

Supreme Court strikes down NY gun law, protects police from lawsuits

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In a pair of reactionary decisions issued Thursday, the 6-3 right-wing majority on the US Supreme Court struck down a New York state law restricting the issuance of permits to carry a concealed weapon and severely restricted the ability of defendants whose Miranda rights were violated to sue the police for damages.

In the much more publicized case, *New York State Rifle & Pistol Association Inc. v. Bruen*, the high court ruled that New York state's century-old system of requiring applicants to demonstrate "proper cause" for why they needed to carry a concealed weapon was too restrictive of the supposed constitutional right to "keep and bear arms."

With *Bruen*, the Second Amendment right has been expanded into a right to "bear" arms virtually anywhere. The opinion, authored by Justice Clarence Thomas, allows that there may be certain "sensitive places" where firearms can be excluded, such as schools and churches, but it provides no delineation of where the line should be drawn, except that a blanket restriction such as New York's is unconstitutional.

Thomas suggested that restrictions similar to New York's in California, New Jersey, Massachusetts, Maryland, Hawaii and the District of Columbia were presumptively unconstitutional as well. "The Second and 14th Amendments protect an individual's right to carry a handgun for self-defense outside the home," he wrote.

Extraordinarily, Thomas began his opinion with a positive reference to *Dred Scott v. Sanford*, the infamous 1857 case that decided that free blacks were not citizens of the United States. Thomas cited then-Supreme Court Justice Roger Taney as a precedent for the assertion that the Constitution guaranteed the right to anyone to "keep and carry arms wherever they went."

A concurring opinion by Chief Justice John Roberts and Justice Brett Kavanaugh, the supposed "moderates" in the right-wing bloc, indicated that they would uphold the right of states to require licensing, background checks,

fingerprinting, safety training, and other measures that limit gun ownership.

The majority opinion set a vague and self-contradictory standard for lower courts to judge restrictions on gun rights: "The government must demonstrate that the regulation is consistent with this nation's historical tradition of firearm regulation."

There is no such national tradition. On the contrary, different states have regulated firearms in different ways. New York's law was itself a longstanding tradition, adopted in the early 1900s. Moreover, the weapons lightly regulated in the 19th century have no equivalent in the 21st. Today's mass shooters do not use muskets, but semi-automatic weapons with more firepower than an entire unit of militiamen from the Revolutionary War.

The court decision is a political boost to ultra-right groups that have long used the Second Amendment as a screen for their activities. Here the role of Clarence Thomas is of some significance. His wife Virginia played a major role in Trump's campaign to overturn the 2020 elections and remain in office. She served as a contact point and advocate for the claims that state legislators could replace Biden electors chosen in the popular vote with Trump electors selected by them.

Justice Thomas was the lone member of the Supreme Court to vote in support of a Trump lawsuit seeking to withhold his email messages on January 6, 2021 from the House committee investigating the attack on the Capitol.

In the *Bruen* ruling, Thomas gives the green light to fascist groups that will seek to enforce their will next time with firearms, not sticks and bear spray.

In the second major ruling, largely ignored by the media, the same 6-3 right-wing majority protected police from being sued by their victims when they engage in gross violations of the Bill of Rights. The case from Los Angeles, *Vega vs. Tekoh*, involved an immigrant working as a nurses' aide in a hospital, who was accused by a

stroke patient of having touched her inappropriately.

A sheriff's deputy, Carlos Vega, arrived to investigate, and he took the hospital worker, Terence Tekoh, into a windowless room in the hospital, where he interrogated him for an hour, refusing to let him leave or call an attorney and threatening Tekoh and his family with deportation, until Tekoh finally signed a piece of paper confessing to the assault.

When the case went to trial, the "confession" was introduced as evidence. Tekoh's attorney replied with a battery of hospital workers, who described the circumstances of their co-worker's interrogation, demonstrating that Vega had been lying. The jury acquitted Tekoh, and he then filed suit against Vega for violating his constitutional rights. He lost the case at the district court but won at the appeals court level. The Supreme Court decided to take up the case and ruled in favor of the cop.

Perhaps the most significant feature of the case is that the Biden administration chose to intervene on the side of the sheriff's deputy, arguing that since the jury had acquitted Tekoh, he had no grounds for complaint. Solicitor General Elizabeth Prelogar submitted an *amicus* (friend of the court) brief supporting Vega, not Tekoh.

The legal issue was whether *Miranda* is a rule implementing a constitutional right, the Fifth Amendment right not to incriminate oneself, or whether it is merely a procedural rule for the police. In a significant ruling, *Dickerson v. United States* in 2000, Chief Justice William Rehnquist wrote that *Miranda* was a constitutional rule that applied to the states and could not be overturned by a state law. Rehnquist was an arch-reactionary, but he seems positively benign compared to the fascistic ideologues who populate the court today.

Justice Samuel Alito Jr., writing the majority opinion, said that "a violation of *Miranda* does not necessarily constitute a violation of the Constitution, and therefore such a violation does not constitute 'the deprivation of [a] right... secured by the Constitution' that would authorize a civil rights suit against a police officer."

In a dissent joined by the other two moderate liberals, Sonia Sotomayor and Stephen Breyer, Justice Elena Kagan wrote that the decision "prevents individuals from obtaining any redress when police violate their rights under *Miranda*."

John Burton, the civil rights lawyer who represented Tekoh in the trial court and the court of appeals and was co-counsel at the Supreme Court, told the WSWS:

"Terence Tekoh did not do anything. He was shut in a tiny room by Deputy Carlos Vega and interrogated for an hour, while the deputy threatened to have his entire family deported back to Cameroon, where the English-speaking, Anglophone minority faces persecution. Vega had his hand on his gun while he made these threats. Terence thought the only way to end the interrogation was to sign a phony letter of apology. And then Vega lied to prosecutors and testified falsely about how he obtained the confession, in order to insure it would be introduced at the trial. The jurors saw through the fraud and found Terence innocent. They told him to sue Vega."

Burton, who is a frequent contributor on legal issues to the WSWS, explained the legal and constitutional issues raised in the case: "The *Miranda* decision clearly stated that the Fifth Amendment requires suspects to be warned about self-incrimination at the outset of police custodial interrogations. And the Supreme Court's decision in *Dickerson* established that *Miranda* establishes a constitutional right, the violation of which, we argued, can result in a suit for damages under the federal Civil Rights Act.

"We were concerned that the right-wing justices would use this case to overturn *Dickerson* or even *Miranda*, as they are moving to overturn *Roe v. Wade*. They chose not to do so at this time, but they carved out an exception to the federal Civil Rights Act, supported by no law at all, that the *Miranda* warning is a mere procedural rule whose violation does not make the deputy liable to be sued.

"The ruling demonstrates the fraud of the claim that the court majority pursues a consistent legal posture of originalism and textualism, conforming to the supposed original intent of those who wrote the Constitution, and the actual text of the law. Instead, the right-wing justices start from their preferred outcome, then rummage through their legal toolbox to find the arguments necessary to support their pre-ordained conclusions."



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