

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ISAIAH KAIN SALAS-MARTINEZ,
Petitioner,

v.

TEXAS,
Respondent.

On Petition for a Writ of Certiorari
to the Texas Court of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

Texas and at least eight other states have laws making it illegal (with very narrow exceptions) for citizens between the ages of eighteen and twenty to carry a handgun outside of the home, even when carried solely for personal protection. Did this Court's opinion issued in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), invalidate Texas Penal Code section 46.02 and similar laws?

List of Parties and Corporate Disclosure Statement

Petitioner is Isaiah Kain Salas-Martinez, who is incarcerated at TDCJ's Dolph Briscoe Unit in Dilley, Texas. Respondent is the State of Texas.

Petitioner is not a corporate entity.

**List of All Directly Related
Proceedings in State and Federal Courts**

Trial:

State v. Salas-Martinez, No. 1799164 (179th Dist. Ct., Harris County, Tex. Feb. 8, 2023).

Direct appeal:

Salas-Martinez v. State, No. 01-23-00099-CR, 2024 WL 3892473 (Tex. App.--Houston [1st Dist.] Aug. 22, 2024), *pet. dismiss'd, improvidently granted*, *Salas-Martinez v. State*, No. PD-1076-24 (Tex. Crim. App. Jan. 15, 2026).

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Introduction

Isaiah Kain Salas-Martinez (“Martinez”) was indicted for the murder of Cole Harrell and was subsequently tried for the offense in the 179th District Court of Texas. At the conclusion of the guilt/innocence phase, pursuant to Texas Penal Code section 9.31(b)(5), the trial court instructed the jurors they could not find Martinez was justified in using force on the night Cole Harrell was killed if they believed that:

1) Martinez had gone to the house where Harrell was killed seeking an explanation from or discussion with Harrell or others acting with him; **and** 2) Martinez's possession of a gun that evening was unlawful pursuant to section 46.02 of the Texas Penal Code. Although the trial occurred several months after this Court held in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), "that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home," the trial court instructed the jurors that it was unlawful pursuant to section 46.02 for an individual to carry a handgun if the person was not in his home or vehicle (or between the two). This instruction made it impossible for the jury to find Martinez was justified in using force, because he had unquestionably carried a handgun outside of his house or vehicle on the night Cole Harrell died because he believed such might be necessary to defend himself or his girlfriend (which, under *Bruen*, was conduct protected by the Second Amendment). Martinez was subsequently found guilty of murder and was sentenced to twelve years in prison. His conviction and sentence were affirmed on appeal.

While Section 46.02 has been amended in the time since Cole Harrell died, even under the current version of the statute, under Texas law, it was illegal for Martinez to carry a handgun outside of his home for self-defense because he was not yet twenty-one years of age on December 17, 2017. While “the people” referred to in the Second Amendment unquestionably included men over eighteen years of age, Texas denies the protection afforded by the amendment to citizens between the ages of eighteen and twenty, with very limited exceptions. Texas is not alone in this respect, as the laws of eight other states appear to limit the right to carry a handgun outside of the home for self-defense to those who are at least twenty-one.¹

The published concurring opinion attached as Appendix B suggests that the Texas Court of Criminal Appeals (“CCA”) dismissed Martinez’s Petition for Discretionary Review based on an independent state procedural rule. Specifically, the opinion states that Martinez

¹ See Cal. Penal Code §§ 25400, 25850, 26150 (making it illegal for an eighteen-year-old to carry a concealed handgun and to openly carry a loaded handgun); Conn. Gen. Stat. §§ 29-28, 29-35 (requiring a license to carry a handgun and making licenses almost entirely unavailable to eighteen-year-olds); Haw. Rev. Stat. §§ 134-2, 134-9 (same); 430 Ill. Comp. Stat. 66/25; 720 Ill. Comp. Stat. 5/24-1 (same); Md. Code Pub. Safety § 5-306; Md. Code Crim. Law § 4-203 (same); Mass. Gen. Laws ch. 140, § 131, ch. 269, § 10 (same); N.J. Stat. §§ 2C:39-5, 2C:58-4 (same); N.Y. Penal Law §§ 265.01, 400.00 (same).

forfeited his right to complain about the trial court's having instructed the jury pursuant to Section 46.02 at trial by not objecting at trial. Appendix at a6. However, as the opinion itself makes clear (and as is explained in greater detail below), Martinez's claim would not be forfeited for lack of objection if this Court's opinion issued in *Bruen* invalidated Section 46.02. Appendix at a11-12. Accordingly, Petitioner Isaiah Martinez respectfully requests this Court grant certiorari to address the Question Presented in this Petition, which is, Did this Court's opinion issued in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), invalidate Texas Penal Code section 46.02 and similar laws?

Opinions and Orders Below

The Texas First Court of Appeals issued its opinion affirming Martinez's conviction and sentence on August 22, 2024. A copy of the court's opinion is included in this Petition's Appendix as Appendix D.

The Texas Court of Criminal Appeals ("CCA") initially granted Martinez's Petition for Discretionary Review to address whether Section 46.02 is unconstitutional pursuant to this Court's opinion issued in *Bruen*. However, after briefing was complete and the case had been

submitted, on January 15, 2026, the CCA issued an order dismissing the petition as improvidently granted. A copy of the CCA's order is attached as Appendix C.

Counsel timely filed a motion for rehearing, which the CCA denied without written opinion on March 5, 2026. A copy of the postcard announcing the court's decision is attached as Appendix A. Judge Parker authored an opinion, concurring in the court's decision, which was published and joined by Judge Finley. A copy of the opinion is attached as Appendix B.

Statement of Jurisdiction

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

Constitutional Provisions and Statutes Involved

The Second Amendment of the United States Constitution provides that, "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. II.

The Fourteenth Amendment of the United States Constitution provides, in pertinent part, "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.” U.S. Const. amend XIV, § 1.

Statement of the Case

On December 16, 2017, Martinez’s then-girlfriend (and current wife), Alexis Quezada, was invited by her friend Amy Sovinsky to a party at Amy’s house, where she lived with her mother, stepfather, boyfriend, and their child. 3 R.R. at 131, 164, 168; 6 R.R. at 112, 116.² At the party, Alexis knew and recognized Jonathan Fernandez (Amy’s boyfriend and the father of her child), Michael Longoria, and Nick Longoria. 6 R.R. at 118. Others at the party included: Chase Harrell, Cole Harrell, Cody Gaitan, Jillian Malone, and Antione Frazier. 6 R.R. at 119; 7 R.R. at 207.

Alexis began to feel intoxicated and went upstairs to rest. 3 R.R. at 140; 6 R.R. at 120, 123; 7 R.R. at 30. On her way upstairs, she noticed that Michael was following her and eventually followed her into the media room. 3 R.R. at 140-41, 194; 7 R.R. at 30.³ Not long after

² Citations to the Reporter’s Record of Martinez’s 2023 capital murder trial appear herein as [volume number] R.R. at [page number(s)]. Citations to the Clerk’s Record appear as C.R. at [page number(s)].

³ Michael’s testimony was slightly different on this point. He testified that Alexis was already upstairs when he joined her and that he believes (but is not sure) they were in Amy’s room. 4 R.R. at 140-41.

getting there, Michael put his arm around Alexis,⁴ making her so uncomfortable she felt sick and ran out of the room toward the bathroom before vomiting in the hallway. 7 R.R. at 32 (“I didn’t want him doing that. I felt – I felt sick.”); *see also* 3 R.R. at 141; 4 R.R. at 143; 5 R.R. at 156; 6 R.R. at 121. Amy helped Alexis clean up and helped Alexis get into her (i.e., Amy’s) bed. 3 R.R. at 141-42. Amy stayed with Alexis for a few minutes before going back downstairs. 3 R.R. at 142. By that time, everyone except for Alexis, Amy, Jonathan, Michael, Chase, and Cole had left the party. *Id.*

According to Alexis, at some point after Amy went downstairs, Jonathan came into the bedroom. 6 R.R. at 129. Jonathan began pulling down her leggings and her underwear. *Id.* Alexis asked him to stop, but Jonathan continued pulling down her pants and touched her vagina; he also groped her chest under her bra. *Id.* at 129-30. After a few minutes of Alexis begging him to stop, Jonathan left the room. 6 R.R. at 130; 7 R.R. at 35.

⁴ On the morning of December 17, 2017, Michael informed a detective that he had “cuddled” with Alexis. 4 R.R. at 145-46, 218. At trial, Michael denied this necessarily meant that he had touched Alexis. *See id.*

After Jonathan left the room, Michael returned. 7 R.R. at 35. At trial, Michael testified that Alexis seemed scared and asked him whether he had seen anyone touching her. 4 R.R. at 148-50; 5 R.R. at 76. After Michael had been in the room a minute or two, Amy came in and kicked him out. 7 R.R. at 36.

Alexis was crying when Amy entered the room. 3 R.R. at 143, 200. According to Amy, Alexis told her that “someone” had tried to touch her. 3 R.R. at 143, 200. According to Alexis, she told Amy that it was, in fact, Amy’s boyfriend, Jonathan, who had touched her. 7 R.R. at 39. Amy brought Alexis’s phone to her, and Alexis called Martinez and asked him to come pick her up, because she no longer felt safe at Amy’s house. 7 R.R. at 40.

At 2:11 a.m., Martinez received the FaceTime call from Alexis and could see and hear her crying while she sat in the bathtub. 8 R.R. at 67-68. After Alexis asked Martinez to pick her up and explained to him what Jonathan had done to her, Amy took the phone away from Alexis and ran out of the room. 6 R.R. at 133; 7 R.R. at 42; 8 R.R. at 69-70. As Martinez testified at trial, like Alexis, Amy was also crying and hysterical. 8 R.R. at 72.

As he was quickly leaving his house to get Alexis, Martinez grabbed a shotgun (which was not loaded) and a handgun that his father had given him as a birthday present. 8 R.R. at 74-76. He asked Amy for her address and then headed to the house. 8 R.R. at 80. Around 2:20 a.m., Martinez ended the FaceTime call so that he could use an application on his phone to navigate to Amy's house. 8 R.R. at 80-81. By 2:25 a.m., he had arrived at the entrance to the neighborhood and called Alexis's phone to ask for the code to get through the security gate. 8 R.R. at 81. Amy, who still had the phone, answered the call and told Martinez the code to use to get through the neighborhood's gate. 8 R.R. at 81.

When Martinez arrived at the house around 2:30 a.m., Jonathan, Michael, Cole, and Chase were on the back patio smoking marijuana (3 R.R. at 188). Amy first went toward the back patio to tell the group that Alexis' boyfriend (i.e., Martinez) had arrived. 4 R.R. at 25-28; 5 R.R. at 163-64. Amy then went to the front door and opened the door for Martinez. 4 R.R. at 28.⁵

⁵ At this point, Amy either ran back upstairs (where Alexis was) or out the front door and then around to the back of the house. *Compare* 3 R.R. at 147-48 *with* 8 R.R. at 86.

Martinez could not see anyone else (besides Amy, who had run away) in the house from where he stood at the front door. 8 R.R. at 84-85. Martinez began searching for Alexis on the first floor of the home. 8 R.R. at 86. As he neared the kitchen, Jonathan (whom Martinez did not know) walked in from the back patio. 8 R.R. at 88. At trial, Martinez testified that he asked Jonathan where Alexis was, and Jonathan immediately charged at him, attempting to take Martinez's shotgun from him. 8 R.R. at 88. During the ensuing struggle, the shotgun then went flying away from Jonathan and Martinez. 4 R.R. at 157; 5 R.R. at 169-70. According to Jonathan and Michael, Martinez then reached for his handgun, which was in the waistband of his pants. 4 R.R. at 157; 5 R.R. at 170-71.

Michael rushed into the house from the back patio, followed by Chase and Cole. 4 R.R. at 156; 5 R.R. at 177; 7 R.R. at 217. While trying to take the handgun away from Martinez, they piled on top of Martinez and began punching, kicking, and grabbing him. 4 R.R. at 165-71, 175. The group was able to tackle Martinez. 4 R.R. at 165; 5 R.R. at 182. According to Jonathan, Michael, and Chase, Martinez fired his handgun

either as he was falling to the ground or immediately after falling to the ground. 4 R.R. at 166-67; 5 at R.R. 180; 7 R.R. at 222.

While this was happening, Alexis heard the yelling and commotion from upstairs and went downstairs to see what it was. 6 R.R. at 138; 7 R.R. at 45-46. She ran downstairs and saw Jonathan and Michael on top of and hitting Martinez, who was lying face down on the ground. 6 R.R. at 138; 7 R.R. at 46, 51. She went towards them to try to separate them, but Jonathan grabbed her and threw her to the floor, bruising her arms. 7 R.R. at 51; 10 R.R. at DX 20. Seeing Alexis for the first time that night, Martinez let go of the handgun. 8 R.R. at 99. At that moment, all he wanted was to get her out of that house. *Id.*

Jonathan ended up with the handgun and unloaded the magazine while Martinez picked Alexis up from the floor and grabbed his shotgun. 5 R.R. at 187; 8 R.R. at 101. After unloading the handgun, Jonathan ran towards the front of the house, went up the stairs, and returned shortly thereafter, pointing his own revolver at Martinez and Alexis. 5 R.R. at 190; 8 R.R. at 103. Martinez slapped the revolver out of his face as he and Alexis walked outside towards Martinez's truck. 8 R.R. at 103. Jonathan ran out of the house and toward Michael's car,

which Michael was already in (pointing his gun at Alexis and Martinez from inside his car). 5 R.R. at 42; 8 R.R. at 103-05. Michael then left (without Jonathan) because Jonathan told him to leave. 4 R.R. at 179. Martinez and Alexis drove away shortly after Michael did. 7 R.R. at 55-56; 8 R.R. at 105. Jonathan then called Michael and told him to come pick him up. 4 R.R. at 181. Before getting in Michael's car, Jonathan threw Martinez's handgun in some bushes near the gate at the entrance of the neighborhood. 4 R.R. at 185; 5 R.R. at 195-96.

Unbeknownst to Jonathan, Michael, Alexis, or Martinez, at this time, Chase was in the backyard of the house with his brother Cole, who had been shot. 7 R.R. at 228-30. Chase called 911, but Cole died before help could arrive. 8 R.R. at 9-10, 13.

At some point during the morning of December 17, 2017, Martinez was arrested. 7 R.R. at 69. He was subsequently indicted for the murder of Cole Harrell (C.R. at 10).

On February 8, 2023, at the conclusion of the guilt/innocence phase Martinez's trial, the trial court charged the jury. 9 R.R. at 9. During the portion of the charge pertaining to whether the jury could find Martinez's actions were justified because he acted in self-defense

(or defense of others), the trial court, reading section 9.31(b)(5) of the Texas Penal Code, instructed the jurors they could not find Isaiah was justified in using force if they:

f[ou]nd and believe[d] from the evidence beyond a reasonable doubt that the force, if any, used by [Martinez] against Cole Harrell or others acting with him, was at a time when the defendant was seeking an explanation from or a discussion with Cole Harrell or others acting with him, concerning [Martinez's] differences with Cole Harrell or others acting with him, but at that time the defendant was unlawfully carrying a handgun in violation of Penal Code Section 46.02.

C.R. at 512.

Because whether the jury could find Martinez was justified in using force turned on whether the jury believed his carrying his handgun was unlawful, the trial court then read to the jury the version of section 46.02 that is applicable to any offense committed on December 17, 2017:

A person violates Section 46.02 of the Penal Code if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun, illegal knife, or club if the person is not:

- 1) on the person's own premises or premises under the person's control; or
- 2) inside of or directly enroute to a motor vehicle or watercraft that is owned by the person or under the person's control.

C.R. at 512.

This section of the trial court's instructions concluded with an application paragraph. Specifically, the trial court instructed the jurors:

if you find and believe from the evidence beyond a reasonable doubt that the force, if any, used by the defendant against Cole Harrell or others acting with him, was at a time when the defendant was seeking an explanation from or a discussion with Cole Harrell or others acting with him, concerning the defendant's differences with Cole Harrell or others acting with him, but at that time the defendant was unlawfully carrying a handgun in violation of Penal Code Section 46.02, then you will find against the defendant on the issue of self-defense.

C.R. at 512. In short, the jurors were told they could not find Martinez acted in self-defense if they believed he was carrying a handgun and was outside of his house on December 17, 2017.

On February 8, 2023, the jury found Martinez guilty of murder. 9 R.R. at 69; C.R. at 521. That same afternoon, the trial court sentenced Martinez to twelve years in prison. 9 R.R. at 131; C.R. at 523.

The first issue Counsel raised on direct appeal was that the trial court erred in instructing the jurors pursuant to section 46.02 of the Texas Penal Code. On August 22, 2024, the court of appeals, issued its Memorandum Opinion, affirming Martinez's conviction and sentence.

Relevant to the grounds addressed in this Petition, the court held that both *Bruen* and *Firearms Policy Coalition, Inc. v. McCraw*, 623 F. Supp. 3d 740 (N.D. Tex. 2022) (an opinion in which the federal district court held that section 46.02 is unconstitutional in light of *Bruen* and which the Attorney General’s Office did not appeal), are distinguishable because neither addressed “whether a state can preclude a defendant charged with murder from asserting the defense of self-defense when the defendant sought an explanation or discussion about differences while carrying a firearm.” Appendix at a39.

Martinez then petitioned the CCA to exercise its discretionary power to address the question of whether *Bruen* invalidated section 46.02. As mentioned above, while the court initially granted review, it subsequently dismissed Martinez’s petition as improvidently granted. Judge Parker’s concurring opinion makes clear that, while the CCA dismissed the petition because it did not believe Martinez had properly preserved error, that would not be the case if it believed this Court’s opinion in *Bruen* invalidated section 46.02. Appendix at a11-12. Essentially, as had the court of appeals below it, the CCA found that *Bruen* could not possibly have expressly held that an eighteen-year-old

Texan has a right to argue in court that he carried a handgun outside of his house in self-defense, because *Bruen* was only concerned with New York state's gun licensing scheme. At least Judges Parker and Finley of the CCA believe that Texas's status as a "shall issue" state means that *Bruen* could not possibly have invalidated any Texas law. Appendix at a14 ("The Supreme Court's notation of Texas as a 'shall issue' jurisdiction conclusively defeats any claim that *Bruen* even impliedly invalidated any Texas firearm statute.").

That statement is, of course, at odds with the decision in *Bruen* itself. This Court made clear that constitutional challenges could be brought to challenge "shall issue" regimes if those regimes were put to "abusive ends." *Bruen*, 597 U.S. at 38 n.9. The Court further speculated that it might find that a "shall issue" regime could be found to have been put to an abusive end and therefore unconstitutional if those regimes involved lengthy wait times or exorbitant fees. *Id.*

The statement from Judges Parker and Finley (i.e., that *Bruen* could not have invalidated a Texas firearm statute) is also at odds with the district court opinion mentioned above, in which, months before Martinez's trial, a federal district court found section 46.02 to be

unconstitutional. *Firearms Pol’y Coal., Inc. v. McCraw*, 623 F. Supp. 3d 740, 758 (N.D. Tex. 2022). That court recognized Texas’s status as having a “shall issue” regime but nonetheless found “that a shall-issue regime cannot allow a state to prohibit a class of persons from exercising their Second Amendment right solely based on their age.” *Id.* at 753. The Attorney General’s Office initially gave notice that it intended to appeal the decision but then moved to dismiss its own appeal. Accordingly, law enforcement officers are presently enjoined from enforcing the statute. *Firearms Pol’y Coal.*, 623 F. Supp. 3d at 758-59. At the same time, state prisoners, like Martinez, would not be entitled to relief in the state courts of Texas if they were arrested today pursuant to section 46.02 because the state courts, guided by Judge Parker’s concurring opinion in this case, continue to presume the statute is constitutional. *See Barahona v. State*, Nos. 03-24-00386-CR, 03-24-00387-CR, 2026 WL 1871080, at *8 (Tex. App.--Austin June 30, 2026, no pet. h.) (citing the concurring opinion attached to this Petition as Appendix B to support the proposition that, under Texas law, “the presumption of constitutionality of Section 46.02 still applies”).

Reasons for Granting the Writ

- I. **The CCA's decision to dismiss Martinez's Petition was not based on an independent and adequate state procedural ground. The decision constitutes a substantive holding by the CCA that *Bruen* did not explicitly invalidate section 46.02.**

Under Texas law, a criminal defendant does not forfeit his right to challenge the constitutionality of a statute by not objecting at trial when the statute in question has already been held to be void. *Smith v. State*, 463 S.W.3d 890, 896 (Tex. Crim. App. 2015); *see also* Appendix at a11-15. As did the intermediate court of appeals, Judge Parker's concurring opinion reveals the CCA believes this Court's opinion in *Bruen* applies to little more than New York's particular gun licensing regime. As this Court is well aware, it found New York's regime to be unconstitutional because that regime required the citizens of New York to prove they had some special heightened need for security to be entitled to the right to carry a handgun for self-defense encompassed in the Second Amendment. Similarly, section 46.02 denied the right contained in the Second Amendment to all citizens between the ages of eighteen and twenty, and did so solely because of their age.

II. This Court should grant certiorari to resolve the split that appears to exist in both the state and federal courts.

While (at least two of) the judges of the CCA believe that *Bruen* could not have invalidated the statute of any state whose firearm licensing statute this Court has characterized as being “shall issue” regimes, the United States Court of Appeals for the Tenth Circuit recently found differently with respect to a recent change to Colorado’s gun licensing scheme. Specifically, in *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024), the Tenth Circuit addressed the question of whether an amendment to that state’s “shall issue” licensing regime which made it illegal for citizens under twenty-one to purchase a firearm was constitutional. As the court recognized, the question to be asked when analyzing statute of a state with a “shall issue” regime is whether the particular statute is abusive. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 124 (10th Cir. 2024); *see also Bruen*, 597 U.S. at 38 n.9. While acknowledging this Court has not yet explained what constitutes “abusive ends” when addressing a “shall issue” licensing regime the court found the state’s statute forbidding those under twenty-one from purchasing a firearm to be constitutional, reversing the district court, which had found the statute to be unconstitutional.

Rocky Mountain, 121 F.4th at 128. The appellate court found the statute at issue to be consistent with historical precedent that similarly limited other activities to those over twenty-one. *Id.* at 122-27.

As mentioned above, the United States Court of Appeals for the Fifth Circuit has not yet had an opportunity to address the constitutionality of section 46.02 because the Attorney General dismissed its appeal in *Firearms Policy Coalition*. That court has, however, had an opportunity to address a federal statute which prevents federal firearm licensees from selling firearms to citizens between eighteen and twenty. Unlike the Tenth Circuit, the Fifth Circuit found there to be no historical support for a law prohibiting citizens between the ages of eighteen and twenty from purchasing a firearm. *Reese v. ATF*, 127 F.4th 583, 595-600 (5th Cir. 2025).

In addition to the split which appears to exist in the circuit courts on the question presented in this petition, as mentioned above it appears that, in addition to Texas, eight other states (i.e., California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, and New York) deny the Second Amendment right to carry a handgun

outside of the home for protection to citizens between the ages of eighteen and twenty solely because of their age.⁶

Conclusion and Prayer for Relief

Petitioner requests this Court grant certiorari and schedule the case for briefing and oral argument.

DATE: July 3, 2026

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⁶ See *supra* note 1.