No. 25-5280

IN THE
Supreme Court of the United States

PHILIP J. MARQUIS,

Petitioner,

v.

MASSACHUSETTS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Judicial Court of Massachusetts

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Massachusetts's non-resident firearms licensing statute violates the Second Amendment or petitioner's constitutional right to travel where, just as with residents, a non-resident license "shall be issued" provided the applicant is not a "prohibited person," such as a felon or a minor; and is not "unsuitable," based on "credible information" that the applicant poses "a risk to public safety or a risk of danger to self or others."

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STATEMENT OF THE CASE

I. Statutory Background

In Massachusetts, carrying a firearm outside the home or place of business without a license is unlawful. Mass. Gen. Laws ch. 269, § 10(a). Both residents and non-residents of Massachusetts are required to have a license to keep and carry a firearm within the state. Mass. Gen. Laws ch. 140, §§ 131 (residents), 131F (non-residents). For residents and non-residents alike, such a license "shall be issued" so long as the applicant is neither a "prohibited person," such as a felon or minor; nor a person "determined unsuitable," *id.* § 131F, based on "reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others." *Id.* § 131(d).[1]

A non-resident license is granted by the Colonel of the State Police or his designee. *Id.* § 131F. The license is valid for one year, though the Colonel may renew the license if such renewal is necessary. *Id.* The fee for such a license (as for resident licenses) is $100. *Id.*; *accord id.* § 131(*i*). By statute, licenses to carry firearms are to be issued within 40 days after submission of a completed application. *Id.* § 131(e).

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[1] As a result of a comprehensive firearms law passed by the Massachusetts Legislature in 2024, the "prohibited person" and "suitability" requirements, which previously appeared in § 131(d), now appear at Mass. Gen. Laws ch. 140, § 121F(j) and (k), respectively. The substance of these requirements is unchanged. Because petitioner's criminal charges pre-date the 2024 law, and for the sake of consistency with the Supreme Judicial Court's decision, this brief cites the versions of Massachusetts's licensing laws in effect at the time of petitioner's incident in 2022, unless otherwise noted.

While the requirements for a non-resident license under § 131F are mostly identical to those for a resident license under § 131(d), there are some differences. For example, a non-resident license lasts for one year, whereas a resident license lasts for five to six years, expiring on the applicant's next birthday after five years from issuance of the license. *Compare* § 131F, *with* § 131(*i*). In addition, the resident license has a "grace period," whereby new residents of Massachusetts, and residents returning to the state after being away, have 60 days after arrival or return to secure a license. Mass. Gen. Laws ch. 140, § 129C(j). No such grace period exists for non-resident licensees.[2]

An applicant aggrieved by the revocation or denial of a non-resident license or application has a right to judicial review in state district court. Mass. Gen. Laws ch. 140, § 131(f). The district court conducts a *de novo* evidentiary hearing, and may order issuance of the license if it finds that there was "no reasonable ground" for revocation or denial of the license, and that the petitioner is not prohibited by law from possessing a license. *Id.*; *see also*, *e.g.*, *Chief of Police of Wakefield v. DeSisto*, 173 N.E.3d 38, 41-42 (Mass. App. Ct. 2021). It is undisputed that petitioner never applied for a non-resident license to carry under § 131F, and thus never pursued any judicial review of any licensing decision. *See* Pet. App. 6-8.

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[2] Additionally, although the licensing statute says that the licensing authority shall either approve or a deny a license application within 40 days of the application, Mass. Gen. Laws ch. 140, § 131(e), below petitioner submitted data from a state government website indicating that, in practice, non-resident license applications may take "up to 90 days" to issue. *See* Pet. App. 25, 27 & n.16.

II. Factual Background

On September 22, 2022, at approximately 8:00 a.m., two Massachusetts state police troopers responded to the scene of a two-vehicle crash on Interstate 495 in Lowell, Massachusetts. Pet. App. 4. There, police observed the two vehicles—one with New Hampshire license plates, the other with Massachusetts plates—in the highway's breakdown lane. *Id.* Petitioner was the operator of the New Hampshire vehicle. *Id.* When a trooper approached petitioner, who was outside of his vehicle, he removed a nine-millimeter Ruger pistol from his pocket and stated, "I just want to let you know that I have this." *Id.* The trooper asked if the weapon was loaded. *Id.* Petitioner stated that it was not, and "racked" it in full view of the trooper to demonstrate. *Id.* The trooper then instructed petitioner to secure the weapon in his pocket and to sit on the highway guardrail in front of his vehicle. *Id.*

The trooper then asked petitioner if he possessed a license to carry a firearm in Massachusetts, and inquired about the origin and destination of his trip. *Id.* Petitioner stated that he did not possess a license to carry a firearm in Massachusetts, and that he was traveling from his home in New Hampshire to his place of work in Massachusetts. Pet. App. 4-5. The trooper then seized the pistol, along with a magazine containing 12 rounds of ammunition. Pet. App. 5. The trooper returned to his cruiser and confirmed that petitioner did not possess a license to carry in Massachusetts, and also that petitioner was not federally prohibited from carrying a firearm. *Id.* Petitioner was cited for a civil motor vehicle infraction related to the crash with the Massachusetts vehicle. *Id.*

III. Procedural History

On November 28, 2022, petitioner was arraigned in state district court on a criminal complaint charging him with unlicensed possession of a firearm in violation of Mass. Gen. Laws ch. 269 § 10(a), and unlicensed possession of ammunition in violation of Mass. Gen. Laws ch. 269, § 10(h)(1). Petitioner subsequently filed a motion to dismiss the criminal complaint, arguing that, in light of this Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the Commonwealth's non-resident firearm licensing scheme violates his Second Amendment rights.

After a non-evidentiary hearing, the motion judge issued a written decision on August 21, 2023, allowing petitioner's motion to dismiss as to the unlicensed possession of a firearm charge. Pet. App. 5, 38-40.[3] In his memorandum of decision, the motion judge found that the Commonwealth failed to meet its burden under *Bruen* of demonstrating that § 131F is consistent with the Nation's historical tradition of firearm regulation, and that § 10(a) is therefore "unconstitutional as applied to this particularly situated defendant." Pet. App. 38-40.

After the trial court denied the Commonwealth's motion for reconsideration, the Commonwealth timely appealed from the motion judge's rulings, and the case was docketed in the Massachusetts Appeals Court. Pet. App. 5. The Massachusetts Supreme Judicial Court ("SJC") subsequently granted the Commonwealth's request for direct appellate review under Mass. R. App. P. 11. Pet. App. 5.

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[3] The state district court did not address the ammunition charge in its dismissal order, *see* Pet. App. 38-40, so that charge remains pending, and was not addressed by the Supreme Judicial Court. Pet. App. 5 n.4.

IV. The SJC's Decision

The SJC reversed the trial court's decision dismissing the complaint. Pet. App. 4. The court first held that petitioner lacked standing under state law to bring an as-applied Second Amendment challenge, since he had never applied for a license under § 131F, and the court had "long held that standing to bring an as-applied challenge to the Commonwealth's firearm licensing scheme requires having applied for (and been denied) a license" under the applicable statute. Pet. App. 6 (collecting cases). But the SJC held that petitioner could bring a facial challenge to § 131F, and thus considered the constitutionality of the statute under the standard governing facial challenges—which required petitioner to demonstrate that "no set of circumstances exists under which the statute would be valid." Pet. App. 8-9 (quoting *United States v. Rahimi*, 602 U.S. 680, 693 (2024); and *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

After clarifying that § 131F did indeed permit non-residents to obtain a temporary license to carry for self-defense in Massachusetts, Pet. App. 9-13, the SJC proceeded to the facial Second Amendment challenge. The court began by grounding its analysis in this Court's "four foundational" Second Amendment decisions—*Heller v. District of Columbia*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *Bruen*, 597 U.S. 1; and *Rahimi*, 602 U.S. 680. Pet. App. 13-17. Doing so, the SJC determined that the conduct at issue fell within the Second Amendment's "plain text," and thus was "presumptively protected." Pet. App. 17-18 (quoting *Bruen*, 597 U.S. at 24). It therefore turned to the next step of the *Bruen* framework, asking whether § 131F was "consistent with the Nation's historical tradition of firearm regulation."

Pet. App. 18 (quoting *Bruen*, 597 U.S. at 24). Here, the SJC focused on the "two metrics" identified in *Bruen* for comparing the challenged regulation against historical analogues: "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* (quoting *Bruen*, 597 U.S. at 29).

Starting with the "why," the court looked at the purpose of § 131F: to create a "general entitlement on the part of nonresidents to obtain firearm licenses" provided they are neither a "prohibited person" nor "unsuitable." Pet. App. 19. And since petitioner did not challenge the "prohibited person" aspect of the statute, the court turned to the suitability requirement, found at Mass. Gen. Laws ch. 140, § 131(d). "By the plain terms of § 131(d), the restriction on nonresidents 'determined unsuitable' exists to prevent persons whose 'behavior' demonstrates 'a risk to public safety or a risk of danger to self or others' from carrying firearms within the Commonwealth." Pet. App. 19-20. "But *only* if there exists . . . 'credible information'" regarding such dangerous behavior may a non-resident be deemed unsuitable. Pet. App. 20 (emphasis in original).

Comparing this purpose of the suitability requirement to the Nation's historical tradition of firearm regulation, the SJC observed: "If there is any point of consensus about what purposes have historically been recognized as a permissible basis for regulating access to firearms, it is 'what common sense suggests: [w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.'" Pet. App. 20 (quoting *Rahimi*, 602 U.S. at 698). "To that end, 'the Second Amendment permits the disarmament of individuals who pose a credible

threat to the physical safety of others.'" *Id.* (quoting *Rahimi*, 602 U.S. at 693). The SJC therefore found the suitability requirement to pass the "why" portion of the *Bruen* test. "To the extent that the Commonwealth restricts the ability of law-abiding citizens to carry firearms within its borders, the justification for so doing is credible, individualized evidence that the person in question would pose a danger if armed." Pet. App. 21.

The court then turned to the "how" portion of the *Bruen* framework. Doing so, it found that Massachusetts's "shall issue" licensing scheme "impose[s] a comparable burden on the right of armed self-defense" relative to "historical regulations." Pet. App. 21 (quoting *Bruen*, 597 U.S. at 29). The court noted that licensing schemes for firearms have been in existence in one form or another since "at least the Nineteenth Century." *Id.* And the SJC looked to *Bruen*'s approval of "shall issue" licensing regimes, which "do not require applicants to show an atypical need for armed self-defense"; are "designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens"; and "'guid[e] licensing officials' by means of 'narrow, objective, and definite standards.'" Pet. App. 22 (quoting *Bruen*, 597 U.S. at 38 n.9).

The court found that Massachusetts's licensing scheme met all of these requirements of a "shall issue" licensing regime. First, any non-resident who is neither a prohibited person nor unsuitable "shall be issued" a license; "[a]pplicants need not demonstrate an 'atypical need for armed self-defense'—or indeed articulate any purpose for which they seek to possess a firearm outside of their home or place of

business." Pet. App. 22 (quoting *Bruen*, 597 U.S. at 38 n.9). Second, "because the *only* statutorily permissible ground on which to withhold or revoke a license from a nonprohibited person is a determination that the person would pose 'a risk to public safety or a risk of danger to self or others' if armed," the licensing scheme is "designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens." Pet. App. 22-23 (emphasis in original) (quoting Mass. Gen. Laws ch. 140, § 131(d); and *Bruen*, 597 U.S. at 38 n.9). Third, the statutory criteria for unsuitability appropriately guide the licensing official by means of "narrow, objective, and definite standards." Pet. App. 23 (quoting *Bruen*, 597 U.S. at 38 n.9). The licensing official may deny a license based on unsuitability only where there is "reliable, articulable and credible information" that the applicant "has exhibited or engaged in behavior" showing that he poses "a risk to public safety or a risk of danger to self or others" if armed. *Id.* (quoting Mass. Gen. Laws ch. 140, § 131(d)). "Subjective, impressionistic judgments of 'unsuitability' are thereby proscribed." *Id.* In addition, the licensing official must notify the applicant in writing of the specific reasons for the unsuitability determination, and a denied applicant may seek judicial review of the official's decision. *Id.* (citing Mass. Gen. Laws ch. 140, § 131(d), (f)).[4]

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[4] The same day it decided this case, the SJC issued a decision in *Commonwealth v. Donnell*, 252 N.E.3d 475 (Mass. 2025), where it facially invalidated a prior version of § 131F—in effect prior to this Court's decision in *Bruen* and applicable in *Donnell* since the charged conduct there took place in 2021—because the prior version functioned as a "may issue" licensing statute that gave excessive discretion to the licensing official, in violation of *Bruen*. *Donnell*, 252 N.E.3d at 483. Later, however, the SJC "abrogated" its decision in *Donnell*, at least in part, in recognition that the prior version of § 131F required denial of a license to an applicant who had been convicted

(footnote continued on following page)

The court then looked to this Court's decision in *Rahimi*, which identified two relevantly similar historical regulations that were also analogous here: surety and "going armed" laws. Pet. App. 23 (citing *Rahimi*, 602 U.S. at 695-99). "Although these did not employ the specific mechanism of licensure, they employed the more general mechanism of administratively conditioning firearm access by persons for whom individualized evidence of risk was found," and were thus "analogous enough to pass constitutional muster." *Id.* (quoting *Bruen*, 597 U.S. at 30). Surety laws, for example, "'*presumed* that individuals had a right to public carry,' and burdened this right 'only when "attended with circumstances giving just reason to fear that [the person] purposes to make an unlawful use of [arms].""' *Id.* (quoting *Bruen*, 597 U.S. at 56) (emphasis in original). And going-armed laws punished those who "menaced others with firearms." Pet. App. 24 (quoting *Rahimi*, 602 U.S. at 697).

Like these historical laws, the Massachusetts non-resident licensing scheme "begins with the presumption that all nonresident applicants 'shall be issued' a temporary license and will thereby enjoy the unencumbered right to public carry"; that right is burdened only when "the applicant has 'exhibited or engaged in behavior' indicative of 'a risk to public safety or a risk of danger to self or others.'" Pet. App. 24 (quoting Mass. Gen. Laws ch. 140, §§ 131F, 131(d)). And, the statute denies a license "only on the basis of 'credible information' that the person has engaged in specific, threatening conduct." *Id.* (quoting Mass. Gen. Laws ch. 140, § 131(d)).

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of a "felony" or a "violent crime," and thus was not facially unconstitutional. *Commonwealth v. Rodriguez*, 267 N.E.3d 77, 92 n.8 (Mass. 2025).

The SJC also rejected petitioner's argument that it was historically unprecedented to have a law "demonstrating that residents of one colony or [S]tate reflexively distrusted armed residents of another colony or [S]tate." Pet. App. 25. The court disagreed with petitioner's premise here, finding that "there is no evidence that the Commonwealth's scheme is motivated in any way by such attitudes of 'reflexive[ ] distrust' toward nonresidents. On the contrary, the Commonwealth's firearm licensing scheme applies the same substantive requirements to residents as to nonresidents," since both must have a license to carry outside the home or place of business, which "shall be issued" provided the applicant is neither a prohibited person nor unsuitable. *Id.*

Finally regarding petitioner's Second Amendment claim, the court addressed his argument that, because a state government website indicated that non-resident license applications may take "up to 90 days" to be processed, his Second Amendment rights are violated. Pet. App. 25. While expressing doubts that the website had the "legal force of a statute or regulation," *id.*, the SJC acknowledged this Court's observation in *Bruen* that, though shall-issue licensing schemes are generally constitutional, "lengthy wait times in processing license applications or exorbitant fees" may "deny ordinary citizens their right to public carry." Pet. App. 26 (quoting *Bruen*, 597 U.S. at 38 n.9). But on petitioner's facial challenge to the statute, he had "not pointed to any evidence that the Commonwealth's processing times meaningfully hinder the ability of nonresidents to exercise their right to public carry in all circumstances, let

alone that the processing timeline is so burdensome that it rises to the level of a constitutional violation." *Id.*

The SJC then turned to petitioner's right-to-travel claim. Recognizing that the right to travel is "firmly embedded" in this Court's jurisprudence despite the right's absence from the text of the Constitution, the court nonetheless found that the differences between the non-resident and resident licensing statutes, *see* page 2, above, did not facially violate any of the "components" of that right. Pet. App. 27-30 (quoting *Saenz v. Roe*, 526 U.S. 489, 498 (1999)). "[T]he requirement that nonresidents obtain a license on the same terms as residents before publicly carrying a firearm within the Commonwealth does not 'impos[e an] obstacle to [nonresidents'] entry into [the Commonwealth],' interfere with 'free ingress and regress to and from neighboring States,' or otherwise 'directly impair the exercise of the right to free interstate movement.'" Pet. App. 29 (quoting *Saenz*, 526 U.S. at 501). Nor does the non-resident statute treat persons from other states as "'unfriendly aliens' rather than 'welcome visitors,'" since the requirements of § 131F—most of which also apply to residents—"cannot be said to demean nonresidents." Pet. App. 30 (quoting *Saenz*, 526 U.S. at 500). Because § 131F does not "penalize" any relevant component of the constitutional right to travel, the SJC applied rational-basis review to the statute. *Id.* Doing so, the court was mindful that, "because residents and nonresidents are frequently not 'in all relevant respects alike,' there is in general 'no duty on the State to have its licensing structure parallel or identical for both residents and nonresidents.'" Pet. App. 32

(quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992); and *Baldwin v. Fish & Game Comm'n of Mont.*, 436 U.S. 371, 391 (1978)).

The court recognized that Massachusetts has "at least a legitimate interest in regulating firearm possession within its borders so as to protect public safety," including a more specific interest in ensuring that those who carry firearms within the state—whether residents or non-residents—are neither prohibited persons nor unsuitable. Pet. App. 32-33. And, "the factual reality is that it may often be more costly or time-consuming to obtain and verify the facts that are necessary to verify the suitability and prohibition status of a nonresident applicant as compared to a resident applicant," since the state usually has more reliable access to pertinent information about its own residents than it does for non-residents. Pet. App. 33. The court reviewed each of the alleged differences between the non-resident and resident licensing statutes, *see* page 2, above, and found that they satisfied rational-basis review. Pet. App. 34-36. The SJC therefore rejected both the facial Second Amendment and right-to-travel challenges to Massachusetts's non-resident firearms licensing scheme.

REASONS FOR DENYING THE PETITION

Petitioner has not identified any compelling reason to grant certiorari. *See* Sup. Ct. R. 10. There is no split of authority on whether "suitability" requirements for firearm licensing laws—which disarm only those determined to pose a credible threat to public safety if armed—violate the Second Amendment. To the contrary, every court to consider the issue has upheld such requirements as consistent with both this Court's precedents and the Nation's historical tradition of firearm

regulation. Nor is there a split on whether applying licensing laws to non-residents violates the constitutional right to travel.

Moreover, this case is a poor vehicle to consider a challenge to Massachusetts's suitability requirement. Because petitioner never applied for a non-resident license, the SJC determined, as a matter of state law, that he lacked standing to make an as-applied challenge to the licensing statute. A state-law standing decision like this is an independent and adequate state ground for rejecting the as-applied challenge that precludes this Court's review. Indeed, there is no factual record here upon which the Court could even assess such a challenge. That leaves only a facial challenge to the statute, a challenge it would survive under *Rahimi* so long as there are "any" circumstances in which it could be applied constitutionally. This case is also a poor vehicle because its posture is arguably interlocutory: the SJC reversed the dismissal of one of two charges, so both charges will now proceed to trial or other resolution.

Finally, the SJC's decision is correct. It carefully applied this Court's Second Amendment precedents, and concluded that the suitability requirement is consistent with the Nation's historical tradition of firearm regulation. It also properly determined that the non-resident licensing statute does not violate the constitutional right to travel.

I. There is No Split of Authority Warranting This Court's Review.

A. No Court Has Held That a Suitability Requirement Violates the Second Amendment.

There is no split of authority on the constitutionality of "suitability" licensing requirements. *See* Sup. Ct. R. 10(a), (b). To the contrary, the only appellate courts

to have considered the constitutionality of these requirements have all held that they are consistent with the Second Amendment.

In *Antonyuk v. James*, 120 F.4th 941 (2024), *cert. denied*, 145 S. Ct. 1900 (2025), the Second Circuit upheld New York's "good moral character" requirement, which assesses whether an individual seeking a license to carry a firearm "is likely to pose a danger to himself, others, or public safety." *Id.* at 981. After surveying historical firearm licensing schemes, that court concluded that "[l]icensing that includes discretion that is bounded by defined standards . . . is part of this nation's history and tradition of firearm regulation." *Id.*; *see also id.* at 987-90 (surveying historical laws authorizing government officials to grant licenses to carry firearms, and concluding that "[f]or as long as American jurisdictions have issued concealed-carry-licenses, they have permitted certain individualized, discretionary determinations by decisionmakers"); *id.* at 987-88 ("The State has identified firearm licensing schemes from the years immediately following ratification of the Fourteenth Amendment that authorized a local official to issue permits in his limited discretion . . . . There are a lot of them.").

And in *Koons v. Attorney General*, 156 F.4th 210 (2025), the Third Circuit upheld New Jersey's "four reputable persons" requirement, which requires handgun license applicants to provide character endorsements from four individuals "who shall certify . . . that the applicant has not engaged in any acts or made any statements that suggest the applicant is likely to engage in conduct, other than lawful self-defense, that would pose a danger to the applicant or others." *Id.* at 247. Again

evaluating historical analogues, that court concluded that the requirement continued the "deeply rooted tradition" of limiting "ownership and use of guns to those who were not considered dangerous by their communities." *Id.* at 248; *see also In re M.U.'s Application for a Handgun Purchase Permit*, 291 A.3d 827, 845-46, 849-54 (N.J. Super. Ct. App. Div. 2023) (rejecting Second Amendment challenge under *Bruen* to state law allowing denial of handgun permit for persons who endangered public health, safety, or welfare). Thus, there is no split of authority on the constitutionality of "suitability" requirements.[5]

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[5] The only "split" of authority identified in support of the petition comes from an amicus curiae, the Gun Owners' Action League ("GOAL"), which purports to identify methodological differences in how courts are applying *Bruen*'s text-and-history framework. *See* GOAL Amicus Br. 14-17. But these putative differences merely reflect different courts' attempts to faithfully apply *Bruen*'s test to different firearm regulations. *See Ortega v. Grisham*, 148 F.4th 1134, 1139 (10th Cir. 2025) (preliminarily enjoining waiting period for firearm purchase after concluding regulation burdens conduct within Second Amendment's scope and does not fit into any "historically grounded exceptions"); *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 221 (4th Cir. 2024) (en banc) (affirming "shall-issue" licensing scheme based on *Bruen*'s "substantive" discussion of shall-issue licensing laws and in absence of evidence scheme was put toward "abusive ends"); *United States v. Peterson*, 150 F.4th 644, 654 (5th Cir. 2025) (affirming "shall-issue" suppressor licensing scheme based on *Bruen*'s discussion of shall-issue licensing regimes); *McCrorey v. Garland*, 99 F.4th 831, 838 (5th Cir. 2024) (affirming background check requirement based on *Bruen*'s discussion of shall-issue licensing regimes).

Here, the SJC did not wade into any methodological disagreements, but instead held that the regulated conduct fell within the plain text of the Second Amendment, and thus conducted the historical analysis that *Bruen* requires. Pet. App. 17-27. This is precisely what the other courts deciding Second Amendment challenges to suitability requirements have done. *See Antonyuk*, 120 F.4th at 987-90; *Koons*, 156 F.4th at 248; *Matter of M.U.*, 291 A.3d at 847-52. On the relevant issue, therefore—whether suitability requirements comport with the Second Amendment—there is no split of authority.

B. No Court Has Held that a Non-Resident Licensing Requirement Violates the Right to Travel.

As with the Second Amendment question, petitioner has pointed to no circuit split on whether a non-resident's right to travel is violated by an even-handed firearms licensing regime that applies to residents and non-residents alike. *See* Pet. 9-12 (discussing right to travel but identifying no conflict of authority). The constitutional right to interstate travel involves at least three different components:

> It protects [1] the right of a citizen of one State to enter and to leave another State, [2] the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, [3] for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.

Saenz, 526 U.S. at 500.

No federal circuit or state appellate decision has struck down, under the right to travel, a licensing regime that requires non-residents to obtain firearms licenses on substantially the same terms as residents—which is the type of regime at issue in this case. Notably, this case does not involve a state licensing scheme that provides no mechanism for non-residents to carry within that jurisdiction. *See* Pet. App. 9-13 (clarifying that § 131F allows non-residents to obtain license to carry in Massachusetts for ordinary self-defense). Petitioner's reference to *different* non-resident licensing regimes *in other states* only underscores that *this* case is not the proper vehicle to consider a right to travel claim. *See* Pet. 13-15.

Indeed, petitioner points to no federal circuit or state appellate court decision that has even addressed how a licensing regime that applies evenly to both residents and non-residents would implicate the constitutional right to travel. In the closest

case of which the respondent is aware, the Seventh Circuit upheld Illinois's non-resident licensing regime against a challenge under the Privileges and Immunities Clause—one of the sources of the constitutional right to travel—and explained that the Clause "does not compel Illinois to afford nonresidents firearm privileges on terms more favorable than afforded to its own citizens." *Culp v. Raoul*, 921 F.3d 646, 657 (2019).

Petitioner's right to travel challenge therefore does not present a circuit split or other conflict of authority.

II. This Case Is a Poor Vehicle to Consider Whether Suitability Violates the Second Amendment.

The circumstances of this case make it a poor vehicle for this Court to consider the constitutionality of a suitability requirement as an element of Massachusetts's licensing regime.

Petitioner here does not challenge having been "determined unsuitable" to carry a firearm in Massachusetts under § 131F, because he never was. His claims arise instead in the context of a challenge to a criminal charge for unlicensed carry. Indeed, no Massachusetts licensing authority or Massachusetts court has ever assessed petitioner's suitability because he never applied for a license. Instead, he carried a firearm in Massachusetts without a non-resident license and without having ever applied for one.

As a result, this case gives the Court no occasion to understand and review the "narrow, objective, and definite standards" that Massachusetts applies through its suitability requirement. *Bruen*, 597 U.S. at 38 n.9. Had he actually applied for a

non-resident license, petitioner may well have been granted one. Or he may have been denied a license for reasons that are fully "consistent with the principles that underpin our regulatory tradition" of firearms regulation. *Rahimi*, 602 U.S. at 692. Under the circumstances of this case, the Court does not have any factual record before it about how § 131F would have been applied to petitioner, and thus cannot assess whether any such application would be unconstitutional.

Moreover, under Massachusetts law, petitioner's failure to apply for a firearms license meant that he only had standing to make a facial challenge to the non-resident licensing statute, not an as-applied challenge. *See* Pet. App. 6-8 (collecting cases). This threshold state-law standing determination again renders this case a poor vehicle, because it means petitioner is limited to making only a facial challenge to § 131F. The SJC's rejection of petitioner's as-applied challenge rests upon an "independent and adequate state ground" over which this Court lacks jurisdiction. *E.g.*, *Glossip v. Oklahoma*, 604 U.S. 226, 242 (2025); *see also Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (statement of Thomas, J., respecting the denial of certiorari) ("[A] state-law standing determination ordinarily is an adequate and independent state ground precluding our review"; criticizing this rule where, unlike here, it would preclude a *facial* challenge to statute).

The Massachusetts standing rule "that licensure denial is a prerequisite for bringing an as-applied challenge to the Commonwealth's firearm licensing scheme is not premised on any substantive position, one way or the other, about the constitutional validity of that particular scheme." Pet. App. 7. Instead, it reflects "the more

general principle" that an individual cannot challenge any type of licensing scheme without first applying for and being denied that license, thereby creating a factual record for review of an as-applied challenge. *Id.* *Compare Glossip*, 604 U.S. at 242 (independent-and-adequate-state-ground doctrine inapplicable where, unlike here, state-law ruling "depend[s] on" or is "intertwined with" federal law).

As the SJC recognized below, this is unlike cases where an individual is categorically barred from applying for a license to carry firearms—or any other license—and challenges that categorical bar. Pet. App. 7. In such cases where an individual is "ineligible to apply" for a license at all, an as-applied challenge can be made to the licensing regime without having first applied, since the application would be entirely futile. Pet. App. 6-7 & n.5. But here, "nothing in the Commonwealth's nonresident firearm licensing scheme precluded the [petitioner] from applying for a nonresident temporary license under § 131F; he simply chose not to do so." Pet. App. 7. Standing is thus an independent and adequate state-law ground that prevents this Court's review of any as-applied challenge to the suitability requirement within the non-resident licensing scheme.

Petitioner is therefore left with only a facial challenge to Massachusetts's non-resident licensing scheme. Pet. App. 8-9. A facial challenge "is the 'most difficult challenge to mount successfully,' because it requires a defendant to 'establish that no set of circumstances exists under which the Act would be valid.'" *Rahimi*, 602 U.S. at 693 (quoting *Salerno*, 481 U.S. at 745). Petitioner's facial challenge fails if

Massachusetts can demonstrate that its non-resident licensing requirement "is constitutional in some of its applications." *Id.*

That question can be answered in the affirmative without even reaching the merits of the suitability requirement: the non-resident licensing requirements at § 131F include not only the suitability requirement on which the petition focuses, but also a requirement that the applicant must not be a "prohibited person." Mass. Gen. Laws ch. 140, § 131F. A prohibited person includes, for example, someone who has been convicted of "a violent crime." *Id.* § 131(d)(i)(C); *see id.* § 121 (definition of "violent crime" includes crime punishable for imprisonment for more than one year that, *e.g.*, "has as an element the use . . . of physical force or a deadly weapon against the person of another"). Such a requirement is undeniably consistent with our historical tradition of disarming those "who present a credible threat to the physical safety of others." *Rahimi*, 602 U.S. at 700. Thus, this Court could decide a facial challenge to the licensing statute without even reaching the question of suitability at all.

Finally, the petition presents a poor vehicle because its procedural posture is arguably interlocutory. The SJC's decision, which arose out of a lower court order dismissing only one of two criminal charges against petitioner, merely vacated the lower court's dismissal and reinstated that charge. The SJC's decision did not address the other charge. *See* note 3, above. Both charges will therefore now proceed against petitioner. Since he may ultimately be acquitted of the charges, or the case may be otherwise resolved short of a conviction, it would be improvident for this Court to pass on the question of the charge's constitutionality. *See Wilson*, 145 S. Ct. at 21

(Thomas, J.) (agreeing with Court's decision to deny certiorari because "Wilson moved to dismiss only some of his charges, most notably leaving for trial a trespassing charge on which his Second Amendment defense has no bearing. He thus seeks review of an interlocutory order over which we may not have jurisdiction.").[6]

III. The SJC's Decision Is Correct.

A. The Suitability Requirement Is Consistent with the Nation's Historical Tradition of Firearm Regulation.

The SJC correctly held that the suitability requirement of § 131F is consistent with the Second Amendment, as elucidated by both this Court's "foundational" decisions in *Bruen* and *Rahimi*, and the Nation's historical tradition of firearm regulation. Pet. App. 13, 18-27. At bottom, the suitability requirement—which permits Massachusetts to deny a license only where "credible" information indicates that the applicant has "engaged in behavior" suggesting that, if issued a license, the applicant "may create a risk to public safety or a risk of danger to self or others," Mass. Gen. Laws ch. 140, § 131(d)—fully comports with the Nation's "tradition of firearm regulation," which "allows the Government to disarm individuals who present a credible threat to the physical safety of others." *Rahimi*, 602 U.S. at 700.

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[6] This case is also a poor vehicle to address the State of New Hampshire and other amici States' concern about individuals being prosecuted for "the briefest or most inadvertent crossing" into Massachusetts with a firearm but without a license. State of New Hampshire *et al.* Amicus Br. 5; *see also id.* 6-7. Petitioner here was on his way to his workplace in Massachusetts, to which he presumably traveled regularly and intentionally. Pet. App. 4-5.

1. Massachusetts's Non-Resident Statute Is a "Shall Issue" Licensing Scheme of the Kind Approved in *Bruen*.

To begin, in *Bruen*, this Court noted that States may, consistent with the Second Amendment, impose "shall issue" licensing requirements, "which often require applicants to undergo a background check or pass a firearms safety course," but "do not require applicants to show an atypical need for armed self-defense," and are instead "designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens." 597 U.S. at 38 n.9 (internal quotation marks omitted); *accord id.* at 79 (Kavanaugh, J., concurring).

Although this Court deemed unconstitutional so-called "may issue" licensing regimes that "grant licensing officials discretion to deny licenses based on a perceived lack of need or suitability," the Court explained that suitability requirements such as Massachusetts's current statute, which operate like "shall-issue" jurisdictions, are permissible. *Id.* at 13 & n.1.[7] Included among the 43 States whose licensing schemes this Court identified as acceptable were three—Connecticut, Delaware, and Rhode Island—that have "suitability" requirements for licensing, like Massachusetts. *Id.* (citing Conn. Gen. Stat. § 29-28(b); Del. Code Tit. 11, § 1442; and R.I. Gen. Laws § 11-

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[7] In *Bruen*, this Court grouped Massachusetts, based on its "good reason" requirement to obtain a firearms license, with New York among the States that had impermissible "may issue" licensing regimes. 597 U.S. at 14 n.2. After *Bruen*, the Massachusetts Legislature amended its resident and non-resident licensing statutes to eliminate its good-reason requirement, and to narrow the suitability requirement to limit licensing official discretion and to focus entirely on whether the applicant posed a risk to public safety. 2022 Mass. Acts ch. 175, §§ 6-22. Massachusetts's licensing statutes therefore now function as "shall-issue" statutes under the criteria specified in *Bruen*. *See* Pet. App. 21-23. *Compare id.*, *with Donnell*, 252 N.E.3d at 483 (explaining that prior, "may issue" version of § 131F was inconsistent with *Bruen*).

47-11). As this Court explained, "[a]lthough Connecticut officials have discretion to deny a concealed-carry permit to anyone who is not a 'suitable person,' the 'suitable person' standard precludes permits only to those 'individuals whose conduct has shown them to be lacking the essential character of temperament necessary to be entrusted with a weapon'"; and "Rhode Island has a suitability requirement, but the Rhode Island Supreme Court has flatly denied that the '[d]emonstration of a proper showing of need' is a component of that requirement." *Id.* (citations omitted). Now that Massachusetts has amended its licensing statutes after *Bruen*, *see* note 7, it has a permissible "shall issue" regime—with a suitability requirement focused not on whether the applicant has a "good enough" reason for a firearm (which would be impermissible), but instead on whether the applicant, if granted a license, would pose a danger to public safety. *Bruen*, 597 U.S. at 13 n.1, 38 n.9.

After carefully comparing the features of Massachusetts's current licensing statute against the features of permissible "shall issue" licensing regimes approved by *Bruen*, 597 U.S. at 13 n.1, 38 n.9, the SJC correctly found that Massachusetts's current law functions as a permissible shall-issue regime. Pet. App. 22-23;[8] *accord Wilson*, 145 S. Ct. at 21 (Thomas, J.) (describing Hawaii's amended concealed carry law as a "shall issue" licensing statute, even though it contains a suitability requirement, *see* Haw. Rev. Stat. § 134-9(a)(3), (h), where "[t]he new regime allows any

[8] In contrast, the SJC recognized that the pre-*Bruen* version of § 131F functioned as a "may issue" statute, and thus it was invalid. *Donnell*, 252 N.E.3d at 483; *see* note 4, above.

applicant who meets certain baseline requirements to obtain a license without any 'special need' limitation").

Importantly, the SJC emphasized the limited nature of the discretion available to licensing officials under the current version of Massachusetts's suitability requirement. A license "shall be issued" unless the applicant is prohibited or unsuitable. Pet. App. 22 (quoting Mass. Gen. Laws ch. 140, § 131F). There is no requirement to demonstrate an "atypical need for armed self-defense." *Id.* (quoting *Bruen*, 597 U.S. at 38 n.9). The licensing official must have "reliable, articulable and credible information" that the applicant has "exhibited or engaged in behavior" suggesting that he would pose "'a risk to public safety or a risk of danger to self or others' if armed," and must provide the applicant a written statement of reasons for the denial. Pet. App. 22-23 (quoting Mass. Gen. Laws ch. 140, § 131(d)). "Subjective, impressionistic judgments of 'unsuitability' are thereby proscribed." Pet. App. 23.[9] Judicial review is available if the applicant is denied. *Id.*[10]

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[9] Petitioner cites earlier cases from the SJC to suggest that the suitability requirement confers unfettered discretion. Pet. 4-6. But those decisions pre-date this Court's decision in *Bruen* (some even pre-date *Heller*), as well as the Massachusetts Legislature's post-*Bruen* amendment of the suitability requirement to narrow it and focus it on public safety, and the SJC's decision in *Marquis* interpreting the suitability requirement in view of this Court's decisions. While the court did not expressly overrule those earlier decisions, to the extent they are inconsistent with the court's decision in *Marquis*, they are not a reliable statement of how the suitability requirement is currently applied in Massachusetts.

[10] And, the suitability requirement can only be challenged on its face here, so petitioner must demonstrate that there are "no set of circumstances" in which the requirement can be applied consistent with the Second Amendment. *Rahimi*, 602 U.S. at 693 (quoting *Salerno*, 481 U.S. at 745). This petitioner cannot do. An applicant

(footnote continued on following page)

2. Suitability Is Relevantly Similar to Both Surety and Going-Armed Laws.

Next, the SJC faithfully applied this Court's historical test in *Bruen*, asking "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified," the "*central*" considerations under *Bruen*'s analogical inquiry. 597 U.S. at 29 (emphasis in original). Starting with the "why," the court described § 131F as creating "a general entitlement on the part of nonresidents to obtain firearm licenses" when the applicant is neither prohibited nor unsuitable. Pet. App. 19. And the suitability requirement "exists to prevent persons whose 'behavior' demonstrates 'a risk to public safety or a risk of danger to self or others' from carrying firearms within the Commonwealth."

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could be "determined unsuitable" for reasons that, while not rendering them a prohibited person under § 131(d)(i)-(x), *see* page 20, above, nonetheless constitutes "reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others." *Id.* § 131(d). And the suitability requirement could certainly be applied in circumstances that are consistent with the Second Amendment as explicated in *Bruen* and *Rahimi*.

For example, an applicant may have had multiple restraining orders against him that have expired, not because a judge deemed them unwarranted, but because the complaining witnesses allowed them to lapse. Such an applicant would thus no longer be a "prohibited person," *see* Mass. Gen. Laws ch. 140, § 131(d)(vi) (disarming only those "currently" subject to a restraining order), but a licensing official could reasonably determine that he has "engaged in behavior" indicating he would be a threat to public safety if allowed to carry a weapon. Similarly, an applicant who has been charged multiple times with crimes of violence, but who—perhaps because the victim elected not to testify—was never convicted of such a crime, *see id.* § 131(d)(i), might nonetheless be properly viewed as a threat to public safety. Finally, an applicant who has made credible threats on social media to engage in violence with a firearm at a school or similar location would likely not fall into any of the criteria for a "prohibited person," but a local police chief might quite reasonably deem them unsuitable to carry a firearm. Such examples are, of course, illustrative, not exhaustive.

Pet. App. 19-20 (quoting Mass. Gen. Laws ch. 140, § 131(d)). The SJC found this rationale to be consistent with our historical tradition, since "[i]f there is any point of consensus about what purposes have historically been recognized as a permissible basis for regulating access to firearms," it is that "[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." Pet. App. 20 (quoting *Rahimi*, 602 U.S. at 698); *accord Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) ("History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns."), *quoted at* Pet. App. 20.

Turning to the "how," the court observed that licensing requirements had existed in one form or another since at least the Nineteenth Century. Pet. App. 21. And, the SJC found the suitability requirement to be relevantly similar to the two historical analogues examined at length in *Bruen* and *Rahimi*: surety and going-armed laws. Pet. App. 23-24. Both kinds of laws presumed that persons had a right to public carry, and burdened that right through the requirement of a bond (surety laws) or arrest and imprisonment (going-armed laws) only where an individual threatened to use arms unlawfully, or jeopardized the physical safety of others. *Id.* As this Court explained in *Rahimi*, although the mechanisms employed by these historical laws are different from the mechanism of disarmament at issue in *Rahimi* (and here), "if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament . . . is also permissible." 602 U.S. at 699. *See generally id.* at 692 (under *Bruen*'s

historical test, the modern law "must comport with the *principles* underlying the Second Amendment, but it need not be a 'dead ringer' or a 'historical twin'" to the analogous earlier laws) (quoting *Bruen*, 597 U.S. at 30) (emphasis added).

3. On Its Face, the Wait Time for a Non-Resident License Does Not Deny Citizens Their Right to Public Carry.

Finally, the SJC appropriately heeded this Court's admonition in *Bruen* that, although shall-issue licensing schemes are generally constitutional, they may be subject to challenge where, for example, "lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." 597 U.S. at 38 n.9. The court therefore considered petitioner's challenge to § 131F on the ground that it may take "up to 90 days" to process a non-resident license application, Pet. App. 25-27, and found this claim to "fail[] on its own terms." Pet. App. 26.

Here, of course, there is no information on how long it took to process petitioner's license, because he never applied for one. That left petitioner with a facial challenge to the wait time, which required him to demonstrate "not that it is possible for the Commonwealth's processing times to deny nonresidents their right to public carry, but that 'no set of circumstances exists' under which those processing times are compatible with the Second Amendment." Pet. App. 26 (quoting *Rahimi*, 602 U.S. at 693). Petitioner failed to point to any evidence that the wait times "meaningfully hinder the ability of nonresidents to exercise their right to public carry in all circumstances, let alone that the processing timeline is so burdensome that it rises to the

level of a constitutional violation." *Id.*[11] Petitioner's challenge to the wait time therefore required the court to "'focus[ ] on hypothetical scenarios where [that regime] might raise constitutional concerns' as opposed to 'circumstances in which [that regime is] most likely to be constitutional'—an error that would leave us 'slaying a straw man.'" Pet. App. 26 (quoting *Rahimi*, 602 U.S. at 701).

The SJC therefore correctly rejected petitioner's Second Amendment challenge to § 131F.

B. The Statute Is Consistent with the Constitutional Right to Travel.

The SJC also correctly held that Massachusetts's approach is consistent with the constitutional right to interstate travel. Pet. App. 27-36. Massachusetts's non-resident firearms licensing regime does not impermissibly burden non-residents' right to travel into Massachusetts, nor does it treat non-residents as anything but welcome visitors. It imposes the same substantive requirements for licensure on non-residents as are imposed on residents. And each of the procedural differences between the non-resident and resident license is rationally related to a legitimate governmental interest. *Cf. Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982) (analysis of right-to-travel claim is "little more than a particular application of equal protection analysis").

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[11] Indeed, some of the statutes cited with approval in *Bruen* as permissible examples of shall-issue licensing, *see* 597 U.S. at 13 n.1, have processing times that are comparable or equal to 90 days. *See, e.g.*, Ariz. Rev. Stat. § 13-3112(H) (75 days); Fla. St. § 790.06(6)(c) (90 days); Ill. Comp. St., ch. 430, § 66/10(e) (90 days); Okla. St., Tit. 21, § 1290.12(A)(13) (60-90 days).

An individual's "right to free interstate migration," *Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 902 (1986), has two "components" that are plausibly implicated by the petition: "[(1)] the right of a citizen of one State to enter and to leave another State[; and (2)] the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State." *Saenz*, 526 U.S. at 500;[12] *see* Pet. 9-12. Massachusetts's non-resident firearms licensing regime violates neither of these components of the right.

A State's regulatory choice violates the right to enter and leave only when it "directly impair[s] the exercise of the right." *See Saenz*, 526 U.S. at 501. Outright prohibitions on transporting certain persons into a state can violate this standard. *See Edwards v. California*, 314 U.S. 160, 171, 177 (1941) (criminal prohibition on transporting indigent non-residents into state); *United States v. Guest*, 383 U.S. 745, 747, 759-60 (1966) (conspiracy to prevent members of certain racial groups from crossing state lines using public highways). Complete prohibitions against non-residents carrying a handgun for individual self-defense have also been struck down on this basis. *See Smith v. District of Columbia*, 568 F. Supp. 3d 55, 66 (D.D.C. 2021). But Massachusetts does not prohibit non-residents from carrying firearms within its borders. *See* Pet. App. 9-13. Instead, it requires of non-residents the same thing that it requires of its residents: that prior to doing so, they apply for and obtain a license.

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[12] A third component, the right to equal treatment for those who choose to become permanent residents of another state, *Saenz*, 526 U.S. at 500, is not at issue here. *See* Pet. 9-12; Pet. App. 28.

Mass. Gen. Laws ch. 140, §§ 131, 131F.[13] This requirement does not "directly impair the exercise of the [non-resident's] right to free interstate movement." *See Saenz*, 526 U.S. at 501.

Nor does the licensing requirement treat a non-resident like an "unfriendly alien" rather than a "welcome visitor" in Massachusetts. *Id.* at 500. To the contrary, Massachusetts treats a non-resident the same as a resident. Like a non-resident, a Massachusetts resident may carry a firearm outside his home or place of business only if he has been issued a license to carry pursuant to the requirements of Mass. Gen. Laws ch. 140, § 131. *See generally* Mass. Gen. Laws ch. 269, § 10(a)(1)-(2). The substantive requirements for issuance of a license to a resident and non-resident are the same. *Compare* Mass. Gen. Laws ch. 140, § 131(d) (residents), *with* Mass. Gen. Laws § 131F (non-residents); *see also* Pet. App. 25. Petitioner cannot reasonably claim he is being treated like an "unfriendly alien" where residents are held to the same standard. *See*, *e.g.*, *Culp*, 921 F.3d at 657 ("Illinois's adoption of a substantial-similarity [licensing] requirement . . . places nonresidents on equal regulatory footing

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[13] Under federal law, a person merely passing through Massachusetts may carry a firearm, even without a license to carry, so long as that person complies with the requirements of 18 U.S.C. § 926A. *See Commonwealth v. Harris*, 119 N.E.3d 1158, 1168-69 (Mass. 2019), *abrogated on other grounds*, *Commonwealth v. Crowder*, 253 N.E.3d 1207, 1216-17 (Mass. 2025) (acknowledging compliance with 18 U.S.C. § 926A as a defense to charge of unlawful possession). In 2024, Massachusetts adopted its own similar statutory protections for those who are merely traveling through the state. 2024 Mass. Acts ch. 135, § 45 (enacting Mass. Gen. Laws ch. 140, § 129C(k)).

It is undisputed that these provisions do not apply here, since petitioner was not merely passing through Massachusetts, but instead was carrying the weapon from his home in New Hampshire to his place of work in Massachusetts. Pet. App. 4-5.

with Illinois residents and does not offend the Privileges and Immunities Clause"); *Johnson v. County of Horry, S.C.*, 360 Fed. Appx. 466, 471 (4th Cir. 2010) (unpublished) (non-resident, complaining of statutory regime treating him the *same as* resident, does not establish right-to-travel violation). That Massachusetts requires non-residents as well as residents to obtain a license prior to carrying a firearm within its borders does not violate a non-resident's right to travel.

Further, the procedural differences in timing between non-resident license applications and those of residents do not violate petitioner's constitutional rights. Below, petitioner highlighted some of those differences. Pet. App. 136-37.[14] As noted, a resident's license is valid for five to six years, while a non-resident's temporary license is valid for one year. *See* Mass. Gen. Laws ch. 140, §§ 131(i), 131F. New or returning residents are afforded a 60-day grace period to come into compliance with Massachusetts's licensing requirements, *see* Mass. Gen. Laws ch. 140, § 129C(j), but non-residents are not. *See Commonwealth v. Paul*, 132 N.E.3d 544, 552 (Mass. App. Ct. 2019). Finally, Mass. Gen. Laws ch. 140, § 131(e) requires that resident applications be processed within 40 days of their submission, and while there is no separate deadline for non-resident license applications, a state government website indicated

[14] Petitioner does not challenge those procedural differences in his petition. *See* Pet. 9-12. To the extent such challenges would present a question of equal protection, it cannot be said to be "fairly included," Sup. Ct. R. 14(1)(a), within the question presented by the petition. *See* Pet. ii. Petitioner has therefore waived this Court's consideration of any equal protection claim. *See* Sup. Ct. R. 14(1)(a).

that it could take "up to 90 days" to process a non-resident license application. Pet. App. 27 & n.16.[15]

A legislative classification that neither burdens a fundamental right nor targets a suspect class will be upheld so long as it is rationally related to furthering a legitimate state interest. *Romer v. Evans*, 517 U.S. 620, 631 (1996); *Federal Communications Comm'n v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993); *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). Because Massachusetts's non-resident licensing regime neither targets a suspect class nor, as discussed above, violates the right to bear arms or the right to travel, it is subject only to rational-basis review. *Cf.*, *e.g.*, *Locke v. Davey*, 540 U.S. 712, 720 n.3 (2004) ("Because we hold that the program is not a violation of the Free Exercise Clause, however, we apply rational-basis scrutiny.") (internal cross-reference omitted); *Baldwin*, 436 U.S. at 388-91 (state law imposing higher fees for hunting licenses on non-residents than residents did not violate a fundamental right, and thus was subject only to rational-basis review).

In *Bruen*, this Court recognized Massachusetts's and other States' significant interest here: protecting the safety of its residents by ensuring that individuals who carry firearms within its borders are law-abiding citizens. 597 U.S. at 38 n.9 (recognizing that "shall issue" licensing regimes are "designed to ensure only that those

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[15] In 2024, Massachusetts made explicit that both resident and non-resident license applications are subject to a 40-day deadline. *See* Mass. Gen. Laws ch. 140, § 121F(a) (2024).

bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens'"); *see also Chief of Police of Worcester v. Holden*, 26 N.E.3d 715, 727 (Mass. 2015) (recognizing Massachusetts's "compelling" and "significant" interest in regulating firearms as "directly affect[ing] the physical safety of the citizenry"). As the SJC recognized, the differences in treatment of non-residents and residents is rationally related to this interest, enabling Massachusetts to make effective periodic assessments of the continued eligibility of persons carrying firearms within its borders.

A licensing determination depends on information related to the applicant's eligibility for a license. *See* Mass. Gen. Laws ch. 140, § 131(e). For both practical and legal reasons, this information is easier to obtain for a resident than for a non-resident. Pet. App. 33-34; *see also Culp*, 921 F.3d at 651. For instance, Massachusetts may and does compel its own agencies to proactively report eligibility-relevant information to, or to respond within short timeframes to inquiries from, licensing authorities. *E.g.*, Mass. Gen. Laws ch. 140, § 131S (requiring clerk-magistrate of court issuing extreme-risk-protection order to transmit order to licensing authority of municipality in which subject resides). Both the shorter duration of non-resident licenses, and the alleged longer processing time of applications for such licenses, reasonably relate to the added difficulty of obtaining current and relevant information for a non-resident, owing to Massachusetts having less ready access to information from other States bearing on public safety regarding non-residents. Pet. App. 34-36; *Culp*, 921 F.3d at 651. And the 60-day grace period for new and returning residents makes sense in a way that it would not for non-residents: While new and returning

residents are likely to remain residents far past the 60-day period, non-residents in Massachusetts are not likely to remain in Massachusetts for so long. Affording them a similar grace period would vitiate *any* regulation applied to them. *See* Pet. App. 35-36. Massachusetts's scheme is therefore rationally related to its legitimate interests.

Massachusetts applies the same substantive criteria to non-residents seeking licenses to carry firearms as it does to residents. Differences in how it processes applications for those licenses are rationally related to its legitimate interest in ensuring the eligibility of those who carry firearms in public within its borders. To hold that its scheme nevertheless violates petitioner's rights would effectively require Massachusetts to cede its determination of eligibility to any person's state of residence. For a non-resident from a state with no licensing requirement at all, such as petitioner,[16] this would render Massachusetts incapable of ensuring that those who carry firearms in public within its borders are, in fact, "law-abiding, responsible citizens," *Bruen*, 597 U.S. at 38 n.9.

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[16] At the time *Bruen* was decided, 25 states (including New Hampshire) employed so-called "constitutional carry," whereby an individual may carry a firearm "without *any* permit whatsoever." 597 U.S. at 13 n.1 (emphasis in original). While New Hampshire and other states are free, of course, to choose as matter of policy (within constitutional limits) whether and how to require firearm licensing within their borders, they are not free to impose their policy preferences on Massachusetts. But that is precisely what petitioner's requested relief would entail.

CONCLUSION

The petition for a writ of certiorari should be denied.

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