No. 18-280

IN THE

Supreme Court of the United States

THE NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ROMOLO COLANTONE, EFRAIN ALVAREZ, AND JOSE ANTHONY IRIZARRY,

Petitioners,

v.

THE CITY OF NEW YORK AND THE NEW YORK CITY POLICE DEPARTMENT – LICENSE DIVISION,

Respondents.

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

BRIEF IN OPPOSITION

ZACHARY W. CARTER
Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007
(212) 356-2500
rdearing@law.nyc.gov
Counsel for Respondents

RICHARD DEARING*
SUSAN PAULSON
**Counsel of Record*

COUNTERSTATEMENT OF QUESTIONS PRESENTED

A New York State law that is not challenged here recognizes two major types of handgun licenses: "premises" licenses and "carry" licenses. Petitioners Romolo Colantone, Efrain Alvarez, and Jose Anthony Irizarry each hold a premises handgun licenses allowing them to keep a handgun in their New York City residence. The City's implementing rules also permit premises licensees to transport their handguns to and from City shooting ranges for target practice or competition. Petitioner argue that the Second Amendment, dormant Commerce Clause, and right to interstate travel compel the City to afford them broader latitude for transportation of a handgun under a premises license. The questions presented are:

1. Whether this case is appropriate for certiorari review, where it (a) presents no circuit split or conflict with this Court's precedents, and (b) addresses what petitioners describe as a "one-of-a-kind" municipal rule with "no analog in any other jurisdiction"?

2. Whether the Second Circuit's application of established constitutional principles to the particular rule here warrants review by this Court?

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INTRODUCTION

The individual petitioners each hold a license to possess a handgun in their New York City residence. The City's regulations permit them to transport their handguns, unloaded and in a locked container, to and from firing ranges within the City. Petitioners do not deny that they are able to maintain proficiency in use of their licensed weapons; they seek the ability to transport their weapons in the City for the purpose of taking them to ranges outside the City, which they claim would be more convenient. One petitioner also seeks to transport his handgun to a second home in upstate New York, without denying that he is free to keep a separate handgun there under a separate premises license. The United States Court of Appeals for the Second Circuit rejected petitioners' claims under the Second Amendment, dormant Commerce Clause, and right to interstate travel.

In seeking certiorari review of that decision, the petition does not claim that it implicates any circuit split (it does not). Nor does the petition claim that the core issues here will recur; instead, it openly casts the challenged municipal rule as an extreme outlier. The petition thus reduces to a request for case-specific error correction, which is reason enough to deny certiorari.

In any event, the court of appeals did not err. The court rejected petitioners' Second Amendment challenge after a thorough analysis applying

intermediate scrutiny. And it faithfully applied the Court's precedents addressing the dormant (or negative) Commerce Clause and the right to interstate travel in rejecting those claims as well.

STATEMENT

A. The relevant handgun licensing framework under state and city law

New York State law establishes a core framework for handgun licensing in New York that is not challenged in this lawsuit. The New York State Penal Law describes two major types of handgun licenses: (1) "premises" licenses, which permit the licensee to possess a handgun in the licensee's home or place of business; and (2) "carry" licenses, which permit the licensee to have and carry a concealed handgun in public. N.Y. Penal Law §§ 400.00(2)(a) and (f).

The Penal Law requires persons to apply for a handgun license in the city or county where they reside. N.Y. Penal Law § 400.00(3)(a).[1] The City's handgun licensing rules recognize both types of handgun licenses provided for by state law: the

[1] The New York Court of Appeals held in 2013 that this requirement specifies only residency, not domicile, thereby allowing persons to apply for a handgun license in the place of a secondary residence in New York. *Osterweil v. Bartlett*, 21 N.Y.3d 580 (2013).

premises license and the carry license. *See* Title 38 of the Rules of the City of New York (RCNY) § 5-01(a), (b). Only premises licenses are at issue in this case.

The City's rules authorize holders of a premises handgun license not only to possess their licensed handgun in a designated premises, but also to transport that handgun, unloaded and secured in a locked container, for specified purposes.[2] These purposes included transporting the gun directly to and from an authorized arms range or shooting club within the City in order to maintain proficiency in the use of their handgun. *See* 38 RCNY §§ 5-01(a); 5-22(a)(14).

A list of approved ranges is filed with the City Clerk and published in the City Record (JA120).[3] There are currently seven New York City Police Department (NYPD)-approved small arms ranges (other than police or military ranges), with each New York City borough having at least one range (JA81, JA122). Petitioners do not claim that the

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[2] The City's rules also allow a premises license holder to transport a handgun to an authorized hunting area or to a gunsmith, with advance written permission from NYPD. 38 RCNY §§ 5-22(a)(16), 5-23(a)(4). Petitioners do not challenge these rules.

[3] "JA" refers to the joint appendix petitioners filed with the Second Circuit.

number of ranges within the City reflects anything other than the play of market forces (*see* App. at 20n11).

Premises handgun licensees are not prohibited from patronizing ranges outside the City or State. Specific statutes in both New York and New Jersey allow individuals to patronize firing ranges with rented or borrowed guns. N.Y. Penal Law § 265.20(7), (7-a), N.J. Stat. § 2C:58-3.1; *See*, *e.g.*, https://perma.cc/F29K-JZ4Y (advertising handgun rentals at a shooting range in McBride Township, New Jersey, 12 miles from New York City; the website touts that "all you need to shoot is a photo ID and a friend," and for females, even the friend is not required).

B. The City's documented history of enforcement challenges when it authorized broader transportation of handguns

Before 2001, the NYPD offered an adjunct to a premises license known as a "target license" (JA77). 38 RCNY §§ 5-01(b), 5-23(b)(1) (as in effect prior to June 30, 2001). The target license allowed the holder to travel with his or her firearm, unloaded and in a locked container, to authorized shooting ranges and competitions, not limited to those located within New York City.

NYPD observed widespread abuses of the target license (JA77). Over many years, NYPD received

reports of target licensees travelling with their firearms when they were not travelling to or from an NYPD-authorized range (JA77). These reports included licensees travelling with loaded firearms, licensees found with firearms nowhere near the vicinity of an authorized range, licensees taking their firearms out on airplanes, and licensees travelling with their firearms during hours when no NYPD-authorized range was open (*id.*).

Because of the difficulty in verifying whether a target licensee is, in fact, traveling to a firing range outside the City, the License Division eliminated the target license and converted existing target licenses into premises licenses, which allow for the transportation of the licensed handgun only to City ranges (JA78-79). NYPD-approved firing ranges are required to maintain a roster listing the names and addresses of all persons who have used the range and the date and hour that they used it and to make those records available for inspection by NYPD during their hours of operation (JA120). Thus by restricting the transport of firearms for target shooting to ranges within the City, the City was able to both reduce the number of firearms carried in public (JA68) and enhance NYPD's ability to verify a licensee's statement that he is transporting his gun to or from an authorized range (JA70-71).

C. Petitioners' suit seeking broader transportation rights under their premises licenses

The individual petitioners each hold premises handgun licenses issued for possession within a specific New York City residence. They, along with petitioner New York State Rifle & Pistol Association, sued the City of New York and the New York City Police Department License Division seeking a declaration that the restrictions on transportation of handguns under the New York City premises license are unconstitutional (JA8-26).

Claiming violations of the Second Amendment, the Commerce Clause, the right to interstate travel, and the First Amendment, petitioners challenged the lack of authorization to transport their premises-licensed handgun within the City of New York (a) for the purpose of taking it to target practice or competitive shooting events outside the City and (b) in the case of petitioner Colantone, for the purpose of taking it to his second home in upstate New York (*id.*).

Petitioners claimed that 38 RCNY § 5-23(a) (the "Rule" or "challenged rule"), forces them to use less-convenient ranges (*see* JA164-66), but did not allege that it inhibits their ability to maintain proficiency in the use of their handguns (JA13-16). Nor did petitioners address the New York State and New Jersey laws authorize individuals to rent or borrow

guns at firing ranges for use there. N.Y. Penal Law §§ 265.20(7), (7-a), N.J. Stat. § 2C:58-3.1.

After the district court (Sweet, J.) granted summary judgment to the defendants (App. at 42-76), petitioners appealed to the United States Court of Appeals for the Second Circuit. The court of appeals affirmed the grant of summary judgment (App. at 1-39).

The Second Circuit first examined whether the challenged rule burdens the core Second Amendment right to possess a firearm for self-defense in the home. With respect to the Rule's restriction on a licensee's ability to take a handgun licensed to a City residence to an out-of-City home, the court observed that the Rule imposes no limit on a licensee's ability to obtain a license to have a handgun at a second home and that petitioner Colantone did not present any evidence that the financial or administrative costs associated with obtaining a premises license for his second home or acquiring a second gun to keep at that location, would be exclusionary or prohibitive (*id.* at 14-15). Colantone did not even estimate the amount of money or time it might take to obtain a license and gun for his second home and did not allege that the Rule restricts his ability to do so in any way (*id.* at 15). The court concluded that, although the restriction on transporting handguns licensed to City residences to out-of-City homes is not substantial, it arguably approaches the core area of

Second Amendment protection and thus, triggers intermediate scrutiny (*id.* at 24).

In examining the Rule's failure to authorize transporting handguns licensed to New York City homes for the purpose of taking them to out-of-City firing ranges and shooting competitions, the court found that the Rule does not significantly inhibit petitioners' ability to utilize training facilities to obtain and maintain their firearm skills, let alone operate as a substantial burden on their right to keep and use firearms for self-defense in the home (App. at 16-23). The Rule allows a holder of a premises license to take the handgun licensed for a New York City residence to an authorized firing range in the City to engage in practice, training exercises, and shooting competitions (*id.* at 18-19). And seven firing ranges are available in the City for any premises license-holder, some of which, the court observed, are "quite substantial" (*id.* at 21-22). Thus, the court found that the restrictions imposed by the Rule do not impose a substantial burden on the core Second Amendment right to own and possess handguns for self-defense because there are "ample facilities" for live-fire training and practice available "within reasonable commuting distance" from the homes of all city residents (*id.* at 23). Without "definitively decid[ing]" whether heightened scrutiny is warranted, the court applied intermediate scrutiny to this claim (*id.* at 24).

The Second Circuit sustained the Rule under intermediate scrutiny. It applied the settled test for

intermediate scrutiny developed by this Court in other constitutional contexts—asking whether the Rule is substantially related to an important governmental interest (App. at 25-26). The Court found that, in a "detailed affidavit" of the former Commander of the NYPD License Division, Andrew Lunetta, the City demonstrated that the Rule serves the City's compelling governmental interest in protecting public safety (*id.* at 26).

The Lunetta affidavit explained the need to control the presence of firearms in public generally, and specifically those held by individuals who have only a premises license, and not a carry license (*id.* at 26). And he explained the importance of being able to monitor and enforce where premises licensees can transport their firearms due to the documented abuses when premises licensees were previously allowed to carry their handguns to shooting ranges out of the City (*id.* at 27). Because of the difficulty in verifying whether a premises licensee is, in fact, traveling to a firing range outside the City, the License Division restricted the scope of the premises license to allow for the transportation of the licensed handgun only to City ranges (*id.* at 27-28). Lunetta explained that this allows the City to promote public safety by better regulating and minimizing the instances of unlicensed transport of firearms on City streets (*id.* at 28).

The court rejected petitioners' argument that the Rule could not survive heightened scrutiny

because of the severity of the burden on their Second Amendment rights. The court found that, in contrast to the City's evidence supporting the Rule's rationale, petitioners produced "scant evidence" demonstrating any burden, let alone a substantial burden, on their protected rights (App. at 28). Petitioners did not present any evidence that they could not participate in shooting competitions outside the City with a rented firearm or could not obtain a license for a handgun at their second home (*id.*). They did not present any evidence of financial or administrative costs associated with obtaining a premises license for a second home (*id.* at 14-15). They did not present any evidence that that the City facilities are inadequate to provide the necessary opportunities for target practice or that the firing ranges outside the City are significantly less expensive or more accessible than those in the City (*id.* at 21-22, 28). And they did not even allege that practicing with their own handguns provides better training than practicing with a rented gun of like model (*id.* at 28-29). Thus, the Rule survived Second Amendment review (*id.* at 29).

The court similarly applied established precedents in analyzing petitioners' Commerce Clause and right to travel claims. The court found that the Rule does not facially discriminate against interstate commerce because it does not prohibit a premises licensee from patronizing an out-of-state firing range or going to out-of-state shooting competitions: it only prevents them from doing so

with the handgun licensed to their New York City residence (*id.* at 31). And any conceivable discriminatory effect would be justified by the Rule's demonstrated public safety rationale (*id.* at 32). Likewise, because the Rule directly governs only activity within the City in order to protect the safety of the City's residents, any incidental extraterritorial effect does not render the rule unconstitutional (*id.* at 33-34).

The court also rejected petitioners' argument that the Rule violates their fundamental right to travel (App. at 35). Finding that petitioners can travel wherever they like, they simply cannot do so with the specific handgun licensed to their City residences, the court concluded that any incidental impact of this restriction on travel is not of any constitutional significance (*id.* at 35-36).[4]

REASONS FOR DENYING THE PETITION

There is no reason for the Court to grant review in this case. Petitioners do not argue that this case presents a split in authority that requires resolution. Nor do they claim that the issues here are recurring. Indeed, they openly paint the challenged rule as a "one-of-a-kind prohibition"

[4] In a ruling that the petition does not challenge, the court rejected petitioners' claim that the Rule violates their First Amendment right to expressive association (*id.* at 36-39).

(Pet. at 1-2) with "no analog in any other jurisdiction" (*id.* at 9).

Instead of claiming the case presents any circuit split or important recurring question, they argue that it is somehow emblematic of a national trend of disregard for Second Amendment rights (Pet. at 22). But the assortment of judicial decisions and local laws they cite do not demonstrate any such trend (*id.* at 22-26). And petitioners fail to explain how review of this case would meaningful address such a trend or clarify matters for lower courts.

In any event, the Second Circuit did not err here. The court of appeals carefully reviewed petitioners' constitutional claims and correctly concluded that they lack merit. To the extent that petitioners seek review on the grounds that the Second Circuit misapplied properly stated rules of law, this argument is both mistaken and not a proper ground for review.

A. The petition reduces to a request for case-specific error correction.

1. Petitioners claim no circuit split and admit the case is "one-of-a-kind."

Petitioners do not even purport to argue that the decision below has created a conflict among the federal courts of appeals requiring resolution by this Court (Pet. at 21-26). And the only circuit split

identified by *Amici Curiae* States (Br. at 5-7) concerns an issue that is *not* presented here: the right to carry a handgun in public for the purpose of self-defense outside the home. This case, by contrast, accepts as a given New York State's concept of the premises handgun license. It solely challenges the City's rule authorizing limited transportation of a handgun under that license. There is no circuit split on that question.

Petitioners also acknowledge that the issue in this case is narrow and will not recur. They openly cast the City's rule authorizing limited transportation of a handgun under a premises license as a "novel," "one-of-a-kind" regulation with "no analog in any other jurisdiction" (Pet. at 1, 2, 3, 9, 10, 14, 21). And they likewise describe the Second Circuit's decision as an "extreme outlier" (*id.* at 3, 11, 21). Petitioners thus effectively concede that a ruling in this case would not resolve any issue of nationwide importance or provide meaningful guidance to lower courts in deciding other such issues.

2. Petitioners' digression into dissimilar issues from other cases does not warrant review in this case.

Instead of identifying a split of authority or recurring issue of nationwide importance, petitioners contend that the Second Circuit's decision reflects a trend in which governments and

courts are disregarding Second Amendment rights and diluting the heightened scrutiny standard in the Second Amendment context (Pet. at 21-22). But the hodgepodge of laws and decisions they cite do not bear out any such pattern (*id.* at 24). And petitioners do not explain how review of this case would reverse this pattern if it did exist.

Petitioners first rely on mistaken facts to try to find a mini-pattern in the City of New York's own gun laws. They claim that "only the City" would enact the challenged transport limitations, as well as a separate rule prohibiting loading more than seven rounds of ammunition into a ten-round magazine (Pet. at 9). But the City did not adopt the second rule; the State of New York did. And petitioners fail to mention that the Second Circuit itself struck down that state-level prohibition, applying intermediate scrutiny. *New York State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242, 264 (2d Cir. 2015).

Nor do the cases petitioners cite from other circuits lend support to their argument that the courts are routinely disregarding Second Amendment rights and disrespecting the heightened scrutiny standard. Indeed, petitioners' first example of this supposed trend is a Seventh Circuit decision that, applying "a more rigorous standard" than intermediate scrutiny, invalidated Chicago's stringent firing range regulations under the Second Amendment (Pet. at 22 (citing *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011) and

Ezell v. City of Chicago, 846 F.3d 888 (7th Cir. 2017)).

In the decision below, the Second Circuit did not quarrel with either Seventh Circuit ruling; rather, the court fully assumed their correctness (App. at 18-20). The Second Circuit distinguished those rulings from the issues before it, because the first Seventh Circuit case involved a flat ban on firing ranges within the City of Chicago (coupled with a requirement that applicants obtain firearms training in order to obtain a license), and the second involved highly restrictive zoning regulations that approximated a ban in practice (App. at 18-20). By contrast, as the Second Circuit pointed out, petitioners here have never claimed that the number of firing ranges within New York City reflects anything other than the play of market forces (*id.* at 20n11).[5]

Petitioners then turn to a series of purported examples that all involve taxes or fees imposed on

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[5] Petitioners mistakenly try to compare (Pet. at 13, 17) the number of firing ranges in New York City to the number of Texas abortion providers discussed by the majority in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). The number of ranges in the City reflects market demand, not the effects of any challenged regulation, as was the case in *Whole Woman's Health*. Petitioners also ignore that the State of Texas is more than 500 times larger than New York City in geographic size (and has more than triple the population).

firearms purchasers, which this case does not. They refer to a Ninth Circuit case concerning a fee collected from firearms purchasers to be used for firearms-related regulatory and enforcement activities (Pet. 22-23). Petitioners' counsel here also represented the plaintiffs there, and argued that the constitutionality of the fee should be analyzed under this Court's First Amendment fee jurisprudence, not traditional Second Amendment intermediate scrutiny. *See Bauer v. Becerra*, 858 F.3d 1216, 1224 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 982 (2018).[6] That distinct case supplies no reason to grant certiorari in this one.

Petitioners (at 23-24) cite two additional local laws imposing minimal taxes on the purchase of firearms and ammunition. *See* Cook County, IL, Firearm Tax Ordinance §§ 74-665, *et seq.* (effective April 1, 2013); Seattle, WA, Ordinance 124833 (adopted August 21, 2015) . But neither supports granting review here. An intermediate Illinois state court upheld the Cook County ordinance against a Second Amendment challenge, holding that it did not impede petitioners' ability to exercise their Second Amendment rights in any meaningful way.

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[6] The Ninth Circuit concluded that the fee is reasonably related to the government's stated interest in improving public safety by disarming individuals who are prohibited from owning or possessing firearms and thus, survived intermediate scrutiny under either the Second Amendment or First Amendment fee jurisprudence. *Bauer*, 858 F.3d at 1227.

Guns Save Life, Inc. v. Ali, No. 2015-CH-18217, Circuit Court of Cook County, Illinois, County Department, Chancery Division, (August 17, 2018).[7] The plaintiff evidently did not appeal the case further.

And the Seattle ordinance was not even challenged on Second Amendment grounds; the challenge instead claimed that the ordinance was preempted by Washington state law. The state's highest court rejected that preemption challenge. *See Watson v. City of Seattle*, 401 P.3d 1 (Wash. 2017). Petitioners fail to establish that questions regarding taxes on gun or ammunition purchases warrant or are ripe for the Court's review, let alone that they warrant review in this case presenting no taxation issue at all.

Finally, reaching even further afield, petitioners argue that the Second Circuit adopted a "firearms exception" to the Commerce Clause that, they predict, is likely to influence the Ninth Circuit's eventual ruling in a challenge to a California law regulating the sale of ammunition that is presently pending in federal district court (Pet. at 24). *See*

[7] The court noted that, even if the tax implicated the Second Amendment it would survive scrutiny because it is substantially related to the important government interest in public safety. *Guns Save Life, Inc. v. Ali*, No. 2015-CH-18217, Circuit Court of Cook County, Illinois, County Department, Chancery Division, (August 17, 2018).

Rhode v Becerra, 18-cv-802-BEN, 2018 U.S. Dist. LEXIS 178746 (S.D.Cal. October 17, 2018). But the California law directly prohibits the sale of ammunition by out-of-state vendors and permits the imposition of a fee on the sale of their ammunition by in-state-vendors. Cal. Penal Code § 30312. The City's premises handgun license rule does neither. It did not require a "firearms exception" to the Commerce Clause for the Second Circuit to conclude that the City's Rule does not violate the Commerce Clause. And even if the two cases did present similar issues, petitioners' references to a potential future ruling from the Ninth Circuit would only show that the Court should await further percolation before considering whether a grant of certiorari was warranted.

Petitioners' discussion covering a hodgepodge of distinct decisions and laws does not provide any reason to grant review here.

B. In any event, the Second Circuit did not err.

Even leaving aside the petition's failure to identify a basis for granting certiorari, petitioners are mistaken in asserting that the Second Circuit departed from established precedents in its decision here. The Circuit resolved petitioners' Second Amendment, Commerce Clause, and right to travel claims by applying established law to the City's "one-of-a-kind" rule.

In evaluating petitioners' Second Amendment claim, the Second Circuit correctly recognized that the core right protected by the Second Amendment is the right to possess a handgun in the home for the purpose of self-defense. *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008).

The Court also correctly recognized that the City's premises handgun license rule does not substantially burden petitioners' Second Amendment rights. The challenged rule does not prohibit Colantone from obtaining a license to possess a handgun for self-defense at his second home. And Colantone presented no evidence about the costs, either financial or administrative, associated with obtaining a license and handgun for his second home (*see* App. at 15). At bottom, his claim reduces to the assertion that those who are able to own two homes should not have to own two handguns as well.

Nor does the challenged rule burden any protected right to acquire and maintain proficiency in the use of licensed handguns. Petitioners can maintain proficiency in the use of their handguns, either by live-fire training or shooting competitions at any of the seven NYPD-approved shooting ranges that currently exist within the City, at target ranges or shooting competitions elsewhere, or by other means. And notwithstanding their complaints about a "paucity of inconvenient in-city shooting ranges" (Pet. at 10; *see also id*. at 5, 8, 11,

13, 16, 17-18), petitioners never offered any evidence that the City ranges are inadequate to provide necessary opportunities to practice shooting or that ranges outside the City are cheaper or more accessible (App. at 22, 28). Indeed, the court of appeals noted that there are "ample facilities" for live-fire training and practice available in the City "within reasonable commuting distance" from the homes of all residents (*id.* at 23). And to the extent that petitioners would prefer to practice at ranges outside the City, although they now suggest that practicing with a rented gun of like model would impair their ability to maintain proficiency in the use of their own handgun, they did not even allege as much in their complaint (Pet. at 16-17; App. at 28-29). The Rule does not impose a substantial burden on petitioners' core Second Amendment right (App. at 21, 23).

Because the Rule does not severely burden or even meaningfully impact the core of the Second Amendment right, the Second Circuit analyzed the Rule under intermediate scrutiny (App. at 24). This is consistent with the approach taken by a majority of courts of appeals. *See, e.g.*, *NRA v. McCraw*, 719 F.3d 338, 348 (5th Cir. 2013) (law prohibiting 18-to-20-year-olds from carrying handguns in public); *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013) (law requiring a "good and substantial reason" for issuance of a handgun permit); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 96-97 (2d Cir. 2012) (law requiring a showing of "proper cause" to obtain a concealed carry permit); *Heller v.*

Dist. of Columbia (Heller II), 670 F.3d 1244, 1256-58, 1261-62 (D.C. Cir. 2011) (laws imposing registration requirements on all firearms and banning assault weapons and large-capacity magazines); *United States v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010) (law prohibiting possession of all firearms while subject to a domestic protection order); *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010) (law effectively prohibiting possession of firearms with obliterated serial numbers); *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (law prohibiting domestic violence misdemeanants from possessing firearms).

The court of appeals also correctly held that the Rule survives intermediate scrutiny. The City presented a "detailed affidavit" of former Commander of the License Division, Andrew Lunetta in support of the Rule's public safety rationale (App. at 26). Lunetta explained the need to be able to effectively monitor and enforce the limits on the transport of handguns in public by individuals who have only a premises license, and not a carry license (*id.* at 26-27). The federal government reached the same (not opposite, *see* Pet. at 2, 14)) conclusion in the federal Firearm Owners Protection Act. That statute authorizes only individuals with a carry license, not those who hold a premises license, to transport locked and unloaded handguns between States where they hold carry rights. 18 U.S.C. § 926A.

The City's restrictions on a premises licensees' ability to transport his or her handgun improves the City's ability to monitor and enforce the limited circumstances under which premises licensees can possess a handgun in public (App. at 27). The City's evidence documenting the difficulties in doing so when premises licensees were previously allowed to transport their handguns to shooting ranges outside the City supported that rationale (*id.* at 27-28). Lunetta explained that, under the prior rule, licensees had been caught traveling with loaded firearms, transporting firearms nowhere near an authorized range or at an hour when no range in the City was open, and were taking their firearms on airplanes (*id.*). By restricting premises licensees to NYPD-authorized ranges, the NYPD can verify whether a premises licensee transporting a handgun in public is, in fact, transporting the handgun to a firing range.

Petitioners are incorrect in arguing that the City's Rule undermines any public safety rationale by forcing individuals to leave handguns in vacant homes (Pet. at 15-16). A public safety risk would exist only if law-abiding gun owners are not responsibly storing their guns The NRA's own rules advise gun owners to store guns unloaded and in a place that is not accessible to unauthorized persons. *See* https://perma.cc/ZN9B-WCGW (NRA gun safety rules). And amici contend that individuals who voluntarily obtain a handgun license tend to be strongly law-abiding (Brf. of *Amici Curiae* Eastern States Sheriffs' Association,

et al. at 1, 6, 8, 15-18). The presence of responsibly stored firearms in temporarily vacant homes does not detract from the substantial fit between the Rule and its public safety rationale.

Thus, to the extent that the Rule burdens petitioners' Second Amendment rights, the Second Circuit properly concluded that it is sufficiently related to the City's compelling government interest in protecting public safety by being able to effectively monitor and enforce the City's rules governing the possession of handguns in public (even if locked and unloaded) by individuals who did not obtain or apply for a carry license (App. at 29).

The Second Circuit also properly applied this Court's precedents to petitioners' dormant Commerce Clause and right to travel claims. As the Second Circuit recognized, both of these claims rest on the same faulty premise: that petitioners have a constitutionally protected right to transport the handgun licensed to their New York City residence to shooting competitions, firing ranges, or homes outside the City. Even petitioners cannot find any authority suggesting that they have any such right (Pet. at 17-21).

Petitioners are incorrect in arguing that the Rule violates the dormant Commerce Clause by prohibiting them from patronizing shooting ranges outside the City with the handgun licensed to their City residence. Unlike *C&A Carbone, Inc. v. Town*

of Clarkstown, 511 U.S. 383 (1994), on which they rely, the Rule does not deprive out-of-state businesses of access to a local market. *Contrast C&A Carbone,* 511 U.S. at 384 (invalidating local ordinance requiring that all waste within its jurisdiction be processed at a local waste processing plant before leaving jurisdiction). Petitioners are free to patronize ranges outside the City or State. And in both New York and New Jersey they can patronize ranges with rented or borrowed guns. N.Y. Penal Law §§ 265.20(7), (7-a), N.J. Stat. § 2C:58-3.1. The Rule does not clearly discriminate against interstate commerce under the Court's Commerce Clause precedents.

Nor does the Rule have an impermissible extraterritorial effect (Pet. at 19). It restricts transportation of a gun licensed to a New York City residence *within the City*. At the most, the only commerce the Rule could be said to control beyond the City's boundaries is the ability to patronize a shooting range outside the City with a gun that, by definition, is licensed to a City residence. But this is not a constitutionally protected right. Nor did Congress opt to protect it in enacting the Firearms Owners Protection Act. *See supra* at 21. And again, petitioners can, in fact, patronize such ranges with rented or borrowed guns. The Rule has no impermissible extraterritorial effect. *See Pharm. Research & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 669 (2003).

Finally, even if petitioners were, as they allege, deterred from travelling to shooting competitions outside the City because they prefer to use their own gun in such competitive events, this would not constitute a denial of the right to travel. Not everything that deters travel burdens that fundamental right. *See Attorney Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986) (plurality opinion) (state law implicates right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize exercise of that right). Where, as here, the Rule's effect on petitioners' willingness to exercise their right to travel is only incidental—a minor restriction on travel, imposed to further the City's significant interests in ensuring public safety—it does not amount to the denial of a fundamental right. *See Zablocki v. Redhail*, 434 U.S. 374, 388 (1978) (finding fundamental rights only implicated by government actions that, at a minimum, "significantly interfere" with the exercise of right).

Ultimately, the challenged rule does not force petitioners to choose between two fundamental rights. It neither infringes upon their Second Amendment rights nor on their fundamental right to travel. It only restricts their ability to transport firearms that are specifically licensed for possession and use inside their New York City residences through the City for the purpose of bringing them to shooting ranges or homes outside the City. That is not a fundamental right. And

unlike golf clubs and musical instruments (*see* Pet. at 20-21), firearms present public safety risks that the City has a legitimate interest in protecting against. Limiting their possession and use in public minimizes the risk of gun violence. *See, e.g., Kachalsky*, 701 F.3d at 94-95 (recognizing danger to public safety posed by handguns in public).

Accordingly, in reaching its decision, the Circuit neither carved out a "firearm exception" to the right to travel or the dormant Commerce Clause nor departed from this Court's Second Amendment jurisprudence, as petitioners claim. For these reasons, too, the decision does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ZACHARY W. CARTER
Corporation Counsel of the
City of New York

Counsel for Respondents

RICHARD DEARING*
SUSAN PAULSON
New York City Law
Department
100 Church Street
New York, NY 10007
(212) 356-2500
rdearing@law.nyc.gov

**Counsel of Record*