

(Sample Brief Petitioner)

IN THE  
COURT OF APPEALS

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In the Matter of Michael Roma, Petitioner

v.

Iverka Valerio as Albany Court Judge et al. Respondents

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On Appeal from the Third Department

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BRIEF FOR THE PETITIONER (TEAM 1)  
*(This number will be assigned with the case)*

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Joe Student	District 13
Jessica Student	District 13

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## QUESTIONS PRESENTED

1. Was the Judge's decision to revoke the Petitioner's permit to carry a pistol arbitrary and capricious when the Petitioner only sought to diffuse a dangerous situation in the airport and did not show poor judgment?
2. Whether the Judge was incorrect in not granting the Petitioner's request for additional time to file affidavits and would have affected the Judge's ultimate decision to revoke the permit?

(The Questions presented should be phrased in your client's favor, compare these questions with the sample brief for the other side. Additionally the questions should be short and go directly to the issues you want decided in your favor)

## STATEMENT OF FACTS

On November 11<sup>th</sup>, 2001, Michael Roma (hereinafter "petitioner") was issued a restricted license to carry a pistol for hunting and target practice. In compliance with that license the petitioner was practicing target shooting on July 3, 2003, prior to traveling to the Albany Airport. The Petitioner accidentally placed the pistol in his carry on baggage rather than his checked baggage. Through no fault of his own, the petitioner traveled through security without being detected because of a failure in security.

The petitioner stopped to have lunch a Connie Angles Diner which was located in the terminal. Upon entering the diner the petitioner realized he had walked into an armed robbery. Security had failed on at least two prior occasions because both robbers were armed and threatening the owner of the diner. Jay Polston, one of the robbers, became enraged and pointed his pistol at Ms. Angeles. The petitioner, who had no other choice, removed his weapon and calmly told the two men to drop their guns. When they refused, the petitioner calmly fired a single shot into the ceiling above the men which caused them to drop their weapons.

Rather being initially treated as a hero, the petitioner was arrested for illegal possession of a weapon. These charges were never pursued. Sometime later Judge Iverka Valerio (hereinafter

“Respondent”) made the decision to revoke petitioner’s permit based on a finding that he showed poor judgment in breaking up the armed robbery at the airport. The respondent based this decision on statements of the two armed robbers. Both of the armed robbers gave conflicting statements about what the petitioner said before calmly shooting the warning shot. Both of the armed robbers were also convicted perjurers and had extensive criminal records. Finally, the petitioner was not granted a hearing or sufficient time to secure affidavits for other witnesses that would have influenced the judges decision.

(The statement of facts should not be a simple copy of the facts given to you for the problem. Highlight the good facts for your client. But also do not ignore the bad facts. Try to show how the bad facts are not as important or can be explained with the good facts. Compare this statement of facts with the other brief as well)

### SUMMARY OF ARGUMENT

The respondent’s decision to revoke the petitioner’s license to carry a pistol was both arbitrary and capricious. The respondent based her decision on the testimony of two know perjurers who had a bias to lie in their affidavits. Furthermore the respondent should have granted the petitioner a full hearing or in the alternative allowed the petitioner a reasonable amount of additional time to obtain affidavits from other witnesses to the event. The respondent’s decision should be overturned and the petitioner’s license should be restored.

(Each major argument should be summarized in this paragraph. The first issue for the petitioner (Roma) is to try and have the lower decision overturned and the license restored. The second issue is to attempt to gain a hearing or be allowed to submit additional evidence through affidavits)

### ARGUMENT

1. THE RESPONDENT’S DECISION TO REVOKE THE PISTOL PERMIT WAS BOTH ARBITRARY AND CAPRICIOUS AND SHOULD BE OVERTURNED.

A validly issued pistol license is an entitlement which should be protected from arbitrary and unreasonable government action adversely affecting its continued enjoyment. Pelose v. County Court of Westchester, 384 N.Y.S.2d 499, 500 (2<sup>nd</sup> Dept. 1976). The petitioner in the instant case was validly issued a pistol permit. He took the time and attention to practice with that weapon which increased his ability to safely use the pistol. He had the license for nearly two years prior to the instant incident and never showed poor judgment. This case is unlike both Gerard v. Czaka, 762 N.Y.S.2d 533 (3<sup>rd</sup> Dept. 2003) where the petitioner angrily threatened classmates by stating it was almost Smith and Wesson time and Brookman v. William Dahaher, 650 N.Y.S. 2d 879 (3<sup>rd</sup> Dept. 1996) where the petitioner exhibited paranoid behavior by wearing the pistol on his belt while mowing the grass. In this case the petitioner only displayed the weapon in an attempt to protect other passengers and the airport staff during a serious robbery. The petitioner showed poise and good judgment by firing a warning shot rather than shooting the perpetrators. Additionally the petitioner did not show poor judgment by bringing the weapon to the airport because he forgot to place the weapon in his checked baggage. It was the airport security's failure to detect the weapon which showed poor judgment on behalf of the airport not the petitioner.

Furthermore, the respondent based her decision on the affidavits of the two armed robbers. Jay Polston was a three time convicted felon for armed robbery and perjury. Marc Wilson was a two time felon who also had a perjury conviction. The only non-biased witness was Connie Angeles who indicated the petitioner never did anything wrong in saving her life. Under those statements the respondent's conclusion that somehow the petitioner showed poor judgment had to have been arbitrary and capricious. There is no evidence in the record of Michael Roma showing poor judgment. Respectfully the respondent's decision should be overturned.

2. THE RESPONDENT FAILED TO GIVE THE PETITIONER ADEQUATE TIME TO SUBMIT ADDITIONAL AFFIDAVITS WHICH ALSO SHOWS HER DECISION WAS ARBITRARY AND CAPRICIOUS BECAUSE SHE DID NOT HAVE ALL OF THE EVIDENCE.

It is well settled that a formal hearing is not required prior to the revocation of a pistol permit as long as the licensee is given notice of the charges and has an adequate opportunity to submit proof in response. Dlugosz v. Scarano, 681 N.Y.S.2d 120, 121 (3<sup>rd</sup> Dept. 1998). In Dlugosz the petitioner was afforded several opportunities to submit evidence which the court considered adequate. In our case, the petitioner was only granted a two week period to attempt to gain affidavits from other witnesses of the incident. The unreasonable two week deadline prevented the petitioner from offering all of the relevant evidence. The respondent's final decision was not based on credible evidence and should be considered arbitrary and capricious.



## CONCLUSION

The respondent's decision to revoke petitioner's license to carry a pistol was arbitrary and capricious for two reasons. First, because the decision was based on evidence provided by two convicted perjurers. The petitioner never showed poor judgment with his firearm during the events at the diner. Second, because the petitioner was not granted a sufficient amount of time to submit evidence prior to the respondents final determination. Petitioner respectfully moves this court to overturn the respondent's decision to revoke the permit. In the alternative petitioner respectfully moves this court to suspend the respondent's decision and grant additional time for the petitioner to submit witness affidavits. *(Make sure you ask for the proper relief in the conclusion so the judges know what you want to happen, also state in short form the reasons why they should rule in your favor)*

Respectfully Submitted,

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