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**Admitted to practice in NY, N.D.N.Y., W.D.N.Y.,
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August 23, 2023

Beezly Kiernan, Esq.
NYS Office of the Attorney General
The Capitol
Albany, New York 12224-0341

via e-mail

Re: Nadine Gazzola, et al. v. Gov. Kathleen Hochul, et al.
2d Cir. Case No.: 22-3068
N.D.N.Y. Case No. 1:22-cv-1134 (BKS/DJS)

To Mr. Kiernan:

This letter covers multiple Hochul-Nigrelli and officer communications to and interactions with plaintiffs and other federally-licensed dealers in firearms, and requests your immediate response. Because defendant communication and actions are so all over the place, I will use examples to try to illustrate my points. This letter does to waive any other, further, or different argument, if defendants compel an emergency motion to the Second Circuit, which I cannot rule out.

First, we request the defendants retract the Hochul-Nigrelli letter (undated, enclosed) because it does not comply with state law. Second, we request the defendants restrain themselves from exceeding their state statutory authority, limited to becoming a partial POC state, serving as the intermediary for handgun background checks, only. Third, we request the NYSP not launch its ammunition background check system at all. Fourth, we request that your clients refrain from what appears to be their targeting, in particular, of one of the plaintiffs, for whatever theatrics and media play the defendants may have in mind over the dealer inspections, simply because this one of the plaintiffs has the misfortune of being in business in proximity to the state capitol.

1. Acting Superintendent Nigrelli has made no announcement, of which myself or anyone in the industry with whom I am communicating these past two weeks is aware, which satisfies his certification requirements under NY PEN §400.02(2) (see S.51001, §7, p. 11). Nigrelli is required to “certif[y] that the statewide license and record database established pursuant to this section and the statewide license and record database established for ammunition sales are

operational for purposes of this section.” The letter being sent to dealers does not contain any such certification, either.

Non-plaintiff dealers are contacting me and telling me that the NYSP is telling them in response to their telephone calls that the system is not ready and won't be operational on September 13, 2023. One officer even offered assurance to a female businesswoman who called by pejoratively cooing, “Don't worry. We all know it won't be working by then. Everything's going to be fine”

We request that the Hochul-Nigrelli letter transmitted to dealers on or about August 17, 2023 be announced to be retracted. The Acting Superintendent would have to follow the certification requirement set out at NY PEN §400.02(2). I enclose a copy of the Hochul-Nigrelli letter, received by a non-plaintiff dealer whose information I redacted. The letter doesn't have a completed date of transmission. The envelope postmark from USPS was August, 17, 2023.

Given that the NYSP still have not issued any “approved as to form” for dealers to start ammunition background check data collection under NY PEN §400.03(2) (see S.51001, §8, p. 12), moving to the next sequential step of an on-line background check would seem premature. It would also amount to a waiver of preliminary dealer data collection.

Also, the NYSP also has not issued an “form determined by the superintendent” for the electronic background check system under NY PEN §400.03(6) (see S.51001, §8, p. 12). Dealers are not in a position to “forward” the information to the NYSP.

Given how poorly this is rolling out and giving the telephone operators at NYSP the benefit of the doubt, isn't the best course of action for the defendants to retract the Hochul-Nigrelli letter to dealers and wait (at least) for the Second Circuit decision on the Preliminary Injunction?

2. The NYSP have no statutory authority to jump in as intermediaries between dealers and the federal FBI/ATF NICS system, as concerns rifles, shotguns, receivers, frames, or antique firearms, as these terms are defined at federal law. At best, the NYSP may be authorized to engage in what is known in the industry as a “partial POC,” meaning, only in relation to handguns.

There is a difference between the federal definition of “firearms” and the state definition of “firearms” – a distinction that I have highlighted in every one of my multiple court filings to all levels of federal court across the past year.

State law uses the word “firearm” for the new NY EXEC §228 repeatedly throughout. See, e.g., NY EXE §228 (1)(b), (2)(a), (2)(b), (2)(c). In New York, “firearm” means only what “handgun” means at federal law. It's never made sense to me, and seems to reflect quite badly on the defendants' willingness to learn or appreciate anything about the well-designed federal firearms compliance scheme of laws, regulations, guidance documents, and rulings. All the more reason to leave the FBI/ATF on lead.

The direction to dealers under the new state NY PEN §400.06(1) is simple: “Any *dealer in firearms* that sells, delivers or otherwise transfers any *firearm* shall contact the division of state police to conduct a national instant criminal background check pursuant to section two hundred twenty-eight of the executive law.” (See, S.51001, §20, p. 18; emphasis added.) Again: “firearm” by state definition for the license and for the object. The authority is limited to handgun transactions requiring a background check.

The same bill, S.51001, contains modifications to the state definitions of “rifle” and “shotgun.” NY PEN §265.00(11) and (12) (see S.51001, §24, pp. 20-21). Those terms are distinct from the state use of the word “firearm.” This evidences the intent of the drafters.

The Hochul-Nigrelli dealer letter exaggerates NYSP authority into what is known in the industry as a “single POC” for all firearms background checks. The Hochul-Nigrelli letter claims it will apply to “firearm, rifle, shotgun, and ammunition.” This is a significant over-reach. This is not what state law says. State law says “firearm” and “firearm” in NY means handgun. The NYSP, at best, has only “partial POC” authority.

The NYSP, basis the Hochul-Nigrelli dealer letter, evidence an intention to cause all federally-licensed dealers in firearms to be disconnect from the federal NICS system as of September 13, 2023.

As you know, we oppose the defendants taking over any aspect of the background check system, and the same is pending in our case. The idea that the defendants are planning to grossly exceed the objected-to state authority would result in a need to notify the Second Circuit, immediately. Given how poorly written the communications are being sent to dealers, isn’t the best course of action for the defendants to retract the Hochul-Nigrelli letter and any associated e-mails and await (at the least) the impending Second Circuit ruling on the Preliminary Injunction?

3. We request the NYSP not launch any ammunition background check system. It is unconstitutional under *NYSRPA v. Bruen*, without question. Your office produced not even an argument of an historical antecedent. Judges around the country, including most recently in Massachusetts, are correctly applying *NYSRPA v. Bruen* to rebalance such unconstitutional laws back into the favor of citizens. Whether through preliminary injunction or a merits decision, any ammunition background check system is destined to fail as a matter of law.

If SCOTUS, through its dissent commentary on the *Antonyuk II* denial of cert can “respect the process” of the Second Circuit, we ask that your clients do so, also.

4. I ask that you pull back your clients from targeting dealers, including any of the plaintiffs who are situate in the Albany media coverage zone. To my best information, the word came screaming down from Hochul through Rosado to Nigrelli, which then resulted in the NYSP “Joint Terrorism Task Force” being shoved out the door, courtesy of a single e-mail, to hit dealers for compliance inspections through Troops C and G, beginning July 25, 2023.

I have spoken with several dealers visited by NYSP-JTTF officers – dealers, who, as it turns out, are all located within the N.D.N.Y. jurisdiction. Each dealer had an identical story. The officer came through the door in uniform with the attached 4-page, 31-question “checklist” in their hands, asking for “help.” The woe-is-me tale spun by the officers is that they have “no training” and “no one” to help them “understand” what they are being directed to do. They “don’t want to be doing this,” so they “made a Word doc” of their own to “help them get organized.” They bait dealers by saying things like “that’s very helpful” and “I’ll take that back and put it on our White Board” and “I had the same question.” In response to every single dealer question, however, each officer said “I don’t know.”

There is no state statutory authority associated with the dealer compliance inspections for these or any other NYSP officer to ask questions of a dealer, while they are in the store.

Your officers want to claim that they “don’t know what’s going on?” My dealers have, since November 1998, worked day-in and day-out as partners with the FBI and the ATF to stop unlawful sales of firearms. They have worked for more than those twenty-five years with federal agents to achieve best practices. And, several of my clients are more than fifty years in the industry. Dealers know what’s going on as a matter of federal law, but it is not their responsibility to either assist officers or incriminate themselves. Dealers have rights, even in an officer interview situation, and those rights include the right to remain silent.

Let’s not dance around this. The goal of the NYSP officers walking into dealers’ shops is to gain information in order to arrest dealers and charge them with class E felonies, to revoke their NY-dealer license, and to strip them of all individual Second Amendment rights. Your clients abruptly, and without notice, blew up the détente in place since our case began on November 1, 2022.

And what is this attached e-mail ruse from “Angie” – assuming she is even a person and not some AI construct, given the lack of last name, rank, or contact information within the NYSP. Why is “Angie” asking dealers to “not share” anything they see before the official launch? This isn’t the Patriot Act. Dealers in firearms are not terrorists, nor suspected terrorists. And, any communication, written or otherwise by the NYSP, does not amount to a federal security letter. Police officers should not be asking dealers or pawnbrokers in firearms to keep secrets with the NYSP.

I have advised my clients that under no circumstance are they to speak with even one more NYSP officer who shows up, unannounced and unscheduled to do anything even resembling an inspection, unless I am physically present on site with them during such a police interview. They are to call me, immediately, and put me on the phone with the officer. I will be asking the officer to wait on hold while I call you. You may not use an officer as a substitute for litigation discovery or to intimidate any party or witness. You have already each plaintiff’s declaration and my legal arguments concerning the industry. The brutal reality for any plaintiff engaged in any of the pending lawsuits is that we were honest in the name of standing. You need not show up at our doors.

In addition, these officer interviews are disrupting witnesses for the plaintiffs. Several additional dealers who may serve as witnesses for the plaintiffs are now asking me, “Can I get in trouble for showing this to you?” What the defendants are doing is wrong on so many levels.

I do not care what political pressures the Democratic Party may be publicly-airing against Hochul that is causing her to pursue these top-down demands to officers. My prior letter to you was precisely on point, and Hochul has now played this game forward one hand. I do not want to see my Albany-area client in handcuffs on the 6 o’clock news. I do not want to see a line-up of *any* dealers splayed across the media, concurrently, to make headlines like “Hochul Goes After Gun Dealers.” These are defendant bully tactics, plain and simple. While this may be consistent with Albany politics, my clients and all dealers and pawnbrokers in firearms across this state are first and foremost federally licensed to engage in the lawful stream of commerce under the Second Amendment to the U.S. Constitution.

Because the content of this letter involves third parties, and comes amidst a botched rush by your clients to jockey ahead of the anticipated Second Circuit ruling on the pending request for Preliminary Injunction, I am treating this as an open letter.

The courtesy of your response by Friday afternoon would be appreciated.

Respectfully submitted,
Paloma A. Capanna
Paloma A. Capanna

[REDACTED]
[REDACTED]
[REDACTED]

August __, 2023

To: New York State Firearm Dealers and Ammunition Sellers

Pursuant to Executive Law § 228, New York has been designated a Point of Contact state for the purpose of processing National Instant Background Check ("NICS") transactions. This means that starting on September 13, 2023, background check requests for firearm, rifle, shotgun, and ammunition purchases will be submitted to the New York State Police, and dealers will no longer submit requests directly to FBI NICS.

As a dealer, you and your staff will be required to register on the NYSNICS.ny.gov web application in advance of New York becoming a Point of Contact State. Instructions on the registration process will be posted on the www.NYSNICS.ny.gov site.

Effective September 13, 2023, prior to transferring a firearm, rifle, shotgun, or ammunition to a purchaser, you must go to www.NYSNICS.ny.gov to complete the background check process.

An Interactive Voice Response (IVR) telephone solution will be implemented as well so you may call in a background check request to 1-877-NYS-NICS should the online system be unavailable. To use this functionality, you must have already set up your business's online profile and have a saved payment method on file in the NYSNICS application which you can register and login to at www.NYSNICS.ny.gov.

Please visit www.NYSNICS.ny.gov for more details about Point of Contact.

New York State Police
NYS NICS Unit
1-877-NYS-NICS
NYSNICS@troopers.ny.gov

NY Dealer Certification / Compliance Checklist

Business Name/FFL Number

Address

--	--

Date Inspected

Inspected By

--	--

1) Has the dealer implemented a security plan? (GBL 875-b{1})	Yes	No	
2) Are all firearms, rifles and shotguns secured, other than during business hours, in a locked fireproof safe or vault on the dealer's business premises or in a secured and locked area on the dealer's business premises?	Yes	No	
3) Is ammunition stored separately from firearms, rifles and shotguns and out of reach of customers?	Yes	No	
4) Is the dealer's business premises secured by a security alarm system that is installed and maintained by a properly licensed security alarm operator?	Yes	No	
5) Is the security alarm system capable of being monitored by a central station?	Yes	No	
6) Does the security system provide complete protection and monitoring for all accessible openings into areas containing firearms, rifles, shotguns, and/or ammunition, including doorways and windows?	Yes	No	
7) Does the security system provide partial motion and sound detection at certain other areas of the premises containing firearms, rifles, shotguns, and/or ammunition, as deemed appropriate by the licensed installer?	Yes	No	
8) Is the dealer equipped with a video recording device at each point of sale and each entrance and exit to the premises, which shall be recorded from both the indoor and outdoor vantage point?	Yes	No	

NY Dealer Certification / Compliance Checklist

9) Does the dealer maintain recordings for a minimum of two years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
10) Does the dealer exclude all persons under 18 years old from areas where firearms, rifles, shotguns, or ammunition are stocked or sold, unless such person is accompanied by a parent or guardian?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
11) Does the dealer sell or otherwise dispose of firearms, rifles, and shotguns only at the location listed on the dealer's federal firearms license or at gun shows?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
12) Does the dealer provide training to all new employees within 30 days of employment?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
13) Have all existing employees completed the training published by the New York State Police before March 3, 2023?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
14) Are records documenting the successful completion of the required employee training maintained for at least five years following the completion of such training by each employee?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
15) Do all employees complete the required training annually?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
16) Are dealer employees or agents under the age of 21 participating in the sale or disposition of firearms, rifles, or shotguns?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
17) Have all employees or agents received training before they participate in the sale or disposition of firearms, rifles, or shotguns?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
18) Does the dealer maintain a record book or electronic-based record of purchase, sale inventory, and other records at the dealer's place of business?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

NY Dealer Certification / Compliance Checklist

	Yes	No
19) Does the dealer submit a copy of records to the State Police every April and October?	<input type="checkbox"/>	<input type="checkbox"/>
20) Do the records include the make, model, caliber or gauge, manufacturers, name, and serial number of all firearms, rifles, and shotguns that are acquired or disposed of not later than one business day after their acquisition or disposition ?	<input type="checkbox"/>	<input type="checkbox"/>
21) Are monthly backups of paper records maintained in a secure container designed to prevent loss by fire, theft, or flood?	<input type="checkbox"/>	<input type="checkbox"/>
22) If the dealer chooses to maintain an electronic-based record system, are those records backed up on an external server or over the internet at the close of business each day?	<input type="checkbox"/>	<input type="checkbox"/>
23) Does the dealer record the date, name, age, occupation, and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the caliber, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm?	<input type="checkbox"/>	<input type="checkbox"/>
24) Are all firearms, rifles and shotguns accounted for through an inventory check prepared once each month and maintained in a secure location?	<input type="checkbox"/>	<input type="checkbox"/>
25) Is sold firearm, rifle, and shotgun disposition information, including serial numbers, dates of sale, and identity of purchasers, maintained and available at any time to government law enforcement agencies and to the manufacturer of the weapon or its designee?	<input type="checkbox"/>	<input type="checkbox"/>
26) Are the records documenting the acquisition, disposition, tracing, and other transactions involving firearms, rifles and shotguns maintained for at least twenty years following each transaction?	<input type="checkbox"/>	<input type="checkbox"/>

NY Dealer Certification / Compliance Checklist

	Yes	No
27) Does the dealer maintain records of criminal firearm, rifle and shotgun traces initiated by the ATF?	<input type="checkbox"/>	<input type="checkbox"/>
28) Are ATF Form 4473 transaction records retained on the dealer's business premises in a secure container designed to prevent loss by fire, theft, or flood?	<input type="checkbox"/>	<input type="checkbox"/>
29) Does the dealer implement and maintain sufficient internal procedures to ensure compliance with Article 39-BB of the General Business Law?	<input type="checkbox"/>	<input type="checkbox"/>
30) Does the dealer annually certify to the New York State Police, by January 31 of each year, that the dealer has complied with all of the requirements of Article 39-BB of the General Business Law?	<input type="checkbox"/>	<input type="checkbox"/>
31) Does the dealer provide the Division of State Police full access to the dealer's premises for periodic inspections?	<input type="checkbox"/>	<input type="checkbox"/>

Additional Comments

Signature

> ----- Original Message -----

> From: "troopers.sm.nysnics" <NYSNICS@troopers.ny.gov>

> To:

> Date: 08/10/2023 12:46 PM EDT

> Subject: NYS Point of Contact Registration Pilot

>

>

> Hello,

>

> I am reaching out to you today to ask for your assistance with the rollout of the new registration process for dealers as NY becomes a Point of Contact State in the upcoming weeks.

>

> We ask that you do not pass on any of the information shared with you during this process as it is a test! We are starting with a select few stores to ensure that the process put in place is working properly and the directions are correct and understandable.

>

> We would ask that the administrators set up the accounts initially, we will have staff that will verify all information for accuracy and then approve the dealer's registration. Upon receiving your registration approval email, you can set up your saved payment method and, invite some or all of your employees to register as well.

>

> The test will take place on Friday August 18th around 10:00am, I will send you out the notification that will eventually be sent out to all dealers letting you know that registration has opened. At that point we would like the administrators to go online, we will provide the link, to begin the registration.

>

> Please let me know if you have any questions and are willing to be part of our pilot groups.

>

> Thank you for your time and assistance!

> Angie

>

>

> -----

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