No. 24-1046

In the Supreme Court of the United States

JASON WOLFORD, ET AL., PETITIONERS

v.

ANNE E. LOPEZ, ATTORNEY GENERAL OF HAWAII

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Second Amendment allows a State to make it unlawful for concealed-carry license-holders to carry firearms on private property open to the public without the property owner's express authorization.

STATEMENT OF COMPLIANCE WITH SUPREME COURT RULE 37.2

The counsel of record for all parties received timely notice of the United States' intent to file this amicus curiae brief at least ten days before the due date.

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in the preservation of the right to keep and bear arms and in the proper interpretation of the Second Amendment.

INTRODUCTION

From the earliest days of the republic, individuals have been free to carry firearms on private property unless the property owner directs otherwise. And in *NYSRPA* v. *Bruen*, 597 U.S. 1 (2022), this Court confirmed that restrictions on carrying firearms for lawful purposes such as self-defense violate the Second Amendment unless they fit within a discernible historical tradition. Yet, after *Bruen*, five States, including Hawaii, inverted the longstanding presumption and enacted a novel default rule under which individuals may carry firearms on private property only if the owner provides express authorization, such as by posting a

conspicuous sign allowing guns. Violations constitute misdemeanors punishable by up to a year in prison. Because most property owners do not post signs either allowing or forbidding guns, Hawaii's default rule functions as a near-complete ban on public carry. A person carrying a handgun for self-defense commits a crime by entering a mall, a gas station, a convenience store, a supermarket, a restaurant, a coffee shop, or even a parking lot. Yet, in the decision below, the Ninth Circuit upheld that rule against a Second Amendment challenge.

That decision warrants this Court's review. Hawaii's novel default rule defies—indeed, effectively nullifies—the "general right to publicly carry arms" that *Bruen* recognized. 597 U.S. at 31. Someone carrying a firearm for self-defense cannot run errands without fear of criminal sanction. In practice, only "those who aimlessly wander the streets" may exercise their right to bear arms. Pet. App. 181a (VanDyke, J., dissenting).

That is no accident. The structure and operation of Hawaii's law reveal that the law serves no legitimate purpose and instead seeks only to inhibit the exercise of the right to bear arms. Hawaii's default rule applies only to firearms—not to anything else that a person might bring with him into a privately owned area that is open to the public. The rule also requires owners who want to allow guns on their premises to satisfy a special standard of clarity that does not apply when they consent to other conduct. And the rule contains exemptions —including for off-duty police officers, retired police officers, and state employees going to and from work—that would make no sense if Hawaii were trying to protect private property rights. Those exceptions only make sense if Hawaii were trying to limit arms-bearing to select, favored groups and to exclude everyone else.

Certiorari is manifestly warranted. The Ninth Circuit's decision conflicts with *Bruen*'s recognition that the Nation does not have "a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense." 597 U.S. at 38. The Ninth Circuit also acknowledged that its decision conflicts with the Second Circuit's decision in *Antonyuk* v. *James*, 120 F.4th 941 (2024), cert. denied, No. 24-795 (Apr. 7, 2025), that a similar New York default rule violated the Second Amendment. See Pet. App. 64a. Eight judges dissented from the Ninth Circuit's refusal to hear this case en banc, correctly recognizing that Hawaii's law "largely vitiate[s]" the right to carry arms in public, *id.* at 169a (Collins, J., dissenting), and "practically accomplish[es] close to the same thing rejected in *Bruen*," *id.* at 171a (VanDyke, J., dissenting). Five States embracing more than a fifth of the Nation's population have already adopted that type of *Bruen*-nullifying rule, and the decision below invites other jurisdictions in the Nation's largest circuit to do likewise. This Court should grant the petition for a writ of certiorari and reverse.

STATEMENT

1. Until *NYSRPA* v. *Bruen*, 597 U.S. 1 (2022), Hawaii maintained a may-issue regime for licenses to carry firearms. See *Wilson* v. *Hawaii*, 145 S. Ct. 18, 19 (2024) (statement of Thomas, J.). Individuals could apply for carry licenses only in narrow circumstances, and police chiefs retained broad discretion to deny applications. See *ibid.* In practice, that may-issue regime operated more like a no-issue regime. In 2018, the Ninth Circuit noted that Hawaii had issued "only four concealed carry licenses" to private citizens "in the past eighteen years" and that, in one county, "not a single concealed carry license ha[d] ever been granted." *Young* v. *Hawaii*, 896

F.3d 1044, 1071 n.21 (emphasis omitted), rev'd, 992 F.3d 765 (9th Cir. 2021) (en banc), judgment vacated, 142 S. Ct. 2895 (2022).

In *Bruen*, this Court held that the Second Amendment guarantees a "general right to publicly carry arms for self-defense" and that may-issue licensing regimes for carrying handguns—like Hawaii's pre-*Bruen* regime —violate that right. See 597 U.S. at 31; see *id.* at 70. The Hawaii State Legislature responded by enacting Act 52, a statute that overhauled the State's laws governing the carrying of firearms. See Act of June 2, 2023, No. 52, 2023 Haw. Sess. Laws 113. As relevant here, Act 52 "establishes a default rule with respect to carrying firearms on private property of another person." § 1, 2023 Haw. Sess. Laws 114. The rule's stated purpose is to protect "the right of private individuals and entities to choose for themselves whether to allow or restrict the carrying of firearms on their property." *Ibid.*

Specifically, the Act provides that a licensee "shall not intentionally, knowingly, or recklessly enter or remain on private property of another person while carrying" a firearm, "unless the person has been given express authorization to carry the firearm on the property by the owner, lessee, operator, or manager." Haw. Rev. Stat. § 134-9.5(a). That restriction applies whether the firearm is "concealed or unconcealed," "loaded or unloaded," and "operable or not." *Ibid.* An owner may allow firearms only by providing "[u]nambiguous written or verbal authorization" or by posting "clear and conspicuous signage at the entrance of the building or on the premises." *Id.* § 134-9.5(b). Carrying a firearm without the requisite permission is a misdemeanor, punishable by up to a year of imprisonment. See *id.* § 134-9.5(e), 706-663.

Act 52 exempts various groups from that private-property default rule. See Haw. Rev. Stat. §§ 134-9.5(d), 134-11(a). For example, the rule does not apply to "state and county law enforcement officers" (even off duty). *Id.* § 134-11(a)(1). Nor does it apply to federal, state, or local employees while on duty or while going to or from their workplaces, if their jobs "require them to be armed." *Id.* § 134-11(a)(4). In addition, the rule applies only to those who carry firearms "pursuant to a license issued under" Hawaii law; it does not cover individuals who may lawfully carry firearms without such a license, such as active or retired police officers visiting from other States. *Id.* § 134-9.5(a); see 18 U.S.C. 926B, 926C.

2. Petitioners are three Hawaii concealed-carry license-holders and a gun-rights advocacy organization. See Pet. App. 9a-10a. Invoking 42 U.S.C. 1983, petitioners sued the Hawaii Attorney General in federal district court. See Pet. App. 10a. Petitioners claimed that various provisions of Act 52, including the private-property default rule, violate the Second Amendment. See *ibid.*

The district court granted a temporary restraining order to petitioners, holding that the private-property default rule likely violates the Second Amendment as applied to property "held open to the public." Pet. App. 157a; see *id.* at 82a-167a. The court explained that individuals have traditionally been free to carry firearms on such property, unless the proprietor affirmatively directs otherwise. See *id.* at 152a. The court determined that history did not support Hawaii's inversion of that traditional presumption. See *id.* at 156a. The parties then agreed to, and the court approved, a stipulation converting the temporary restraining order to a preliminary injunction. *Id.* at 215a-218a.

3. The Ninth Circuit affirmed in part and reversed in part. Pet. App. 1a-81a. As relevant here, the court reversed the portion of the injunction prohibiting enforcement of the private-property default rule. See *id.* at 56a-64a. Citing four historical laws that prohibited carrying firearms on "subsets of private land" without the owner's consent, and two historical laws that purportedly prohibited carrying firearms on "*any* private property" without the owner's consent, the court discerned a "tradition of arranging the default rules that apply specifically to the carrying of firearms onto private property." *Id.* at 60a-62a.

The court of appeals denied petitioners' petition for panel rehearing and rehearing en banc. Pet. App. 168a-202a. Judge VanDyke, joined by five other judges, issued a dissenting opinion in which he argued that the private-property default rule "effectively nullifie[s] the Second Amendment rights" of Hawaiians and "has no grounding in the historical record." *Id.* at 181a, 189a; see *id.* at 170a-202a. Judge Collins, joined by one other judge, dissented for "many of the same reasons set forth by Judge VanDyke." *Id.* at 169a; see *id.* at 169a-170a.

ARGUMENT

The Second Amendment, which binds the States by virtue of the Fourteenth 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." U.S. Const. Amend. II. In *NYSRPA* v. *Bruen*, 597 U.S. 1 (2022), this Court held that the Second Amendment guarantees ordinary Americans a "general right to publicly carry firearms" for lawful purposes such as self-defense. *Id.* at 31. As eight judges correctly recognized in dissenting from the de-

nial of rehearing en banc, Hawaii's private-property default rule violates—in fact, functionally eliminates—that right. The Ninth Circuit acknowledged that its decision upholding the rule conflicts with the Second Circuit's decision striking down a similar New York law in *Antonyuk* v. *James*, 120 F.4th 941 (2024), cert. denied, No. 24-795 (Apr. 7, 2025). See Pet. App. 64a. Laws like Hawaii's have now been enacted in five States with a combined population of more than 75 million—*i.e.*, more than a fifth of the total population of the United States. This Court should grant the petition for a writ of certiorari, limited to the first question presented.

A. Hawaii's Private-Property Default Rule Violates The Second Amendment

1. As this Court recently reaffirmed, a law regulating arms-bearing conduct complies with the Second Amendment only if the government can show that the law comports with the "principles" underlying "'the Nation's historical tradition of firearm regulation.'" See *United States* v. *Rahimi*, 602 U.S. 680, 689, 692 (2024) (citation omitted). "Why and how the regulation burdens the right are central to this inquiry." *Id.* at 692.

Under that test, the government bears the burden of showing that the challenged statute "regulates arms-bearing for a permissible reason." *Rahimi*, 602 U.S. at 692. The regulation must serve a legitimate purpose; legislatures may not regulate arms simply to frustrate or inhibit the exercise of Second Amendment rights. For example, while a State may adopt a licensing scheme that is "designed to ensure" that those bearing arms are qualified to do so, States cannot pursue "abusive ends" by using "lengthy wait times" or "exorbitant fees" to thwart the public-carry right. *Bruen*, 597 U.S. at 38 n.9.

Even when a law regulates arms-bearing for a valid reason, the government must show that the "burden [it] imposes" "fits within our regulatory tradition." *Rahimi*, 602 U.S. at 698. While that tradition permits certain narrow restrictions on who may carry arms, where and how they may carry them, and what types of arms they may carry, it does not permit laws that "broadly restrict arms use by the public generally." *Ibid.* "American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense." *Bruen*, 597 U.S. at 38. Applying that principle, *Bruen* struck down a state law requiring carry-license applicants to show a special need for self-protection, explaining that the law "operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public." *Id.* at 60.

Those decisions reflect the Second Amendment's original meaning. The founders viewed England's game laws, which disarmed the bulk of the people on the pretext of preventing poaching, as paradigmatic examples of abridgments of the traditional right to keep and bear arms. See *District of Columbia* v. *Heller*, 554 U.S. 570, 606-607 (2008). In explaining why those laws were objectionable, commentators noted that the laws' true purpose and practical effect were to broadly prevent the people from possessing firearms.[1] That history confirms that modern laws with similar purposes or effects blatantly violate the Second Amendment.

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[1] See, *e.g.*, 1 St. George Tucker, *Blackstone's Commentaries* App. 300 (1803) ("In England, the people have been disarmed, generally, under the specious pretext of preserving the game."); 2 William Blackstone, *Commentaries on the Laws of England* 412 (10th ed. 1787) ("[D]isarming the bulk of the people * * * is a reason oftner meant, than avowed, by the makers of forest or game laws.").

Post-ratification tradition points the same way. In the 19th century, courts usually evaluated the validity of firearms laws by asking whether they fell within the scope of the police power. See William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 Notre Dame L. Rev. 1467, 1489 (2024). Under that doctrine, legislatures could enact "reasonable regulations" of the "manner" or "mode" of exercising a right but could not "subvert or injuriously restrain" "the right itself." *Yick Wo* v. *Hopkins*, 118 U.S. 356, 371 (1886) (citation omitted). That doctrine preluded laws that, "under the pretence of regulating," sought "a destruction of the right." *State* v. *Reid*, 1 Ala. 612, 616 (1840); see Baude & Leider 1491 (legislatures could not "restrict [the] right simply out of disagreement with the value of the right"). That doctrine also precluded laws that broadly negated the right—for example, laws that "require[d] arms to be so borne as to render them wholly useless for the purpose of defence." *Reid*, 1 Ala. at 616; see Baude & Leider 1491 ("restrictions could not be so severe as to amount to a nullification of the right").

This Court has applied similar tests across other areas of constitutional law. The rule in a range of contexts is that laws regulating constitutionally protected conduct must serve legitimate purposes and may not seek simply to inhibit the exercise of constitutional rights.[2] The Court also has distinguished, in a range of contexts, between reasonably regulating the manner of exercis-

[2] See, *e.g.*, *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 533 (1993) (Free Exercise Clause forbids laws whose "object or purpose" is the "suppression of religion"); *Sorrell* v. *IMS Health Inc.*, 564 U.S. 552, 566 (2011) (Free Speech Clause forbids laws whose "purpose" is "to suppress [protected] speech").

ing a right and nullifying the right itself.[3] Those principles apply equally to the Second Amendment.

2. Hawaii's private-property default rule violates those basic principles. Under traditional property law, a person who enters private property open to the public does not need specific permission from the owner to carry a gun—or, for that matter, to carry anything else, or to engage in any other constitutionally protected conduct, such as prayer or speech. See Ian Ayres & Spurthi Jonnalagadda, *Guests with Guns: Public Support for "No Carry" Defaults on Private Land*, 48 J.L. Med. & Ethics 183, 184 (2020). It is instead up to the owner to impose special restrictions on what members of the public may bring with them. Act 52 inverts that traditional default rule for firearms alone. A person who seeks to carry firearms on private property open to the public may do so only with the owner's express authorization, on pain of committing a misdemeanor. Yet the same person can carry all manner of other things—from chainsaws and brass knuckles to megaphones and picket signs—without express permission. That special default rule for firearms violates the Second Amendment in both why and how it regulates arms-bearing conduct.

a. Hawaii cannot identify any "permissible reason" to adopt a special guns-only default rule. *Rahimi*, 602 U.S. at 692. The rule transparently serves a forbidden

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[3] See, *e.g.*, *City of Ladue* v. *Gilleo*, 512 U.S. 43, 55, 56 (1994) (Free Speech Clause permits reasonable "time, place, or manner" regulations, but forbids regulations that "completely" "foreclose an entire medium of expression"); *Delaware* v. *Van Arsdall*, 475 U.S. 673, 679 (1986) (Confrontation Clause permits "reasonable limits" on cross-examination, but forbids "cutting off all questioning" about a witness's bias).

purpose: to "eviscerate the general right to publicly carry arms for self-defense." *Bruen*, 597 U.S. at 31; see Robert Leider, *Pretextually Eliminating the Right to Bear Arms through Gerrymandered Property Rules* (Dec. 23, 2022).[4]

In Act 52, the Hawaii Legislature claimed that the private-property default rule protects "the right of private individuals and entities to choose for themselves whether to allow or restrict the carrying of firearms on their property." § 1, 2023 Haw. Sess. Laws 114. But that account of the rule's purpose is implausible. The traditional default rule already fully protects property owners' rights: The owner gets to decide whether to open his property to the public and whether to impose restrictions or conditions on entry. Any owner who wants to invite the public but exclude firearms need only post a "no guns" sign—just as an owner who wants to exclude pets would post a "no pets" sign. See Restatement (Second) of Torts § 168 (1965) ("A conditional or restricted consent to enter land creates a privilege to do so only in so far as the condition or restriction is complied with.").

Hawaii's singling out of firearms confirms that the default rule has nothing to do with protecting property rights. For everything but firearms, Hawaii presumes that owners welcome it on their property unless they affirmatively object. Individuals entering property open to the public presumptively may bring in bicycles, roller skates, protest banners, muddy shoes, dripping umbrellas, melting ice cream cones, open containers of alcohol, boomboxes, dogs, and many other things that owners might not want on their premises. Only if some-

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[4] https://firearmslaw.duke.edu/2022/12/pretextually-eliminating-the-right-to-bear-arms-through-gerrymandered-property-rules

one wants to carry a gun must he obtain "express authorization" under the arbitrary presumption that all property owners would view guns differently. Haw. Rev. Stat. § 134-9.5(b). That discriminatory rule manifestly seeks to suppress gun rights, not to protect property rights. It is no more constitutional than a hypothetical law requiring political campaigners (and only campaigners) to obtain a homeowner's express authorization before walking up the front path and knocking on the door.

Further undercutting Act 52's professed rationale, the statute imposes a heightened burden on owners who want to allow firearms on their premises. Under the normal rules of property law, a person may manifest consent through "words or acts"—or even through "silence or inaction, if the circumstances or other evidence indicate that the silence or inaction is intended to give consent." Restatement (Second) of Torts § 892, cmt. (b) (1979). Under Act 52, by contrast, an owner may allow firearms on his property only by giving "[u]nambiguous written or verbal authorization" or by posting "clear and conspicuous signage." Haw. Rev. Stat. § 134-9.5(b). If a person asks an owner whether he may carry a gun, and the owner nods his head in approval, the person *still* may not bring his gun inside. That result confirms that Hawaii is simply trying to make it harder for people to carry guns.

On top of all that, Act 52 contains exemptions that would be inexplicable if the default rule's purpose were to protect property rights. The Act exempts "state and county law enforcement officers," whether on or off duty. Haw. Rev. Stat. § 134-11(a)(1). The Act also exempts federal, state, or local employees while on duty or going to or from work, if their duties "require them

to be armed." *Id.* § 134-11(a)(4). And the Act does not apply to certain active or retired police officers visiting from other States. See p. 5, *supra*. Hawaii does not explain why off-duty police officers, state employees stopping for coffee on their way to work, or out-of-state retired police officers could override property rights that everyone else must respect, or why property owners would presumptively draw the lines differently for those individuals if their objection were to having guns on their property at all. The exemptions raise "serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring" the exercise of a constitutional right. *Brown* v. *EMA*, 564 U.S. 786, 802 (2011).

The scope and operation of Hawaii's default rule thus establish that the rule serves no legitimate objective and that it instead seeks simply to impede the carrying of firearms. That is plainly unconstitutional.

b. Hawaii's default rule also violates the Second Amendment in *how* it regulates the carrying of arms. The rule imposes a far more severe burden than precedent and tradition permit.

In contrast to traditional gun regulations that focus on specific categories of people, specific places, specific types of weapons, or specific modes of carry, Hawaii's default rule "broadly restrict[s] arms use by the public generally." *Rahimi*, 602 U.S. at 698. Unlike laws that restrict arms-bearing by those who "present a special danger of misuse," *ibid.*, Hawaii's rule applies to ordinary, law-abiding citizens who hold carry licenses, see Haw. Rev. Stat. § 134-9.5(a). Unlike laws excluding arms from "sensitive places," *Bruen*, 597 U.S. at 30, Hawaii's rule covers just about any private property, whether "residential, commercial, industrial, agricul-

tural, institutional, or undeveloped," Haw. Rev. Stat. § 134-9.5(c), and whether the property is generally open to the public or not, see *ibid*. Unlike laws restricting "dangerous and unusual weapons," *Bruen*, 597 U.S. at 47, Hawaii's rule applies to any type of "firearm," including those commonly used for self-defense, Haw. Rev. Stat. § 134-9.5(a). And unlike laws regulating "the manner of carry," *Bruen*, 597 U.S. at 38, Hawaii's rule applies whether the firearm is "operable or not," "loaded or unloaded," and "concealed or unconcealed," Haw. Rev. Stat. § 134-9.5(a). This Court has already determined that "there is no historical basis" for such "broad prohibitions." *Bruen*, 597 U.S. at 50.

As a practical matter, the default rule operates not just as a broad restriction but as a near-complete ban. Because most owners do not post signs either allowing or forbidding firearms, the rule effectively means that ordinary citizens may not carry firearms on any private property, even property open to the public. That restriction deprives individuals who want to exercise their Second Amendment rights of their ability to "go about their daily lives." Pet. App. 181a (VanDyke, J., dissenting). A person carrying a firearm cannot pick up a cup of coffee, get lunch at a drive-through restaurant, stop for gas, enter a parking lot, go into a store, buy groceries, or engage in other routine tasks that require setting foot on private property. When asked where people could carry firearms under a New York law that resembles Act 52, the Governor of New York answered, "probably some streets." Luis Ferré-Sadurní & Grace Ashford, *N.Y. Democrats to Pass New Gun Laws in Re-*

sponse to Supreme Court Ruling, N.Y. Times, June 30, 2022.[5]

That near-complete ban is flatly inconsistent with *Bruen* and the long history underlying it. *Bruen* recognized that an "ordinary, law-abiding citizen" has a "general right to publicly carry arms for self-defense." 597 U.S. at 9, 31. Just as States may not limit that right to those who show "a special need for self-defense," *id.* at 11, States may not limit the right to "those who aimlessly wander the streets," Pet. App. 181a (VanDyke, J., dissenting).

3. The court of appeals upheld the private-property default rule on the ground that States had enacted a handful of purportedly analogous restrictions during the 18th and 19th centuries. See Pet. App. 60a-68a. But the court's approach is inconsistent with *Rahimi*, which held that the relevant question is "whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." 602 U.S. at 692 (emphasis added). The Ninth Circuit's identification of a small set of poor analogues falls short of that standard.

In fact, the court of appeals' historical analysis fails on its own terms. The court cited six laws—a 1721 Pennsylvania law, 1722 and 1771 New Jersey laws, a 1763 New York law, an 1865 Louisiana law, and an 1893 Oregon law—setting default rules for carrying firearms on certain private property. See Pet. App. 60a-61a. Under this Court's cases, however, the state bears the burden of showing that a firearms regulation rests on a "well-established" historical tradition. *Bruen*, 597 U.S. at 30. Hawaii cannot meet that burden merely by pulling "scattered cases or regulations," *Rahimi*, 602 U.S.

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[5] https://nytimes.com/2022/06/30/nyregion/handgun-concealed-carry-ny-html

at 738 (Barrett, J., concurring), from "seemingly random time period[s]," *Samia* v. *United States*, 599 U.S. 635, 656 (2023) (Barrett, J., concurring in part and concurring in the judgment). In *Bruen*, therefore, the State could not satisfy its burden by identifying "three colonial regulations," "a single state statute and a pair of state-court decisions" from the mid-19th century, and a "handful of temporary territorial laws that were enacted nearly a century after the Second Amendment's adoption." 597 U.S. at 46, 65, 67-68 (emphasis omitted). The evidence cited by the court of appeals—four colonial laws, one mid-19th-century law, and one law enacted more than a century after the Second Amendment's adoption—is similarly inadequate to justify Hawaii's sweeping prohibition.

Moreover, most of the cited laws do not go nearly as far as Hawaii's, and so they are poor analogues. The court of appeals acknowledged that four of the six laws—the 1721 Pennsylvania law, the 1722 New Jersey law, the 1763 New York law, and the 1893 Oregon law—applied only to "subsets of private land, such as plantations or enclosed lands," sought "to prevent poaching," and "likely did not apply to property that was generally open to the public." Pet. App. 60a-61a. And although the court thought that the 1771 New Jersey law applied more broadly, its text and context suggest that it, too, was limited "to private land not open to the public." *Antonyuk*, 120 F.4th at 1047. Such "narrow" historical precursors cannot justify "a broad prohibitory regime." *Rahimi*, 602 U.S. at 700. Just as historical laws excluding arms from sensitive places cannot justify modern laws banning arms everywhere, see *Bruen*, 597 U.S. at 30-31, so too laws presumptively excluding firearms from certain types of private land to combat poaching

cannot justify modern laws presumptively prohibiting the carrying of firearms for self-defense on all private property open to the public.

That leaves the 1865 Louisiana statute that made it unlawful for anyone "to carry fire-arms on the premises or plantations of any citizen, without the consent of the owner." Act of Dec. 20, 1865, No. 10, § 1, 1865 La. Acts 14. Louisiana enacted that statute immediately after the Civil War, before its readmission to the Union. See Pet. App. 188a (VanDyke, J., dissenting). During that period, fears of an uprising among newly freed slaves prompted "systematic efforts" in the old Confederacy to disarm black people. *McDonald* v. *City of Chicago*, 561 U.S. 742, 771 (2010). The Louisiana law cited by the court of appeals formed part of those efforts. As the State's Reconstruction Governor later explained, "[t]his [law], of course, was aimed at the freedmen." Henry Clay Warmoth, *War, Politics and Reconstruction: Stormy Days in Louisiana* 278 (1930). Far from supporting Hawaii's position, Louisiana's law is "probative of what the Constitution does *not* mean." *Rahimi*, 602 U.S. at 720 (Kavanaugh, J., concurring).

B. The Court Of Appeals' Decision Warrants Review

1. This Court should grant review because, as eight judges correctly recognized, Hawaii's law "largely vitiate[s]" *Bruen*, Pet. App. 169a (Collins, J., dissenting), and "effectively nullifie[s]" the right to bear arms, *id.* at 181a (VanDyke, J., dissenting). *Bruen* explained that the Second Amendment secures a "general right to publicly carry arms for self-defense," but that our regulatory tradition includes restrictions identifying "exceptional circumstances under which one could not carry arms." 597 U.S. at 31, 38. The court of appeals turned that analysis upside down, upholding a law that prohib-

its public carry in general and that effectively limits the right to bear arms to narrow circumstances.

Review is especially warranted because Hawaii is just one of multiple States that have enacted such laws since *Bruen*. *Bruen* identified six outlier States that had maintained the type of may-issue licensing regime that the Court struck down. 597 U.S. at 15. Five of those States—Hawaii, California, Maryland, New Jersey, and New York—then reacted to *Bruen* by enacting the type of default rule at issue here. See Haw. Rev. Stat. § 134-9.5(a); Cal. Penal Code § 26230(a)(26); Md. Code Ann. Crim. Law § 6-411(d); N.J. Stat. Ann. § 2C:58-4.6(a)(24); N.Y. Penal Law § 265.01-d(1). Those laws all include gerrymandered exemptions showing that their real purpose is to confine arms-bearing to favored groups rather than to protect property rights. See, *e.g.*, N.J. Stat. Ann. § 2C:39-6(a)(12), 58-4.6(a)(24) (exempting prosecutors and judges).

The Ninth Circuit concluded in a companion case that California's law violates the Second Amendment because it allows firearms on private property "*only* if the owner has consented in one specific way: posting signs of a particular size." Pet. App. 63a. But the court's distinction between Hawaii's and California's laws "strains the proverbial gnat while swallowing the camel." *Id.* at 180a n.1 (VanDyke, J., dissenting). The "overwhelming impact" of the two States' novel default rules arises from "the reversal of the presumption," not from the "nuances of how someone might go about restoring permission to bear a firearm on [his] property." *Ibid.* Under the decision below, California need make only a minor tweak to its default rule to resume nullifying the public-carry rights of about 30 million adults.

2. The Ninth Circuit's decision independently warrants review because it conflicts with the Second Circuit's in *Antonyuk*. There, the Second Circuit considered a New York law that, like the Hawaii law here, created "a default presumption that carriage on any private property is unlawful." *Antonyuk*, 120 F.4th at 1042. The Second Circuit held, in reviewing a preliminary injunction, that the law likely violated the Second Amendment. See *id.* at 1044-1048. The court observed that New York's law "functionally create[d] a universal default presumption against carrying firearms in public places, seriously burdening lawful gun owners' Second Amendment rights" to an extent "entirely out of step" with tradition. *Id.* at 1047. New York cited essentially the same historical evidence that Hawaii cited here, but the Second Circuit concluded that New York "ha[d] not carried its burden under *Bruen*." *Ibid.*

The Ninth Circuit acknowledged that circuit conflict, stating that its decision "differ[ed] from" the Second Circuit's and that it "respectfully disagree[d] with" that court's analysis. Pet. App. 64a. Judge VanDyke, too, noted that the Ninth Circuit's decision "results in a split with the Second Circuit, which ruled that the application of New York's similar private-property law was unconstitutional." *Id.* at 171a (VanDyke, J., dissenting).

3. Finally, granting review in this case would allow this Court to provide much-needed guidance to lower courts. Since the foundational decisions of *Heller* and *McDonald* in 2008 and 2010, the Court has granted plenary review in and decided only two Second Amendment cases: *Bruen* and *Rahimi*.

Without a developed body of precedent on which to rely, lower courts "have struggled" to interpret the Second Amendment. *Rahimi*, 602 U.S. at 739 (Barrett, J.,

concurring); see *id.* at 708 (Sotomayor, J. concurring) (courts are "struggling"); *id.* at 747 (Jackson, J., concurring) (courts are "at sea"). *Rahimi* provided valuable guidance, but multiple Justices have recognized the need for more.[6] So, in the year since *Rahimi*, have many judges on the courts of appeals[7] and the district courts.[8]

Rahimi began the process of clarifying *who* may possess arms. See 602 U.S. at 698, 701-702. This case affords an opportunity to begin addressing *where* arms may be carried. And the Court should, in an appropriate case, also provide a framework for evaluating *what*

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[6] See, *e.g.*, *Harrel* v. *Raoul*, 144 S. Ct. 2491, 2492 (2024) (statement of Thomas, J.) ("[T]his Court must provide more guidance."); *Rahimi*, 602 U.S. at 736 (Kavanaugh, J., concurring) ("Second Amendment jurisprudence is still in the relatively early innings."); *id.* at 746 (Jackson, J., concurring) ("[I]t is becoming increasingly obvious that there are miles to go.").

[7] See, *e.g.*, *United States* v. *Canada*, 123 F.4th 159, 161 (4th Cir. 2024) ("[C]ourts (including this one) are grappling with many difficult questions."); *Yukutake* v. *Lopez*, 130 F.4th 1077, 1104 (9th Cir. 2025) (Lee, J., concurring) ("[I]t can be difficult to discern the scope of the Second Amendment, especially because the Court has only recently (and sparingly) analyzed the contours of the [right]."); *NRA* v. *Bondi*, No. 21-12314, 2025 WL 815734, at *38 (11th Cir. Mar. 14, 2025) (en banc) (Rosenbaum, J., concurring) ("[T]he law is unsettled, and courts across the country are trying to figure out just how to faithfully apply the right to keep and bear arms.").

[8] See, *e.g.*, *United States* v. *Handlovic*, No. 24-CR-207, 2025 WL 1085172, at *2 (M.D. Pa. Apr. 10, 2025) ("[C]ourts throughout the United States [have] struggled to reach consensus."); *United States* v. *Gomez*, No. 24-CR-73, 2025 WL 971337, at *5 (N.D. Tex. Mar. 25, 2025) ("[L]ower courts continue to struggle."); *Lane* v. *Cacace*, No. 22-CV-10989, 2025 WL 903766, at *10 (S.D.N.Y. Mar. 25, 2025) ("[C]ourts, operating in good faith, are struggling.") (citation omitted); *Suarez* v. *Paris*, 741 F. Supp. 3d 237, 255 n.17 (M.D. Pa. 2024) ("[M]any questions remain in the wake of *Bruen* and *Rahimi*.").

types of arms people may possess. See *Harrel* v. *Raoul*, 144 S. Ct. 2491, 2492 (2024) (statement of Thomas, J.). The Court's consideration of those important questions would help lower courts seeking to interpret the Second Amendment, legislatures seeking to comply with the Constitution, and (most important) ordinary Americans seeking to exercise their fundamental right to possess and carry arms for lawful purposes such as self-defense.

4. This case is an appropriate vehicle for deciding the question presented and for clarifying "the principles underlying the Second Amendment." *Rahimi*, 602 U.S. at 692. Petitioners have standing to challenge Hawaii's private-property default rule and have preserved their challenge in the lower courts. See Pet. App. 57a-58a. The district court, the court of appeals, and the judges who dissented from the denial of rehearing en banc all addressed the merits of that challenge. See *id.* at 150a-157a (district court); *id.* at 58a-64a (court of appeals); *id.* at 182a-190a (VanDyke, J., dissenting).

The preliminary-injunction posture in which this case arises should not deter this Court from granting review. The court of appeals did not decide this case in haste; to the contrary, it issued an 81-page opinion nearly a year after petitioners appealed. See D. Ct. Doc. 81 (notice of appeal filed Sept. 7, 2023); Pet. App. 1a-81a (opinion issued Sept. 6, 2024). The court's decision also turned on the merits; the court explained that it "need not consider" the equities because petitioners were not likely to succeed in challenging the default rule. Pet. App. 78a (citation omitted). And since the court's merits analysis all but foreordains the final outcome, further proceedings in the lower courts would serve no useful purpose. This Court often considers constitutional issues in the context of preliminary-injunction proceed-

ings; no sound basis exists to treat Second Amendment issues differently. See, *e.g.*, *Mahmoud* v. *Taylor*, No. 24-297 (argued Apr. 22, 2025); *Free Speech Coalition, Inc.* v. *Paxton*, No. 23-1122 (argued Jan. 15, 2025); *United States* v. *Skrmetti*, No. 23-477 (argued Dec. 4, 2024).

CONCLUSION

This Court should grant the petition for a writ of certiorari, limited to the first question presented.

Respectfully submitted.

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MAY 2025