No. 24-373

In The
Supreme Court of the United States

MARYLAND SHALL ISSUE, INC., *et al.*,

Petitioners,

v.

WES MOORE, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court deny certiorari to consider the constitutionality of Maryland's handgun qualification license law, where (1) that law is consistent with this Court's pronouncement in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), that "shall-issue" licensing schemes are constitutional under the Second Amendment; and (2) the lower courts are not divided as to the constitutionality of such schemes?

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

BRIEF IN OPPOSITION

INTRODUCTION

In *New York State Rifle & Pistol Ass'n v. Bruen*, this Court struck down New York's discretionary handgun licensing law because it required citizens seeking public-carry handgun licenses to show "a special need for self-protection distinguishable from that of the general community." 597 U.S. 1, 38-39 (2022). Applying a text-and-history analysis, the Court held that the historical record did "not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense," and the Court therefore concluded that New York's discretionary "proper cause" requirement was unconstitutional. *Id*. But the Court made it clear that not all firearms licensing schemes are unconstitutional under *Bruen*, just those that vest broad discretion in licensing officials to deny licenses to law-abiding, responsible citizens.

As the Court explained, "shall-issue licensing regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Id*. at 38 n.9 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)). The Court described proper shall-issue schemes as those that "contain only 'narrow, objective, and definite standards' guiding licensing officials, rather than requiring the 'appraisal of facts, the exercise of judgment, and the formation of an opinion.'" *Id*. (citations omitted). Thus, shall-issue licensing schemes, "under which 'a general desire for self-defense is sufficient to obtain a [permit],'" are

unaffected by the constitutional flaws that doomed New York's may-issue law. *Id*. (citation omitted).

Maryland's handgun qualification license law meets *Bruen's* criteria for a constitutional shall-issue scheme. It "contain[s] only 'narrow, objective, and definite standards' guiding licensing officials," such as passing a "background check" and completing a "firearms safety course." *Id*. And, as the record below demonstrates, Maryland's licensing law has not been "put toward abusive ends"; it does not impose "lengthy wait times," "exorbitant fees," or any other unnecessary burdens—the circumstances that *Bruen* envisioned might overcome the presumption of constitutionality enjoyed by shall-issue schemes. *Id.* Indeed, although the Fourth Circuit's majority and concurrences varied in the doctrinal basis for their ultimate conclusions, 14 of the en banc panel's 16 judges had no difficulty in finding Maryland's law constitutional under *Bruen*'s shall-issue guidance.

Because shall-issue schemes satisfy *Bruen*'s analysis and guidance, petitioners are unable to identify any true circuit split; instead, they point to purported disagreements about the meaning of the word "infringe" and the jurisprudential status of certain dicta on the Second Amendment. At the same time, at least 15 other jurisdictions, spanning eight circuits, have some form of shall-issue permit-to-purchase licensing law, with varying requirements, many similar to Maryland's.[1]

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[1] *See* Cal. Penal Code § 26840; Conn. Gen. Stat. §§ 29-33, 29-36f; Del. Code Ann. tit. 11, § 1448D; D.C. Code §§ 7-2502.01-04; Haw. Rev. Stat. § 134-2; 430 Ill. Comp. Stat. 65/4; Mass. Gen. Laws ch. 140, § 129B; Mich. Comp. Laws § 28.422; Minn. Stat. § 624.7131; Neb. Rev. Stat. §§ 69-2403, 2404; N.J. Stat. Ann. § 2C:58-3; N.Y. Penal Law § 400.00; R.I. Gen. Laws § 11-47-35; Wash. Rev. Code § 9.41.090. In addition, in 2022 Oregon voters

So far, this is the only appellate decision to apply *Bruen* to whether a shall-issue licensing scheme is constitutional. And no court has held that such a law violates the Second Amendment. Thus, lower courts are *not* divided as to the constitutionality of shall-issue licensing schemes such as Maryland's—the core issue addressed by the court of appeals.

STATEMENT

Maryland's Firearm Safety Act of 2013

Maryland enacted the Firearm Safety Act of 2013 to enhance public safety in connection with the lawful transfer and handling of firearms. 2013 Md. Laws ch. 427. As relevant here, the Act requires that most Marylanders obtain a handgun qualification license before purchasing a handgun. Md. Code Ann., Pub. Safety § 5-117 (LexisNexis 2018). Covered persons may not "sell, rent, or transfer a handgun," or "purchase, rent, or receive a handgun" unless the receiving person presents a valid license. *Id*. § 5-117.1(b), (c).

The Licensing Process

The Secretary of the Maryland Department of State Police "shall issue" a handgun qualification license to an applicant who (1) is at least 21 years old; (2) is a Maryland resident; (3) has completed a firearms safety course within three years of application; and (4) "is not

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approved a handgun permit-to-purchase law. *See* Oregon Ballot Measure 114 (2022) (codified at Or. Rev. Stat. § 166.505). Although the Oregon law survived a Second Amendment challenge in federal court, *Oregon Firearms Fed'n v. Kotek*, 682 F. Supp. 3d 874 (D. Or. 2023), a state court held that the law violated the Oregon Constitution and enjoined its enforcement, *see Arnold v. Kotek*, Case No. 22CV41008 (Harney Co. Cir. Ct. Nov. 21, 2023), *appeal docketed*, CA A183242 (Or. Ct. App.).

prohibited by federal or State law from purchasing or possessing a handgun." Pub. Safety § 5-117.1(d).

The required firearms safety course must include at least four hours of instruction by a certified firearms instructor, *id*. § 5-117.1(d)(3)(i), on (1) "State firearm law"; (2) "home firearm safety"; and (3) "handgun mechanisms and operation," *id*. § 5-117.1(d)(3)(ii). The course must contain "a firearms orientation component that demonstrates the person's safe operation and handling of a firearm." *Id*. § 5-117.1(d)(3)(iii). As part of this component, an applicant must "safely fire[] at least one round of live ammunition." Code of Maryland Regulations ("COMAR") 29.03.01.29C(4). The firearms-safety-course requirement is waived for (among others) a person who already lawfully owns a handgun or has completed certain other training courses. Pub. Safety § 5-117.1(e).

An applicant for a handgun qualification license must submit (1) "an application in the manner and format designated by the Secretary;" (2) an application fee "to cover the costs to administer the program of up to $50;"[2] (3) proof of completion of the safety course requirement; (4) any other information or documentation required by the Secretary; and (5) a statement under oath that the individual is not prohibited from possessing a handgun. *Id*. § 5-117.1(g).

Maryland's law requires the Secretary of the State Police to apply to the Maryland Department of Public Safety and Correctional Services for a state and

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[2] The application fee is set at the statutory cap of $50, COMAR 29.03.01.28C, which is less than the processing and production costs associated with each application and does not account for other costs associated with administering the program. C.A. J.A. 125-126, 198, 200.

national criminal history records check for each applicant. *Id*. § 5-117.1(f)(2). To facilitate that process, the application for a license must include "a complete set of the applicant's legible fingerprints." *Id*. § 5-117.1(f)(3)(i).

Within 30 days of receiving a complete application, the Secretary must either issue a license or provide a written denial accompanied by a statement of the reason for the denial and notice of the applicant's appeal rights. *Id*. § 5-117.1(h). Since the requirement's inception, all properly completed applications received by the State Police have been processed within this mandated timeframe. Pet. App. 144a.

A handgun qualification license is valid for ten years.[3] Pub. Safety § 5-117.1(i). A person who is denied a license, or whose license is revoked, may request a hearing from the Secretary within 30 days of the action and thereafter may seek judicial review. *Id*. § 5-117.1(l)(1), (3).

To purchase a handgun, a licensee must complete an application (the "77R process") confirming that the applicant is not prohibited from acquiring a handgun and must pay a $10 application fee. *Id*. § 5-118(a), (b). Unless the State Police disapprove an application within seven days (during which time it reviews the application and conducts a background check), the applicant may take possession of the handgun. *Id*. §§ 5-121 – 5-123.

From October 1, 2013, when Maryland's law went into effect, through the end of 2020, a total of 192,506

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[3] The only requirement to renew a handgun qualification license is payment of the $20 renewal fee. Pub. Safety § 5-117.1(j); COMAR 29.03.01.34.

Marylanders obtained handgun qualification licenses. Pet. App. 148a. During each year from 2017 to 2020, there were more handgun transfers than in any year prior to 2013. C.A. J.A. 1611, 1613. The number of handgun transfers in 2020 (104,400) exceeded that in 2013 (90,090), when handgun sales spiked with the approach of the handgun qualification licensing scheme's effective date. C.A. J.A. 1611, 1613.

The Public Safety Benefits of the Firearm Safety Act

The fingerprinting and firearms-safety-course components of Maryland's law have significant public safety benefits. The fingerprinting requirement makes it more difficult for an unqualified person to obtain a firearm using false or altered identification. Pet. App. 181a-184a. Fingerprinting also enables the State Police to obtain updated and reliable criminal history information about a licensee from other law enforcement agencies and court systems. Pet. App. 183a-184a. Such information permits the State Police to revoke the handgun qualification license of a person convicted of a disqualifying offense. Pet. App. 184a.

The fingerprint requirement also deters straw purchasers and those intending to purchase firearms for criminal purposes. Pet. App. 185a. Empirical studies show that laws requiring firearm purchasers to obtain a license and pass a background check based on fingerprints are associated with a reduction in the flow of guns to criminals.[4] Permit-to-purchase laws, like Maryland's law, are associated with reductions in

[4] *See, e.g.*, Daniel W. Webster et al., *Preventing the Diversion of Guns to Criminals Through Effective Firearm Sales Laws*, in *Reducing Gun Violence in America, Informing Policy with Evidence and Analysis* 109 (Daniel W. Webster et al. eds 2013).

firearm homicide rates.[5] Further, Maryland's license requirement is associated with a significant reduction in the number of handguns that have been diverted to criminals soon after retail purchase.[6]

The law's firearms-safety-training requirement also promotes public safety. The required training enhances compliance with state laws and reduces access to firearms by unqualified persons, including children. Pet. App. 187a-190a. The training promotes safe handling and operation of firearms, thus reducing the risk of accidental discharges and the risk of potentially fatal accidents. Pet. App. 187a-190a. It also reduces the likelihood of theft, thereby reducing criminals' and unqualified persons' access to firearms. Pet. App. 187a-190a. Further, requiring that the applicant demonstrate the safe operation and handling of a firearm promotes public safety by reducing accidental discharges. Pet. App. 187a-190a.

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[5] *See* Cassandra K. Crifasi et al., *Association Between Firearm Laws and Homicide in Urban U.S. Counties*, 95(3) J. of Urb. Health 383, 384 (2018) (concluding that permit-to-purchase laws "were associated with a 14% reduction in firearm homicide in large, urban counties"); Kara E. Rudolph et al., *Association Between Connecticut's Permit-to-Purchase Handgun Law and Homicides*, 105 Am. J. of Pub. Health 8, e49 (Aug. 2015) (associating Connecticut's permit-to-purchase law with a 40% reduction in Connecticut's firearm homicide rate); Daniel W. Webster et al., *Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides*, 91(2) J. of Urb. Health 293 (2014) (associating the repeal of Missouri's permit-to-purchase law with a 23% increase in that state's annual firearm rate).

[6] *See* Cassandra K. Crifasi et al., *The Initial Impact of Maryland's Firearm Safety Act of 2013 on the Supply of Crime Guns in Baltimore*, 3(5) Russell Sage Found. J. for Soc. Sci. 128 (2017).

Proceedings Below

In 2016, the plaintiffs challenged Maryland's law in the United States District Court for the District of Maryland. They alleged that the law violated the Second Amendment because its requirements did not "implicate historically-recognized limitations or prohibitions on Second Amendment activity" and its "onerous, expensive and lengthy application process" deterred individuals from exercising their Second Amendment rights.[7] C.A. J.A. 31-32.

The district court disposed of the plaintiffs' Second Amendment claims on standing grounds, but the Fourth Circuit disagreed and remanded the case. Pet. App. 216a-231a. On remand, the district court granted summary judgment to the State. In holding that the scheme did not violate the Second Amendment, the district court applied the two-pronged approach to Second Amendment challenges that, prior to *Bruen*, nearly all of the courts of appeals had adopted. Pet. App. 158a-161a (citations and some quotation marks omitted).[8] First, the district court concluded that the law's administrative requirements "burden[ed]" the

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[7] The plaintiffs also alleged that (1) the Firearm Safety Act's failure to define "receive" or "receipt" was unconstitutionally vague; and (2) certain aspects of the handgun qualification license requirement imposed through regulation, such as the live-fire requirement, were not authorized by statute. The Fourth Circuit affirmed the district court's conclusion that no plaintiff had standing to bring these claims. Pet. App. 235a, 239a.

[8] Although the district court declined to apply the plaintiffs' proffered "text, history, and tradition" standard, the district court nonetheless noted that this standard "would not compel a finding that the [handgun qualification licensing law] is unconstitutional" given that licensing schemes served the purpose of enforcing "substantive requirements for ownership" of firearms. Pet. App. 163a n.13 (citations omitted).

plaintiffs' Second Amendment rights because "they 'make it considerably more difficult for a person lawfully to acquire and keep a firearm.'" Pet. App. 166a (citation omitted).

Still, the district court found no "evidence establishing that any law-abiding, responsible citizen who applied for [a handgun qualification license] was denied the [license]." Pet. App. 168a. The court thus concluded that the handgun licensing "requirements place no more than 'marginal, incremental, or even appreciable restraint on the right to keep and bear arms.'" Pet. App. 168a (citation omitted). Applying intermediate scrutiny, the court held that the "fingerprinting and training requirements are reasonably adapted to serve the State's overwhelming interest in protecting public safety," and "the time and expense associated with the requirements are reasonable." Pet. App. 201a.

The plaintiffs appealed. In the meantime, this Court granted certiorari in *Bruen*. The Fourth Circuit, in turn, placed this case in abeyance pending *Bruen*'s resolution.

In June 2022, this Court decided *Bruen* and rejected the two-pronged test that applied tiers of scrutiny depending on "how close the law comes to the core of the Second Amendment and the severity of the law's burden on that right." *Bruen*, 597 U.S. at 18. *Bruen* instead held that, "[t]o justify its regulation," "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id*. at 17.

The Fourth Circuit Panel Decision

Following this Court's decision in *Bruen*, the Fourth Circuit received supplemental briefing from the

parties and, on November 21, 2023, the panel issued its decision. Judge Richardson, writing for himself and Judge Agee, concluded that "Maryland's law fails the new *Bruen* test" because it "regulates a course of conduct protected by the Second Amendment, and Maryland has not established that the law is consistent with our Nation's historical tradition." Pet. App. 91a. Judge Richardson explained that, in his view, Maryland's law fell within the Second Amendment's text because, "even though Maryland's law does not prohibit Plaintiffs from owning handguns at some point in the future, it still prohibits them from owning handguns *now*." Pet. App. 94a. And applying *Bruen*'s "history and tradition" test, the panel majority concluded that, although Maryland's law was consistent with the rationale behind the historical tradition of prohibiting "dangerous" people from possessing firearms, it was nonetheless unconstitutional because the "burden is markedly different." Pet. App. 101a. The panel majority asserted that because "Maryland's law burdens all people—even if only temporarily—rather than just a class of people whom the state has already deemed presumptively dangerous," it was not "'relevantly similar' to the laws allegedly comprising that tradition." Pet. App. 101a-102a.

Judge Keenan dissented, criticizing the panel majority for "fail[ing] to grapple substantively with the implications of the Supreme Court's discussion in *Bruen* of shall-issue regimes." Pet. App. 113a. Judge Keenan noted that Maryland's law was like the shall-issue schemes referenced in *Bruen*, in that it "allows any law-abiding, responsible person who seeks to obtain a handgun qualification license to do so by completing the objective criteria outlined in the statute." Pet. App. 115a. She also took issue with the panel majority's focus on delay, given that "compliance with these

objective, non-discretionary conditions" in the shall-issue schemes that this Court deemed presumptively constitutional in *Bruen* "necessarily results in some delay." Pet. App. 116a. Drawing again on *Bruen*'s shall-issue discussion, Judge Keenan explained that the operative question was whether Maryland's law "'infringes' the rights of law-abiding, responsible individuals," and that this question "requires a distinct analysis as part of *Bruen*'s step-one 'plain text' inquiry." Pet. App. 116a-117a. Judge Keenan explained that she would have remanded the case for the district court to conduct such an analysis in the first instance. Pet. App. 123a-126a.

The Fourth Circuit's En Banc Decision

The State petitioned for rehearing en banc, which the Fourth Circuit granted. Following additional supplemental briefing and oral argument, the court affirmed the district court's conclusion that Maryland's law is constitutional.

The Majority Decision

The majority opinion, written by Judge Keenan and joined by nine other judges, began by explaining the two-step framework set forth in *Bruen,* which had addressed New York's requirement that any person seeking a license to carry a firearm publicly demonstrate "a special need for self-protection distinguishable from that of the general community." Pet. App. 8a. The court observed that, in assessing whether this requirement violated the Second Amendment, this Court had "rejected the means-based analysis previously applied by [the Fourth Circuit] and around which many Courts of Appeals 'ha[d] coalesced.'" Pet. App. 9a. Under the new framework, a court would first "look to 'the text of the Second Amendment to see if it encompasses the

desired conduct at issue' (step one)"; if not, "that conduct falls outside the ambit of the Second Amendment, and the government may regulate it." Pet. App. 9a (citation omitted). But "[i]f the text does cover the conduct at issue, 'the burden shifts to the government to justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation' (step two)." Pet. App. 9a (some quotation marks omitted).

The court explained that *Bruen* held that, although "the plain text of the Second Amendment covered the plaintiffs' desired conduct," "the government had not satisfied its burden under step two," and therefore the provision of New York's law at issue was unconstitutional. Pet. App. 10a. But, the court noted, *Bruen* "did not limit its discussion . . . to the proper-cause requirement challenged by the petitioners or to other 'may-issue' licensing regimes." Pet. App. 10a. Instead, in footnote 9 of its opinion, this Court had "discussed in dicta the presumptive lawfulness of what the Court referred to as 'shall-issue' licensing laws":

> To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' "shall-issue" licensing regimes, under which "a general desire for self-defense is sufficient to obtain a [permit]." Because these licensing regimes do not require applicants to show an atypical need for armed self-defense, they do not necessarily prevent "law-abiding, responsible citizens" from exercising their Second Amendment right to public carry. Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to

> ensure only that those bearing arms in the jurisdiction are, in fact, "law-abiding, responsible citizens." And they likewise appear to contain only "narrow, objective, and definite standards" guiding licensing officials, rather than requiring the "appraisal of facts, the exercise of judgment, and the formation of an opinion"—features that typify proper-cause standards like New York's. That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry.

Pet. App. 10a-11a (quoting *Bruen*, 597 U.S. at 38 n.9).

Against that backdrop, the court of appeals examined whether a shall-issue law such as Maryland's law "infringed" the right to keep and bear arms. Pet. App. 13a. The court observed that this Court had "not conducted an extensive evaluation of the term 'infringe,' most likely because the Court has not been required to do so." Pet. App. 13a. *Bruen*, however, in "distinguishing 'shall-issue' licensing laws," had "introduced a more nuanced consideration of the concept of 'infringement.'" Pet. App. 15a. In doing so, this Court had "established guideposts that reviewing courts may use to determine whether a 'shall-issue' licensing law 'infringes' the right to keep and bear arms," such as when they are "put toward abusive ends." Pet. App. 15a. Noting that it was "not free to ignore [this] substantive dictum," the court of appeals "h[e]ld that non-discretionary 'shall-issue' licensing laws are presumptively constitutional and generally do not 'infringe' the Second Amendment right to keep and

bear arms under step one of the *Bruen* framework." Pet. App. 15a, 18a. Only if a plaintiff rebuts this presumption of constitutionality, the court explained, would the burden shift to the government to demonstrate, at *Bruen*'s step two, that the regulation "is consistent with this Nation's historical tradition of firearm regulation." Pet. App. 18a.

The court of appeals then addressed arguments that *Bruen*'s shall-issue discussion is "inapplicable to the present case or to the step one inquiry." Pet. App. 19a. The court first rejected the notion that the shall-issue discussion was limited only to public-carry laws, noting this Court's statement that "[n]othing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms." Pet. App. 19a-20a (quoting *Bruen*, 597 U.S. at 32, 70). Next, the court placed the shall-issue discussion in *Bruen*'s textual first step, rather than its history-oriented second step. The court observed that the shall-issue discussion "did not refer to any of the hallmarks of a step two historical inquiry, such as the historical tradition of 'shall-issue' licensing laws or, conversely, the lack of a historical tradition for 'shall-issue' licensing laws that may be subject to constitutional challenge." Pet. App. 21a. Instead, this Court had "grounded the 'shall-issue' discussion in step one by explaining that even a presumptively constitutional 'shall-issue' licensing law may go too far if it imposes conditions that effectively deny an individual the right to keep and bear arms." Pet. App. 21a.

Applying this analytical framework to Maryland's law, the court of appeals first observed that, because the Maryland "statute allows any law-abiding person who seeks to obtain a handgun qualification license to do so by completing the objective criteria outlined in

the statute," Maryland's law "qualifies as a presumptively constitutional 'shall-issue' licensing law" under *Bruen*. Pet. App. 23a; *see id.* (highlighting that "the very requirements on which the plaintiffs focus their constitutional attack are the same requirements [this Court] cited as presumptively constitutional components of a 'shall-issue' licensing law").

The court of appeals then examined whether, under *Bruen*'s shall-issue framework, Maryland's law "'infringes,' or effectively denies, the right to keep and bear arms." Pet. App. 22a. The court first "reject[ed] the plaintiffs' argument that any delay resulting from compliance with the [Maryland] statute qualifies as 'infringement.'" Pet. App. 25a. This argument, the court explained, "improperly discount[ed this Court's] guidance that requirements such as background checks and training instruction, which necessarily occasion some delay, ordinarily will pass constitutional muster." Pet. App. 27a.

Next, the court of appeals rejected the plaintiffs' argument that, because the application process could, under some circumstances, take longer than 30 days, it could "result[] in the type of 'lengthy' wait time that would qualify . . . as a 'denial' of an applicant's Second Amendment rights." Pet. App. 28a. The court noted that the plaintiffs had mounted a facial challenge, and thus could not succeed unless they were able to "establish that there is 'no set of circumstances' under which the law would be valid." Pet. App. 25a, 28a (citation omitted). Here, however, the record showed that "there were no completed [handgun qualification license] applications pending disposition for longer than 15 days." Pet. App. 28a. The court noted that "[t]his time period is far shorter than many of the

permissible processing periods cited by [this Court] in *Bruen*." Pet. App. 28a (citing *Bruen*, 597 U.S. at 13 n.1).

Finally, the court of appeals rejected the plaintiffs' contention "that the [handgun qualification license] statute is 'abusive' because a separate Maryland law, the 77R process"—which the plaintiffs did not challenge—"requires another background check for purchases of regulated firearms." Pet. App. 29a. The court observed that there are "key differences between these two processes," namely, that (1) only the handgun qualification license law involves the submission of fingerprints; and (2) the background check for the 77R process occurs for all purchases, while the handgun qualification license background check occurs only at the time of initial licensing. Pet. App. 29a, 31a-32a.

The Concurrences

Judge Rushing, joined by Judge Gregory and Judge Quattlebaum, concurred in the judgment. She began by disagreeing with the majority's conclusion that Maryland's handgun qualification licensing scheme did not implicate the Second Amendment's text under *Bruen*'s first step. Pet. App. 34a. Instead, in her view, Maryland's law "regulates conduct covered by the text of the Second Amendment" because it "applies to 'the people,' handguns are 'Arms,' and the law regulates acquisition, which is a prerequisite to 'keep[ing] and bear[ing]' those arms." Pet. App. 35a.

Judge Rushing concluded, however, that the Maryland law passes muster under *Bruen*'s step two. In *United States v. Rahimi*, 602 U.S. 680 (2024), she explained, this Court had clarified that the historical analysis mandated by *Bruen* "permits more than just those regulations identical to ones that could be found in 1791," but also those "consistent with the principles

that underpin our regulatory tradition." Pet. App. 36a (quoting *Rahimi*, 602 U.S. at 692). Applying those principles, Judge Rushing observed that footnote 9 of *Bruen* "gives lower courts insight into the degree of fit necessary for a shall-issue licensing regime to be relevantly similar to historical analogues and thus consistent with the Nation's historical tradition of firearm regulation." Pet. App. 39a.

Judge Rushing first addressed the justification, or the "why," of shall-issue licensing schemes. She concluded that "the shall-issue licensing laws considered in *Bruen* burdened Second Amendment rights in order to keep firearms out of the hands of individuals . . . whose public carry of firearms . . . threatened public safety," and this "justification is comparable to historical regulations restricting certain persons' ability to possess and publicly carry weapons because of the danger they posed." Pet. App. 40a. "The justification for Maryland's handgun license requirement is relevantly similar to," and "supported by," this historical tradition. Pet. App. 41a-42a. Like the shall-issue licensing laws considered in *Bruen*, Maryland's law contains requirements, such as a background check requiring fingerprinting and a firearms safety course, "'designed to ensure only that those [keeping] arms in the jurisdiction are, in fact, law-abiding, responsible citizens' whose possession of handguns does not pose a danger to others." Pet. App. 41a-42a.

Judge Rushing then examined the "how," or whether Maryland's law "impose[d] a comparable burden" to the relevant historical tradition. Pet. App. 44a. Plaintiffs' argument that the handgun qualification license law departed from historical laws by subjecting everyone to the licensing requirement rather than disarming dangerous individuals after the fact, she

observed, "cannot be squared with *Bruen*'s Footnote Nine." Pet. App. 45a. *"[A]ll* licensing schemes share the feature that Plaintiffs claim is unconstitutional," but "[d]espite this fact, [this Court] was untroubled by a licensing regime requiring advance permission to carry a gun, at least when the criteria for receiving permission from the government are objective and tied to historically defensible justifications." Pet. App. 45a.

Applying *Bruen*'s guidance, Judge Rushing concluded that, because Maryland's law "contains only 'narrow, objective, and definite standards' for distinguishing between individuals prohibited from receiving a handgun and everyone else," "Maryland's handgun license requirement fits comfortably within *Bruen*'s criteria for a constitutional shall-issue licensing regime." Pet. App. 48a. Finally, agreeing with the majority's reasoning, Judge Rushing rejected the plaintiffs' broad argument that the law was abusive, as well as their specific arguments regarding the 77R process and the licensing scheme's supposed wait times. Pet. App. 48a.

Judge Niemeyer wrote a separate opinion concurring in part, dissenting in part, and concurring in the judgment. He agreed with the majority that *Bruen*'s shall-issue discussion was dispositive because Maryland's law was, on its face, a shall-issue licensing scheme that had not been "put toward abusive ends." Pet. App. 52a. Judge Niemeyer believed, however, that "[t]he majority opinion should have ended with that analysis," and, like Judge Rushing, he disagreed with the majority's conclusion that Maryland's law could be upheld under *Bruen*'s first step. Pet. App. 52a.

The Dissent

Judge Richardson, joined by Judge Agee, dissented. As in his opinion for the panel below, Judge Richardson

disagreed that *Bruen*'s shall-issue discussion provided guidance as to the constitutionality of Maryland's licensing scheme. Pet. App. 58a-65a. He thus rejected the en banc majority's holding that Maryland's law is constitutional at *Bruen*'s step one because it does not "infringe" the right to keep and bear arms. Pet. App. 64a-69a. And he disagreed with Judge Rushing that Maryland's law is consistent with the historical tradition of prohibiting dangerous individuals from possessing firearms; in his view, requiring a license prior to purchase placed Maryland's law outside of that tradition. Pet. App. 69a-83a.

REASONS FOR DENYING REVIEW

Petitioners assert that (1) the Fourth Circuit's decision conflicts with this Court's Second Amendment precedents; and (2) "it deepens at least two circuit splits." Pet. 15. Neither assertion withstands scrutiny.

First, the decision is consistent with *Bruen*, which declared that a shall-issue licensing scheme is constitutional so long as it employs objective standards, is not "put toward abusive ends," and is "designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Bruen*, 597 U.S. at 38 n.9 (citation omitted).

Second, the "circuit splits" that petitioners present are illusory. And there is no circuit split as to the constitutionality of shall-issue licensing schemes such as Maryland's: although at least 15 other jurisdictions have shall-issue permit-to-purchase licensing schemes (and the vast majority of states have some form of shall-issue public-carry licensing scheme), every court to address a Second Amendment challenge to these laws since *Bruen* has determined that footnote 9's guidance is controlling.

I. THE FOURTH CIRCUIT'S DECISION IS CONSISTENT WITH THIS COURT'S SECOND AMENDMENT PRECEDENTS.

In *Bruen*, this Court addressed the constitutionality of shall-issue licensing schemes, i.e., those "under which 'a general desire for self-defense is sufficient to obtain a [permit].'" *Bruen*, 597 U.S. at 38 n.9. These schemes "contain only 'narrow, objective, and definite standards' guiding licensing officials." *Id.* Even though they "often require applicants to undergo a background check or pass a firearms safety course," they pass constitutional muster as long as they are not "put to abusive ends." *Id*. That analysis is dispositive here. Whether as a matter of text (as the majority below held), or as a matter of historical tradition (as Judge Rushing's concurrence concluded), Maryland's handgun qualification license law does not contravene the Second Amendment.

A. Maryland's Handgun Qualification License Law Is Constitutional Under *Bruen*'s First Step Because It Does Not "Infringe" Any Second Amendment Right.

The en banc majority's decision follows directly from *Bruen*'s shall-issue guidance. In declaring that shall-issue schemes "do not necessarily prevent 'law-abiding, responsible citizens' from exercising" their Second Amendment rights, *id*., this Court presumptively insulated shall-issue licensing schemes from constitutional challenge because they do not impair, and thus do not "infringe," those rights. This Court explained that a licensing scheme that otherwise meets certain *substantive* requirements might thereafter lose its presumption of constitutionality only to the extent that certain *administrative* requirements, such as

"lengthy wait times" or "exorbitant fees," act to "deny" the Second Amendment right in practice. *Id*.

Contrary to petitioners' arguments, the court of appeals did not "misconstrue[] the plain-text meaning of 'infringe' to require a total deprivation of the right," and it did not improperly base its holding on a "negative inference[]." Pet. 15-16. Rather, the court of appeals observed that, where this Court had struck down laws as violative of the Second Amendment, the laws at issue acted to "effectively ban[] the possession or carry of arms." Pet. App. 14a. The court contrasted those cases with the shall-issue licensing schemes discussed in *Bruen*, which did not ban the possession or carry of arms, but rather created administrative processes that could be navigated easily by individuals otherwise entitled to exercise the underlying right. By approving of these administrative requirements notwithstanding their impact on the ability to publicly carry a handgun, *Bruen* instead "introduced a more nuanced consideration of the concept of 'infringement.'" Pet. App. 15a.

B. If Maryland's Handgun Qualification License Law Falls Within the Second Amendment's Text, It Is Nonetheless Constitutional Because It Is Consistent with This Nation's Historical Tradition of Firearm Regulation.

Under *Bruen*'s step-two analysis, "[t]he government must . . . justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. But as this Court has explained, because its "precedents were not meant to suggest a law trapped in amber," "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791." *Rahimi*,

602 U.S. at 691-92. "[T]he appropriate analysis," this Court has explained, "involves considering whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Id*. at 692 (emphasis added).

Even if Maryland's handgun qualification license scheme falls within the text of the Second Amendment, it is still constitutional, as Judge Rushing concluded in her concurrence below. Pet. App. 48a. First, as Judge Rushing explained, the justification for Maryland's law, and all its constituent parts, is the "well support[ed]" and commonsense historical "tradition of regulating firearm possession by dangerous individuals." Pet. App. 40a; *see Rahimi*, 602 U.S. at 693 (noting that there is "ample evidence that the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others").

The modest administrative burden on applicants for a handgun qualification license is "relevantly similar" to the burden imposed by that historical tradition. Although the ex ante enforcement mechanism of Maryland's law is not identical to those historical laws that disarmed individuals only after they were determined to be dangerous, *Bruen*'s historical analysis does not require so stringent a fit. As Judge Rushing explained in her concurrence, by blessing licensing schemes whose elements by their nature temporarily "prevent[]" an applicant "from exercising his rights while he awaits government approval," "Footnote Nine gives lower courts insight into the degree of fit necessary to a shall-issue licensing regime to be relevantly similar to" the historical tradition. Pet. App. 39a, 45a. In other words, *Bruen* allows a government to "briefly burden the rights of 'law-abiding, responsible citizens'" so long as "the criteria for receiving permission from

the government are objective and tied to historically defensible justifications." Pet. App. 45a-46a; *see also Berron v. Illinois Concealed Carry Licensing Review Bd.*, 825 F.3d 843, 847 (7th Cir. 2016) (noting that, because, under *Heller*, the State "may set substantive requirements for [handgun] ownership," the State "may use a licensing system to enforce them").

Maryland's licensing scheme satisfies this criterion. Like the shall-issue schemes described in *Bruen*, Maryland's law "contain[s] only 'narrow, objective, and definite standards' guiding licensing officials." *Bruen*, 597 U.S. at 38 n.9. Further, Maryland's law contains the same requirements that *Bruen* referenced, such as "a background check," "a firearms safety course," and "fingerprinting." *Id*.; *see also id*. at 80 (Kavanaugh, J., concurring). Thus, to the extent that the shall-issue licensing schemes discussed in footnote 9 were constitutional under *Bruen*'s second-step historical analysis, so is Maryland's scheme.

C. Petitioners Otherwise Identify No Inconsistency Between the Decision Below and *Bruen*.

Petitioners offer no persuasive reason why, despite the foregoing, *Bruen*'s shall-issue discussion does not control this case. First, they claim that the en banc decision "improperly elevated footnote 9 over *Bruen*'s holdings and the constitutional text." Pet. 22. They attempt to downplay *Bruen*'s shall-issue discussion as "stray comments" that provide, at best, "thoughtful advice." Pet. 22-23. But as the Fourth Circuit recognized, this Court's shall-issue discussion was not some academic musing; instead, it was crafted to provide lower courts with practical guidance as to the constitutionality of objective shall-issue licensing schemes. This Court recognized that its decision,

which on its face implicated only one facet of New York's licensing scheme, could have been read to call into question the legitimacy of *all* aspects of licensing schemes generally. *Bruen*'s shall-issue discussion was thus designed to provide a framework to reconcile its primary holding with potential challenges to licensing schemes. It is thus unsurprising that 14 of the Fourth Circuit's 16 en banc judges were able to grasp this Court's clear message.

Petitioners next claim that "*Bruen*'s dicta just 'invited courts to independently assess the pedigree of shall-issue licensing schemes against the historical record.'" Pet. 24 (quoting Pet. App. 62a). But if that were the case, this Court could have simply stopped after the first sentence of the footnote. Instead, *Bruen* articulated unequivocal guidance as to what features of licensing schemes would enable them to survive scrutiny. To the extent that this Court invited lower courts to independently assess challenged licensing schemes, it was only with respect to whether they were being "put toward abusive ends." *Bruen*, 597 U.S. at 38 n.9.

Moreover, contrary to the petitioners' claim, there is no hint that this Court's shall-issue discussion was limited to public-carry, as opposed to permit-to-purchase, licensing schemes. Indeed, such a conclusion would contradict the fundamental principle animating *Bruen*: that the right to "keep" and the right to "bear" are on equal constitutional footing. *See Bruen*, 597 U.S. at 32, 70 (noting that "[n]othing in the Second Amendment's text draws a home/public distinction," and that the right to public carry is "not a 'second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees'" (citation omitted)).

D. The Requirements of Maryland's Handgun Qualification License Law Are Not "Abusive."

Petitioners next argue that Maryland's shall-issue scheme is nonetheless unconstitutional because its requirements are "abusive and unnecessary." Pet. 35. But, as noted above, the requirements of Maryland's law—including fingerprints, a background check, and a firearms training course—mirror those referenced in *Bruen*'s shall-issue guidance. Moreover, the application fee, set at $50, is not facially "exorbitant," and in any event is less than the cost of administering the program. *See Cox v. New Hampshire*, 312 U.S. 569, 577 (1941) (upholding the constitutionality of licensing fees designed "to meet the expense incident to the administration" of the licensing scheme).

Likewise, petitioners claim that the Maryland law, which mandates that the State issue a handgun qualification license within 30 days, imposes "lengthy wait times." Pet. 35. But this argument ignores that handgun qualification licenses are sent to approved individuals as soon as the administrative process is completed. Because petitioners present only a facial claim, the possibility that *some* applicants may wait as long as 30 days does not suggest that the lower court's decision contravened *Bruen*.

Finally, plaintiffs claim that Maryland's law is "abusive" because, to purchase a handgun, a license holder must also submit to Maryland's 77R process, which involves a seven-day waiting period. Pet. 35. Petitioners, however, did not challenge this law below, and thus cannot now complain that it somehow renders the Maryland shall-issue process unconstitutional on its face. In any event, as both the majority and the concurrence recognized below, unlike the

handgun qualification license background check, the 77R process applies to *all* handgun purchases, even if the purchaser already is licensed. Accordingly, the 77R process serves the independent purpose of ensuring that the individual's criminal history *at the time of purchase* does not preclude the individual from owning a firearm.

II. NO CIRCUIT SPLIT WARRANTS REVIEW.

Petitioners claim that the Fourth Circuit's decision "deepens at least two circuit splits," relating to "(1) when a challenged law 'infringe[s]' protected conduct under the Second Amendment's plain text; and (2) whether dicta from this Court's Second Amendment cases permit lower courts to uphold firearm laws without regard to text and history." Pet. 27. Neither of these "splits" provides a basis for this Court to grant certiorari. And as to the core issue addressed by the Fourth Circuit—namely, the constitutionality of shall-issue permit-to-purchase schemes—there is no split at all.

A. Petitioners' Claimed Splits Do Not Require This Court's Intervention.

To support their contention that "[l]ower courts are divided as to the meaning of 'infringe' for purposes of the textual inquiry," petitioners point to a single case on each side of the ledger. Pet. 27-28. This does not approach a split in the circuits. And on closer examination, even these cases fail to live up to their billing. On one side, petitioners point to *Frein v. Pennsylvania State Police*, 47 F.4th 247, 254 (3d Cir. 2022), which held that the police "infringed" a criminal defendant's parents' Second Amendment rights by retaining their guns after the criminal case ended. On the other side, petitioners cite *McRorey v. Garland*, 99 F.4th 831, 838-39 (5th Cir. 2024), which held that an

expanded background check for 18-to-20-year-olds was not an "infringement" for purposes of the Second Amendment.

There is no conflict between these cases. *Frein* involved an *indefinite* seizure of firearms, which the Third Circuit had little difficulty concluding was an "infringement" of the parents' right to possess them. 47 F.4th at 254. *McRorey*, by contrast, involved a *temporary* delay in the ability of a discrete subset of individuals to purchase a firearm, solely for the purpose of determining whether they were disqualified from possessing that firearm. 99 F.4th at 838-39. These cases could hardly be more distinct.

Petitioners also claim that certiorari is necessary because "[l]ower courts are divided as to whether this Court's dicta render some restrictions presumptively lawful." Pet. 29. But, again, petitioners' supposed circuit split is illusory. On one side of the split, they point to cases, such as *McRorey* and *Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023),[9] that rely on *Bruen*'s extensive shall-issue discussion to conclude that a challenged shall-issue licensing scheme is constitutional. On the other side of this supposed circuit split are cases that relate not to licensing schemes or similar restrictions, but to laws prohibiting felons (or people under indictment) from possessing firearms. Pet. 29-30 (citing cases such as *United States v. Gay*, 98 F.4th 843 (9th Cir. 2024), *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024), *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023), and *Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023)).

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[9] This Court later vacated *Antonyuk* in light of *Rahimi* and remanded it to the Second Circuit, which largely reaffirmed its prior decision. *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024).

Any difference in how lower courts have treated these two categories of cases is a function not of disagreement among the circuits, but of the disparity in these two substantively distinct areas of Second Amendment law. In each of the felon-in-possession cases that petitioners cite, the court's focus was on how to apply *Heller*'s generalized, unelaborated-upon statement that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." 554 U.S. at 626. This Court has not since revisited these dicta, and thus has not provided any significant guidance on the doctrinal underpinnings or practical bounds of this statement. In contrast, the extensive shall-issue discussion in *Bruen* provided well-defined and workable direction as to the types of licensing schemes that would pass constitutional muster and those that would not. 597 U.S. at 38 n.9. Thus, any difficulty that the lower courts may be experiencing with respect to *Heller*'s cursory dicta regarding the disarmament of "felons" does not conflict with the relative ease with which they have applied *Bruen*'s detailed shall-issue discussion to the constitutionality of particular shall-issue licensing schemes. And in any event, the sort of abstract jurisprudential division to which the petitioners point—purportedly concerning the relationship between dicta (whatever their substance) and a specific holding of the Court—is not the sort of circuit split that warrants this Court's intervention.

B. No Circuit Split Exists on the Constitutionality of the Type of Licensing Scheme at Issue Here.

The courts of appeal are *not* divided as to the issue here: the constitutionality of shall-issue permit-to-purchase licensing schemes, such as Maryland's

handgun qualification licensing scheme. Although at least 15 jurisdictions have some form of permit-to-purchase licensing scheme, no court has found any of them to violate the Second Amendment.[10]

Indeed, perhaps due to the clarity of *Bruen*'s shall-issue discussion, challenges to these laws have been scant. Some cases, like this one, have challenged the very fact of the licensing scheme. *See, e.g.*, *Theodore v. Campbell*, No. 24-cv-11985-MJJ (D. Mass.) (complaint filed Aug. 1, 2024); *Neuberger v. Delaware Dep't of Safety & Homeland Sec.*, No. 24-cv-590-MN (D. Del) (complaint filed May 16, 2024); *Guns Save Life, Inc. v. Kelly*, No. 4-23-0662 (Ill. App. Ct.) (awaiting appellate decision). Others have challenged specific aspects of the licensing scheme, also with little success. *See, e.g.*, *Oregon Firearms Fed'n*, 682 F. Supp. 3d at 935-40 (rejecting argument that Oregon's permit-to-purchase scheme was unconstitutional because the mental health provision improperly granted the licensing official some discretion as to whether to issue the permit).

In any event, *Bruen* was decided just two Terms ago, and the appellate decision in this case is the only one to address the legal issues potentially implicated by shall-issue licensing schemes. Should this Court wish to revisit its shall-issue discussion, it will be best positioned to do so after litigants and courts in other cases have more fully developed the relevant legal and factual arguments through the adversarial process. Apart from this case, that benefit is virtually nonexistent today.

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[10] As noted above, Oregon's law was held to violate the Oregon *state* constitution; that decision is on appeal to the Oregon Court of Appeals.

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Like the shall-issue licensing schemes referenced in *Bruen*, Maryland's law is "designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" 597 U.S. at 38 n.9. Under Maryland's law any person otherwise qualified to possess a handgun can obtain a handgun qualification license. Indeed, nearly 200,000 Marylanders acquired handgun qualification licenses between the law's enactment in October 2013 through the end of 2020. Pet. App. 148a. In the absence of a true circuit split or a departure from the clear dictates of *Bruen*, their desire to acquire handguns without delay does not warrant this Court's review of Maryland's shall-issue handgun licensing scheme. *See B&L Prod., Inc. v. Newsom*, 104 F.4th 108, 119 (9th Cir. 2024) (noting that "the Second Amendment does not elevate convenience and preference over all other considerations") (citation omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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