

No. _____

In the Supreme Court of the United States

BRAYAM GUERRA LICON, *PETITIONER*,

V.

UNITED STATES OF AMERICA, *RESPONDENT*.

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit*

PETITION FOR WRIT OF CERTIORARI

MAUREEN SCOTT FRANCO
Federal Public Defender
KRISTIN L. DAVIDSON
Assistant Federal Public Defender
Counsel of Record
OFFICE OF THE FEDERAL
PUBLIC DEFENDER
WESTERN DISTRICT OF TEXAS
300 Convent Street, Suite 2300
San Antonio, Texas 78205
Kristin_Davidson@fd.org
(210) 472-6700

Counsel for Petitioner

Question Presented

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court explained the Second Amendment’s key terms. The Court later fleshed out the two-step analysis required in a Second Amendment case in *NYSRPA v. Bruen*, 597 U.S. 1 (2022). If the challenged law clashes with the plain text of the Amendment, it is presumptively unconstitutional. *Id.* at 24. The government then has the burden to show that the challenged law is “consistent with the Nation’s historical tradition of firearm regulation.” *Id.*

The Court’s subsequent Second Amendment cases have focused on *Bruen*’s second step. See *United States v. Hemani*, 146 S. Ct. 1677 (2026); *Wolford v. Lopez*, 146 S. Ct. 2032 (2026); *United States v. Rahimi*, 602 U.S. 680 (2024). But in *Wolford*, the Court clarified that the “plain text” inquiry under *Bruen*’s first step “entails three subsidiary questions”—whether the challenged law (1) applies to “the people”; (2) concerns “Arms;” and (3) restricts the possession or carrying of arms. 146 S. Ct. at 2043–44 (cleaned up).

The question presented is:

Under *Bruen*’s first step, does an additional presumption of constitutionality exist for laws characterized as “shall-issue licensing regimes”?

Parties to the Proceedings

Pursuant to Sup. Ct. R. 14.1(b)(i), the parties to the proceedings in the court whose judgment is sought to be reviewed are:

Petitioner Brayam Guerra Licon, the defendant in the district court and appellant below.

Respondent United States of America, the plaintiff in the district court and appellee below.

Related Proceedings

United States District Court for the Western District of Texas:

United States v. Licon, No. 7:24-CR-195-1 (May 7, 2025)
(criminal judgment)

United States Court of Appeals for the Fifth Circuit:

United States v. Licon, No. 25-50380 (May 15, 2026) (per
curiam) (unpublished)

Table of Contents

Question Presented.....	iv
Parties to the Proceedings.....	v
Related Proceedings.....	vi
Table of Contents	vii
Table of Authorities.....	viii
Introduction.....	1
Opinion Below	3
Jurisdiction.....	4
Constitutional and Statutory Provisions Involved	4
Statement	4
A. Legal background.....	4
B. Proceedings below.	12
Reasons for Granting the Petition	14
I. Lower courts have badly misconstrued <i>Bruen</i> 's first step and created conflicts between courts.	14
II. This is a critically important and recurring question.	22
Conclusion	23
Appendix	
<i>United States v. Licon</i> , No. 25-50380 (5th Cir. May 15, 2026)	1a
Statutes Involved	3a

Table of Authorities

Cases

<i>Commonwealth v. Marquis</i> , 252 N.E.3d 991 (2025).....	19–20
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	iv, 6–7, 11
<i>Haynes v. United States</i> , 390 U.S. 85 (1968)	5
<i>Kanter v. Barr</i> , 919 F.3d 437 (7th Cir. 2019)	7
<i>Lonmont v. O’Neill</i> , 285 F.3d 9 (D.C. Cir. 2002).....	21–22
<i>McCoy v. Jacobson</i> , 176 F.4th 1055 (8th Cir. 2026)	20
<i>McRorey v. Garland</i> , 99 F.4th 831 (5th Cir. 2024)	17
<i>Md. Shall Issue, Inc. v. Moore</i> , 116 F.4th 211 (4th Cir. 2024)	16–17, 20
<i>Mock v. Garland</i> , 75 F.4th 563 (5th Cir. 2023)	4
<i>NYSRPA v. Bruen</i> , 597 U.S. 1 (2022)	iv, 2–3, 8–11, 13–18, 22
<i>Smith & Wesson Brands, Inc. v.</i> <i>Estados Unidos Mexicanos</i> , 605 U.S. 280 (2025)	1
<i>United States v. Comeaux</i> , 179 F.4th 297 (5th Cir. 2026)	18

<i>United States v. DeBorba</i> , 177 F.4th 1005 (9th Cir. 2026)	17, 20
<i>United States v. Focia</i> , 869 F.3d 1269 (11th Cir. 2017)	7
<i>United States v. Hemani</i> , 146 S. Ct. 1677 (2026)	iv, 10
<i>United States v. Peterson</i> , 161 F.4th 331 (5th Cir. 2025)	13, 17, 20–21
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	iv, 10
<i>United States v. Speed</i> , 175 F.4th 272 (4th Cir. 2026)	16, 18, 20
<i>United States v. Thompson/Ctr. Arms Co.</i> , 504 U.S. 505 (1992)	5
<i>Wolford v. Lopez</i> , 146 S. Ct. 2032 (2026)	iv, 2, 8, 10–11, 18–19
Constitutional Provisions	
Second Amendment, U.S. Const. amend. II	4, 6
U.S. Const. Art. III, § 2	15
Statutes	
18 U.S.C. § 922(g)(1)	6
26 U.S.C. § 5811	5
26 U.S.C. § 5812	5, 21
26 U.S.C. § 5822	20
26 U.S.C. § 5841	4–5, 12

26 U.S.C. § 5845	4–5
26 U.S.C. § 5861	2, 4–5, 12
26 U.S.C. § 5861(d)	2, 12
26 U.S.C. § 5871	4–5, 12
28 U.S.C. § 1254(1)	4
National Firearms Act, Pub. L. No. 73-474, 48 Stat. 1236	4
One Big Beautiful Bill Act, Pub. L. No. 119-21, § 70436, 139 Stat. 72, 247 (2025)	5
18 Pa. Cons. Stat. § 6106(a)	15
18 Pa. Cons. Stat. § 6109	15, 21
Other Authorities	
Brief Amicus Curiae of Gun Owners of America et al., <i>Wolford v. Lopez</i> , No. 24-1046 (Nov. 24, 2025)	18
<i>Grant v. Higgins</i> , No. 25-566 (U.S.)	3, 23
<i>Viramontes v. Cook County, IL</i> , No. 25-238 (U.S.)	3, 23

In the Supreme Court of the United States

BRAYAM GUERRA LICON, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*.

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit*

PETITION FOR WRIT OF CERTIORARI

Petitioner Brayam Guerra Licon, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Introduction

Licon possessed an AR-15 rifle, “the most popular rifle in the country.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). But the barrel length of the AR-15 was less than 16 inches, so he was criminally prosecuted because he received or possessed that firearm in violation of the National Firearms Act’s taxation-and-registration scheme. *See* 26 U.S.C.

§ 5861(d). Licon challenged the constitutionality of the NFA as applied to him because the laws clash with the plain text of the Second Amendment and there is no historical tradition of firearm regulation that allows the government to systematically tax and track who receives or possesses protected arms.

The Fifth Circuit affirmed Licon’s conviction based on circuit precedent that holds that the NFA’s taxation-and-registration scheme is a “shall-issue licensing regime” that is “presumptively constitutional” under *Bruen*’s first step—according to the dicta in *Bruen*’s footnote 9. That precedent placed an additional burden on Licon to show, as part of the plain-text inquiry of *Bruen*’s first step, that the challenged law was put to abusive ends as applied to him specifically. By contrast, when a law regulates arms-bearing conduct, the government bears the burden under *Bruen*’s second step to prove that the challenged law is consistent with the Nation’s historical understanding of the Second Amendment right.

The Fifth Circuit’s mischaracterization of *Bruen*’s first step conflicts with at least one state court of last result, and “smuggle[s] additional limits, drawn from our regulatory tradition, into the plain-text stage of the inquiry.” *Wolford v. Lopez*, 146 S. Ct. 2032, 2054 n.1 (2026) (Barrett, J., concurring).

The question presented is critically important to the scope of a fundamental right. The Court has already granted certiorari in cases that will answer whether the Second Amendment guarantees the right to possess the AR-15 platform and similar semiautomatic rifles in *Viramontes v. Cook County, IL*, No. 25-238 (U.S.), and *Grant v. Higgins*, No. 25-566 (U.S.). This case would make an ideal companion case because it presents a question that *Viramontes* and *Grant* do not: whether the constitutionality of the NFA's taxation-and-registration regime, at least as applied to short-barreled rifles like Licon's, is a question for *Bruen*'s second step, not its first.

This question will not go away, and this is an ideal vehicle to resolve it. The Court should grant certiorari. At minimum, the Court should hold this petition pending the outcome of *Viramontes* and *Grant*, which could shed light on the required analysis under *Bruen*'s first step.

Opinion Below

A copy of the unpublished opinion of the court of appeals, *United States v. Licon*, No. 25-50380 (5th Cir. May 15, 2026) (per curiam), is reproduced at Pet. App. 1a–2a.

Jurisdiction

The opinion and judgment of the United States Court of Appeals for the Fifth Circuit were entered on May 15, 2026. This petition is filed within 90 days after the judgment’s entry. *See* Sup. Ct. R. 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

The Second Amendment provides: “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.”

Relevant statutory provisions of the National Firearms Act—26 U.S.C. §§ 5841, 5845, 5861, and 5871—are reproduced in the Appendix. Pet. App. 3a–11a.

Statement

A. Legal background.

1. In 1934, Congress passed the National Firearms Act (“NFA”), Pub. L. No. 73-474, 48 Stat. 1236 (codified as amended at 26 U.S.C. §§ 5801–5872), an “especially restrictive regime [that] resulted from panic over gangster-related violence and thus was instituted to regulate ‘weapons likely to be used for criminal purposes.’” *Mock v. Garland*, 75 F.4th 563, 570 (5th Cir. 2023) (quoting *United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 517

(1992) (plurality opinion)); *see also Haynes v. United States*, 390 U.S. 85, 87 n.4 (1968). The NFA established a national registry of certain classes of firearms—including short-barreled rifles—known as the National Firearms Registration and Transfer Record (“NFRTR”). 26 U.S.C. §§ 5841(a), 5845(a)(3). The NFRTR contains information on each firearm, the firearm’s registration date, and the identification and address of the person entitled under law to possess it. § 5841(a)(1)–(3). An individual who transfers a firearm must complete an application identifying the firearm, applicant, and transferee; include the transferee’s fingerprints and photograph; and pay a \$200 tax.¹ §§ 5811, 5812. The NFA provides for denial of an application for transferring a firearm if transferring or possessing the firearm would violate the law. 26 U.S.C. § 5812(a). If approved, the transferor must register the firearm in the NFRTR. § 5841(b). Failure to comply with this registration-and-taxation scheme subjects an individual to up to ten years’ imprisonment. §§ 5861, 5871. In addition, a conviction for violating

¹ Although Congress recently eliminated the \$200 tax on the transfer of short-barreled rifles, *see One Big Beautiful Bill Act*, Pub. L. No. 119-21, § 70436, 139 Stat. 72, 247 (2025), the taxation requirement was in effect at all times relevant to this petition, *see* 26 U.S.C. § 5811 (1976), and the registration requirement remains in place.

any provision of the NFA further subjects the individual to the lifetime relinquishment of their Second Amendment right to possess any firearm. *See* 18 U.S.C. § 922(g)(1).

2. In *District of Columbia v. Heller*, the Court held for the first time that the Second Amendment codifies an individual right to keep and bear arms—a right that is not limited to militia service. 554 U.S. 570, 579–600 (2008). In reaching this conclusion, the Court conducted a “textual analysis” of the Second Amendment’s language—explaining its key terms—and surveyed the Amendment’s “historical background.” *Id.* at 578, 592. The Court had “no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right”—enjoyed by “the people”—“to keep and bear arms.” *Id.* at 595. The Court held that the phrase “to keep and bear Arms” means to “have” and “carry Arms.” *Id.* at 583–85. And “Arms” refers to implements used for offense or defense, adding that handguns, which are “overwhelmingly chosen by American society” for self-defense, fall squarely into this category. *Id.* at 581, 628.

Relying on the historical understanding of the Amendment, however, the Court recognized that the Second Amendment right was not an “unlimited” right “to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.*

at 592, 626. Similarly, the Court cautioned that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” *Id.* at 626–27 & n.27. But the Court acknowledged that it was not “undertak[ing] an exhaustive historical analysis ... of the full scope of the Second Amendment.” *Id.* at 626. And it did not cite any historical examples of these “longstanding” laws, explaining that there would be “time enough to expound upon the historical justifications for the[se] exceptions ... if and when those exceptions come before us.” *Id.* at 635. The Court then turned to the District of Columbia handgun ban at issue, finding that it was historically unprecedented and thus violated the Second Amendment. *Id.* at 629, 631–35.

Following *Heller*, the courts of appeals coalesced around a two-step framework for analyzing Second Amendment challenges that focused on the historical scope of the Second Amendment at step one and applied means-ends scrutiny at step two. *See, e.g., Kanter v. Barr*, 919 F.3d 437, 441–42 (7th Cir. 2019); *United States v. Focia*, 869 F.3d 1269, 1285 (11th Cir. 2017). Applying the means-end interest balancing, “lower courts rejected nearly all Second

Amendment claims based on reasoning that resembled that in Justice Breyer’s *Heller* dissent.” *Wolford*, 146 S. Ct. at 2043.

3. Then came *Bruen*. In *Bruen*, this Court held that the two-step framework adopted by the courts of appeals was “one step too many.” 597 U.S. at 19. Instead, the Court explained that *Heller* demanded a test “centered on constitutional text and history.” *Id.* at 22. Under this test, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 17. “The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. “Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Id.* (cleaned up).

Bruen explained that the appropriate analysis under the second step involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. A court must ascertain whether the new law is “relevantly similar” to laws that our tradition is understood to permit, “apply[ing] faithfully the balance struck by the founding generation to modern circumstances.” 597 U.S. at 29. The law need not be a “historical twin,” but analogical reasoning is also not a “regulatory

blank check.” *Id.* at 30. “How” and “why” the regulations burden the right to bear arms are central to this inquiry. *Id.* at 29.

Applying this two-step analysis, the Court held that the challenged New York law, which prohibited citizens from carrying handguns in public for self-defense, violated the Second and Fourteenth Amendments. *Bruen*, 597 U.S. at 38. In addition, the Court pointed out six other jurisdictions that had adopted “may-issue” statutory provisions like New York’s. *Id.* at 15. But in footnote 9, the Court clarified that “shall-issue” licensing regimes “under which ‘a general desire for self-defense is sufficient to obtain a [permit]’” are not immediately unconstitutional just because the may-issue regimes in seven identified jurisdictions are. *Id.* at 38 n.9. The Court explained,

[b]ecause these licensing regimes do not require applicants to show an atypical need for armed self-defense, they do not necessarily prevent ‘law-abiding, responsible citizens’ from exercising their Second Amendment right to public carry. ... Rather, it appears that these shall-issue regimes ... are designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’ ... And they likewise appear to contain only ‘narrow, objective, and definite standards’ guiding licensing officials, ..., rather than requiring the ‘appraisal of facts, the exercise of judgment, and the formation of an opinion,’ ... features that typify proper-cause standards like New York’s. That said, because any permitting scheme can be put toward abusive

ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry.

Id. at 38 n. 9 (internal citations omitted). The Court did not specify at which step—text or history—these constitutional challenges would turn.

4. The Court’s subsequent Second Amendment cases have been decided under *Bruen*’s second step, because in each case the challenged law easily clashed with the plain text of the Second Amendment. *See United States v. Hemani*, 146 S. Ct. 1677, 1686 (2026) (noting the government’s concession that § 922(g)(3)’s unlawful user provision burdens conduct presumptively protected by the Second Amendment); *Wolford*, 146 S. Ct. at 2047 (2026) (noting party agreement that “the plain text of the Second Amendment protects what petitioners want to do: carry handguns for self-defense”) (cleaned up); *United States v. Rahimi*, 602 U.S. 680, 693 (2024) (holding 18 U.S.C. § 922(g)(8) constitutional at *Bruen*’s second step).

In *Wolford*, the Court broke no new ground in explaining *Bruen*’s first step but reiterated that it requires nothing more than “a court [determining] whether the law before it clashes with the ‘plain text’ of the Amendment’s language.” 146 S. Ct. at 2043 (quot-

ing *Bruen*, 597 U.S. at 24). That inquiry, the Court clarified, “entails three subsidiary questions.” *Id.* “First, does the law apply to ‘the people’—which is to say, to ‘all members of the political community’?” *Id.* (quoting *Heller*, 554 U.S. at 580). “Second, does it concern any form of ‘Arms,’ i.e., any weapon customarily used for offensive or defensive purposes?” *Id.* (quoting *Heller*, 554 U.S. at 580). “Third, does the law place any restrictions on either the ‘keep[ing]’ (i.e., possession) or the ‘bear[ing]’ (i.e., carrying) of arms?” *Id.* (quoting *Bruen*, 597 U.S. at 32–33). If each question is answered in the affirmative, then the “challenged law falls within the plain text of the Second Amendment,” and “is presumptively unconstitutional—which means that it *may* violate the preexisting right that the Amendment codified.” *Id.* at 2044 (citation omitted) (emphasis in original). It then becomes the government’s burden “to show that its challenged law did not infringe the historical understanding of the codified right.” *Id.* While history is relevant to “elucidate how contemporaries understood the text,” courts cannot “smuggle additional limits, drawn from our regulatory tradition, into the plain-text stage of the inquiry.” *Id.* at 2054 & n.1 (Barrett, J., concurring).

B. Proceedings below.

1. When law enforcement agents executed a search warrant for the hotel room where Licon was residing, they found an AR-15 rifle manufactured by CORE that had a barrel length of nine inches. Federal law enforcement agents verified that neither Licon nor the AR-15 CORE rifle were registered in the NFRTR. Consequently, Licon was charged in a one-count indictment for having violated 26 U.S.C. §§ 5841, 5861(d), and 5871.

2. Licon moved to dismiss the indictment. He argued that, under the framework established by *Bruen*, the Second Amendment protects the right to possess a short-barreled rifle like an AR-15, and the government cannot show a relevantly similar founding-era tradition that conditions the possession of arms on registration with and taxation by the federal government. The district court denied his motion, concluding that a short-barreled rifle is not a bearable arm in common use under the plain text of the Second Amendment.

3. Licon pleaded guilty to the indictment without a plea agreement. He admitted that he had received and possessed a semiautomatic rifle with a barrel length under 16 inches in length, it was operable, and it was not registered to him in the NFRTR. The district court sentenced Licon to 78 months' imprisonment and three years' supervised release.

4. Licon raised his Second Amendment challenge on appeal. The Fifth Circuit affirmed because circuit precedent foreclosed Licon’s Second Amendment challenge. Pet. App. 1a. (citing *United States v. Peterson*, 161 F.4th 331, 337–41 (5th Cir. 2025), *cert. denied*, No. 25-1076, 2026 WL 1052030 (U.S. Apr. 20, 2026)).

In *Peterson*, the Fifth Circuit addressed a similar question—whether the NFA violated the Second Amendment as applied to an unregistered suppressor. 161 F.4th at 335. The Court acknowledged that *Bruen*’s two-step framework governed the Second Amendment analysis. *Id.* at 337. But under *Bruen*’s first step, the court concluded that “the NFA suppressor-licensing scheme is presumptively constitutional because it is a shall-issue regime.” *Id.* at 339. To reach this conclusion, the court relied on footnote 9 in *Bruen*’s opinion, reasoning that the NFA “is precisely the ‘objective[] and definite’ licensing criterion held permissible under *Bruen*.” *Id.* (quoting *Bruen*, 597 U.S. at 38 n.9). Keeping the burden on *Peterson*, the court concluded that, under *Bruen*’s first step, it was dispositive to his Second Amendment challenge that he “fail[ed] to make any showing as to how the requirement places an unconstitutional burden on his Second Amendment rights.” *Id.*

Reasons for Granting the Petition

I. Lower courts have badly misconstrued *Bruen*’s first step and created conflicts between courts.

1. The Second Amendment guarantees “the right of the people to keep and bear Arms.” In *NYSRPA v. Bruen*, this Court facially invalidated a New York public-carry licensing law that vested authorities with the discretion to deny otherwise-eligible applicants their Second Amendment rights. 597 U.S. 1, 13–15 (2022). As the Court explained, such a “may-issue” regime was not only atextual, but also ahistorical, as no “historical limitation ... operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public” *Id.* at 60.

In *Bruen*, the Court contrasted New York’s “may-issue” regime with the seeming “shall-issue” regimes of states whose laws were not at issue. *See* 597 U.S. at 38 n.9. While other states’ “shall-issue” regimes “appeared to contain only narrow, objective, and definite standards guiding licensing officials,” New York’s “may-issue” regime “required the appraisal of facts, the exercise of judgment, and the formation of an opinion” *Id.* (cleaned up). New York’s “open-ended” and “unchanneled discretion,” *Id.* at 79 (Kavanaugh, J. & Roberts, C. J., concurring), had historical—and therefore constitutional—significance.

But the significance of *Bruen*'s footnote 9 ended there. The Court's dictum, which qualified that other states' licensing regimes only "*appear[ed]* to operate" as shall-issue statutes, and only "*appear[ed]* to contain" certain features, simply acknowledges what was *not* at issue before the Court. 597 U.S. at 13 n.1, 38 n.9 (emphasis added). To suggest otherwise implies that the Court used a footnote to opine on the constitutionality of hundreds of laws across the Nation that were not at issue before it. *Cf.* U.S. Const. Art. III, § 2 (limiting the "judicial Power" to "Cases" and "Controversies").

Moreover, most of the 43 states identified in footnote 9 have either permitless (or "constitutional") carry regimes or require "shall-issue" licensure only for concealed carry and impose no licensing requirement on open carry. *See, e.g., Bruen*, 597 U.S. at 13 n.1 (collecting 25 states with permitless or constitutional carry laws at the time, which "allow certain individuals to carry handguns in public within the State without any permit whatsoever"); *cf.* 18 Pa. Cons. Stat. §§ 6106(a), 6109 (Pennsylvania law requiring license for concealed carry, while leaving open carry undisturbed). In other words, most of the "shall-issue" regimes *Bruen* discussed either do not require a license to possess or carry a protected arm or regulate only the manner of carry and do not require licensure

for public carry as a general matter. Thus, it certainly would be difficult “to suggest the unconstitutionality” of regimes that do not mandate licensure in the first place, and which offer licenses only as an option—primarily for reciprocity purposes with other states. *Bruen*, 597 U.S. at 38 n.9.

2. Yet contrary to these obvious limitations on the scope of *Bruen*’s footnote 9, some lower courts have latched onto the Court’s dicta, have badly mischaracterized it, and created a conflict with at least one state court of last resort. The Fourth, Fifth, and Ninth Circuits argue that *Bruen* definitively held that all “shall-issue” regimes are constitutional—not just for public carry, but also to acquire firearms in the first place. For instance, purporting to follow *Bruen*’s footnote 9, the Fourth Circuit has “h[e]ld that non-discretionary ‘shall-issue’ licensing laws are presumptively constitutional and generally do not ‘infringe’ the Second Amendment right to keep and bear arms” *Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 222 (4th Cir. 2024); *see also United States v. Speed*, 175 F.4th 272, 286 (4th Cir. 2026) (holding that the NFA regulations related to silencers are “presumptively constitutional” under *Bruen*’s first step). Likewise, the Ninth Circuit has held that “[f]ootnote 9 in *Bruen* creates a presumption of constitutionality” for the NFA’s scheme. *United States v. DeBorba*, 177 F.4th 1005, 1012–13 (9th

Cir. 2026). Prior to *Peterson*, another panel in the Fifth Circuit used *Bruen*'s footnote 9 to exempt from historical analysis age-related waiting periods on firearm acquisition. *McRorey v. Garland*, 99 F.4th 831, 836–37 (5th Cir. 2024). In these circuits, so long as the challenged firearm regulation can be labeled a “shall-issue” license—no matter how ahistorical, onerous, or unrelated to public carry it is—the government avoids its historical burden under *Bruen*'s second step unless the individual first proves that the regime “effectively denies the Second Amendment right” *Md. Shall Issue*, 116 F.4th at 223.

Peterson, the Fifth Circuit precedent relied upon below, similarly recasts the NFA as a “shall-issue” licensing scheme rather than a tax-and-registration regime, and thus “*Bruen*'s presumption of constitutionality ... applies to the NFA's application procedures.” Pet. App. 1a (citing *Peterson*, 161 F.4th at 337–41). Thus, the Fifth Circuit, like the Fourth and Ninth Circuits, absolves the government of its historical burden, and has once again converted *Bruen* into a “judge-empowering interest-balancing inquiry,” widely blessing preconditions on the threshold acts of acquisition and possession—not just public carry. *Bruen*, 597 U.S. at 22 (cleaned up); see also *United States v. Comeaux*, 179 F.4th 297, 304

(5th Cir. 2026) (Clement, J., joined by Duncan, J., concurring) (noting that *Peterson* “problems abound” because “[b]y transforming [*Bruen*’s] footnote nine’s dictum into doctrine” the effect of *Peterson* “resurrects a repudiated form of interest-balancing, as it now greenlights a court’s assessment of a law’s ‘abusiveness,’ which can bring a *Bruen* challenge to an end. But such interest-balancing provides cover for judicial policymaking”); *Speed*, 175 F.4th at 291 (Richardson, J., concurring) (respecting circuit precedent but noting that the “half-step between steps one and two [of the *Bruen* test] ... disregards both the Second Amendment’s plain text and Supreme Court precedent”).

This expansive application of *Bruen*’s footnote 9 is impossible to square with *Bruen*’s methodological holding, which requires the government to justify all firearm regulations as “consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 17. The Court’s recent decision in *Wolford* highlights that *Bruen*’s footnote 9 was not meant to be a “methodological landmine for lower courts to explode” when it elucidated in no uncertain terms that the plain text of the Second Amendment consists of “three subsidiary questions.” Brief Amicus Curiae of Gun Owners of America et al. 18, *Wolford v. Lopez*, No. 24-1046 (Nov. 24, 2025) (first quote); *Wolford*, 146 S. Ct. at 2043 (second quote). Those

“three subsidiary questions” require a court to answer only whether the challenged law applies to “the people” and interferes with the individual right to “keep and bear” “Arms.” *Id.* Courts cannot—as the Fifth Circuit and its sister circuits have done—“smuggle additional limits, drawn from our regular tradition, into the plain-text stage of the inquiry.” *Id.* at 2054 n.1 (Barrett, J., concurring).

In contrast to the Fourth, Fifth, and Ninth Circuits, at least one state court of last resort has limited *Bruen*’s first step to its “three subsidiary questions.” *Wolford*, 146 S. Ct. at 2043. In *Commonwealth v. Marquis*, 252 N.E.3d 991 (2025), the Massachusetts Supreme Judicial Court upheld the state’s nonresident firearm licensing scheme utilizing *Bruen*’s two-step framework, finding that the scheme comports with our Nation’s historical tradition of firearms regulation under *Bruen*’s second step. *Id.* at 997–98. Under *Bruen*’s first step, the court reiterated that the “textual question depends on whether the persons subjected to the regulation at issue are members of ‘the people,’ whether the weapons at issue are ‘[a]rms,’ and whether the specific conduct at issue qualifies as ‘keep[ing]’ or ‘bear[ing]’ within the meaning of the Second Amendment.” *Id.* at 1007–08. The court acknowledged—and rejected—the attempt to “include a fourth question in the step one inquiry:

namely, whether the relevant regulation constitutes an ‘infringement.’” *Id.* at 1008 n.12 (citing *Md. Shall Issue*, 116 F.4th at 220–22). The court reasoned that, because any such inquiry “often implicate[s] questions about consistency with history and tradition,” it was proper to “maintain the three-part analysis of [*Bruen*’s] step one.” *Id.*; see also *McCoy v. Jacobson*, 176 F.4th 1055, 1057 (8th Cir. 2026) (noting that the “correct manner of analyzing” the constitutionality of “shall-issue permitting regimes” is “subject to some debate”).

3. A conflict also exists over the characterization of the NFA as a “shall-issue licensing regime.” See *DeBorba*, 177 F.4th at 1012; *Speed*, 175 F.4th at 286; *Peterson*, 161 F.4th at 339–40. Central to *Peterson*’s holding that the NFA is presumptively constitutional under the plain text of the Second Amendment—which controlled the panel’s opinion below—is its conclusion that the NFA is a “shall-issue” licensing regime. 161 F.4th at 339. The Fifth Circuit reached this conclusion in *Peterson* based on a “conce[ssion] at oral argument” and *Bruen*’s footnote 9. *Id.* But the NFA is nothing like the sort of “shall-issue” licensing schemes the Court discussed in *Bruen*. Citing 26 U.S.C. § 5822, *Peterson* claims that “[t]he NFA provides that the [Bureau of Alcohol, Tobacco, Firearms and Explosives] will deny a firearm-making application if the ‘making or

possession of the firearm would place the person making the firearm in violation of law.” *Id.* The related statutory provision for transferring NFA firearms is similarly worded. *See* 26 U.S.C. § 5812(a) (“Applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.”).

But these provisions contain no corollary directive that applications “shall be approved” if an applicant meets the statutory criteria. Rather, they simply direct what must happen if an applicant is ineligible, remaining silent as to all other circumstances. The NFA therefore stands in stark contrast to the “shall-issue” licensing regimes *Bruen* discussed, which contain affirmative language directing authorities to issue licenses—not just deny them. *See, e.g.*, 18 Pa. Cons. Stat. § 6109(g) (“Upon the receipt of an application for a license to carry a firearm, the sheriff shall, within 45 days, issue or refuse to issue a license ...”).

In contrast with the Fourth, Fifth, and Ninth Circuits, the D.C. Circuit has explained that the NFA—and § 5812 in particular—is a provision that “delegate[s] broad authority to the Secretary to promulgate regulations governing applications under the [NFA].” *Lonmont v. O’Neill*, 285 F.3d 9, 16 (D.C. Cir. 2002). Section 5812,

which governs transfers, “provide[s] that applications ‘shall be denied[,]’” but it does not “restrict[] the Secretary’s broad power to grant or deny applications in any other respect.” *Id.* at 17. Such a “broad power to grant or deny” is irreconcilable with the “narrow, objective, and definite standards’ guiding licensing officials” in quintessentially “shall-issue” licensing regimes. *Bruen*, 597 U.S. at 38 n.9.

* * * *

Bruen’s “shall-issue” footnote 9 has become an easy “out” for judges to avoid historical analysis. The Court should grant the Petition to solve the conflict and clarify that no extra “presumption of constitutionality” inquiry exists under *Bruen*’s first step and that, once the “three subsidiary questions” are met, all firearms regulations are subject to historical scrutiny under *Bruen*’s second step.

II. This is a critically important and recurring question.

The Court should grant the petition because the question is critically important and recurring. This case is an ideal vehicle for addressing this question. The case cleanly presents a purely legal issue. There are no jurisdictional problems, factual disputes, or preservation issues. Licon thoroughly briefed his Second Amendment challenges in both the district court and the court of appeals.

The district court and Fifth Circuit squarely rejected both challenges under *Bruen*'s first step. At minimum, the Court should hold Licon's petition pending the decision in *Viramontes v. Cook County, IL*, No. 25-238 (U.S.) and *Grant v. Higgins*, No. 25-566 (U.S.), which asks whether an AR-15 is a protected arm.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted.

MAUREEN SCOTT FRANCO
Federal Public Defender
KRISTIN L. DAVIDSON
Assistant Federal Public Defender
Counsel of Record
OFFICE OF THE FEDERAL
PUBLIC DEFENDER
WESTERN DISTRICT OF TEXAS
Counsel for Petitioner

August 13, 2026