

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

REPLY BRIEF FOR THE PETITIONER

JENNIFER N. SELLITTI, Esq.
New Jersey Public Defender

CODY T. MASON, Esq.*
New Jersey Deputy Public Defender

Office of the New Jersey Public Defender
25 Market Street
P.O. Box 850
Trenton, New Jersey 08625
(609) 292-8292
(609) 777-1795 (fax)
Cody.Mason@opd.nj.gov

Attorneys for Petitioner
**Counsel of Record*

TABLE OF CONTENTS

	<u>PAGE NOS.</u>
REPLY BRIEF FOR THE PETITIONER.....	1
I. The New Jersey Court’s Decision Conflicts with This Court’s Precedents and the State Is Mistaken in Arguing Otherwise.....	3
II. The Appellate Court’s Decision Conflicts with the Decisions of Seemingly Every Other Jurisdiction to Address the Question and the State’s Efforts to Downplay this Conflict Are Unavailing.....	6
III. This Case Presents the Ideal Vehicle for Resolving the Question Presented and the State’s Arguments to the Contrary Are Legally and Factually Unfounded	10
CONCLUSION.....	13

TABLE OF AUTHORITIES

PAGE NOS.

Cases

<i>Arizona v. Evans</i> , 514 U.S. 1 (1995).....	8
<i>Collingswood v. Ringgold</i> , 331 A.2d 262 (N.J. 1975)	4
<i>Commonwealth v. Guardado</i> , 206 N.E.3d 512 (Mass. 2023)	9
<i>Golden v. United States</i> , 248 A.3d 925 (D.C. 2021)	6
<i>In re Felmeister</i> , 471 A.2d 775 (N.J. 1984)	11, 12
<i>In re Preis</i> , 573 A.2d 148 (N.J. 1990)	11
<i>In re T.F.-G.</i> , 312 Cal.Rptr.3d 685 (Cal. Ct. App. 2023).....	7
<i>Madsen v. Women’s Health Ctr., Inc.</i> , 512 U.S. 753 (1994).....	11, 12
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022)	1, 2, 7, 9, 10
<i>People v. Brundige</i> , 182 N.Y.S.3d 595 (N.Y. Sup. Ct. 2023).....	7
<i>People v. Caldwell</i> , 173 N.Y.S.3d 918 (N.Y. Sup. Ct. 2022)	8
<i>People v. Carrington</i> , 196 N.Y.S.3d 339 (N.Y. Sup. Ct. 2023).....	7
<i>People v. Rodriguez</i> , 171 N.Y.S.3d 802 (N.Y. Sup. Ct. 2022)	8
<i>People v. Sovey</i> , 179 N.Y.S. 3d 867 (N.Y. Sup. Ct. 2022).....	7
<i>People v. Williams</i> , 175 N.Y.S.3d 673 (N.Y. Sup. Ct. 2022)	8
<i>Plummer v. United States</i> , 983 A.2d 323 (D.C. 2009)	4, 6
<i>Poulos v. New Hampshire</i> , 345 U.S. 395 (1953)	3, 4
<i>Royall v. Virginia</i> , 116 U.S. 572 (1886)	4, 5
<i>Siccardi v. State</i> , 284 A.2d 533 (N.J. 1971)	11
<i>Somlo v. C.A.B.</i> , 367 F.2d 791 (7th Cir. 1966).....	4

TABLE OF AUTHORITIES (CONT'D)

PAGE NOS.

Cases (Cont'd)

State v. Cassidy, 843 A.2d 1132 (N.J. 2004) 11, 12

State v. Gandhi, 989 A.2d 256 (N.J. 2010) 11

State v. Roberts, 515 A.2d 799 (N.J. Super. Ct. App. Div. 1986) 11, 12

State v. Wade, 303 A.3d 1051 (N.J. 2023) 9

State v. Wilson, 543 P.3d 440 (Haw. 2024) 9

Walker v. City of Birmingham, 388 U.S. 307 (1967) 10, 11

Statutes

N.J. Stat. Ann. § 2C:29-9a 11

N.J. Stat. Ann. § 2C:39-5b(1) 11

REPLY BRIEF FOR THE PETITIONER

This Court should grant Mr. Reeves’s petition to address the question of whether a state may punish a person for exercising their constitutional right to carry a firearm in self-defense simply because they failed to first secure a permit that was unavailable to them due to an unconstitutional requirement. As discussed in Mr. Reeves’s petition, such review is needed because the appellate court’s decision allowing such prosecutions conflicts with this Court’s jurisprudence; because that opinion is inconsistent with the holdings of other state courts; and because this case presents an ideal vehicle to address the issue, particularly since Mr. Reeves had a limited permit and would have been eligible for a full permit if not for the unconstitutional heightened need-for-self-defense requirement.

The State’s arguments in response to these grounds for granting certiorari are unpersuasive. The State argues that the appellate court’s opinion is consistent with this Court’s case law because Mr. Reeves did not “submit” to the permitting scheme and because *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), only invalidated part of that scheme. But Mr. Reeves *did* submit to the scheme because he applied for and was granted a limited permit. And, in any event, such compliance is only needed when a permit scheme is valid, and New Jersey’s scheme was not. Additionally, while many of this Court’s prior opinions involved convictions stemming from wholly unconstitutional permitting schemes, it has applied the same principles, and reversed convictions, when only part of the scheme was invalid at least when, as here, the invalid part of the scheme affected the defendant. Thus,

contrary to the State's claims, the appellate opinion directly conflicts with this Court's precedents, warranting further review.

The State's attempts to downplay the appellate opinion's departure from the holdings of other state courts is also misguided. Contrary to the State's arguments, the appellate opinion conflicts with multiple opinions issued by the District of Columbia Court of Appeals, as well as those of numerous trial and intermediate appellate courts, covering over half of the jurisdictions affected by *Bruen's* invalidation of heightened self-defense requirements. This conflict calls for this Court's review particularly given the unwillingness of some state courts of last resort, including in New Jersey, to address the significant issues presented.

Finally, the State is mistaken in claiming that this case is a flawed vehicle for review because Mr. Reeves's limited permit was issued by a judge. While the State is correct that individuals may be prosecuted for failing to comply with unconstitutional injunctions or similar court orders, that principle has no relevance here, where the permit was issued as part of an administrative, non-judicial process, and where Mr. Reeves was charged with carrying a gun without a permit, not violating a court order. The judiciary's limited role in New Jersey's old permitting scheme therefore is not an impediment to this Court's review and does not make this case less ideal for resolving the question presented.

I. The New Jersey Court's Decision Conflicts with This Court's Precedents and the State Is Mistaken in Arguing Otherwise.

The State does not dispute that New Jersey's permitting scheme denied its citizens of their Second Amendment rights, or that this unconstitutional scheme led to Mr. Reeves's prosecution. As explained in Mr. Reeves's petition, this concession should have been dispositive under this Court's case law, which makes clear that a person may disregard an unconstitutional permitting scheme and cannot be punished for engaging in the relevant constitutional conduct. Pet. 6-11.

Nonetheless, the State argues that Mr. Reeves is not entitled to relief, and that the appellate ruling is not in conflict with this Court's jurisprudence, primarily because Mr. Reeves did not "submit to the licensing scheme." Resp. Brf. 21-22. But the State is mistaken, both factually and legally. First, Mr. Reeves *did* submit to the licensing scheme, as he applied for and received a permit, albeit one limited to his employment. App. 8. In doing so, Mr. Reeves both complied with the scheme *and* demonstrated his eligibility for not only a limited permit, but a full permit if not for the unconstitutional heightened self-defense requirement. App. 37, 50. Thus, Mr. Reeves submitted to the scheme, as the State argues he should have done.

The State is also wrong, however, in arguing that such submission was required. The main case relied upon by the State for this proposition is *Poulos v. New Hampshire*, 345 U.S. 395 (1953). But *Poulos* dealt with "the wrongful refusal of [a] license" under a "valid" permitting scheme, *id.* at 408-09, not an invalid scheme. The *Poulos* Court's holding -- that the defendant could not act without securing a permit even if the issuing authority acted arbitrarily because "[t]he valid

requirements of license are for the good of the applicants and the public[.]” *id.* at 409 -- thus has no bearing here, or in any other case involving an unconstitutional permit requirement, as the Court itself explained. *See id.* at 413-14 (explaining holding applied to cases involving unlawful refusal of a license under “a valid” scheme and not when the permitting scheme itself is “held unconstitutional”); *see also Somlo v. C.A.B.*, 367 F.2d 791, 793 (7th Cir. 1966) (finding plaintiff had to comply with “valid” pilot licensing scheme); *Collingswood v. Ringgold*, 331 A.2d 262, 270-73 (N.J. 1975) (finding defendants had to comply with permitting scheme that was constitutional once irrelevant provision was narrowly construed). Accordingly, Mr. Reeves was not required to comply with the scheme, although he did anyway.

The State’s other argument, that a person is only entitled to relief if the permitting scheme is found to be “entirely unconstitutional,” is equally misplaced. Resp. Brf. 22-23. *Poulos* includes no such instruction, contrary to the State’s claims. And while many cases have involved reversing convictions stemming from entirely invalid schemes, this Court has afforded the same relief when *part* of a permitting scheme was unconstitutional, as long it affected the defendant. *See Royall v. Virginia*, 116 U.S. 572, 582-83 (1886) (reversing conviction for practicing law without a license where only the process for payment was deemed unconstitutional, as applied, and not the whole scheme); *see also Plummer v. United States*, 983 A.2d 323, 340-42 (D.C. 2009) (allowing defendant to challenge conviction for possessing a handgun without a license even though only one requirement to obtain a license was unconstitutional). As this Court has explained, when part of a permit scheme

unconstitutionally limits a person's rights, "its unconstitutionality infects and nullifies" the resulting prosecution, which is "equally a denial" of the person's rights, even if other parts of the scheme remain. *Royall*, 116 U.S. at 583.

Thus, the State's argument is legally mistaken. And it is also illogical. A person's constitutional rights are no less infringed by enforcement of a partially unconstitutional permitting scheme than by enforcement of a wholly invalid scheme. In either event, they are wrongly punished for exercising a constitutionally protected right, in violation of this Court's precedent. Indeed, the State's position would give states free reign to impose unconstitutional permitting requirements so long as a single valid requirement also exists, with no legal recourse for their citizens who exercise their constitutional rights. *See* Resp. Brf. 24 (suggesting conviction can stand simply because "the permitting law and its other criteria remain valid"). The absurdity of this outcome not only undermines the State's position but further shows the need for this Court's intervention to ensure that its case law concerning unlawful permitting schemes is properly understood and fairly applied, including in cases involving the Second Amendment right to self-defense.

In short, and contrary to the State's claims, this Court's precedent calls for Mr. Reeves's conviction to be reversed. As in *Royall*, the heightened self-defense requirement was unconstitutional, as all agree, Resp. Brf. 5-6, and infected the criminal enforcement of that provision against Mr. Reeves, who otherwise would have received a permit and been free from prosecution. His conviction therefore cannot stand, and certiorari is warranted.

II. The Appellate Court’s Decision Conflicts with the Decisions of Seemingly Every Other Jurisdiction to Address the Question and the State’s Efforts to Downplay this Conflict Are Unavailing.

As discussed in Mr. Reeves’s petition, the Appellate Division’s ruling conflicts with how seemingly every other state court has addressed the issue. The State seeks to downplay this fact in multiple ways. Those arguments, however, are unpersuasive and do not diminish the need for this Court’s intervention.

The State first wrongly claims that the appellate opinion is not in conflict with any courts of last resort. Resp. Brf. 14. Contrary to this claim, the District of Columbia Court of Appeals has consistently held that a conviction for possessing a gun without a permit cannot stand when the defendant, like Mr. Reeves, could have obtained a permit if not for an unconstitutional permit requirement. *See Golden v. United States*, 248 A.3d 925, 947-48 (D.C. 2021) (holding that prosecution for carrying gun without a permit could not proceed if trial court found on remand that, “but for the [invalid] ‘good reason’ requirement, [the defendant] would have been eligible and able to register and obtain a license to carry his gun”); *Plummer*, 983 A.2d at 335-37, 34-42 (holding conviction for carrying a gun without a permit could not stand if defendant “could have successfully obtained” a permit if not for since-invalidated provision requiring applicants to possess a registration certificate). And the Court of Appeals has also made clear that such relief is available even though other parts of the permitting scheme remain valid. *See Plummer*, 983 A.2d at 342 (remanding to determine whether defendant could meet other, valid requirements to obtain a permit, including as to “age, criminal history, mental capacity, and

vision”). The appellate court’s ruling, and the New Jersey Supreme Court’s order allowing it to stand, therefore directly conflict with decisions of other courts, including a court of last resort, and the State is wrong to argue otherwise.¹ *See also People v. Sovey*, 179 N.Y.S. 3d 867, 871-72 (N.Y. Sup. Ct. 2022) (holding defendant was entitled to relief “[i]f what discouraged and prevented [him] from applying for an[d] receiving a license was [the] unconstitutional ‘special need’ provision”).

The State is also mistaken in attempting to minimize the other relevant opinions simply because the challenges in those cases were generally unsuccessful. Resp. Brf. 14. While true, the State does not dispute that each case involved people who, unlike Mr. Reeves, never applied for a permit and/or could not satisfy the remaining permit requirements,² and that the same courts suggested, if not explicitly held, that relief could be available to someone in Mr. Reeves’s position. *See In re T.F.-G.*, 312 Cal.Rptr.3d 685, 701-03 (Cal. Ct. App. 2023) (denying relief to defendant who never applied for a permit or established his qualifications while noting relief may be available where defendant’s ineligibility “turned on the good cause requirement”); *People v. Brundige*, 182 N.Y.S.3d 595, 620-21 (N.Y. Sup. Ct. 2023) (denying relief to defendant who never applied for permit and had prior felony conviction while suggesting relief might be available to “law-abiding, adult citizens”

¹ While the State emphasizes that the District of Columbia cases were decided pre-*Bruen*, Resp. Brf. 15, it provides no explanation for why that should matter when they involved the same issue presented here -- whether a conviction for carrying a gun without a permit can stand when such a permit was unavailable due to a requirement that violated the Second Amendment.

² One case cited by the State, *People v. Carrington*, 196 N.Y.S.3d 339, 341 (N.Y. Sup. Ct. 2023), involved a challenge to New York’s “newly revised” post-*Bruen* permitting scheme. In any event, the defendant in that case, unlike Mr. Reeves, never applied for a permit. *Id.* at 341-42.

with “restricted” permit licenses or who would have been qualified to obtain a full permit absent the “proper cause” requirement); *People v. Rodriguez*, 171 N.Y.S3d 802, 804 n.2, 804-05 (N.Y. Sup. Ct. 2022) (denying relief to defendant who never applied for permit and who had a prior criminal history while noting relief may be available to a person who possessed a limited permit or “who sought but was denied a concealed carry license under the old, unconstitutional regime”); *People v. Williams*, 175 N.Y.S.3d 673, 927-31 (N.Y. Sup. Ct. 2022) (denying relief to defendant who never applied for permit or established qualifications while suggesting relief may be available to a person who “could have overcome the constitutionally permissible restrictions” that remained); *People v. Caldwell*, 173 N.Y.S.3d 918, 922-23 (N.Y. Sup. Ct. 2022) (denying relief to defendant who never applied for permit and had a prior felony conviction while noting relief may be available where, “had the defendant applied for . . . a license, he would have been denied a license under a now unconstitutional provision”). Thus, contrary to the State’s arguments, the appellate opinion affirming Mr. Reeves’s conviction conflicts with how every other state court has addressed the issue.

Lastly, the State is mistaken in arguing that there is a need for further “percolation” in the state courts before certiorari should be granted. Resp. Brf. 17-18. At the outset, this is not a requirement for certiorari, as demonstrated by the State’s reliance on a footnote from a dissenting opinion. *See* Resp. Brf. 18 (citing *Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting)). Nonetheless, this standard has been met, as explained above, because the issue presented has

already been addressed in “diverse opinions” from multiple trial courts, intermediate appellate courts, and a court of last resort, *Evans*, 514 U.S. at 23 n.1 (Ginsburg, J., dissenting), in more than half of the jurisdictions with permitting schemes struck down by *Bruen*. See *Bruen*, 597 U.S. at 13-14 (noting “six States and the District of Columbia” had invalid licensing schemes).³

A wait-and-see approach is therefore unnecessary because numerous courts have already addressed the issue. And it is particularly inappropriate given that some state courts of last resort, including the New Jersey Supreme Court, appear unwilling to give these issues the full consideration they deserve, as occurred in this case. See also *State v. Wade*, 303 A.3d 1051, 1051 (N.J. 2023) (denying leave to appeal published appellate decision addressing *Bruen*’s application to convictions for possessing a firearm without a permit); *State v. Wilson*, 543 P.3d 440, 444-45 (Haw. 2024) (declining to address merits of Second Amendment challenge to defendant’s prosecution for possessing a firearm without a permit). Thus, while waiting for additional scrutiny may be preferable in other cases, it is inappropriate here, where a clear divide already exists among the courts, and where delay will likely only result in many people, including Mr. Reeves, being denied their rights without meaningful judicial review.

³ Courts in one of those jurisdictions, Massachusetts, also appear unlikely to ever address the issue after finding that *Bruen* invalidated prior convictions for carrying a gun without a permit on a separate, state-specific ground. See *Commonwealth v. Guardado*, 206 N.E.3d 512, 522, 538-39 (Mass. 2023) (reversing based on jury instructions concerning Commonwealth’s burden of proof in such cases).

III. This Case Presents the Ideal Vehicle for Resolving the Question Presented and the State's Arguments to the Contrary Are Legally and Factually Unfounded.

As explained in Mr. Reeves's petition, this case is an ideal vehicle for addressing the question presented because *Bruen's* effect on prosecutions and convictions for possessing a firearm without a permit is the only issue in this case and because Mr. Reeves is the model petitioner, as he satisfied every qualification to obtain a full carry permit other than the since-invalidated heightened-self-defense requirement. The State does not dispute any of these facts, including that Mr. Reeves could have obtained a full permit and avoided prosecution if not for a permitting provision that all agree violated the Second Amendment. Resp. Brf. 5-6.

Instead, the State argues that this case "suffers vehicle problems" because Mr. Reeves's limited carry permit was issued by a judge. Resp. Brf. 2-3, 10. According to the State, this means that Mr. Reeves had to comply with the limitation placed on his right to self-defense, even if it was unconstitutional, because "parties are not 'free to disobey' court orders, even if a court order is 'subject to substantial constitutional question[.]'" Resp. Brf. 3 (quoting *Walker v. City of Birmingham*, 388 U.S. 307, 317-18 (1967)). In other words, the State asserts that certiorari is inappropriate because Mr. Reeves "cannot escape sanctions" even if his rights were denied under the invalid permitting scheme because that scheme was enforced pursuant to a court order. Resp. Brf. 11-12. This misses the mark both due to the administrative nature of the relevant order and because Mr. Reeves was not prosecuted for violating a court order.

First, while judges were charged with issuing carry permits under New Jersey's then-existing scheme, their involvement was administrative and "clearly nonjudicial in nature[.]" *Siccardi v. State*, 284 A.2d 533, 538 (N.J. 1971), with the Legislature having "reposed what is essentially an executive function in the judicial branch." *In re Preis*, 573 A.2d 148, 151 (N.J. 1990). Thus, while issued by a judge, the permit order was administrative in nature and not akin to the injunctions or similar court orders that this Court has held must be honored regardless of their constitutionality. *See Walker*, 388 U.S. at 309 (court-issued injunction); *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 757 (1994) (same); *see also State v. Gandhi*, 989 A.2d 256, 271-73 (N.J. 2010) (court-issued restraining order); *State v. Cassidy*, 843 A.2d 1132, 1137 n.3 (N.J. 2004) (same); *In re Felmeister*, 471 A.2d 775, 775 (N.J. 1984) (attorney disciplinary rule); *State v. Roberts*, 515 A.2d 799, 800-01 (N.J. Super. Ct. App. Div. 1986) (court-issued order for bail).

Even more basically, this case does not involve enforcement of a court order. Mr. Reeves was prosecuted for failing to secure a full carry permit. App. 3; *see also* N.J. Stat. Ann. § 2C:39-5b(1) ("Any person who knowingly has in his possession any handgun . . . without first having obtained a permit to carry the same . . . is guilty of a crime of the second degree."). He was not charged with contempt or otherwise prosecuted for violating a court order, *see* N.J. Stat. Ann. § 2C:29-9a ("[A] person is guilty of a crime of the fourth degree if the person purposely or knowingly disobeys a judicial order or protective order[.]"), unlike in the cases cited by the State. *See Walker*, 388 U.S. at 309-12 (prosecution for contempt of injunction); *Gandhi*, 989

A.2d at 259-60 (prosecution for contempt and stalking in violation of restraining order); *Roberts*, 515 A.2d at 800-01 (prosecution for contempt of bail order).⁴

The fact that the State did not charge Mr. Reeves with contempt further shows that he was not subject to an injunction-like court order. And it also provides separate grounds to reject the State's overarching argument. Simply put, the principle that a person may be prosecuted for violating an invalid court order has no relevance when a person, like Mr. Reeves, was not charged with violating a court order in the first place. The State's invocation of this principle is thus misplaced not only because of the administrative nature of the permit order, but also because Mr. Reeves was never prosecuted for violating that order. The court's role in issuing the permit therefore is not an impediment to this Court's review.

Lastly, it is of no moment that New Jersey has changed its permitting laws or that Mr. Reeves has completed his probationary sentence. Resp. Brf. 3-4, 19-20. These facts do not change the reality that Mr. Reeves's rights were violated, and that he will have a serious conviction following him for the rest of his life due to that violation. And they do not diminish the broader significance of the issue given the important constitutional questions at play and the erroneous nature of the opinion below.

In sum, the Appellate Division has ruled that a person may be criminally punished for exercising their Second Amendment right to carry a handgun for self-

⁴ The other cases cited by the State did not directly address the ability to criminally prosecute a person for violating a court order. *See Madsen*, 512 U.S. at 757 (addressing scope of injunction); *Cassidy*, 843 A.2d at 1133 (addressing validity of search based on invalid restraining order); *Felmeister*, 471 A.2d at 775 (addressing disciplinary proceeding for violating court rule).

defense simply because they did so without first satisfying an unconstitutional permitting requirement. This decision stands alone, in conflict with this Court's precedents and the holdings of other courts that have addressed the issue. This Court should grant the petition for certiorari to resolve this dispute and to protect the Second Amendment rights of Mr. Reeves and all other similarly situated individuals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JENNIFER N. SELLITTI, Esq.
New Jersey Public Defender
Attorney for the Petitioner



CODY T. MASON, Esq.
New Jersey Deputy Public Defender
Counsel of Record

DATED: May 20, 2024