IN THE CIRCUIT COURT
FOR THE SECOND JUDICIAL CIRCUIT
WABASH COUNTY, MT. CARMEL, ILLINOIS

SHAWNA JOHNSON,	)	
Petitioner,	)	
	)	
-v-	)	**No. 13-MR-15**
	)	
ILLINOIS STATE POLICE,	)	
Respondent.	)	

ORDER

This matter having come before the court for hearing on Petitioner, Shawna Johnson's Second Amended Petition For Review of Denial of Firearm Owner's Identification Card filed with leave of court on December 28, 2015, all parties and counsel all having been present, the court having heard, seen and considered the sworn testimony, the exhibits, the various stipulation of facts, the relevant pleadings and entire record herein as relevant to the matters and issues before the court, the arguments and authorities presented by counsel and all other applicable authorities, and the court having jurisdiction over the parties and subject matter and being fully advised, **HEREBY FINDS AND ORDERS AS FOLLOWS:**

I. Findings of Fact and History of the Proceedings

Most of the facts are undisputed. Although the court has previously in prior rulings recited factual findings, the court again believes it is helpful to recite the material facts and the history of the proceedings in this case.

On June 7, 2001, Petitioner, Shawna L. Johnson pled guilty and was convicted of Battery, a Class A Misdemeanor under Illinois law, in the Circuit Court of the Second Judicial Circuit, Wabash County, Illinois in Case No. 2001-CM-56. At that time, Shawna Johnson's surname (married name) was Korstick. Johnson's conviction was part of a negotiated plea whereby she pled guilty to an amended charge of Battery (under 720 ILCS 5/12-3(a)) and received a sentence of one year conditional discharge, along with a jail sentence of 2 days (time served) in jail, and a $ 150 fine and court costs. The original charge was filed as Domestic Battery (under 720 ILCS 5/12-3.2(a)(1)). As part of the negotiated plea, the original charge was amended by interlineation - striking the allegations with the regard to the fact that the victim of the battery was Johnson's husband at the time. The amended count to which Johnson pled guilty stated in pertinent part that Johnson, "... without legal justification, knowingly caused bodily harm to Michael A. Korstick, in that [she] hit [Korstick] on the face and head causing bruises and abrasions ... ." There is no

indication that any firearm or firearm ammunition was used by Johnson in any way in the commission of this domestic battery/battery. Johnson successfully completed the term of conditional discharge and was discharged on November 18, 2008. Other than this battery conviction, and another 1991 Wabash County (non-domestic violence) battery conviction (with a $ 1 fine), Johnson has not been convicted of any felony or misdemeanor in Illinois or any other state. It is also undisputed that on March 25, 2001, the date of the alleged battery/domestic battery, Johnson was married to and had children in common with the alleged victim, Michael A. Korstick. **(See Respondent's Exhibit "H" - ISP's Request For Admission of Facts - attached to ISP's Memorandum of Law.)** Although Johnson never moved to withdraw her plea and never appealed her Battery conviction, in her answers to certain questions in the very same above- referenced "Request For Admission of Facts," she denies striking her husband. Johnson also alleges in an affidavit that she once had an Order of Protection against her husband, Michael Korstick. She claims this order of protection was in place prior to her pleading guilty in 2001-CM-56. And, she says that she dismissed her order of protection case due to pressure from her employer at that time indicating to her that such order of protection was creating problems at work. Johnson also claims that at the time she entered into the negotiated plea in question, she inquired about the impact of the negotiated plea on her FOID Card. Johnson claims the State's Attorney at that time told her that it would probably not impact her FOID card, and that, if it did, it would only be for a short time. **(See Affidavit of Shawna Johnson filed July 25, 2014.)**

On or about April 1, 2010, after Johnson's plea, conviction and successful discharge, Johnson sought and obtained a Firearms Owner's Identification Card (FOID card). However, the Illinois State Police (ISP) revoked Johnson's FOID card on the basis of the above-referenced Battery conviction and sent Johnson a letter dated July 27, 2012 informing Johnson that she was ineligible for a FOID card as a result of her Battery conviction. ISP's July 27, 2012 letter (Exhibit "D") states in pertinent parts:

> "[ISP] records reflect on June 7, 2001, you were convicted of Battery, as a result of an incident involving domestic violence. Pursuant to Federal and State law, The [ISP] is prohibited from issuing a [FOID] card to anyone convicted of any crime involving domestic violence. You are ineligible for a [FOID] card as result of your conviction. ... This action is in accordance with the Federal Gun Control Act of 1968, 18 USC 922(g)(9). This makes it unlawful for any person convicted of a 'misdemeanor crime of domestic violence' to ship, transport, possess or receive firearms or ammunition."

(See ISP's Exhibit "D" attached to its Memorandum of Law in support of ISP's Motion for Summary Judgment.)

Johnson claims she sent a letter dated August 16, 2012 to the Director of the Illinois State Police requesting a formal hearing regarding the revocation. Although Johnson claims under oath in an affidavit that she mailed such letter, she did not send such registered or certified mail. **(See documents filed by Petitioner on November 21, 2013.)** ISP claims that it did not receive

Johnson's letter and that they have no record of any such letter in a file that they maintain regarding Johnson's FOID Card application and revocation. **(See Respondent's Motion For Summary Judgment and Memorandum in Support. And, see Affidavit of ISP Sergeant Mark Bayless filed December 5, 2013.)** On or about April 9, 2013, Johnson received a letter from ISP indicating that she was required to turn over her revoked FOID card to a local law enforcement agency. Johnson turned her FOID card over to the Wabash County Sheriff on August 12, 2013. Johnson made no further contact or follow-up with ISP until she filed her petition in the instant case.

Shawna Johnson (pro se) filed the/her initial petition in this case, a petition entitled, "Petition For Review of Denial of Firearm Owner's Identification Card," back on August 15, 2013.

Ms. Johnson eventually obtained counsel and filed an amended petition. The Illinois Attorney General entered its appearance of behalf of ISP. The Wabash County State's Attorney, Cassandra Goldman, stepped aside indicating she did not object to the petition and that she would not participate in these proceedings.

Petitioner eventually raised her "as applied" challenge in her pleadings as she alleged and argued that the current federal and state framework which prohibits her from possessing firearms and ammunition, is unconstitutional and violates of her Second Amendment rights "as applied" to her. Petitioner's Amended Petition For Review filed on September 9, 2014 incorporated this "as applied" constitutional challenge. This Amended Petition was essentially identical to Ms. Johnson's original *pro se* Petition except that her Amended Petition added her constitutional "as applied" challenge in Paragraph (15). Johnson did further expound upon her constitutional ("as applied") challenge in her previously filed Memorandum of Law in Opposition to Respondent's Motion For Summary Judgment.

After various motions (Motion to Dismiss, Motion for Summary Judgment, etc.) were presented, argued and resolved, the Court ultimately granted Petitioner and her counsel leave to file and on December 28, 2015 Petitioner through her counsel did file her Second Amended Petition officially raising her claim that various applicable laws were unconstitutional "as applied" to the Petitioner, Shawna Johnson.

In its October 28, 2015 Order denying ISP's Motion For Summary Judgment, this Court specifically found and legally concluded that, the "civil rights restored" exemption under Section 18 U.S.C. § 921(a)(33)B(ii) and the fact that Shawna Johnson was incarcerated as part of her conditional discharge sentence removed the federal firearm bar for Ms. Johnson because, as part of her sentence of conditional discharge, she was sentenced to and did serve two (2) days (pre-trial detention) in the Wabash County Jail. Thus, the court found that Petitioner was entitled to the relief she requested (restoration of her F.O.I.D. card) without resorting to a resolution of her Constitutional claim. At that point, the court struck/dismissed Petitioner's Constitutional ("As-Applied") claim, with leave to re-instate such claim if it later became necessary to address such claim. Subsequently, however, in its Order dated December 16, 2015, the Court granted the Respondent's Motion To Reconsider such ruling and granted Respondent-ISP's Motion For

Summary Judgment on all requested relief except for Petitioner's previously pled Constitutional "As-Applied" challenge. As part of that December 16, 2015 Order Granting Respondent's Motion to Reconsider and Granting Summary Judgment, the court also granted Petitioner leave to re-plead her Constitutional ("As-Applied") challenge. ***See this Court's Orders dated October 28, 2015 and December 16, 2015.***

Then, on December 28, 2015, Petitioner, Shawna Johnson filed her Second Amended Petition For Review of Denial of Firearm Owner's Identification Card. And, this case proceeded to a final evidentiary hearing. On January 20, 2016, all participating parties and counsel took part in an evidentiary hearing where Petitioner, Shawna Johnson presented several witnesses. Although the ISP demanded such contested evidentiary hearing, the ISP presented no witnesses of its own. But, the Attorney General on behalf of the ISP did cross-examine Petitioner, Shawna Johnson and he other witnesses. Here is a summary of the testimony of Petitioner's witnesses:

Larry Blaize, a retired Illinois State Police trooper, testified on Shawna Johnson's behalf. Blaize was an ISP trooper for 21 years. He was also a City of Mt. Carmel police officer for 11 years. And, he further worked part-time for three years as an officer or deputy for the Edwards County Sheriff's Department, the Wabash County Sheriff's Department and the City of Albion Police Department. Blaize has known Shawna Johnson since about 1999. Blaize has even been present with and has observed Shawna Johnson and her husband (Jerry Johnson) use firearms several times when they had been shooting guns together (apparently when Shawna still had a valid FOID Card). As a former officer of course, Blaize has had training and experience in the handling and proper use of firearms. And, Blaize had also had experience, training and responsibility in determining whether and submitting a written report if someone might pose a (clear and present) danger in possessing/using a firearm. Blaize said Shawna Johnson exhibited no characteristics which would cause him concern about her being a threat to society or anyone else if she were to have a FOID Card. Blaize said he even allowed Shawna Johnson to shoot a couple of his own pistols and one of his rifles and that she "always exhibited good firearm safety and seemed very knowledgeable about firearms and was very competent in the use of a firearm." Blaize said that, based upon his observations and training, he had no reason to be concerned about Shawna Johnson's safety or qualifications to handle or use a firearm. Blaize said that he felt Shawna Johnson was actually better in her handling of firearms than a lot people he'd seen who carry guns for a living, such as security guards. Blaize even wrote a letter on behalf of Ms. Johnson at her request in 2009 or 2010 to try to help her get her conviction expunged or overturned or help her get a pardon. Blaize concluded his testimony by stating that he believes Shawna Johnson has "a very god character" and that she would be a "very good employee" and that he would "trust her to do his business."

Shawna Johnson testified on her own behalf and in support of her petition. Johnson has been married to her current husband, Jerry Johnson, since January, 2009. She was previously married to Michael Korstick, initially in August 1981 when Shawna Johnson was 14 years old and pregnant by Korstick. Michael Korstick was 24 years old at the time. Shawna Johnson has four daughters by Korstick and she has a step-daughter who is Jerry Johnson's daughter. Shawna Johnson testified that Michael Korstick was incarcerated and not present to help raise their children for a lot of their early marriage. When Michael Korstick was originally incarcerated for

"drinking and drugging" and stealing and slaughtering a hog, Shawna Johnson and her daughters were already living with Shawna's mother because Michael Korstick was "abusive" to Shawna. Shawna testified that Korstick first hit her right after they were married and while she was pregnant back in the summer of 1981. She said she had called the police about Korstick physically abusing her "maybe four or five times." But, she said she had did not always call the police after Korstick had abused her. In February, 2001, Johnson testified that she sought and obtained an order of protection against Korstick after he had punched her in the mouth. Johnson said that another one of Korstick's ex-wives also had got an order of protection against him. However, Johnson said that dropped her order of protection against Michael Korstick in March 2001 because of pressure from her employer, J. Wilderman's Autoplex. At the time, Shawna was the service manager and Michael Korstick was also working at J. Wilderman's. Shawna Johnson said she was told (by her employer) that she better drop the order of protection or she "wouldn't have a job."

Shortly after Shawna Johnson dropped her order of protection in March 2001, she was arrested for the "domestic violence" incident in question in the instant case. Concerning the offense which occurred later in March 2001 and which caused the ISP to revoked Shawna Johnson's FOID Card, Shawna Johnson testified that she went to a party. She and Korstick were not living together at the time. She said Korstick showed up at the party and that he was "getting abusive, verbally, physically, and that he shoved [Shawna] out of a trailer door." She said she asked another guy for a ride home. She got in the car. Korstick jumped into the car and other guys pulled him out of the car. Shawna said she went home. She said that, the next morning, a police officer came to her house and she was arrested for domestic (battery) for hitting Michael the night before. Shawna Johnson testified that she does not remember hitting Michael Korstick that night. When the officer took Shawna to the police station, Michael Korstick was there. Korstick was yelling at the officer that he (Korstick) didn't want Shawna to be arrested for the incident. He said he wanted to "take it back" and didn't want to press charges.

As a result of the March 2001 incident, Shawna Johnson was charged with domestic battery. She had four daughters at the time. She was working and making $ 700 per week. She said she had no money to pay for an attorney. She also said that she was not offered a public defender. Shawna thought that her only option was to talk to the State's Attorney, try to make a deal so she could keep her job. Once again, she was told, by her employer, that she "needed to make [the criminal charges] go away." So, she talked to the State's Attorney (Terry Kaid) and asked him what her options were. Kaid told her that he would amend the charge from domestic battery to "simple" battery, that she could plead guilty and that there may be the possibility of [getting] the FOID Card [back]." Kaid told her she wouldn't lose her FOID Card forever, "just maybe a short time because of a battery charge. Shawna received a conviction, she was sentenced to conditional discharge, and, she had to pay a fine and complete counseling. She was discharged successfully from the conditional discharge order, but not until 2008. ***See Wabash County Case No. 2001-CM-56 of which the court has taken judicial notice.***

Shawna Johnson testified that she had had a valid FOID Card since the early 1990's when the incident occurred and when was convicted of battery and received conditional discharge back in March, 2001. She said that, from her discussions with State's Attorney Terry

Kaid at the time of her plea, she understood that she would lose her FOID Card – for maybe five years – and that she would then be able to get it back.

Shawna and Michael Korstick were divorced in August, 2008. Michael Korstick died in January, 2011. Shawna had no further contact with Michael between the time of their divorce and his death.

In 2010, nine years after her battery conviction, Shawna Johnson applied for and received an Illinois FOID Card. When she filled out her application for such FOID Card, she went to visit Wabash County Sheriff, Joe Keeling to get help filling out the application. She said there was a question on the application about whether she'd had a domestic battery or domestic violence conviction. She said she answered the question "no," because she went and asked Sheriff Keeling specifically about her situation. She told him about the fact that she'd been charged with battery but she pleaded guilty to and was convicted of battery. Shawna testified that Sheriff Keeling told her that, "Shawna, if you were convicted of a battery, that's how you answer it." She completed the application and a FOID Card was issued. After she got her FOID Card, she purchased a handgun and a shotgun. She said she used the handgun for protection and target practice and that the shotgun was for hunting.

Shawna Johnson testified that she learned her FOID Card had been revoked in July 2012 when tried to purchase another handgun from a federally licensed firearm dealer in Indiana and she was advised that her FOID Card was revoked. She called the Illinois State Police (ISP) the next day. ISP informed her that she had a domestic battery and that she was prohibited from having a FOID Card. She did receive a revocation letter (dated July 27, 2012) shortly thereafter. ***See Petitioner's Exhibit # 1 from the January 20, 2016 hearing.*** Shawna Johnson said that, after she received the revocation letter, she put her FOID Card in an envelope to mail it back to ISP as instructed. She thought she had mailed the envelope at that time. But, according to Johnson's further testimony, which this court believes, she misplaced the envelope which contained the FOID Card along with some other important papers and indeed did not mail it back to ISP at that time (July 2012). On August 16, 2012, Shawna Johnson completed and mailed a letter to the ISP asking them to review the decision to revoke her FOID Card. Johnson said she never received a response to this letter. ISP denies they ever received it. The court believes Shawna Johnson's testimony that she mailed the letter to ISP shortly after she drafted it. ***See Petitioner's Exhibit # 2 from the January 20, 2016 hearing.***

Subsequently, Johnson received a letter from ISP, dated August 1, 2013, stating that they had not received her FOID card back as requested (in the July 27, 2012 letter) and that she must send it back or be charged with a misdemeanor. ***See Petitioner's Exhibit # 3 from the January 20, 2016 hearing.*** In response to this letter, Johnson searched her papers, found her FOID Card in the envelope she thought she'd mailed, and took the FOID Card to the Wabash Count Sheriff, so that it could be returned to ISP. At that time, she also filled out a form indicating that she herself did not possess any firearms. ***See Petitioner's Exhibit # 4 from the January 20, 2016 hearing.*** Shawna Johnson and her husband, Jerry Johnson, both testified about how Jerry owns/has title to all the guns in their home and that all guns and ammunition are locked up, with key or combination locks, and that only Jerry and not Shawna has access to and knowledge of the keys and combinations to the locks. Thus, Shawna Johnson testified that, if someone broke

into her home, she would be unable to use any of the guns to protect herself or her thirteen year-old step-daughter.

Shawna Johnson also testified about being hit by Michael Korstick in February, 2001 and her subsequent order of protection against him, which she later had dismissed in March 2001. Korstick was also charged and prosecuted for the February 2001 incident. ***See Wabash County Case No. 2001-CM-31 of which the court has taken judicial notice.***

Shawna Johnson also testified about her other efforts to remove her battery conviction and to have her FOID Card restored. Shawna Johnson filed for a pardon back in (March) 2012. In fact, she had applied for this pardon before she learned that her FOID Card had been revoked. Finally, almost four years later on January 2, 2016 – just a couple of weeks before the January 20, 2016 hearing - Shawna Johnson got a letter from the Governor/Prison Review Board of the State of Illinois, stating that her request for pardon had been denied. ***See Petitioner's Exhibit # 5 from the January 20, 2016 hearing.***

Shawna Johnson testified that she has not been arrested since the incident in question in March 2001 – over 17 years ago. As to the rest of her criminal history, she has had a couple of "seat belt tickets." And, in 1991, she was convicted of a battery and fined $ 1 in Wabash County Circuit Court, relating to an altercation with another (non-related) woman (babysitter). Johnson described the details of this 27 year old offense. **Other than the two battery convictions and the "couple of seat belt tickets," Shawna Johnson has led a law-abiding life.**

Apparently, Shawna and Michael Korstick were initially married, divorced and then got back together and re-married in 1998. Then, as indicated above, they were once and for all divorced and separated in 2010.

Shawna Johnson testified that she believes that she is a pretty responsible person. She said she went through actually two divorces with Michael Korstick and that she did not try to hurt him at any other time except the battery conviction. Shawna said she knows how to use a firearm. She does not want to hurt anyone. She said she learned a lot from her relationship with and being married to Michael Korstick. She does not want her daughters to have to go through any of the pain that she endured nor does she want to cause them pain by her own actions.

On cross-examination by the Attorney General, Shawna Johnson said that in her petition for a pardon, she presented letters of reference and explained the circumstances of her battery conviction much as she had to the court in the hearing on January 20, 2016. She said she didn't believe she left anything out of that petition for pardon.

Michael McWilliams, a Sergeant with the City of Mt. Carmel Police Department (MCPD) also testified on behalf of Petitioner. McWilliams had been with MCPD for 11 years. Just as Retired Trooper Larry Blaize had done, McWilliams talked about the "clear and present danger affidavit," which he said is a form provided by the State of Illinois and which is used by law enforcement officers and school officials to document and report threatening statements or actions of individuals whom such officers/officials believe might present a danger if they were allowed to have a firearm and to potentially convince the appropriate agency(ies) to revoke the

FOID card(s) of such individual(s). McWilliams said he'd known Shawna Johnson and her husband for approximately 7 years at the time of his testimony as the Johnson's had provided maintenance for the MCPD squad cars. And, he'd also known Ms. Johnson through her prior employment at "2Go's," a local gas station/convenience store. McWilliams testified that he'd also known and dealt with Shawna Johnson's ex-husband, Michael Korstick. McWilliams described Michael as "unreasonable" and "very difficult to deal with" as he would "get worked up and agitated over certain situations." As to McWilliams' many dealings with Shawna Johnson, however, McWilliams said that she had "never showed [him] any behavior whatsoever that would be concerning to [him]" and that [to his] knowledge, she has always been honest and truthful with [him]. … and that he'd [n]ever seen anything out of the way with her behavior that would alarm [him] in any way, shape or form." McWilliams also testified that he believed Shawna Johnson has a fine reputation and is well-respected in the Mt. Carmel/Wabash County, Illinois community. McWilliams also said that, during his time on the MCPD, he is not aware of Ms. Johnson being arrested or law enforcement having any difficulty with her. McWilliams said that he was "without a doubt" comfortable with Shawna Johnson possessing a firearm.

Wabash County Sheriff's Deputy D-Ray Etzkorn testified on behalf of Shawna Johnson. Etzkorn had been a full-time deputy for 19 years. He had known Shawna Johnson for over 20 years. Etzkorn knew Shawna Johnson through her work with her various employers. Etzkorn actually worked with Johnson's ex-husband, Michael Korstick, in the "clean-up shop" of a local car dealership in the late 1970's and/or early 1980's. Etzkorn described Michael Korstick "fairly jovial" on a day-to-day basis. But, Etzkorn said that Korstick was "quite prone to temper tantrums," that Korstick could "become agitated and quite often he became very animated." Etzkorn said that if Korstick lost his temper Korstick was prone to throw things, curse, and that Korstick could actually become so irritated that he would start to shake.

Etzkorn said that over the 20 years he has known her, Shawna has always been a friendly and outgoing individual. Etzkorn testified that he'd never had any issues with Shawna. Etzkorn further testified that he would not have any concerns about Shawna Johnson possessing firearms or a FOID card. Etzkorn said Shawna has been a very family-oriented person and that she looks out for her family. Etzkorn testified that, as far as he knew, Ms. Johnson seems to be well-liked. And, Etzkorn said he consider Ms. Johnson to be well-respected in the community.

Etzkorn was a deputy at the time of Shawna Johnson's battery conviction in question in 2001. Etzkorn said he had reviewed the report form the 2001 incident. Etzkorn testified that, notwithstanding Shawna Johnson's 2001 battery and prior 1991 battery convictions, he would believe Ms. Johnson would be safe with a gun, he would trust her with a gun and that he had never seen any reason or had any reason to think that she would act in a manner dangerous to the public safety.

Former Wabash County Sheriff Arnold "Joe" Keeling also testified on behalf of Shawna Johnson. Keeling was a two-term sheriff of Wabash County, Illinois from 2006 to 2014. Keeling started in law enforcement in 1989 and even worked as a deputy assigned to the Illinois State Police Drug Task Force for a period of time. Keeling actually arrested Michael Korstick for drugs. Keeling said he'd dealt with Korstick 4-5 times, including seeing Korstick at

his employment location(s). Keeling said Korstick had "kind of a lack of respect for any kind of authority" and "he like had a chip on his shoulder" and he "got pretty hot tempered sometimes."

Keeling also discussed the "clear and present danger" forms consistent with testimony of the other officers. Keeling said that he had completed such a form 2 to 3 times regarding individuals whom he believed should not possess a firearm or FOID Card.

Keeling testified that he'd known Shawna Johnson for 20-25 years. Over the lengthy period of time, Keeling said that he has known Shawna to be "pretty easygoing, good to work with, good to talk to, seems like a pretty good person." Keeling said he'd "never had any other dealings with her other than good."

Keeling further testified about meeting with Shawna Johnson in his office in August of 2013 when she signed a firearm disposition record and turned over her FOID Card to then Sheriff Keeling. ***See Exhibit 4.*** Keeling testified that Shawna Johnson was "complying with the law 100 percent" but that she was "definitely upset about the process" of and the fact that she was losing her FOID Card.

As to Shawna Johnson's reputation, Keeling said that "Shawna has a good reputation … [that] everybody likes her … and no one has really had any problems with her." And, he said she is a "well-respected person." Keeling was aware of Shawna's 2001 and 1991 battery convictions. Nonetheless, Keeling said he would not have any concerns about Shawna Johnson having a firearm. Keeling said that during the 20-25 years he's known Shawna Johnson, he had never seen her do anything that was illegal, rude or disrespectful to anybody nor had she done anything that would make him believe that she would do anything to harm anyone.

Mt. Carmel Police Chief John Lockhart testified on behalf of Shawna Johnson. Lockhart had been with the MCPD for 19 years and he'd known Shawna Johnson for 15 years at the time of his testimony. Initially he'd met Johnson as she was neighbor to his parents. But, he also met Johnson professionally as he was the officer responding to the complaint which resulted in Ms. Johnson's arrest for domestic battery in February, 2001, and which eventually resulted in a conviction for battery for Ms. Johnson. The officer who arrested Shawna Johnson (the day after the incident (Corporal Johnson) was no longer with the MCPD. Lockhart reviewed, identified and referred to his own police report from the incident in question. ***See Exhibit 6.*** Michael Korstick was observed to have a bloody nose or otherwise appeared to be injured at the time.

Chief Lockhart also recalled numerous times when he'd had contact with Michael Korstick when Korstick was often intoxicated, agitated, animated, and hard to talk or reason with.

Lockhart testified at the hearing that he then had almost daily contact with Shawna Johnson at her place of employment. As had the other officers in their testimony, Lockhart discussed the "clear and present danger" report forms that he has used and completed during his law enforcement career. Lockhart testified that, based upon his experience in law enforcement, and his knowledge or opinion of Shawna Johnson and her reputation in the community, that

Shawna Johnson is "one of the few people that [he's] dealt with that [he would] have no hesitation whatsoever on her ability and common sense to own a firearm." Lockhart continued, "I find no reason why she should not. I have no indications, other than the one report, of her being violent or anything unlawful that I'm aware of. She's had a good record and a good rapport within the community. And to be honest with you, I have people out there now that have FOID cards and even concealed carry that I would be more concerned about than I would Mrs. [Johnson]." Lockhart said that he did not believe that Shawna Johnson is someone who would be likely to act in a manner dangerous to public safety if she were issued a FOID card. Lockhart said this was true even after he was made aware of and also considered Ms. Johnson's previous (1991) battery conviction related to the dispute with a babysitter.

Shawna Johnson's husband, James "Jimmy" Johnson, testified on Shawna's behalf. Shawna and Jimmy had been married for 7 years at the time of the hearing. But, they've known each other, through working at common employers, for several years before that. The Johnson's (Jimmy and Shawna) now run an auto maintenance business out of their residence where they service fleet vehicles, including squad cars for local law enforcement agencies.

Jimmy Johnson also knew Michael Korstick, he worked for a time with both Shawna and Michael Korstick and he testified that had observed them together and how Michael Korstick treated Shawna. Jimmy Johnson testified that Korstick would call Shawna an "F'ing bitch" and other demeaning things.

Jimmy Johnson testified that he himself has a FOID Card and even an Illinois "Concealed Carry" permit. He said he'd been a gun owner for over 20 years and that he'd gone through 16 hours of training to get his concealed carry permit. Mr. Johnson said named the several firearms that he has at his home under lock and key or combination lock and that Shawna did not have access to the key or the combination for the two gun safes at their home. He said that since Shawna lost her FOID card, she has "never" been allowed to possess a firearm or ammunition. Jimmy Johnson said that Shawna has never struck him or threatened to hit him. He said that he would have no fear if Shawna would again be allowed to have a FOID Card and a firearm.

II. Applicable Federal Statutes

The Federal Gun Control Act of 1968 prohibits possession of a firearm by any person convicted of a felony. 18 U.S.C. § 922. In 1996, Congress extended the prohibition to include individuals convicted of a misdemeanor crime of domestic violence. **18 U.S.C. § 922(g)(9).** The Federal Gun Control Act defines "a misdemeanor crime of domestic violence" as an offense that:

> (i) is a misdemeanor under Federal, State, or Tribal law; and
> (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." **18 U.S.C. § 921(a)(33)(A).**

In ***U.S. v. Hayes, 555 U.S. 415 (2009),*** the U.S. Supreme Court held that misdemeanors, such as Ms. Johnson's conviction for Battery, can/do bar the possession of firearms and ammunition under the Federal Gun Act (**18 U.S.C. § 922(g)(9)**) even though the predicate offense does not include/allege the existence of a domestic relationship between the offender and the victim as a discrete element of the offense. ***Hayes, 555 U.S. at 421.***

As argued by the ISP, even as here in the instant case, where a charge of Domestic Battery was amended to Battery, and, where the discrete or specifically alleged element of the domestic relationship between the offender and the victim has been removed/amended-out of the charging document/Information, it appears that 18 U.S.C § 922(g)(9) still bars the offender from possessing a firearm or ammunition if, in reality, there was one of the domestic relationships as delineated in the federal statute in existence between the offender and the victim. ***See 18 U.S.C. § 922(g)(9) and 18 U.S.C. § 921(a)(33)(A).***

However, federal law also includes certain exceptions/exemptions which, if applicable to the specific facts of a certain case, would negate the conviction for a misdemeanor crime of domestic violence and remove the federal bar to possession of a firearm and ammunition. These exceptions, set-forth in section **921(a)(33)(B)(ii)** of Title 18 **(18 U.S.C. § 921(a)(33)(B)(ii))** (Supp. II 1996)), provide that:

> "... a person shall not be considered to have been convicted of misdemeanor domestic violence if the conviction has been expunged or set aside, if the person has been pardoned, or if the person's "civil rights" have been "restored." **See 18 U.S.C. § 921(a)(33)(B)(ii)**.

This court, along with the parties and counsel in this case, have waded – via various hearings on Motions to Dismiss and a Motion for Summary Judgment - through all possible exceptions and exemptions stated under the above-sited federal statutes and the court has ultimately found that none of the above-recited exceptions or exemptions are available/provide relief to Shawna Johnson.

III. Applicable Illinois Statutes

The Illinois Firearms Owner's Identification Act (FOID Act) is found at 430 ILCS 65/0.01 et.seq. The Illinois General Assembly amended Section 10 (c) of the FOID Act effective January 2013, adding language stating that a court may grant relief (the issuance of a FOID card) only where the granting of such relief would not be contrary to federal law.

430 ILCS 65/10
65/10. Appeal to director; hearing; relief from firearm prohibitions.

"§ 10. Appeal to director; hearing; relief from firearm prohibitions.

(a) Whenever an application for a Firearm Owner's Identification Card is denied, whenever the Department fails to act on an application within 30 days of its receipt, or whenever such a Card is revoked or seized as provided for in Section 8 of this Act, the aggrieved party may appeal to the Director of State Police for a hearing upon such denial, revocation or seizure, unless the denial, revocation, or seizure was based upon a forcible felony, stalking, aggravated stalking, domestic battery, any violation of the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or the Cannabis Control Act that is classified as a Class 2 or greater felony, any felony violation of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012, or any adjudication as a delinquent minor for the commission of an offense that if committed by an adult would be a felony, in which case the aggrieved party may petition the circuit court in writing in the county of his or her residence for a hearing upon such denial, revocation, or seizure.

(b) At least 30 days before any hearing in the circuit court, the petitioner shall serve the relevant State's Attorney with a copy of the petition. The State's Attorney may object to the petition and present evidence. At the hearing the court shall determine whether substantial justice has been done. Should the court determine that substantial justice has not been done, the court shall issue an order directing the Department of State Police to issue a Card. However, the court shall not issue the order if the petitioner is otherwise prohibited from obtaining, possessing, or using a firearm under federal law.

(c) Any person prohibited from possessing a firearm under Sections 24-1.1 or 24-3.1 of the Criminal Code of 2012 or acquiring a Firearm Owner's Identification Card under Section 8 of this Act may apply to the Director of State Police or petition the circuit court in the county where the petitioner resides, whichever is applicable in accordance with subsection (a) of this Section, requesting relief from such prohibition and the Director or court may grant such relief if it is established by the applicant to the court's or Director's satisfaction that:

(0.05) when in the circuit court, the State's Attorney has been served with a written copy of the petition at least 30 days before any such hearing in the circuit court and at the hearing the State's Attorney was afforded an opportunity to present evidence and object to the petition;
(1) the applicant has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within 20 years of the applicant's application for a Firearm Owner's Identification Card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction;
(2) the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his reputation are such that the applicant will not be likely to act in a manner dangerous to public safety;
(3) granting relief would not be contrary to the public interest; and
(4) granting relief would not be contrary to federal law." **See 430 ILCS 65/10.**

430 ILCS 65/8
65/8. Grounds for denial and revocation

"§ 8. Grounds for denial and revocation. The Department of State Police has authority to deny an application for or to revoke and seize a Firearm Owner's Identification Card previously issued under this Act only if the Department finds that the applicant or the person to whom such card was issued is or was at the time of issuance:

> (n) A person who is prohibited from acquiring or possessing firearms or firearm ammunition by any Illinois State statute or by federal law;

Upon revocation of a person's Firearm Owner's Identification Card, the Department of State Police shall provide notice to the person and the person shall comply with Section 9.5 of this Act." **See 430 ILCS 65/8.**

430 ILCS 65/13
65/13. Acquisition or possession prohibited by law

"§ 13. Nothing in this Act shall make lawful the acquisition or possession of firearms or firearm ammunition which is otherwise prohibited by law."

See 430 ILCS 65/13.

As this court has determined after consideration of the various motions in this case, relief is not available to Shawna Johnson under any of the above Illinois statutes.

Moreover, as established at the evidentiary hearing in January 2016, Shawna Johnson even sought and was denied a pardon by the Governor/Prison Review Board.

IV. Consideration of Applicable Legal Authorities

In the recent Illinois Appellate 5th District case of ***Odle v. Department of State Police, 2015 IL App (5th) 140274 (Ill. App. 5 Dist., November 18, 2015),*** the Illinois Appellate 5th District Court certainly left the door open (and even opined that the ***Coram*** court left the door open) for a potential "As-Applied" challenge to a perpetual firearm ban in an appropriate case.

The ***Odle*** court held that a petitioner in such an appropriate case would have to plead and show that he or she has led a law-abiding life for an extended period of time ***or*** that he or she could present other facts that would distinguish his/her circumstances from those of other persons who have been historically barred from Second Amendment protections due to having domestic violence convictions:

"Finally, we briefly address the petitioner's second amendment arguments. He contends that the interplay between the FOID Act and the federal Gun Control Act could lead to a permanent prohibition on gun ownership. This is because the Gun Control Act provides that the federal prohibition against acquiring or possessing a firearm as a result of a conviction for a "misdemeanor crime of domestic violence" ends when the person's civil rights are restored, if the state in which the conviction occurred provides for the restoration of civil rights after a conviction. 18 U.S.C. § 921(a)(33)(B)(ii) (2012). In Illinois, however, an individual convicted of a misdemeanor does not lose any civil rights as a result of the misdemeanor and, as such, cannot have any rights restored within the meaning of the Gun Control Act. See *Coram,* 2013 IL 113867, ¶ 18, 375 Ill.Dec. 1, 996 N.E.2d 1057. **The petitioner argues that this result violates his rights to keep and bear arms under the second amendment. As the State Police points out, the petitioner did not raise this constitutional claim before the circuit court. As such, he has forfeited consideration of the issue on appeal.** See *In re Liquidations of Reserve Insurance Co.,* 122 Ill.2d 555, 567–68, 120 Ill.Dec. 508, 524 N.E.2d 538 (1988); *People v. Myles,* 131 Ill.App.3d 1034, 1046, 87 Ill.Dec. 341, 476 N.E.2d 1333 (1985). **Moreover, even if we were to consider the constitutional challenge on its merits, we would reject the petitioner's claim. The rights to keep and bear arms, like other constitutional rights, are**

not unlimited. *District of Columbia v. Heller,* 554 U.S. 570, 626, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). The prohibition on firearm ownership and possession by people convicted of crimes of domestic violence has been upheld repeatedly. *United States v. Skoien,* 614 F.3d 638, 642–44 (7th Cir.2010); *Enos v. Holder,* 855 F.Supp.2d 1088, 1098–99 (E.D.Cal.2012). The rationale behind this prohibition is that people convicted of crimes based on acts of domestic violence pose a danger to members of their families due to a high rate of recidivism. See *Hayes,* 555 U.S. at 426–27; *Enos,* 855 F.Supp.2d at 1098–99. However, both federal and state courts have noted that a lifelong prohibition might raise constitutional questions. See, *e.g., O'Neill,* 2015 IL App (3d) 140011, ¶ 29, 390 Ill.Dec. 367; *Skoien,* 614 F.3d at 645. In *Coram,* our supreme court found it unnecessary to address the constitutional question (*Coram,* 2013 IL 113867, 375 Ill.Dec. 1, 996 N.E.2d 1057), but the court noted that "Congress obviously did not believe it reasonable or necessary to impose a perpetual firearm disability on anyone in the listed categories in section 922(g)." ...The rationale underlying these concerns is the notion that a domestic abuser who has led a law-abiding life for many years may no longer pose the risk to family members that justified the initial ban. See *Skoien,* 614 F.3d at 644. We note that while the petitioner in this case does not explicitly make these arguments, he does cite *Skoien* in support of his otherwise conclusory contention that a perpetual prohibition violates his rights under the second amendment. **The petitioner contends that a perpetual or lifelong ban on firearm ownership is unconstitutional. He does not specify whether he is arguing that the statutes at issue are unconstitutional on their face or unconstitutional as applied to him. Courts that have considered similar arguments have treated them as challenges to the statutes as applied.** See, *e.g., Skoien,* 614 F.3d at 645; *Enos,* 855 F.Supp.2d at 1099; see also *Coram,* 2013 IL 113867, ¶ 18, 375 Ill.Dec. 1, 996 N.E.2d 1057 (stating that the circuit court in that case found the FOID Act prohibition to be unconstitutional as applied to Coram). **The petitioner in this case is not in a position to make such a claim. As discussed previously, the petitioner pled guilty late in 2011 to a charge based on events that took place earlier that year. He petitioned for review less than two years later, in March 2013. Thus**, **he is not someone "who has been law abiding *for an extended period* " of time after his conviction (emphasis added) (*Skoien,* 614 F.3d at 645). Nor has he alleged any other facts "that distinguish his circumstances from those of persons historically barred from Second Amendment protections" due to domestic violence convictions (*Enos,* 855 F.Supp.2d at 1099 (explaining that such allegations are necessary to sustain an as-applied constitutional challenge (citing *United States v. Barton,* 633 F.3d 168, 174 (3d Cir.2011)))). As such, he has not provided us with any basis to find that an otherwise constitutional statutory scheme is not constitutional as applied to him. See *Skoien,* 614 F.3d at 645 (explaining that an individual "to whom a statute properly applies can't obtain relief based on arguments that a differently situated person might present").** Thus, even if the petitioner had not forfeited his constitutional claim, we would reject it. For the foregoing reasons, we deny the petitioner's motions to correct misnomer and dismiss the appeal, and we reverse the order of the circuit court."

See ***Odle v. Department of State Police, 2015 IL App (5th) 140274 (Ill.App. 5 Dist., November 18, 2015).***

Subsequent to its opinion in ***Odle***, in the case of ***Bailey v. The Department of State Police***, 2016 IL App (5th) 140586 (Appellate Court of Illinois, Fifth District)(March 3, 2016), the Illinois 5th District Appellate Court again made it clear that, post ***Coram*** and the 2013 amendments, Illinois courts can no longer order the issuance of a FOID Card under 430 ILCS 65/10 when the defendant/applicant was convicted of crime involving domestic violence and if the defendant/applicant possessing firearms would violate federal law. The 5th District Court stated:

> "Before concluding, we take this opportunity to discuss the FOID Act and the ramifications this court has observed as a result of the 2013 amendments. Members of the criminal justice system have failed to recognize that a trial court can no longer require the issuance of a FOID card, when faced with a conviction involving domestic violence. See 430 ILCS 65/10(b) (West 2012) (the circuit court "shall not" issue an order directing the Department to provide an applicant with a FOID card where the applicant is "otherwise prohibited from obtaining, possessing, or using a firearm under federal law"). It does not matter if a plea is involved or if the crime is a felony or a misdemeanor. The severity of the crime is irrelevant; rather, it is the nature of the crime that is germane. Further, it is not important whether the criminal conviction is for a misdemeanor that contains the words "domestic violence." A simple "battery" conviction may suffice for the decision to revoke a FOID card based on the underlying circumstances.
> See ***Odle***, **2015 IL App** (**5th**) **140274**, **398 Ill.Dec**. **313**, **43 N.E**.**3d 1223**. The Department has the obligation to investigate the circumstances of the crime, as it did in ***Odle***, and determine whether the criminal actions involved violence of a domestic nature. "The rationale behind this prohibition is that people convicted of crimes based on acts of domestic violence pose a danger to members of their families …." ***Odle***, **2015 IL App** (**5th**) **140274**, **398 Ill.Dec**. **313**, **43 N.E**.**3d 1223**. … Perhaps our legislature should have considered requiring that the Department be named as a nominal party in a section 10 proceeding involving a request for the issuance of a FOID card. Alternatively, our lawmakers could have required that the Department be given notice of circuit court proceedings pursuant to section 10 of the FOID Act. Regardless of whether any action is taken to address the complexities brought about by the 2013 amendments to the FOID Act, it is now clear that the Act does not allow FOID cards to be issued to individuals who have been convicted of crimes that involve domestic violence."

See Bailey v. The Department of State Police, 2016 IL App (5th) 140586.

In another case decided after the ***Odle*** case (and after the evidence and briefs were concluded in the instant case), the 3rd District Appellate Court in ***People v. Heitmann, 2017 IL App (3d) 160527 (Ill. App. 3d Dist., October 2, 2017)*** again indicated that an "as applied" challenge might be granted in an appropriate case. However, the Court found that Joseph Lane Heitmann, the Petitioner who sought reinstatement of his FOID Card, was premature in presenting his "as applied" challenge because he had not yet sought a pardon from the Illinois Governor/Prison Review Board. Like Shawna Johnson, Mr. Heitmann had pleaded guilty to battery (in 1990) for grabbing the arm of his then-wife, dumping beer on here, and throwing two lit cigarettes at her. He was convicted and sentenced to a fine of $ 150. After his plea and conviction, Heitmann continued to possess a (valid) FOID Card. Then, 24 years later, in 2014, Heitmann applied for a concealed carry permit. In the process of investigating Heitmann for such permit, the State Police turned up Heitmann's (domestic violence) battery conviction, rejected his concealed carry permit and revoked Heitmann's FOID Card. Heitmann filed a petition in the Circuit Court of Bureau County seeking relief from the ISP's revocation of his FOID Card. Eventually, after the ISP was allowed to intervene, the trial court dismissed Heitmann's petition. Heitmann appealed to the 3rd District Appellate Court and argued that granting him a FOID card would not be contrary to federal law, and the FOID Card Act is unconstitutional as applied to him because it amounts to a perpetual firearm ban. The 3rd District Appellate Court affirmed the trial court's dismissal of Heitmann's petition and specifically held that: (1) Illinois circuit courts may no longer remove the federal ban on firearm ownership by those convicted of domestic battery; (2) gun rights do not fall under the rights covered by the civil rights restored language of the federal Gun Control Act of 1968 (Gun Control Act) (18 U.S.C. § 921(a)(33)(B)(ii) (2012));

(3) even if gun rights were civil rights, Illinois does not provide a mechanism for restoration of such rights; and (4) the "safety valve" provision of the Gun Control Act provides no remedy to petitioner. The 3rd District Appellate Court further held that that granting Mr. Heitmann a FOID card would be contrary to federal law. And, moreover, the Appellate Court found that Heitmann's "as-applied" challenge was premature because Heitmann had not yet availed himself of every remedy available to him. Specifically, Heitmann had not yet applied for a pardon. ***See People v. Heitmann, 2017 IL App (3d) 160527 (Ill. App. 3d Dist., October 2, 2017).***

In ***Baumgartner v. Greene County State's Attorney's Office and The Illinois State Police, 2016 IL App (4th) 150035 (Ill. App. 4th Dist., March 31, 2016),*** Appellant and FOID Card applicant, Kyle Baumgartner was denied a FOID Card by the Illinois State Police (ISP) based on his criminal record, which included misdemeanor conviction for domestic battery. Baumgartner filed petition for relief in the Circuit Court of Greene County, Illinois. The trial court initially granted Baumgartner relief, but subsequently granted the ISP's motion to intervene, vacated the order requiring the issuance of the FOID Card and ultimately denied/dismissed Baumgartner's petition. On appeal, the 4th District Appellate Court made holdings consistent with other post-***Coram*** appellate courts decisions Odle (5th), Bailey (5th), Heitmann (3rd), held that: (1) the Illinois Firearm Owners Identification Card Act bars relief where applicant is prohibited by federal law from possessing firearm; (2) Baumgartner did not lose any civil rights and, thus, he could not have had any restored to remove his federal firearm disability; and (3) Although Baumgartner had forfeited because he had not raised his "as applied" challenge, the Appellate court would nonetheless have denied Baumgartner's "as applied" challenge based up the facts of his case because Baumgartner (like Heitmann) had not availed himself of one potential avenue of relief – Baumgartner had not yet applied for a pardon.

In discussing Baugartner's "as–applied" constitutional challenge, as well as the facts, law and considerations a court should weigh to resolve such a challenge, the 4th District Appellate Court stated:

> "On appeal, plaintiff's final contention is that the FOID Act and the Gun Control Act are unconstitutional as applied to him. He maintains that, because he established himself before the circuit court as a law-abiding individual, interpreting section 10 of the FOID Act and section 922(g)(9) of the Gun Control Act as prohibiting him from possessing a firearm violates his second amendment rights to keep and bear arms (U.S. Const., amend. II). ISP responds that plaintiff forfeited his constitutional challenge on appeal by failing to raise the issue in the circuit court. Alternatively, it maintains plaintiff's claim is without merit because there is no certain lifetime ban preventing him from possessing a firearm. In its *amicus curiae* brief, the United States takes the same position as ISP. Whether a statute is unconstitutional is a question of law subject to *de novo* review." ***Lebron v. Gottlieb Memorial Hospital, 237 Ill.2d 217, 227, 341 Ill.Dec. 381, 930 N.E.2d 895, 902 (2010)***. However, when an appellant has failed to raise his constitutional claim before the circuit court, "he has forfeited consideration of the issue on appeal." ***Odle*, 2015 IL App (5th) 140274, ¶ 35, 398 Ill.Dec. 313, 43 N.E.3d 1223** (finding the appellant forfeited his constitutional claim that the interplay between the FOID Act and the federal Gun Control Act violated his rights to keep and bear arms under the second amendment). Additionally, "[a] court is not capable of making an 'as applied' determination of unconstitutionality when there has been no evidentiary

hearing and no findings of fact." ***In re Parentage of John M., 212 Ill.2d 253, 268, 288 Ill.Dec. 142, 817 N.E.2d 500, 508 (2004); see also Lebron, 237 Ill.2d at 228, 341 Ill.Dec. 381, 930 N.E.2d at 902*** (holding that "when there has been no evidentiary hearing and no findings of fact, the constitutional challenge must be facial"). ***"By definition, an as-applied constitutional challenge is dependent on the particular circumstances and facts of the individual defendant or petitioner" and, "[t]herefore, it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review." People v. Thompson, 2015 IL 118151, 398 Ill.Dec. 74, 43 N.E.3d 984.*** Although plaintiff acknowledges that he failed to raise an as-applied constitutional challenge in the circuit court, he asks this court to excuse his forfeiture on the basis the circuit court heard and considered evidence in connection with his petition under section 10 of the FOID Act and because the State certainly could have presented evidence [during the hearing on his section 10 petition] but chose not to. Here, we decline to excuse plaintiff's forfeiture. As stated, the hearing before the circuit court concerned plaintiff's request for relief under section 10 of the FOID Act. ***At no time during the underlying proceedings did the court consider or make factual findings relative to an as-applied constitutional challenge to the FOID Act or the federal Gun Control Act.*** Moreover, the hearing at issue occurred prior to ISP's intervention in the underlying proceedings. ISP was ultimately allowed to intervene, in part, based on claims that the State's Attorney's office—the original respondent in the matter—was not sufficiently representing ISP's interests. Thus, although the State's Attorney's office was present at the hearing and could have presented contrary evidence to that presented by plaintiff, ISP did not have the same opportunity. Finally, even if we were inclined to excuse plaintiff's forfeiture, we question the appropriateness of reaching the merits of his as-applied constitutional claim under the circumstances presented by this case. In ***Coram, 2013 IL 113867, 375 Ill.Dec. 1, 996 N.E.2d 1057***, the circuit court held section 922(g)(9) of the federal Gun Control Act was unconstitutional as applied to the appellee, an individual denied a FOID card by ISP, and ISP appealed. On review before the supreme court, the dissent noted the constitutional question presented by the appeal but found it to be premature. ***Coram, 2013 IL 113867, 375 Ill.Dec. 1, 996 N.E.2d 1057 (Theis, J., dissenting, joined by Garman, J.)***. We find the dissent's reasoning instructive. The dissent noted that under section 921(a)(33)(B)(ii) of the Gun Control Act (18 U.S.C. § 921(a)(33)(B)(ii) (2006)), "an individual convicted of misdemeanor domestic violence potentially has three avenues of relief from the federal [firearms] ban," *i.e.*, having their conviction expunged, being pardoned, or having their civil rights restored. ***Coram, 2013 IL 113867, 375 Ill.Dec. 1, 996 N.E.2d 1057 (Theis, J., dissenting, joined by Garman, J.).*** The dissent further stated that, "[i]n Illinois, the constitution gives the Governor the unfettered authority to 'grant … pardons, after conviction, for all offenses on such terms as he thinks proper' " and noted "[t]he pardon power is extremely broad." ***Coram, 2013 IL 113867, 375 Ill.Dec. 1, 996 N.E.2d 1057 (Theis, J., dissenting, joined by Garman, J.). (quoting Ill. Const.1970, art. V, § 12)***. It then determined as follows: "Where [the appellee] has not availed himself of a potential state remedy available to him under the statute, we need not and should not determine whether the statute is an unconstitutional perpetual ban which violates his second amendment rights. A remedy does not become unavailable merely because it is discretionary or resort to it may fail. It is not futile without ever being tried. Thus, where it is yet unknown whether [the appellee] can satisfy section 921(a)(33)(B)(ii), the question of '[w]hether a misdemeanant who has been law abiding for an extended period must be allowed to carry guns again, even if he cannot satisfy [section] 921(a)(33)(B)(ii), is a question not presented today.' [Citation]." ***Coram, 2013 IL 113867, 375 Ill.Dec. 1, 996 N.E.2d 1057 (Theis, J., dissenting, joined by Garman, J.).*** Like in ***Coram***, plaintiff in this case has a potential state remedy available to him, which could result in the removal of his federal firearm disability. Nothing in the record indicates he has attempted to avail himself of that potential remedy. As a result, his constitutional claim is premature. … On appeal, ISP argues plaintiff's felony conviction for unlawful possession with the intent to deliver cannabis also renders him ineligible for possession of a FOID card. However, given our resolution of the other issues presented for review in this case, we find it unnecessary to address this alternative claim. … For the reasons stated, we affirm the circuit court's judgment."

See Baumgartner v. Greene County State's Attorney's Office and The Illinois State Police, 2016 IL App (4th) 150035 (Ill. App. 4th Dist., March 31, 2016).

It is interesting, instructive and important to this court that Mr. Heitmann's case is very similar Shawna Johnson's case, at least in the fact that Heitmann essentially committed a

domestic battery but pled guilty to a battery charge. Also, Heitmann got to keep his FOID Card for a (long) period of time after he was convicted of a battery which involved his wife. The 3rd District acknowledges and leaves the door "wide open" to the possibility that, if Heitmann were to seek but be denied a pardon, his "as applied" constitutional claim would then be "ripe" and he would be in a position to pursue such as he would have then exhausted all remedies under Illinois law (as applied in concert with federal law) other than such "as applied" challenge. Indeed, had Heitmann pursued and been denied a pardon, he would be in the exact same legal position as this court finds Shawna Johnson in today.

Unlike the FOID Card applicants in *Odle*, *Heitmann* and *Baumgartner*, Shawna Johnson *did* seek a pardon from the Illinois Governor/Prison Review Board. Her request for a pardon was denied on December 23, 2015, just 5 days before she filed her Second Amended Petition – the petition at issue – on December 28, 2015. Shawna Johnson has pursued every other available statutory remedy or avenue for relief. All have led to a dead end. Her "as applied" challenge is not only "ripe," but, this court holds, it should bear fruit as her request to have her FOID Card reinstated must be granted.

V. Opinion and Analysis of Shawna Johnson's Second Amended Petition and Her Second Amendment "As Applied" Challenge

1. This Court has subject matter jurisdiction. As the Petitioner argues and as this court has previously found, 430 ILCS 65/10(a) granted/grants the Petitioner the right to petition the Circuit Court of Wabash County, Illinois to seek relief from the revocation of her F.O.I.D. card by the Respondent-ISP because of her battery conviction. In ruling on the various motions to date, including the motions for summary judgment, the court has determined that, "as-applied" to Petitioner, the state and federal statutory scheme prohibit the court from ordering ISP to re-issue Ms. Johnson's a F.O.I.D. card, short of a determination in her favor regarding her "as-applied" Constitutional challenge. The court previously granted the Petitioner leave to plead and pursue her "As-Applied" claim. The Respondent and the Wabash County State's Attorney have had more than adequate notice of such claim. And, this court has subject matter jurisdiction and the authority to hear such Constitutional claim. ***See: Coram v. State of Illinois, 2013 IL 113867, 375 Ill.Dec. 1, 996 N.E.2d 1057(Ill. 2013); O'Neill v. Director Of The Illinois Department Of State Police, 2015 IL App (3d) 140011 (Ill. App. 3d Dist., March 11, 2015); and, Odle v. Department of State Police, 2015 IL App (5th) 140274 (Ill.App. 5 Dist., November 18, 2015).***

2. The Second Amended Petition sufficiently alleges a Constitutional Violation/"As Applied" challenge and a "Perpetual" Ban. The Court has previously found and stated that the Petitioner's Second Amended Petition sufficiently alleges facts to support Petitioner's

Constitutional ("As-Applied") Claim, to put Respondent on notice of such claim and to make such claim cognizable.

3. <u>The Petitioner's "As-Applied" Constitutional Claim is Cognizable, "Ripe" and Must be Granted</u>. In its October 2015 Order Regarding The Motions For Summary Judgment, this court granted the Petitioner leave to re-plead her constitutional claim when and if such became necessary (i.e. if Petitioner is left with no other resort). In its December 16, 2015 Order, the court reconsidered a portion of that October 2015 Order and determined that Petitioner could not prevail under an argument that her "civil rights were restored" by her pretrial detention. **Thus, as the court then found and now restates, short of a Constitutional "As-Applied" challenge, Petitioner would be perpetually precluded under federal and state law from possessing a firearm. As indicated in both of the court's October 28, 2015 and December 16, 2015 Orders, in that event, this court would need to consider such constitutional ("as applied") challenge.** The Illinois Supreme Court (in ***<u>Coram</u>***), the Illinois Appellate 5th District Court (in ***<u>Odle</u>***) and other Illinois Appellate Courts (e.g. the 3rd District Court in ***<u>O'Neill</u>*** and ***<u>Heitmann</u>***) have all indicated that an "As-Applied" challenge should be considered in the appropriate case. As shown by the testimony and other evidence at the hearing, Petitioner Shawna Johnson has indeed pursued a pardon and has been denied. The denial of the requested pardon was just issued by the Governor/Prisoner Review Board on December 23, 2015 - in the midst of Petitioner being required to file/filing her Second Amended Petition. This court believes that, under the facts of this case, the Petitioner, Shawna Johnson and her counsel have presented a clear, convincing and strong case that supports the Petitioner's "As-Applied" challenge and convinces this court that Shawna Johnson's Second Amended Petition must be granted. ***See: <u>Coram v. State of Illinois</u>, 2013 IL 113867, 375 Ill.Dec. 1, 996 N.E.2d 1057(Ill. 2013); <u>O'Neill v. Director Of The Illinois Department Of State Police</u>, 2015 IL App (3d) 140011 (Ill. App. 3d Dist., March 11, 2015); <u>People v. Heitmann</u>, 2017 IL App (3d) 160527 (Ill. App. 3d Dist., October 2, 2017); and, <u>Odle v. Department of State Police</u>, 2015 IL App (5th) 140274 (Ill. App. 5 Dist., November 18, 2015).***

The Court fully adopts the analysis, including both the recitation of facts and the application of law, in Petitioner's Supplemental Briefing filed herein on March 24, 2016. The court will not here recite such Supplemental Briefing verbatim. But, the court does believe that the analysis of Petitioner's counsel in such Supplemental Briefing is "spot-on" with regard to the discussion about Shawna Johnson's situation considered in light of the factors under 430 ILCS 65/10(c) and especially with regard to the Petitioner's "as applied" challenge to the Federal and State statutes at issue.

A. <u>The Court Finds that the statutory factors under 430 ILCS 65/10(c) strongly support granting Petitioner's requested relief and the reinstatement of her FOID Card and</u>

that, but for 18 U.S.C. Sect. 922(g)(3), Petitioner, Shawna Johnson would be eligible to have her FOID Card reinstated under 430 ILCS 65/10(c):

(1) The circumstances regarding Shawna Johnson's conviction for battery (domestic violence): Petitioner was herself a victim domestic violence and in an abusive relationship with the alleged victim of her crime and her estranged husband Michael Korstick. Ms. Johnson married Korstick after she became pregnant with his child when she was 14 years old and Korstick was 24 years old. Shawna Johnson testified that she called the police to report physical abuse by Korstick some 4-5 times and that there were other incidents of domestic violence that she did not report to the police. The court strongly agrees with Petitioner's counsel that Shawna Johnson was the victim of domestic violence and not the aggressor. In fact, the court finds that this was true not only through Shawna Johnson's entire relationship and contacts with Michael Korstick but also and particularly on the night that she slapped him in the face - an event for which Shawna Johnson ultimately received a battery conviction and which resulted in the loss of her FOID Card.

Shawna Johnson was not represented by an attorney at the plea hearing. She felt pressured by her employer (where Korstick also worked at the time) to take the deal and "to make it go away." Petitioner agreed to and successfully completed a period of conditional discharge including completing counseling and paying a fine. The State's Attorney at that time, Terry Kaid, told Johnson that her plea to and conviction of simple battery would not prevent her from obtaining a FOID Card or possessing firearms after a period of time had passed. As the attorneys for Ms. Johnson argue, this statement by State's Attorney Kaid would have been arguably well-grounded in Illinois law at the time of the plea deal.

(2) Petitioner, Shawna Johnson's Criminal History: Shawna Johnson has no felony record. She has the two battery convictions (in 1991 and 2001) that have been discussed throughout this case and this order. And, she has a "couple of speeding tickets."

(3) Shawna Johnson's Reputation: Five (5) current and former local law enforcement officers – from all levels (City, County and State) - all testified Shawna Johnson's impeccable and impressive reputation in the community for her honesty, reasonable and agreeable disposition, good character, trustworthiness, dependability, and law-abiding nature. These are law enforcement officers who have lived in and served Mt. Carmel, Wabash County and the community where Shawna Johnson has lived, worked and raised her family.

(4) The Public Interest: Again, the court emphasizes that all FIVE (5) of the current and former local law enforcement officers testified in support of Shawna Johnson's efforts to have her FOID Card reinstated. Larry Blaize (retired ISP), Michael McWilliams (current Sergeant with MCPD), Joe Keeling (retired Wabash County Sheriff), D-Ray Etzkorn (current Wabash County Sheriff's Deputy) and John Lockhart (current Chief of MCPD) all testified that they had no concern about public safety or the safety of any individual if Shawna Johnson's FOID Card

was reinstated and she was once again able to possess and use firearms and ammunition. Shawna Johnson previously (even after her two battery convictions) and legally had a FOID Card and possessed and used firearms and ammunition. According to a number of witnesses, while she legally had her FOID Card, Shawna Johnson showed competency, knowledge, safe practices, skill and respect in her use of firearms and ammunition in the context of hunting and target practice. Moreover, there has never been any allegation nor any scintilla of evidence to even hint that Shawna Johnson has ever threatened any violence with or any other illegal or any inappropriate use of any firearm. The public at large would not be in any increased danger if Shawna Johnson had guns. Nor would any of Shawna Johnson's family members or "loved ones." This vast record shows that Shawna Johnson has never physically harmed or threatened any of her family members or "loved ones," with or without a gun. **Also, see the Court's discussion below in Part C.**

B. <u>The Court Finds That Shawna Johnson Has Led A Law-Abiding Life For An Extended Period Of Time Such That ISP's Revocation of Her FOID Card and the State and Federal Statutes Upon Which Such Revocation is Based Are Unconstitutional A Applied to Shawna Johnson</u>.

Shawna Johnson has never been charged with or convicted of a felony. She has no criminal charges or convictions since 2001. She successfully and perfectly completed the conditional discharge order entered as to the battery which still, 17 years after that battery, keeps her from having her FOID Card reinstated. Shawna and her husband have made great efforts to comply and they have complied with all laws in relation to and since the Director of the State Police revoked her FOID Card. Shawna Johnson's law-abiding life has not only been for an extended period of time and nearly the entire extent of her life, but, indeed, the only two blemishes on her record include 2 brief episodes on two different nights a decade apart from each other. **The Court adopts its recitation and analysis herein of all of the other evidence concerning Shawna Johnson's law-abiding life and tremendous reputation. And, the Court again fully adopts the analysis, including both the recitation of facts and the application of law, in Petitioner's Supplemental Briefing filed herein on March 24, 2016.**

C. <u>The Court Finds That Shawna Johnson and Her Counsel Have Presented Other Important Facts Which Distinguish Shawna Johnson and Her Circumstances From Others Historically Barred From Second Amendment Protections Due To Domestic Violence Convictions Such That ISP's Revocation of Her FOID Card and the State and Federal Statutes Upon Which Such Revocation is Based Are Unconstitutional As Applied to Shawna Johnson</u>.

The Court again fully adopts as part of its findings in this Section C, the analysis, including both the recitation of facts and the application of law, in Petitioner's Supplemental Briefing filed herein on March 24, 2016.

Shawna Johnson was not represented by an attorney when she pled guilty to and received a conviction and was sentenced to conditional discharge for battery. However, the court does acknowledge that the Wabash County Circuit Court apparently found that Ms. Johnson (then Ms. Korstick) made a knowing and voluntary waiver of her rights to counsel and to trial when she pled guilty to battery and received conditional discharge.

Terry Kaid, the State's Attorney who negotiated and agreed to Ms. Johnson's plea agreement for conditional discharge not only amended the charge/Information so that Shawna Johnson could plead guilty to and receive a conviction for battery rather than domestic battery, Kaid also told Johnson, when she specifically asked Kaid, that Johnson might lose her FOID Card for a period of time (5 years) but that she should be able to have her FOID Card restored thereafter. This statement by Kaid, which is unrebutted and which was made by the prosecutor and State's advocate in the criminal case that ISP claims forever bars Ms. Johnson from regaining her FOID Card, shows the uncertainty and fluctuation of the application of federal and state law to Ms. Johnson's situation. By this statement, even State's Attorney Kaid indicated he believed Shawna Johnson should be able to eventually get her FOID Card back! Admittedly, Shawna Johnson never petitioned the Wabash County Circuit Court to set-aside her guilty plea and vacate the judgment of conviction within 30 days, within two (2) years or otherwise. But, Ms. Johnson had no reason to believe that this statement by Kaid was potentially not accurate until ISP revoked her FOID Card by letter dated July 27, 2012 – more than eleven (11) years after Johnson pleaded guilty and received her conviction for battery.

It is important and instructive that Shawna Johnson previously (even after her two battery convictions) and legally had a FOID Card and possessed and used firearms and ammunition. According to a number of witnesses, while she legally had her FOID Card, Shawna Johnson showed competency, knowledge, safe practices, skill and respect in her use of firearms and ammunition in the context of hunting and target practice. She has also shown respect for the laws governing the possession and use of firearms. She returned her FOID Card in person to the Sheriff, Joe Keeling. She and her husband, Jimmy Johnson, have taken substantial measures to make sure that Shawna does not have access to firearms or ammunition. And, she has methodically, respectfully and patiently pursued her right to have her FOID Card returned and her right to possess and use firearms restored. Moreover, there has never been any allegation nor a scintilla of evidence to even hint that Shawna Johnson has ever threatened any violence with or any other illegal or any inappropriate use of any firearm.

The Wabash County State's Attorney has not objected to Shawna Johnson's petition.

The witnesses who support Shawna Johnson's petition include a former Illinois State Police Officer, a former Sheriff, a current and long-time Sheriff's Deputy, the current Chief of Police, and a current City Police Officer. Five (5) current and former local law enforcement officers – from all levels (City, County and State) - all testified in support of Shawna Johnson's efforts to have her FOID Card reinstated. Larry Blaize (retired ISP), Michael McWilliams (current Sergeant with MCPD), Joe Keeling (retired Wabash County Sheriff), D-Ray Etzkorn (current Wabash County Sheriff's Deputy) and John Lockhart (current Chief of MCPD) all testified that they had no concern about public safety or the safety of any individual if Shawna Johnson's FOID Card was reinstated and she was once again able to possess and use firearms and ammunition. These officers all discussed Shawna Johnson's impeccable and impressive reputation in the community for her honesty, reasonable and agreeable disposition, good character, trustworthiness, dependability, and law-abiding nature. These are law enforcement officers who have lived in and served Mt. Carmel, Wabash County and the community where Shawna Johnson has lived, worked, been the victim of a very abusive relationship and where she pleaded guilty to make a case "go away" so that she could keep her job and, essentially on her own her, support her daughters. Michael Korstick had abused and battered Shawna repeatedly prior to Shawna's March, 2001 battery of Korstick. In February 2001, one month before the battery in March, Shawna Johnson even obtained an Emergency Order of Protection (EOP) against Michael Korstick her abuser and the eventual "victim" of the (domestic) battery. Although the record clearly reflects that Shawna Johnson established and needed such protective order, she understandably folded to pressure put on her by her (and Mr. Korstick's common) employer, and she moved to vacate the EOP and dismissed her petition. More than 17 years have passed since Ms. Johnson's battery/domestic violence conviction. More than 27 years have passed since she slapped her ex-husband's babysitter. Ms. Johnson has never committed any offense involving a firearm. She is a law-abiding citizen. She and her husband have taken great pains and made great efforts to make sure she complies with revocation of her FOID card, even though she strenuously disagrees with the law's application to her.

Shawna Johnson and her attorneys, Ms. Blakeslee and Mr. Jenson have clearly and convincingly shown facts that certainly distinguish Shawna Johnson's "circumstances from those of persons historically barred from Second Amendment protections" due to domestic violence convictions. It is hard to imagine a case and a set of facts where a Petitioner convicted of a (domestic violence) battery would be more deserving than Shawna Johnson of having her FOID Card and her right to possess a firearm restored. In fact, in none of the many cases – from Illinois or elsewhere - that this court has reviewed over these past several years in its consideration of Shawna Johnson's petition and the many motions preceding this ruling, has this court found an applicant with such strong and unique facts and circumstances as Shawna Johnson and her counsel have presented herein.

Shawna Johnson has only once committed a crime of "domestic violence" and that was not with a firearm. Indeed, even in that ("domestic") battery, Shawna Johnson was not the

aggressor or the abuser. She was actually the victim in and of her own crime. She was the victim on that night in March of 2001. She was fighting-off and trying to flee from her abuser, Michael Korstick. She was also the victim of a cursory (at best) investigation following the incident. Shawna Johnson and other witnesses weren't even interviewed, and, the "victim" had even asked to have the charges dropped. Shawna Johnson was a victim of the court proceedings and pressures following the event which essentially forced her to "make it go away" under the belief that she would lose her job if she didn't plead guilty and that she might lose her FOID Card for a time but she would eventually get it back. **Finally, Shawna Johnson continues to be the victim of that crime and an intricate system of federal and state statutes that perpetually deny her a FOID Card and the use of firearms even though she – as a long-time domestic violence victim and not an abuser - is precisely NOT the type of person who those laws were meant to bar from owning and possessing firearms.**

After the 2013 amendments to the Illinois "FOID Act" (430 ILCS 65/10), and, even though her circumstances and all factors otherwise strongly support granting Shawna Johnson the relief she seeks, she is not eligible because her almost 18 year-old (domestic violence) battery conviction makes her ineligible under Federal law – specifically the 1996 amendments to the Federal Gun Control Act (18 U.S.C. § 922). See 430 ILCS 65/8(n) and 65/10. Her (domestic violence) battery conviction is not eligible for either expungement under Illinois law or the "civil rights restored" exception under Section 18 U.S.C. § 921(a)(33)B(ii). Finally, Shawna Johnson sought and was denied a pardon.

Having considered the facts, the applicable statutes and all other applicable legal authorities, as well as the arguments and recommendations of counsel, THE COURT FINDS AND ORDERS THAT:

SUBSTANTIAL JUSTICE HAS NOT BEEN DONE.

THE COURT FURTHER FINDS THAT, BECAUSE OF THE ISP'S REVOCATION OF AND REFUSAL TO REINSTATE PETITIONER, SHAWNA JOHNSON'S FOID CARD AND BECAUSE OF THE PERPETUAL DENIAL OF HER RIGHT TO POSSESS AND USE FIREARMS, THE FOLLOWING FEDERAL AND STATE LAWS AS APPLIED TO SHAWNA JOHNSON, EACH AND ALL VIOLATE SHAWNA JOHNSON'S RIGHTS UNDER THE SECOND AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES:

(A) 18 U.S.C. Sect. 922(g)(9);

(B) 430 ILCS 65/8(n);

(C) 430 ILCS 65/10(b) and (c)(4); and

(D) 20 Ill.Admin.Code Sect 1230.20 (the Illinois Administrative Code's authorizing provision regarding ISP's application, process and rules for the grant or denial of a request for a FOID Card).

THEREFORE, THE COURT REVERSES THE DECISION OF THE (DIRECTOR OF THE) ILLINOIS STATE POLICE IN ITS DENIAL OF PETITIONER'S REQUEST TO REINSTATE/REISSUE HER A FOID CARD.

FURTHERMORE, THE COURT ORDERS THE RESPONDENT, THE ILLINOIS STATE POLICE – SPECIFICALLY THE DIRECTOR OF THE ILLINOIS STATE POLICE - TO REINSTATE AND REISSUE TO PETITIONER, SHAWNA JOHNSON HER/A FOID CARD, INSTANTER.

THERE IS NO JUST CAUSE FOR DELAY IN THE APPEAL OR ENFORCEMENT OF THIS ORDER.

THE CIRCUIT CLERK IS ORDERED TO PROVIDE FILE-MARKED COPIES OF THIS ORDER TO ALL PARTIES AND COUNSEL OF RECORD.

_____ _____

DATE **JUDGE**