

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION**

David D. BACH,

Plaintiff,

v.

Civil Action No. _____

George E. PATAKI, in his official
capacity as Governor of New York;
Eliot SPITZER, in his official capacity
as Attorney General of New York; James
W. MCMAHON, in his official capacity as
Superintendent, New York State Police;
J. Richard BOCKELMANN, in his official
capacity as Ulster County Sheriff;

Defendants.

Affidavit of David D. Bach

I, David D. Bach, being duly sworn, state and affirm as follows:

1. I am a citizen of the United States and the State of Virginia where I maintain my domicile. I possess a permit to carry a concealed handgun in accordance with Virginia law and own a 9mm pistol (model P-85, manufactured by Sturm, Ruger and Company of Southport, Connecticut) substantially similar to the type used by the United States Armed Forces, National Guard, and law enforcement.¹

¹ Attachment 1 (photocopy of Virginia concealed carry permit).

2. I am a Commissioned Officer in the United States Naval Reserve with approximately twenty-five years of service, including twelve years of active duty service. Due to my military service with the Navy's Underwater Demolition and SEAL Teams, I have extensive experience in handling and providing instruction in different types of small arms. I currently hold a Department of Defense Top Secret Security Clearance and have never been convicted of a felony, firearms related crime, or any other serious offense.

3. I am a graduate from an accredited law school and have been a licensed attorney in good standing from the Commonwealth of Pennsylvania since 1985. During the past seventeen years, I have been employed by the Office of the General Counsel, Department of the Navy as an attorney, except for a period of approximately four-and-a-half years when I returned to active duty as a Navy SEAL both during and after Operation DESERT STORM.

4. I have been married for seventeen years and have three young children. Although born in New Jersey, I grew up in the Town of Saugerties, County of Ulster, New York where my parents continue to reside.

5. My parents own a small farm and my family and I periodically visit them for several days at a time. During the ten-hour drive between Virginia and Upstate New York, my family and I travel on dimly lit rural roads, busy streets and highways some of which are in densely populated areas that have extremely high crime rates. Should our vehicle breakdown in one of these areas, or should we have an accident, we would be vulnerable to criminal attack because we are required to travel unarmed. In addition, because of my occupation within the Department of Defense and Naval Special Warfare, I believe my family and I are at greater risk of being targeted by those seek to carry out symbolic acts of terror. Therefore, I wish to possess and carry my personal firearm to protect my family and myself from acts of criminal

violence in accordance with New York State law during our journey and while temporarily visiting within the State's jurisdiction.

6. Law enforcement personnel are relatively few and far between and have neither a legal duty to respond to an emergency 911 call nor protect a citizen or family from a violent criminal acts. Despite the exceptional efforts of law enforcement, they cannot be everywhere at all times as evidenced by the tens of thousands of ordinary, law-abiding American citizens who have been, and continue to be brutally attacked, terrorized and murdered by sadistic criminals in New York State.

7. Following the attacks on the World Trade Center in New York, the Pentagon in Virginia, and a commercial airliner in Pennsylvania, the President and Attorney General of the United States, and Director of Homeland Security repeatedly warned American citizens of impending terrorist attacks, including the possible employment of weapons of mass destruction. Additionally, they have notified the public of the vital need for every citizen to be watchful and vigilant as the Nation remains on heightened alert indefinitely. Because the United States is in a state of war at home and abroad, and thousands of citizens have been slaughtered by foreign enemies in New York, Virginia and Pennsylvania, I continue to maintain a heightened concern for the safety and welfare of my family, particularly when traveling interstate through unfamiliar territory.

8. As a parent, I bear ultimate responsibility for the safety, welfare, protection and defense of my children. But because New York State law prohibits me from obtaining the required license to possess and carry an operable pistol or revolver, I am unable to effectively protect and defend my family from acts of criminal violence while temporarily visiting and traveling within the State. Because attempting to use a cumbersome long-gun as a personal defense weapon is an ineffective alternative to a handgun, particularly in an automobile, I am

deprived of the only rational and effective means I have to repel an attack from a violent criminal predator.

9. Due to my military training, I am aware that law enforcement routinely chooses handguns as its primary weapon of protection. When used properly, a handgun offers an extremely effective means of personal protection in close combat situations, such as stopping violent criminals.

10 Although the State of New York has deprived me of the rational and effective means to protect and defend my family, the State would be immune from liability should my family or I be harmed by criminals, even if the State were to be found grossly negligent.

11. Because of my concern for my family's protection and safety, I mailed written inquiries to Eliot Spitzer, New York State Attorney General; Sergeant James Sherman, New York State Police, Pistol Permit Bureau; and J. Richard Bockelmann, Ulster County Sheriff on November 14, 2001.² My purpose in contacting these government officials was to confirm my understanding of New York law whereby an ordinary nonresident from another State who does not meet one of the narrowly prescribed exemptions under NY Penal Law § 265.20, is ineligible to obtain a New York firearms license, and thus submission of a firearms license application and nonrefundable fee would be a futile act.

12. By letter of November 27, 2001, Peter A. Drago, Director of Public Information and Correspondence, State of New York, Office of the Attorney General referred me to the New York State Police in Albany as the "appropriate authority to contact with your request."³

² See Attachment 2 (letters from D. Bach to Elliot Spitzer, New York State Attorney General, Sergeant James Sherman, New York State Police, Pistol Permit Bureau, and J. Richard Bockelmann, Ulster County Sheriff of November 14, 2001).

³ See Attachment 3 (letter from Peter A. Drago, Director of Public Information and Correspondence, State of New York, Office of the Attorney General to D. Bach of November 27, 2001).

13. By letter of December 5, 2001, Sergeant James Sherman of the New York State Police, Pistol Bureau, confirmed that “no exemption exists which would enable you to possess a handgun in New York State.” Further, “[t]here are no provisions for the issuance of a carry permit, temporary or otherwise, to anyone not a *permanent* resident of New York State nor does New York State recognize pistol permits issued by other states.” Finally, he warned that anyone “found to be in possession of a pistol or revolver that is not registered on a New York State Pistol Permit, exempt personnel excluded, would be subject to automatic forfeiture of the firearm in question and criminal prosecution.”⁴

14. By letter of December 18, 2001, Ulster County Undersheriff, George A. Wood confirmed that “[t]here are two ways in New York State to lawfully possess a pistol/revolver. First is to be licensed, as outlined in §400.00, and the second is to meet one of the ‘exceptions’ outlined in §265.20 of the NYS Penal Law.” Further, he informed me that I clearly would not meet the exemption for military personnel under New York Penal Law § 265.20(1)(d) while temporarily visiting in the State despite my current military status as a Selected Naval Reservist.⁵

15. Based on the foregoing responses regarding the State’s application of New York law, I concluded that neither I nor other ordinary nonresidents, *i.e.*, those not meeting any exemption under NY Penal Law § 265.20, are eligible to obtain a valid New York State firearms license, and that submission of a firearms license application and nonrefundable fee would be a futile act since by law it could not be approved.

16. Because authorized officials of the State of New York had unequivocally informed me of my ineligibility to obtain the required license to possess and carry a personal firearm, I

⁴ See Attachment 4 (letter from Sergeant James Sherman, New York State Police, Pistol Bureau to D. Bach of December 5, 2001).

⁵ See Attachment 5 (letter from George A. Wood, Ulster County Undersheriff to D. Bach of December 18, 2001).

began investigating whether in applying New York law against me, these officials had violated any of my rights, or the rights of other nonresidents, under the Constitution and laws of the United States. After months of research, I prepared the required moving papers solely on my own to seek federal judicial relief before the United States District Court for the Northern District of New York.

I declare under penalty of perjury that the foregoing information is true and correct.

David D. Bach

City/County of _____
Commonwealth of Virginia

The foregoing instrument was subscribed and sworn before me this _____ day of
_____ 2002, by

Notary Public

My commission expires: _____