No. 23-6521

IN THE

Supreme Court of the United States

SHAWN REEVES,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the New Jersey intermediate appellate court erred in rejecting Petitioner's collateral attack on his conviction for carrying a handgun in violation of the terms of a court order.

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The trial court proceedings, which did not raise the question presented, are unpublished and unreported. See Resp. App. 1-5 (jury verdict and judgment of conviction). The opinion of the New Jersey Superior Court, Appellate Division is unpublished. Pet. App. 1-25. The New Jersey Supreme Court's order denying the petition for certification, Pet. App. 26, is reported. See *State v. Reeves*, 295 A.3d 216 (N.J. 2023). The New Jersey Supreme Court's order denying Petitioner's motion for reconsideration, Pet. App. 27, is reported. See *State v. Reeves*, 303 A.3d 392 (N.J. 2023).

JURISDICTION

Petitioner timely invoked this Court's jurisdiction under 28 U.S.C. § 1257(a).

INTRODUCTION

This Petition arises from an unpublished state intermediate appellate court decision that satisfies none of this Court's traditional certiorari criteria. In rejecting Petitioner's attempt to vacate a conviction for a violation of New Jersey's handgun-carry law that took place nearly six years before *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), the New Jersey Appellate Division—like other state courts—correctly followed long-established principles barring collateral attacks on convictions after an individual has taken the law into his own hands.

In 2015, Petitioner Shawn Reeves applied for a New Jersey permit to publicly carry a handgun while performing his job duties as a security guard. A state court issued an order allowing Petitioner to publicly carry a handgun while on the job—but "for no other purpose." Pet. App. 50. Petitioner did not apply for an

expanded permit or seek further judicial review. He also did not challenge the constitutionality of the law or court order. Instead, one year later, in 2016, he simply disobeyed the court order and statute then in effect. While unlawfully "masquerad[ing] as an armed police officer," Petitioner was observed carrying a gun in public outside the scope of his employment. Pet. App. 5, 8. Petitioner was convicted by a jury of unlawful possession of a handgun and of impersonating a police officer. An intermediate appellate court then rejected Petitioner's argument that his conviction was invalid under *Bruen*. As that court explained, although *Bruen* invalidated one of the criteria on which New Jersey previously relied to evaluate permits to carry, *Bruen* did not retroactively grant individuals a right to carry without a permit whatsoever, or violate the terms of a court-ordered permit in effect at that time.

Certiorari is not warranted in this case. The issue presented in this case does not implicate the scope of the Second Amendment right, and the Petition does not dispute that the State's current permitting law is consistent with *Bruen*. Instead, Petitioner says that *Bruen* retroactively invalidates his prior conviction for carrying a firearm without a lawful permit, because it invalidated *one* of the many criteria that the State was using to review permits at that time. That issue does not warrant certiorari for four reasons: this Petition offers a poor vehicle for addressing this infrequently-arising issue; the alleged split is entirely illusory; the question presented at the very least calls for further percolation; and the decision below is correct.

First, this Petition offers a poor vehicle in which to address this question. Petitioner contends that where a permitting statute is unconstitutional even in part, individuals cannot be punished for violating that law,

even if the remainder of the permitting requirements are valid. But here, Petitioner did not merely violate a statute; he also violated the express terms of a court order. Pet. App. 50. And this Court's cases teach that parties are not "free to disobey" court orders, even if a court order is "subject to substantial constitutional question," *Walker v. City of Birmingham*, 388 U.S. 307, 317-18 (1967); instead, they must appeal. That Petitioner's conduct thus triggers an independent and longstanding prohibition on collateral attacks to court orders represents a significant vehicle problem.

Second, the Petition errs in claiming this question is the subject of a split. The courts to consider similar challenges based on later-invalidated permitting laws have recognized the core distinction between decisions invalidating the *entire* permitting provision on its face and those invalidating *part of* the permitting statute. Lower courts, both pre- and post-*Bruen*, consistently hold that defendants cannot retroactively invalidate a conviction for acting without a permit if the permit law was only partially invalidated. Indeed, the cases on which Petitioner relies *denied* other defendants' efforts to vacate their convictions. All he offers to claim a split is isolated *dicta* from state trial court or state intermediate appellate court decisions—which has never been enough to justify certiorari.

Third, the Petition fails to meet this Court's usual certiorari criteria in a number of other ways. For one, no State's court of last resort addressed this question after *Bruen*, and many have not passed on it at all; indeed, the decision below is an unpublished appellate court ruling. For another, Petitioner himself says that the decision below no longer reflects New Jersey law, which is an argument that any similarly situated individual is free to make in state court. Further,

Petitioner's claim rests entirely on a fact pattern that is unlikely to arise frequently and thus has limited importance to other cases. And review is of limited importance even in this case, since Petitioner already served probation for the challenged conviction—which ran concurrently to the other conviction for impersonating a police officer.

Finally, the decision below is consistent with this Court's longstanding decisions. Across constitutional contexts, this Court has made clear that when a state law "prohibits certain conduct unless the person has a license, one who without a license engages in that conduct can be criminally prosecuted," even if aspects of that law were later invalidated in a separate suit. *Poulos v. New Hampshire*, 345 U.S. 395, 409, n.13 (1953). Although the rule is different when the entire permitting statute is later facially invalidated, which explains the cases on which Petitioner relies, *Bruen* invalidated just one severable and discrete component of the New Jersey permitting law. Petitioner was thus not free to take the law into his own hands and carry a firearm without a permit in violation of statutes and court orders, all while impersonating an officer.

STATEMENT OF THE CASE

A. New Jersey's Permitting Laws.

In New Jersey, an individual who wishes to carry a handgun in public must first obtain a permit to do so. N.J. Stat. Ann. § 2C:39-5(b). To obtain a permit, an applicant must first apply to the relevant law enforcement official—the chief police officer in the municipality or the superintendent of the New Jersey State Police. *Id.*, § 2C:58-4(c). The law enforcement official performs the necessary background check to ensure the individual is not disqualified for reasons such as certain prior

convictions and mental illness. *Id.*, §§ 2C:58-3(c) and -4(c). The applicant must also demonstrate "thorough[] familiar[ity] with the safe handling and use of handguns" and submit references. *Id.*, § 2C:58-4(b)-(c). And until *Bruen*, an applicant had to also demonstrate "a justifiable need to carry a handgun" based on an "urgent necessity for self-protection." *Id.*, § 2C:58-4(c) (amended in 2022).

Before December 2022, law enforcement agencies performed the requisite application checks, but were not the ultimate arbiters of an applicant's permit.[1] Rather, the New Jersey Superior Court—the state trial court—issued decisions on whether an individual could publicly carry a handgun. *Id.*, § 2C:58-4(d). The trial court was empowered to issue an order granting or denying the applicant a public carry permit. See, *e.g.*, Pet. App. 50; N.J. Stat. Ann. § 2C:58-4(d)-(e). The court could also issue a court order "restrict[ing] the applicant as to the types of handguns he may carry and where and for what purposes the handguns may be carried." N.J. Stat. Ann. § 2C:58-4(d).

B. *Bruen* And Subsequent Amendments.

This Court in *Bruen* invalidated one provision of New Jersey's permitting scheme. In *Bruen*, this Court held that New York's "proper cause" requirement to obtain a carry license—which required individuals to demonstrate "a special need for self-protection" before they could carry firearms in public—violated the right

[1] In December 2022, the New Jersey Legislature amended several aspects the handgun-carry procedures, including removing the justifiable-need requirement and removing the Superior Court from the process of obtaining a permit if the relevant law enforcement agency approves an application. See N.J. Pub. L. 2022, c.131, § 3.

of "ordinary, law-abiding citizens . . . to carry handguns publicly for their self-defense." 597 U.S., at 9, 12. The Court noted that six other jurisdictions, expressly including New Jersey, had analogous requirements that were likewise invalid. *Id.*, at 15.

But *Bruen* expressly did not disturb other criteria for assessing carry-permit applications—criteria that remain widespread among the States. *Bruen* explicitly held that States may require individuals to obtain a permit before they carry in public. See *id.*, at 38, n.9 (upholding "shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course," which "are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens'"); see also *id.*, at 79-80 (Kavanaugh, J., concurring) (confirming that the *Bruen* majority opinion "does not prohibit States from imposing licensing requirements for carrying a handgun," and that six States whose laws had been invalidated in part "may continue to require licenses for carrying handguns for self-defense" subject to conditions like "fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements").

The day after *Bruen*, the New Jersey Attorney General issued a directive clarifying the requirements for carrying handguns within the State. See N.J. Att'y Gen. L. Enf't Dir. 2022-07 (June 24, 2022). The Attorney General recognized that although the State could no longer "require a demonstration of justifiable need in order to carry a firearm," it could continue to "enforc[e] the other requirements" in the State's laws applicable to carry permits. *Id.*, at 1. The Attorney General thus directed New Jersey's law enforcement agencies to

"continue to ensure" that applicants for public carry permits satisfy all the criteria established by state law, "except that the . . . applicant[s] need not submit a written certification of justifiable need to carry a handgun." *Id.*, at 2. And the New Jersey Legislature subsequently amended the permitting scheme to eliminate the justifiable-need requirement. N.J. Pub. L. 2022, c.131, § 3.

C. The Proceedings Below.

Petitioner's offense conduct took place nearly six years before this Court's decision in *Bruen*. In 2015, Petitioner applied for a carry permit. Pet. App. 50. The application included a letter of need from Petitioner's employer—a private armed security company—which noted that Petitioner "will be employed on a part time basis," described Petitioner's anticipated job duties, and explicitly requested "approval of [Petitioner's] permit to carry a handgun during the course of his employment." Pet. App. 32. Defendant did not seek a permit to carry outside of his employment. See *id.*; Pet. App. 30, 37; see also Pet. 10-11.

The Newark Police Department approved the application. Pet. App. 28, 37. On November 20, 2015, the New Jersey Superior Court issued a court order granting Petitioner's application. The court ordered as follows: "[t]he application for permission to carry said handgun, while in the employment of VISUAL PROTECTION SERVICES . . . while serving as an ARMED SECURITY GUARD . . . as set out in the letter of need . . . hereby is approved." Pet. App. 50. Petitioner was thus authorized to carry a handgun only in the course of his employment, "but for no other purpose." *Id.* Petitioner never sought to expand the terms of this court order, whether before the Superior

Court or on appeal. He also never sought to challenge the New Jersey laws in effect at the time.

As the decision below recounted, based on the facts adduced at trial, on October 7, 2016, at around 7:45 p.m., Petitioner was pulled over by two detectives because his vehicle "'matched the general description' of a vehicle police were looking for in connection with an unrelated incident." Pet. App. 4. As "the detectives approached [Petitioner's] vehicle, [Petitioner] wa[]ved a gold constable badge out the window" and "stated, 'I'm on a job, I'm an officer just like you.'" *Id.* Petitioner was observed carrying a loaded gun and wearing what appeared to be both a "tactical uniform" and a "duty belt" that held a radio and handcuffs. Pet. App. 4-5. Petitioner had "two emergency flashing light bars, a double magazine pouch for ammunition, and a police-style traffic jacket" in his vehicle. Pet. App. 5.

After the officers requested his identification, Petitioner provided only the gold badge, his employer identification card, and a "firearm carry permit, which authorized carrying a firearm only 'during and in the course of employment.'" Pet. App. 5. Petitioner acknowledged that "he had finished work for the day around 4:00 p.m."—four hours earlier—and was just "running errands." *Id.* And as Petitioner's employer later testified, Petitioner "was not authorized by [his] employer to have flashing emergency lights in his personal vehicle." *Id.*

The State charged Petitioner with second-degree unlawful possession of a handgun, N.J. Stat. Ann. § 2C:39-5(b), and fourth-degree impersonating a police officer, N.J Stat. Ann. § 2C:28-8(b). See Pet. App. 3. In December 2019, a jury found him guilty on both counts. *Id.* In October 2020, he was sentenced to two years of probation and 100 hours of community service, to run concurrently. Resp. App. 3.

This Court decided *Bruen* while Petitioner's appeal was still pending. Petitioner asked the New Jersey Superior Court, Appellate Division—New Jersey's intermediate appellate court—to vacate his conviction for unlawfully carrying a firearm. Pet. App. 7. Even though Petitioner's carry permit was "limited to th[e] circumstances" of his employment, and even though he was apprehended carrying a loaded firearm outside those circumstances in the course of impersonating a police officer, Petitioner contended that "he was not actually in violation of his permit" because *Bruen* had held unconstitutional the "justifiable-need provision" of New Jersey's permitting law. Pet. App. 7-8.

The Appellate Division rejected that request in an unpublished opinion. See N.J. Court R. 1:36-3 (noting unpublished decisions do not "constitute precedent" and are not "binding upon any court"). The court noted that while state law requires individuals to obtain a permit before carrying firearms in public, Petitioner had only applied "for permission to carry . . . while in the employment of Visual Protection Services" and "while serving as an as an armed security guard." Pet. App. 8. And because the trial court's order "limited" the scope of Petitioner's handgun-carry permit "to those circumstances," Petitioner was not "free to act as if [he] possess[ed] an unrestricted permit" "simply because [he] may be eligible to obtain such a permit through proper channels." Pet. App. 8. Rather, the "proper procedure in these circumstances . . . is to apply to amend the permit or apply for a new one," Pet. App. 9—precisely what the *Bruen* plaintiffs did after their permits were denied, 597 U.S., at 15-16. In other words, while *Bruen* unquestionably changed the criteria New Jersey could use when evaluating permit applications, that decision "did not empower permit holders to disregard judicial orders"—i.e., the terms of Petitioner's

court-ordered permit—that were binding on him at that time. Pet. App. 9.

The New Jersey Supreme Court denied a petition for certification. That court also rejected Petitioner's subsequent motion for reconsideration. Pet. App. 26-27. The instant Petition followed.

REASONS FOR DENYING THE PETITION

This Court should deny the instant Petition. First, vehicle problems complicate review of the question in this case. Second, the alleged split is illusory. Third, additional percolation is warranted, and review is not needed from this unpublished intermediate appellate decision. Fourth, the decision below is correct under a long line of this Court's precedents.

I. The Petition Suffers Vehicle Problems.

Petitioner overlooks a significant problem with his Petition: although he claims that he cannot face any consequences for violating New Jersey law in effect at the time, his conduct also violated a court order. As a result, his effort to vacate his conviction conflicts with an independent doctrine barring collateral attacks on judicial orders. The intermediate appellate court that denied his claim also relied on this rule in rejecting his defense, and its presence in this case significantly complicates Petitioner's argument that he is entitled to bring this collateral challenge. The Petition fails to address the impact of this independent bar.

The collateral bar on challenging judicial orders is well established. Although there may be instances in which an individual can validly contravene a facially unconstitutional statute or regulation, parties are not simply "free to disobey" a court order by engaging in conduct that the court directed them not to undertake.

Walker, 388 U.S., at 317-18. That is so even if an order is "subject to substantial constitutional question"; the proper course instead is to "challeng[e]" the order on appeal or on reconsideration, and then seek to "modify or dissolve" it. *Id.*; see *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 793 (1994) (Scalia, J., concurring in judgment in part and dissenting in part) (invoking the "the collateral bar rule of *Walker*"). As this Court has reasoned, a contrary rule of law would empower individuals "to ignore all the procedures of the law and carry their battle to the streets," and undermine the fundamental tenet that "no man can be judge in his own case." *Walker*, 388 U.S., at 320-21.

New Jersey precedent follows *Walker*. New Jersey courts have long recognized the need for "compliance with judicial orders to promote order and respect for the judicial process." *State v. Gandhi*, 989 A.2d 256, 272 (N.J. 2010); *State v. Cassidy*, 843 A.2d 1132, 1137 n.3 (N.J. 2004). As a result, courts have recognized—just as *Walker* did—that violators can be prosecuted, even for violating judicial orders "later found to have infringed on constitutional rights." *State v. Roberts*, 515 A.2d 799, 802 (N.J. Super. Ct. App. Div. 1986). This venerable principle applies to all types of court orders. See *Matter of Felmeister*, 471 A.2d 775, 782-83 (N.J. 1984) (barring collateral challenges to the court's disciplinary rules in disciplinary proceedings).

The collateral bar on challenging court orders is an independent basis supporting the decision below. As noted above, under the New Jersey law in effect at the relevant time, see *supra* at 5, carry permits were issued by the New Jersey trial courts. Petitioner was subject to a judicial order that authorized him to carry while performing his duties as an armed security guard, but explicitly ordered that Petitioner could

carry in public "for no other purpose." Pet. App. 50. As the decision below found, because Petitioner was subject to a court order and never sought to challenge, modify, or review that order, he cannot escape sanctions for violating it. In the panel's words, Petitioner "was obliged to comply with the court-ordered restrictions in the permit that was issued to him" even if the terms were based on an unconstitutional standard. Pet. App. 9. While *Bruen* impacts the substantive Second Amendment law that governs public carry, that decision "did not empower permit holders to disregard judicial orders. The proper procedure in these circumstances, rather, is to apply to amend the permit or apply for a new one." *Id*.

This case is therefore a tremendously poor vehicle for addressing the question presented. Petitioner asks this Court to address how *Bruen* may have impacted preexisting convictions for permitless carrying in the States that had previously imposed a heightened self-defense requirement in their permitting statutes. See Pet. i-ii. That question is not outcome-determinative here, however, because Petitioner cannot obtain relief unless he can also surmount this independent bar on collaterally challenging court orders. Yet his Petition does not even attempt to do so: it does not mention the collateral-order doctrine or *Walker*; it does not identify any split on this doctrine; and it does not address (let alone refute) its application to this dispute.[2] In short,

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[2] Petitioner briefly acknowledges the panel's express holding that he was "obliged to comply with the court-ordered restrictions in the permit," but he responds only that the intermediate appellate court "did not cite to any supporting authority" for that rule. Pet. 5 (citing Pet. App. 7-9). But this Court reviews judgments, not opinions, and in any event, these precedents, including *Walker*, were presented to the panel. That the intermediate appellate court decision relied on *Walker*'s rule without citing

to the degree this Court wishes to review the question presented, it should not do so in a case—as this one—in which the Petitioner violated a court order.

In his forthcoming reply, Petitioner may argue (as he contended below) that a judicial order evaluating a carry permit is not the kind of court order to trigger *Walker*'s bar on collateral challenges to court orders writ large. But that question is not at all certworthy, and only highlights the vehicle problems inherent in this Petition. The question whether this kind of court order falls within the bar on collateral challenges to court orders is the type of split-less error correction on an infrequently-arising issue that this Court regularly declines to review. And it has no practical importance: a decision to grant an application for a carry permit is no longer reviewed by any court in New Jersey, so the issue no longer recurs in this State. The question the Petition actually raises is not outcome-determinative, and any effort on reply to convince this Court to take up the separate collateral-bar issue would not meet its certiorari criteria. Certiorari is not warranted.

II. The Alleged Split Is Illusory.

The intermediate appellate court's decision below does not implicate a split warranting certiorari. As an initial matter, because Petitioner never addresses the independent collateral-bar issue, Petitioner does not identify any circuit split on that separate holding. But even focusing exclusively on the specific question the Petition presents, the alleged split is illusory.

As an initial matter, although Petitioner contends that the decision below "conflicts with how seemingly

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that case by name in its unpublished decision hardly warrants certiorari.

every other jurisdiction with a similar law" resolved the question presented, Pet. 11, Petitioner cannot cite a *single* state high court decision from any jurisdiction after *Bruen* to adjudicate this question, including New Jersey. See R. 10 (noting this Court considers conflicts only among federal circuits and state "court[s] of last resort"). Instead, Petitioner cites various state trial or intermediate appellate court decisions from New York and California, Pet. 14-15, and pre-*Bruen* cases in the D.C. Court of Appeals, Pet. 13-14. That is insufficient.

Even if disagreement in post-*Bruen* state trial and intermediate appellate court cases could suffice, there is no split here. Begin with New York, where the vast majority of cases Petitioner cites *affirmed* convictions for carrying firearms without a permit—and rejected collateral attacks by those who claim they would have been eligible for a permit but for the unlawful proper-cause requirement in effect at the time. See *People v. Brundige*, 182 N.Y.S.3d 595, 598 (N.Y. Sup. Ct. 2023) (trial court holding defendant's Second Amendment challenge to conviction for publicly carrying without a permit could not proceed given the lack of "indication this defendant has ever applied for a [carry] permit"); *People v. Carrington*, 196 N.Y.S.3d 339, 343 (N.Y. Sup. Ct. 2023) (agreeing defendant "must have first submitted to the complained of" permitting law before he can challenge his conviction for violating it); *People v. Rodriguez*, 171 N.Y.S.3d 802, 805 (N.Y. Sup. Ct. 2022); *People v. Caldwell*, 173 N.Y.S.3d 918, 922-23 (N.Y. Sup. Ct. 2022); *People v. Williams*, 175 N.Y.S.3d 673, 675 (N.Y. Sup. Ct. 2022); *People v. Brown*, No. 71673-22, 2022 WL 2821817, at *3 (N.Y. Sup. Ct. July 15, 2022). Although one outlier trial court ruling departed from a "chorus of other judges" to allow collateral attacks to convictions for permitless carry that predated *Bruen*, *Brundige*, 182 N.Y.S.3d, at 600 (discussing *People v.*

Sovey, 179 N.Y.S.3d 867 (N.Y. Sup. Ct. 2022)), a single state trial court decision that contradicts most other decisions in that State cannot support certiorari.

Petitioner gets no further referencing post-*Bruen* decisions in the California lower courts. Like the courts in New York, intermediate appellate courts in California have also rejected collateral challenges from defendants who chose to simply carry without a permit—rather than seek a permit and challenge any denial as unconstitutional. See *In re T.F.-G.*, 312 Cal. Rptr. 3d 685, 703 (Cal. Ct. App. 2023) (emphasizing that because *Bruen* found only part of the permitting laws unconstitutional, "a functioning licensing regime remains in place if the good cause requirement were removed," and the State may still prosecute violations of the law barring permitless carry) (citing *In re D.L.*, 310 Cal. Rptr. 3d 562, 578-80 (Cal. Ct. App. 2023)).

Petitioner's reliance on pre-*Bruen* cases in the D.C. Court of Appeals also comes up short. Petitioner relies heavily upon *Plummer v. United States*, 983 A.2d 323 (D.C. 2009), but that case is inapposite. As explained below, *infra* at 21-25, under this Court's cases, there is an important difference between permitting laws that are entirely unconstitutional (where no one needs to comply, and collateral challenges may proceed) and permitting laws that are partially unconstitutional or unconstitutional as applied (meaning individuals still have to comply with the requirement generally or seek relief from the courts first, and may not disregard the permitting requirement outright). As the D.C. Court of Appeals explained, *Plummer* is the former. There, the Court considered a challenge to a prior conviction for unlawful possession of a handgun after *District of Columbia v. Heller*, 554 U.S. 570 (2008), held that the District's handgun possession ban unconstitutional.

Because the District enacted a "total ban on handgun possession," which *Heller* held "completely invalid," *Plummer*, 983 A.2d, at 342-43, parties could retroactively and collaterally challenge their convictions. See, *e.g.*, *Carrington*, 196 N.Y.S.3d, at 343 (noting permitting requirements like the one governing public carry are not "'outright ban[s]' as was the case in *Plummer*" (citation omitted)).

This case is instead far more like *Dubose v. United States*, 213 A.3d 599 (D.C. 2019), disproving the claim of any split between the District and an unpublished intermediate appellate court decision in New Jersey. *Dubose* considered whether to entertain a defendant's collateral attack on his unlawful-carry conviction, *id.*, at 601, 604, in the wake of the D.C. Circuit's decision that invalidated the law—a precursor to *Bruen*. See *Wrenn v. District of Columbia*, 864 F.3d 650, 661, 668 (CADC 2017) (holding the District's "good reason" criteria for a carry license unconstitutional). Confronted with the scenario now before New Jersey after *Bruen*, the D.C. Court of Appeals *rejected* the collateral challenge, and it rejected defendant's claim "that, because he could not satisfy the 'good reason' requirement, no valid statute prohibited him from carrying a pistol without a license." *Dubose*, 213 A.3d, at 604. Far from any split with *Plummer*, there is consistency with *Dubose*.

Unable to identify an analogous case where a state court has invalidated a conviction for unlawful carry of a firearm, Petitioner relies heavily on dicta to drum up a split as to his fact pattern: where the individual had a partial permit but exceeded its scope. Petitioner claims that in such a rare case, the other courts *would* grant relief—not based on their judgments, but based on dicta he says support his as-applied theory. Pet. 13-

15. But "dicta does not a circuit split make." *Pac. Coast Supply, LLC v. N.L.R.B.*, 801 F.3d 321, 334, n.10 (CADC 2015). And mere remarks that point out a specific other defendant could not show he "would have [been] otherwise qualified," *Dubose*, 213 A.3d at 605, or would be disqualified for other reasons such as a felony conviction, see *Brundige*, 182 N.Y.S.3d, at 598-99; *Newman v. United States*, 258 A.3d 162, 166 (D.C. 2021), hardly creates a split with the judgment below. In other words, the fact other defendants had "even more tenuous" claims than Petitioner does not show these decisions necessarily would afford Petitioner the relief he seeks. *Caldwell*, 173 N.Y.S.3d, at 923; see also *Rodriguez*, 171 N.Y.S.3d, at 805 (observing in dicta a similar claim "might" be a "colorable[e] argu[ment]").[3] Petitioner identifies no decision affording relief in this situation, let alone from a court of last resort.

III. The Petition Otherwise Fails To Satisfy This Court's Certiorari Criteria.

The Petition fails to satisfy a number of traditional certiorari criteria in additional respects as well. For one, this question has been resolved by few state high courts generally, and none since *Bruen*. For another, the Petition's arguments regarding intervening state-court decisions undermine any need for this Court to intervene. And finally, the decision below has limited

[3] To the extent that the California intermediate appellate courts have opined on the viability of an as-applied claim by "a hypothetical person lawfully carrying a firearm in public for self-defense after failing to secure a license due to a 'good cause' requirement," *T.F.-G.*, 312 Cal. Rptr. 3d, at 703, that is also dicta. And *Golden v. United States*, 248 A.3d 925 (D.C. 2021), expressly declined to address the defendant's Second Amendment argument. *Id.*, at 948.

impact, both in future cases and even in this one. The upshot is not certiorari, but percolation instead.

First, this Court should decline review because the issues presented have not percolated in the state high courts after *Bruen*. *Bruen* found seven state permitting laws partially invalid, on the basis that each (at that time) included heightened self-defense requirements. See 597 U.S., at 70-77. The Petition does not cite a single opinion from any of these seven state high courts addressing when a defendant could collaterally attack a conviction for carrying without a permit—let alone on a fact pattern similar to Petitioner's.[4] Indeed, the Petition does not identify state appellate or trial court decisions addressing this issue from three of the affected jurisdictions. As this Court's own certiorari practices recognize, allowing more "'percolation' in, and diverse opinions from, state . . . appellate courts" before taking up an issue, "may yield a better informed and more enduring final pronouncement." *Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting). Such additional review would be proper here.

Second, the Petition's own submissions regarding intervening state precedent only confirm the need for percolation. The Petition argues that the intermediate appellate court has since "suggested that relief could be available to defendants, like [Petitioner], [who] . . . 'would have been granted a gun-carry permit but for the justifiable-need requirement.'" Pet. 15-16 (citing *State v. Wade*, 301 A.3d 393, 403 (N.J. Super. Ct. App. Div. 2023)). But that argument is self-defeating: to the degree New Jersey courts have adopted the rule that Petitioner prefers, future cases are bound by *Wade*—

[4] As noted above, *supra* at 15-16, the District of Columbia Court of Appeals decisions cited by Petitioner were pre-*Bruen*.

not the unpublished decision below. That is a reason to *deny* review, not to grant it. See R. 10 (explaining certiorari may be warranted if the decision of a state high court splits with that of another state high court, not where a split involves intermediate appellate courts of a single state); *Davis v. United States,* 417 U.S. 333, 340 (1974) (noting certiorari denied when the claimed "conflict" was "intra-circuit"). And a lack of clarity about New Jersey's rule warrants percolation for the state court to ultimately clarify its rule.[5]

Finally, the decision below is of limited impact. As noted above, the decision has no precedential effect. And this case involves unusual facts that are unlikely to recur with any frequency. Petitioner's fundamental argument is that individuals who previously received

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[5] To be clear, however, Petitioner misreads *Wade* and therefore errs in suggesting that any future individuals similarly situated to him would be entitled to relief. *Wade* disallowed a collateral attack on convictions for carrying without a permit brought by a defendant who had never applied for a permit—even though the defendant (like this one) argued that he would have been able to obtain a permit but for the justifiable need requirement. 301 A.3d, at 404; see *id.*, at 403 (confirming that individuals are "not free to ignore a statute and presume that they would have been granted a permit but for one potentially invalid provision of a permit statute"). Petitioner emphasizes that the *Wade* panel also explicitly doubted that the defendant before them would have been able to obtain a permit even absent the extant justifiable-need standard, see Pet. 15-16 (citing 301 A.3d, at 403), but that evidentiary deficiency provided an *additional* reason to deny relief, not the exclusive one. Moreover, *Wade* did not involve a defendant subject to a prior court order and therefore did not confront the bar on collaterally challenging court orders that is likewise fatal. Nothing in *Wade* is in tension with the decision below. That said, Petitioner's contention that *Wade* supports his position is evidence favoring percolation, not certiorari.

partial permits to carry for enumerated purposes are best situated to show that they would have received a full permit to carry but for the self-defense condition, and thus best situated to challenge their prior state convictions. See Pet. ii; see also Pet. 14-15 (contrasting this case with other cases in which individuals did not seek or receive a permit at all). But that fact pattern—covering only individuals who had previously received partial permits yet carried beyond the permit's scope, and were caught and charged by law enforcement pre-*Bruen*—is unlikely to arise much at all, as Petitioner's own cases indicate. And because New Jersey law has since changed, there is no reason to believe this issue can arise again after *Bruen*. That is, even if Petitioner believes these unusual facts should aid him on the merits, they confirm the Petition is uncertworthy.

In any event, this Court's review will have limited importance even in this case. Petitioner was convicted after a jury trial of both the unlawful carry count and a separate impersonating a police officer count, and Petitioner was sentenced to concurrent sentences of only two-years' probation and 100 hours of community service in October 2020. See *supra* at 8; Resp. App. 3. Because his probationary sentence period has long since ended, and given that his sentence for the carry-related conviction was concurrent with his sentence for the unchallenged impersonation conviction, review by this Court will have limited impact even within the context of Petitioner's own case.

IV. The Decision Below Is Consistent With A Long Line Of This Court's Cases.

Beyond the vehicle issues, lack of split, and overall inability to meet this Court's certiorari criteria, there is a final reason to deny certiorari: the decision below is consistent with a consistent body of precedent.

This Court's cases are clear. When the law requires an individual to obtain a permit before engaging in a particular course of conduct, that individual has "the choice of securing a license . . . or, before he acts, seeking a review in the civil courts of the licensing authority's refusal to issue him a license." *Poulos*, 345 U.S., at 409 n.13.

Petitioner did not avail himself of those options. He never applied for an unrestricted permit to carry a handgun. And he also never challenged the denial of such permit in court, as other plaintiffs seeking relief from unconstitutional statutes have repeatedly done. See, *e.g.*, *Bruen*, 597 U.S., at 15-16; *McDonald v. City of Chicago*, 561 U.S. 742, 751 (2010); *Heller*, 554 U.S., at 575. Instead, Petitioner took the law into his own hands by carrying a permit outside the scope of his job duties without having obtained a permit to do so. Only after apprehension, prosecution, and conviction did he challenge the validity of one aspect of the permitting scheme governing the grant of such permits.

This Court in *Poulos* rejected collateral attacks of this kind. *Poulos* involved an individual convicted of holding religious services in a park without the license required by a local ordinance. See 345 U.S., at 397-98. Although Poulos argued that the denial of the license had violated the First Amendment, and although this Court recognized that he had been "wrongfully" and unlawfully "refused [a license] by the municipality," *id.*, at 408, this Court still held that he was not free to proceed "without a license and defeat prosecution" by collaterally attacking the constitutional validity of the denial of a permit. *Id.*, at 409; see also *id*., at 409 n.13 (adding that where the individual violates a provision that "prohibit[s] certain conduct unless the person has a license, one who without a license engages in that

conduct can be criminally prosecuted without being allowed to show that the application for a license would have been unavailing"). So even if application of a specific permitting condition is unconstitutional, a defendant cannot avoid penalty by failing to submit to the licensing scheme, flouting the requirement, and raising his legal challenge only after prosecution.

Poulos and its progeny offered a number of reasons for this rule, including that allowing residents to flout the permitting law in effect at the time affects public safety and undermines the rule of law. See *id.*, at 409 (reasoning that a rule allowing "applicants to proceed without the required permits to run businesses, erect structures, purchase firearms, transport or store explosives or inflammatory products, hold public meetings without prior safety arrangements or take other unauthorized action is apt to cause breaches of the peace or create public dangers"); see also, *e.g.*, *Somlo v. C.A.B.*, 367 F.2d 791, 793 (CA7 1966) (relying on *Poulos* to find that a person may not "disregard . . . license requirements" since he "may not become a law unto himself"). Allowing an individual to disregard a permitting law on the claim that he *would* have been able to satisfy the indisputably valid requirements—and requiring courts to undertake such an inquiry in a criminal proceeding—is untenable. Pet. App. 8. The argument that Petitioner *could have* obtained the permit but for the unconstitutional criterion, see Pet. 11, is thus inconsistent with *Poulos* itself.

Petitioner is correct to say there are exceptions to this rule, but he misunderstands the line. See Pet. 8-9. As *Poulos* explained, there is a distinction between permitting statutes that are *entirely* unconstitutional (so no one need comply) and permitting laws that are either only partially unconstitutional or unconstitutional

as applied (so individuals still have to comply with the requirement generally, or seek relief from the courts first). See 345 U.S., at 414 (explaining that where the entirety of the permitting requirement is facially invalid, defendants can collaterally challenge the laws as a valid defense to prosecution because "[t]he statutes were as though they did not exist," and thus "there were no offenses in violation of a valid law"); *id.,* at 413-14 (distinguishing *Royall v. Virginia*, 116 U.S. 572 (1886); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); and *Thomas v. Collins*, 323 U.S. 516 (1945), on this basis); see also *Lovell v. City of Griffin*, 303 U.S. 444, 452-53 (1938) (finding that only if the entirety of the permitting law is "void on its face" can a defendant "contest its validity" without initially seeking a permit).[6]

The cases on which Petitioner relies all fall on the other side of the line. *Lovell* involved an ordinance that was "void on its face": a sweeping law barring "the distribution of literature of any kind at any time,

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[6] Petitioner is thus far off the mark in claiming that the State or the New Jersey courts are treating the Second Amendment as a "second class right." Pet. 9. Instead, the New Jersey courts have long heeded *Poulos*'s teaching, and drawn a distinction between cases in which the entirety of the permitting law is invalid (and thus collateral attacks may be entertained) and cases in which only part of the law is invalid (and thus individuals still need to comply with the permitting requirement generally). In *Borough of Collingswood v. Ringgold*, 331 A.2d 262 (N.J. 1975), defendants challenged convictions for door-to-door solicitation without a permit on the ground that the ordinance was unconstitutional. *Id.*, at 265, 267. The New Jersey Supreme Court held that while one section of the ordinance was unconstitutional under the First Amendment, the remaining registration requirements were still valid and enforceable, and therefore that the collateral challenge had to fail. *Id.*, at 270-72. *Ringgold* confirms how the decision below was consistent with *Poulos* and the principles animating that precedent even in other constitutional contexts.

at any place, and in any manner without a permit," where the very act of requiring the license at all "strikes at the very foundation of the freedom of the press." 303 U.S., at 451-52. *Staub v. City of Baxley*, 355 U.S. 313 (1958), similarly challenged a facially invalid solicitation law. See *id.*, at 320-21 (explaining claim was that the licensing regime itself was an unlawful "prior restraint," which "challeng[ed] the constitutional effect of all its sections"); see *Jones v. City of Opelika*, 319 U.S. 103, 104 (1943) (same as *Lovell*); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969) (finding challenged law to be prior restraint invalidated in cases like *Staub*). So too for *Smith v. Cahoon*, 283 U.S. 553 (1931), which found the licensing measure "manifestly beyond the power of the state" and "invalid upon its face." *Id.*, at 562-65. Each case involved a permitting law that was entirely invalid, not one in which at least some (or even most) of the permitting measure remained permissible.

By contrast, in this case and in *Poulos*, the State's overall decision to require a permit is constitutionally valid, even if certain aspects of the permitting regime were unconstitutional. Indeed, it is undisputed that States like New Jersey may require some valid permit before an individual can lawfully carry a firearm. See *Bruen*, 597 U.S., at 39 n.9; *id.*, at 79-80 (Kavanaugh, J., concurring). Put another way, unlike *Lovell*, *Staub*, and *Cahoon*, New Jersey's pre-*Bruen* justifiable-need requirement was severable from its overall permitting law—which no party disputes is constitutionally firm otherwise. And because the fact of the permitting law and its other criteria remain valid even if one criterion was unconstitutional, "a criminal prosecution is not the proper venue" to bring a collateral challenge. Pet. App. 8; see *id.* (reiterating that, even those who could satisfy the permitting criteria are "not free to act as if

they possess an unrestricted permit simply because they may be eligible to obtain such a permit through proper channels" without first actually doing so). The Petition cites no precedent dispensing with *Poulos* in such a situation, and doing so would upend the public-safety and rule-of-law principles *Poulos* promotes.

Finally, as laid out in detail above, *supra* at 10-13, the decision below was correct for a second reason: the independent cases prohibiting collateral challenges to court orders. See *Walker*, 388 U.S., at 317-18 (holding that individuals cannot "disobey" a court order even if it is "subject to substantial constitutional question"; individuals must instead "challeng[e]" it through the proper appellate procedures). At the time he engaged in the conduct at issue, Petitioner was the subject of a court order that authorized him only to carry while performing his duties as an armed security guard, and that explicitly ordered that Petitioner could carry in public "for no other purpose." Pet. App. 50. He cannot violate the terms of the court order—without seeking to appeal or modify the terms—and then claim for the first time in his prosecution the right to do so.

CONCLUSION

This Court should deny the petition.

Respectfully submitted,

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