UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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JAMES M. MALONEY,

Plaintiff,

-against-

MEMORANDUM & ORDER
03-CV-786 (PKC)(AYS)

MADELINE SINGAS, in her official capacity as Acting District Attorney of Nassau County,

Defendant.
----------x
PAMELA K. CHEN, United States District Judge:

On July 23, 2017, the Court issued an order stating, *inter alia*, that "in keeping with the Second Circuit's reading of [*District of Columbia v. Heller*, 554 U.S. 570 (2008)] a presumption in favor of Second Amendment protection applies, and the government, *i.e.*, Nassau County, has the burden of producing evidence that nunchakus are not 'in common use' *or* not 'typically possessed by law-abiding citizens for lawful purposes.'" (Dkt. 188, at 4 (quoting *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo ("NYSRPA")*, 804 F.3d 242, 257 n.73 (2d Cir. 2015) (emphasis added).)[1] The Court now *sua sponte* amends its prior order to make clear that Defendant Nassau County's burden is not an either-or test, but rather, Defendant *must* prove, at a minimum, that nunchakus are "not typically possessed by law-abiding citizens for lawful purposes", and not simply that they are not in common use. Indeed, whether nunchakus are in common use is ultimately irrelevant.

[1] *See also Kolbe v. Hogan*, 849 F.3d 114, 131 n.9 (4th Cir.), *cert. denied*, 138 S. Ct. 469 (2017) ("Although the *Heller* Court invoked Blackstone for the proposition that 'dangerous and unusual' weapons have historically been prohibited, Blackstone referred to the crime of carrying 'dangerous *or* unusual weapons.'") (emphasis in original).

In its prior order, the Court focused on *NYSRPA*'s statement that the burden of proof regarding the constitutionality of the nunchakus ban was on Defendant and not Plaintiff. (Dkt. 188.) However, after delving into all of the available Second Amendment jurisprudence case law, much of which is outside of this Circuit and much of which is opaque and contradictory, the Court believes that many courts, including the Second Circuit in *NYSRPA*, have ultimately concluded that the issue of "common use" is irrelevant to the Court's analysis as to whether a weapon is outside of the Second Amendment's protection, and that the only relevant inquiry is whether the weapon at issue is typically possessed for a lawful purpose.

The overwhelming majority of courts that have addressed Second Amendment challenges have found that the weapon's "typical possession" for an unlawful purpose, in itself, is sufficient to deny Second Amendment protection. *See, e.g.*, *Kolbe*, 849 F.3d at 131 (noting that even if the majority accepted the dissent's argument that assault weapons are popular, the Court can still "stop those weapons from being used again and again to perpetrate mass slaughters"); *Friedman v. City of Highland Park, Illinois*, 784 F.3d 406, 408-09 (7th Cir. 2015) (noting that "during Prohibition the Thompson submachine gun (the 'Tommy gun') was all too common in Chicago, but that popularity didn't give it a constitutional immunity from the federal prohibition enacted in 1934"); *United States v. Hatfield*, 376 F. App'x 706, 707 (9th Cir. 2010) (holding that "modern sawed-off shotguns are not typically possessed for lawful purposes" and, therefore, are not entitled to Second Amendment protection); *United States v. Marzzarella*, 614 F.3d 85, 95 (3d Cir. 2010) ("It is arguably possible to extend the exception for dangerous and unusual weapons to cover unmarked firearms. . . . Because a firearm with a serial number is equally effective as a firearm without one, there would appear to be no compelling reason why a law-abiding citizen would prefer an unmarked firearm. These weapons would then have value primarily for persons seeking to use

them for illicit purposes."); *United States v. Tagg*, 572 F.3d 1320, 1326 & n.5 (11th Cir. 2009) ("[W]e conclude that the pipe bombs at issue were not protected by the Second Amendment. Unlike the handguns in *Heller*, pipe bombs are not typically possessed by law-abiding citizens for lawful purposes.") (collecting cases); *Worman v. Healey*, 293 F. Supp. 3d 251, 265-66 (D. Mass. 2018) (holding that "AR-15-type rifles . . . fall outside the scope of the Second Amendment" even though they are "an extraordinarily popular firearm" because "[t]he features of a military style rifle are designed and intended to be particularly suitable for combat rather than sporting applications") (citation and internal quotation marks omitted); *United States v. Barbeau*, No. 15-CR-391 (RAJ), 2016 WL 1046093, at *3 (W.D. Wash. Mar. 16, 2016) ("[R]estrictions on short-barreled weapons are permissible, particularly given that Congress specifically found that short-barreled rifles are primarily weapons of war and have no appropriate sporting use or use for personal protection.") (citation and internal quotation marks omitted).

This conclusion is supported by *NYSRPA*, in which the Second Circuit found that the assault weapons and large-capacity magazines at issue were "in common use", but stated that it "*must* next determine whether assault weapons and large-capacity magazines are 'typically possessed by law-abiding citizens for lawful purposes.'" 804 F.3d at 255-56 (emphasis added). This reasoning makes clear that a weapon being "in common use" is not enough to deny Second Amendment protection; otherwise, the *NYSRPA* court could have concluded after its "common use" analysis that the weapons at issue were protected by the Second Amendment. This reasoning also implies, by contrast, that a weapon's "typical possession" for an unlawful purpose, standing alone, *can* be enough to undermine Second Amendment protection.[2] Moreover, such reasoning is

[2] In his concurrence in *Caetano v. Massachusetts*, Justice Alito stated that the test for whether a weapon falls within the scope of the Second Amendment is "a conjunctive test: A weapon may not be banned unless it is both dangerous *and* unusual." 136 S. Ct. 1027, 1031 (2016)

consistent with the Second Amendment's emphasis on, and "the historical understanding" that, "the right to keep and bear arms . . . is for *lawful purposes*." *United States v. Greeno*, 679 F.3d 510, 520 (6th Cir. 2012) (emphasis in original).[3]

In addition, the Court has not identified a single case in which a court has found that a bearable arm is outside of the scope of the Second Amendment simply because it is not in "common use". *See, e.g.*, *Friedman*, 784 F.3d at 409 ("[R]elying on how common a weapon is at the time of litigation would be circular to boot. [For example,] [m]achine guns aren't commonly owned for lawful purposes today because they are illegal. . . . Yet it would be absurd to say that the reason why a particular weapon can be banned is that there is a statute banning it, so that it isn't commonly owned. A law's existence can't be the source of its own constitutional validity.");

(Alito, J., concurring) (emphasis in original). In *NYSRPA*, however, which preceded *Caetano*, the Second Circuit only considered the conjunctive test of whether the weapons were "dangerous and unusual" in the context of its "typical possession" analysis. 804 F.3d at 256 (finding that the Court "must also consider more broadly whether the weapon is 'dangerous and unusual' in the hands of law-abiding civilians"). By contrast, some courts have used "unusual" as equivalent to "in common use", and "dangerous" as shorthand for "typical possession." *See, e.g., Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015).

[3] Some courts, however, have implied that the party bearing the burden must demonstrate both that the weapon is not in "common use" *and* its "typical possession" is for an unlawful purpose. *See, e.g., Hollis v. Lynch*, 827 F.3d 436, 447-51 (5th Cir. 2016) (finding that machineguns are "dangerous", and then proceeding to analyze whether they are "usual"); *Fyock v. Sunnyvale*, 779 F.3d 991, 998 (9th Cir. 2015) (finding regulations restricting possession of certain types of large-capacity magazines burdened conduct falling within the scope of the Second Amendment where the government demonstrated that the magazines were "dangerous" but not "unusual"); *United States v. Henry*, 688 F.3d 637, 640 (9th Cir. 2012) (holding that machine gun possession is not entitled to Second Amendment protection because it is "likely to cause serious bodily harm" and "unusual because . . . [o]utside of a few government-related uses, machine guns largely exist on the black market"); *United States v. McCartney*, 357 F. App'x 73, 76 (9th Cir. 2009) ("The weapons involved in this case are dangerous and unusual [and therefore, not protected by the Second Amendment]. [Defendant's] own expert testified that the machine gun is a dangerous weapon in light of the fact that it devastated entire populations in World War I. And the possession of a machine gun by a private citizen is quite unusual in the United States.") (internal quotation marks omitted).

Fyock v. City of Sunnyvale, 25 F. Supp. 3d 1267, 1276 (N.D. Cal. 2014), *aff'd sub nom. Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015) ("The fact that few people will require a particular firearm to effectively defend themselves . . . should be celebrated, and not seen as a reason to except [them] from Second Amendment protection."). This principle comports with the Second Circuit's finding in *NYSRPA* that "the Second Amendment extends, prima facie, to *all* instruments that constitute bearable arms, not just to a small subset." 804 F.3d at 255-56 (citation and internal quotation marks omitted) (emphasis in original).

Thus, the Court clarifies the applicable burden of proof and relevant test in this matter: it will not be enough for Defendant Nassau County to simply prove that nunchakus are "unusual" in order to rebut the *prima facie* presumption of Second Amendment protection; Defendant must show that the "typical possession" of nunchakus is for an unlawful purpose.

CONCLUSION

In light of its Amended Order, the parties may submit supplemental letters, no longer than five pages, by October 22, 2018, addressing whether Defendant has met its burden that nunchakus are "not typically possessed by law-abiding citizens for lawful purposes". The Court shall hold oral argument on December 5, 2018 at 11:00 a.m. in Courtroom 4F North.

SO ORDERED.

/s/*Pamela K. Chen*
PAMELA K. CHEN
United States District Judge

Dated: Brooklyn, New York
October 1, 2018

ADMITTED TO PRACTICE IN:
NEW YORK; NEW JERSEY;
UNITED STATES SUPREME COURT;
U.S. COURTS OF APPEALS FOR THE SECOND AND THIRD CIRCUITS;
U.S. DISTRICT COURTS FOR THE EASTERN DISTRICT OF TEXAS, DISTRICT OF NEW JERSEY, NORTHERN DISTRICT OF FLORIDA, NORTHERN DISTRICT OF ILLINOIS, DISTRICT OF CONNECTICUT, AND NORTHERN, SOUTHERN & EASTERN DISTRICTS OF NEW YORK; U.S. COURT OF INTERNATIONAL TRADE; U.S. COURT OF FEDERAL CLAIMS.

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November 12, 2018

The Honorable Pamela K. Chen
United States District Judge, E.D.N.Y. **Via ECF**
Re: *Maloney v. Singas*, 03-cv-786

Dear Judge Chen:

I write in response to Your Honor's Memorandum & Order of October 1, 2018 (DE 210).[1] In part for purposes of facilitating the framing of issues to be clarified at oral argument,[2] I have subdivided this letter into four numbered parts, each with a short phrase as a title or rubric.

1. BANNING "BAD GUY" WEAPONS OK, BUT WHERE?

The 10/18 M&O indicates that a weapon that is typically possessed for unlawful purposes may be entitled to no Second Amendment protection ("**2Ap**")[3] at all. Under *Heller*, denial of 2Ap on that basis would require not only that the "typical" use of a weapon be for unlawful purposes, but also that the term of art "typical" contemplate some fairly high degree of exclusivity as to unlawful versus lawful use. Otherwise, the very handguns that were the first class of weapons for which 2Ap was explicitly recognized (in *Heller*) would not be entitled to 2Ap. It is indisputable that handguns, which are easily concealed and deadly, are typically used

[1] Hereinafter, the "10/18 M&O." It is noted at the outset that an apparent error appears in the text of the 10/18 M&O at page 3, beginning five lines up from the bottom: "This reasoning [in *NYSRPA*] makes clear that a weapon being 'in common use' is not enough to deny Second Amendment protection;" It would appear that the word "not" should have been inserted between "weapon" and "being." Alternatively, the Court may have wished to write "grant" rather than "deny." In any event, it is acknowledged that the gravamen of this passage is that the analysis for a newly considered weapon's eligibility for Second Amendment protection does not turn solely on the "common use" inquiry, but must also include what may be perhaps framed as the "lawful-purposes/dangerous-and-unusual" analysis.

[2] Oral argument is scheduled for 11:00 am on Wednesday,. December 5, 2018.

[3] For brevity, the abbreviation 2Ap is used herein in such contexts as "2Ap jurisprudence," by which is meant the still-evolving legal analysis that is to be applied to determine if a given weapon, theretofore untested as to its 2Ap status, is eligible for Second Amendment protection.

in armed robberies and other crimes. These are clearly unlawful purposes, but handguns are just as clearly entitled to 2Ap under *Heller*, and that is because handguns are also typically owned by law-abiding citizens for such lawful purposes as home defense, self-defense, and target shooting.

The fact that nunchaku are typically possessed by law-abiding citizens for such lawful purposes as martial arts effectively ends this inquiry, even if (and it has not been proven) nunchucks were also associated with unlawful purposes (as indeed are most weapons to some degree or another). But a more subtle aspect of this inquiry is worthy of exploration.

As a hypothetical, consider the box-cutter. It is a small hand-held tool with a short, retractable, very sharp blade (often an insertable razor or similar thin metallic item). Next, consider a local criminal law banning any and all possession—whether in a building or in public and no matter the intent of the possessor—of a box cutter, perhaps in response to street crime involving victims being slashed by assailants and/or robbers. But whatever vicious and horrifying potential criminal uses of the tool exist, it remains true that box-cutters are also typically used by law-abiding citizens for such lawful purposes as, well, cutting open boxes. What would or should this fact do to 2Ap for box cutters in a challenge to this local law?

Immediately, one recognizes that the typical use of a box-cutter *as a weapon* is readily distinguishable from its typical lawful use in general. (Of course, the same is not true of nunchaku, given that martial-arts practice is incident to self-defense in a way that access to packaged goods is not, but before next considering that, I'll address further the question posed.)

It is submitted that since the local legislators included no *mens rea* requirement, Second Amendment challenges to the local law may well fare differently depending on the *locus* of the right to possession being sought. For example, a criminal defendant charged under the local law with possessing a box cutter on the street and raising a Second Amendment challenge in response would likely not fare as well as might (and indeed should) a defendant charged with the same crime for keeping a box cutter under her pillow for self-defense.

Thus, it may be that the "lawful-purposes/dangerous-and-unusual" analysis (see footnote 1, *supra*, and discussion under 3, *infra*) should at least in some cases be somewhat more deferential to the weapon's 2Ap status if a ban's extension into the home is all that is being challenged. Arguably, a level-of-scrutiny analysis that differs within or without the home could be the basis for achieving that distinction in a different way, but, as this Court has recognized, 10/18 M&O at 2, much of the available 2Ap case law is still often "opaque and contradictory." (A more thorough analysis of/proposal for principles of 2Ap jurisprudence being beyond the scope of this letter, I shall save further discussion for responsive commentary at oral argument.)

2. <u>MARTIAL-ARTS PRACTICE AND SELF-DEFENSE INEXTRICABLY INTERTWINED</u>

As noted parenthetically above, "martial-arts practice is incident to self-defense in a way that access to packaged goods is not." Put another way, the lawful purpose for which box-cutters are typically used is quite different in kind from the potential use of the same instrument as a

weapon. The same is true of many instrumentalities in common use for lawful purposes: chain saws, gasoline, matches, flare guns, etc. But instrumentalities the common use of which is martial-arts practice must fall into a different category because the lawful common use is one that is inextricably intertwined with the practice of self-defense. (At risk of stating the obvious, martial arts is itself a form of self-defense.) It is accordingly submitted that the nunchaku's widespread lawful common use for martial-arts practice negates any possibility that evidence of the same instrument's use for unlawful purposes could result in its being entitled to no 2Ap at all on the theory that it is "typically possessed for unlawful purposes." In any event, there is no evidence of that last-quoted proposition properly before the Court at this time. But even more importantly, a second opportunity for the defendant to supplement the record in that regard in the wake of the 10/18 M&O would be futile, since, as *Heller* illustrates (*see supra*), even if nunchucks were[4] widely used for unlawful purposes (as are handguns) there remains a typical lawful use that forecloses such summary 2Ap denial.

3. HOW IS "DANGEROUS AND UNUSUAL" RELATED TO "TYPICALLY POSSESSED FOR UNLAWFUL PURPOSES"?

It is worth noting at the outset that all of the weapons at issue in the cases that the Court cited in the 10/18 M&O at 2-3 as addressing weapons for which no 2Ap exists because they are "typically possessed for unlawful purposes" are weapons of considerable or even extraordinary destructive capacity, such as "Tommy guns" (*Friedman*), "sawed-off shotguns" (*Hatfield*), "pipe bombs" (*Tagg*), and "assault weapons" (*Kolbe*, *Worman*). In many of these cases, especially in the last two listed and most especially in *Kolbe*, the court's analysis was indeed more related to the military utility of the class of weapons at issue, i.e., their similarity to the M16, and, correspondingly, to the awesome firepower of which such weapons are capable.

Although the Supreme Court has yet to articulate the connection between the compound term of art it introduced in *Heller*, "dangerous and unusual," and the "typically possessed for unlawful purposes" test that, as this Court suggests, may lead to a denial of 2Ap entirely for a given weapon, it is axiomatic that some relationship between these legal concepts must exist. This Court appears to have acknowledged as much by its careful placement of footnote 2 in the 10/18 M&O following the text preceding it. That footnote quotes briefly from the *Caetano* concurrence; a slightly longer passage from the same appears below:

> As the *per curiam* opinion recognizes, this is a conjunctive test: A weapon may not be banned unless it is *both* dangerous *and* unusual. Because the Court rejects the lower court's conclusion that stun guns are "unusual," it does not need to consider the lower court's conclusion that they are also "dangerous."

Caetano v. Massachusetts, 136 S. Ct. 1027, 1031 (2016) (Alito, J., concurring) (citing *per curiam* opinion, *id*. at 1027-1028) (emphasis in original).

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[4] Grammatically, the use of "were" above is to indicate the subjunctive mood, not the past tense.

It follows that, under *Heller*,[5] if a weapon may be banned completely, i.e., give rise to no 2Ap at all, on the basis that it is "typically possessed for unlawful purposes," it must also be because it is "dangerous and unusual." Of those two adjectives, "unusual" is the better fit with the concept of "typically possessed for unlawful purposes." Thus, the hidden element, which was present in all of the cases that the Court cited in the 10/18 M&O at 2-3, is that the weapon was also "dangerous." Of course, all weapons are too some degree dangerous (or else they would not be very effective as weapons), but the level of dangerousness[6] is not the same for "Tommy guns" (*Friedman*) or "sawed-off shotguns" (*Hatfield*) on the one hand as it is for stun guns (*Caetano*) or nunchaku (the instant case) on the other.

It is submitted that "dangerous and unusual" is an evolving term of art, and that, based on existing case law (including and especially *Heller*, *Caetano*, *NYSRPA*, and the cases that the Court cited in the 10/18 M&O at 2-3), the "unusual" component refers to the question of whether the instrument is "typically possessed for lawful purposes" or "typically possessed for unlawful purposes" (an absence of the former and a preponderance of the latter equating to "unusual"). The "dangerous" component, although less well-established,[7] must, in turn, relate to the destructive capacity of the weapon and, relatedly, to the question of whether it may be too lethal even for law-abiding citizens to possess, a consideration that the Second Circuit explicitly articulated in *NYSRPA*:

> Looking solely at a weapon's association with crime[8] . . . is insufficient. We must also consider more broadly whether the weapon is "dangerous and unusual" in the hands of law-abiding civilians.

804 F.3d at 256.

The nunchaku is neither "dangerous" nor "unusual." It is far less dangerous than even the handguns at issue in *Heller*, and it is "typically possessed for lawful purposes" and therefore not "unusual." To deny it 2Ap here, in the absence of any evidence showing that it is "typically possessed for unlawful purposes" and where the challenge is solely to the ban as applied to simple in-home possession, would be inconsistent with Second Amendment jurisprudence.

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[5] Justice Alito wrote (emphasis in bold added): "**As the *per curiam* opinion recognizes**, this is a conjunctive test: A weapon may not be banned unless it is *both* dangerous *and* unusual."

[6] That is, the capacity to kill large numbers of people quickly and/or to cause disproportionate harm, see my discussion in the brief, DE 202, at pages 20-21; pdf pages 25-26 of 31.

[7] See the discussion in Part II of my brief, DE 195, at pdf pages 5-6, addressing long-term jurisprudential considerations, including and especially the dangers of too casually allowing any weapon to satisfy the "dangerous" criterion, which would inevitably pose obstacles to gaining support for sensible legislation aimed at limiting access to truly dangerous weaponry.

[8] A weapon's "association with crime" appears to be similar if not identical to the question of whether it is "typically possessed for unlawful purposes."

4. A TOTAL BAN ON NUNCHAKU DOES NOT SERVE THE SAME PURPOSES AS A TOTAL BAN ON MANUFACTURED WEAPONS

With manufactured firearms that are capable of rapid repeat-fire, states have imposed total bans on any and all possession, even in the home, with the goal in mind of preventing the entry of such weapons into the state.

Such considerations have no counterpart in New York's ban on "chuka sticks." The nunchaku, unlike any firearm, requires no complex manufacturing process to be brought into existence, and can be readily manufactured with little more than a pair of dowels, some cordage or chain, and common carpentry tools. Since nunchucks can easily be fashioned with readily available materials virtually anywhere, a complete prohibition of in-home possession would have little if any effect in stemming any perceived tide of illegal nunchaku entering New York.

This final consideration may be of some pragmatic relevance to the Court in its final consideration of this long-standing challenge to simple in-home possession only.

Respectfully submitted,

James Michael Maloney

UNITED STATES DISTRICT COURT
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consistent with the Second Amendment's emphasis on, and "the historical understanding" that, "the right to keep and bear arms . . . is for *lawful purposes*." *United States v. Greeno,* 679 F.3d 510, 520 (6th Cir. 2012) (emphasis in original).[3]

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(Alito, J., concurring) (emphasis in original). In *NYSRPA*, however, which preceded *Caetano*, the Second Circuit only considered the conjunctive test of whether the weapons were "dangerous and unusual" in the context of its "typical possession" analysis. 804 F.3d at 256 (finding that the Court "must also consider more broadly whether the weapon is 'dangerous and unusual' in the hands of law-abiding civilians"). By contrast, some courts have used "unusual" as equivalent to "in common use", and "dangerous" as shorthand for "typical possession." *See, e.g., Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015).

[3] Some courts, however, have implied that the party bearing the burden must demonstrate both that the weapon is not in "common use" *and* its "typical possession" is for an unlawful purpose. *See, e.g., Hollis v. Lynch*, 827 F.3d 436, 447-51 (5th Cir. 2016) (finding that machineguns are "dangerous", and then proceeding to analyze whether they are "usual"); *Fyock v. Sunnyvale*, 779 F.3d 991, 998 (9th Cir. 2015) (finding regulations restricting possession of certain types of large-capacity magazines burdened conduct falling within the scope of the Second Amendment where the government demonstrated that the magazines were "dangerous" but not "unusual"); *United States v. Henry*, 688 F.3d 637, 640 (9th Cir. 2012) (holding that machine gun possession is not entitled to Second Amendment protection because it is "likely to cause serious bodily harm" and "unusual because . . . [o]utside of a few government-related uses, machine guns largely exist on the black market"); *United States v. McCartney*, 357 F. App'x 73, 76 (9th Cir. 2009) ("The weapons involved in this case are dangerous and unusual [and therefore, not protected by the Second Amendment]. [Defendant's] own expert testified that the machine gun is a dangerous weapon in light of the fact that it devastated entire populations in World War I. And the possession of a machine gun by a private citizen is quite unusual in the United States.") (internal quotation marks omitted).

Fyock v. City of Sunnyvale, 25 F. Supp. 3d 1267, 1276 (N.D. Cal. 2014), *aff'd sub nom. Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015) ("The fact that few people will require a particular firearm to effectively defend themselves . . . should be celebrated, and not seen as a reason to except [them] from Second Amendment protection."). This principle comports with the Second Circuit's finding in *NYSRPA* that "the Second Amendment extends, prima facie, to *all* instruments that constitute bearable arms, not just to a small subset." 804 F.3d at 255-56 (citation and internal quotation marks omitted) (emphasis in original).

Thus, the Court clarifies the applicable burden of proof and relevant test in this matter: it will not be enough for Defendant Nassau County to simply prove that nunchakus are "unusual" in order to rebut the *prima facie* presumption of Second Amendment protection; Defendant must show that the "typical possession" of nunchakus is for an unlawful purpose.

CONCLUSION

In light of its Amended Order, the parties may submit supplemental letters, no longer than five pages, by October 22, 2018, addressing whether Defendant has met its burden that nunchakus are "not typically possessed by law-abiding citizens for lawful purposes". The Court shall hold oral argument on December 5, 2018 at 11:00 a.m. in Courtroom 4F North.

SO ORDERED.

/s/*Pamela K. Chen*
PAMELA K. CHEN
United States District Judge

Dated: Brooklyn, New York
October 1, 2018