

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS & ST. JOHN

KOSEI OHNO,

Plaintiff,

v.

**HONORABLE MARIO BROOKS,
In his capacity as COMMISSIONER OF
THE VIRGIN ISLANDS POLICE
DEPARTMENT and GOVERNMENT
OF THE VIRGIN ISLANDS,**

Defendants.

3:25-cv-00014-RAM-EAH

**TO: Adam G. Christian, Esq.
Julie Anne Beberman, Esq.**

ORDER

THIS MATTER comes before the Court on a Motion to Amend Complaint, filed on September 4, 2025 by Plaintiff Kosei Ohno. Dkt. No. 36. Defendants, Hon. Mario Brooks and the Government of the Virgin Islands, opposed the motion on October 2, 2025, Dkt. No. 40, and Plaintiff filed a reply on October 24, 2025. Dkt. No. 44. For the reasons that follow, the Court will grant Plaintiff's Motion to Amend Complaint.

BACKGROUND

A. The Initial Complaints

On March 27, 2025, Plaintiff filed his initial complaint against the Defendants, Dkt. No. 1, followed by a First Amended Complaint ("FAC") on April 3, 2025, Dkt. No. 2. In the FAC, Mr. Ohno alleged that he was a principal of Crown Bay Marina, L.P. (the "Marina"), a Virgin Islands entity that owns and operates the Crown Bay Marina on St. Thomas; Defendant Mario Brooks is the Commissioner of the Virgin Islands Police Department ("VIPD"); and Defendant Government of the Virgin Islands ("GVI") is the governing body for the U.S. Virgin Islands.

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 2

Dkt. No. 2, ¶¶ 3-5. Commissioner Brooks was tasked, inter alia, with licensing persons to possess and carry firearms in the Territory and other duties related to firearms found in Title 23, Chapter 5 of the Virgin Islands Code (“Chapter 5”). *Id.* ¶ 6. In 2018, Mr. Ohno applied to the VIPD Firearms Division for a “concealed carry” firearms license for two pistols: a 9 mm P30 HK (“HK”) and a 300 Sig Sauer MCX (“MCX”). *Id.* ¶ 9. The then-Commissioner approved his concealed carry applications in 2018 and his renewal application in 2021. *Id.* ¶¶ 11-13. When Mr. Ohno attempted to renew his concealed carry licenses for both firearms in August 2024, the VIPD refused to accept the applications until he obtained a V.I. Driver’s license. *Id.* ¶¶ 19-20; Dkt. No. 1-1. Mr. Ohno alleged that he resides in Washington State and comes to the Virgin Islands for Marina business; he does not remain in the Virgin Islands such that he would have to obtain a V.I. driver’s license. *Id.* ¶ 22.

In attempting to renew his concealed carry licenses in 2024, Mr. Ohno wrote Commissioner Brooks and the Director of the VIPD Firearms Bureau on October 21, 2024, explaining why Chapter 5 did not require him to have a V.I. driver’s license. *Id.* ¶¶ 21, 23. The letter detailed the reasons he obtained and maintained firearms as the principal of the Marina, including a 2017 scissors attack by a former employee, a 2019 firearm discharge on the property, and a threat against him and other Marina employees resulting from civil litigation. He termed the Commissioner’s decision arbitrary and capricious and asked that his renewal application be granted. *Id.* ¶¶ 24-26. Mr. Ohno did not receive a response until March 12, 2025 at which time Commissioner Brooks denied the application because the MCX was an “assault weapon” under the Virgin Islands Code, had the capacity to be converted into

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 3

a short-barreled rifle under federal regulations, had a removable scope, and was a “military-style or tactical firearm” and not a “standard handgun” under V.I. law. *Id.* ¶¶ 27-29. The Commissioner concluded that a concealed carry license was not available for that type of weapon. *Id.* ¶ 29. The Commissioner’s March 12, 2025 letter did not address Mr. Ohno’s renewal application for the HK firearm; upon requesting clarification, Mr. Ohno was advised that the renewal application for the HK was approved and would be issued. *Id.* ¶¶ 30, 31.

Plaintiff responded in a March 20, 2025 letter, stating that the cited federal regulation did not apply to the Virgin Islands; the MCX was not an assault weapon under V.I. law; and the presence or absence of a scope was not a basis for changing the classification of the firearm under V.I. law. *Id.* ¶ 32. Plaintiff reiterated that the MCX was eligible for a concealed carry license under Chapter 5, that the Commissioner’s decision was an abuse of discretion, and requested issuance of a renewed concealed carry license for the MCX. *Id.* The Commissioner failed to respond, prompting Mr. Ohno to file suit seeking injunctive and declaratory relief. *Id.* ¶ 33. The FAC alleged five counts: (1) violation of Plaintiff’s Second Amendment and Due Process rights; (2) request for mandatory preliminary and permanent injunctive relief; (3) reversal/vacatur of the Commissioner’s decision and a directive to issue a renewed concealed carry license for the MCX; (4) declaratory relief that Chapter 5 is void and unenforceable per the Second Amendment; and (5) declaratory relief that Chapter 5 is void and unenforceable pursuant to the Revised Organic Act § 8(1). *Id.* at 6-9.

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 4

B. Preliminary Injunction Order

On April 29, 2025, Mr. Ohno filed a Motion for a Temporary Restraining Order and Preliminary Injunction seeking to continue in full force and effect his 2021 firearms license for the MCX for the pendency of this litigation. Dkt. No. 12, 13. In their Response, Defendants “consent[ed] to a preliminary injunction extending Mr. Ohno’s concealed carry firearms license for the MCX, with the caveat that Mr. Ohno still must adhere to the status quo of complying with 23 V.I.C. § 455 by applying for renewal of his extended license every three years and meeting all requirements for renewal.” Dkt. No. 24. The Response went on to say that “[s]o long as the litigation is ongoing concerning whether the MCX may be registered for concealed carry, the [VIPD] will not deny the re-extension of Mr. Ohno’s license based on the type of firearm.” *Id.* The Defendants attached a copy of the extended license they proposed to issue to Mr. Ohno. Dkt. No. 24-1. They asked the Court to grant the Plaintiff’s motion and enter an order requiring them to extend his 2021 license pursuant to the above conditions. *Id.* They consulted with the Defendant, who did not agree with having to apply for renewal of the extension every three years until the matter is resolved. *Id.* Mr. Ohno filed a reply in which he reaffirmed that his request for a preliminary injunction should be granted, but opposed the conditions described in Defendants’ response. Dkt. No. 28.

After holding a telephonic conference on May 23, 2025, the District Judge entered a Preliminary Injunction Order on May 26, 2025 that granted Plaintiff’s motion in part. Dkt. No. 30. The Order directed the Defendants to issue a concealed carry firearms license to Mr. Ohno for the MCX pistol, extending the 2021 license through May 23, 2028. *Id.* The Order

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 5

further provided that, if the litigation remained pending in May 2028, Mr. Ohno should apply to Defendants for further extension of the license in accordance with 23 V.I.C. § 455, and that, during the life of the litigation, Defendants shall not deny Plaintiff's application to extend the 2021 MCX license based on the type of firearm, but they could deny the extension for lawful reasons set forth in 23 V.I.C. §§ 456a and 458. *Id.* The Order would remain in effect until final judgment, unless modified by another Court Order. *Id.*

C. Motion to Dismiss Filings

On June 23, 2025, Defendants moved to dismiss this action for lack of jurisdiction due to mootness, arguing that with the granting of Mr. Ohno's concealed carry application and renewal of his license, he had received all of the relief that the Court could afford him, thereby rendering his request for a declaratory judgment invalidating the V.I. firearms statutes and regulations moot. Dkt. No. 33. They argued that Mr. Ohno no longer had an injury-in-fact, and none of the exceptions to the mootness doctrine applied. *Id.*

Mr. Ohno filed an Opposition, asserting that Defendants did not meet their burden to show mootness, the record facts were relevant to both the jurisdictional and merits issues, his case was not mooted by Defendants' decision because the license renewal issues were capable of repetition, and the renewal had no bearing on his challenges to Chapter 5 under the Second and Fourteenth Amendments and the Revised Organic Act. Dkt. No. 34. He also argued that the Defendants did not have the authority to unilaterally change their March 12, 2025 decision and were attempting to engineer a failure of subject matter jurisdiction. *Id.* at 5. Defendants filed a Reply, asserting that the "voluntary cessation" exception to mootness

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 6

did not apply because there was no indication that the Commissioner would revoke, suspend or refuse to renew Mr. Ohno's license in the future. Dkt. No. 35 at 2. No repeal or change to V.I. laws or regulations was needed to moot Mr. Ohno's claims because he had no injury. They reiterated that he was not entitled to any further relief, the Commissioner had jurisdiction to reconsider his decision, and Mr. Ohno's concerns about the V.I. firearms licensing regime were not sufficient for the court to retain jurisdiction. *Id.* at 4-8.

D. Motion to Amend Complaint

On September 4, 2025, Mr. Ohno filed the instant Motion for Leave to Amend Complaint in which he seeks leave to file a "Second Amended and First Supplemental Complaint." Dkt. No. 36. He attached a redlined version of the FAC,¹ Dkt. No. 36-1, showing the proposed amendments. The Court will refer to that document as the "SAC" (Second Amended Complaint), Dkt. No. 36-1. He expands the factual allegations to include events occurring both before and after the events surrounding his license renewal attempt in 2024, which were the focus of the FAC. He also revises the existing causes of action, including setting out in subsections of Counts I, II, and VI his specific challenges to Chapter 5 and the regulations, and adds two more causes of action. *Id.*

The proposed SAC contains new allegations that relate to Mr. Ohno first applying for firearms licenses in the Virgin Islands in 2018 to obtain his initial concealed carry licenses

¹ While Plaintiff filed a redlined version of his proposed SAC, pursuant to LRCi 15.1, he did not file a clean copy of the proposed SAC, which is also required by that Local Rule. The Court will exercise its discretion to overlook that failure to comply with the Local Rule.

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 7

(bringing his firearms to the VIPD, paying fees, ensuring he had a home lockbox, taking a local handgun course, and other requirements), Dkt. No. 36-1 at ¶¶ 15-18, that relate to 2021, when he renewed those licenses, *id.* ¶¶ 21-22; and miscellaneous allegations not related to those events, *id.* ¶¶ 7, 9, 10, 13, 26.

As indicated, some of the new allegations in the proposed SAC concern post-March 2025 events regarding the actual issuance of the licenses for Mr. Ohno's HK and MCX firearms and his subsequent efforts to lawfully bring into the V.I. a noise suppressor and large capacity magazine ("LCM") for his MCX firearm, which the VIPD denied. Dkt. No. 36-1 ¶¶ 44-58. He alleges that, in late June 2025, Plaintiff wrote Defendant Brooks advising him that he intended to bring to the V.I. a noise suppressor for his MCX and 30-round magazines. Mr. Ohno requested confirmation he could do so and legal authority if the Commissioner believed these items could not be lawfully brought to and possessed in the Territory. *Id.* ¶ 53. In July 2025, he was informed they could not be brought. *Id.* ¶ 54. Mr. Ohno proposes to add the denial of these requests to the list of § 1983 violations in Counts I, ¶¶ 69, 71 and Count II, ¶ 74. Dkt. No. 36-1. Other proposed amendments clarify the titles of the cause of action (asserting that he was bringing Counts I-III and V under 52 U.S.C. § 1983); buttress the allegations to the cause of action under the Revised Organic Act; add new causes of action under § 1983 (including under the Fourth Amendment) and a facial challenge under the Second and Fourteenth Amendments. Dkt. No. 36-1. He also separated the causes of action from the claims for relief (including preliminary and permanent injunctive relief under

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 8

Counts I-III and V, declaratory relief, and an order vacating Defendant Brooks's denial of Mr. Ohno's application to renew his licenses).² Dkt. No. 36-1.

The Motion to Amend contends that Mr. Ohno plausibly states claims under 42 U.S.C. § 1983 and the Second, Fourth, and Fourteenth Amendments to the Constitution; states a claim appealing the Commissioner's denial of his application to renew his MCX license and challenging the appeal statute under the Second and Fourteenth Amendments; and states claims that Chapter 5 violates the Second and Fourteenth Amendments and the Revised Organic Act. Dkt. No. 36 at 3. Plaintiff concludes that no exceptions to "the general rule"

² The SAC amends Count I (Violation of the Second and Fourteenth Amendments) to bring those claims under 42 U.S.C. § 1983, and asserts constitutional violations based on, inter alia: denial of permission to possess the noise suppressor and 30-round capacity for his MCX firearm; denial of his MCX renewal license; being issued a license that did not say "concealed carry"; requiring a driver's license for his initial application; imposing a fee for initial licenses and renewals; and requiring a separate firearms license for each firearm. Dkt. No. 36-1 at 12-13. The SAC adds Counts II and III, violations of § 1983 (Second, Fourth, and Fourteenth Amendments) based on Policies, Practices, and Customs, challenging: "unbridled discretion" of the Commissioner under Chapter 5; the limited classes of persons who may possess/carry concealed firearms in the V.I, limits under Chapter 5; limits or prohibitions of noise suppressors and standard capacity magazines despite no laws regulating them; an overly burdensome licensure process (Count II); and entry into his residence to inspect his firearm safe and searches of his luggage when bringing firearms into the V.I. (Count III). *Id.* at 13-15. Mr. Ohno adds Count V, a § 1983 Second and Fourteenth Amendment violation based on administrative appeal standards, where he alleges that neither Chapter 5 or the Firearm Regulations require a Commissioner to issue findings of fact when denying firearms licenses or renewals, the Chapter 5 appeal standard, which are designed to deprive Plaintiff of his constitutional rights. *Id.* at 15. He adds new allegations to Count VI, a facial challenge to Chapter 5 based on the Second and Fourteenth Amendments, and Count VI, a challenge to Chapter 5 under the Revised Organic Act. *Id.* at 16-17. As to relief, he seeks preliminary and permanent injunctive relief as to Counts I-III and V; declaratory relief as to all Counts, declaring Chapter 5 unconstitutional; an Order vacating Commissioner Brooks's denial of his application to renew his concealed carry licenses for his HK and MCX firearms; and an award of costs and attorney's fees under 42 U.S.C. § 1988. *Id.* at 17.

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 9

(apparently permitting amendment) exist and thus leave to amend should be freely granted. *Id.* at 4. In an extensive footnote, Plaintiff addresses some of the jurisdictional arguments raised by the Defendants in their Motion to Dismiss relating to federal court jurisdiction over an appeal of the Commissioner's decision. *Id.* at 3 n.3.

Defendants filed an Opposition to the Motion for Leave to Amend, arguing against the Motion to Amend pursuant to Fed. R. Civ. P. 15(a) and the Motion to Supplement, pursuant to Rule 15(d). Dkt. No. 40. As to the Motion for Leave to Amend, Defendants first assert that the motion should be denied "if the Court grants Defendants' motion to dismiss due to mootness," given the arguments they made in their Motion to Dismiss and Reply. *Id.* at 3-4. They assert that the Motion for Leave to Amend seeks to create subject matter jurisdiction by alleging new facts supporting new causes of action to revive Mr. Ohno's moot complaint. *Id.* But since he is not seeking to cure any defect in his jurisdictional allegations, his Motion to Amend must be denied as moot, without prejudice. *Id.* When a complaint is moot, it must be dismissed, regardless of whether a plaintiff seeks to amend to add a live claim. *Id.* at 4.

Second, amendment would be futile because several of the new allegations concern Mr. Ohno's experiences when he initially applied for a firearms license in 2018 and when he renewed the licenses in 2021 making them untimely under the two-year statute of limitations pursuant to § 1983. *Id.* at 4-5. His claims relating to various firearms licensing procedures with which he disagrees do not violate his constitutional rights. *Id.* at 5. The five-month pendency of the renewal application did not violate § 1983 because the VIPD treated his licenses as extended during that time. *Id.* at 6. Requiring a license for each firearm did not

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 10

violate his constitutional rights, as it did not prevent him from exercising his right to public carry. *Id.* at 6-7. Neither was the \$150 fee per firearm unconstitutional, as it was not exorbitant and cases have held that fees in that range are constitutional. *Id.* at 7-8. Mr. Ohno's claim that his license was endorsed as "business protection" and therefore was not a concealed carry license is frivolous, as the license was issued pursuant to 23 V.I.C. § 454(3) providing that a business protection license is clearly a type of concealed carry license. *Id.* at 8. VIPD's inspection of firearms entering the V.I. constitutes a constitutional administrative inspection and is permissible even without a warrant. Moreover, given Mr. Ohno's allegations, the inspection was not unreasonable in scope or manner, or unduly burdensome. *Id.* at 9-10. His claim relating to VIPD initially requesting a V.I. Driver's License is moot, given that he never alleged he obtained a Driver's License and his renewal applications were approved without having to obtain such a license. *Id.* at 5-6.

Defendants add that the Court should deny leave to supplement because the new allegations about the silencer and large capacity magazines are not sufficiently related to the allegations in the FAC, will cause disorder, and be less efficient than if Mr. Ohno filed a separate complaint, and it would be futile to allow amendment. *Id.* at 10-18. Case law provides that supplementation should not be allowed for a plaintiff to assert an entirely new theory of recovery or cause of action. *Id.* at 11. Mr. Ohno did not request to bring a silencer and large capacity magazines when he applied for the MCX license renewal. Then the parties came to a preliminary agreement to extend his MCX license, and Defendants renewed the MCX license. Only after renewal did Mr. Ohno request to bring a silencer and LCMs. Those

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 11

allegations do not relate to the MCX licensing and do not bring the FAC back to life. *Id.* at 11-12. Adding new claims about the silencer and LCMs will add confusion and complexity, and if he were to prevail on those claims, he would obtain no further relief as to his MCX. *Id.* at 12. Nothing prevents Mr. Ohno from filing a separate action concerning those items. *Id.* at 13.

Moreover, supplementation would be futile because the proposed SAC would be subject to dismissal for failure to state a claim. *Id.* at 13- Silencers are not firearms and are not protected under the Second Amendment. *Id.* at 14-15 (citing cases from the Fourth and Tenth Circuit Courts of Appeal). Restricting LCMs does not infringe on the Second Amendment because they are not “arms” used for self-defense but are weapons of war. *Id.* at 15-16. Even if considered “arms,” restricting possession does not violate the Second Amendment and constitutes an appropriate limitation on firearms ownership. *Id.* at 17-18.

In his reply, Mr. Ohno asserts that this action is not moot, relying on his arguments raised in opposition to Defendants’ Motion to Dismiss. Dkt. No. 44 at 1-2. He adds that Defendants did not previously allege that the FAC lacked sufficient jurisdictional allegations and such a contention is a new and improper request to dismiss the case. *Id.* at 2-3. Mr. Ohno asserts that Defendants’ Opposition focuses on the alleged failure to allege violations of the Second and Fourth Amendment under § 1983, but does not address his claims that Defendants’ laws, regulations, and policies constitute violations of the Fourteenth Amendment and Revised Organic Act, thereby conceding the SAC adequately pleads facts establishing subject matter jurisdiction. *Id.* at 4-6.

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 12

Plaintiff contends that he plausibly stated claims on the challenged counts (I, II, and III). *Id.* at 8. As to Count One, he alleges he was denied a concealed carry license for his MCX in violation of his Second Amendment rights and was deprived of his Fourteenth Amendment Due Process rights because the MCX had been twice approved for licensure under the same regulations that required exorbitant fees and unnecessary steps that delayed the exercise of his rights and the denial had no legal basis. *Id.* at 8-9. This deprivation was by Defendant Brooks who acted under color of state law and who remains ultimately responsible for the proper execution of the law. *Id.* at 9.

As to Count Two, a § 1983 Claim under the Second and Fourteenth Amendments for policies, practices, and customs, Mr. Ohno alleged that Commissioner Brooks enforces Chapter 5 and Firearms Regulations that give Commissioners unbridled discretion over when and how to approve or deny applications, which is inconsistent with historical firearms traditions under *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). *Id.* at 10-11. Here, Plaintiff points to, inter alia, excessive fees, separate licenses per firearm, three and five year renewal requirements for different types of firearms, and prohibitions on firearms attachments or accessories despite no statutory ban. *Id.* at 11-12. As to Count Three, a § 1983 Claim under the Second and Fourth Amendments for policies, practices, and customs, Mr. Ohno cites the requirement that, in order to obtain approval of a firearms license, he must permit police officers to enter his home to verify proper storage, even though Chapter 5 does not require a lockbox or safe in a home to store firearms. *Id.* at 12. The search of travelers’

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 13

luggage when they enter the V.I. and the requirement to declare a firearm is a basis for this claim. *Id.* at 13.

Mr. Ohno argues that his claims are not barred by the statute of limitations, given the continuing violations doctrine and the policies and practices by which the Defendants unconstitutionally infringed on his constitutional rights. Because he must renew his licenses every three years, he faces continued imposition of these policies, which make his § 1983 claims timely. *Id.* at 14-17. Defendants' remaining challenges fail to show futility. Pursuant to *Bruen*, they must prove the constitutionality of their actions. *Id.* at 17. The requirement that Plaintiff provide a driver's license to apply for a license is not moot, as it is part of the practices by which Defendants infringe on Second Amendment rights and it violates Due Process because neither Chapter 5 nor the regulations require an applicant to produce a license. Plaintiff addresses Defendants' arguments concerning the five-month delay in addressing his 2024 renewal application, the requirement of separate licenses for each firearm and the amount of license fees, the "Business Protection" designation on his license, and the airport baggage inspections, distinguishing Defendants' case law and contending that the case should be resolved on the merits. *Id.* at 17-20.

Finally, Mr. Ohno asserts that his supplemental claims are neither unrelated to the existing claims nor futile. *Id.* at 20. Prejudice is the key factor in denying supplementation, and Defendants have not presented any prejudice they would suffer if the motion to supplement was granted. *Id.* at 21. The claims concerning the silencer and LCMs are sufficiently related to the FAC as they show Defendants' effort to impinge on Plaintiff's right

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 14

to bear arms. *Id.* at 22. As to futility, Mr. Ohno distinguishes the cases Defendants rely on to ban or restrict those items, given that the Virgin Islands lacks any ban on suppressors or LCMs, and they cannot create such a ban by regulation. *Id.* at 22-23.

DISCUSSION

I. Legal Standards

A. Rule 15(a)

Rule 15(a) of the Federal Rules of Civil Procedure allows a party to amend its pleading and directs the Court to grant such leave “when justice so requires.” Fed. R. Civ. P. 15(a)(2).

As the United States Supreme Court has declared:

In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the other party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’

Foman v. Davis, 371 U.S. 178, 182 (1962). In the Third Circuit, “prejudice to the non-moving party is the touchstone for the denial of an amendment.” *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1414 (3d Cir. 1993) (citation modified). *Cureton v. NCAA*, 252 F.3d 267, 273 (3d Cir. 2001). When assessing prejudice, courts consider “whether allowing an amendment would result in additional discovery, cost, and preparation to defend against new facts or new theories.” *Cureton v. Nat’l Collegiate Athletic Ass’n*, 252 F.3d 267, 273 (3d Cir. 2001). Put another way, the non-movant “must show more than a generalized claim of prejudice; rather, it must demonstrate that it would be unfairly disadvantaged or deprived of the opportunity to

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 15

present facts or evidence if amendment were allowed.” *Curran v. Trowbridge*, No. 23-cv-v0019, 2025 WL 2772763, at *2 (W.D. Pa. Sept. 29, 2025) (citation modified).

“Futility” means that the complaint, as amended, would fail to state a claim upon which relief could be granted. *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997).

[T]he Court will take the factual allegations of the proposed amended complaint as true, draw all reasonable inferences in favor of the plaintiff, and deny the motion to amend only if the factual allegations in the complaint do not raise plausible claims and are not sufficient “to raise a right to relief above the speculative level.”

Shopman's Loc. Union 502 Pension Fund v. Samuel Grossi & Sons, Inc., 578 F. Supp. 3d 698, 703 (E.D. Pa. 2022) (citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008)); *see also* 3 Moore et al., *Moore's Federal Practice* ¶ 15.15 (3d ed. 2024) (“An amendment is futile if it merely restates the same facts as the original complaint in different terms, reasserts a claim on which the court previously ruled, fails to state a legal theory, or could not withstand a motion to dismiss.”).

B. Rule 15(d)

Rule 15(d), entitled “Supplemental Pleadings,” “operates in conjunction with Rule 15(a).” *Garrett v. Wexford Health*, 938 F.3d 69, 82 (3d Cir. 2019). The Rule provides, in pertinent part:

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense.

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 16

Fed. R. Civ. P. 15(d). “Thus, rather than set forth additional events that occurred before the original complaint was filed, as does a Rule 15(a) amendment, a supplemental pleading under Rule 15(d) presents more recent events. Rule 15(d) thus promotes a complete adjudication of the dispute between the parties.” *Garrett*, 938 F.3d at 82-83. Factors to be considered by the Court in making a determination under Rule 15(d) “are the same as those to be considered in motions to amend, including the promotion of a justiciable disposition of the case, the delay or inconvenience in permitting a plaintiff to supplement the complaint, any resulting prejudice to the other parties in the action, and whether the supplement would be futile.” *El v. Matson*, No. 21-01325, 2022 WL 22905735, at *1 (W.D. Pa. June 3, 2022) (citation modified). Supplementation under Rule 15(d) can also “be employed to allege subsequent facts to cure a deficient pleading.” *Garrett*, 938 F.3d at 83.

The grant or denial of an opportunity to amend or to supplement “is within the discretion of the District Court[.]” *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002); *T Mobile Ne. LLC v. City of Wilmington, Del.*, 913 F.3d 311, 326-27 (3d Cir. 2019).

C. Mootness

Mootness arises where “changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief.” *Ordonez-Tevalan v. Att’y Gen. of U.S.*, 837 F.3d 331, 339–40 (3d Cir. 2016). Where a plaintiff can no longer “demonstrate that he possesses a legally cognizable, or ‘personal stake,’ in the outcome of the action. . . . the action can no longer proceed and must be dismissed as moot.” *Genesis*

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 17

Healthcare v. Symczyk, 569 U.S. 66, 71–72 (2013); *see also Road-Con, Inc. v. City of Phila.*, 120 F.4th 346, 356 (3d Cir. 2024) (“Because mootness necessarily means no continuing case or controversy exists between the parties, its finding removes the case from the subject matter jurisdiction of the court.”) (citation modified); *Cnty. of Morris v. Nationalist Mvmt.*, 273 F.3d 527, 533 (3d Cir. 2001) (opining that a court’s ability to grant effective relief lies at the heart of the mootness doctrine). The Third Circuit has opined that it is “particularly skeptical of deeming a claim moot based on an action a defendant took unilaterally after the litigation began. Thus, voluntary cessation of a challenged practice will only moot a case if it is absolutely clear that the alleged wrongful behavior could not reasonably be expected to recur. The defendant bears a heavy burden to make this showing.” *Sczesny v. Murphy*, No. 24-1676, 2025 WL 816153, at *2 (3d Cir. Mar. 14, 2025), *cert. denied*, No. 24-1290, 2025 WL 2823810 (U.S. Oct. 6, 2025)

II. Application

A. Mootness

The first argument Defendants make in opposition to the Motion to Amend is that the Court lacks jurisdiction over the First Amended Complaint due to mootness, Dkt. No. 40 at 2-3, given the fact that Defendants “decided to grant” Mr. Ohno’s application to renew his MCX license and therefore he “has received all the relief that this Court can afford him” such that his request for a declaratory judgment invalidating the V.I. firearms statutes and related regulations is moot. Dkt. No. 33 at 1. This argument, by its terms, applies only to the declaratory judgment requests for relief (not to others set out in the SAC), and relies on a

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 18

contingency—"if the Court grants Defendants' motion to dismiss due to mootness," Dkt. No. 40 at 3 (emphasis added), which motion the District Judge has not yet addressed.

In a May 26, 2025 Order, the District Judge granted in part Plaintiff's Motion for Temporary Restraining Order and for Preliminary Injunction Dkt. No. 30. The Order recited how the Defendants agreed to extend Mr. Ohno's MCX license through May 2028. *Id.* The Order also provided that the MCX license would "remain in effect until final judgment is rendered in this case, unless modified by other order of the Court." *Id.* In other words, by its explicit terms, the Preliminary Injunction did not end the case and did not make any determination on the merits of Plaintiff's claims: it merely granted preliminary relief permitting him to renew his MCX license. If the Defendants had sought to conclude the case by this Order, they certainly could have negotiated for such a resolution—but they did not. *Cf. Diversant, LLC v. Carino*, No. 18-cv-3155, 2019 WL 1091077, at *3 (D.N.J. Mar. 8, 2019) ("Because mootness necessarily means no continuing case or controversy exists between the parties, its finding removes the case from the subject matter jurisdiction of the court."). Thus, the merits of Mr. Ohno's claims are still before the Court because they have not been adjudicated, and they are not moot.

Moreover, the District Judge has not adjudicated the pending Motion to Dismiss before this Court and thus has not determined that the Court has no subject matter jurisdiction over the FAC. Once the FAC is amended to add the new allegations and claims, that may very well moot the Motion to Dismiss. In any event, this Court rejects Defendants'

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 19

argument that the FAC is moot and therefore the Court has no subject matter jurisdiction over the FAC, which would have ended the case prior to the Plaintiff filing the proposed SAC.

B. Amending Under Rule 15(a)

In arguing futility under Rule 15(a), the Defendants point to the pre-2024 allegations (regarding Mr. Ohno's initial application for firearms licenses in 2018 and his renewal in 2021) as untimely, having occurred outside the two-year statute of limitations for § 1983 claims. They also assert that the allegations regarding the pendency of the renewal application, requiring a license for each firearm, and the firearm licensing fee did not state constitutional claims and therefore amendment would be futile. Dkt. No. 40 at 5-10. In his Reply, Mr. Ohno claims that the continuing violations doctrine saves these 2018 and 2021 allegations from the time-bar and that he has stated § 1983 claims. Dkt. No. 44 at 10-17.

Mr. Ohno challenged the time-bar argument by raising the continuing violations doctrine in his reply brief. As a result, the Defendants did not have an opportunity to counter that argument, which the Court would benefit from in assessing whether the statute of limitations applies to bar these aspects of Plaintiff's claims. In addition, because many of the arguments Defendants have raised in their Opposition to the Motion to Amend, as discussed in greater detail below, are geared to the merits of the claims in both the FAC and proposed SAC, the Court believes it would benefit from full briefing on these issues. Consequently, the Court is not prepared to determine that Mr. Ohno's pre-2024 allegations are untimely on this record.

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 20

More to the point, the allegations underlying two of the arguments Defendants make in arguing that amendment is futile—the alleged unconstitutionality of the pendency of the 2024 renewal allegation and requiring a license for each firearm, Dkt. No. 40 at 6-7—were already included in the FAC, Dkt. 2 ¶¶ 9-13, 21, 27-29, and were reiterated in the SAC, Dkt. No. 36-1, ¶¶ 12, 38. The change made in the proposed SAC was that Mr. Ohno set forth a list of alleged unconstitutional aspects of the V.I. laws and regulations in Counts I and II, and to a lesser extent, Count VI, that he was challenging. That list collated the various allegations made throughout the SAC to specify what aspects of firearms laws/regulations and policies/procedures Mr. Ohno considered unconstitutional. Dkt. No. 36-1 ¶¶ 71, 74, 77. The inclusion of the pendency of the application and license for each firearm items in those lists is not an amendment because the facts underlying those claims were already set forth in the FAC. Accordingly, the appropriate way to challenge these claims (the alleged unconstitutionality of the pendency of the renewal allegation and requiring a license for each firearm) would be in a motion to dismiss for failure to state a claim, not in opposition to a motion to amend.

The third item cited by Defendants in opposing amendment, the licensing fee, was not mentioned in the FAC and therefore its inclusion is properly considered an amendment. The Defendants argue that the \$150 fee per firearm is not unconstitutional, pointing to district court cases from other jurisdictions that such a renewal fee has not been found exorbitant. Dkt. No. 40 at 7-8. But without governing law, this Court is not prepared to conclude from a two-paragraph, summary argument at this stage of the proceedings that Plaintiff did not state a claim such that amendment to include this argument would be futile.

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 21

The final argument Defendants raise in opposition to amendment is that Mr. Ohno's claim relating to the VIPD initially requesting that he obtain a V.I. Driver's License is moot because his renewal applications for both handguns were approved without him having to obtain a license. Dkt. No. 40 at 5-6. The Court rejects this one-paragraph argument on the same basis as it rejected Defendants' argument that the FAC was moot: the District Judge granted a preliminary injunction, not a permanent injunction on the merits in this case. Therefore, the fact that the Defendants did not require a V.I. driver's license upon renewal in 2024 does not resolve the question of whether the statute or policy is unconstitutional and/or whether it may fall under the exceptions to the mootness doctrine as a practice capable of repetition yet evading review, *see Gulden v. Exxon Mobil Corp.*, 119 F.4th 299, 309 (3d Cir. 2024), or as a voluntary cessation, *see Clark v. Governor of N.J.*, 53 F.4th 769, 776 (3d Cir. 2022). Defendants have not argued much less shown that they would be prejudiced by amendment, *Lorenz*, 1 F.3d at 1414, thereby prompting the Court to conclude that amendment should be allowed under Rule 15(a).

C. Supplementing under Rule 15(d)

In their Opposition, the Defendants argue that the supplemental allegations are not sufficiently related to the FAC because they do not relate to the MCX licensing, which is the subject of the FAC. They reason that if the FAC is moot because the MCX license was renewed and Mr. Ohno may legally possess it, those allegations would not bring the FAC back to life. Dkt. No. 40 at 12. In addition, adding these allegations "will cause more disorder and be less efficient than if Ohno were to file a separate lawsuit" and will add confusion and complexity

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 22

to the case because the FAC contains no allegations about the silencer or LCMs that may not be legally possessed in the V.I. *Id.* Also, the injunctive relief Plaintiff seeks in the SAC would apply only to the silencer and/or LCMs, not the MCX license that he already possesses, so supplementation would expand the scope of potential remedies. *Id.* at 13.

The Court disagrees. Defendants' argument is based on the premise that because the FAC involved licensing for the MCX and Mr. Ohno received his license, the entire FAC is therefore moot—an argument this Court rejected *supra*. Moreover, adding references to the SAC regarding being denied permission to lawfully bring the silencer and LCMs into the Virgin Islands are merely additional challenges to the numerous challenges Mr. Ohno has made to the V.I. firearm licensing regimen that forms the basis of the FAC and that are set forth in the proposed SAC. *See, e.g.*, Dkt. No. 36-1, ¶¶ 71, 74, 77. These additional allegations and challenges will not add disorder, complexity, or confusion to this case, or make resolution less efficient. Rather, addressing all of Mr. Ohno's constitutional, regulatory, and policy challenges at once will be much more efficient. Filing a separate complaint would cause the Court to address similar constitutional matters in a piecemeal fashion, which is what supplementation is geared to avoid. *See Bryant v. Raddad*, No. 21-1116, 2021 WL 2577061, at *2 (E.D. Pa. June 22, 2021) ("Allowing a plaintiff to file partial amendments or fragmented supplements to the operative pleading, presents an undue risk of piecemeal litigation that precludes orderly resolution of cognizable claims.") (citation modified). The interests of efficiency and judicial economy support supplementation under Rule 15(d).

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 23

The Defendants also contend that supplementation would be futile because silencers and LCMs are not protected under the Second Amendment; however, even if LCMs were protected, the Virgin Islands’ restrictions on them do not violate Plaintiff’s Second Amendment rights. Dkt. No. 40 at 13. Defendants cite Fourth and Tenth Circuit Courts of Appeal cases holding that silencers do not fall within the scope of the Second Amendment’s protection, but no governing law from the Third Circuit. *Id.* at 15. As to LCMs, Defendants cite *Ass’n of N.J. Rifle & Pistol Clubs v. AG N.J.*, 910 F.3d 106, 116 (3d Cir. 2018), that held that magazines were “arms.” They argue, however, that that decision was pre *Bruen*, and that that case was to be heard en banc by the Third Circuit on October 25, 2025. Dkt. No. 40 at 15-16 & n.2. They add that, even if LCMs were considered “arms,” restricting them does not violate the Second Amendment because such a limitation is supported by the nation’s regulatory traditions. Again, Defendants cite cases from other Courts of Appeal supporting restrictions on LCMs, not governing Third Circuit case law. *Id.* at 17.

Without governing law (or even some governing law pointing against Defendants’ position that may or may not remain good law), the issue of whether V.I. laws and regulations limiting or prohibiting silencers and LCMs is an open question in the Third Circuit and the Virgin Islands. This Court is not prepared to conclude, at this time—particularly in assessing a motion to amend and not a fully briefed motion to dismiss—that adding allegations concerning silencers and LCMs, and challenging the limitations/prohibitions on them, would fail to state a claim and would therefore be futile so as to deny the Motion to Amend.

Ohno v. Brooks
3:25-cv-00014-RAM-EAH
Order
Page 24

In sum, given the liberal approach to the amendment of pleadings to ensure that claims will be “decided on the merits rather than on technicalities,” *Dole v. Arco Chem. Co.*, 921 F.2d 484, 486-87 (3d Cir. 1990), the Court will exercise its discretion and grant the motion to amend and supplement. *Grayson*, 293 F.3d at 108.

CONCLUSION

For the reasons set forth above, it is hereby **ORDERED**:

1. Plaintiff’s Motion to Amend Complaint, Dkt. No. 36, is **GRANTED**.
2. Plaintiff shall file a Second Amended Complaint, in conformity with Dkt. No. 36-1, by **December 1, 2025**.

ENTER:

Dated: November 26, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE