



Written by [Bob Adelman](#) on August 4, 2021

SCOTUS Will Hear Challenge to New York's Gun Laws

The Supreme Court has accepted 52 *amici curiae* (friend of the court) briefs in New York State Rifle & Pistol Association's lawsuit against New York's superintendent of state police, Keith Corlett. Nearly all of them focus on a particular part of the case that the justices might otherwise miss during the deliberations scheduled to begin in October.

One of them, however, focuses directly on the personal and intimate pain suffered by innocents, especially innocent people of color — black and Hispanic — who transgressed, often without knowing it, New York City's draconian and unconstitutional limits on their right to keep and bear arms.



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[The brief](#), presented by the Black Attorneys of Legal Aid, or BALA, a group formed in 2017 to defend innocents against laws such as New York's, makes the case that not only do New York's gun-control laws prevent law-abiding citizens from obtaining permission to keep and bear firearms outside their homes, they are being used primarily against people of color. BALA presents six cases. We will look closely at just one of them here.

BALA summarizes its argument:

The ... Second Amendment affords the people "the right to keep and bear arms."

Despite the clear text and this Court's precedents [*McDonald* and *Heller*], New York's licensing regime does the opposite. It deprives everyone of that right, only returning it to those select few who manage to first secure a firearm license from the police.

For everyone else, possession of a firearm is effectively a "violent felony," punishable by 3½ to 15 years in prison.

New York's licensing requirements criminalize the exercise of the fundamental Second Amendment right, with rare exceptions.

As a result, each year, we represent hundreds of indigent people whom New York criminally charges for exercising their right to keep and bear arms. For our clients, New York's licensing regime renders the Second Amendment a legal fiction. Worse, virtually all our clients whom New York prosecutes for exercising their Second Amendment right are Black or Hispanic.

And that is no accident. New York enacted its firearm licensing requirements to criminalize gun ownership by racial and ethnic minorities. That remains the effect of its enforcement by police and prosecutors today.

The consequences for our clients are brutal. New York police have stopped, questioned, and



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frisked our clients on the streets. They have invaded our clients' homes with guns drawn, terrifying them, their families, and their children.

They have forcibly removed our clients from their homes and communities and abandoned them in dirty and violent jails and prisons for days, weeks, months, and years.

They have deprived our clients of their jobs, children, livelihoods, and ability to live in this country. And they have branded our clients as "criminals" and "violent felons" for life.

They have done all of this only because our clients exercised a constitutional right.

This, wrote the attorneys, results in a system where the New York Police Department "unilaterally decides whose firearm possession is an unlicensed crime and whose is a licensed right. It thus leaves the right to keep and bear arms up to the discretion of local police."

Consider the case of Jasmine Phillips, a Texan who lawfully owned a gun in that state but was prosecuted under the New York law for unlicensed possession of the firearm while visiting family in the city:

Ms. Jasmine Phillips is a combat-decorated military veteran who served in Iraq. She had never been convicted of a crime. She legally possessed a pistol in Texas for self-defense.

After she and her husband separated, her husband moved to New York. To have their children spend some time with their father, Ms. Phillips and her children drove to New York.

While Ms. Phillips was parked in her car in New York, police officers surrounded the vehicle. One officer knocked on the passenger side window. Another opened the driver side car door, put her in a chokehold, dragged her out of the car, threw her on the pavement, flipped her over and handcuffed her. She heard officers search the car and find her pistol.

The prosecution later justified these acts because of a "tip."

"The arrest was traumatizing," she recounts. "Being separated from my two baby boys, who were three and four years old, broke my heart."

After the arrest, she was held at the precinct, and then the courthouse, without food, water, a phone call, or even access to a bathroom. After hours and hours of prearrest detention and processing, she finally saw a judge.

Like virtually everyone else accused of possessing a firearm, she was charged with violating N.Y. Penal Law § 265.03(3), a violent felony.

The judge set high monetary bail.

"I felt completely hopeless," she says. "I thought about my kids, wracked with guilt and worry about what they were going through — were they scared? Confused? I was taken away from them so suddenly. I was crushed. I also thought about my job and the home I was renting, realizing that I was going to lose both. I felt broken."

Ms. Phillips was jailed on Rikers Island for weeks before she made bail.

Because of her arrest, the Administration for Children Services ("ACS") intervened and filed a child-neglect proceeding against her.

"I lost everything: my job, my car, my home, and my kids."



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She couldn't see her children again for a full year, missing her son's fifth birthday. She recalls:

Through my attorneys, I petitioned the family court to allow ACS to let me see my child, but ACS was too slow to respond. I spent my son's fifth birthday in an Airbnb, alone, surrounded by the gifts that I had bought for him.

When I was finally allowed to see my children while I was in New York, ACS required that I meet with them during supervised visits in an ACS facility. It was so humiliating to have someone stand there while I tried to have some semblance of a normal, loving interaction with my kids.

During one visit, my older son told me that he loved going to school.

I was absolutely devastated. No one had told me that he had started pre-K. I missed his first day of school. I missed the chance to ask how his first day of school went. I can never undo that.

After extensive advocacy, Ms. Phillips' case was diverted and eventually dismissed.

Still, the case had lasting effects: a Texas judge ruled against her in a child-custody case because of her "felony arrest."

For Ms. Phillips, that was "the lowest moment of [her] life and the most hopeless [she] ever felt. There are no words to fully reach the depth of that emotion I was feeling," she explains.

But the effects of the case did not stop there, either. ACS failed to properly close Ms. Phillips' case and, four years after the arrest, they called the local sheriff in Texas to do a "welfare check." She was not at home when the police came by, but her landlord was.

The police repeated inaccurate information about the dismissed case, provided by ACS, and the landlord then terminated the lease.

In addition, to this day, Ms. Phillips reports that her younger son continues to suffer severe separation anxiety:

If I leave the house to get something from the car without telling him, he'll run out and say, "Momma, why didn't you tell me you were leaving?" It hurts me so much every time he asks.

In sum, Ms. Phillips' arrest for gun possession outside of the home continues to affect her, her family, and their lives today.

This is the personal side of the unconstitutional law New York uses to persecute and prosecute innocents who unwittingly violate it. There are five more equally devastating cases [in the brief](#).

The high court is limiting its role to determining not whether citizens can legally carry outside the home but merely determining whether New York City's application for a concealed-carry license violates their Second Amendment-protected rights.

It will hear arguments this fall and make its ruling next spring.

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