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May 15, 2023

VIA ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Hardaway, et al., v. Nigrelli, et al.*, No. 22-2933

Dear Ms. Wolfe:

Pursuant to Rule 28(j), Plaintiffs-Appellees submit this letter in response to Defendant-Appellant Nigrelli's May 5, 2023, letter regarding New York's amendment to N.Y. Penal Law § 265.01-e(2)(c). Under the amended text, the Place of Worship Ban still applies to ordinary, law-abiding citizens "except for those persons responsible for security at such place of worship."

The State asserts that both Reverend Hardaway and Bishop Boyd can now carry in their churches. In its 28(j) letter in *Spencer v. Nigrelli*, 22-3237, the State further said "anyone" can be "determine[d]" by church leadership to be "responsible for church security." The State's interpretation that "anyone" with permission may carry appears to render the Place of Worship Ban mere surplusage. Under the State's interpretation (if binding), the Place of Worship Ban would lack *any* independent legal force as the Anti-Carry Default in N.Y. Penal Law § 265.01-d(1) *already* bars carrying on church property without "express consent."

Both Hardaway and Boyd alleged in the Complaint and stated in their respective declarations that they previously permitted their parishioners, who were duly licensed, to carry a firearm on church property. *See* JA 71–72, ¶¶ 35, 37 (Complaint); JA 108, ¶ 11 (Hardaway Declaration); JA 111–12, ¶¶ 8, 11 (Boyd Declaration). Both would continue to do so but for the Place of Worship Ban. *See* JA 71–72, ¶¶ 35, 37; JA 108, ¶ 11; JA 112, ¶ 11. To the extent Hardaway and Boyd have less than the full autonomy (which they had prior to the Place of Worship Ban) to permit duly licensed parishioners to carry, their claims are not moot.

Sincerely,

s/David H. Thompson
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