

COURT OF COMMON PLEAS OF PHILADELPHIA  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL

<b>Gun Owners of America Inc., et al.,</b> <i>Plaintiff(s);</i>  <i>vs.</i>  City of <b>Philadelphia, and</b> Commissioner Danielle M. <b>Outlaw,</b> <i>Defendant(s).</i>	May Term, 2021 <i>No. 2725</i>  CLASS ACTION
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**RULE TO SHOW CAUSE**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, upon consideration of the Plaintiffs' Petition for Preliminary Injunction, this Court hereby **ORDERS** that:

1. A Rule is issued for Defendants to show cause why this Court should not grant Plaintiffs' request for a preliminary injunction.
2. A hearing is scheduled on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ am/pm via Zoom.

**BY THE COURT:**

\_\_\_\_\_  
J.

COURT OF COMMON PLEAS OF PHILADELPHIA  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
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<p><b>Gun Owners of America Inc., et al.,</b> <i>Plaintiff(s);</i></p> <p><i>vs.</i></p> <p>City of <b>Philadelphia, and</b> Commissioner Danielle M. <b>Outlaw,</b> <i>Defendant(s).</i></p>	<p>May Term, 2021 <i>No. 2725</i></p> <p>CLASS ACTION</p>
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**[PROPOSED] ORDER**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, upon consideration of the Plaintiffs' Petition for Preliminary Injunction, this Court hereby **GRANTS** the motion and further **ORDERS**:

1. Defendants shall permit LTCF approved applicants to pick-up their physical license—without appointment—on the 45th day after application or any day thereafter.
2. Application date is the day an LTCF application is submitted, irrespective of the PPD GPU's operating hours. Days shall be calculated pursuant to Pa. R.C.P. 106.
3. No bond is required of Plaintiffs as Defendants will not suffer damages if this injunction was improperly granted.
4. Defendants are cautioned that failure or delay in issuance of License to Carry Firearms beyond 45 days may subject them to sanctions upon further application to this Court.

**BY THE COURT:**

\_\_\_\_\_  
J.

**Andrew B. Austin, Esq.**  
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*Attorney for Plaintiffs and Proposed Class*

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**Gun Owners of America Inc., et al.,**  
*Plaintiff(s);*

*vs.*

City of **Philadelphia**, and  
Commissioner Danielle M. **Outlaw**,  
*Defendant(s).*

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

May Term, 2021  
*No. 2725*

CLASS ACTION

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## **PLAINTIFFS' PETITION FOR PRELIMINARY INJUNCTION**

Pennsylvania law imposes a non-discretionary 45 day deadline on Defendants issuance of a Pennsylvania License to Carry Firearms (“LTCF”). Despite this clear mandate, the Philadelphia Police Department (“PPD”) Gun Permit Unit (“GPU”)—to which this responsibility is delegated—refuses to comply with this statutory duty. Instead, LTCF applicants are “approved” for their license, but required to schedule appointments outside the 45 day deadline. The PPD GPU refuses to allow applicants to pick-up their applicants prior to that appointment.

Plaintiffs respectfully request that this Court preliminarily enjoin Defendants from this illegal process, and require they allow approved applicants to pick-up their application without appointment on or after the 45 day deadline has expired. As Defendants’ 45 day deadline has already expired for Plaintiff Pirestani and other class-members, Plaintiffs respectfully request this hearing on this injunction be held on an expedited basis.

1. Commissioner Danielle Outlaw is the “Chief of Police” of Philadelphia. In that role, she is responsible for the issuance of LTCFs to residents of the City. This duty is delegated to the PPD GPU.
2. Plaintiffs Gun Owners of America and Gun Owners Foundation are nonprofit organizations dedicated to preserving, protecting, and defending the gun rights of Americans, with numerous members within Philadelphia who have or are seeking their Pennsylvania LTCF.
3. Plaintiffs Breslow, Enden, Pirestani, Soffer, and Sturgis are residents of Philadelphia who have applied for– and been approved by PPD– to be issued an LTCF.
4. These Plaintiffs represent a class of individuals who have “applied for a License to Carry Firearms in Philadelphia but [have] not yet received their license or a denial thereof.” Cmplt. at ¶ 27.
5. After PPD GPU approved the representative Plaintiffs, it cautioned them that approval did not allow them to carry a firearm concealed, but instead they were required to schedule an in-person appointment to schedule pick-up of their physical license.
6. At the time of approval, all appointments available for the representative Plaintiffs was more than 100 days in the future.
7. For example, on May 29<sup>th</sup> 2021, the first available appointment was October 22<sup>nd</sup> 2021. Available is constantly changing, however representative Plaintiffs were unable to schedule a timely appointment for pick-up.
8. Pennsylvania law requires that Commissioner Outlaw “shall, within 45 days, issue or refuse to issue” an applicants LTCF. 18 Pa. C.S. § 6109 (g).

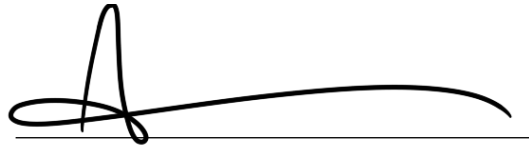
9. However, Commissioner Outlaw did not– and refused– to comply with this deadline, which has already passed for Plaintiffs Enden, Pirestani, and Sturgis, and—upon information and belief—dozens if not hundreds of other class-members.<sup>1</sup>
10. Defendants had ample opportunity to address their failure to comply with the LTCF deadline, but instead have simply attempted to circumvent it with spurious interpretation or toothless offers of judgment.
11. Further, this Court has already determined Defendants refusal to issue physical LTCFs is in violation of the law, Order of Judge Roberts (Control No. 2104121600027) at \*1 n. 1, *Auerbach v. Outlaw*, Apr. '21 # 1216 (Phila. Com. Pl. Ct. May 14, 2021), yet the Defendants have not altered their conduct and continue to refuse to issue LTCFs without an appointment even after 45 days.
12. Without a preliminary injunction, representative Plaintiffs and class members will forever and irreparably be deprived of the benefit of the 45 day issuance deadline and further deprived of their fundamental right to bear arms in accordance with Pennsylvania law for the length of Defendants delay.

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<sup>1</sup> After the initiation and service of this lawsuit, Defendants began attempting to contact the representative Plaintiffs to offer earlier appointments, including weekend hours. However, Plaintiffs' Counsel has contacted other LTCF applicants who are not named parties to this suit, who have denied receiving similar offers of earlier appointments.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter the proposed preliminary injunction on behalf of themselves, and all others similarly situated, requiring that Defendants issue approved applicants their physical LTCFs in the time specifically mandated by law.

Respectfully Submitted,

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a long, sweeping horizontal line that ends in a small upward curve.

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**Andrew B. Austin, Esq.**  
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PHILADELPHIA COUNTY

May Term, 2021  
*No. 2725*

CLASS ACTION

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## **PLAINTIFFS' BRIEF IN SUPPORT OF THEIR PETITION FOR PRELIMINARY INJUNCTION**

Defendants refuse to comply with “clear and unambiguous” Pennsylvania law requiring they issue or refuse to issue License to Carry Firearms (“LTCF”) within the mandatory 45 days. Order of Judge Roberts (Control No. 2104121600027) at \*1 n. 1, *Auerbach v. Outlaw*, Apr. ‘21 # 1216 (Phila. Com. Pl. Ct. May 14, 2021) (citing *Id.* at § 6109). Hundreds if not thousands of LTCF applicants are currently approved by the Philadelphia Police Department (“PPD”) Gun Permit Unit (“GPU”) for issuance of their LTCF, which the GPU *refuses to physically issue* until the applicant waits their turn for an appointment frequently months in the future. This behavior is illegal and unconscionable: Defendants have no authority or discretion to unilaterally extend the 45 day deadline imposed by the law. Order of Judge Roberts at \*1 n. 1, *Auerbach v. Outlaw, supra.*

Plaintiffs Gun Owners of America, Gun Owners Foundation, and five Plaintiffs represent a class of individuals who are being unfairly deprived of the benefit of the law, and request this Court issue an injunction requiring the PPD GPU to allow approved LTCF applicants who have waited the maximum of 45 days to pick-up their physical license without further delay.

## QUESTION PRESENTED

**Question # 1.** Whether this Court should issue a preliminary injunction compelling Commissioner Outlaw to timely issue LTCFs to the class of approved applicants within the explicit 45 day statutory deadline imposed by the legislature? *See* 18 Pa. C.S. § 6109 (g)

Answer: **YES.**

## STATEMENT OF FACTS

In Philadelphia, a person cannot carry a weapon openly- or conceal- without a valid LTCF. 18 Pa. C.S. § 6108. Residents of Philadelphia must apply with Commissioner Outlaw, as “Chief of Police” in Philadelphia. § 6108 (b). Commissioner Outlaw delegates these duties to the the PPD GPU. Pennsylvania law explicitly provides the PPD GPU “shall, within 45 days, issue or refuse to issue a license.” § 6109 (g). The PPD GPU refuses to comply with this mandate of Pennsylvania law.

Plaintiffs represent a class of persons who have “applied for a License to Carry Firearms in Philadelphia but have not yet received their license or a denial thereof.” *Cmplt.* at ¶ 27. This class includes hundreds of applicants who Defendants have completed their mandatory investigation and ‘approved’ the issuance of a LTCF. However, instead of promptly issuing



these licenses, applicants must schedule an online appointment to pick up their physical LTCF.<sup>2</sup> Appointments are not available within 45 days of application. *Id.* at *Ex. D* (reflecting that on May 29<sup>th</sup> 2021, the first available appointment was October 22<sup>nd</sup> 2021, or 146 days later).

Without preliminary injunction, Plaintiffs and class will forever and irreparably be deprived of the benefit of the 45 day issuance deadline imposed by the General Assembly. Further, Plaintiffs and the class will be deprived of their fundamental right to bear arms under the United States and Pennsylvania Constitutions for the length of the delay.

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<sup>2</sup> The Gun Permit Unit previously operated solely as a walk-in, first-come, first-served office for the majority of its existence. LTCF Appointments are a relatively new change to PPD GPU operations, having been instituted in response to COVID-19. The PPD GPU's first attempt at appointments required applicants to schedule the drop-off of their physical LTCF application, and were scheduling appointments more than a year into the future to apply. Defendants abandoned this clearly illegal 'appointment to apply' process in response to Plaintiff GOA's first Mandamus lawsuit on this issue. *Gun Owners of America, et al. v. Philadelphia & Outlaw*, Oct. '20 # 130 (Phila. Com. Pl. Ct. 2020). GOA discontinued that lawsuit when the PPD GPU began accepting applications via email on or about December 7<sup>th</sup> 2020 however specifically cautioned Defendants that their process must comply with the 45 day mandate of the law.

## LEGAL ARGUMENT

### 1. **PRELIMINARY INJUNCTION IS NECESSARY AND APPROPRIATE TO RESOLVE ONGOING IRREPARABLE HARM TO MEMBERS OF THE CLASS FOR THE DEFENDANTS REFUSAL TO TIMELY ISSUE LTCFS.**

A preliminary injunction may be entered by this Court to resolve immediate and irreparable harm that cannot be adequately compensated by damages. *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). Courts are to consider six factors in deciding to issue a preliminary injunction, each of which is an “essential prerequisite[]”:

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages.

Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings.

Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.

Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits.

Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity.

Sixth and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.

*Summit Towne*, 828 A.2d at 1011 (internal citations omitted)

1.1. **Defendants failure to timely issue LTCFs to Plaintiffs and the class is irreparable injury.** Denial of the class' statutory right to be timely issued their LTCF for any period of time constitutes irreparable harm. As a general matter, the harms suffered by plaintiff and the class are not the type of harm that could be compensated financially. Each day Defendants refuse to issue LTCFs as required is a deprivation of Plaintiffs' and class-members' rights, which cannot be remedied or compensated. Time is a precious currency that once spent, cannot be recovered.

Additionally, the right to bear arms is a fundamental right guaranteed by the United States- and Pennsylvania- Constitution. U.S. CONST. amend. II, PA. CONST. art. I, § 21; *See also Caba v. Weaknecht*, 64 A.3d 39, 52-53 (Pa. Cmmw. Ct. 2013). However, in Philadelphia, no person can carry a weapon either openly or concealed without a valid LTCF. 18 Pa. C.S. § 6108. Defendants' refusal to timely issue Plaintiffs and class-members their LTCF is therefore a deprivation of their Constitutional rights, which should be considered by this Court to be an irreparable harm.

Further, even if the damages suffered by Plaintiffs and the class could be compensated economically, Pennsylvania law forecloses that possibility. *See* Tort Claims Act, 42 Pa. C.S. § 8541 *et seq.* Defendants' refusal to comply with their statutory mandate does not fit within any of the exceptions to governmental immunity, so there can be no financial penalty or compensation. *Id.* at § 8542. The Commonwealth Court has explicitly held that irreparable harm arises when the government is immune from suit. *See Boykins v. City of Reading*, 562 A.2d 1027, 1028 (Pa. Cmmw. Ct. 1989) ("The inability to be adequately compensated by an award of damages constitutes irreparable harm.")

- 1.2. **The balance of harms weighs exclusively in Plaintiffs and the class' favor.** Absent an injunction, Plaintiffs and the class will not have the benefit of their LTCF during days they are entitled to it. Defendants are statutorily required to perform these duties within the prescribed period; they cannot suffer harm for being compelled to perform duties in accordance with the plain mandate of the law.
- 1.3. **Injunction shall restore the *status quo* to allow pick-ups without appointment.** This preliminary injunction would restore the *status quo* as it existed prior to the Defendants changes to the LTCF issuance process. Prior to COVID-19, the PPD GPU physically issued LTCFs to approved applicants on a walk-up basis without appointment. However, Defendants have since made changes to their process by requiring pick-up appointments; however these changes do not comply with 45 day mandate of the law. 18 Pa. C.S. § 6109 (g).

However, even if this Court should find that the current system of appointments are the *status quo*, the plaintiffs right to relief is clear. Defendants may not “arbitrarily extend the 45 day period prescribed in the statute to actually issue the license.” Order of Judge Roberts at \*1 n. 1, *Auerbach v. Outlaw*, *supra*. If the Defendants process is the current *status quo* it violative of the “procedures and language in 18 Pa. C.S. § 6109 [which] are clear and unambiguous[.]” *Id.* Modification of the *status quo* is proper with a “a very strong showing that the plaintiff has a ‘clear right’ to relief.” *Sovereign Bank v. Harper*, 674 A.2d 1085, 1092 (Pa. Super. Ct. 1996).

- 1.4. **Defendants have no meritorious defense and are subject to collateral estoppel on this very issue.** Plaintiffs are likely to prevail, as the Defendants are subject to issue preclusion having lost this exact case as an individual action. Order of Judge Roberts (Control No. 2104121600027) at \*1 n. 1, Order of Judge Roberts at \*1 n. 1, *Auerbach v. Outlaw, supra*.<sup>3</sup> Further, Defendants have no meritorious defense to this action: In the *Auerbach* matter, Defendants were reduced to arguing against the plain-meaning of the word ‘issue’.<sup>4</sup> *Id.* While the Defendants are not subject to collateral estoppel on the declaratory judgment action, that claim merely seeks different relief on identical issues, therefore it is likely that this Plaintiffs will similarly prevail.
- 1.5. **Any narrowing of the proposed injunction would exclude necessary relief for class-members.** Plaintiffs and class-members are all suffering irreparable harm for the Defendants refusal to perform their statutory duties under 18 Pa. C.S. § 6109. There are hundreds of class-members suffering the same irreparable harm, and any further narrowing of the proposed preliminary injunction would inequitably exclude individuals from relief. Further, the law was already carefully tailored by the Legislature, which statutorily requires exactly what this injunction seeks. § 6109 (g). Defendants have been provided explicit duties by the law, and must comply. No additional narrowing of this injunction is possible without improperly excluding individuals from receiving proper interim remedy.

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<sup>3</sup> Plaintiff notes that the *Auerbach* matter has not yet entered a final judgment, though it appears Judge Roberts’ May 12<sup>th</sup> 2021 granting preemptory judgment and subsequent May 19<sup>th</sup> 2021 orders dismissing preliminary objections and moot were intended to terminate the case with final judgment in favor of Plaintiff Auerbach. At the time of writing, there is a Motion for Final Judgment pending in that case.

<sup>4</sup> Defendants attempted to argue that they had fully complied with their statutory duty, claiming they were only required to “issue a decision approving or denying an application within 45 days” which they claim did not include the “action of placing the physical license in [the applicant’s] hands.” Brief of Defendant Outlaw in Opposition to Prelim. Inj. at 7 (Control No. 21042535), *Auerbach v. Outlaw, supra*. This nonsensical interpretation by Commissioner Outlaw was “specifically rejected” by this Court. Order of Judge Roberts at \*1 n. 1, *Auerbach v. Outlaw, supra*.

1.6. **Plaintiffs are acting in the public interest, while Defendants are scofflaws.** Specifically, Defendants actions are violative of the public interest: Defendants agree these individuals are entitled to be issued their LTCFs, as they have already been approved these applicants, and determined their possession of an LTCF will not endanger the public. There is no reason to deny or delay issuance of these LTCFs, but rather the delay is solely for the convenience of the Defendants.

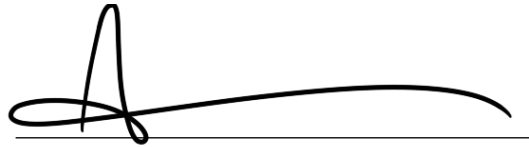
The General Assembly has specifically created and codified a schema for the concealed carry of firearms within the Commonwealth. 18 Pa. C.S. § 6109. In Philadelphia, the right to bear arms is limited further. § 6108. Individuals have a fundamental right to bear arms, which they are not permitted to do absent issuance of a LTCF. *Compare* U.S. CONST. amend. II, PA. CONST. art. I, § 21 *with* 18 Pa. C.S. § 6108. Defendants are refusing to issue LTCFs to the public in accordance with clear mandate of the law.

Compliance with the law is in the public interest. This is particularly true when it is the City refusing to follow the law, and their refusal to perform a statutory duty abridges and deprives hundreds of its residents from exercising a fundamental and statutorily guaranteed right. It is entirely in the public interest for Defendants to promptly and timely issue LTCFs to approved applicants.

## CONCLUSION

Plaintiffs respectfully request that this Court enter the proposed preliminary injunction on behalf of themselves, and all others similarly situated, requiring that Defendants issue approved applicants their physical LTCFs in the time specifically mandated by law.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Andrew B. Austin', written over a horizontal line.

**Andrew B. Austin, Esq.**

Pennsylvania Bar # 323768

*Attorney for Plaintiffs and Proposed Class*

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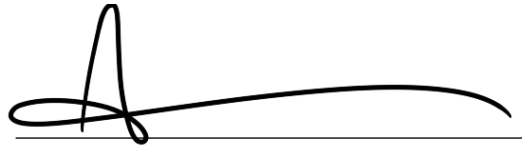
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## CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this **Petition for Preliminary Injunction** and any accompanying memorandum or other documents upon the Defendants or their Attorneys of Record via email at `lydia.furst@phila.gov` on **Monday, June 7<sup>th</sup> 2021**.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Andrew B. Austin', written over a horizontal line.

**Andrew B. Austin, Esq.**

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