No. 112116

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ALBERTO AGUILAR, Defendant-Appellant.	))))))))))	Circuit Court of Cook County No. 98 CR 5675 Honorable **Charles P. Burns** Judge Presiding.

MOTION FOR AN EXTENSION OF TIME FOR THE FILING OF THE BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE

The People of the State of Illinois, by their Attorney, ANITA ALVAREZ, State's Attorney of Cook County, Illinois, through ALAN J. SPELLBERG and VERONICA CALDERON MALAVIA, Assistant State's Attorneys, pursuant to the provisions of Supreme Court Rule 343(c), ask this Honorable Court for an extension of time, to and including July 25, 2012, for the filing of the Brief and Argument for the Plaintiff-Appellee. The People submit the following in support of their Motion.

1. Defendant was charged with two counts of aggravated unlawful use of a weapon and one count of unlawful possession of a firearm under Indictment No. 08 CR 12069.

2. Following a bench trial, defendant was convicted of aggravated unlawful use of a weapon and, subsequently, sentenced to 24 months' probation.

3. On February 11, 2011, the Appellate Court, First District, affirmed

defendant's conviction, rejecting a Second Amendment challenge to the aggravated unlawful use of weapon statute. See *People v. Aguilar*, 408 Ill. App. 3d 136 (1st Dist. 2011).

4. This Court allowed defendant's petition for leave to appeal on May 25, 2011.

5. On September 14, 2011, defendant timely filed his Opening Brief.

6. The People's Response Brief is on due July 2, 2012.

7. This is the People's sixth request for an extension of time for the filing of their brief.

8. On May 14, 2012, the People filed a motion to supplement the record with a transcript of the preliminary hearing in this case and the People's unsuccessful motion to admit gang evidence at trial. This court granted the People's motion to supplement the record on May 25, 2012.

9. Assistant State's Attorney Veronica Calderon Malavia is assigned to the instant case and is diligently working to file the People's brief in this matter. She was not involved in the case at the appellate level and, therefore, had to independently review the record and research the issues raised by defendant.

10. The instant case presents three question of first impression for this Court: (1) whether the Aggravated Unlawful Use of A Weapon (AUUW) statute is facially invalid under the Second Amendment as interpreted by in *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3050 (2010); (2) whether the Unlawful Possession of A Firearm (UPF) statute is facially invalid under the Second Amendment; and (3) whether *Heller* and *McDonald* render *Kalodimos v. Morton Grove*, 103 Ill. 2d 483 (1984)'s interpretation of Illinois right to bear arms (Ill. Const. 1970, art. I, §22) unsustainable thereby mandating the reversal of *Kalodimos*.

11. On June 21, 2012 ASA Malavia filed a motion for additional pages in order to effectively respond to the claims contained in defendant's Opening Brief and the multiple amicus curiae briefs filed on his behalf. The motion is still pending before this Court.

12. ASA Malavia will need additional time to ensure that the page

limitation comports with this Court's anticipated ruling on the People's request for additional pages. Once the internal review is completed by the State's Attorney's Office, the brief must be submitted to the Attorney General's Office for further review. Additional time will ensure that ASA Malavia has the time to effectively make any necessary edits to the People's brief.

13. ASA Malavia's personal caseload and responsibilities as a supervisor contributed to the delay in filing the People's brief. ASA Malavia is the State Appeals Supervisor for the Criminal Appeals Division of the Cook County State's Attorney's Office, and, as such, is responsible for extensive supervisory and administrative duties in addition to her own pending caseload. In particular, ASA Malavia is responsible for approving and supervising the state appeals that will be filed on behalf of the People in the First District, Appellate Court. Her responsibilities include reading the transcripts, conducting legal research prior to approving the filing of a notice of appeal, preparing or supervising the preparation of motions to reconsider in appropriate circumstances and perfecting the record for appeal. ASA Malavia also develops the People's theory in the majority of the State appeals and supervises the preparation of the People's briefs in many of the State appeals.

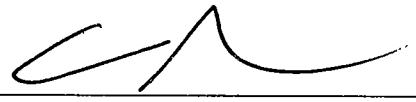
14. In addition to evaluating potential state appeals during this time, ASA Malavia filed the People's Brief in *People v. Charles Grant*, App. Ct. No. App. Ct. No. 10-0174 on June 20, 2012.

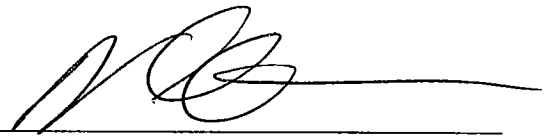
15. She is also responsible for preparing the People's Reply brief in *In re Danielle J.*, Sup. Ct. No. 110810, which deals with the constitutionality of 705 ILCS 405/5-615(1)(b), a Juvenile Delinquency provision which allows the State's Attorney's Office to object to the court's imposition of supervision in a delinquency. She is also assigned prepare the People's briefs in *People v. Darlene Solis*, 1-10-2756, which deals with the constitutionality of Illinois' Prostitution statue, 720 ILCS 5/11-14 (2011) and *People v. Darryl Sutton*, App. Ct. No. 1-10-2886.

16. The People submit that this request for an extension of time is made in good faith and is in no way intended to prejudice the defendant or delay these proceedings.

THEREFORE, the People of the State of Illinois respectfully request an extension of time to and including to July 25, 2012, for the filing of their Brief and Argument.

ANITA ALVAREZ
State's Attorney of Cook County
309 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-5496

BY: 
ALAN J. SPELLBERG, Supervisor
Criminal Appeals Division

BY: 
VERONICA CALDERON MALAVIA,
Assistant State's Attorney

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT

VERONICA CALDERON MALAVIA, being first duly sworn on oath, deposes and says that affiant is a duly appointed and acting Assistant State's Attorney of Cook County, Illinois; that affiant has read the foregoing Motion by her subscribed; that affiant knows the contents therein; and that upon information available to her the same is true in substance and in fact.

VERONICA CALDERON MALAVIA,
Assistant State's Attorney

STATE OF ILLINOIS
COUNTY OF COOK
Signed or Attested Before Me
on this 2nd day of July, 2012,
VERONICA CALDERON MALAVIA
Assistant State's Attorney.

(SEAL)

Signature of Notary Public

OFFICIAL SEAL
BELVA J HILL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/29/16

No. 112116

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PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of Cook County
	)	No. 98 CR 5675
Plaintiff-Appellee,	)	
	)	Honorable
v.	)	**Charles P. Burns**
	)	Judge Presiding.
ALBERTO AGUILAR,	)	
	)	
Defendant-Appellant.	)	

NOTICE AND PROOF OF SERVICE

TO:

ALAN D. GOLDBERG
Deputy Defender
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203 North LaSalle Street – 24th Floor
Chicago, Illinois 60601
Attention: **David Holland**

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Buffalo, NY 14202

CAMERON CLOAR
One Embarcadero Center, Suite 1800
San Francisco, CA 94111

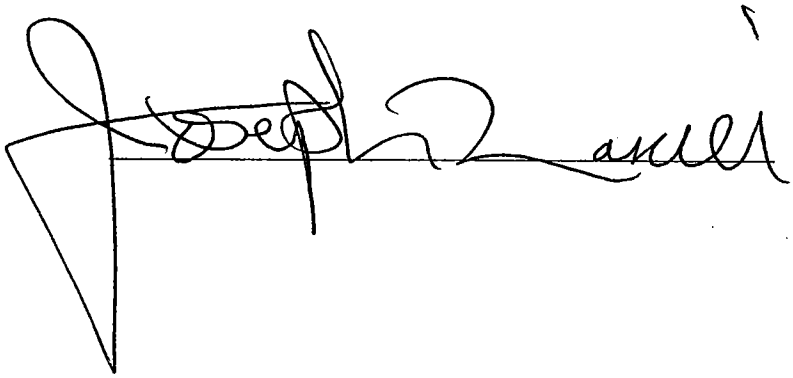
PLEASE TAKE NOTICE that on July 2, 2012, we shall personally serve the Office of the State Appellate Defender and serve by mail the Illinois Attorney General, and shall serve by mail the above-named counsels, and shall file in the Office of the Clerk of the Supreme Court of Illinois, in Chicago the attached Motion, Affidavit, and Draft Order.

ANITA ALVAREZ
State's Attorney of Cook County
309 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-5496

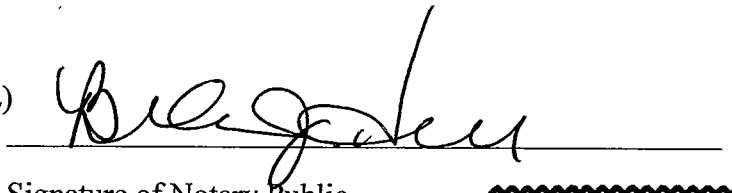
BY: _____
VERONICA CALDERON MALAVIA,
Assistant State's Attorney

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

JOSEPH LANIER, being first duly sworn on oath, deposes and says that he personally served the Office of the State Appellate Defender and served by mail Illinois Attorney General's Office, and served by mail the above-named counsels, the above-mentioned papers and this Notice on July 2, 2012.



STATE OF ILLINOIS
COUNTY OF COOK
Signed or Attested Before Me
on this 2nd day of July, 2012,
JOSEPH LANIER.

(SEAL) 

Signature of Notary Public

OFFICIAL SEAL
BELVA J HILL
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MY COMMISSION EXPIRES:03/29/16

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PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ALBERTO AGUILAR, Defendant-Appellant.	))))))))))	Circuit Court of Cook County No. 98 CR 5675 Honorable **Charles P. Burns** Judge Presiding.

ORDER

This Cause Coming Before This Court on Motion of The People of the State of Illinois, and all parties having been notified, and the Court Being Fully advised in the premises,

IT IS HEREBY ORDERED that the People's Unopposed Motion for an Extension of time to and Including July 25, 2012, for the Filing of the Brief and Argument for the Petitioner-Appellant is granted/denied.

ENTER:

_____
JUSTICE OF THE SUPREME COURT OF ILLINOIS

_____
Date