No. 24-795

IN THE

Supreme Court of the United States

IVAN ANTONYUK, et al.,
Petitioners,

v.

STEVEN G. JAMES, in His Official Capacity as Superintendent of New York State Police, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the court of appeals properly considered nineteenth-century history alongside consistent Founding-era history for purposes of evaluating plaintiffs' likelihood of success on a facial Second Amendment challenge to state laws regulating firearms.

2. Whether the court of appeals properly determined that plaintiffs were unlikely to succeed on the merits of a facial Second Amendment challenge to New York's requirement that an applicant for a firearm license must demonstrate the ability to carry and use a firearm "in a manner that does not endanger oneself or others," N.Y. Penal Law § 400.00(1)(b).

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INTRODUCTION

In July 2022, the New York State Legislature enacted the Concealed Carry Improvement Act (CCIA) to amend the State's firearm licensing and possession laws in compliance with this Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). Shortly after the CCIA took effect, petitioners—five individuals with licenses to carry firearms and one individual who has never applied for such a license—filed this lawsuit against several state and local officials challenging nearly every provision of the CCIA as unconstitutional.[1]

After a district court preliminarily enjoined enforcement of several provisions of the CCIA, the U.S. Court of Appeals for the Second Circuit (Jacobs, Lynch, and Lee, JJ.) vacated the preliminary injunction in part, and affirmed it in part. Petitioners sought certiorari, and, in June 2024, this Court remanded the case along with several other firearm-related cases for further consideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024). After receiving additional briefing from the parties about the effect of *Rahimi*, the court of appeals issued an updated decision reaching the same conclusions as its original decision and explaining that the original decision was consistent with and further supported by *Rahimi*. Petitioners now seek certiorari again.

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[1] Respondents are Steven G. James, in his official capacity as Superintendent of the New York State Police; Judge Matthew J. Doran, in his official capacity as licensing official for Onondaga County; and Joseph Cecile, in his official capacity as Chief of Police of the City of Syracuse. Respondents jointly file this brief.

The petition for certiorari should be denied. As an initial matter, this Court's ordinary practice of denying interlocutory review is especially advisable here, where the court of appeals merely found that plaintiffs did not establish a likelihood of success on the merits at the preliminary injunction stage, either for lack of standing or for lack of a meritorious legal claim. The preliminary injunction record in this case was developed in a matter of just weeks, and no fact or expert discovery has yet taken place. Further litigation may obviate any need for this Court's review, and, at a minimum, such review would be aided by a complete record and merits determination.

In any event, neither question presented by the petition merits this Court's review in this case. The first question asks whether evidence from the nineteenth century may be considered in evaluating the constitutionality of state firearm laws. Contrary to plaintiffs' contention, the answer to this question is not dispositive in this case because the challenged state laws are supported by consistent history from both the Founding era and subsequent periods including the nineteenth-century Reconstruction era when the right to bear arms was incorporated against the States. This case does not present any conflict between Founding-era laws and later legal developments. Moreover, this Court has never held—and should not now consider holding—that nineteenth-century history is categorically irrelevant in evaluating Second Amendment challenges; to the contrary, this Court and numerous courts of appeals have routinely considered such history in evaluating Second Amendment challenges to firearm laws.

The second question presented is also flawed, both as a vehicle and on the merits. Petitioners raise only a facial constitutional challenge to New York's "good

moral character" licensing requirement, which is statutorily defined to require a showing that an applicant can use a firearm "in a manner that does not endanger oneself or others," N.Y. Penal Law § 400.00(1)(b). The court of appeals correctly concluded that such a requirement could not possibly be unconstitutional in every application, as is required to sustain a facial challenge. Moreover, no petitioner has applied for a license under the challenged licensing scheme, much less been denied a license based on the "good moral character" requirement, and there is no record supporting petitioners' speculative assertions about the license review and adjudication process. Nor does the decision below conflict with any decision of another court.

STATEMENT

A. Legal Background

1. This Court's decisions in *Bruen* and *Rahimi*

New York law requires a license to carry a concealed handgun in public. *See, e.g.*, Penal Law § 265.03 (criminalizing possession of loaded handgun), § 265.20(a)(3) (exempting license holders). New York law has long set forth basic eligibility criteria for a license, including being at least twenty-one years old, not having a felony record, and otherwise having "good moral character." *Id.* § 400.00(1)(a)-(c). Until recently, New York also required demonstrating "proper cause" to obtain a concealed-carry license. *Id.* § 400.00(2)(f) (effective through June 23, 2022).

In *Bruen*, this Court concluded that insofar as "proper cause" demanded showing "a special need for self-defense," this requirement implicated the Second

Amendment right and was invalid because it was unsupported by historical tradition. *See* 597 U.S. at 11, 24-26. In so holding, *Bruen* rejected the framework previously used by nearly all federal courts of appeals to evaluate Second Amendment challenges in favor of a restated standard: if "the Second Amendment's plain text covers an individual's conduct," then the government seeking to regulate that conduct "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* at 17. In applying that standard, the Court considered historical sources from before the Founding-era enactment of the Second Amendment in 1791, through the era when the Second Amendment right was incorporated against the States in the Fourteenth Amendment in 1868. *See id.* at 38-70. Because the Court determined that "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same," the Court found it appropriate to consider history from both periods. *See id.* at 38.

Bruen was explicit about areas of law left undisturbed by the decision. First, the Court announced that "nothing in [its] analysis" was meant to undermine the constitutionality of "shall-issue" licensing regimes employed by dozens of States. *Id.* at 38 n.9. These laws "often require applicants to undergo a background check or pass a firearms safety course" and "are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)); *see also id.* at 79-80 (Kavanaugh, J., concurring). The Court also noted the broad range of state licensing regimes operating on a "shall-issue"-type basis, including several that have good-moral-character or "suitability" requirements to ensure that individuals

issued licenses can be trusted to use firearms safely. *Id.* at 13 n.1.

Second, the Court "assume[d] it settled" that certain locations are "'sensitive places' where arms carrying could be prohibited consistent with the Second Amendment." *Id.* at 30. The opinion endorsed such longstanding bans in schools, legislative assemblies, polling places, and courthouses, while recognizing that this list was nonexhaustive and "that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible." *Id.* In other words, *Bruen* did not disavow any existing "restrictions that may be imposed on the possession or carrying of guns," other than the proper-cause requirement. *Id.* at 72 (Alito, J., concurring).

In addition, *Bruen* cautioned that its standard was not intended to be a "regulatory straightjacket" and made clear that the government need not identify a "historical twin" or "dead ringer" to support a modern regulation. *Id.* at 30 (emphasis omitted). The Court recognized that "[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868," and further underscored that "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 27-28. Accordingly, when "[p]roperly interpreted, the Second Amendment allows a 'variety' of gun regulations." *Id.* at 80 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 636).

Last term, this Court further clarified the contours of *Bruen*'s history-and-tradition standard in *Rahimi*. In that case, this Court rejected a facial Second Amendment challenge to the federal statute prohibiting indi-

viduals subject to domestic violence restraining orders from possessing firearms, 18 U.S.C. § 922(g)(8). In doing so, the Court explained that the Second Amendment "was never thought to sweep indiscriminately" and that arms-bearing was always "subject to regulations." *Rahimi*, 602 U.S. at 691. In particular, citing extensive historical evidence from the eighteenth and nineteenth centuries, the Court explained that, "[s]ince the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms," analogous to the modern provision at issue in *Rahimi*. *Id.* at 690. The Court cited historical surety laws that required individuals deemed dangerous to post a bond to possess a weapon, and "going armed" laws that prohibited carrying arms in public to the terror of the people. *See id.* at 693-98.

The Court emphasized that *Bruen*'s history-and-tradition standard was "not meant to suggest a law trapped in amber." *Id.* at 691. Rather, the standard requires courts to consider "whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Id.* at 692 (emphasis added); *see id.* at 703-04 (Sotomayor, J., concurring); *see also id.* at 739-40 (Barrett, J., concurring). Thus, although the historical laws the Court cited were "by no means identical" to the modern law disarming those subject to domestic violence restraining orders, they did "not need to be." *Id.* at 698. The historical laws demonstrated a broader principle of the Second Amendment consistent with "what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at 698.

The Court also emphasized that a facial Second Amendment challenge to a firearm law must fail when

the plaintiff has not demonstrated that the challenged law is invalid in all applications. Facial challenges cannot succeed based on "hypothetical scenarios" where the challenged law might raise constitutional concerns, because the law need only be valid in some application. *Id.* at 701; *see id.* at 693.

2. New York's Concealed Carry Improvement Act

Shortly after *Bruen* was decided in June 2022, New York Governor Kathy Hochul announced that she would convene an extraordinary legislative session to bring New York's law into compliance with the decision. N.Y. Governor, Proclamation (June 24, 2022).[2] On July 1, 2022, the Legislature passed the CCIA, which removed the proper-cause requirement that *Bruen* declared unconstitutional and made several other changes to New York's firearm licensing and possession laws. *See* Ch. 371, 2022 McKinney's N.Y. Laws 1447 (eff. Sept. 1, 2022). The amendments relevant to this petition are discussed below.

First, the CCIA narrowed and made more precise the longstanding requirement of "good moral character" for a firearm license; under this provision, the State had long denied licenses to people with criminal records and other evidence of a history of violence. The CCIA expressly defined the term "good moral character" to mean "having the essential character, temperament and judgement necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others." N.Y. Penal Law § 400.00(1)(b). The CCIA also required that applicants for licenses to carry

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[2] https://www.governor.ny.gov/sites/default/files/2022-06/Proclamation_Extraordinary_Session_June_2022.pdf

firearms in public complete firearm training, *id.* §§ 400.00(1)(o)(iii), 400.00(19), meet with a licensing officer for an interview, *id.* § 400.00(1)(o), and submit statutorily specified information to the licensing officer, including references who could "attest to the applicant's good moral character" by representing that the applicant is not "likely to engage in conduct that would result in harm to themselves or others," *id.* § 400.00(1)(o)(ii).[3] Under the amended statute, anyone satisfying the license requirements "shall be issued" a license. *See id.* § 400.00(2). If an application is denied, the licensing officer must explain in writing the reasons for the denial, and an applicant has the right to appeal the decision. *See id.* § 400.00(4-a).

Second, the CCIA codified several sensitive locations in which carrying a firearm would not be allowed, including government buildings such as courthouses, polling places, schools, healthcare facilities, public parks, and crowded venues like theaters and stadiums. *Id.* § 265.01-e(1)-(2). The sensitive-location provision exempts law-enforcement officers, military personnel, armed security guards, and persons lawfully hunting. *Id.* § 265.01-d(2).[4]

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[3] The statute also required applicants to provide a list of recent social-media accounts. Penal Law § 400.00(1)(o)(iv). The court of appeals in this case upheld a preliminary injunction against enforcement of that provision (Pet. App. 111-115), and the New York State Police has since removed the social-media-accounts question from the licensing application form.

[4] The CCIA separately barred possessing a firearm on another person's private property without the owner or lessee's express consent. Penal Law § 265.01-d(1). The court of appeals upheld a preliminary injunction against enforcement of that provision with respect to property open to the public (Pet. App. 200-215), and the provision is not at issue on this appeal.

B. Procedural Background

1. The district court's preliminary injunction

Several weeks after the CCIA took effect, petitioners filed this lawsuit pursuant to 42 U.S.C. § 1983 in the U.S. District Court for the Northern District of New York, challenging nearly every aspect of the CCIA, including the provisions described above, principally under the Second and Fourteenth Amendments. (CA2 J.A. 17-89.) Five of the six petitioners have firearm carrying licenses in New York, and therefore challenged the restrictions on carrying firearms in sensitive places or on others' private property without consent. (CA2 J.A. 18-19.) The sixth petitioner (Lawrence Sloane) did not have a carry license (and indeed had never applied for one), and challenged each of the CCIA's licensing requirements, as well as the sensitive-place and private-property provisions. (CA2 J.A. 19, 79-82.)

When they filed their lawsuit, petitioners moved for a temporary restraining order (TRO), preliminary injunction, and permanent injunction. (CA2 J.A. 197-201.) The district court gave defendants five days to respond to the TRO request (which it then granted), and three weeks to oppose the preliminary injunction motion with respect to dozens of challenged provisions. (CA2 J.A. 5-11.) On that timetable, the parties had no opportunity to engage historical experts and as a result the district court did not have the benefit of expert testimony in the record. At the preliminary injunction hearing, the parties presented only oral argument and no evidence. (CA2 J.A. 13 (ECF No. 72).)

The district court granted plaintiffs' motion in part, and preliminarily enjoined defendants from enforcing

the good-moral-character licensing requirement and various related disclosure requirements, approximately a dozen sensitive-place restrictions (including, e.g., prohibitions on firearms in public parks, restaurants serving alcohol, and concert venues), and the private-property requirement. (Pet. App. 216-430.)

2. The court of appeals' initial vacatur of much of the preliminary injunction

The U.S. Court of Appeals for the Second Circuit (Sack, Wesley, and Bianco, JJ.) unanimously granted respondents' motion for a stay of the preliminary injunction pending appeal. (CA2 ECF No. 76.) This Court denied petitioners' application to vacate the stay. *Antonyuk v. Nigrelli*, 143 S. Ct. 481 (2023).

Following briefing and argument on this appeal and three related cases, a different panel of the Second Circuit (Jacobs, Lynch, and Lee, JJ.) jointly issued a comprehensive opinion, unanimously vacating the district court's preliminary injunction against enforcement of the good-moral-character requirement and most, but not all, of the licensing disclosures and sensitive-place provisions enjoined by the district court. *See Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023), *vacated sub nom. Antonyuk v. James*, 144 S. Ct. 2709 (2024) (mem.), *and reinstated in part by Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024).

3. This Court's remand and the court of appeals' new opinion

Petitioners filed a petition for certiorari. Shortly thereafter, this Court issued its decision in *Rahimi,* granted the petition for certiorari in this case, vacated this Court's judgment, and remanded for further consid-

eration in light of *Rahimi*. *See Antonyuk v. James*, 144 S. Ct. 2709 (2024).[5]

On remand, the court of appeals ordered supplemental briefing on the effect of *Rahimi* (*see* Pet. App. 8) and subsequently issued a new comprehensive, 246-page slip opinion, again unanimously vacating the district court's preliminary injunction against enforcement of the good-moral-character requirement and most of the licensing disclosures and sensitive-place provisions enjoined by the district court, either on standing or merits grounds. (Pet. App. 1-215.)[6]

After "conscientiously follow[ing] the Court's mandate" and "reconsider[ing] all of [the court of appeals' prior] conclusions in light of *Rahimi*," the court of appeals concluded that *Rahimi*'s methodology is generally consistent with the methodology the court applied in its prior opinion, and the Court's analysis in *Rahimi* thus supports the court of appeals' prior conclusions. (Pet. App. 8; *see* Pet. App. 116 n.59.) The court of appeals further emphasized that its preliminary injunction decision "does not determine the ultimate constitutionality of the challenged CCIA provisions, which await

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[5] The Court similarly granted petitions, vacated judgments, and remanded for further consideration in light of *Rahimi* in seven other cases involving challenges to firearm regulations. *See Garland v. Range*, 144 S. Ct. 2706 (2024) (mem.); *United States v. Daniels*, 144 S. Ct. 2707 (2024) (mem.); *United States v. Perez-Gallan*, 144 S. Ct. 2707 (2024) (mem.); *Vincent v. Garland*, 144 S. Ct. 2708 (2024) (mem.); *Jackson v. United States*, 144 S. Ct. 2710 (2024) (mem.); *Cunningham v. United States*, 144 S. Ct. 2713 (2024) (mem.); *Doss v. United States*, 144 S. Ct. 2712 (2024) (mem.).

[6] As noted earlier (at nn. 3-4), the court of appeals affirmed the preliminary injunction as to the social-media-disclosure requirement and the private-property requirement to the extent it applies to property open to the public.

further briefing, discovery, and historical analysis." (Pet. App. 215 n.126.)

As relevant here, the court of appeals rejected petitioners' categorical argument that a court may consider only Founding-era history in evaluating a plaintiff's likelihood of success on Second Amendment challenges to state firearm laws. The court recognized that it would be improper to rely on post-Founding history that is "*inconsistent* with prior practices," but concluded that, when later laws "reflect previously settled practices and assumptions, they remain probative as to the existence of an American tradition of regulation." (Pet. App. 83-84 n.41 (citing *Bruen*, 597 U.S. at 35-36).) The court further "agree[d] with the decisions of [its] sister circuits" that, for state laws like the CCIA, the understanding of the right to bear arms around 1791, when the Second Amendment was originally ratified, and around 1868, when the people incorporated the Second Amendment against the States through the Fourteenth Amendment, both may be relevant, particularly where, as in this case, there is consistent history in both periods. (Pet. App. 48-49.)

In concluding that petitioners were unlikely to succeed on the merits of their facial challenge to the good-moral-character licensing requirement, the court of appeals concluded that the requirement served as an appropriate "proxy for dangerousness." (Pet. App. 64.) The court further underscored that *Rahimi* marshaled extensive historical evidence that the nation's firearm laws have always included provisions to prevent dangerous individuals from misusing firearms. (Pet. App. 64-65.) The court emphasized that *Rahimi* found historical laws to be sufficient analogues for the modern law at issue, notwithstanding their substantial differences from the modern law, because the laws "shared a critical

substantive characteristic: they all used their differing procedural mechanisms to disarm those who were determined to be dangerous." (Pet. App. 102.) And the court rejected the argument that the "bounded discretion" given to licensing officials applying the good-moral-character requirement violated the Second Amendment (Pet. App. 78), noting *Bruen*'s approval of shall-issue regimes with comparable good-moral-character requirements and the historical evidence of similar licensing regimes (Pet. App. 94-103).

REASONS FOR DENYING THE PETITION

I. REVIEW OF THIS INTERLOCUTORY APPEAL IS PREMATURE.

This petition for certiorari seeks review of an interlocutory appeal of a preliminary injunction decision. As the court of appeals emphasized below, its preliminary decision is "not a full merits decision," and may change pending further record development in the district court and further briefing. (Pet. App. 215 n.126.) And as noted above (at 9), the record on this appeal was developed in merely three weeks and there was no opportunity to present expert evidence below.

This Court's ordinary practice is to deny interlocutory review irrespective of whether a case presents an arguably significant statutory or constitutional question.[7] This Court has departed from that

[7] *See*, *e.g.*, *Abbott v. Veasey*, 580 U.S. 1104 (2017) (Roberts, C.J., respecting denial of certiorari); *Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944 (2012) (Alito, J.); *Wrotten v. New York*, 560 U.S. 959 (2010) (Sotomayor, J.); *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R.*, 389 U.S. 327,

(*continued on the next page*)

practice in rare circumstances, such as, for example, when an important question would be "effectively unreviewable" after final judgment, *Will v. Hallock*, 546 U.S. 345, 349-50 (2006) (quotation marks omitted), or when an immunity from suit, rather than a mere defense to liability, is implicated, *Ashcroft v. Iqbal*, 556 U.S. 662, 671-72 (2009). Nothing in this case will become effectively unreviewable if this Court takes its ordinary course by waiting until after final judgment—and the development of a complete record—to review any remaining issues.

II. PETITIONERS' METHODOLOGICAL QUESTION AS TO THE RELEVANCE OF INCORPORATION-ERA HISTORY DOES NOT MERIT THIS COURT'S REVIEW.

A. This Case Is a Poor Vehicle for Addressing the Methodological Question.

Petitioners' first question presented is a methodological one, asking whether courts addressing the constitutionality of state firearm laws are precluded from considering nineteenth-century history.

Contrary to petitioners' unsupported assertion (Pet. 10), this question is far from "outcome-determinative" in this case because the court of appeals considered nineteenth-century history alongside consistent evidence from the Founding era and earlier. For example, the court of appeals explained that "the State has made a robust showing of a well-established and representative

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328 (1967) (per curiam); *see also Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) ("except in extraordinary cases, the writ is not issued until final decree," and nonfinality "alone furnishe[s] sufficient ground" to deny certiorari).

tradition of regulating firearms in public forums and quintessentially crowded places," like many of the sensitive places governed by the CCIA. (Pet. App. 150.) That tradition "endur[ed] from medieval England to Reconstruction America and beyond" (Pet. App. 150), in a "'long, unbroken line'" (Pet. App. 153 (quoting *Bruen*, 597 U.S. at 35)).

As for the Founding era, the court of appeals correctly recognized that at least two large States—Virginia (then the largest State) and North Carolina (the third largest)—and the District of Columbia had regulations in that era similar to the CCIA's sensitive-place regulations, "prohibiting firearms in fairs and markets, *i.e.*, the traditional, crowded public forum." (Pet. App. 150-151 & n.81, 158.) Even the district court recognized that a large proportion of the national population was governed by such laws in 1791. (*See* Pet. App. 307 n.66.) And the court of appeals correctly recognized that laws from the Founding era support other provisions of the CCIA too. For instance, the good-moral-character requirement is consistent with the many Founding-era laws disarming individuals who threatened harm to others, including surety and "going-armed" laws discussed by this Court in *Rahimi*, *see* 602 U.S. at 693-98, among others (*see, e.g.*, CA2 J.A. 297-320, 361-429).

Petitioners are therefore simply incorrect to suggest (*e.g.*, Pet. 10, 19-21) that the court of appeals' opinion is supported only by incorporation-era history. For example, petitioners cite a reference in the court of appeals' opinion to firearm licensing schemes being a post-Civil War phenomenon. (Pet. 19 (citing Pet. App. 82 n.40).) But they ignore that both *Rahimi* and the court of appeals' opinion below recognized that other laws intended to disarm dangerous individuals have always

been an integral part of the nation's historical tradition of firearm regulation, including in the Founding era. (*See* Pet. App. 64-65, 70-74.) And *Rahimi* made clear that even though such historical laws may differ from modern laws, the historical laws are similar enough to support the modern laws when they are rooted in the same principle that the government may disarm those who pose a danger to others. *See* 602 U.S. at 692, 698.

Petitioners also misplace their reliance (Pet. 20) on the fact that restrictions of firearms in parks (one of the sensitive places covered by the CCIA) emerged in the nineteenth century. As the court of appeals correctly explained, modern parks came into existence in the nineteenth century, so there could have been no identical earlier firearm restrictions in parks. (*See* Pet. App. 155-157.) And earlier commons and greens on which petitioners rely (Pet. 22) served different purposes from modern parks, i.e., animal grazing and militia mustering—for which firearm restriction was likely deemed unnecessary or inappropriate. (Pet. App. 160-162.)[8]

Petitioners likewise err in their attempt (Pet. 21) to discount Founding-era laws on which the courts below relied. As the court of appeals correctly explained—and petitioners ignore—this Court declined to rely on some of those laws in *Bruen* only "within the context in which th[e] statute[s] w[ere] offered: as . . . analogue[s] supporting a carriage ban in public *generally*." (Pet. App. 151

[8] Petitioners' assertion (Pet. 22) that there were Founding-era traditions contrary to the CCIA is also unsupported. The pages from court of appeals briefs they cite refer to a handful of secondary sources from decades after the Founding referencing instances of drinking in connection with militia musters—not a tradition of firearms at non-military-related locations like those covered by the CCIA.

n.82 (citing *Bruen*, 597 U.S. at 40-41).) By contrast, this Court did not address the laws' specific location restrictions, e.g., in fairs and markets, as an analogue for modern sensitive-place restrictions, because no such sensitive-place restriction was at issue in *Bruen*. (*See id.*) Further, petitioners are incorrect to suggest that *Bruen* expressed "doubt that three colonial regulations could suffice" to show a historical tradition. Pet. 21 n.11 (citing *Bruen*, 597 U.S. at 46). The regulations discussed in *Bruen* were from the seventeenth century, not the Founding era, and they were not supported by a long line of earlier and subsequent history, like the Founding-era regulations at issue here. *See* 597 U.S. at 46-48.

B. The Decision Below Is Correct and Consistent with This Court's Precedent Respecting the Relevant Scope of Historical Evidence.

The courts below also were correct to recognize that incorporation-era history is relevant in analyzing the constitutionality of state firearm laws like the CCIA, particularly where, as here, that history is consistent with Founding-era history (see *supra* at 14-16). As this Court made clear in *Bruen* and *Rahimi*, a "long, unbroken line" of consistent history supporting a contemporary firearm law provides important support for such a law. *Bruen*, 597 U.S. at 35; *see Rahimi*, 602 U.S. at 693-98. Thus, where, as here, "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same," history from both periods may be considered. *Bruen*, 597 U.S. at 38; *see also id.* at 82 (Barrett, J., concurring) (consistency of historical evidence in Founding and incorporation eras "makes it unnecessary to choose between them"). By contrast, it is only historical "laws that are *inconsistent* with the original meaning of the

constitutional text" that may be rejected as evidence. *See id.* at 36.

Indeed, this Court has repeatedly embraced post-Founding-era—including incorporation-era—history in interpreting the constitutional right to bear arms. *District of Columbia v. Heller* described evidence of post-ratification understanding of a right as a "critical tool of constitutional interpretation." 554 U.S. 570, 605 (2008). And *McDonald v. City of Chicago* exhaustively retraced incorporation-era public understanding of the right to bear arms to support this Court's conclusions that the Second Amendment right was considered fundamental and that the Fourteenth Amendment therefore incorporated that right against the States; in so doing, *McDonald* necessarily used incorporation-era evidence to illuminate the original scope of the Second Amendment. 561 U.S. 742, 767-78 (2010). *Bruen* also examined both incorporation-era and other nineteenth-century history at length. *See* 597 U.S. at 50-70. *Rahimi* likewise relied on nineteenth-century history, and multiple concurring opinions discussed the value of post-ratification history in constitutional analysis. *See* 602 U.S. at 693-98, 723-29 (Kavanaugh, J., concurring), 738 (Barrett, J., concurring).[9]

Petitioners cite (Pet. 14) a number of decisions of this Court that relied on Founding-era history to interpret the scope of other incorporated constitutional rights. But the cited cases, much like the Second Amendment cases discussed above, in fact considered a wide

[9] The references in *Rahimi* on which petitioners rely (Pet. 12-13) are not to the contrary. They refer to consistent history "since" the Founding era, without discounting any of it. *See, e.g.,* 602 U.S. at 690, 705 (Sotomayor, J., concurring); *id.* at 750 (Thomas, J., dissenting).

range of history—including from the nineteenth-century incorporation era. *See, e.g.*, *Ramos v. Louisiana*, 590 U.S. 83, 90-92 (2020) (considering history from fourteenth through late-nineteenth centuries to interpret the Sixth Amendment); *Timbs v. Indiana*, 586 U.S. 146, 150-54 (2019) (considering history from the Magna Carta through the nineteenth century to interpret the Eighth Amendment); *Virginia v. Moore*, 553 U.S. 164, 168-71 & nn.3-4 (2008) (considering nineteenth-century, including incorporation-era, history to interpret Fourth Amendment).[10]

Accordingly, this Court has consistently made clear that post-1791 history remains relevant, either as post-enactment history to shed further light on the Framers' intent in 1791, or as contemporaneous history to understand the right when reevaluated and ultimately incorporated against the States in 1868, or both. While petitioners note that this Court has recognized that the meaning of a constitutional provision "'does not alter,'" and "'[t]hat which it meant when adopted it means now'" (Pet. 13-14 (quoting *South Carolina v. United States*, 199 U.S. 437, 448 (1905))), that observation supports the relevance of postenactment history in interpreting original meaning, and does not preclude the relevance of history from the incorporation era when the Fourteenth Amendment was adopted.

Contrary to petitioners' suggestion, *Bruen* did not decide that the scope of incorporated rights is pegged exclusively "'to the public understanding . . . in 1791'"

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[10] One other case that petitioners cite, *Gamble v. United States*, 587 U.S. 678 (2019), did not involve any incorporated right, but rather a right applied against the federal government. In any event, that case still considered postenactment historical sources, including from the nineteenth century. *See id.* at 685-86.

(Pet. 24 (quoting *Bruen*, 597 U.S. at 37)). As the beginning of the quoted sentence makes clear, the Court has "generally *assumed*"—without deciding—that the scope of such rights was defined by the 1791 understanding. *See Bruen*, 597 U.S. at 37 (emphasis added). But petitioners omit the further context casting doubt on this assumption, because "[s]trictly speaking, New York is bound to respect the right to keep and bear arms because of the Fourteenth Amendment, not the Second." *Id*.

Petitioners also are wrong to suggest (Pet. 16) that the court of appeals sought to marginalize *Bruen* as an "exceptional" decision. Rather, the court of appeals said—citing *Bruen* itself—that the *proper-cause requirement* at issue in *Bruen* was exceptional, in that it conditioned the exercise of a constitutional right on the rights-holder's reasons for exercising the right. (Pet. App. 41; *accord* Pet. App. 44-45, 129.) The court of appeals merely distinguished—correctly—the exceptional nature of the proper-cause requirement at issue in *Bruen* from the wholly unexceptional provisions presented by this petition, namely, regulations that restrict firearms in specified sensitive places and disarm demonstrably dangerous individuals, each supported by extensive and long-standing history.

Likewise, the court of appeals made the common-sense point, not addressed in *Bruen*, that an absence of prior laws is relevant but not dispositive, because "Legislatures past and present have not generally legislated to their constitutional limits." (Pet. App. 39; *see also* Pet. App. 40, 87 (quoting *Binderup v. Attorney Gen.*, 836 F.3d 336, 369 (3d Cir. 2016) (Hardiman, J., concurring in part and concurring in the judgments).) Justice Barrett's concurrence in *Rahimi* made the same point: that it is wrong to assume that past "legislatures maximally exercised their power to regulate." 602 U.S. at

739-40. The fact that the court of appeals also cited a law review article making that commonsense point does not demonstrate that the court agreed with unrelated criticism of *Bruen* elsewhere in the article—much less that the court intended to defy *Bruen* sub silentio, as petitioners suggest (Pet. 2, 17-18).

C. There Is No Circuit Split on the Methodological Question and the Issue Is Still Percolating in the Lower Courts.

Petitioners are incorrect to contend (Pet. 24-28) that the court of appeals' decision below creates a circuit split. The court of appeals expressly "agree[d] with the decisions of [its] sister circuits" in recognizing that incorporation-era history is, along with Founding-era history, "a relevant consideration" in constitutional challenges to state firearm laws. (Pet. App. 48-49 (citing cases).) Indeed, all courts of appeals to have addressed the issue, and many other courts—like the district court below and this Court in *Bruen*—have found incorporation-era history relevant to such challenges, where, as here, the incorporation-era history is consistent with Founding-era history.

Although courts have varied somewhat in their precise descriptions of the weight to be given to incorporation-era history, the courts that have reached the issue—including those cited by petitioners—have consistently agreed with the courts below in this case that at least some weight should be given to such history. And the courts have consistently considered incorporation-era history themselves in analyzing the scope of the Second Amendment. *See, e.g.*, *Wolford v. Lopez*, 116 F.4th 959, 980-1002 (9th Cir. 2024) (considering history from Founding era through incorporation era), *reh'g denied sub nom. Carralero v. Bonta*, 125 F.4th

1246 (9th Cir. 2025); *Worth v. Jacobson*, 108 F.4th 677, 695-98 (8th Cir. 2024) (similar), *pet. for cert. docketed*, No. 24-782 (U.S. Jan. 23, 2025); *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 48, 51 (1st Cir.) (similar), *pet. for cert. docketed*, No. 24-131 (U.S. Aug. 6, 2024); *Bevis v. City of Naperville*, 85 F.4th 1175, 1201-02 (7th Cir. 2023) (similar), *cert. denied sub nom. Harrel v. Raoul*, 144 S. Ct. 2491 (July 2, 2024); *National Rifle Ass'n v. Bondi*, 61 F.4th 1317, 1325-32 (11th Cir.) (similar), *reh'g en banc granted & op. vacated*, 72 F.4th 1346 (11th Cir. 2023).[11]

No case on which petitioners rely conflicts with the decision below. *First*, petitioners cite some cases involving Second Amendment challenges to *federal*—rather than state—laws. The period when the right to bear arms was incorporated against the States through the Fourteenth Amendment is not so clearly and directly relevant to those federal laws, as it is in the case of state laws. Thus, those cases' focus on the Founding era is consistent with the decisions below. *See United States v. Connelly*, 117 F.4th 269, 275 (5th Cir. 2024); *United States v. Ayala*, 711 F. Supp. 3d 1333, 1342 & n.4 (M.D. Fla. 2024), *appeal docketed*, No. 24-10462 (11th Cir. Feb. 14, 2024); *Brown v. Bureau of Alcohol, Tobacco,*

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[11] *See also Springer v. Grisham*, 704 F. Supp. 3d 1206, 1216-19 (D.N.M. 2023), *appeal docketed*, No. 23-2194 (10th Cir. Dec. 15, 2023); *Maryland Shall Issue, Inc. v. Montgomery Cnty.*, 680 F. Supp. 3d 567, 582-87 (D. Md.), *appeal docketed*, No. 23-1719 (4th Cir. July 10, 2023); *Goldstein v. Hochul*, 680 F. Supp. 3d 370, 391-92 (S.D.N.Y.), *appeal docketed*, No. 23-995 (2d Cir. July 6, 2023); *Frey v. Nigrelli*, 661 F. Supp. 3d 176, 197-206 (S.D.N.Y.), *appeal docketed sub nom. Frey v. Bruen*, No. 23-365 (2d Cir. Mar. 16, 2023); *State v. Wilson*, 154 Haw. 8, 15-19, *cert. denied*, 145 S. Ct. 18 (2024); *Wade v. University of Mich.*, 347 Mich. App. 596, 614-17 (2023), *pet. for cert. docketed*, No. 24-773 (U.S. Jan. 21, 2025.

Firearms & Explosives, 704 F. Supp. 3d 687, 704 n.8 (N.D.W. Va. 2023), *appeal docketed*, No. 23-2275 (4th Cir. Dec. 11, 2023).

Second, the only case petitioners cite involving a challenge to a state law where the court rejected reliance on incorporation-era history did so because the court identified a conflict between incorporation-era history and Founding-era history. Specifically, in *Lara v. Commissioner Pennsylvania State Police*, the court rejected the defendant's reliance on incorporation-era history restricting firearm possession by 18-to-20-year-olds because the court found that such history conflicted with Founding-era history permitting such possession. 125 F.4th 428, 441-42 (3d Cir. 2025). By contrast, as discussed (*supra* at 14-16), there is no conflict between Founding-era and incorporation-era history here.[12]

Moreover, to the extent that courts have varied somewhat in their articulations of the weight to be given to incorporation-era history, the issue is actively percolating in the lower courts. Most of the district court decisions on which petitioners rely are on appeal, and the Eleventh Circuit granted rehearing en banc in *Bondi*, 72 F.4th 1346 (No. 21-12314), ECF No. 86. A rehearing petition is pending in the Third Circuit in *Lara*. *See* Pet. for Rehr'g (Feb. 10, 2025), *Lara*, 125 F.4th 428 (No. 21-1832), ECF No. 122. These lower courts should be given an opportunity to crystallize—and potentially further unify—their own law before this Court grants review. That is because, "when frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may

[12] Respondents also do not agree with the *Lara* panel's conclusion that Founding-era history is in conflict with the incorporation-era history restricting firearm possession by 18-to-20-year-olds.

yield a better informed and more enduring final pronouncement by this Court." *Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting); *see also Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment) ("[T]he crucible of adversarial testing on which we usually depend, along with the experience of our thoughtful colleagues on the district and circuit benches, could yield insights (or reveal pitfalls) we cannot muster guided only by our own lights.").

III. PETITIONERS' FACIAL CHALLENGE TO NEW YORK'S LICENSING STANDARD FOR ASSESSING DANGEROUSNESS DOES NOT MERIT THIS COURT'S REVIEW.

A. This Case Is a Poor Vehicle for Addressing the Licensing Question.

Petitioners' second question presented asks whether the CCIA's requirement that firearm license applicants show "good moral character"—i.e., that they can use a firearm "in a manner that does not endanger oneself or others," N.Y. Penal Law § 400.00(1)(b)—violates the Second Amendment on its face. As this Court emphasized in *Rahimi*, a facial challenge is "'the most difficult challenge to mount successfully, because it requires a [challenger] to 'establish that no set of circumstances exists under which the Act would be valid.'" 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). "[F]acial challenges are disfavored," because they "often rest on speculation about the law's coverage and its future enforcement," *Moody v. NetChoice, LLC*, 603 U.S. 707, 723, 744 (2024) (quotation marks omitted), and thus "raise the risk of premature interpretation of statutes on the basis of factually barebones

records," *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008) (quotation marks omitted). Facial challenges are also inconsistent with principles of judicial restraint because they force courts to "anticipate a question of constitutional law in advance of the necessity of deciding it." *Id.* (quotation marks omitted). "And facial challenges threaten to short circuit the democratic process by preventing duly enacted laws from being implemented in constitutional ways." *Moody*, 603 U.S. at 723 (quotation marks omitted); *see also id.* at 752-53 (Thomas, J., concurring), 777 (Alito, J., concurring).

Here, as the court of appeals correctly recognized (*e.g.*, Pet. App. 77-78, 100-101), petitioners' challenge displays all the deficiencies of a facial challenge. Petitioners plainly cannot establish that there is "no set of circumstances," *Rahimi*, 602 U.S. at 693 (quotation marks omitted), in which respondents could constitutionally refuse a firearm license to someone lacking good moral character, i.e., likely to use a firearm "in a manner that . . . endanger[s] oneself or others," Penal Law § 400.00(1)(b). Petitioners' challenge rests on speculation that the good-moral-character requirement permits "open-ended" discretion to deny licenses. (*See* Pet. 29.) But no petitioner has actually sought, much less been denied, a license under the challenged scheme; nor is there any record to assess how the challenged licensing scheme operates in practice. Petitioners' challenge therefore anticipates a theoretical constitutional dispute before it has ever appeared in practice. And their challenge seeks to undermine the democratic process by enjoining state and local officials from enforcing a duly enacted state statute without any evidence that these officials have applied the statute in an unconstitutional manner. Petitioners cannot state a

facial claim—much less provide a basis for this Court's review on certiorari—by ignoring the licensing requirement's lawful applications and proceeding based solely on hypothetical unconstitutional applications.

Moreover, only one of the petitioners (Sloane) even arguably has standing to challenge the licensing provisions. (*See* CA2 J.A. 18-19.) Although the court of appeals found that Sloane had standing to challenge the constitutionality of a licensing requirement that has never been applied to him, this Court may disagree and conclude that it lacks jurisdiction to reach the merits of the question presented. In addition, if Sloane applied for a license during the pendency of this case, the challenge could be mooted, because he attests that he is a law-abiding person and has good moral character, which should qualify him for a license (CA2 J.A. 144 ¶ 3, 146 ¶ 14). Accordingly, this case is an exceedingly poor vehicle to address petitioners' question presented.

B. The Decision Below Is Correct and Consistent with This Court's Precedent Regarding Firearm Licensing.

The second question presented does not warrant this Court's review for the additional reason that the court of appeals' decision on that point is consistent with this Court's precedent, including *Bruen* and *Rahimi*. The good-moral-character requirement at issue here denies firearm licenses only to individuals who are demonstrably dangerous: those who lack "the essential character, temperament and judgement necessary to be entrusted with a weapon and to use it *only in a manner that does not endanger oneself or others*." Penal Law § 400.00(1)(b) (emphasis added).

Requirements similar, or indeed nearly identical, to the good-moral-character requirement are a feature of many other States' firearm licensing regimes, which were favorably referenced in *Bruen* as "shall issue"-type regimes appropriately "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 (quoting *Heller*, 554 U.S. at 635). *See id.* at 13 n.1 (collecting statutes). Some of those States expressly require good moral character. *See*, *e.g.*, Del. Code Ann. tit. 11, § 1441(a) (applicant must be of "good moral character"); Ga. Code Ann. § 16-11-129(d)(4) ("of good moral character"); Ind. Code § 35-47-2-3(g)(2) ("of good character and reputation"); Me. Rev. Stat. Ann., tit. 25, § 2003(1) ("demonstrate[] good moral character"). And others use similar dangerousness proxies, for instance referring to "suitability" for a license, *see*, *e.g.*, Conn. Gen. Stat. § 29-28(b)(2); 11 R.I. Gen. Laws Ann. § 11-47-11(a), or not posing a likelihood of using a weapon in a "manner as would endanger the person's self or others," Iowa Code Ann. § 724.8(3). *See also, e.g.*, Ala. Code § 13A-11-75(c)(11) (applicant must not cause "justifiable concern for public safety"); Colo. Rev. Stat. Ann. § 18-12-203(2) (not likely to "present a danger to self or others"); Tex. Gov. Code Ann. § 411.172(a)(7) ("not incapable of exercising sound judgment with respect to the proper use and storage"); Va. Code Ann. § 18.2-308.09(13) (not "likely to use a weapon unlawfully or negligently to endanger others"). (*See also* Pet. App. 82-86 (citing additional examples).)

Petitioners' contention (*see*, *e.g.*, Pet. 2, 29) that the CCIA's good-moral-character requirement would give licensing officers "open-ended" discretion to deny licenses to individuals who could safely carry firearms is incorrect. Under the CCIA, anyone satisfying the

statutorily defined license requirements—i.e., as relevant here, anyone who will "not endanger oneself or others" with a firearm—"shall be issued" a license. *See* N.Y. Penal Law § 400.00(2). The licensing officer has no more discretion than in the other shall-issue regimes discussed above that this Court cited favorably in *Bruen*. And, under the CCIA, the officer must explain the reasons for the denial in writing, and the applicant is entitled to appellate review, both administratively in some jurisdictions and judicially in a state court challenge. *See id.* § 400.00(4-a); N.Y. C.P.L.R. §§ 7801-7806.

Petitioners are also wrong to assert (Pet. 29) that New York "replaced" the proper-cause requirement this Court found unconstitutional in *Bruen* with the good-moral-character requirement. The good-moral-character requirement dates back more than a century, *see* Ch. 608, § 1, 1913 N.Y. Laws 1627, 1629, and serves the independent purpose of ensuring that firearm license applicants are not dangerous, regardless of what, if any, cause they might have for carrying a firearm. What *has* changed after *Bruen* is the CCIA's clarifying definition of good moral character, explicitly tying that term to dangerousness. *See* N.Y. Penal Law § 400.00(1)(b). This definition expressly cabins licensing officers' discretion, and closely mirrors language from licensing schemes in other States that this Court cited favorably in *Bruen*, 597 U.S. at 13 n.1, 38 n.9.[13]

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[13] Petitioners' cited cases (*see* Pet. 30, 33-34 & n.19) fail to show that the CCIA's good-moral-character requirement results in denial of licenses to individuals who could safely carry firearms. All of those cases either predated the CCIA's addition of the expressly dangerousness-based good-moral-character definition at issue here, *see Sibley v. Watches*, 501 F. Supp. 3d 210 (W.D.N.Y. 2020); *Matter of Dimino v. McGinty*, 210 A.D.3d 1150 (N.Y. 3d Dep't 2022), or

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Petitioners misread *Bruen* and *Rahimi* in suggesting (Pet. 28-35) that this Court rejected a statutory standard like the CCIA's that denies licenses to those lacking the character or temperament necessary to be entrusted with a weapon safely. On the contrary, in *Bruen*, this Court endorsed a nearly identical standard as a valid "shall issue"-type regime. *See* 597 U.S. at 13 n.1, 38 n.9 (endorsing standard precluding licenses for those "whose conduct has shown them to be lacking the essential character o[r] temperament necessary to be entrusted with a weapon" (quotation marks omitted)).

Because the CCIA requires a dangerousness showing, the paragraph in *Rahimi* rejecting the contention that an individual may be disarmed "simply because he is not 'responsible,'" 602 U.S. at 701-02, on which petitioners rely (Pet. 31-35), has no application here.[14] At a minimum, as the court of appeals observed, the CCIA's "'good moral character' requirement is plainly capable of constitutional application to dangerous persons—

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involved challenges to local licensing laws not at issue in this case which lacked such a dangerousness-based definition, *see Srour v. New York City*, 699 F. Supp. 3d 258 (S.D.N.Y. 2023), *vacated as moot*, 117 F.4th 72, 86 (2d Cir. 2024), *pet. for cert. docketed*, No. 24-844 (U.S. Feb. 7, 2025), or imposed additional requirements not present in the CCIA, *Matter of Kamenshchik v. Ryder*, 78 Misc. 3d 646, 655-56 (N.Y. Sup. Ct. 2023), *vacated in part & modified in part*, 84 Misc. 3d 1048 (N.Y. Sup. Ct. 2024).

[14] Contrary to petitioners' suggestion (Pet. 32), neither respondents nor the court of appeals below "conceded" that the good-moral-requirement requires some notion of "responsibility" more demanding than the ability to use firearms safety. To the contrary, both respondents and the court of appeals have been clear that the CCIA's good-moral-character requirement, with its specific and narrow definition of that term, is a "proxy for dangerousness." (Pet. App. 64.)

who are the core target of that requirement"—and thus is not unconstitutional on its face. (Pet. App. 71 n.30.)

Moreover, *Rahimi* underscores that the CCIA's dangerousness-based standard for issuing firearm licenses is consistent with history and tradition. As this Court there explained, "[s]ince the founding," "[o]ur tradition of firearm regulation [has] allow[ed] the Government to disarm individuals who present a credible threat to the physical safety of others." 602 U.S. at 690, 700. Many such historical analogues for the CCIA's licensing requirement were discussed in *Rahimi*. *See id.* at 693-98. Respondents identified many more historical analogues in their papers below, from Founding-era loyalty and militia laws disarming dangerous individuals, to incorporation-era firearm licensing laws. (*See*, *e.g.*, Br. for Appellants Nigrelli & Doran at 34-36 (Jan. 9, 2023), CA2 ECF No. 95.) And the court of appeals rightly recognized both that "[t]here are a lot" of early licensing laws like the CCIA's (Pet. App. 79-85), and that, "[s]trikingly . . . these laws and ordinances did not merely exist—they appear to have existed without constitutional qualms or challenges." (Pet. App. 85).[15]

[15] Petitioners misplace their reliance (Pet. 22-23) on an assertion that some historical analogues for the good-moral-character requirement were racially discriminatory. To the extent that historical laws focused on disarming racial groups (wrongly) deemed dangerous at the time, that fact would only underscore that the Second Amendment has long been understood to permit disarming those deemed dangerous. Citing those laws as historical precedent for disarming those deemed dangerous at the time does not entail endorsing now-rejected views of how to determine dangerousness.

C. There Is No Circuit Split on the Licensing Question.

Finally, petitioners are wrong to assert (Pet. 35-37) that the decision below creates a circuit split. Petitioners cite no decision of another circuit holding a licensing requirement like the CCIA's good-moral-character requirement inconsistent with the Second Amendment, and respondents are aware of none. To the contrary, the only other court of appeals to address a Second Amendment challenge to a similar firearm licensing requirement of which respondents are aware upheld that requirement, *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211 (4th Cir. 2024) (en banc)—and this Court recently denied review of that decision, *Maryland Shall Issue*, No. 24-373, 2025 WL 76446 (U.S. Jan. 13, 2025).

The cases on which petitioners rely address a wholly different issue: whether a federal statute categorically prohibiting firearm possession by convicted felons is consistent with the Second Amendment. *See Range v. Attorney Gen.*, 124 F.4th 218, 222 (3d Cir. 2024) (en banc); *United States v. Williams*, 113 F.4th 637, 642-43 (6th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1121-22 (8th Cir.), *reh'g denied*, 121 F. 4th 656 (8th Cir. 2024), *pet. for cert. docketed*, No. 24-6517 (U.S. Feb. 10, 2025); *United States v. Duarte*, 101 F.4th 657, 661 (9th Cir.), *reh'g en banc granted & op. vacated*, 108 F.4th 786 (9th Cir. 2024).[16] In addressing a categorical

[16] Petitioners also rely on a dissent from denial of rehearing (Pet. 36 n.22), which of course cannot create a circuit split, and in any event, like the other cases cited by petitioners, the dissent from denial of rehearing addressed a federal statute categorically prohibiting the sale of certain firearms, in that case, to people less than

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prohibition, some of these cases found that not all convicted felons pose a sufficient threat to warrant a ban on possession of firearms. But the cases did not involve an individualized licensing determination like the CCIA's, and so they could not create a circuit split with the decision below. And, in fact, the other circuits' decisions recognized, consistent with the court of appeals' decision below, that dangerous people could be disarmed consistent with the Second Amendment, and that laws like the CCIA's licensing requirement that serve to disarm dangerous people are facially constitutional. *See, e.g.*, *Range*, 124 F.4th at 230; *Williams*, 113 F.4th at 657; *Jackson*, 110 F.4th at 1129; *Duarte*, 101 F.4th at 679. In suggesting that some of these decisions conflict with the decision below in rejecting "virtue" evaluations as a basis for disarmament, petitioners misunderstand the decision below—which approved only dangerousness, not virtue, evaluations as a basis to disarm. See *supra* at 26, 29 n.14.[17]

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twenty-one years old. *See National Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 714 F.3d 334, 335 (5th Cir. 2013) (en banc) (Jones, J., dissenting).

[17] Moreover, because the court of appeals' decision in this case expressly declined to reach the issue of whether the "people" protected by the Second Amendment include only law-abiding and responsible citizens (Pet. App. 66-68), the decision cannot be in conflict with any other decision on that issue, contrary to petitioners' suggestion (Pet. 36-37).

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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