No. _____

In The
Supreme Court of the United States

LAZARUS CASAS,

Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New York, Appellate Division, First Department

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court invalidated New York's proper-cause requirement for obtaining a license to possess a firearm outside of the home and "conclude[d] that the State's licensing regime violates the Constitution." *Id.* at 11. In this case, the Manhattan District Attorney's Office prosecuted Lazarus Casas for possessing a firearm without a license under the very same regime that this Court considered in *Bruen*.

The question presented is:

Under the Second and Fourteenth Amendments to the U.S. Constitution, may New York punish an individual for failing to comply with the licensing regime that this Court examined in *Bruen*, even though, as Mr. Casas objected, and this Court confirmed, the proper-cause requirement was unconstitutional?

RELATED PROCEEDINGS

People v. Casas, CLA-2024-01152, Court of Appeals of New York. Order denying leave to appeal entered on February 21, 2025.

People v. Casas, No. 2022-05191, Supreme Court of the State of New York, Appellate Division, First Department. Judgment entered on November 26, 2024.

People v. Casas, Ind. No. 71633/2022, Supreme Court of the State of New York, New York County. Judgment entered on November 7, 2022.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Lazarus Casas respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of New York, Appellate Division, First Department.

OPINIONS BELOW

The opinion of the Supreme Court of the State of New York, Appellate Division, First Department, is reported at *People v. Casas*, 220 N.Y.S.3d 310 (N.Y. App. Div. 2024), and appears at Appendix A. The opinion of the Supreme Court of the State of New York, New York County, rejecting Mr. Casas's motion to dismiss the indictment is unreported and appears at Appendix B.

JURISDICTION

The Appellate Division entered its judgment on November 26, 2024. The Court of Appeals of New York denied leave to appeal in an order dated February 21, 2025, which is reported at *People v. Casas*, 254 N.E.3d 634 (N.Y. 2025), and appears at Appendix C. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the U.S. Constitution, U.S. Const. amend. II; the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, U.S. Const. amend. XIV, § 1; the Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2; and the relevant statutory provisions are reproduced at Appendix D.

INTRODUCTION

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court held that it is the state that bears "the burden" to show that its effort to restrict firearm possession is "consistent with this Nation's historical tradition of firearm regulation." *Id.* at 33-34. Further, because New York "failed to meet [its] burden to identify an American tradition justifying [its] proper-cause requirement," that provision was "unconstitutional." *Id.* at 38-39. In this case, New York prosecuted Lazarus Casas for possessing a firearm without a license under the very same regime that this Court considered in *Bruen*. Yet, despite Mr. Casas's protest that the proper-cause provision was unconstitutional, and the fact that New York made no effort to demonstrate that its licensing regime could otherwise be constitutionally enforced against him, the court below ruled, in a one-sentence conclusory decision, that Mr. Casas's prosecution and conviction did not violate the Second Amendment. By doing so, the court below relieved New York of its burden to show that its attempt to restrict (and punish) the possession of a firearm comports with the historical tradition of firearm regulation. Troublingly, the decision echoed appellate precedent in New York asserting that *Bruen* had "no impact" on the state's firearm possession statutes. Because the decision below clearly defies *Bruen*, the petition should be granted, and the judgment summarily reversed. In the alternative, the petition should be granted, and the case set for briefing and oral argument.

STATEMENT OF THE CASE

A. Mr. Casas Is Prosecuted for Firearm Possession Under the Same Licensing Regime as Under *Bruen*.

In April 2022, after discharging a pistol into the air from the rooftop of his apartment building in Manhattan,[1] Mr. Casas was charged with one count of criminal possession of a weapon in the second degree, in violation of N.Y. Penal Law § 265.03(3), one count of criminal possession of a weapon in the second degree, in violation of N.Y. Penal Law § 265.03(1)(b), and one count of criminal possession of a firearm, in violation of N.Y. Penal Law § 265.01-b(1).

Significantly, "New York's criminal weapon possession laws prohibit only *unlicensed* possession of handguns." *People v. Hughes*, 1 N.E.3d 298, 301 (N.Y. 2013). Indeed, N.Y. Penal Law § 265.20(a)(3) provides that the statutes punishing firearm possession, including those under which Mr. Casas was charged, "shall not apply to . . . [p]ossession of a pistol or revolver by a person to whom a license therefor has been issued as provided under section 400.00 . . . of this chapter." At the time of Mr. Casas's conduct, however, New York's licensing regime included the requirement that, to obtain a license to carry a firearm outside the home, an individual had to demonstrate "proper cause." N.Y. Penal Law § 400.00(2)(f).

B. Mr. Casas Unsuccessfully Moves to Dismiss the Firearm Possession Charges Based on the Second Amendment.

[1] During his presentence investigation interview, Mr. Casas explained that he was returning home with his girlfriend and their children when he saw a man with whom he had a previous altercation, as well as two other men, standing in front of his apartment building. Believing them to be a threat to his and his family's safety, Mr. Casas went to the rooftop and a fired a shot into the air so that the men would leave.

Mr. Casas moved to dismiss the indictment on Second Amendment grounds. Pet. App. 17-21. Mr. Casas argued that New York's licensing scheme did not "comport with the Second Amendment's right of individuals to keep a loaded pistol in the home for protection or to carry outside of the home for protection." Pet. App. 20. Among other things, Mr. Casas pointed out that the proper-cause provision was one of those "onerous requirements [that] violate the Second Amendment's right to bear arms." Pet. App. 19. Mr. Casas asserted that, accordingly, N.Y. Penal Law §§ 265.01-b(1) and 265.03 are "unconstitutional because [they] impose[] criminal sanctions against those . . . who are alleged to have exercised their Constitutional right to bear arms without first obtaining a permit through [New York]'s onerous . . . licensing permit scheme." Pet. App. 20.

In response, the prosecution argued that the licensing scheme was not onerous, and the challenged provisions were not unconstitutional. Pet. App. 24-25. In support of this claim, the prosecution cited a Second Circuit decision that had upheld New York's licensing scheme and Penal Law proscriptions as constitutional under the Second Amendment. Pet. App. 25 (citing *Libertarian Party of Erie Cnty. v. Cuomo*, 970 F.3d 106, 127-28 (2d Cir. 2020)).

On June 3, 2022, citing the same Second Circuit decision, the trial court denied Mr. Casas's motion to dismiss the charges as unconstitutional under the Second Amendment. Pet. App. 5 (citing *Libertarian Party of Erie Cnty.*, 970 F.3d at 127-28). Thereafter, Mr. Casas pleaded guilty to one count of criminal possession of a weapon

in the second degree, N.Y. Penal Law § 265.03(1)(b), and was sentenced to three and a half years of prison and two and a half years of post-release supervision.

C. New York's Appellate Division Rejects Mr. Casas's Second Amendment Claim Without Holding Respondent to Its Burden Under *Bruen*.

On appeal to the Appellate Division, First Department, Mr. Casas renewed his contention that the indictment should be dismissed because, as he had asserted, and as this Court in *Bruen* confirmed, the proper-cause provision violated the Second Amendment. Pet. App. 43-57, 99-114.

Respondent conceded that the proper-cause provision was unconstitutional, but argued that it could be severed, and the remainder of New York's firearm licensing regime could be enforced. Pet. App. 81-82, 84-88. In particular, according to respondent, Mr. Casas was ineligible for a license under N.Y. Penal Law § 400.00(1)(c) because of a previous misdemeanor conviction for criminal possession of a weapon in the fourth degree and under N.Y. Penal Law § 400.00(1)(e) because of the use of marijuana. Pet. App. 81-82, 87-88. However, respondent made no effort to show that those licensing restrictions were consistent with the historical tradition of firearm regulation. Pet. App. 81-82, 87-88.

In reply, Mr. Casas pointed out that, under *Bruen*, the burden is on the state to establish that historical tradition supports the regulation that it invokes. Pet. App. 111-12. Mr. Casas noted, however, that respondent made no attempt to show that N.Y. Penal Law § 400.00(1)(c) and (e) were historically grounded and could be constitutionally applied to him. Pet. App. 111-12. Because respondent made no effort

to fulfill its "burden to identify an American tradition justifying [those] requirement[s]," its argument that the licensing regime could be enforced against him was meritless. Pet. App. 111-12 (quoting *Bruen*, 597 U.S. at 70).

The Appellate Division rejected Mr. Casas's Second Amendment claim. Pet App. 2-3. It held that "on the present record, [Mr. Casas] has not established that his prosecution and conviction are unconstitutional under . . . *Bruen*." Pet. App. 2. The court gave no explanation. Pet. App. 2-3. Mr. Casas asked the New York Court of Appeals to grant review to address his Second Amendment claim. Pet. App. 122-27. The Court of Appeals denied review. Pet. App. 9.

REASONS FOR GRANTING THE WRIT

Bruen was clear in specifying the analytical framework for assessing a Second Amendment claim: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct," and "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24. Applying that framework, this Court confirmed that an individual has the "right to carry a handgun for self-defense outside the home," and New York's proper-cause provision was unconstitutional because New York "failed to meet [its] burden to identify an American tradition justifying [that] requirement." *Id.* at 10, 38-39.

Mr. Casas was prosecuted for possessing a firearm without a license issued under the same regime that this Court examined in *Bruen*. Despite his objection that the proper-cause requirement was unconstitutional, and the fact that respondent

made no effort to show that New York's licensing regime could otherwise be constitutionally enforced against him, the Appellate Division ruled that his prosecution and conviction did not violate the Second Amendment. That decision defies *Bruen* and should be reversed.

A. The Decision by the New York Court Below Defies *Bruen*.

New York courts have recognized that the state does not criminalize all possessions of firearms; instead, New York "prohibit[s] only *unlicensed* possession of handguns." *Hughes*, 1 N.E.3d at 301. Indeed, N.Y. Penal Law § 265.20(a)(3) provides that the statutes punishing firearm possession, including the two under which Mr. Casas was charged, "shall not apply to . . . [p]ossession of a pistol or revolver by a person to whom a license therefor has been issued as provided under section 400.00 . . . of this chapter." The criminal firearm possession statutes thus "work hand-in-glove" with the licensing regime under N.Y. Penal Law § 400.00. *Wilson v. Hawaii*, 145 S. Ct. 18, 22 (2024) (Gorsuch, J., respecting denial of certiorari).

At the time that Mr. Casas was charged, however, New York's licensing regime included the requirement that, to obtain a license to carry a firearm outside the home, an individual had to demonstrate "proper cause." *See* N.Y. Penal Law § 400.00(2)(f); *see also Bruen*, 597 U.S. at 12. As this Court confirmed in *Bruen*, that provision was unconstitutional. *See* 597 U.S. at 11. Because the licensing regime was thus "not broad enough to accommodate the demands of the Second Amendment," *Wilson*, 145 S. Ct. at 23 (Gorsuch, J., respecting denial of certiorari), the courts below should have dismissed the unlawful firearm possession charges levied against Mr. Casas. *See, e.g.*,

Shuttlesworth v. City of Birmingham, 394 U.S. 147, 148, 159 (1969) (reversing conviction for engaging in conduct without obtaining license where applicable licensing regime violated the First Amendment); *Staub v. City of Baxley*, 355 U.S. 313, 314, 325 (1958) (same); *Smith v. Cahoon*, 283 U.S. 553, 556-57, 562-63, 567-68 (1931) (similar where applicable licensing regime violated due process and equal protection); *see also Wilson*, 145 S. Ct. at 19, 21 (Thomas, J., joined by Alito, J., respecting denial of certiorari) (noting that, because Hawaii's firearm licensing regime, which "closely paralleled" that of New York, was also unconstitutional, the Hawaii Supreme Court should have "upheld the dismissal" of the charges Mr. Wilson faced for carrying a firearm without a license).

Below, respondent's only answer was that the proper-cause provision could be severed, and the rest of New York's licensing regime could be enforced. Pet. App. 81-82, 84-88. Specifically, respondent cited N.Y. Penal Law § 400.00(1)(c) and N.Y. Penal Law § 400.00(1)(e), which prohibit an individual convicted of "a serious offense" and an "unlawful user of . . . any controlled substance" from obtaining a license, respectively. Pet. App. 81-82, 87-88. According to respondent, Mr. Casas was ineligible for a license under N.Y. Penal Law § 400.00(1)(c) because of a prior misdemeanor conviction for criminal possession of a weapon in the fourth degree and under N.Y. Penal Law § 400.00(1)(e) because of the use of marijuana. Pet. App. 81-82, 87-88.

Notably, however, even as it gestured toward these two other licensing restrictions, respondent made no effort to show that they were "consistent with the

Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24; *see* Pet. App. 81-82, 87-88. Because respondent did not even acknowledge (let alone, meet) its "burden to identify an American tradition justifying [these] requirements," the Appellate Division should have rejected respondent's position. *Bruen*, 597 U.S. at 70. Its decision otherwise absolved respondent of its burden and defies this Court's holding in *Bruen*. *See id.* at 24 (holding that "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct," and "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation").

To be sure, "the Second Amendment allows a 'variety' of gun regulations." *Bruen*, 597 U.S. at 80 (Kavanaugh, J., joined by Roberts, C.J., concurring) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008)). And a state may well succeed in establishing that the limits that it seeks to impose are consistent with the historical tradition of firearm regulation. *Cf. United States v. Rahimi*, 602 U.S. 680, 684-86, 702 (2024) (federal government discharged its burden to show that 18 U.S.C. § 922(g)(8) was constitutional). Here, however, respondent failed entirely to acknowledge (let alone, meet) its burden to show that the licensing restrictions that it invoked are "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. That was inexcusable. After all, it is not enough for a state to assert that it may have some kind of licensing regime: "That much is surely true. But it's just as true that state licensing regimes can sometimes be so restrictive that they violate the Second Amendment." *Wilson*, 145 S. Ct. at 22 (Gorsuch, J., respecting

denial of certiorari). And under *Bruen*, it is the state that bears the burden to demonstrate that the licensing regime that it seeks to enforce comports with the historical tradition of firearm regulation. 597 U.S. at 24. Here, respondent made no effort to meet that burden. "Even under *Bruen*, this is an easy case." *Rahimi*, 602 U.S. at 703 (Sotomayor, J., joined by Kagan, J., concurring).

Tellingly, New York's Appellate Division could not provide any explanation even as it sided with respondent and rejected Mr. Casas's Second Amendment claim. All that it said was that "on the present record, [Mr. Casas] has not established that his prosecution and conviction are unconstitutional under . . . *Bruen*." Pet. App. 2-3. This "one-sentence conclusory" statement, however, "is as inexplicable as it is unexplained." *Felkner v. Jackson*, 562 U.S. 594, 597-98 (2011). Given that respondent bore the "burden to identify an American tradition justifying the State's" laws, *Bruen*, 597 U.S. at 70, respondent's failure to meet that burden should have led the Appellate Division to rule in favor of Mr. Casas, not respondent. *Id.* at 33-34 (noting that "the burden falls on [the government] to show that New York's [licensing] requirement is consistent with this Nation's historical tradition of firearm regulation").

Unfortunately, the decision below does not reflect an isolated or inconsequential misapplication of *Bruen* by New York courts. New York's Appellate Division "is a single statewide court," *Mountain View Coach Lines, Inc. v. Storms*, 476 N.Y.S.2d 918, 919 (N.Y. App. Div. 1984), and the ruling by the First Department here is "binding on all trial-level courts in the state" unless another department of the Appellate Division or the Court of Appeals disagrees, *People v. Turner*, 840 N.E.2d

123, 127 (N.Y. 2005). In the nearly three years since *Bruen* has been decided, however, other departments of the Appellate Division have uniformly claimed that *"Bruen* had no impact" on New York's firearm possession statutes. *E.g.*, *People v. Manners*, 191 N.Y.S.3d 90, 94 (N.Y. App. Div. 2023); *accord People v. Mancuso*, 207 N.Y.S.3d 290, 293-94 (N.Y. App. Div. 2024). And despite being offered the opportunity to correct course in this case, New York's Court of Appeals declined to do so, forcing Mr. Casas to seek relief in this Court. The resistance of New York courts to *Bruen* is palpable and intolerable.

Finally, while New York's Appellate Division in this instance did not openly criticize this Court's decision in *Bruen* as the Hawaii Supreme Court did in *Wilson*, *see* 145 S. Ct. at 19 (Thomas, J., joined by Alito, J., respecting denial of certiorari) (describing the Hawaii Supreme Court's ruling), its quiet refusal to follow the dictates of this Court's decision in *Bruen* is no less detrimental to the proper functioning of our legal system. As this Court has emphasized, "[t]he Supremacy Clause provides that 'the Judges in every State shall be bound' by the Federal Constitution, 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'" *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 488 (2020) (quoting U.S. Const. art. VI, cl. 2). And a "basic principle" that forms a "permanent and indispensable feature of our constitutional system" is that this Court's decisions reflect "the supreme law of the land." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). To that end, "vertical *stare decisis* is absolute, as it must be in a hierarchical system with 'one supreme Court.'" *Ramos v. Louisiana*, 590 U.S. 83, 124 n.5 (2020) (Kavanaugh, J., concurring in part) (quoting

U.S. Const. art. III, § 1). Here, the New York Appellate Division's disregard of its "constitutional obligation to follow [the] precedent of this Court" should not be left unchecked. *Id.*

B. This Court Has Jurisdiction to Address the Second Amendment Claim.

After being prosecuted for firearm possession, Mr. Casas raised his Second Amendment claim at "every level" of the New York state court system. *Hemphill v. New York*, 595 U.S. 140, 148 (2022). In particular, as relevant here, the Appellate Division expressly ruled that Mr. Casas "has not established that his prosecution and conviction are unconstitutional under . . . *Bruen*." Pet. App. 2-3. "Because the last state court in which review could be had considered [the] constitutional claim on the merits, it is properly presented for [this Court's] review." *Victor v. Nebraska*, 511 U.S. 1, 19 (1994).

Nor are there adequate or independent state grounds for the judgment below. Even though respondent urged the Appellate Division to reject Mr. Casas's Second Amendment claim on standing and preservation grounds, Pet. App. 76-84, the Appellate Division's decision "contains no clear or express indication" that it accepted respondent's procedural arguments. *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985); *see also Michigan v. Long*, 463 U.S. 1032, 1044 (1983) (this Court "ha[s] jurisdiction in the absence of a plain statement that the decision below rested on an adequate and independent state ground"). In fact, by omitting reference to those issues, the Appellate Division indicated that, unlike in other cases, it found respondent's procedural assertions here unpersuasive. *Compare, e.g.*, *People v.*

Rivera, 222 N.Y.S.3d 66, 66 (N.Y. App. Div. 2024) (holding that Second Amendment claim was "unpreserved," and defendant "failed to establish that he has standing"); *People v. Kirlew*, 219 N.Y.S.3d 658, 659 (N.Y. App. Div. 2024) (holding that "defendant did not preserve his claim" and "lacked standing"), *with* Pet. App. 2-3. (no discussion of such issues). Because the Appellate Division declined to provide "a plain statement of an independent state ground in this case," there are no "barriers to a determination by this Court of the validity under the federal constitution of [the] state action," *Long*, 463 U.S. at 1041, 1044 n.10 (quoting *Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 557 (1940)).

Finally, this case presents a final judgment: after moving to dismiss the indictment based on the Second Amendment, Mr. Casas was convicted and sentenced, and he has exhausted his appeals in the New York state courts. Thus, this case differs from *Wilson* in its procedural posture. In *Wilson*, Members of the Court observed that "this Court's intervention clearly remains imperative, given lower courts' continued insistence on treating the Second Amendment 'right so cavalierly.'" 145 S. Ct. at 22 (Thomas, J., joined by Alito, J., respecting denial of certiorari) (quoting *Silvester v. Beccera*, 583 U.S. 1139, 1140 (2018) (Thomas, J., dissenting from denial of certiorari)). Mr. Wilson, however, was "seek[ing] review of an interlocutory order." *Id.* at 21; *see also id.* at 23-24 (Gorsuch, J., respecting denial of certiorari). Because this case, by contrast, involves a final judgment, this Court clearly has jurisdiction to address the Second Amendment claim. 28 U.S.C. § 1257(a).

C. Summary Reversal Is Warranted.

Summary reversal is appropriate in cases where the lower court's decision "squarely conflicts" with, *Flippo v. West Virginia*, 528 U.S. 11, 14 (1999), or "egregiously misapplie[s]" this Court's precedent, *Wearry v. Cain*, 577 U.S. 385, 395 (2016). Where an individual's liberty is at stake, this Court has not hesitated to summarily reverse to ensure that the lower courts obey this Court's decisions and respect the constitutional right that is at issue. *See, e.g.*, *Grady v. North Carolina*, 575 U.S. 306, 307-08, 311 (2015) (right against unreasonable search); *Martinez v. Illinois*, 572 U.S. 833, 834 (2014) (right against double jeopardy); *Hinton v. Alabama*, 571 U.S. 263, 264, 276 (2014) (right to effective assistance of counsel); *Presley v. Georgia*, 558 U.S. 209, 209 (2010) (right to public trial); *Kaupp v. Texas*, 538 U.S. 626, 629 (2003) (right against unreasonable seizure).

The Second Amendment right "is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *Bruen*, 597 U.S. at 70 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality opinion)). Thus, in *Caetano v. Massachusetts*, 577 U.S. 411 (2016), this Court summarily reversed the lower court's denial of the petitioner's Second Amendment claim because it was "inconsistent with *Heller*'s clear statement[s]." *Id.* at 411-12. Because the decision below likewise "directly conflicts" with *Bruen*, *Flippo*, 528 U.S. at 11, summary reversal is appropriate. In the alternative, the petition should be granted, and the case set for briefing and oral argument.

CONCLUSION

For the foregoing reasons, the petition should be granted, and the judgment reversed. In the alternative, the petition should be granted, and the case set for briefing and oral argument.

Respectfully submitted,

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