No. ______

In the Supreme Court of the United States

MASHOUR HOWLING,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether in state criminal felony cases premised upon inter-state comity concerns of state statutes conflicting on the legal effect given the underlying "status" violation, the "universal" Common Law presumption requiring *mens rea,* first addressed by this Court in *Morissette v. United States,* 72 S. Ct. 240 (1952) (J. Robert Jackson), consistent with the Due Process violation described in *Lambert v. California,* 78 S. Ct. 240 (1957), and later adopted for Federal cases in *Rehaif v. United States,* 139 S. Ct. 2191 (2019), should apply.

2. Whether Maryland's pattern jury instruction approved by Maryland's High Court below, lacking any "guilty mind" *scienter* requirements for felony convictions with potential lengthy incarceration regardless of the circumstances, was proper, under *Morissette, Lambert*, and *Rehaif,* when the categorical "crime of violence" charged was an almost 20 year-old collateral "simple assault" conviction in Pennsylvania, with Petitioner's home state having legislatively and factually determined previously, Petitioner was qualified to possess a firearm.

STATEMENT OF RELATED PROCEEDINGS

This care arises from and is related to the following proceedings in the Circuit Court for Montgomery County, Maryland, the Court of Special Appeals of Maryland, and the Court of Appeals of Maryland.

1. *State of Maryland v. Mashour Howling* (Cir. Ct., Mont. Co., Md), No. 135898C, Indictment filed June 27, 2019;

2. *Howling v. State of Maryland,* (Court of Special Appeals of Maryland), No. 2087, Sept. Term 2019, 2021 WL 402519, decision affirming conviction, February 4, 2021;

3. *Howling v. State of Maryland,* (Court of Appeals of Maryland), *Petition for Certiorari granted,* 259 A.3d 797 (2021), decision affirming Court of Special Appeals, 478 Md. 472 ([April 28], 2022), reconsideration denied (June 15, 2022).

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the mearing of this Court's Rule 14.1(b)(iii).

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INTRODUCTION

On June 27, 2019, Petitioner was indicted on charges related to a handgun found in a parked vehicle, in the Circuit Court for Montgomery County, Maryland. The three-Count indictment was as follows.

> Count One—(Violation of Md. Code, Public Safety, § 5-133(c)(1) (iii)) Felony Possession of a Firearm with a Previously Disqualifying Conviction of a Crime of Violence in Pennsylvania;"[1] and
>
> Count Two—Misdemeanor Loaded Handgun in a Vehicle.
>
> Count Three—Illegal Possession of Ammunition with a Disqualifying Conviction.

Counts One and Three were related solely to Exhibit 6, which was a then 17-year-old Certified Copy of a December 18, 2002 Simple Assault plea conviction from Pennsylvania, which involved no jail time, 18 months' probation, and $100.00 fine. App.73.

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[1] "The Grand Jurors of the State of Maryland, for the body of Montgomery County, upon their oaths and affirmations, present that [Petitioner], on or about March 20, 2019, in Mongomery County, Maryland, did possess a regulated firearm after being convicted of an offense under the laws of Pennsylvania that would constitute a crime of violence under Section 5-101 of the Public Safety Article, if committed in this state, in violation of Section 5-133 (c) of the Public Safety Article against the peace, government and dignity of the State." Indictment, *State of Maryland v. Howling,* Criminal Number 135898C, Filed June 27, 2019.

There was an extensive discussion and request by Petitioner for the Pattern Jury Instruction in Maryland to include a *scienter* requirement on Count One, consistent with this Court's *Rehaif v. United States* decision issued a few months earlier. The State objected and the trial judge adopted the State's position, so the Pattern Jury Instructions given did not include any *mens rea* element. The State which chose to prosecute the matter to the maximum extent permitted under Maryland law, did their best to ensure Howling was convicted without the jury being given a choice or chance to address any reasonable *mens rea* elements or defenses of Mr. Howling as to his knowledge of his collateral status as a prohibited person in Maryland, based on the 2002 Pennsylvania "simple assault' conviction.

> Assistant State's Attorney: "So under the laws of the state of Maryland, the laws that you are to apply to the facts of this case, he is prohibited from possessing a firearm. He is prohibited from possessing this firearm. He brought it into Maryland. What happened in Pennsylvania doesn't matter.
>
> […]
>
> Mr. Howling as well as anybody else in this state, especially if you're here often enough that you're going to the barber, your mom is here, getting your finger checked out, [are] responsible for knowing the laws of this state and following the laws of this state. Like it or not, he is a prohibited person. Like it or not, he may not legally possess a firearm in this state.

> It doesn't matter if he meant to bring the gun because nowhere in those jury instructions did you hear that he had to intend to commit a crime. It doesn't mean that you're not guilty of destruction of property. A person knows slashing someone's tires is destruction of property and is illegal. Ignorance of the law is not a defense. It is not a defense. All you are here to do is take the facts that you heard, apply the law and come to a vote. And based on everything that you have heard, the only positive (sic) verdict is that he's guilty of all three counts and we would ask that you find him so. Thank you." Transcript, 10/15/2019, pg. 151, 153

At sentencing, the trial judge noted the jury had sympathy for Petitioner's situation. "[The] jurors liked you. They didn't like what they had to do. They felt bad about it. But they did what the law mandates that they do based on how they found the evidence." Transcript, 11/26/2019, pg. 25. In addition to the felony conviction, the trial Court ultimately sentenced Petitioner to nine years imprisonment on the consecutive charges, all suspended, with unsupervised probation of three years, with "record checks" conducted should Petitioner be charged or convicted of other criminal offenses. *Id.* at 26-28.

OPINIONS BELOW

After Mr. Howling was found guilty on all counts, a timely appeal was filed on December 5, 2019. In an unreported opinion dated February 4, 2021, the

Court of Special Appeals of Maryland affirmed the convictions. Appendix 'B.' *Howling v. State of Maryland,* No. 2087, Sept. Term 2019, 2021 WL 402519, (Md. Ct. Spec. App. Feb. 4, 2021).

Issue One at the Court of Special Appeals, concentrated on the requested Maryland jury instruction, to have a *mens rea* element like this Court adopted in *Rehaif.* (App. 51-61). Two other issues argued included objections to *voir dire,* which were not presented to the Maryland Court of Appeals and not presented to this Court.

Mr. Howling, through private counsel after previous representation by the Maryland Office of Public Defender, filed a timely Certiorari Petition with permission granted for a Supplemental Petition. These Questions Presented in the Petitions, included specifically requesting Maryland appellate courts adopt *Rehaif* and to address this case's interesting "state comity concerns."[2]

[2] The description in the Reported decision of the Maryland Court of Appeals, gives only the "online" version of the Questions Presented of that Court. *See https://www.mdcourts.gov/coappeals/petitions/202109petitions* (Last Accessed 10/10/2022) The Questions Presented actually granted Certiorari, instead included more detailed and specific wording focusing upon "state comity concerns of a Pennsylvania resident briefly visiting in Maryland[…]". The Maryland Court of Appeals, for unstated reasons, left out the wording of the actual Questions Presented, in the Reported Opinion, and instead relied upon the "online" version. App.5-6; App.80-81; *Howling,* at 478. This was attempted to be remedied as part of the timely Reconsideration motion filed, which had Heading #2, as follows:

The Court of Appeals of Maryland, after granting discretionary review, entered its decision on April 28, 2022, affirming the errors presented by Petitioner for appellate review. *Howling v. State of Maryland, cert. granted,* 259 A.3d 797 (Md. 2021), and *aff'd,* 478 Md. 472 (2022), *reconsideration denied* (June 15, 2022) (Appendix A) [3]

As noted further *infra,* the Maryland Court of Appeals did not adopt the *Rehaif* framework requested.[4] [5] Maryland's Court of Appeals also

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> "This Court Erroneously Relied Upon And Quoted In Its Decision at Page 3 of the *Slip Op.*, the "Online" Version of the Questions Presented, As Opposed to the Actual More Detailed and Nuanced Questions Presented in the Petition for Writ of Certiorari and Petitioner's Brief, Including the Specific Facts of Mr. Howling's Case and the Unaddressed "State Comity" Concerns."

[3] A "Corrected Order" dated August 11, 2022, was issued, which re-confirmed the timely Motion for Reconsideration was denied on June 15, 2022, but clarified an additional judge "did not participate" in the decision denying Reconsideration, apparently due to their involvement in the Court of Special Appeals' decision. (App. 72)

[4] Maryland's grant of Certiorari in the *Howling* case, along with the companion case of *Abongnelah,* appears to be the first State to grant Certiorari on adopting *Rehaif's* rationale and application to a "felon in possession" or categorical "crime of violence" charges, so juries could decide if the Government has satisfied the appropriate *mens rea* status element beyond a reasonable doubt, on these serious felony criminal charges, purely based on status of what may be innocent conduct lacking blameworthiness.

declined to address the multi-state and inter-state "state comity" facts and legal concerns argued by Petitioner, all involving the Commonwealth of Pennsylvania, leaving essentially the entire discussion on the legal arguments presented, to a short passing footnote "Pennsylvania law permits the possession of firearms by individuals convicted of simple assault …]" App.8.

STATEMENT OF JURISDICTION

Reconsideration was timely filed, making the original deadline for Certiorari due under this Court's Rules 13(1), "within 90 days after the entry of the judgment" due on September 13, 2022. On September 2, 2022, an Extension of Time Request was filed with this Court and granted on September 9, 2022, extending the time to file Petition for Writ of Certiorari through October 13, 2022. (No.22A208) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

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[5] Despite other appellate cases in Maryland on *mens rea* seemingly supporting this interpretation, even prior to *Rehaif's* adoption by this Court. *See Chow v. State,* 393 Md. 431, 463, ftnt. 20 (2006)(Adopting *Liparota* framework for other gun-related charges in predecessor statute, and noting in support Justice Robert Jackson's admonition in *Morrisette,* "[t]he contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil. […]Crime as a compound concept, generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand, was congenial to an intense individualism and took deep and early root in American soil.")

PROVISIONS INVOLVED IN THE CASE

U.S. Const. amend. II

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const. amend. XIV

Section 1 Due Process of Law

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[…]

Md. Code, Public Safety, § 5-133

[…]

(c)(1) A person may not possess a regulated firearm if the person was previously convicted of:

(i) a crime of violence;

(ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article; or

(iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

(2)(i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years.

(ii) The court may not suspend any part of the mandatory minimum sentence of 5 years.

(iii) Except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

(3) At the time of the commission of the offense, if a period of more than 5 years has elapsed since the person completed serving the sentence for the most recent conviction under paragraph (1)(i) or (ii) of this subsection, including all imprisonment, mandatory supervision, probation, and parole:

(i) the imposition of the mandatory minimum sentence is within the discretion of the court; and

(ii) the mandatory minimum sentence may not be imposed unless the State's Attorney notifies the person in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.

STATEMENT OF THE CASE

On October 15, 2019, a one-day jury trial before the Honorable Judge Eric Johnson involved mostly undisputed facts which are recounted below by the Maryland Court of Special Appeals.

> "On March 20, 2019, Maryland Park Police Corporal Brian Rumsey was on his lunch break at a shopping center on Layhill Road, Montgomery County, when he observed two men who caught his attention because they appeared to be "checking their surroundings, constantly looking around," without any apparent purpose. One of the men walked to a vehicle with what appeared to be a beer in a bag in his hand, stood behind the vehicle, and looked back toward the liquor store in the shopping center.
>
> Worried that "something [was] not right," Corporal Rumsey entered the liquor store, where he observed the second man at the counter buying beer and a cigar. As he approached the man, Corporal Rumsey smelled the odor of marijuana coming from his person. Corporal Rumsey watched the man leave the liquor store and join the first man; the two men then crossed Layhill Road together and entered the passenger side of a parked Dodge Ram pickup truck.
>
> Corporal Rumsey flagged down a marked Montgomery County Police Department cruiser and explained his observations to Officer Sean McKinney, who approached the

pickup truck. The passenger door was open, and one of the men was outside the vehicle. As Officer McKinney approached, he smelled a "strong odor of marijuana" emanating from the vehicle and/or its passengers. When the man outside the vehicle looked over his shoulder and saw Officer McKinney, he "made a series of movements towards the inside of [the] vehicle." The man told Officer McKinney that his friend, later identified as Howling, was getting a haircut and that he and the second man were waiting for him. The pickup truck was eventually searched, yielding a rental agreement in Howling's name, a loaded Glock semiautomatic handgun, two magazines, and approximately $4,000 in cash. Two officers then located Howling in the barbershop and arrested him.

During a recorded interview with the police, Howling explained that he lives in Pennsylvania, but that his mother has lived in Montgomery County since he was a child. He explained that he was in the area for a doctor's appointment, and his friends "just wanted to ride down with [him]." Howling said he did not realize the gun, which was legally registered to him in Pennsylvania, was in the truck "until on the way down" and that the money was for "stuff" he had to pick up for work. Howling acknowledged that he had been convicted of assault while attending college in Pennsylvania, which the officer explained prohibited him from possessing a firearm in

Maryland, but he claimed he did not intentionally bring the gun into the State.

Howling first contends that the trial court erred as a matter of law when it declined to propound his proposed jury instructions relating to the charges of illegal possession of a firearm and illegal possession of ammunition, and instead gave applicable pattern jury instructions. He maintains that, in light of the United States Supreme Court's recent decision in *Rehaif v. United States* [139 S. Ct. 2191] (2019), his requested instructions properly identified a scienter element of the charged crimes and should have been given to the jury.

At the close of the State's case-in-chief, defense counsel moved for judgment of acquittal on the charges of illegal possession of the firearm and ammunition on the ground that Howling was unaware that he could not legally possess either in Maryland. The court denied the motion, ruling that "[w]ith respect to the argument of scienter of knowledge about the gun laws in Maryland, the statute that prohibits [ ] certain persons from having a firearm is a strict liability offense. It does not require that intent be proven."

After declining to present evidence, Howling renewed his motion for judgment of acquittal, citing *Rehaif* for the proposition that, as a Pennsylvania resident who was convicted of assault in Pennsylvania, the burden was on the State to show that he

should have known of the status that would make him a person prohibited from possessing a firearm in Maryland. Defense counsel analogized Howling's case with the facts in *Rehaif*, in which the United States Supreme Court held that the government must show that the defendant knowingly possessed a firearm and that he knew he belonged to a group whose status would make him a person prohibited from possessing a firearm in the United States. *See id.* at 2194. Counsel explained that, if the court were to deny the motion for judgment of acquittal, she would request proposed jury instructions "that add essentially the element that says the Government must prove [that] he knew that he was a prohibited person based on his conviction" in Pennsylvania.

The prosecutor countered that *Rehaif* involved federal law. In light of what she considered to be a "very clear" pattern jury instruction on the charged crimes, Maryland Pattern Jury Instruction-Criminal ("MPJI-Cr") 4:35.6, the prosecutor requested that the court deny the motion for judgment of acquittal and find the pattern jury instructions sufficient, especially because the *Rehaif* case was based on the interpretation of a federal criminal statute and the defense's requested instructions therefore improperly added an element to the pertinent State statute. The trial court ruled [in favor of the State, due to it being a 'pattern jury instruction' consistent with Maryland law.]"

[…]

"In her closing argument, defense counsel told the jury:

So in Pennsylvania, he legally transferred this gun to himself. So he's somebody who has an address in Johnson Town, Pennsylvania, his phone number is in Pennsylvania and he told detectives, he came down with his mother because he had the gun for eight to 10 years. He's had other guns. It just didn't even occur to him that he couldn't have that gun in Maryland.

And the issue really is how could he have known. I mean the State just got up here and said the law applies to anyone. But did you know? And it's different when he was actually in Pennsylvania and he did everything he was supposed to do to have that, that he would expect to know that here in Maryland, it's a problem."

[,,,] "So, ladies and gentlemen, we'd ask the State, because it's their burden to get back up here and talk to you again about this case, and this is one of those somewhat unusual cases because we already conceded that, yes, Mr. Howling shouldn't have had a handgun. But we are asking that you, as he is, presumed innocent until they prove to you beyond a reasonable doubt because it is their burden that he knew and understood that he couldn't have that gun in Maryland because he did legally have that gun in Pennsylvania, the

> place where he's from, the place where he lives, the place where he got the conviction almost 18 years ago, a place where he's purchased and owned a firearm since then. He was just trying to come here to run some errands. It doesn't mean he knows every law in the [S]tate of Maryland. And most people don't actually know every law in the [S]tate of Maryland."

App. 49-56. *Howling v. State*, No. 2087, Sept. Term, 2019, 2021 WL 402519, at *1–4 (Md. Ct. Spec. App. Feb. 4, 2021).

> "A jury in the Circuit Court for Montgomery County convicted appellant, Mashour Howling of possession of a firearm by a prohibited person, possession of ammunition by a prohibited person, and transporting a loaded handgun in a vehicle. After the trial court sentenced him to a suspended term of nine years' imprisonment, Howling filed a timely notice of appeal."

App.48. *Howling,* at *1.

REASONS FOR ALLOWANCE OF THE WRIT

I. CERTIORARI IS DESIRABLE AND IN THE PUBLIC INTEREST TO ADDRESS WHETHER THE PRESUMPTION OF "GUILTY MIND" *MENS REA* ELEMENT FOR A JURY TO CONVICT, PREVIOUSLY ADOPTED FOR ALL FEDERAL CASES IN *REHAIF V. UNITED STATES,* SHOULD INCLUDE SERIOUS FELONIES FROM STATE STATUTES SEEKING TO CRIMINALIZE COMPLEX AND CONFLICTING COLLATERAL "STATUS" DESIGNATIONS FROM OTHER STATES, CONSISTENT WITH *MORRISETTE V. UNITED STATES* AND *LAMBERT V. CALIFORNIA.*

A. Introduction And Discussion of Supreme Court Rules 10 and 14

1. "Certworthiness" Under Supreme Court Rule 10 and This Court's Similar Position Granting Certiorari in *Lambert.*

Supreme Court Rule 10 discusses what typically makes a case "Certworthy" for review by this Court, which in relevant part notes as follows:

> "[…] The following, although neither controlling nor fully measuring the Court's discretion [in granting Certiorari], indicate the character of the reasons the Court considers:
>
> […]
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state

> court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." S.C. R. 10.

The questions posed this Court are potentially narrow in application to cases similar to those of Mr. Howling, which have *both* a *Rehaif-error* type claim,[6] but with the twist of an "inter-state" application on the crimes charged. This "inter-state" application is confirmed by the wording and function of Md. Code Public Safety, § 5-133(C) which seeks to "categorically" criminalize as felonies, people who may be reasonably "blameless" in not being aware Maryland considers a decades-old and generally inconsequential misdemeanor, as a jackhammer to criminally convict the unwary for up to fifteen years imprisonment. Maryland's Statute, defines as significant "prior offenses" prohibiting handgun possession, to include potentially remote "simple assault" non-felonies and furthers this manifest unfairness by "re-interpreting" offenses the other sovereign Commonwealth of Pennsylvania rightly did

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[6] Which this Court found in all Federal cases pending appeal at the time of *Rehaif,* satisfy the significant "plain error" Standard of Review for reversal in any pending criminal cases, in *Greer v. United States* [and *United States v. Gary*], 141 S. Ct. 2090 (2021).

not find significant. This includes such categories as a "simple assault" misdemeanor to allow the "broad brush" of ineligibility, to illogically criminalize well-meaning people with a "felony" in Maryland, which designation is then spread to other states. This is especially noteworthy and of public policy importance, when the "innocent" conduct is now what this Court has recently opined to be a fundamental Second Amendment right, which typically applies to Petitioner Howling. *See e.g. New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

While potentially narrow in application, this Court's grant of Certiorari, would provide a proper presumption benchmark, for when there's a "conflict" between states, regardless of the alleged violation happening in a single state, in proper factual and legal circumstances as exists here, the State is required to include "*mens rea*" as an element for the serious felony crime alleged. This is consistent with "cooperative federalism," and quite important in the promoting the underlying Common Law *mens rea* principles that undergird criminal law. As discussed further *infra,* Certiorari is also consistent with this Court's previous grant of Certiorari in *Lambert v. California,* 355 U.S. 225 (1957), and for various other reasons as well of Constitutional importance.

Maryland's Court of Appeals[7] has apparently spoken as to whether this Court's *Rehaif* framework

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[7] A Referendum is before the voters on November 8, 2022, which would change the name of Maryland's High Court from the "Court of Appeals of Maryland" to "Supreme Court of Maryland."

requiring *mens rea* as an element for those charged with serious felonies based on "status" offenses, should apply in a "statutory interpretation" examination of similar Maryland statutes. Appendix A. However, unlike what exists now in all Federal Courts since *Rehaif*, and in contrast with Michigan's Supreme Court, Maryland has answered "no." Maryland's Court of Appeals, perhaps ironically begin their discussion in saying "no" in *Howling,* by quoting this Court's decision of *Lambert v. California* ("There is wide latitude in the lawmakers to declare an offense and to exclude elements of knowledge…[and diligence] from its definition.") App.2.

It's unfortunate the Maryland Court of Appeals did not read this Court's *Lambert* more fully and properly, beyond the single sentence of *dicta* they relied upon in dismissing the State appellate court challenge. Had they done so, *Lambert* would have been understood historically speaking, to have been for the *opposite* proposition, as one of the few previous Supreme Court decisions where this Court has clearly invalidated under the United States Constitution and its Amendments, a conviction based upon the statute lacking *mens rea.* *See Lambert,* at 227 (Los Angeles "Status" Ordinance requiring felon registration violates "due process" of Fourteenth Amendment)[8]; *see also, Smith v. California,* 361 U.S.

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[8] Footnote 1 in *Lambert,* appears to pose an unanswered Question Presented similar to *Howling's* Petition, since it wasn't contested the Ordinance applied *intra-state* as Ms. Lambert had been convicted of a felony in Los Angeles County, California. Thus, "[*Lambert*] does not involve a person who, convicted of a

147 (1959)(another Los Angeles Ordinance lacking *mens rea*, criminalizing obscene materials in certain bookstores, found to violate both First and Fourteenth Amendments). These concerns have also been squarely addressed by the Sixth Circuit Court of Appeals in *United States v. Wulff*, 758 F.2d 1121, 1125 (6th Cir. 1985), in affirming dismissal of indictment on charges of violating the Migratory Bird Treaty Act [MBTA].

> "We believe the proper guidance for the resolution of this issue can be found in Judge, now Justice, Blackmun's opinion in *Holdridge* [*v. United States*, 282 F.2d 302 (8th Cir. 1960)]]. Extrapolating from *Holdridge,* the proper test would appear to be as follows: The elimination of the element of criminal intent does not violate the due process clause where (1) the penalty is relatively small, and (2) where conviction does not gravely besmirch. […] "This is not, in this Court's mind, a relatively small penalty." [Citation Omitted] In addition, as the district judge noted, a felony conviction irreparably damages one's reputation, and in Michigan a convicted felon loses, among other civil rights, his right to sit on a jury and his right to possess a gun. [Citations Omitted] We are of the opinion that in order for one to be convicted of a felony

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crime in another jurisdiction, [and so this Court] must [therefore now] decide whether he has been convicted of a crime that 'would have been punishable as a felony' had it been committed in California." *Lambert v. California*, 355 U.S. 225, 231, n.1 (1957).

> under the MBTA, a crime unknown to the common law which carries a substantial penalty, Congress must require the prosecution to prove the defendant acted with some degree of scienter. Otherwise, a person acting with a completely innocent state of mind could be subjected to a severe penalty and grave damage to his reputation. This, in our opinion, the Constitution does not allow."

Wulff, at 1125.

The next sentence not quoted by the Maryland Court of Appeals below in *Lambert* is also telling. (" […]. But we deal here with conduct that is wholly passive—mere failure to register. It is unlike the commission of acts, or the failure to act under circumstances that should alert the doer to the consequences of his deed. […]*On the other hand, due process places some limits on its exercise. Engrained in our concept of due process is the requirement of notice. Notice is sometimes essential so that the citizen has the chance to defend charges*. Notice is required before property interests are disturbed, before assessments are made, before penalties are assessed. Notice is required in a myriad of situations where a penalty or forfeiture might be suffered for mere failure to act. […][Citations Omitted] These cases involved only property interests in civil litigation. But the principle is equally appropriate where a person, wholly passive and unaware of any wrongdoing, *is brought to the bar of justice for condemnation in a criminal case*." *Lambert v. California*, 355 U.S. 225, 228 (1957) [Emphasis Added].

2. Supreme Court Rule 14.1 on State High Court Review

Under Supreme Court Rule 14.1(g)(i), a "petitioner seeking review of a state-court judgment to specify, among other things, "when the federal questions sought to be reviewed were raised" in the state court system and "the method or manner of raising them and the way in which they were passed on by those courts, ... so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari." *Adams v. Robertson*, 520 U.S. 83, 92 (1997).

As related to S.C. Rule 14, both the *Rehaif* case discussion of the "common law" as well as the federal *inter-state* comity issues were ever-present, and raised throughout the below Courts. At the Circuit Court level[9], as recounted by the Court of Special

[9] This is confirmed by the transcript, trial counsel sought with the trial judge to include *mens rea* as an element for the jury's consideration. Transcript, 10/15/2019, pg. 116-117.

MS. ZOULIAS: "[W]e'll use Mr. Howling as an example. He was allowed to legally own a firearm in Pennsylvania.

THE COURT: Correct.

MS. ZOULIAS: So it's now only that he is in Maryland that he could not have a firearm.

THE COURT: Correct.

MS. ZOULIAS: But unlike many of these cases, his conviction was from Pennsylvania. His address was in Pennsylvania. There's nothing that would indicate to him that he should have known that being in Maryland, he wasn't allowed to have his

Appeals, *supra,* these facts include Petitioner was: (1) a Pennsylvania resident, (2) with a 2002 Pennsylvania charge of "simple assault," and (3) licensed by Pennsylvania to carry a firearm, as the minor misdemeanor was not considered at all disqualifying to Mr. Howling from being considered a law-abiding citizen. App. 54-57 (Noting Petitioner through counsel, after being denied a jury instruction with *mens rea* on the element of "knowledge," nevertheless in response to the prosecution's closing of the "law applies to everyone" how "it's different when [Petitioner Howling] was actually in Pennsylvania and he did everything he was supposed to do to have that [gun], that he would expect that here in Maryland, it's a problem." App. 55. Yet, Maryland's intermediate appellate Court in affirming the conviction, found the jury instruction given Petitioner was not factually or legally erroneous, and

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firearm. And I think that's much like the defendant in this case, Reha (phonetic sp.), because Reha was here on a visa, on a student visa. He was actually specifically told if you've been out of school, you will lose that visa status. And then goes to a firing range and the Government prosecutes him for having a firearm and being a person here without a status. And Bryer (phonetic sp.) wrote that essentially it was the burden is on the Government to show that he should have known of that status would have made him a prohibited person because another person could just go or a person is on a student visa, could have gone to that firing range and would not be committing a crime. And so I think this is the similar argument here which is that what the Supreme Court case says and it says sort of very clearly in its holding which is that essentially the Government must prove both the defendant knew he possessed a firearm and that he knew he belonged to the relevant category."

"disagree[d]" with Petitioner's contention the Maryland "jur[y] were required to find that he knew he was barred from possessing a firearm and ammunition in Maryland, particularly where he could legally possess those items in Pennsylvania." App. 57.

Likewise, the multistate/inter-state "comity" concerns and the "universal" Common Law first addressed by this Court in *Morrisette v. United States,* 72 S. Ct. 240 (1952) (J. Robert Jackson), were expressly argued (and at length), to the Maryland Court of Appeals in the Certiorari Petition originally drafted, the "Supplemental" Petition and two "Supplemental Authority" filings[10] which were the

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[10] The first Supplemental Authority filing, of July 8, 2021, updated the Maryland Court of Appeals on this Court's decision of *Greer v. United States* [and *United States v. Gary*], 141 S. Ct. 2090 (2021). The second Supplemental Authority filing of September 7, 2021, updated the Maryland Court of Appeals, on the Michigan Supreme Court's decision adopting the *Rehaif* framework to their *mens rea* determinations. *See People v. Magnant*, 508 Mich. 151, 176, 973 N.W.2d 60, 73–74 (2021).

The Michigan Supreme Court in *People v. Magnant* adopted this *mens rea* for the criminal statute of transporting large amounts of cigarettes, without appropriate tax stamp licensing, when it was transmitted between a Native American reservation into the State of Michigan. *Magnant,* however did not appear to rely specifically upon this also involving a Reservation matter. Thus, Michigan would apparently apply *Rehaif,* to both *intra-state* matters involving solely Michigan-related statutory determinations, and the more complicated *mens rea* circumstances invoking *inter*-state comity considerations. Adopting the framework of *Rehaif*, Michigan's Supreme Court noted:

source of the Grant of Certiorari by the Maryland Court of Appeals, and also, the Petitioner's Brief itself. Still, the Maryland Court of Appeal's written opinion failed to address these larger federal, inter-state, and multi-state issues and "unanimous" common law upbringing amongst States, requiring *mens rea* for serious felony charges. Maryland, instead relied in its decision-making to limit its written decision, which by its terms only interpreting the Maryland statute itself. App.5-6, 26-29.[11] That

> "[The *Rehaif*] Court held, the criminal-intent presumption required the government to "show that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it." [*Rehaif*] at 2194. The Court explained that a knowledge-of-status requirement is not a knowledge-of-the-law requirement:
>
> This maxim [that "ignorance of the law is no excuse"], however, normally applies where a defendant has the requisite mental state in respect to the elements of the crime but claims to be unaware of the existence of a statute proscribing his conduct. In contrast, the maxim does not normally apply where a defendant has a mistaken impression concerning the legal effect of some collateral matter and that mistake results in his misunderstanding the full significance of his conduct, thereby negating an element of the offense. [*Rehaif*] at 2198 (quotation marks and citations omitted […]"

[11] After requesting the Court of Appeals fully grant Reconsideration to address the "state comity" argument from the Certiorari Petition, Petitioner noted "[i]n the alternative, this Court should at the very least conform the Questions Presented on Page Three [of the *Howling* Decision] [App. 5] to the ones actually presented this Court in Attached "A." [App.80-81] These are for all intents and purposes the same as that argued to this Court in the Petitioner's Brief. *See* Attached 'B.'"

said, a close reading of the *Howling* decision, does not properly distinguish this Court's *Rehaif* decision, the Common Law presumptions of *Morrisette,* addressed in *Rehaif* and previous Court of Appeals' decisions like *Chow v. State,* 393 Md. 431 (2006). In fact, if one looked through the entire Maryland Court of Appeals' 38-page *Slip. Op.* decision in *Howling,* there is not a *single mention* of *Morrisette v. United States,* 72 S. Ct. 240 (1952), and there is not a *single mention* of the "universal" "Common Law" presumptions that especially apply to the original 13 colony States. These arguments were presented to the Maryland's High Court, and they declined to address them. This Court's case law and Supreme Court Rule 14 have been complied with by Petitioner Howling. *See also, Hemphill v. New York*, 142 S. Ct. 681, 689 (2022)(Petitioner has properly presented for this Court's consideration his challenges, "properly presented to the state court that rendered the decision we have been asked to review.' No particular form of words or phrases is essential' " for satisfying the presentation requirement, so long as the claim is " 'brought to the attention of the state court with fair precision and in due time.'" [Citations Omitted])

There was also, no specific examination done by the Maryland Court of Appeals, of the specific subsection of conviction argued by Petitioner, of Md. Code, Public Safety, § 5-133 (c))(1)(3) which involves a complex question of pure law involving other states' convictions, being grafted by Maryland's Draconian "re-interpretation" of another state's offense, and which makes the lack of *scienter* requirements, even

more prejudicial and disconcerting. The decision below, thus ignores other States' differing interpretations given, and completely disregards here Pennsylvania's legal effect of "status" (here, for a Pennsylvania resident) and "state comity." This was done against even permitting a charged criminal defendant to explain their specific *mens rea* circumstances, in compliance with that State's law. This is particularly necessary, when it comes to decades-old minor misdemeanors, the criminal defendant never served any jail time for.

As noted *supra,* the Maryland Court of Appeals has also brought to the fore this Court's *Lambert v. California* decision, through their decision below on the federal law and Due Process Constitutional violation. The Maryland Court of Appeals, misstates this Court's holding of *Lambert* and decision, by treating a sentence of *dicta* without explaining the intricacies involved, that actually held the opposite, in the very next sentence and through the holding. App.2. *Lambert* is not valid for the proposition claimed by Maryland, and ignores this Court's jurisprudence since *Lambert* in 1957 which further favors ensuring a State court provide basic "due process" uniformity and fairness.

A review of the *Lambert* decision, quoted at the outset by the Maryland Court of Appeals in *Howling*, similarly finds an attempt by a State Sovereign entity, to remove "willfulness" and "lack of knowledge" against those in Los Angeles, California found in violation of the "registration law." *Lambert,* at 242-243. In finding "probable jurisdiction" this Court chastised the violations of the "Due Process

requirement of the Fourteenth Amendment" by these types of divisive "registration laws" and the "severity lies in the absence of an opportunity either to avoid the consequences of the law or to *defend any prosecution brought under it.* Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process. Were it otherwise, the evil would be as great as it is when the law is written in print too fine to read or in a language foreign to the community. Reversed." [Emphasis Added] *Lambert,* at 227, 229-230.

Criminal defendants throughout the United States, per the appellate determination below in Maryland, are not even allowed to present testimony on how they may have reasonably relied upon their home state's legal determination, as qualified to own a regulated firearm. Based on the Maryland Court of Appeals' decision, guilty mind "*mens rea"* does not apply and therefore not relevant to the jury, for the main "vicious mind" basis to apply any criminal statute here, which is based solely on "status." Any factual circumstances against a "guilty mind" *mens rea* which would reasonably defeat criminal guilt as an element, are simply defeated by formulaic application of Maryland's law. Which if true, would commit potentially any and all criminal defendants completely lacking in blame, to serve up to 15 years in jail, under Md. Code, Public Safety, § 5-133.

Just as the hapless criminal Defendant in *Morissette* faced, for reasonably thinking long "abandoned" scrap metal, which turned out to be Federal property, should allow a defense against

significant criminal penalties and incarceration, the State of Maryland saw the matter as simply black and white, and feared a jury being instructed against "guilty intent" as an element to be considered, and thus insisted this matter was a limited question of "ignorance of the law is not a defense." *Howling* Transcript, 10/15/2019, pg. 151. This position is wrong under *Rehaif, Morissette,* and the Common Law for collateral matters, and is instead reminiscent of the position addressed by the Dissenting judge in *Morissette's* case at the Sixth Circuit Court of Appeals, which had the trial judge saying the same "not a defense" screed to the jury. Petitioner Howling never contested that the gun was his. But the jury was explicitly over objection instructed, no matter the circumstances, Howling's reasonable lack of knowledge of what should be an element for guilt in this felony, was instead irrelevant. Petitioner has thus far, fallen under Maryland's Draconian interpretation, of Pennsylvania's *different* definition, of a now 20-year old "simple assault" plea conviction. As the Dissenting Judge in the Circuit Court of Appeals felt necessary to let the words speak for themselves, to help explain to get the Supreme Court's attention in *Morissette,* this position is not consistent with American ideals of justice and fairness.

> "[I]t is no defense to claim that it was abandoned, because it was on private property. * * * And I instruct you to this effect: That if this young man took this property (and he says he did), without any permission (he says he did), that was on the property of the United

> States Government (he says it was), that it was of the value of one cent or more (and evidently it was), that he is guilty of the offense charged here. If you believe the government, he is guilty. * * * The question on intent is whether or not he intended to take the property. He says he did. Therefore, if you believe either side, he is guilty.'"
>
> After the jury left, exceptions were taken, and counsel for appellant said:
>
> 'The objection is this, as I understand the court's charge, that the taking is the intent.
>
> 'The Court: No. I leave the question to them whether he intended to take it. He says he did.
>
> 'Mr. Transue: But the taking must have been with a felonious intent.
>
> 'The Court: That is presumed by his own act.'"

Morissette v. United States, 187 F.2d 427, 433 (6th Cir. 1951) (J. McAllister, dissenting), *rev'd,* 72 S. Ct. 240 (1952) (J. Jackson).

Justice Robert Jackson saw how *Morissette* would be fundamentally wrong to countenance and should be an example for the future. It was not a matter of political activism, or judicial overreach, as it was important and necessary to explain and a line be drawn. There is a fundamental right of Constitutional dimension to only be convicted for a "guilty mind" in order to be found "guilty" beyond a

reasonable doubt.[12] This has existed since before the United States' founding, as was ingrained in the Common Law in all 13 original States, including the seventh state admitted into the Union, Maryland.

That said, it is not unreasonable or inconsistent to have a Supreme Court decision, that is both American and patriotic. Justice Jackson had taken a leave of absence from the Supreme Court in 1945 and 1946, to become lead prosecutor in the Nuremburg trials against Nazi war criminals, and required establishing a system of justice, against the witnessed war crimes, that was allowed to flourish in Germany's fascist regime. Totalitarianism and authoritarianism, allows for the Government to "make up" laws that cared not a whit about *mens rea*, without a fair jury of one's peers, a right tracing to Chapter 39 of the Magna Carta, and necessarily guaranteed under the Sixth Amendment to the Constitution as part of an "impartial jury."

When Justice Jackson returned, there was a perceived new threat, on the opposite end of the

[12] This high burden in American Common Law possibly traces to future President John Adam's criminal defense of British soldiers in the Boston Massacre in the well-publicized trial in 1770. *See* Randolph N. Jonakait, *The Rise of the American Adversary System: America Before England*, 14 Widener L. Rev. 323, 355 (2009)("Judge Oliver in [one of the Massacre trials], instructed the jury that if they were convinced that justification had been established they must acquit "or if upon the whole, ye are in any reasonable doubt of their guilt, ye must then, agreeable to the rule of law, declare them innocent." […] (*quoting* 3 Legal Papers of John Adams 309 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965))."

ideological spectrum, in the form of Communism. Again, Justice Jackson understood the evolving threat in 1948, four years before *Morissette*. He wrote about in the American Bar Association (ABA) Journal, whereby "Communist teaching has been stated by Soviet authority in these simple words: 'The Court has been, and still remains, as it ought to be according to its nature—namely, one of the organs of governmental power, a weapon in the hands of the ruling class for the purpose of safeguarding its interests'" […] [T]heir view of the function of a Court, instead of being an advance over ours, is simply an adherence to an old authoritarian practice." "The Meaning of Statutes: What Congress Says or What the Court Says," American Bar Journal, Associate Justice Robert Jackson, July, 1948, Pg. 535.[13]

The State of Maryland advocates as they unflinchingly have done in Petitioner's case, to do away with *scienter* requirements as an element in significant felony charges, of potentially 15 years imprisonment.Maryland has improperly ignored the framework and groundwork fully developed before Petitioner's conviction by this Court in *Rehaif*. Maryland has even ignored those different and reasonable interpretation of fellow sovereign states and "state comity," against the "status" determination which allowed for the potential criminal felony conviction, on what is otherwise

[13] Avail: http://www.roberthjackson.org/wp-content/uploads/migrated-files/thecenter/files/bibliography/1940s/the-meaning-of-statutes.pdf

"innocent" conduct. Which makes little sense, other than it is easier to get a conviction, when there's no opportunity to explain the lack of guilty mind. This Court should grant Certiorari in normal course, and explain to Maryland, the ultimate wisdom of Justice Jackson's warning and concern in *Morissette.*

B. The Facts Of This Case, Are An Ideal Vehicle For The Grant Of Certiorari, As Petitioner Has A "More Than Plausible" Argument of Innocence, Which Was The Focus Of This Court's Attention In The 7-2 *Rehaif* Case To Ensure United States Citizens Maintain The Ideal Of *Mens Rea* Originating From This Country's Founding, Was The Hypothetical "Ideal Case" Discussed By Justice Samuel Alito Previously As Part Of Oral Arguments In *Greer v. United States,* And Has Now Been Unanimously Agreed Upon In *Ruan v. United States,* As An Indispensable Part Of The Criminal Justice System.

As this Court adopted in *Rehaif v. United States,* 139 S. Ct. 2191 (2019)*:*

> "A federal statute, 18 U.S.C. § 922(g), provides that "[i]t shall be unlawful" for certain individuals to possess firearms. The provision lists nine categories of individuals subject to the prohibition, including felons and aliens who are "illegally or unlawfully in the United States." *Ibid.* A separate provision, § 924(a)(2), adds that anyone who "*knowingly* violates" the

> first provision shall be fined or imprisoned for up to 10 years. […]
>
> The question here concerns the scope of the word "knowingly." Does it mean that the Government must prove that a defendant knew both that he engaged in the relevant conduct (that he possessed a firearm) and also that he fell within the relevant status (that he was a felon, an alien unlawfully in this country, or the like)? We hold that the word "knowingly" applies both to the defendant's conduct and to the defendant's status. *To convict a defendant, the Government therefore must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.* [Emphasis Added]

Rehaif, at 2194-2195.

Seven (7) Supreme Court Justices adopted this stance in *Rehaif*, written by Justice Stephen Breyer, with a Dissenting Opinion by Justices Samuel Alito and Clarence Thomas. The oral arguments well discuss why there was a strong Majority in *Rehaif,* including Justices Neil Gorsuch, Brett Kavanaugh, and Chief Justice John Roberts, noting the practical aspects, in that most "felon-in-possession" cases, will not open the door to injustice, but expand it now and in the future. But one example, was Justice Kavanaugh agreeing with the Government "that 99 percent of the time or 90 percent of the time this is going to be so easy to prove, but there are going to be those cases*, the delta of cases where the defendant*

truly was mistaken about his or her status, and you just said is not blameworthy in that circumstance, I think I have that right, *and yet you would put that person in prison for up to 10 years."* [Emphasis Added] *See* https://www.oyez.org/cases/2018/17-9560 (Argument at 29:20) (Last Accessed 10/12/2022)(Available for both audio and transcript)

Justice Samuel Alito, who vigorously dissented on *Rehaif,* has since acknowledged the allure of preventing the injustice in specific cases, in the oral arguments on one of the two post-*Rehaif* cases heard April 20, 2021 involving whether and how an appellate court can review matters outside the record to ascertain "plain error" in a *Rehaif* case.

> "Suppose there's a case where a defendant would have a—a plausible claim, maybe a more than plausible claim, that he or she did not recall a felony conviction. Let's say it's –it occurred 20 years ago, the--the offense was not labeled a felony under state law, but it qualifies under the felon-in-possession statute, the defendant was sentenced to probation. So there's a potential defense there if the issue had been—if the—the trial judge had anticipated our decision."

Greer v. United States, Oral Argument Supreme Court Transcript (avail: https://www.oyez.org/cases/2020/19-8709) (Argument at 44:39) (Last accessed 10/12/2022).

Remarkably, Justice Alito's hypothetical is Petitioner's case, except, with the significant additional concern it's predicated upon a different

State's different determination on whether the alleged predicate criminal violation, in fact was in anyway prohibiting Petitioner from legally and generally Constitutionally-protected right to possession a firearm. Which as matter of *stare decisis,* is now the law of the land, throughout the Federal Court system.

This Court's recent decision in *Ruan v. United States*, 142 S. Ct. 2370 (June 27, 2022), involving applying a strong *mens rea* for doctors charged for criminal distribution of narcotics when they have been "authorized" by licensing authorities, again displays a strong Majority viewpoint, thus far concentrated in the Federal system, of *mens rea* presumption in serious criminal law statutes.

> "First, as a general matter, our criminal law seeks to punish the " 'vicious will.'" *Morissette v. United States*, 342 U.S. 246, 251 […] (1952); [Citation Omitted] With few exceptions, " 'wrongdoing must be conscious to be criminal.' " *Elonis v. United States*, 575 U.S. 723, 734, 135 S.Ct. 2001, 192 L.Ed.2d 1 (2015) (quoting *Morissette*, 342 U.S. at 252, 72 S.Ct. 240). Indeed, we have said that consciousness of wrongdoing is a principle "as universal and persistent in mature systems of [criminal] law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Id.*, at 250, 72 S.Ct. 240.
>
> Consequently, when we interpret criminal statutes, we normally "start from a

> longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state." *Rehaif v. United States*, […] 139 S.Ct. 2191, 2195 […] (2019). We have referred to this culpable mental state as "scienter," which means the degree of knowledge necessary to make a person criminally responsible for his or her acts. [Citations Omitted] *Ruan,* at 2376–77.

Petitioner Howling is seeking relief from this Court, in large part because Maryland's High Court of Appeal, did not proper address, or ignored completely, despite presentation to the Court, these above-stated requirements of *Morissette,* the Common Law, *Lambert v. California,* the actual Statute of Public Safety 5-133 (with conflicting determinations of "status" violations when Pennsylvania held Petitioner was qualified), "state comity" concerns, and Constitutional considerations. [14] [15]

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[14] A recent Law Review article, examines these Constitutional concerns and considerations in detail. As discussed in Erik Luna, *Mezzanine Law: The Case of A Mens Rea Presumption*, 53 Ariz. St. L.J. 565, 569–70 (2021):

> "As will be discussed below, the presumption of *mens rea* and the act of inferring a culpable mental state seem to reside within the interstices of the positive law of ordinary statutes and the fundamental law of the Constitution. The result is an instance of "mezzanine law": an intermediate layer of law that addresses issues of *mens rea* left unresolved by the tools of statutory interpretation, but it does so without invoking the full

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> weight of the Constitution. Part II lays out the conventional understanding of the alternatives, where a culpable mental state may be required either by statutory law or by constitutional law--but that's it, there's no third option--an understanding that has made the Supreme Court hesitant to impose a culpable mental state under the Constitution despite lingering concerns that *mens rea* should not be relegated to the general scrum of legislative discretion.[…]"

Thus, to the extent Petitioner's case is "Certworthy" on the facts and law, but there remains any uncertainty on "probable jurisdiction" of the exact best method to examine Maryland's decision below, Petitioner contends this Court should still grant Certiorari. In other words, it may also be "Certworthy" to discuss and address this Court's jurisdiction in this matter. (Regardless of the previous precedent of *Lambert*, quoted upon by the Maryland Court below, and which itself has significant similarities to this case).

[15] *See also Clayton v. Commonwealth*, 75 Va. App. 416, 430 (Sept. 22, 2022) (J. Raphael, Concurring)(Noting "Justice Scalia and Professor Garner proposed a *mens rea* presumption as Canon 50 in their 2012 treatise. *See* Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 303 (2012). Their "*Mens Rea* Canon" combines the idea that statutory offenses that resemble common-law offenses are presumed to incorporate common-law *mens rea*, while statutory offenses unfamiliar to the common law are presumed to require culpability if they impose serious punishment: A statute creating a criminal offense whose elements are similar to those of a common-law crime will be presumed to require a culpable state of mind (*mens rea*) in its commission. All statutory offenses imposing substantial punishment will be presumed to require at least awareness of committing the act.")

C. The Certworthiness Of This Case, Has Increased In Importance Since Maryland's *Howling* Decision, As The *New York State Rifle & Pistol Association v. Bruen* Supreme Court Decision Has Confirmed A Fundamental Second Amendment And Public Policy Right Is Implicated.

Petitioner did not directly make any direct Second Amendment arguments below. That said, Petitioner Howling's case, at least as a matter of public interest and public policy, has increased "Certworthiness" in light of this Court's recent *Bruen* decision. *Bruen*, naturally supports an increased importance against States unfairly or wrongly, criminalizing citizens as "unqualified" possessors of firearms, without the long-standing Common Law and Constitutional protections consistently requested by Petitioner, in favor of a *mens rea* element on the critical "status" determination.

Without this Court's intervention, there remains little to separate out on the State level, what would typically be 100% innocent, legal and constitutionally protected rights, from a potential 15-year felony conviction. (Of which Petitioner received a 9-year suspended sentence, as an unwary non-resident of Maryland.) *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2143, 2156 (June 22, 2022) (J. Thomas) ("Whatever the likelihood that handguns were considered "dangerous and unusual" during the colonial period, they are indisputably in "common use" for self-defense today. They are, in fact, "the quintessential self-defense

weapon." [Citation Omitted] Thus, even if these colonial laws prohibited the carrying of handguns because they were considered "dangerous and unusual weapons" in the 1690s, they provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today. […]New York's proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.").

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Supreme Court of the United States grant review of this matter.

Respectfully Submitted,

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