtor could escape a money judgment rendered in Connecticut simply by crossing over into Massachusetts. See ibid. Difficult conflict of laws and comity questions arose given that a private litigant might, for example, reside in one colony, then contract in another concerning property in a third, and each colony might have different laws concerning any dispute arising from the contract; the litigant might secure judgment in one jurisdiction and seek to enforce it in another. See Edward S. Corwin, The Full Faith and Credit Clause, 81 U. Pa. L. Rev. 371, 372-73 (1932-1933).

The Full Faith and Credit Clause responded to these concerns by:

establish[ing] throughout the federal system the salutary principle ... that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered, so that a cause of action merged in a judgment in one state is likewise merged in every other.

Borys, 76 N.J. at 111 (quoting Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 439 (1943)).

The Clause was also motivated by a concern with “authentication of the statutes of the several states.” Corwin, 81 U. Pa. L. Rev. at 374. That is, in the event that, for example, a litigant in a New Jersey court invoked a Pennsylvania

law, the New Jersey court needed a way to be sure that the law presented to it was authentic. For this reason, the Clause authorized Congress to “prescribe the Manner in which such Acts, Records and Proceedings shall be proved,” U.S. Const., Art. IV § 1, which Congress has done, see 28 U.S.C. § 1738 (“The Acts of the legislature of any State ... shall be authenticated by affixing the seal of such State ... thereto.”). That did not mean the laws of New Jersey would bind Pennsylvania or vice versa. It meant simply that other states’ laws could be uniformly authenticated.

While the Clause served as “a nationally unifying force,” Borys, 76 N.J. at 111 (quoting Hunt, 320 U.S. at 439), it categorically does not require “a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.” (Da28) (quoting Hyatt, 538 U.S. at 494). In our federal system, states are, of course, able to maintain and enforce their own laws, and “[n]othing in the Constitution ensures unlimited extraterritorial recognition of all statutes.” Klaxon, 313 U.S. at 498.

Indeed, this Court has already rejected an argument strikingly similar to the one defendant advances here. In In re Winston, 438 N.J. Super. 1 (App. Div. 2014), this Court addressed whether the Full Faith and Credit Clause required New Jersey to treat an applicant for a permit to purchase a handgun as not disqualified from receiving the permit where the applicant had disqualifying



New York convictions but had obtained certificates from New York courts that “relieve[d] the holder of all disabilities” except “the right to be eligible for public office.” Id. at 3. This Court recognized that those New York certificates “relieve[d] [the applicant] from the automatic disqualification his convictions would otherwise pose to his possessing a firearm in New York.” Id. at 8. But this Court nevertheless explained that because New Jersey law instead required a full expungement for a conviction before removing it as a disability, and New York’s “certificates of relief” were not full expungements, the certificates did not permit the applicant to receive the New Jersey permit. Id. at 8-9. As this Court explained, “[t]here is no constitutional requirement that New Jersey deem [the applicant] not disqualified for a permit under its firearms law just because New York has seen fit to do so under its law.” Id. at 9.

Defendant’s Full Faith and Credit Clause argument is on even weaker footing than the argument that this Court rejected in Winston. In Winston, the applicant had applied for and been denied a permit to purchase a handgun, and challenged that denial as unconstitutional on the ground that he would have been eligible to possess a firearm under New York law. Id. at 3. Here, defendant never applied for a NJ Carry Permit; instead, she proceeded to carry a handgun in the State without one in violation of N.J.S.A. 2C:39-5(b)(1), and now claims that New Jersey cannot prosecute her for that violation because she can carry a

handgun in Pennsylvania on account of her PA Carry License. Courts that have considered such claims have consistently rejected them. See Moran v. Wis. Dep't of Just., 932 N.W.2d 430, 433 (Wis. App. 2019) (Full Faith and Credit Clause “does not require the State of Wisconsin to defer to Virginia law with respect to the circumstances under which a felon residing in this state may possess firearms within this state’s borders”); Commonwealth v. Harris, 119 N.E.3d 1158, 1166 (Mass. 2019) (“Ultimately, this matter concerns different jurisdictions making differing determinations about firearm licensing and regulation. The Commonwealth is not required to substitute its statutes for those of New Hampshire.” (citation omitted)); People v. Shear, 83 Cal. Rptr. 2d 707, 714 (Cal. Ct. App. 1999) (“The Full Faith and Credit Clause does not preclude California from ... prohibiting convicted felons within its borders from possessing firearms merely because defendant could lawfully possess firearms in Arizona.”).

Further, Pennsylvania does not even purport to authorize handgun carry in New Jersey through the issuance of PA Carry Licenses. See 18 Pa. Stat. Ann. § 6109 (“A license to carry a firearm shall be for the purpose of carrying a firearm ... throughout this Commonwealth.” (emphasis added)). Although Pennsylvania has entered into carry reciprocity agreements with some states, whereby each recognizes the handgun carry licenses issued by the other, see 18

Pa. Stat. Ann. § 6109(k) (authorizing such agreements), Pennsylvania and New Jersey have no such agreement, as the Pennsylvania Attorney General clearly specifies on its website.<sup>5</sup> Thus, while Pennsylvania’s permitting statute is a “public act,” (Db4), 18 Pa. Stat. Ann. § 6109 only governs handgun carry in Pennsylvania; it is irrelevant to defendant’s conviction under N.J.S.A. 2C:39-5(b)(1) for violating the requirements to carry a handgun in New Jersey.

The only Full Faith and Credit case that defendant invokes, Hughes v. Fetter, 341 U.S. 609 (1951), is wholly inapposite. (Db2-3, 5-6). There, the U.S. Supreme Court held that Wisconsin state courts had to entertain a wrongful death action based on Illinois law even though Wisconsin law did not authorize its courts to “entertain[] suits brought under the wrongful death acts of other states.” Id. at 610; see also id. at 611 (“We are called upon to decide the narrow question whether Wisconsin, over the objection raised, can close the doors of its courts to the cause of action created by the Illinois wrongful death act.”). Fetter has no bearing on defendant’s conviction because, as just explained, there is no relevant Pennsylvania law that New Jersey courts have refused to apply. Rather, defendant has been prosecuted for violating New Jersey law in New Jersey.

Finally, defendant’s references to the interstate recognition of driver’s

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<sup>5</sup> See Pennsylvania Attorney General, Concealed Carry Reciprocity, <https://www.attorneygeneral.gov/resources/concealed-carry-reciprocity/>.

licenses, (Db6), and to Obergefell v. Hodges, 576 U.S. 644 (2015), (Db10), fail to advance her Full Faith and Credit Clause argument because neither involves the Full Faith and Credit Clause at all. As to the former, States recognize one another's driver's licenses as a matter of comity and mutual convenience, not constitutional mandate—and defendant cites nothing to suggest that this is a constitutional requirement. And under Obergefell, same-sex couples enjoy the right to have their marriages recognized as a matter of Equal Protection and Due Process, not because of the Full Faith and Credit Clause. See Obergefell, 576 U.S. at 672 (“The right of same-sex couples to marry that is part of the liberty promised by the Fourteenth Amendment is derived, too, from that Amendment’s guarantee of the equal protection of the laws.”). If the Constitution compels all States to recognize the validity of same-sex marriages, then of course each State must recognize such marriages performed in other States.

In short, “[t]here is no constitutional requirement that New Jersey” decline to prosecute defendant for violating New Jersey law by carrying a handgun in New Jersey without a NJ Carry Permit “just because” she may carry a handgun in Pennsylvania by virtue of her PA Carry License consistent with Pennsylvania law. See Winston, 438 N.J. Super. at 9. Accordingly, this Court should reject defendant’s Full Faith and Credit challenge to her conviction.

\* \* \* \*

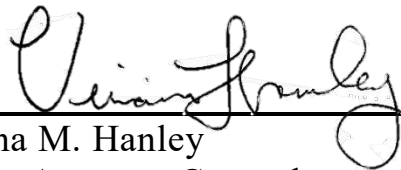
New Jersey has every reason—and every right—to enforce its permitting statute within the State, which does not permit handgun carry within New Jersey without a NJ Carry Permit, regardless of whether an individual possesses a carry license from any other state. Defendant’s contrary arguments find no purchase in case law and contravene basic principles of federalism.

CONCLUSION

This Court should affirm defendant’s conviction.

Respectfully submitted,

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September 25, 2024

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**STATE OF NEW JERSEY,**  
**Plaintiff-Respondent**

**v.**

**JELUDY TAVAREZ-RODRIGUEZ,**  
**Defendant-Appellant**

**: SUPERIOR COURT OF NEW JERSEY**  
**: APPELLATE DIVISION**  
**: APP. DIV. DKT NO.: A-713-23T4**  
**:**  
**:**  
**:**  
**:**  
**: Criminal Action**  
**:**  
**: Sat Below: Hon. Christopher J. Garrenger,**  
**J.S.C.**

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Honorable Judges of the Appellate Division:

Pursuant to Rule 2:6-2(b), please accept this letter brief on behalf of  
Defendant, Jeludy Tavarez-Rodriguez, in reply to the State's Opposition.

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## **PROCEDURAL HISTORY AND STATEMENT OF FACTS**

For the Defendant's recitation of the procedural history and statement of facts, please refer to the Defendant's brief. Db<sup>1</sup>1.

## **LEGAL ARGUMENT**

### **POINT I**

#### **PROSECUTION OF DEFENDANT VIOLATES THE SECOND AMENDMENT**

The State takes the position that whether New Jersey must recognize Mr. Tavarez-Rodriguez's Pennsylvania carry permit is not an issue answered by the Second Amendment, but one that is addressed by the Full Faith and Credit Clause. Sb<sup>2</sup>12. This is not supported by any of the caselaw since the Supreme Court decided N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 71 (2022). For example, in United States v. Rahimi, 602 U.S. \_\_\_, 144 S.Ct. 1889, 1901-03 (2024), the Court applied Bruen in determining whether 18 U.S.C. § 922(g)(8) was both facially valid and valid as applied.

Further, the United States Court of Appeals for the Third Circuit undertook an "applied to" analysis in Range v. Attorney Gen. United States, 69

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<sup>1</sup> Defendant-Appellant's Letter Brief, filed July 12, 2024

<sup>2</sup> Plaintiff-Respondent's Brief, filed September 11, 2024.



F.4<sup>th</sup> 96, 103 (3d. Cir. 2023) (*en banc*). In that case, the defendant was charged with violating 18 U.S.C. § 922(g)(1), the federal felon in possession statute. *Id.* at 98. The Third Circuit undertook a Bruen analysis as “applied to him,” and determined that he could not be disarmed. *Id.* at 103-106<sup>3</sup>. It is clear from these decisions that the Second Amendment applies to the instant case.

Addressing the Bruen framework, the State argues that states “requiring permits to carry firearms is consistent with the principles that underpin our regulatory tradition” Sb12 (citations omitted). Defendant does not challenge this. The State then posits that “[h]istory shows that States may use licensing regimes to ensure that those carrying arms within the State do not pose a safety threat. Sb13 (citations omitted).

The State has never argued that Ms. Tavaréz-Rodríguez poses a safety threat. These arguments do not address the Second Amendment issue in this case, which is whether it is in the historical tradition of the United States for states to not recognize valid carry permits issued by another state.

The State’s reliance on Rahimi misses the point. Rahimi involved a Texas resident whose gun license was suspended for two years as part of a domestic violence restraining order. *Id.* at 1895. After the restraining order

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<sup>3</sup> This decision has been vacated and remanded to the Third Circuit for further consideration in light of Rahimi. Garland v. Range, 144 S. Ct. 2706 (2024).

was entered, Rahimi was arrested for possessing a firearm while subject to a domestic violence restraining order, in violation of 18 U.S.C. § 922(g)(8). Id. Rahimi challenged the statute as being facially unconstitutional. Id. at 1896.

After a historical analysis, the Supreme Court concluded that “[t]aken together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” Id. at. 1901. This finding was within the domestic violence context and based on a judicial finding. See id. at 1901-02.

Nothing in Rahimi can be read as holding that a state may assume that an individual with a carry permit from a sister state poses a credible threat to the safety of others. Further, any judicial determination or other reason for disqualification that would make an individual ineligible to possess a firearm pursuant to 18 U.S.C. § 922(g)(1)-(9) would also prevent an individual from obtaining a carry permit from Pennsylvania. 18 Pa. State. Ann. § 6109(d) and (e). By virtue of Ms. Tavaréz-Rodríguez being issued a license by Pennsylvania, we can assume she meets all the criteria, and the State has never challenged her credentials.

The State also relies on State v. Hatch, 64 N.J. 179 (1973) to argue that someone from out of state who has fulfilled the requirements of his home state

is still subjected to New Jersey regulations. *Sb17*. Despite what the State wrote in its parenthetical regarding Hatch, that case had nothing to do with carry permits. In Hatch, the defendant had a Massachusetts hunting license and was travelling to Philadelphia with a rifle and shotgun in his rear seat. *Id.* at 182. The defendant was convicted of violating N.J.S.A. 2A:151-42(c), since the firearms were not "in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile" *Id.* at 182. Importantly, the New Jersey Supreme Court noted that "[w]hile we doubt that the Legislature ever contemplated that one in his situation as aforescribed would be called upon to hold a New Jersey purchaser identification card for the rifle and shotgun, he was at least obliged to fulfill its pertinent requirement with respect to their proper encasing as set forth in N.J.S.A. 2A:151-42(c). That requirement was entirely reasonable and did not unduly or unfairly burden interstate travel." *Id.* at 188.

The conclusion of Hatch can be summed up as, "to carry handguns in one's car or on one's person along the highways is, apart from certain exemptions, 'clearly forbidden unless the person carrying the handgun has a permit issued in accordance with [N.J.S.A. 2C:58-4].'" (quoting Matter of Two Seized Firearms, 127 N.J. 84, 87-88 (1992)). Applying the principles of the Court in Hatch, it is doubtful the Legislature contemplated someone in Ms.

Tavarez-Rodriguez's situation would be called upon to hold a New Jersey carry permit.

The State's reliance on Matter of Two Seized Firearms, 127 N.J at 84 is also misguided. The claimant in that case, a Florida resident, had a loaded firearm in the glove compartment. Id. at 85. Again, the Court recognized that "[i]t is illegal in New Jersey to transport a loaded handgun in this way without a license to carry." Id. There is no indication in that the claimant had a Florida carry license.

The State further relies on the language of 18 U.S.C. § 926A to argue that the possession by Ms. Tavarez-Rodriguez was violative of federal law. That statute provides a legal way for gun owners from states that don't require or issue licenses to pass through states in which licenses are required.

The State relies on scare tactics to expand the scope of Defendant's arguments. The State argues that accepting the Defendant's argument would force every state "to accept 'the lowest common denominator of gun control among the various states,'" Sb15 (citation omitted), and that Defendant's interpretation of the Second Amendment would require New Jersey to allow those from states that do not issue permits to carry in New Jersey. Sb16. Defendant has never made the argument that New Jersey must allow individuals from states that do not require licenses to carry in New Jersey.

Defendant is not asking New Jersey to apply the law of any other state within its borders. Defendant argues that a carry permit issued by Pennsylvania satisfies the requirements of N.J.S.A. 2C:58-4.

## **POINT II**

### **PROSECUTION OF DEFENDANT VIOLATES THE FULL FAITH AND CREDIT CLAUSE**

"The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation." Sherrer v. Sherrer, 334 U.S. 343, 355 (1948).

In its opposition, the State has mischaracterized Defendant's arguments regarding the Full Faith and Credit Clause of the United States Constitution. U.S. Const., Art. IV § 1. The State's argument and all of the cases it relies upon are cases in which the one state was being asked to apply, or enforce, the law of another state due to a party residing in another state. There is a "stark distinction between recognition and enforcement of judgments under the full faith and credit clause." Adar v. Smith, 639 F.3d 146, 160 (5<sup>th</sup> Cir. 2011) (citing Baker v. General Motors Corp, 522 U.S. 222 (1998)).

Defendant is not asking this Court to "substitute the statutes of [Pennsylvania] for [New Jersey's] own statute[] dealing with a subject matter

concerning which it is competent to legislate.” Sb21 (citation omitted).

Defendant is not asking for unlimited extraterritorial recognition of a Pennsylvania statute. Id. Defendant is asking for this Court to recognize a valid license duly issued by Pennsylvania.

The State goes through a historical analysis of the Full Faith and Credit Clause, explaining how the Framers were concerned with the enforcement of money judgments and the difficulty presented at the time with foreign judgments. Sb19-20. The Full Faith and Credit Clause’s application is not limited to money judgments; nonetheless, in Baker, the Supreme Court noted they have “never placed equity decrees outside the full faith and credit domain. 522 U.S. at 234.

The State relies on this Court’s decision in In re Winston, 438 N.J. Super 1 (App. Div. 2014), which the State argues is strikingly similar to this case, however, it is readily distinguishable. In that case, the issue was whether a New York Certificate of Relief from Disability was equivalent to a New Jersey expungement. Id. at 4-5. As pointed out by the State, this Court found that the certificates do not satisfy the expungement statute. Sb22.

Specifically, this Court, relying on New York case law, found that the purpose of the certificate was to “enable eligible offenders who have shown certain indications of having been rehabilitated to avoid some of the

restrictions immediately flowing from their convictions, such as the bar against holding certain civil service positions and the loss of the right to vote,” and “most importantly” that “[the] granting of a certificate of relief from disabilities in no way eradicates or expunges the underlying conviction.” Id. at 8-9. Notably, this Court did not look at the process or requirements for obtaining a certification. Instead, this Court looked at the purpose and the effect. In the instant matter, Defendant is not asking this Court to determine whether a Pennsylvania statute is equivalent to a New Jersey law; Defendant’s position is that a Pennsylvania license to carry is equivalent to New Jersey’s.

Both licensing regimes have the purpose of ensuring those who are permitted to carry firearms within their states are “law-abiding, responsible citizens.” Bruen, 597 U.S. at fn.9. Once issued, they both have the effect of allowing individuals to carry within their respective states. The State cites to Pennsylvania’s statute only permitting those with licenses to carry within Pennsylvania. This is unpersuasive. For instance, N.J.S.A. 39:3-10a states a “person shall not drive a motor vehicle on a public highway in this State unless the person is ... in possession of a ... basic driver's license *issued* to that person in accordance with this article.” (emphasis added). Clearly, textual limitations have their exceptions.

“The full faith and credit clause [is] a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which *rights judicially established* in any part are given nation-wide application.” Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 439 (1943) (emphasis added). The Courts have required that states recognize the judgements and acts of other states, even when the laws of the forum state conflict. See Faunteroy v. Lum, 210 U.S. 230 (1908).

Underscoring all of these issues is that this case does not concern a simple judgment or driver’s license, it is in regard to a constitutionally protected right. The State’s argument that Full Faith and Credit does not apply since this is not a money judgment loses sight of the issue here. If states are compelled to *recognize* money and equity judgments of other states, they must *recognize* public acts concerning constitutional rights. “The constitutional right to bear arms in public for self-defense is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” Bruen, 597 U.S. 1 at 70 (quoting Mcdonald v. Chicago, 561 U.S.742, 780 (2010)). Ms. Tavaréz-Rodríguez has proven to Pennsylvania that she is a “law-



abiding, responsible citizen” and therefore qualified to carry a handgun. Bruen, 591 U.S. at fn.9. As noted by Justice Thomas:

“[I]t appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’ And they likewise appear to contain only ‘narrow, objective, and definite standards’ guiding licensing officials, rather than requiring the ‘appraisal of facts, the exercise of judgment, and the formation of an opinion.’” (citations omitted).

Id.

The State has never argued that Ms. Tavaréz-Rodríguez is not a “law-abiding, responsible citizen” or that she is otherwise ineligible for a carry permit. The State has not cited any reason not to recognize Tavaréz-Rodríguez’s Pennsylvania carry license other than its anti-federalist take that states protect individual liberties better than a strong national government- yet seeks to punish someone for exercising a guaranteed right.

**CONCLUSION**

For the reasons set forth above, Defendant respectfully requests this Court reverse the decision of the trial court.

Respectfully submitted,

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