NO. ______

In the
Supreme Court of the United States

MICHAEL GOULD, *et al.*,

Petitioners,

v.

MARK MORGAN, in his Official Capacity as Acting Chief of the Brookline Police Department, *et al.*,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *District of Columbia v. Heller*, this Court held that the Second Amendment protects "the individual right to possess and carry weapons in case of confrontation," 554 U.S. 570, 592 (2008), and in *McDonald v. City of Chicago*, it determined that this right "is fully applicable to the States," 561 U.S. 742, 750 (2010). The Court of Appeals for the District of Columbia Circuit has concluded that the right to carry a firearm extends outside the home and that licensing restrictions that require citizens to show a special need for carrying a firearm effectively "destroy[ ] the ordinarily situated citizen's right to bear arms" and therefore are categorically unconstitutional. *Wrenn v. District of Columbia*, 864 F.3d 650, 666 (D.C. Cir. 2017). By contrast, the court below, along with the Second, Third, and Fourth Circuits, have upheld substantively indistinguishable licensing restrictions under a watered-down "intermediate scrutiny" analysis.

The questions presented are:

1. Whether the Second Amendment protects the right to carry a firearm outside the home for self-defense.

2. Whether the government may deny categorically the exercise of the right to carry a firearm outside the home to typical law-abiding citizens by conditioning the exercise of the right on a showing of a special need to carry a firearm.

PARTIES TO THE PROCEEDING

Petitioners Michael Gould, Christopher Hart, Commonwealth Second Amendment, Inc., Danny Weng, Sarah Zesch, and John R. Stanton were plaintiffs before the District Court and the plaintiffs-appellants in the Court of Appeals.

Respondents Mark Morgan, in his official capacity as Acting Chief of the Brookline Police Department, William G. Gross, in his official capacity as Commissioner of the Boston Police Department, and the Commonwealth of Massachusetts Office of the Attorney General were defendants-appellees in the Court of Appeals. William B. Evans, the former Commissioner of the Boston Police Department, was initially docketed by the Court of Appeals as an appellee, but the current Commissioner, William G. Gross, was substituted in his place on August 23, 2018, pursuant to FED. R. APP. P. 43(c)(2). Daniel C. O'Leary, the former Chief of the Brookline Police Department, was also initially docketed by the Court of Appeals as an appellee, but the current Acting Chief, Mark Morgan, was substituted in his place on June 14, 2018, pursuant to FED. R. APP. P. 43(c)(2).

CORPORATE DISCLOSURE STATEMENT

Commonwealth Second Amendment, Inc., has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

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PETITION FOR WRIT OF CERTIORARI

In *District of Columbia v. Heller*, this Court held that the Second Amendment protects "the individual right to possess and carry weapons in case of confrontation" for the "the core lawful purpose of self-defense." 554 U.S. 570, 592, 630 (2008). But the lower courts have split over the constitutionality of laws that categorically bar typical, law-abiding citizens from carrying handguns outside the home for self-defense. The D.C. Circuit has seen these laws for what they are—"necessarily a total ban on most [citizens'] right to carry a gun"—and it has struck down the District of Columbia's requirement that citizens show a "good reason," *other than self-defense*, before carrying a handgun outside the home as categorically unconstitutional. *Wrenn v. District of Columbia*, 864 F.3d 650, 666, 668 (D.C. Cir. 2017). But following contrary decisions from the Second, Third, and Fourth Circuits, the court below upheld Massachusetts's substantively indistinguishable "good reason" requirement, App.6a, concluding that the restriction passes constitutional muster under a toothless version of "intermediate scrutiny" that consists of little more than blind deference to the State's "prerogative" to "make the necessary policy judgments" and "[s]elect among reasonable alternatives." App.35a; *see also Drake v. Filko*, 724 F.3d 426, 429, 440 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865, 881–82 (4th Cir. 2013); *Kachalsky v. County of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012).

The decision below also directly contradicts this Court's decisions in *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). In *Heller*, this Court

held that the right to self-defense is "the *central component*" of the Second Amendment. 554 U.S. at 599. But the First Circuit upheld the Commonwealth's law based on the view that bearing arms for the purpose of self-defense lies at "the periphery of the Second Amendment right," App.26a. In *Heller*, this Court held that the Second Amendment takes "off the table" the policy choice of flatly banning core Second Amendment conduct. 554 U.S. at 636; *see also McDonald*, 561 U.S. at 767–68. But the First Circuit upheld Respondents' ban on bearing arms for self-defense by blindly deferring to the Commonwealth's "policy judgment[ ]" that *whenever* a law-abiding citizen possesses a firearm in public, he creates a risk to the public safety. App.31a–33a, 35a. And *Heller* made clear that the Second Amendment rids the government of "the power to decide on a case-by-case basis whether the right is *really worth* insisting upon," 554 U.S. at 634, yet that is the precise power the First Circuit has allowed Massachusetts to arrogate to itself.

The First Circuit, unfortunately, does not stand alone in its repudiation of this Court's precedent. This Court currently has pending before it a petition for a writ of certiorari to the Third Circuit, which has upheld New Jersey's substantively similar restrictions on the right to bear arms. *Rogers v. Grewal*, No. 18-824. And the Second and Fourth Circuits have likewise blessed substantively identical laws. Indeed, as the Fourth Circuit has stated plainly, the subtext apparently underlying all of these decisions is that these courts will not extend "*Heller* beyond its undisputed core holding" until this Court tells them they must: "If the Supreme Court . . . meant its holding

to extend beyond home possession, it will need to say so more plainly." *United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011) (quotation marks omitted).

While this Court spoke plainly enough in *Heller*, the time has come to give recalcitrant lower courts the even-more explicit direction they claim to need. The petition in *Rogers* presents an ideal vehicle for this Court to review the issue that has so divided the lower federal courts, and the Court should grant review in that case, resolve the split in authority, and reiterate that adherence to its Second Amendment precedents is not optional. It should then grant the instant petition, vacate the panel decision below siding with the Second, Third, and Fourth Circuits, and remand to the First Circuit to reconsider the issue anew.

OPINIONS BELOW

The panel opinion of the Court of Appeals is reported at 907 F.3d 659 and reproduced at App.1a. The order of the District Court granting Respondents' motion for summary judgment is reported at 291 F. Supp. 3d 155 and reproduced at App.37a.

JURISDICTION

The Court of Appeals issued its judgment on November 2, 2018. On December 26, 2018, Justice Breyer extended the time within which to file a petition for a writ of certiorari to and including April 1, 2019. No. 18A660. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The relevant portions of Amendments II and XIV to the United States Constitution, the General Laws of Massachusetts, and the Acts and Resolves of Massachusetts are reproduced in the Appendix beginning at App.77a.

STATEMENT

I. THE COMMONWEALTH'S "GOOD REASON" REQUIREMENT

"In Massachusetts, carrying a firearm in public without a license is a crime." App.4a–5a. State law makes the knowing possession of a handgun outside the home without "a license to carry firearms" punishable by "imprisonment . . . for not less than two and one-half years." MASS. GEN. LAWS ch. 269, § 10(a)(6). To obtain a license to carry firearms, Massachusetts residents must apply to the chief of police of the jurisdiction where they reside or are employed. *Id.* ch. 140, § 131(d); *see also id.* § 121 (defining "licensing authority"). Under current law, the only type of license that an individual can apply for, or that a police chief can issue, is a "Class A" license.[1]

[1] Massachusetts law previously authorized police chiefs to issue "Class B" licenses, which authorized the carrying—openly, but not concealed—of firearms with a capacity of ten rounds or less. *See* MASS. GEN. LAWS ch. 140, § 131(b); *see also id.* § 121 (defining "large capacity"). In 2014, the General Court enacted legislation that immediately prohibited police chiefs from issuing "Class B" licenses and phased out statutory references to Class A and B licenses by 2021. 2014 Mass. Acts ch. 284, secs. 46–57, 101; *see*

Upon receiving an application, the local police official—in concert with the Massachusetts Colonel of State Police and other state officials—must investigate the applicant and determine whether he or she meets certain statutory eligibility requirements. *Id.* § 131(d), (e). Petitioners do not challenge any of these eligibility requirements.

If the local licensing official determines that an applicant meets all of these eligibility conditions, he "may issue" a license to carry, *id.*, if he further concludes that "the applicant can demonstrate a 'proper purpose' for carrying a firearm," App.6a (quoting *Ruggiero v. Police Comm'r of Boston*, 464 N.E.2d 104, 107 (Mass. App. Ct. 1984)). Massachusetts law does not enumerate all of the "proper purposes" for carrying a handgun in public, but it does specify two reasons that, if shown, can justify issuance of a license: (1) the applicant "has good reason to fear injury to the applicant or the applicant's property," or (2) the applicant wishes to "carry[ ] . . . firearms for use in sport or target practice only . . . ." MASS. GEN. LAWS ch. 140, § 131(d).

Massachusetts further authorizes the licensing authority to impose "such restrictions relative to the possession, use or carrying of firearms as the licensing authority deems proper," *id.* § 131(a), and some localities issue licenses subject to restrictions that authorize the carrying of firearms in public for limited, specified purposes. *See Ruggiero*, 464 N.E.2d at 107. For example, Respondent Morgan, Acting Chief of the

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also Morin v. Leahy, 862 F.3d 123, 126 n.8 (1st Cir. 2017). Because of this transition, the distinction between these types of licenses is irrelevant in this case. App.39a n.2.

Brookline Police Department, issues licenses with seven different types of restrictions, including "target," "hunting," and "employment"; Respondent Gross, Commissioner of the Boston Police Department, issues licenses with three varieties of restrictions: "employment," "target and hunting," and "sporting." App.7a; *see also* App.42a–45a, 46a–48a. A resident with a license subject to one of these restrictions may only carry a firearm in the course of engaging in activity specified by the restriction.[2] App.7a. Such a license thus *does not* authorize the carrying of firearms for the purpose of general self-defense.

Instead, to obtain a license that authorizes carrying a firearm outside the home for the purpose of self-defense—one that is not subject to these restrictions—an applicant must show "good reason to fear injury" to his person or property. MASS. GEN. LAWS ch. 140, § 131(d); App.6a. Implementing this provision, Respondents have "promulgated policies requiring that an applicant furnish some information to distinguish his own need for self-defense from that of the general public." App.6a–7a.

Accordingly, under Massachusetts law as applied in these jurisdictions, typical law-abiding citizens of Massachusetts—the vast majority of responsible citizens who, by definition, cannot demonstrate a special need for self-defense that "distinguish[es] [their] own need for self-defense from that of the

[2] In some cases, Respondents' restrictions also authorize individuals to carry firearms when traveling to and from the location where an authorized activity will take place—e.g., the firing range or job site. App.43a–44a.

general public," App.7a—effectively remain subject to a flat ban on carrying handguns outside the home for the purpose of self-protection.

II. RESPONDENTS' REFUSAL TO ISSUE PETITIONERS LICENSES TO CARRY FIREARMS OUTSIDE THE HOME

Pursuant to these policies, Respondents denied requests by each of the individual Petitioners (and members of Petitioner Commonwealth Second Amendment) for a license that would allow them to carry a firearm outside the home for purposes of self-defense. For instance, Petitioner John Stanton, a professional musician, applied for a license in 2014, listing "self-defense, target shooting, hunting, and all other lawful purposes" as his reasons for wishing to carry a firearm outside the home. App.51a. Rather than granting him a license authorizing these purposes, however, Respondent Gross's licensing unit issued Stanton a license restricted to "Target & Hunting." *Id.* Mr. Stanton twice wrote to the Boston licensing officials requesting that these restrictions be removed and that he be allowed to carry a firearm for self-protection. Both times, Boston's licensing officials refused to remove the restrictions that prevented Stanton from carrying a firearm for self-defense, explaining that he "could not show that [he had a] proper purpose to possess [an unrestricted] license." App.50a–52a (alterations in original); *see also* App.45a–46a, 49a–52a.

III. PROCEEDINGS BELOW

1. On February 4, 2016, Petitioners brought suit against Respondents, in their official capacities, challenging their refusal to issue licenses allowing

Petitioners to carry firearms for self-defense under the Second Amendment, applicable to state and local officials in Massachusetts by way of the Fourteenth Amendment. The District Court had jurisdiction over the action under 28 U.S.C. §§ 1331 and 1343. On March 13, 2017, the Commonwealth of Massachusetts intervened to defend the constitutionality of its licensing laws. The parties cross-moved for summary judgment, and on December 5, 2017, the District Court entered an opinion and order denying Petitioners' motion and granting Respondents'.

The court applied a "two-step approach," asking first "whether the challenged law imposes a burden on conduct that falls within the scope of the Second Amendment's guarantee as historically understood," and second whether the law passed "the appropriate form of judicial scrutiny." App.56a–57a. At the first step, the court elected not to "engag[e] in a round of full-blown historical analysis" of the scope of the Second Amendment right, instead "assum[ing] for analytical purposes that the Second Amendment extends to protect the right of armed self-defense outside the home." App.60a, 64a. At the second step, the court concluded that "intermediate scrutiny, or a related analogue, is the appropriate standard to assess the constitutionality of the restrictions in question," and that those restrictions survived that scrutiny. App.67a, 73a–74a.

2. Petitioners appealed the judgment to the First Circuit, and on November 2, 2018, a panel of that court affirmed. Applying the same "two-step" approach as the District Court, the panel first asked "whether the challenged law burdens conduct that falls within the

scope of the Second Amendment's guarantee." App.18a. Because it read the historical record as indicating that "states and their predecessor colonies and territories have taken divergent approaches to the regulation of firearms" the panel concluded that "historical inquiry does not dictate an answer to the question of whether the Boston and Brookline policies burden conduct falling within the scope of the Second Amendment." App.20a. However, reading the "tea leaves" from this Court's decisions in *Heller* and *McDonald*, the court reasoned that those cases "impl[ied] that the right to carry a firearm for self-defense guaranteed by the Second Amendment is not limited to the home." App.21a. Accordingly, the panel elected to "proceed on the assumption that the Boston and Brookline policies burden the Second Amendment right to carry a firearm for self-defense." *Id.*

At the second step, the court determined that "the appropriate level of scrutiny must turn on how closely a particular law or policy approaches the core of the Second Amendment," with "intermediate scrutiny" the appropriate standard for "firearms regulations that burden rights on the periphery of the Second Amendment." App.22a, 27a. Because, in the panel's view, "the core Second Amendment right is limited to self-defense in the home," it assessed the policies challenged in this case under intermediate scrutiny. App.23a, 28a. And the challenged restrictions passed this test, the court concluded, since "[i]t cannot be gainsaid that Massachusetts has compelling governmental interests in both public safety and crime prevention," *id.*, and "the fit between the asserted governmental interests and the means chosen to advance them is close enough to pass intermediate

scrutiny," App.30a. While it noted that Petitioners had submitted "a profusion of countervailing studies and articles" showing that Respondents' restrictions would have no net public-safety benefit, the panel opined that "it is the legislature's prerogative—not ours—to weigh the evidence, choose among conflicting inferences, and make the necessary policy judgments." App.33a, 35a.

REASONS FOR GRANTING THE WRIT

This Court should intervene and decide the constitutionality of "good reason"-style restrictions on the right to bear arms for three independent reasons: to resolve the direct conflict in the Circuits over the constitutionality of these laws; to correct the decisions ignoring the clear holdings of *Heller* and *McDonald*; and to end the lower courts' open and massive resistance to those decisions. A petition is currently pending before this Court, in *Rogers v. Grewal*, No. 18-824, that squarely raises the same questions presented in this case, in the context of New Jersey's "justifiable need" standard. This gives the Court an ideal opportunity to consider these important questions, resolve the lower-court split in authority, and correct the federal courts' defiance of its Second Amendment case law. This Court accordingly should grant the petition in *Rogers*, hold the petition in this case while *Rogers* is argued and decided, and then grant a writ of certiorari, vacate the First Circuit's decision, and remand the matter to that court to reconsider the case in light of this Court's disposition in *Rogers*.

I. THIS COURT SHOULD RESOLVE THE CONFLICT OVER THE CONSTITUTIONALITY OF "GOOD REASON"-STYLE RESTRICTIONS ON THE SECOND AMENDMENT RIGHT.

A. THE LOWER FEDERAL COURTS ARE INTRACTABLY DIVIDED OVER THE CONSTITUTIONALITY OF THESE TYPES OF LAWS.

As discussed at further length in the *Rogers* petition, since this Court's decisions in *Heller* and *McDonald*, the lower federal courts have struggled over the extent to which the Second Amendment "individual right to possess and carry weapons in case of confrontation" applies outside the confines of the home. *Heller*, 554 U.S. at 592. The lower courts have ultimately coalesced around two distinct—and directly contrary—answers to the question.

The panel below hewed to the approach that has been adopted by the Second, Third, and Fourth Circuits, all of which have upheld "good reason"-type restrictions substantively identical to Respondents'. In *Kachalsky v. County of Westchester*, for example, the Second Circuit upheld New York's requirement that ordinary citizens demonstrate "proper cause" to carry handguns outside the home—a standard the defendants defined as demanding "a special need for self-protection distinguishable from that of the general community." 701 F.3d at 86 (quoting *Klenosky v. New York City Police Dep't*, 428 N.Y.S.2d 256, 257 (N.Y. App. Div. 1980), *aff'd*, 421 N.E.2d 503 (N.Y. 1981)). The *Kachalsky* court concluded that even assuming the Second Amendment applies in public, "[t]he state's ability to regulate firearms . . . is

qualitatively different in public than in the home." *Id.* at 94, 95. Accordingly, it analyzed New York's "proper cause" restriction under merely intermediate scrutiny. And reasoning that "[i]t is the legislature's job, not ours, to weigh conflicting evidence and make policy judgments," it upheld the law. *Id.* at 99; *see also Drake*, 724 F.3d at 426; *Woollard*, 712 F.3d at 865.

In *Wrenn v. District of Columbia*, by contrast, the D.C. Circuit struck down the District of Columbia's requirement that ordinary citizens must show a "good reason" to obtain a permit to carry handguns outside the home. While *Gould*, *Kachalsky*, *Woollard*, and *Drake* determined that "good reason"-type restrictions "fall[ ] outside the core of the Second Amendment right," App.23a, *Wrenn* drew precisely the opposite conclusion: "the individual right to carry common firearms beyond the home for self-defense—even in densely populated areas, even for those lacking special self-defense needs—falls within the core of the Second Amendment's protections." 864 F.3d at 661. Similarly, while the First Circuit, along with the Second, Third, and Fourth, upheld the substantively identical restrictions before them under intermediate scrutiny, *Wrenn* instead adopted a "categorical approach," under which "complete prohibitions of Second Amendment rights" are "always invalid." *Id.* at 665 (brackets and quotation marks omitted). And the *Wrenn* court determined that the District of Columbia's "good reason" requirement "is necessarily a total ban on most . . . residents' right to carry a gun in the face of ordinary self-defense needs." *Id.* at 666; *see also Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012).

Accordingly, the lower courts have split into two diametrically opposed camps over the question whether a State may effectively ban ordinary, law-abiding citizens from carrying handguns in public for self-defense. As a result, whether an American citizen is allowed to bear arms for "the core lawful purpose of self-defense," *Heller*, 554 U.S. at 630, largely depends on which federal circuit his State of residence falls within. That state of affairs is arbitrary and intolerable, and this Court should intervene to resolve the split of authority over this vital question.

B. THE DECISIONS UPHOLDING "GOOD REASON"-STYLE RESTRICTIONS ARE DIRECTLY CONTRARY TO THIS COURT'S INSTRUCTIONS IN *HELLER* AND *MCDONALD*.

This Court's review of the questions presented is necessary for the independent reason that those courts that have upheld "good reason"-style restrictions on the right to bear arms are in direct conflict with the clear holdings of this Court's decisions in *Heller* and *McDonald*.

By protecting both the keeping *and bearing* of arms, the text of the Second Amendment leaves no doubt that it applies outside the home. This is also clear from *Heller*, which "repeatedly invokes a broader Second Amendment right than the right to have a gun in one's home." *Moore*, 702 F.3d at 935–36. And as discussed in the petition in *Rogers*, the inquiry into the historical understanding of the Second Amendment required by this Court's precedents leads to the same destination. Petition for Writ of Certiorari at 23–28, *Rogers v. Grewal*, No. 18-824 (Dec. 20, 2018).

Heller makes clear that the right to individual self-defense is "the *central component*" of the Second Amendment. 554 U.S. at 599. Because the Second Amendment's text, history, and purposes all show that its protections extend outside the home, the right to carry firearms "for the core lawful purpose of self-defense" necessarily extends beyond those four walls as well. *Id.* at 630. Those courts that have concluded that "good reason" restrictions "fall[ ] outside the core of the Second Amendment right," App.24a, are thus in direct conflict with this Court's precedents.

The decision in the case below, and the other decisions upholding similar laws, also run contrary to this Court's precedents by declining to apply *Heller*'s categorical text-and-history approach. Under *Heller*, because "[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon," wholesale infringements upon the Amendment's "core protection" must be held unconstitutional categorically, not "subjected to a freestanding 'interest-balancing' approach." 554 U.S. at 634–35. Respondents' demand "that an applicant furnish some information to distinguish his own need for self-defense from that of the general public," App.6a–7a, *extinguishes* the core Second Amendment rights of typical citizens in just this wholesale way—for these citizens by definition cannot make such a showing. The panel below accordingly should have struck down the challenged policies as unconstitutional *per se*, not weighed their constitutionality under a watered down version of the "tiers of scrutiny" approach.

Finally, the First Circuit—along with the Second, Third, and Fourth Circuits—have compounded their error in refusing to apply *Heller*'s categorical test by instead applying a weak-tea form of scrutiny that is effectively indistinguishable from the rational-basis review that this Court *singled out as inappropriate*. *Heller*, 554 U.S. at 628 n.27. As demonstrated in the *Rogers* petition, Petition for Writ of Certiorari at 32–35, the social science literature studying the effects of "good reason"-type restrictions like Respondents' has overwhelmingly concluded that these limits cannot be shown to cause *any* increase in public safety. For instance, in 2005 the National Academy of Sciences' National Research Council ("NRC") determined, after an exhaustive review of the relevant social-scientific literature, that "with the current evidence it is not possible to determine that there is a causal link between the passage of right-to-carry laws and crime rates." NATIONAL RESEARCH COUNCIL, FIREARMS AND VIOLENCE: A CRITICAL REVIEW 150 (Charles F. Wellford, John V. Pepper, & Carol V. Petrie eds., 2005), http://goo.gl/WO1ZNZ. Any realistic appraisal of existing social-scientific data thus leads inexorably to the conclusion that the "justifiable need" requirement cannot be shown to benefit the public safety.

Moreover, because myriad alternatives exist that are more narrowly crafted to address the problem of handguns being carried by those likely to misuse them—such as background-check and training requirements—a "good reason"-style law that prevents *any* ordinary citizen from carrying a firearm in public plainly fails the narrow-tailoring requirement that applies under intermediate

scrutiny. *See McCullen v. Coakley*, 573 U.S. 464, 486 (2014); Petition for Writ of Certiorari at 34, *Rogers*, No. 18-824. The panel below thus upheld the Commonwealth's "good reason" requirement only by applying a form of scrutiny effectively equivalent to rational basis review.

C. THIS COURT'S REVIEW IS NEEDED TO CORRECT THE LOWER FEDERAL COURTS' MASSIVE RESISTANCE TO *HELLER* AND *MCDONALD*.

Since the decisions in *Heller* and *McDonald*, many lower courts have stubbornly and deliberately ignored those decisions, narrowing them to their specific facts and making a hollow mockery of the Second Amendment's promise that law-abiding citizens must be allowed "to use [firearms] for the core lawful purpose of self-defense." *Heller*, 554 U.S. at 630. Many courts, for example, have flatly ruled that "the Second Amendment does not confer a right that extends beyond the home." *Jennings v. McCraw*, 2012 WL 12898407, at *5 (N.D. Tex. Jan. 19, 2012), *aff'd sub nom. NRA v. McCraw*, 719 F.3d 338 (5th Cir. 2013); *see also, e.g.*, *Kachalsky v. Cacace*, 817 F. Supp. 2d 235, 264–65 (S.D.N.Y. 2011), *aff'd sub nom. Kachalsky*, 701 F.3d 81. These cases "reflect[ ] a distressing trend: the treatment of the Second Amendment as a disfavored right." *Peruta v. California*, 137 S. Ct. 1995, 1999 (2017) (Thomas, J., dissenting from the denial of certiorari).

While this Court's decision to grant the writ in *New York State Rifle & Pistol Ass'n v. City of New York*, No. 18-280, begins to reverse that trend, the Court hears many cases each Term resolving disputes

about the application of more favored rights; declining to review this issue because of the grant in *New York* would thus itself be a signal of the Second Amendment's continued second-class status. *See Silvester v. Becerra*, 138 S. Ct. 945, 951 (2018) (Thomas, J., dissenting from the denial of certiorari) ("[I]n this Term alone, we have granted review in at least five cases involving the First Amendment and four cases involving the Fourth Amendment—even though our jurisprudence is much more developed for those rights."). Indeed, this Court's review is all the more necessary in the context of "good-reason"-type restrictions on carrying firearms in public, since unlike the law at issue in *New York*, these types of restrictions have been imposed by multiple jurisdictions and repeatedly upheld by the lower courts—in open defiance of this Court's instructions. The many decisions thumbing the nose at this Court's Second Amendment precedents accordingly provide an independent basis for this Court's review of the issue raised in this case.

II. THIS COURT SHOULD HOLD THIS PETITION, GRANT REVIEW IN *ROGERS V. GREWAL*, AND THEN GRANT THE WRIT, VACATE THE PANEL'S DECISION, AND REMAND TO THE FIRST CIRCUIT.

For all of these reasons, this Court should grant review of this critically important issue to resolve the disagreement among the lower courts over the scope of the Second Amendment and the constitutionality of "good reason" restrictions like the ones upheld below. The petition in *Rogers* currently pending before this Court squarely presents an ideal opportunity to take up this issue.

The questions presented in *Rogers* are the same as those presented in this case. And as explained in the *Rogers* petition, that case is a uniquely good vehicle for reviewing these important issues. The Second Amendment claim is the sole claim at issue in that case, meaning that this Court's resolution of that claim will likely be dispositive not only of that case but also of other cases like this one challenging "good reason"-style restrictions. Indeed, the New Jersey law challenged in *Rogers* is a perfect representative of the types of "good reason"-style restrictions that have created the split of authority. The time for the Court to resolve the conflict over the constitutionality of these laws has come, and *Rogers* presents the perfect opportunity to do so.

The Court should accordingly grant certiorari in *Rogers*. Further, because the questions presented in this case are the same as those in *Rogers*, it should hold this petition, pending the briefing, argument, and decision in *Rogers*, and then grant certiorari in this case, vacate the panel's decision, and remand to the First Circuit to give that court an opportunity to reconsider the case in light of whatever disposition this Court reaches in *Rogers*.

CONCLUSION

For the reasons set forth above, the Court should grant certiorari in *Rogers v. Grewal*, No. 18-824, grant the instant petition for certiorari once *Rogers* has been decided, vacate the decision below, and remand the case to the First Circuit for reconsideration.

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Respectfully submitted,

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