UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DWIGHT D. MITCHELL,

Plaintiff,

vs.

JENNIFER DAVENPORT, et al.,

Defendants.

Civil Action No. **3:26-cv-01511**

AMENDED BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

(Fed. R. Civ. P. 65; L. Civ. R. 65.1)

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I. INTRODUCTION

1. This case concerns whether a state may criminalize silence and compel speech from a law-abiding citizen solely because he exercises the constitutional right to bear arms. Section 2C:58-4.4(b)(1) makes silence a fourth-degree crime. It compels a carry-permit holder, if "stopped or detained" while traveling with a handgun in a motor vehicle, to "immediately disclose" "I have a handgun / a handgun is stored in the vehicle"—even when the handgun is unloaded, locked, secured, and not readily accessible to any occupant while driving. N.J. Stat. Ann. § 2C:58-4.4(b)(1). Plaintiff's intended conduct fits that secured-transport scenario. (Mitchell Decl. ¶¶ 20–27, 30, 72). Plaintiff seeks narrow, as-applied preliminary relief preventing New Jersey from criminalizing compelled disclosure in that setting.

2. Section 2C:58-4.4(b)(2) criminalizes passive nonproduction of papers. It compels a permit holder, during the same routine stop setting, to "display the permit to carry." A first violation is a disorderly persons offense; a second or subsequent violation escalates to a fourth-degree crime. N.J. Stat. Ann. § 2C:58-4.4(b)(2). As applied to a valid permit holder who cannot physically produce the permit card roadside (stolen wallet, lost wallet, forgotten wallet, inaccessible card), the statute converts lawful licensure into criminal exposure for a paperwork omission. (Mitchell Decl. ¶¶ 4, 52–55).

3. Section 2C:58-4.4(c) compels firearm surrender for "inspection." It commands that "when a permit holder is carrying a handgun in public and is detained as part of a criminal investigation," must "provide the handgun" upon request "for purposes of inspecting the handgun," on pain of a fourth-degree crime. N.J. Stat. Ann. § 2C:58-4.4(c). Plaintiff challenges subsection (c) only to the extent New Jersey enforces or threatens to enforce it in routine stop settings without individualized, articulable justification to believe Plaintiff is "armed and presently dangerous," *Terry v. Ohio*, 392 U.S. 1, 27 (1968), or could "gain immediate control of weapons," *Michigan v. Long*, 463 U.S. 1032, 1049–50 (1983) as applied to Plaintiff's intended lawful carry/transport practice of unloaded, secured in a locked container, vehicle safe or trunk, and inaccessible to any occupant while driving. (Mitchell Decl. ¶¶ 58–60).

4. Before Plaintiff obtained a New Jersey Permit to Carry, New Jersey did not impose (and does not generally impose) these compelled-speech, compelled-display, and compelled-turnover duties on ordinary motorists who transport firearms in a locked, unloaded, inaccessible manner. (Mitchell Decl. ¶¶ 50–51). Plaintiff's transport method is safety-oriented: unloaded; locked; secured in a container, vehicle safe, or trunk; not readily accessible while driving. (Mitchell Decl. ¶¶ 24–27).

5. The Mandates attach because Plaintiff is licensed. But for his Permit

to Carry status, Plaintiff would not face fourth-degree criminal liability for silence, for inability to produce a permit card roadside, or for declining compelled turnover of a secured handgun during routine traffic enforcement. (Mitchell Decl. ¶¶ 44–45, 50–51). That is the irrationality at the core of the equal-protection and chilling analysis: licensure triggers added criminal burdens even when accessibility and danger are unchanged.

6. Plaintiff does not ask this Court to rewrite New Jersey's firearms code or to disable ordinary traffic enforcement. Plaintiff asks for narrowly tailored preliminary relief preventing New Jersey from: (i) treating silence as a fourth-degree crime during routine stops when the handgun is secured and inaccessible; (ii) treating inability to produce a physical permit card roadside as criminal where licensure can be promptly verified or cured; and (iii) compelling turnover and "inspection" of a secured handgun absent constitutionally required Fourth Amendment predicates. (Mitchell Decl. ¶¶ 52–55, 58–60).

7. As applied to Plaintiff's intended conduct—peaceable public carriage including temporary secured vehicle storage incidental to lawful travel—the Mandates burden Second Amendment conduct, compel speech in violation of the First Amendment, conflict with federal safe-passage objectives under 18 U.S.C. § 926A, and create irrational differential treatment under the Equal Protection Clause. *New York State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. at 24 (2022);

Wooley v. Maynard, 430 U.S. 705, 714 (1977); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Revell v. Port Auth. of N.Y. & N.J.*, 598 F.3d 128, 136–37 (3d Cir. 2010).

8. Under Bruen, when the Second Amendment's plain text covers the conduct, the Constitution presumptively protects it, and the government bears the burden to justify its regulation by this Nation's historical tradition. *Bruen*, 597 U.S. at 24; *Range v. Att'y Gen. U.S.*, 124 F.4th 218 (3d Cir. 2024) (en banc).

9. Rahimi reaffirms that methodology and rejects interest-balancing substitutes. The government must identify relevant analogues at the level of principle: burden and justification. *United States v. Rahimi*, 602 U.S. 680, 688–91 (2024).

10. The Disclosure Mandate is categorical. It compels speech during routine governmental encounters without an individualized dangerousness predicate, and it threatens felony-grade punishment untethered to misuse or threatened harm. *Wooley*, 430 U.S. at 714; *Barnette*, 319 U.S. at 642; *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 795–97 (1988). (Mitchell Decl. ¶¶ 35–38).

11. Plaintiff seeks narrow, as-applied relief limited to secured, unloaded, and inaccessible firearm transport during routine stops absent individualized suspicion. Because Plaintiff has shown a likelihood of success on the merits and ongoing irreparable constitutional harm, and because the balance of equities and

the public interest favor preserving constitutional rights, this Court should enter preliminary relief. *Reilly v. City of Harris*burg, 858 F.3d 173, 176–79 (3d Cir. 2017).

12. Because Plaintiff seeks preliminary relief to prevent the ongoing enforcement of an unconstitutional statute, the Court must evaluate the request for interim relief before addressing any anticipated Rule 12 motion directed at the pleadings. Otherwise, the constitutional injury the injunction seeks to prevent would continue during the pendency of the litigation. Federal courts therefore routinely resolve motions for preliminary injunction at the outset of constitutional litigation. See *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). Accordingly, the Court should first resolve Plaintiff's request for preliminary injunctive relief before addressing any motion to dismiss directed to the pleadings.

II. PROCEDURAL POSTURE

13. Plaintiff brings this action under 42 U.S.C. § 1983 for prospective relief against state officials with enforcement authority pursuant to *Ex parte Young*, 209 U.S. 123, 155–56 (1908). This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

14. Pre-enforcement standing exists where a plaintiff faces a credible threat of prosecution and refrains from constitutionally protected conduct as a

result. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158–61 (2014); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007); *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988); *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979).

15. The threat here is concrete. The Mandates impose criminal penalties for silence, for nonproduction of the permit card, and for declining compelled turnover. N.J. Stat. Ann. § 2C:58-4.4(b)(1)–(2), (c). The New Jersey State Police publicly instruct permit holders that if stopped or detained while carrying or traveling with a handgun, they "must disclose" firearm possession and "must produce" a permit to carry—confirming real-world enforcement intent. (Mitchell Decl. ¶¶ 9–10, Ex. E). Under *Driehaus*, Plaintiff need not wait to be arrested.

16. The Third Circuit recognizes ripeness where a statute chills constitutional rights and exposes intended conduct to enforcement. *Artway v. Attorney Gen.*, 81 F.3d 1235, 1247 (3d Cir. 1996); *Nat'l Shooting Sports Found. v. Att'y Gen. of N.J.*, 80 F.4th 215, 220–23 (3d Cir. 2023); *Presbytery of N.J. of the Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1463 (3d Cir. 1994).

17. This is a paradigmatic pre-enforcement case. Plaintiff intends to resume lawful public carriage and secured transport. The Mandates criminalize that intended conduct unless Plaintiff speaks on command, produces papers on demand, and submits to compelled seizure. Defendants have not disavowed enforcement.

Those facts establish a credible threat and ongoing chill. *Susan B. Anthony List*, 573 U.S. at 158–61. Plaintiff has ceased transporting firearms and ceased lawful public carriage since November 2025, but will immediately resume if this Court enjoins the Mandates as applied. (Mitchell Decl. ¶¶ 39–45). The law does not require Plaintiff to invite prosecution to obtain prospective relief.

III. LEGAL STANDARD

18. A preliminary injunction requires Plaintiff to establish: (1) likelihood of success on the merits; (2) irreparable harm; (3) that the balance of equities favors relief; and (4) that an injunction serves the public interest. *Holland v. Rosen*, 895 F.3d 272, 285–86 (3d Cir. 2018); *Reilly v. City of Harrisburg*, 858 F.3d 173, 176–79 (3d Cir. 2017); *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65; L. Civ. R. 65.1.

19. The loss of constitutional freedoms, "for even minimal periods of time," constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). That rule applies to First and Second Amendment burdens and ongoing chill. *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011); *Reilly*, 858 F.3d at 179.

IV. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS

A. Second Amendment

20. The Second Amendment protects the right of law-abiding citizens to

"keep and bear Arms." U.S. Const. amend. II; *District of Columbia v. Heller*, 554 U.S. 570, 582–84 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

21. Bruen rejects interest balancing. When the Second Amendment covers the conduct, the government must justify regulation by historical tradition.

Bruen, 597 U.S. at 24–26. Rahimi confirms that courts must test modern firearm regulations against relevant, principle-level historical analogues, especially where the State invokes dangerousness to justify burden. *Rahimi*, 602 U.S. at 688–91. [1]

22. "Bear" means to carry for confrontation. *Heller*, 554 U.S. at 584. Public carry necessarily includes ordinary movement through public space, including by motor vehicle. *Bruen*, 597 U.S. at 32–33.

23. Plaintiff's conduct falls within the plain text. Plaintiff is a law-abiding permit holder engaged in lawful public carriage and ordinary travel, storing the handgun unloaded, locked, secured, and not readily accessible while driving. (Mitchell Decl. ¶¶ 20–27).

24. Because the Second Amendment's text covers Plaintiff's conduct, the

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[1] The Third Circuit granted rehearing en banc in the consolidated Ronald Koons v. Attorney General New Jersey, No. 23-1900 (3d Cir. 2025) appeals and vacated the September 10, 2025 panel opinion. That means you should not rely on that vacated panel as binding authority.

burden shifts to the State. *Bruen*, 597 U.S. at 24–26.

25. The Mandates impose criminal burdens on protected carry. They condition lawful vehicle travel and lawful public carriage on compelled disclosure, compelled display of papers, and compelled firearm surrender—even when the handgun is stored in the most safety-conscious manner possible: unloaded; locked; inaccessible. No historical tradition imposed criminal conditions on peaceable public carriage. N.J. Stat. Ann. § 2C:58-4.4(b)(1)–(2), (c). (Mitchell Decl. ¶¶ 24–27, 52–55, 58–60).

26. N.J.S.A. § 2C:58-4.4(b)(1) and (c) provide no definition of the phrase "carrying a handgun in public." The statute does not clarify whether "carrying" refers only to a handgun worn on the person, a handgun immediately accessible in a vehicle, or any circumstance in which a handgun is merely present in a motor vehicle while a citizen moves through public space. (Mitchell Decl. ¶¶ 58–60)

27. Because the statute leaves the triggering condition undefined in a criminal statute, it delegates to individual officers the authority to determine—case by case and after the fact—whether a citizen was "carrying a handgun in public" for purposes of imposing criminal liability. A criminal statute that fails to define the conduct triggering liability invites arbitrary enforcement and chills constitutionally protected activity. See *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983); *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

28. That burden is substantial. The statute forces a choice: surrender one set of rights (to speak or not speak; to be free from unreasonable seizure; to bear arms) or risk arrest and felony-grade prosecution. (Mitchell Decl. ¶¶ 37–45).

29. Under Bruen and Rahimi, the State must identify historical analogues that are "relevantly similar" in burden and justification. *Bruen*, 597 U.S. at 24–26; *Rahimi*, 602 U.S. at 684–87. [2]

30. The State will try to reframe the Mandates as mere "traffic-stop safety" rules outside Bruen. That relabeling fails. The Mandates are firearm regulations: each criminal penalty is triggered by the presence of a handgun and the permit-holder's exercise of the right to carry. New Jersey cannot evade Bruen by renaming categorical firearms burdens as "officer safety." *Bruen*, 597 U.S. at 24–26.

31. Section 2C:58-4.4(c)'s "criminal investigation" trigger also collides with the Fourth Amendment's limits on what a routine traffic stop can become. The "tolerable duration" of a stop is defined by its mission; a stop "prolonged

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[2] The Supreme Court issued multiple GVR orders in the wake of Rahimi, directing reconsideration of post-Bruen decisions in light of intervening methodology. On remand, the Third Circuit issued precedential decisions applying Bruen/Rahimi and reaffirming that the government must justify firearms burdens by relevant historical tradition rather than interest balancing. See, e.g., *Range v. Att'y Gen. United State*s, 124 F.4th 218 (3d Cir. 2024) (en banc); *Lara v. Comm'r Pa. State Police*, 125 F.4th 428 (3d Cir. 2025).

beyond" that mission is unlawful absent independent reasonable suspicion. *Rodriguez v. United States*, 575 U.S. 348, 354–57 (2015). Labels do not expand constitutional authority.

32. Section 2C:58-4.4(c) supplies no objective definition of what qualifies as a "criminal investigation." That indeterminacy invites mission creep: routine traffic enforcement becomes a "criminal investigation" on demand, solely to trigger compelled firearm transfer and inspection. That inversion is unconstitutional both historically (no tradition of categorical disarmament based on mere status) and doctrinally (no authority to extend the stop without cause). *Rodriguez*, 575 U.S. at 354–57.

33. The constitutional mismatch is most stark on Plaintiff's facts. When the handgun is unloaded, locked, secured, and inaccessible, the State's compelled "inspection" does not respond to any immediate-access danger. It escalates a routine encounter and chills protected carry by preventing ordinary, safe vehicle transport incidental to public carriage. (Mitchell Decl. ¶¶ 24–27, 58–60).

34. Bruen's discussion of historical surety laws shows the opposite model: regulation keyed to individualized complaint, judicial process, and a demonstrated dangerousness predicate. *Bruen*, 597 U.S. at 55–60.

35. Rahimi likewise explains that historical analogues track demonstrated threats and credible risk—danger-based predicates—not categorical status-based

burdens imposed on peaceable citizens. *Rahimi*, 602 U.S. at 688–91.

36. The Mandates create criminal exposure where historical tradition demanded individualized predicates. The State's categorical burden is therefore disproportionate to any historical analogue. *Bruen*, 597 U.S. at 55–60; *Rahimi*, 602 U.S. at 688–91.

37. The Disclosure Mandate requires no reasonable suspicion, no sworn complaint, no judicial process, and no individualized dangerousness finding. It applies to all permit holders, including those transporting a handgun unloaded, locked, and inaccessible. N.J. Stat. Ann. § 2C:58-4.4(b)(1). (Mitchell Decl. ¶¶ 24–27, 30, 72).

38. The defect is not that New Jersey may regulate firearms during police encounters. The defect is that New Jersey imposes criminal liability without a demonstrated-dangerousness predicate and without regard to accessibility or risk. Historical regulations addressed misuse, affray, credible threats, dangerous and unusual weapons—not peaceable carriage accompanied by silence. *Heller*, 554 U.S. at 627.

39. Generalized policy interests cannot substitute for the historical showing Bruen requires. *Bruen*, 597 U.S. at 24–26.

40. Plaintiff has therefore established a likelihood of success on his as-applied Second Amendment claim.

B. First Amendment – Compelled Speech

41. Section 2C:58-4.4(b)(1) compels Plaintiff to speak. It requires an affirmative disclosure ("I have a handgun / a handgun is stored in the vehicle") during a compelled police encounter, on pain of a fourth-degree crime. N.J. Stat. Ann. § 2C:58-4.4(b)(1). (Mitchell Decl. ¶¶ 30, 37–38, 72).

42. The First Amendment protects the right to speak and the right to remain silent. *Barnette*, 319 U.S. at 642; *Wooley*, 430 U.S. at 714. Government-compelled speech is presumptively unconstitutional. *Riley*, 487 U.S. at 795–97. That rule applies when the government compels a person to deliver a government-prescribed message as a condition of engaging in protected conduct. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp*., 515 U.S. 557, 573 (1995); *303 Creative LLC v. Elenis*, 600 U.S. 570, 598–603 (2023).

43. Section 2C:58-4.4(b)(1) compels a content-based disclosure triggered solely by Plaintiff's exercise of protected carry and his permit status. It does not regulate conduct alone; it compels speech.

44. Content-based compelled speech triggers the most demanding scrutiny; the government must show a constitutionally sufficient justification for forcing the message. *Riley*, 487 U.S. at 795–97; *NIFLA v. Becerra*, 585 U.S. 755, 766–68 (2018).

45. Hiibel upheld compelled disclosure of a name during a lawful Terry

stop, but it did not authorize compelled disclosure of constitutionally protected conduct or a compelled admission that a person is engaged in protected activity. *Hiibel*, 542 U.S. 177, 187–88 (2004). Hiibel also does not supply a free-standing principle that the State can criminalize silence whenever it chooses to attach a speech condition to a constitutional right.

46. The unconstitutional conditions doctrine forbids conditioning the exercise of one constitutional right on surrender of another. *Koontz v. St. Johns River Water Mgmt. Dis*t., 570 U.S. 595, 604 (2013); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). New Jersey cannot condition the right to bear arms on compelled speech during routine stops where the State lacks an individualized dangerousness predicate.

47. The undefined "immediate" disclosure requirement invites discretionary enforcement and chills protected conduct. See *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972); *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244–45 (2002). (Mitchell Decl. ¶¶ 32–33, 35–38). Plaintiff has therefore shown a likelihood of success on his compelled-speech claim as applied.

C. Supremacy Clause – FOPA Preemption

48. Congress enacted 18 U.S.C. § 926A to protect lawful interstate transport of unloaded and inaccessible firearms and to prevent states from noting a

traveler's compliance with federal safe passage yet still subjecting the traveler to arrest exposure. Section 926A operates as a federal safe harbor for interstate firearm transport through restrictive jurisdictions. *Revell v. Port Auth. of N.Y. & N.J., 598 F.3d 128, 136–37 (3d Cir. 2010)*; 18 U.S.C. § 926A.

49. Plaintiff does not seek damages under § 926A. Plaintiff seeks traditional equitable relief preventing state enforcement that stands as an obstacle to federal objectives. *Verizon Md. Inc. v. PSC*, 535 U.S. 635, 642 (2002); *Shaw v. Delta Air Lines*, 463 U.S. 85, 96 n.14 (1983).

50. State law is preempted when it stands as an obstacle to Congress's purposes and objectives. *Arizona v. United States*, 567 U.S. 387, 399 (2012); *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

51. As applied to § 926A-qualifying travel, the Disclosure Mandate imposes an additional criminal condition at the very moment Congress sought to eliminate arrest exposure for compliant transport: it forces a traveler to speak on pain of felony-grade liability even when the firearm is unloaded and inaccessible. That additional state-imposed criminal condition frustrates the federal safe-passage objective.

52. Section 927 preserves state firearm laws except where they create a "direct and positive conflict" with federal law. 18 U.S.C. § 927. The Mandates

create that conflict. Section 926A protects interstate transport of unloaded and inaccessible firearms without additional state-law conditions. By attaching criminal liability to silence during a stop in those circumstances, New Jersey imposes a condition that defeats Congress's safe-passage rule.

53. Section 926A is often described as a defense raised after arrest. But that posture does not bar equitable relief where a state regime chills federally protected conduct before prosecution occurs. The Mandates impose criminal liability at the moment of a stop, forcing travelers to abandon § 926A-protected transport or risk arrest. Pre-enforcement relief is therefore appropriate.

54. Nothing in § 926A reflects a congressional intent to foreclose equitable preemption review. *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 326–28 (2015). Plaintiff has therefore shown a likelihood of success on his obstacle-preemption claim as applied.

D. Equal Protection

55. Section 2C:58-4.4(b)(1)–(2) imposes criminal disclosure and proof-of-licensure burdens on permit holders but not on other individuals transporting firearms under identical accessibility and risk conditions. (Mitchell Decl. ¶¶ 50–51).

56. Even under rational basis review, classifications must bear a reasonable relationship to a legitimate governmental interest. *Nordlinger v. Hahn*,

505 U.S. 1, 10 (1992); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446–50 (1985).

57. When accessibility and dangerousness are identical, criminalizing permit holders' silence and nonproduction of a card—while exempting similarly situated non-permit holders transporting firearms in the same locked/unloaded/inaccessible manner—creates the kind of arbitrary classification equal protection forbids. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Hill v. Borough of Kutztown*, 455 F.3d 225, 239 (3d Cir. 2006). Plaintiff has therefore shown likelihood of success on his equal protection claim as applied.

V. FOURTH AMENDMENT — UNREASONABLE SEIZURE (AS APPLIED TO § 2C:58-4.4(C))

58. Section 2C:58-4.4(c) compels a physical surrender of Plaintiff's handgun "for purposes of inspecting the handgun." That compelled transfer is a Fourth Amendment seizure. It must be reasonable in scope and justification. New Jersey cannot impose a categorical seizure rule untethered to individualized facts showing danger or access—particularly where the handgun is unloaded, locked, and not readily accessible. (Mitchell Decl. ¶¶ 58–60).

59. Terry allows a protective frisk only when an officer reasonably believes the person is "armed and presently dangerous." *Terry*, 392 U.S. at 27. The constitutional predicate is dangerousness, not mere possession.

60. In the traffic-stop context, the Supreme Court reiterates the same

predicate: an officer must "reasonably suspect that the person stopped is armed and dangerous" to proceed from stop to weapons frisk. *Arizona v. Johnson*, 555 U.S. 323, 326–27, 332-33 (2009). Thus, even during lawful stops, doctrine does not authorize categorical weapons intrusions absent an individualized armed-and-dangerous basis.

61. Long permits a limited protective search only when the officer reasonably believes the suspect is dangerous and may "gain immediate control of weapons." *Long*, 463 U.S. at 1049–50. That "immediate control" requirement defeats compelled inspection here. Plaintiff's handgun is stored unloaded and locked in locations inaccessible during the stop, eliminating any realistic possibility of immediate control. (Mitchell Decl. ¶¶ 24–27, 60). [3]

62. New Jersey cannot avoid these limits by relabeling routine traffic enforcement as a "criminal investigation." A traffic stop "prolonged beyond" the time needed to complete the stop's mission violates the Fourth Amendment absent independent reasonable suspicion. *Rodriguez*, 575 U.S. at 354–57. Section 2C:58-4.4(c)'s undefined "criminal investigation" trigger invites precisely that

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[3] Accessibility drives the State's asserted officer-safety rationale. When a handgun is unloaded and locked in a container or trunk, and not within reach, it is not capable of immediate use during the stop. Historical regulations addressed misuse and imminent threats, not mere possession of inaccessible arms. *Bruen*, 597 U.S. at 55–60; *Rahimi*, 602 U.S. at 688–91.

constitutionally forbidden expansion. (Mitchell Decl. ¶¶ 59–60).

63. The Third Circuit rejects an "automatic firearm exception" to Terry. Where firearm possession can be lawful, police may not presume criminality or danger from mere presence of a gun. *United States v. Ubiles*, 224 F.3d 213, 217–18 (3d Cir. 2000). Plaintiff presents an even weaker basis for seizure than Ubiles: Plaintiff is licensed, and the handgun is unloaded, locked, secured, and inaccessible during the stop. (Mitchell Decl. ¶¶ 24–27). If suspicion was insufficient in Ubiles, it is necessarily insufficient where the handgun is lawfully possessed and physically inaccessible.

64. Because Section 2C:58-4.4(c) compels firearm turnover and inspection without requiring a specific, articulable armed-and-dangerous basis or any realistic possibility of immediate access, Plaintiff is likely to succeed on his Fourth Amendment claim as applied to the locked/unloaded/inaccessible scenario.

VI. DUE PROCESS: PASSIVE "DISPLAY" OMISSION + NO CURE + ENFORCEMENT LOOP

65. Section 2C:58-4.4(b)(2), as applied to a valid permit holder who cannot physically produce the permit card roadside, criminalizes passive inability to "display the permit" despite valid licensure and escalates repeat incidents to a fourth-degree crime. N.J. Stat. Ann. § 2C:58-4.4(b)(2). This is not punishment for misuse, brandishing, or threatened harm. It is punishment for nonproduction of papers. (Mitchell Decl. ¶¶ 4, 52–55).

66. Due process forbids criminal punishment for passive noncompliance where the law operates as a trap for the unwary and supplies no meaningful notice-based safety valve. *Lambert v. California*, 355 U.S. 225, 228–30 (1957). As applied here, § 2C:58-4.4(b)(2) punishes inability to display a physical card roadside without any meaningful cure mechanism or verification-based alternative.

67. New Jersey's own licensing regimes illustrate the defect: the State often treats "failure to exhibit" as fine-level conduct and provides a cure mechanism through later production or verification. See, e.g., N.J. Stat. Ann. § 39:3-29 (driver's license; dismissal available upon later production). Section 2C:58-4.4(b)(2) is the outlier: it converts a routine paperwork omission by a valid license holder into escalating criminality.

68. The due process problem compounds because (b)(2) functions as an escalation mechanism during roadside encounters: inability to display a card can instantly recast a lawful permit holder as a criminal suspect, increasing pressure to treat the stop as a "criminal investigation" and to demand firearm turnover "for inspection" under § 2C:58-4.4(c). That "loop" is constitutionally intolerable in the locked/unloaded/inaccessible setting because it is untethered to access or danger. (Mitchell Decl. ¶¶ 52–55, 59–60).

69. Plaintiff is therefore likely to succeed on his Fourteenth Amendment due process claim as applied to § 2C:58-4.4(b)(2) in routine traffic-stop

circumstances where Plaintiff is validly licensed but cannot physically produce the permit card roadside and licensure can be promptly verified or later produced.

VII. ANTICIPATED STATE ARGUMENTS

70. The State will likely defend the statutes on officer-safety grounds before any interest-balancing occurs. It is true that traffic stops can be dangerous. *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977). That framing misstates the governing rule. When a law burdens the right to bear arms, the State must first identify a historical analogue justifying the burden. *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 24–26 (2022).

71. Plaintiff does not dispute that officers may take reasonable safety precautions during stops based on specific, articulable facts suggesting danger. The Constitution already supplies that doctrine—Terry, Johnson, Long, and Rodriguez. The State's theory fails because it converts generalized risk into categorical criminal burdens imposed on a subset of law-abiding citizens.

72. Generalized "traffic-stop risk" does not authorize categorical firearm intrusions. A protective frisk requires individualized justification that the person is "armed and presently dangerous." *Terry*, 392 U.S. at 27. Johnson reiterates the same predicate. *Johnson*, 555 U.S. at 326–27, 332.

73. Long permits protective intrusion only when danger and immediate access exist. *Long*, 463 U.S. at 1049–50. Those predicates are absent where the

handgun is unloaded, locked, and not readily accessible during the stop. In Plaintiff's scenario, § 2C:58-4.4(c) compels transfer and handling precisely when the weapon is secured and the encounter would otherwise remain routine.

74. The State also cannot justify § 2C:58-4.4(c) by expanding the stop beyond its traffic mission without constitutional cause. A stop "prolonged beyond" the time needed to address a traffic violation is unlawful absent independent reasonable suspicion. *Rodriguez*, 575 U.S. at 354–57. The statute's undefined "criminal investigation" trigger cannot override those limits.

75. Plaintiff does not dispute that officers may take reasonable individualized measures. But if generalized risk sufficed, the State could impose categorical seizure-and-disclosure duties on every permit holder regardless of access, risk, or individualized suspicion. The Fourth Amendment and Bruen/Rahimi reject that inversion: intrusion must track individualized facts, not mere status and the presence of an inaccessible handgun.

76. The Mandates also fail Bruen/Rahimi precisely because they apply even when the handgun is unloaded and not readily accessible and even absent any individualized suspicion of dangerousness. Historical regulations addressed demonstrated threats, not categorical status-based conditions imposed on peaceable

citizens. *Bruen*, 597 U.S. at 55–60; *Rahimi*, 602 U.S. at 688–91. [4]

77. The State may cite *Hiibel v. Sixth Judicial District Court*, 542 U.S. 177, 187–88 (2004), which upheld a statute requiring a suspect to identify himself during a lawful Terry stop. But Hiibel concerned compelled disclosure of identity—information necessary to complete the stop itself—not compelled disclosure of constitutionally protected conduct. The statute challenged here requires a permit holder to announce the presence of a firearm solely because he is exercising the right to bear arms. Nothing in Hiibel authorizes the government to condition the exercise of a constitutional right on compelled speech during routine encounters with law enforcement.

78. The State may also argue Plaintiff's injury is speculative. It is not. Pre-enforcement standing exists when a credible threat chills protected conduct. *Susan B. Anthony List*, 573 U.S. at 158–61. Plaintiff has already ceased protected conduct because of the Mandates and will resume immediately upon injunction. (Mitchell Decl. ¶¶ 39–45).

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[4] The concept of accessibility bears directly on the State's asserted officer-safety rationale. Where a firearm is unloaded and secured in a locked container or trunk, and not within reach of the vehicle's occupants, it is not capable of immediate use during the stop. Historical regulations addressed misuse or imminent threats, not the mere presence of inaccessible arms. See *Bruen*, 597 U.S. at 55–60; *Rahimi, 602 U.S. at 688–91*. The absence of immediate accessibility thus materially distinguishes Plaintiff's conduct from the risk-based regulations historically permitted.

VIII. IRREPARABLE HARM

79. Courts consistently hold that the loss of First or Second Amendment rights, even briefly, constitutes irreparable harm warranting immediate injunctive relief. *Elrod*, 427 U.S. at 373; *Roman Catholic Diocese*, 592 U.S. at 19.

80. Ongoing chilling of First and Second Amendment rights constitutes irreparable harm. *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011); *Reilly*, 858 F.3d at 179.

81. The Mandates have already chilled Plaintiff's conduct. Since November 2025, Plaintiff has ceased transporting firearms and has ceased lawful public carriage to avoid criminal liability. (Mitchell Decl. ¶¶ 39–45). Plaintiff is also a professional firearms instructor whose work requires routine transport of secured firearms; the Mandates have curtailed those activities. (Mitchell Decl. ¶¶ 6, 15–16, 34, 40–45). Plaintiff intends to immediately resume lawful carriage and secured vehicle transport if this Court enjoins enforcement. (Mitchell Decl. ¶¶ 44–45).

82. Criminal prosecution and collateral consequences cannot be remedied by damages.

IX. BALANCE OF EQUITIES

83. The State suffers no cognizable injury from temporary restraint of unconstitutional enforcement. *Holland*, 895 F.3d at 286.

84. Plaintiff faces criminal liability and constitutional deprivation absent relief, interim relief is necessary to preserve the status quo and prevent irreparable injury during the pendency of this action.

X. PUBLIC INTEREST

85. Safeguarding constitutional rights serves the public interest. *Heller*, 554 U.S. at 635; *McDonald*, 561 U.S. 742, 791; *Bruen*, 597 U.S. at 79.

86. Compliance with federal law furthers national interests under the Supremacy Clause.

87. Because Plaintiff has demonstrated likelihood of success and ongoing irreparable constitutional injury, the remaining factors—the balance of equities and the public interest—favor preliminary relief. *Reilly*, 858 F.3d at 179.

XI. NARROW REQUESTED RELIEF

88. Plaintiff seeks narrow, as-applied preliminary relief under the specific facts presented. The request does not restrict ordinary traffic enforcement, does not foreclose individualized safety measures supported by articulable facts, and does not impair any lawful police authority. Within those limits, Plaintiff requests an order enjoining enforcement of N.J. Stat. Ann. § 2C:58-4.4(b)(1), (b)(2), and (c) as applied to Plaintiff during routine traffic stops under the following conditions:

89. Plaintiff holds a validly issued permit to carry. (Mitchell Decl. ¶ 4).

90. The handgun is lawfully possessed. (Mitchell Decl. ¶¶ 20–21).

91. The handgun is unloaded and secured in a locked container, vehicle safe, or trunk. (Mitchell Decl. ¶¶ 24–27).

92. The handgun is not readily accessible to any occupant while driving. (Mitchell Decl. ¶¶ 26–27).

93. The encounter is a routine stop absent individualized reasonable suspicion that Plaintiff is presently dangerous. *Terry*, 392 U.S. at 27.

94. This relief preserves ordinary stop procedures; it bars enforcement absent the individualized predicates officers already apply under Terry, Long, and Rodriguez to extend a stop or seize a weapon. The relief is administrable: it turns on objective conditions—unloaded, locked, and inaccessible—not fine-grained roadside litigation about speculative risk.

95. As to § 2C:58-4.4(b)(2), Plaintiff seeks relief limited to the scenario where he is validly licensed but cannot physically display the permit card roadside, and licensure can be promptly verified through ordinary law-enforcement channels or cured by later production—without converting a lawful permit holder into a criminal suspect for a paperwork omission. (Mitchell Decl. ¶¶ 52–55).

96. As to § 2C:58-4.4(c), Plaintiff seeks relief limited to preventing compelled firearm turnover and inspection in the locked/unloaded/inaccessible scenario absent a particularized basis to suspect Plaintiff is "armed and presently

dangerous," *Terry*, 392 U.S. at 27, or that Plaintiff may "gain immediate control of weapons," *Long*, 463 U.S. at 1049–50. (Mitchell Decl. ¶¶ 58–60).

97. As to § 2C:58-4.4(c), Plaintiff also seeks relief preventing Defendants from treating or reclassifying routine traffic stops as "criminal investigations" for the purpose of invoking § 2C:58-4.4(c) absent independent, particularized, and articulable reasonable suspicion of criminal activity sufficient under the Fourth Amendment to lawfully extend the stop beyond its traffic mission. *Rodriguez*, 575 U.S. at 354–57.

98. This narrow relief preserves legitimate law enforcement authority while preventing ongoing constitutional harm.

99. Plaintiff's narrow preliminary request reflects the procedural posture and does not waive Plaintiff's facial challenges or broader as-applied claims, which remain pending for full adjudication.

100. This injunction would simply preserve the constitutional status quo while the Court adjudicates the merits.

XII. REQUEST REGARDING STAY

101. Should relief be granted, a stay pending appeal would be unwarranted. A stay requires likelihood of success and absence of irreparable harm. *Nken v. Holder*, 556 U.S. 418, 426 (2009).

102. Continued deprivation of constitutional rights constitutes irreparable injury weighing against a stay. *Roman Catholic Diocese*, 592 U.S. at 18–19.

103. The narrow tailoring of the relief also minimizes public-safety concerns.

XIII. CONCLUSION

104. For these reasons, Plaintiff respectfully requests that this Court grant the Motion for Preliminary Injunction and enjoin enforcement of N.J. Stat. Ann. § 2C:58-4.4(b)(1), (b)(2), and (c) as applied to Plaintiff's lawful public carriage and secured vehicle transport of a handgun that is unloaded, locked in a container, vehicle safe, or trunk and not readily accessible during routine traffic stops, absent individualized reasonable suspicion sufficient to justify prolonging the stop or seizing the firearm under the Fourth Amendment. Granting this limited preliminary relief will preserve Plaintiff's constitutional rights while this Court adjudicates the merits. The requested order leaves officers free to employ individualized safety measures authorized by the Fourth Amendment while preventing categorical criminalization and seizure in the secured-transport scenario presented here.

Respectfully submitted,

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