

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SJC NO: DAR-29068

APPEALS COURT  
NO: 2022-P-0971

DANA D. DUPRAS SR.,  
APPELLANT

VS.

AMENDED  
APPLICATION OF  
APPELLANT FOR  
DIRECT APPELLATE  
REVIEW

CHARLES J. CULLEN, in his  
capacity as Deputy Chief of  
Police, and THE FALL RIVER  
DIVISION OF THE DISTRICT  
COURT DEPARTMENT, acting  
by and through Judge Kevin J.  
Finnerty, as nominal judicial  
defendant,

APPELLEES

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APPLICATION FOR DIRECT APPELLATE REVIEW OF ACTION FOR  
CERTIORARI REVIEW OF DISTRICT COURT AFFIRMATION OF  
SUSPENSION OF APPELLANT'S LICENSE TO CARRY FIREARMS,  
REPORTED BY THE BRISTOL COUNTY SUPERIOR COURT (YESSAYAN,  
J.) TO THE APPEALS COURT FOR DETERMINATION, PURSUANT TO  
M.R.CIV.P. 64(a), BY REPORT DATED 09/26/2022.

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### **Request for Direct Appellate Review**

In accordance with Rule 11 of the Massachusetts Rules of Appellate Procedure, the Appellant requests that the Court grant direct appellate review of this appeal, which is based on a report by the Bristol County Superior Court (Yessayan, J.) to the Appeals Court, for determination of the Appellant's action for certiorari review, pursuant to G.L.c. 249, sec. 4, of a decision of the Fall River District Court (Finnerty, J.), upholding the suspension of the Appellant's license to carry firearms, in light of the decision of the Supreme Court of the United States in *New York State Rifle and Pistol Assn., Inc. v. Bruen, et al*, Docket No. 20-843, 597 U.S. \_\_\_\_ (2022).

### **Statement of Prior Proceedings**

The Appellant filed the Complaint in this action in the Bristol County Superior Court, on 12/07/2021, in which he sought review, pursuant to G.L.c. 249, sec. 4, of a decision of the Fall River District Court (Finnerty, J.), dated 11/10/2021, upholding a decision of the Appellee, Charles J. Cullen, acting in his capacity as the designee of the licensing authority of the City of Fall River for the issuance of licenses to carry firearms, pursuant to G.L.c. 140, sec. 122, suspending the license to carry firearms issued to the Appellant, pursuant to G.L.c. 140, sec. 131. That decision of the Fall River District Court arose from an evidentiary hearing, which took place before that Court (Finnerty, J.), on 10/19/2021, on an

appeal by the Appellant, pursuant to G.L.c. 140, sec. 131(f), from a decision of the Appellee, Charles J. Cullen, to suspend the Appellant's license to carry firearms, on the grounds that the Appellant was no longer a suitable person to possess such a license, within the meaning of G.L.c. 140, sec. 131(d). The presiding judge at that hearing (Finnerty, J.) issued his decision upholding that suspension, by a *Memorandum of Decision on Judicial Review*, dated 11/10/2021, a copy of which is appended hereto. The Complaint filed in the Superior Court also names the Fall River Division of the District Court Department, acting through Judge Finnerty, as the nominal judicial defendant in this action.

Timely service of the Complaint was made upon the Appellees, in accordance with M.R.Civ.P. 4; and, in compliance with Superior Court Standing Order 1-96, a Stipulation as to the Contents of the Record on review between the Appellant and the Appellee, Cullen, was filed in the Superior Court, on 03/30/2022; and, a Certified Copy of the Record of Proceedings in the District Court was filed by the Appellee, District Court, in the Superior Court, on 04/05/2022. Subsequently, in compliance with Superior Court Standing Order 1-96 and Superior Court Rule 9A, the Appellant filed the Plaintiff's Motion for Judgment on the Pleadings and a memorandum of law in support of that motion, along with the opposition by the Appellee, Cullen, to that motion and a memorandum of law in support of that opposition, on 05/05/2022. The Appellee,

District Court, did not make any further filing beyond the Certified Record of the Proceedings which had taken place in the District Court.

On 07/01/2022, the Appellant filed a motion, assented to by all parties, for leave to file a supplement to his memorandum in support of his motion for judgment on the pleadings, along with such supplement, raising the issue of the *Bruen* decision as having the effect that G.L.c. 140, secs. 131 and 131L are facially, and as applied to the Appellant, in violation of the Second and Fourteenth Amendments to the Constitution of the United States. The Superior Court (Yessayan, J.) then held a non-evidentiary hearing on the Appellant's motion for judgment on the pleadings, on 07/12/2022, at the conclusion of which that motion was taken under advisement by Judge Yessayan. Subsequently, however, on 07/25/2022, Judge Yessayan conducted a status conference with counsel, as a result of which the Appellee, Cullen, was given until 08/08/2022 to file an opposition to the *Bruen* issue raised by the Appellant and the Appellant was given until 08/22/2022 to file a reply to such opposition.

The Appellee, Cullen, then filed a supplemental memorandum in opposition to the supplemental memorandum of the Appellant raising the *Bruen* issue, on 08/09/2022, to which the Appellant filed a reply memorandum, on 08/15/2022. Judge Yessayan then conducted a further status conference, on 09/15/2022; as a result of which, all parties joined in an assented motion requesting that the Court

(Yessayan, J.) report this matter to the Appeals Court for determination without prior decision by the Superior Court, pursuant to M.R.Civ.P. 64(a), which was filed with the Superior Court, on 09/20/2022. Judge Yessayan then allowed that motion and reported the matter, pursuant to Rule 64(a), on 09/26/2022. Copies of that assented motion and the Court's order allowing it and reporting the matter are appended hereto.

### **Short Statement of Facts Relevant to the Appeal**

At the hearing before the Fall River District Court (Finnerty, J.), on 10/19/2021, the only witnesses to testify were the Appellee, Cullen, and the Appellant. Cullen testified that he suspended the Appellant's license to carry firearms by a written notice dated 12/10/2019 to the Appellant, informing the Appellant that he was being deemed to be an "unsuitable" person to have a license to carry firearms, within the meaning of G.L.c. 140, sec. 131(d), due to an incident which occurred on 12/09/2019, involving the Appellant having been taken into custody by the police and transported to a hospital for a psychiatric evaluation, pursuant to G.L.c. 123, sec. 12, and an associated search of the Appellant's residence having resulted in the Appellant having been charged with having an improperly stored large capacity firearm in his home. Cullen also testified that he was not contesting a claim by the Appellant that that written notice was not received by the Appellant, until June of 2021, and that the Appellant's claim for

judicial review of that suspension, therefore, was timely filed in the District Court, in accordance with G.L.c. 140, sec. 131(f).

Cullen testified that the basis of his decision to suspend the Appellant's license was the police report regarding the incident which occurred on 12/09/2019, which was entered into evidence as an exhibit. Essentially, that report says that, as a result of a call to the police by a credit card company agent claiming that the Appellant had said that he was suicidal, during a telephone conversation with that agent, police officers located the Appellant, placed him in custody and brought him to Charlton Memorial Hospital in Fall River for evaluation, pursuant to G.L.c. 123, sec. 12. In addition, the report says that other officers went to the Appellant's home, obtained permission from the Appellant's wife to search for firearms, conducted a search and, among multiple firearms legally possessed by the Appellant, found one which the report refers to as having been "unsecured"; as a result of which, a complaint was taken out against the Appellant for a violation of G.L.c. 140, sec. 131L. That charge, however, was ultimately filed without a change of plea and dismissed.

For his part, the Appellant testified that he had not spoken to the credit card agent, never claimed to be suicidal, never was suicidal and was not diagnosed to be suicidal or mentally unbalanced in any way, once he was taken to the hospital, and was not admitted to the hospital but, instead, released to go home, after a few

hours. The Appellant also testified that the gun which he was charged with having "improperly" stored was, in fact, properly stored with a trigger lock on it.

At the conclusion of testimony and closing arguments, the trial judge informed the parties that he had no evidence before him to show that the Appellant had improperly stored a firearm, that the only evidence which he had on that question was that the gun was properly stored and the only issue left in the case was whether the section 12 seizure of the Appellant provided a basis for the license suspension. In his *Memorandum of Decision on Petition for Judicial Review*, the trial judge ruled that use of the section 12 action as a basis for suspending the Appellant's license would have been arbitrary and capricious and an "erroneous interpretation of the disqualification statute." The judge, however, said that the "other stated reason for the licensing authority's action was violation of the proper storage of firearms statute" and that, as a result, he could not rule that "there was **no** reasonable ground for suspending the license" (emphasis in the original) and, therefore, denied the Appellant's petition

### **Statement of Issues of Law Raised by the Appeal**

As a result of the decision of the Supreme Court of the United States in *Bruen*, the issues raised by the present appeal include:



1. Whether G.L.c. 140, sec. 131, as it existed, at all times relevant to the present case<sup>1</sup>, was facially in violation of the Second and Fourteenth Amendments to the Constitution of the United States, in light of the discretion given to a licensing authority to deny, suspend or revoke a license to carry firearms by the terms of that statute;
2. Whether G.L.c. 140, sec. 131, as applied to the Appellant, in the present case, resulted in a violation of the Appellant's rights under the Second and Fourteenth Amendments to the Constitution of the United States, as a result of the Appellee, District Court, having applied a standard of review to the decision of the Appellee, Cullen, to suspend the Appellant's license to carry firearms, which impermissibly deferred to the discretion of the Appellee, Cullen, to make that decision, in violation of the said Second and Fourteenth Amendments;
3. Whether G.L.c. 140, 131L is facially in violation of the Second and Fourteenth Amendments to the Constitution such that the use of an accusation of violation of that statute, as a basis for the suspension of the Appellant's license, constituted a violation of the rights of the Appellant under said Second and Fourteenth Amendments; and,

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<sup>1</sup> The legislature made amendments to G.L.c. 140, sec. 131, effective August 10, 2022, which are referenced *infra* at page 18.

4. Whether the evidence presented at trial in the District Court, including an unsubstantiated criminal accusation of violating G.L.c. 140, sec. 131L, was insufficient to support the decision of the District Court upholding the suspension of the Appellant's license, consistent with the ruling in *Bruen*.

All of the foregoing issues were raised and preserved in the Superior Court.

### **Argument**

The decision in *New York State Rifle and Pistol Assn., Inc. v. Bruen, et al*, Docket No.20-843, 597 U.S. \_\_\_\_ (2022) leads to the inevitable conclusion that G.L.c. 140 sec. 131, as well as G.L.c. 140, sec. 131L, are in violation of the Second and Fourteenth Amendments to the Constitution of the United States, facially and as applied to the Appellant.

In *Bruen*, the Court rejects the traditional "means - end" scrutiny analysis by which the constitutionality of a law placing a burden on the exercise of a constitutional right will be measured by the governmental interest encompassed within that law (i.e. the "end" to be accomplished) relative to whether that law is sufficiently restricted in its terms and effect on the free exercise of that right (i.e. the "means" to accomplish the "end"). Thus, the Court has specifically eschewed the analysis of the constitutionality of a law restricting the carrying of firearms, whether inside or outside of the home, by application of "strict scrutiny", "rational relation" or "intermediate" analysis. Slip Opinion, pgs. 9 - 10. "Instead, the

government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to bear arms." Slip Opinion, pg. 10. The Court elaborates on that required analysis as follows:

"We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearms regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." Slip Opinion, pg. 15.

The Court makes clear that the Second Amendment does not prohibit firearm licensing schemes but also makes a distinction between what it refers to as "shall issue" schemes, as exist in 43 states, and "may issue" schemes, such as exist in New York and six other jurisdictions, including Massachusetts. The Court's description of that distinction is, as follows:

'But the vast majority of States - 43 by our count - are "shall issue" jurisdictions, where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, ***without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability***. Meanwhile, only six States and the District of Columbia have "may issue" licensing laws, under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, ***usually because the applicant has not demonstrated cause or suitability for the relevant license***. Aside from New York, then, only California, the District of Columbia, Hawaii, Maryland, ***Massachusetts***, and New Jersey have analogues to the "proper cause" standard.' Slip Opinion, pgs. 5 - 6 (citations omitted)(emphasis added).

The Court then proceeds to rule that the New York "proper purpose" law under consideration is impermissible, as follows:

' . . . , we conclude that respondents have not met their burden to identify an American tradition justifying the State's proper-cause requirement.

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." ***We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need.*** That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant's right to confront the witnesses against him. And it is not how the Second Amendment works when it comes to public carry for self-defense.' Slip Opinion, pgs. 62 - 63 (citations omitted)(emphasis added).

The import of the Court's Opinion is then succinctly summed-up in Justice Kavanaugh's concurrence, as follows:

' . . . the Court's decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense. In particular, the Court's decision does not affect the existing licensing regimes - known as "shall issue" - that are employed in 43 States.

The Court's decision addresses only ***the unusual discretionary licensing regimes, known as "may issue" regimes, that are employed by 6 States including New York.*** As the Court explains, New York's outlier may-issue regime is constitutionally problematic ***because it grants open-ended discretion to licensing officials*** and authorizes licenses only for those applicants who can show some special need apart from self-defense. Those features of New York's regime - ***the unchanneled discretion for licensing officials*** and the special need requirement - in effect deny the right to carry handguns for self-defense to many "ordinary, law-abiding citizens. . . . New York's law is inconsistent with the Second Amendment right to possess and carry handguns for self-defense.

By contrast, 43 States employ objective shall-issue licensing regimes. . . . Unlike New York's may-issue regime, those shall-issue regimes do not grant ***open-ended discretion to licensing officials*** and do

not require a showing of some special need apart from self-defense. As petitioners acknowledge, shall-issue licensing regimes are constitutionally permissible, ***subject of course to an as-applied challenge if a shall-issue licensing regime does not operate in that manner in practice.***

Going forward, therefore, the 43 States that employ objective shall-issue licensing regimes for carrying handguns for self-defense may continue to do so. Likewise, the 6 States including New York potentially affected by today's decision may continue to require licenses for carrying handguns for self-defense ***so long as those States employ objective licensing requirements like those used by the 43 shall-issue States.***' Slip Opinion, Kavanaugh, J., concurring, pgs. 1-2, (citations omitted)(emphasis added).

G.L.c. 140, sec. 131 clearly runs afoul of the constitutional requirements for a valid restriction on Second Amendment rights, as enunciated by the Court in *Bruen*. That statute and the decisions of the Supreme Judicial Court and Appeals Court interpreting it leave no doubt that a licensing authority is given a level of discretion under that statute, regarding issuing, suspending or revoking licenses to carry, which is impermissible under the Second and Fourteenth Amendments, as interpreted in *Bruen*. In addition to providing specific categories of persons who are per se prohibited from having licenses, section 131(d) gives a licensing authority the power to deny an application for a license to carry, or to suspend or revoke a license, if, ***"in a reasonable exercise of discretion"***, that licensing authority considers that that applicant or license holder is "unsuitable" to have such a license. The only criteria which section (d) provides as to the basis for a determination of "unsuitability" is that such a decision be based on the overtly vague standard of "(i) reliable and credible information that the applicant or

licensee has exhibited or engaged in behavior that *suggests* that, if issued a license, the licensee *may* create a risk to public safety, or (ii) existing factors that *suggest* that, if issued a license, the applicant or licensee *may* create a risk to public safety." (emphasis added). [Compare: Scione v. Barnes, 481 Mass. 225, 230-232 (2019)(description of vagueness under article 12 of Massachusetts Declaration of Rights)]. Decisions of the Supreme Judicial Court and the Appeals Court leave no doubt that a licensing authority's discretion to decide *ex parte* what "behavior" or "existing factors" "suggest" that an applicant or licensee "may" create a risk to public safety, if issued a license, is effectively shielded from being disturbed, even upon judicial review. Cf. Chief of Police of Wakefield v. DeSisto, 99 Mass. App. Ct. 782, 786 (2021); Chief of Police of Taunton, et al v. Caras, et al, 95 Mass. App. Ct. 182, 186 - 187 (2019)(judge may not second guess the licensing authority's decision to take one reasonable action over another).

In fact, if a license is suspended, as in the present case, section (d) does not even require that the licensing authority specify the terms and limits of such a suspension, such as length of the suspension or actions which the licensee may take to correct whatever factor(s) gave rise to the suspension. Indeed, the testimony of the Appellee, Cullen, before the District Court, makes clear that, in issuing that suspension, the policy in Fall River is for the licensing authority to exercise unfettered discretion as to how long to let such a suspension stay in effect or what,

if any, action a licensee can take to remedy whatever condition existed, upon which the suspension was based.

Consequently, G.L.c. 140, sec. 131 falls squarely within the category of discretionary licensing statutes governing the constitutional right to carry firearms, which *Bruen* holds to be impermissible. It is a statute which, on its face, confines a citizen's right to the exercise of a specifically enumerated, fundamental right contained within the Bill of Rights to the open-ended discretion of a government functionary and, as such, is in violation of the Second and Fourteenth Amendments.

In addition, under the *Bruen* analysis, section 131L of G.L.c. 140, which imposes specific storage requirements of firearms within the home and which is implicated in the present case, is also in violation of the Second and Fourteenth Amendments. That statute requires a homeowner to store a firearm in a locked container or with a trigger lock, even in the home; yet, in light of *Bruen's* replacement of the traditional "means - end" method of analysis, only if the government can produce historical facts showing that it was considered acceptable, from the time that the Second Amendment was enacted through the time of the enactment of the Fourteenth Amendment, that the government could order citizens how to store guns on the premises of their own homes, can section 131L be considered permissible within the limits of the Second and Fourteenth

Amendments. Given that that period of time was one in which the national population was extensively rural, and even frontier, and firearms considered an essential tool, including for self-defense, in environments without police protection and susceptible to violent incursions by robbers, etc., it is doubtful that the suggestion that the government had any authority to tell people that they had to lock up their firearms, and thereby hinder their immediate availability for self-protection in life-threatening situations, would have been looked upon as anything other than nonsense. Under *Bruen*, only if the government is able to produce a historical record proving that such a governmental restriction was accepted, at that time, could section 131L be considered as having constitutional legitimacy of any kind.

In addition, under *Bruen*, the suspension of the Plaintiff's license and the affirmation of that suspension by the District Court was an application of G.L.c. 140, sec. 131, which was in violation of the Second and Fourteenth Amendments. The suspension of the Plaintiff's license was based on nothing more than a suspicion on the part of the licensing authority that the Appellant was suicidal and an accusation that he had an "improperly stored" firearm in his home. Without more, the exercise by that authority of its power to suspend the Appellant's license was the exercise of open-ended discretion on the part of a government officer, which *Bruen* says is in violation of the Second and Fourteenth Amendments.



Although the District Court judge ruled that the suspicion of mental instability on the part of the Appellant did not provide a basis for suspension of the Appellant's license and that he did not have any evidence before him to show that the Plaintiff had "improperly" stored a firearm in his home, that judge ruled that he was still affirming the decision to suspend the Plaintiff's license because he could not say that there was no basis for suspending the license, in the face of the accusation of improper storage. Such a speculative ruling constitutes nothing other than judicial abdication to the type of open-ended, discretionary infringement of the Appellant's rights under the Second and Fourteenth Amendments, which *Bruen* holds to be in violation of those Amendments.

#### **Statement of Reasons Why Direct Appellate Review Appropriate**

Direct appellate review is appropriate in this action because the effect of the *Bruen* decision is one of first impression and raises the issue of whether G.L.c. 140, sec. 131, prior to its amendment, as referenced in footnote #1 *supra*, is in violation of the Second and Fourteenth Amendments to the Constitution of the United States, particularly regarding the "suitability" standard for the denial, suspension or revocation of a license to carry firearms. In addition, no precedent exists, upon which the Superior Court in the present action can rely in attempting to interpret and apply the effect of the principles enunciated in *Bruen* to the present action or any similar action; yet, the question of what the effects of those principles

are on the facial constitutionality of G.L.c. 140, sec. 131, as well as on the application of that statute in the present case and others, is likely to affect such a wide range of citizens and court actions, throughout the Commonwealth, and to arise on a recurring basis, that the need for interpretation and clarification of the effect of *Bruen* on G.L.c. 140, sec. 131 makes immediate direct appellate review essential to the administration of justice regarding firearms regulation throughout the Commonwealth.

Indeed, although amendments were made to G.L.c. 140, sec. 131, effective August 10, 2022, interpretation of the effect of the *Bruen* decision in the present case also will reflect on the constitutionality of section 131, as amended; since, subsection (d) of the amended statute still predicates the issuance, suspension or revocation of a license on a finding by the licensing authority that a person is not "unsuitable" to hold such a license, makes no meaningful change to the definition of "unsuitability" relative to its prior definition and effectively leaves in place the judicially recognized mandate of impermissibly broad discretion being allowed to a licensing authority in making such a decision.

BY APPELLANT'S ATTORNEY,  
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## **APPENDIX**

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**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL COUNTY  
Docket Report**

**2173CV00881 Dupras, Sr., Dana D vs. Charles J Cullen In his/her capacity Deputy Chief of Police et al**

<b>CASE TYPE:</b> Administrative Civil Actions	<b>FILE DATE:</b> 12/07/2021
<b>ACTION CODE:</b> E03	<b>CASE TRACK:</b> X - Accelerated
<b>DESCRIPTION:</b> Certiorari Action, G. L. c. 249 § 4	
<b>CASE DISPOSITION DATE:</b>	<b>CASE STATUS:</b> Open
<b>CASE DISPOSITION:</b> Pending	<b>STATUS DATE:</b> 12/07/2021
<b>CASE JUDGE:</b>	<b>CASE SESSION:</b> Civil A (New Bedford)

**DCM TRACK**

Tickler Description	Due Date	Completion Date
Service	03/07/2022	12/28/2021
Under Advisement	08/11/2022	09/28/2022
Status Review	10/28/2022	
Judgment	12/07/2022	

**PARTIES**

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**Private Counsel**

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Paul W Patten  
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Work Phone (508) 672-3559  
Added Date: 12/07/2021

**Defendant**

Charles J Cullen In his/her capacity Deputy Chief of  
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Fall River Police Department  
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**Private Counsel**

630053

Gary P Howayeck  
Gary P. Howayeck, P.C.  
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Added Date: 03/28/2022



**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL COUNTY  
Docket Report**

<b>Defendant</b> Fall River District Court 186 S. Main Street Fall River, MA 02721	<b>Private Counsel</b> <span style="float:right">549788</span> Daniel P Sullivan Executive Office of the Trial Court Executive Office of the Trial Court Two Center Plaza Suite 540 Boston, MA 02108 Work Phone (617) 455-7461 Added Date: 04/05/2022
	<b>Private Counsel</b> <span style="float:right">687939</span> Christine E Griffin Trial Court Trial Court 2 Center Plaza 5th Floor Boston, MA 02108 Work Phone (617) 878-0331 Added Date: 04/05/2022

**EVENTS**

Date	Session	Event	Result	Resulting Judge
07/12/2022	Civil A (New Bedford)	Hearing for Judgment on Pleading	Held - Under advisement Held as Scheduled	Yessayan
07/25/2022	Civil A (New Bedford)	Conference to Review Status	Held via Video/Teleconference	Yessayan
08/08/2022	Civil A (New Bedford)	Filing of Motions	Held as Scheduled	Milord
08/22/2022	Civil A (New Bedford)	Filing of Motions	Held as Scheduled	Milord
09/15/2022	Civil A (New Bedford)	Conference to Review Status	Held as Scheduled	Yessayan

**FINANCIAL SUMMARY**

	Fees/Fines/Costs/Charge	Assessed	Paid	Dismissed	Balance
<b>Total</b>		275.00	275.00	0.00	0.00



**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL COUNTY  
Docket Report**

**INFORMATIONAL DOCKET ENTRIES**

Date	Ref	Description	Judge
12/07/2021	1	Complaint electronically filed.	
12/07/2021	2	Civil action cover sheet filed.	
12/07/2021		Case assigned to: DCM Track X - Accelerated was added on 12/07/2021	
12/07/2021		Attorney appearance On this date Paul W Patten, Esq. added as Private Counsel for Plaintiff Dana D Dupras, Sr.	
12/07/2021		EDocument sent: A Tracking Order - X only was generated and sent to: Plaintiff, Attorney: Paul W Patten, Esq. paulpatten@comcast.net	
12/23/2021	3	Service Returned for Defendant Charles J Cullen in his/her capacity Deputy Chief of Police: Service through person in charge / agent;	
12/28/2021	4	Affidavit of Service for Defendant Fall River District Court: Service via certified mail;	
03/28/2022		Attorney appearance electronically filed.	
03/28/2022	5	Attorney appearance On this date Gary P Howayeck, Esq. added as Private Counsel for Defendant Charles J Cullen in his/her capacity Deputy Chief of Police	
03/30/2022	6	Party(s) file Stipulation as to Contents of Record on Review Pursuant to MGL Ch. 249, Sec. 4.  Applies To: Dupras, Sr., Dana D (Plaintiff); Charles J Cullen in his/her capacity Deputy Chief of Police (Defendant)	
04/05/2022	7	Answer to original complaint/Certified Copy of the Record of the Proceedings.  Applies To: Fall River District Court (Defendant)	
04/05/2022		Attorney appearance On this date Daniel P Sullivan, Esq. added as Private Counsel for Defendant Fall River District Court	
04/05/2022		Attorney appearance On this date Christine E Griffin, Esq. added as Private Counsel for Defendant Fall River District Court	
05/05/2022	8	Plaintiff Dana D Dupras, Sr.'s Motion for judgment on the pleadings MRCP 12(c) and Request for hearing	
05/05/2022	8.1	Dana D Dupras, Sr.'s Memorandum in support of its motion for judgment on the pleadings	
05/05/2022	8.2	Opposition to plaintiff's motion for judgment on the pleadings filed by Charles J Cullen in his/her capacity Deputy Chief of Police	
05/05/2022	8.3	Charles J Cullen in his/her capacity Deputy Chief of Police's Memorandum in opposition to plaintiff's motion for Judgment on the Pleadings	



COMMONWEALTH OF MASSACHUSETTS  
BRISTOL COUNTY  
Docket Report

05/05/2022	8.4	Certificate of Compliance Superior Court Rule 9C	
05/10/2022		The following form was generated:	
		Notice to Appear Sent On: 05/10/2022 11:41:08	
07/01/2022	9	Plaintiff Dana D Dupras, Sr.'s Assented to Motion for leave to file supplement to memorandum in support of motion for judgment on the pleadings pursuant to superior court Rule 9A(a)(6)	
07/01/2022		The following form was generated:	
		Notice to Appear Sent On: 07/01/2022 14:39:57	
07/12/2022		Matter taken under advisement: Hearing for Judgment on Pleading scheduled on: 07/12/2022 02:00 PM Has been: Held - Under advisement Hon. Raffi N Yessayan, Presiding Appeared: Plaintiff Paul W Patten, Esq., Private Counsel Defendant Gary P Howayeck, Esq., Private Counsel Staff: Jennifer A. Sullivan, Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter	Yessayan
07/25/2022		Event Result: Conference to Review Status scheduled on: 07/25/2022 02:00 PM Has been: Held via Video/Teleconference Comments: Defendants have two weeks (August 8, 2022) to file an opposition to Papers #8 and 9 and Plaintiff has two weeks from August 8, 2022 (August 22, 2022) to file a reply. Hon. Raffi N Yessayan, Presiding Appeared: Plaintiff Paul W Patten, Esq., Private Counsel Defendant Gary P Howayeck, Esq., Private Counsel Staff: Kellee-Sue Milord, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter	Yessayan
08/08/2022		Event Result: Filing of Motions scheduled on: 08/08/2022 04:30 PM Has been: Held as Scheduled Kellee-Sue Milord, Presiding Staff: Kellee-Sue Milord, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter	Milord



**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL COUNTY  
Docket Report**

08/09/2022	10	Gary P Howayeck, Esq.'s Memorandum in opposition to (Memorandum of Law) to Plaintiff's Motion for Judgment on the Pleadings.	
08/15/2022	11	Plaintiff Dana D Dupras, Sr.'s Reply to Supplemental Memorandum of law of defendant, Charles Cullen in Opposition to plaintiff's motion for judgment on the pleadings	
08/22/2022		Event Result:: Filing of Motions scheduled on: 08/22/2022 04:30 PM Has been: Held as Scheduled Kellee-Sue Milord, Presiding Staff: Kellee-Sue Milord, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter	Milord
09/15/2022		Event Result:: Conference to Review Status scheduled on: 09/15/2022 11:00 AM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Appeared: Plaintiff Paul W Patten, Esq., Private Counsel Defendant Gary P Howayeck, Esq., Private Counsel Staff: Kellee-Sue Milord, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter	Yessayan
09/20/2022	12	Plaintiff Dana D Dupras, Sr.'s Assented to Motion for Report of Motion for Judgment on the Pleadings for Determination by the Appeals Court Pursuant to MRCP P. 64(a).	
09/21/2022		Case sent to Bristol County - FALL RIVER Location.	
09/26/2022		Case sent to Bristol County - NEW BEDFORD Location.	
09/26/2022		Endorsement on Motion for Report of Motion for Judgment on the Pleadings for Determination by the Appeals Court (#12.0): ALLOWED After review and consideration, the motion is Allowed. The Court, therefore, reports this matter to the Appeals Court pursuant to M.R.Civ.P. Rule 64(a).  Judge: Yessayan, Hon. Raffi N	Yessayan
09/28/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Paul W Patten, Esq. paulpatten@comcast.net Defendant, Attorney: Gary P Howayeck, Esq. gary@howayeck.com Defendant, Attorney: Daniel P Sullivan, Esq. daniel.sullivan2@jud.state.ma.us Defendant, Attorney: Christine E Griffin, Esq. christine.griffin@jud.state.ma.us	
09/30/2022	13	Plaintiff Dana D Dupras, Sr.'s Request for Assembly of Appeal	
10/04/2022	14	Appeal: Statement of the Case on Appeal (Cover Sheet), by e-filing to the Appeals Court.	





COMMONWEALTH OF MASSACHUSETTS  
BRISTOL COUNTY  
Docket Report

10/04/2022	15	Notice of assembly of record sent to Counsel
10/04/2022	16	Notice to Clerk of the Appeals Court of Assembly of Record, by e-filing to the Appeals Court.

A true copy attest:

/s/ Dina M. Swanson, Esquire  
Assistant Clerk/Magistrate

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss

District Court Department

Fall River Division

No.: 2132CV0464

DANA D. DUPRAS, SR.

v.

CHARLES J. CULLEN, IN HIS CAPACITY AS

DEPUTY CHIEF OF POLICE

MEMORANDUM OF DECISION ON PETITION FOR JUDICIAL REVIEW

Petitioner has been licensed to carry firearms under G. L. chapter 140 section 131 and its predecessor statutes in Massachusetts since 1979. He is not a person prohibited under the licensing statute from possessing such a license.

Petitioner appeals to this court to reverse the decision of licensing authority of the City of Fall River that he is an unsuitable person to have such a license

Acknowledging, as was recently stated in *Chief of Police of Wakefield v. DeSisto*, 99 Mass. App. Ct. 782 (2021) that a reviewing court is not permitted to re-weigh the facts and substitute its decision for the licensing authority's exercise of discretion, on these facts this court concludes that the decision to suspend the petitioner's license was in part arbitrary and capricious and was based on an error of law. However, because of the other stated reason, improper storage of a firearm (see exhibit #1), this court denies the petition.

The Fall River Police Department received a telephone call from an insurance company agent stating that petitioner made an alarming comment during a telephone call that had just occurred. Police officers responded to the petitioner's residence to conduct a wellness check. They seized his firearms and took the petitioner to the hospital for evaluation under G.L. c. 123, section 12. Petitioner was not committed under section 12 and was released from the hospital's emergency department after a few hours. One firearm of the many seized from the petitioner's home was reported to have been found improperly stored and the petitioner was charged for that criminal offense. Ultimately, the criminal charge was filed without a change of plea before being dismissed.

The police report narrating the facts presented to Deputy Chief Cullen, the licensing authority's designee, is respondent's hearing exhibit number one. Although the focus at the hearing was on the section 12 evaluation as basis for determining the petitioner's unsuitability, this court concludes that it would have been arbitrary and capricious and an erroneous interpretation of the disqualification statute to suspend the petitioner's license on that basis. The other stated reason for the licensing authority's action was violation of the proper storage of firearms statute. Considering the foregoing this court

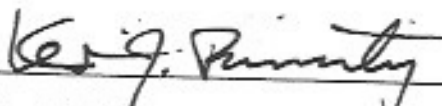
A true copy, Attest:



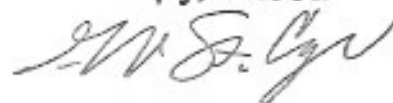
Assistant Clerk

cannot that there was no reasonable ground for suspending the license. The petition is therefore DENIED.

Dated: November 10, 2021

  
Kevin J. Finnerty, District Court Judge

A true copy, Attest:



Assistant Clerk

**CLERK'S NOTICE**

DOCKET NUMBER

2173CV00881

**Trial Court of Massachusetts  
The Superior Court**

## CASE NAME:

Dana D Dupras, Sr. vs. Charles J Cullen In his/her capacity Deputy  
Chief of Police et alJennifer A. Sullivan, Clerk of Court  
Bristol County

## TO:

Paul W Patten, Esq.  
56 North Main St Suite 221  
Fall River, MA 02720

## COURT NAME &amp; ADDRESS

Bristol County Superior Court - New Bedford  
441 County Street, 1st floor  
New Bedford, MA 02740

You are hereby notified that on 09/26/2022 the following entry was made on the above  
referenced docket:

Endorsement on Motion for Report of Motion for Judgment on the Pleadings for Determination by the Appeals Court  
(#12.0): ALLOWED

After review and consideration, the motion is Allowed. The Court, therefore, reports this matter to the Appeals Court  
pursuant to M.R.Civ.P. Rule 64(a).

Judge: Yessayan, Hon. Raffi N

DATE ISSUED

09/28/2022

ASSOCIATE JUSTICE/ ASSISTANT CLERK

Hon. Raffi N Yessayan

SESSION PHONE#

(508)996-2051

12.

BRISTOL, SS SUPERIOR COURT  
FILED

SEP 20 2022  
COMMONWEALTH OF MASSACHUSETTS

JENNIFER A. SULLIVAN, ESQ.  
CLERK / MAGISTRATE

SUPERIOR COURT  
CIVIL ACTION  
NO. 2173CV00881

BRISTOL, SS.

DANA D. DUPRAS,  
PLAINTIFF

VS.

CHARLES J. CULLEN, ET.  
AL.,  
DEFENDANTS

ASSENTED MOTION BY ALL  
PARTIES FOR REPORT OF  
MOTION FOR JUDGMENT ON  
THE PLEADINGS FOR  
DETERMINATION BY THE  
APPEALS COURT PURSUANT  
TO M.R.CIV.P. 64(a)

Now come all Parties to this action and move, pursuant to the provisions of Rule 64(a) of the Massachusetts Rules of Civil Procedure, that the Court (Yessayan, J.) report the Plaintiff's Motion for Judgment on the Pleadings, to the Appeals Court for determination. As grounds therefor, the Parties state that:

1. This is an action for certiorari review, pursuant to G.L.c. 249, sec. 4, from a Fall River District Court hearing and decision, upholding a decision of the Defendant, Charles J. Cullen, suspending the Plaintiff's license to carry firearms, pursuant to G.L.c. 140, sec. 131(f). As such, the role of the Superior Court is confined solely to reviewing the record of the proceedings in the District Court and to "correct substantial errors of law apparent on the record adversely affecting material rights" and does not involve the taking of evidence and determining issues of fact;

9/26/22 - After review and consideration, the motion is allowed. The Court, therefore, reports this matter to the Appeals Court pursuant to M.R.Civ.P. Rule 64(a).  
Hon. J. Yessayan

2. A full hearing on the merits, at which evidence was taken by the District Court (Finnerty, J.), followed by that Court issuing its Memorandum of Decision on Petition for Judicial Review, containing that Court's findings of fact and rulings of law, took place before the District Court; and, copies of the transcript of the testimony of witnesses, exhibits introduced and the memorandum containing the findings and rulings of the District Court (Finnerty, J.) are contained in the Certified Copy of the Record of said District Court proceedings, which is on file in the present action. That evidence established the material facts, upon which the District Court (Finnerty, J.) made determinations of law resulting in that Court's decision upholding the suspension of the Plaintiff's license to carry firearms;

3. The Parties are in agreement that there are no issues of material fact involved in the present action, that the material facts in this matter are as shown in said memorandum of decision by the District Court and the evidence introduced at said District Court hearing and that the only issue in the present action, including on an appeal in this action, is whether the application of law by the District Court (Finnerty, J.) to those facts resulting in its decision upholding the suspension of the Plaintiff's license was in error;

4. Count II of the Complaint filed by the Plaintiff, raises the issue of whether the suspension of the Plaintiff's license to carry firearms, pursuant to G.L.c. 140, sec. 131(f), constituted a violation of the Second and Fourteenth Amendments to the Constitution of the United States; and, subsequent to the filing of said complaint, the Supreme Court of the United States issued its decision in *New York State Rifle and Pistol Assn, Inc. v. Bruen, et al*, Docket No. 20-843, 597 U.S. \_\_\_\_\_ (2022);

5. The effect of the *Bruen* decision is one of first impression and raises the issue of whether G.L.c. 140, sec. 131, particularly including the provisions therein regarding the denial, suspension or revocation of a license to carry firearms, on the basis of a person being "unsuitable" to have such a license, is in violation of the Second and Fourteenth Amendments to the Constitution of the United States. In addition, no precedent exists, upon which the Court in the present action can rely in attempting to interpret and apply the effect of the principles enunciated in *Bruen* to the present action or any similar action; and, the question of what the effect of those principles are on the facial constitutionality of G.L.c. 140, sec. 131, as well as on the application of that statute to the Plaintiff in the present case or any other person similarly situated, is likely to affect such a wide range of citizens and court actions throughout the Commonwealth, and to arise on a recurring basis, that judicial economy and the need for interpretation and clarification of the effect of *Bruen* on G.L.c. 140, sec. 131 makes immediate appellate review regarding that effect essential to decision of the present case and to the administration of justice regarding firearms regulation throughout the Commonwealth.

Wherefore, the Parties request that the Court proceed with reporting this action for determination by the Appeals Court, pursuant to M.R.Civ.P. 64(a).

ASSENTED TO:  
BY PLAINTIFF'S ATTORNEY,  
/s/ Paul W. Patten  
PAUL W. PATTEN  
SUITE 221  
56 NORTH MAIN STREET  
FALL RIVER, MA 02720  
BBO# 391400  
(508)672-3559  
paulpatten@comcast.net  
DATED: 09/19/2022

ASSENTED TO:  
DEFENDANT TRIAL COURT,  
BY ITS ATTORNEY,  
/s/ Christine E. Griffin  
CHRISTINE E. GRIFFIN, BBO No. 687939  
LEGAL DEPARTMENT  
EXECUTIVE OFFICE OF THE TRIAL COURT  
TWO CENTER PLAZA, ROOM 540  
BOSTON, MA 02108  
(617)742-8575  
christine.griffin@jud.state.ma.us  
DATED: 09/19/2022

ASSENTED TO:  
DEFENDANT CHARLES J.  
CULLEN, DEPUTY CHIEF,  
BY HIS ATTORNEY,  
/s/ Gary P. Howayeck  
GARY P. HOWAYECK,  
ASSISTANT CORPORATION  
COUNSEL, BBO No. 630053  
CITY OF FALL RIVER  
ONE GOVERNMENT CENTER  
FALL RIVER, MA 02721  
TEL: (508)324-263  
FAX: (508)324-2655  
ghowayeck@fallriverma.org  
DATED: 09/19/2022

Certificate of Service

I, Paul W. Patten, attorney for the Plaintiff, certify that, on 09/20/2022, service of copies of this document has been made upon Attorney Gary Howayeck, Esq., counsel for the Defendant, Charles J. Cullen, and Attorney Christine E. Griffin, Esq., counsel for the nominal judicial Defendant, in accordance with the provisions of Rule 7 of the Massachusetts Rules of Electronic Filing and M.R.Civ.P. 5.

/s/ Paul W. Patten  
Paul W. Patten  
Dated: 09/20/2022



## **CERTIFICATE OF COMPLIANCE**

I, Paul W. Patten, attorney for the Appellant, certify pursuant to M.R.App.P. 11(b) and 16(k), that this document complies with the rules of court that pertain to the filing of an application for direct appellate review, as contained in M.R.App.P. 20(a), and that compliance herein is met by said Argument containing 1996 words using Times New Roman font, a proportionally spaced font, as defined in M.R.App.P. 20(a)(4)(B), using 14 point size, and the word processing program used being Microsoft Word for Mac, Version 16.65

/s/ Paul W. Patten  
Paul W. Patten, Esq.  
Suite 221  
56 North Main Street  
Fall River, MA 02720  
BBO#391400  
(508)672-3559  
paulpatten@comcast.net

Dated: 10/12/2022

## **CERTIFICATE OF SERVICE**

I, Paul W. Patten, attorney for the Appellant, certify that, on 10/12/2022, I made service of this Amended Application for Direct Appellate Review on counsel for the Appellee, Charles J. Cullen, Attorney Gary P. Howayeck, through the e-filing system of eFileMA.com and on counsel for the Appellee, Fall District Court, by mailing a copy of this document by first-class mail to its counsel, Christine E. Griffin, Esq., Administrative Attorney, Executive Office of the Trial Court - Legal Department, 2 Center Plaza, 5th Floor, Boston, MA 02108, as well as emailing a copy to said counsel at [christine.griffin@jud.state.ma.us](mailto:christine.griffin@jud.state.ma.us).

/s/ Paul W. Patten  
Paul W. Patten, Esq.  
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Fall River, MA 02720  
BBO#391400  
(508)672-3559  
[paulpatten@comcast.net](mailto:paulpatten@comcast.net)

Dated: 10/12/2022