

**No. 24-1046**

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IN THE  
**Supreme Court of the United States**

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JASON WOLFORD ET. AL.

*Petitioners,*

v.

ANNE LOPEZ.,

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*Respondent.*

On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Ninth Circuit

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**SUPPLEMENTAL BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI**

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Petitioners respectfully submit the following Supplemental Brief pursuant to Supreme Court Rule 15.8 in order to address the Third Circuit Court of Appeals recently released opinion in *Koons v Platkin*, No. 23-1900 & 23-2043, --- F.4th ---, 2025 WL 2612055 (3rd Cir. Sep. 10, 2025), the Seventh Circuit’s opinion in *Schoenthal v. Raoul*, No. 24-2643 & 24-2644, --- F.4th ---, 2025 WL 2504854 (7th Cir. Sep. 2, 2025), and the Second Circuit’s opinion in *Giambalvo v. Suffolk County, New York*, --- F.4th ---- 2025 WL 2627368 (2025).

## **ARGUMENT**

### **I. KOONS DEEPENS THE SPLIT ON QUESTION 1 AND CREATES MULTIPLE CIRCUIT SPLITS ON OTHER QUESTIONS**

The Third Circuit’s decision in *Koons* deepens the circuit split on the private property default rule addressed in Question 1 of Petitioners’ petition for certiorari. Specifically, the Third Circuit reviewed a New Jersey law identical to Hawaii’s H.R.S. § 134-9.5(b), at issue in this case, finding that the New Jersey’s default rule presumptively banning firearms on private property was “not sufficiently rooted in the principles underlying this Nation’s history and tradition to pass constitutional muster.” *Koons*, 2025 WL 2612055 at \*26. The court explained that “[h]istorical examples were seemingly limited to private property that was not impliedly held open to the public, such as plantations and estates.” *Id.*

That ruling stands in direct conflict with the Ninth Circuit’s decision below and is in accord with the Second Circuit’s opinion in *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024) (*Antonyuk II*). See

Petition at 9-10. Thus, the Third Circuit's opinion has deepened the circuit conflict identified in Question 1 of the petition.

Waiting for the decisions of other appellate court will not aid this Court's "ultimate decisionmaking" regarding the constitutionality of this issue. *Snope v. Brown*, 145 S. Ct. 1534, 1535 (2025) (Statement of Justice Kavanaugh respecting the denial of certiorari). Default rules like Hawaii's only otherwise exist in California, New York, New Jersey and Maryland and, with the decision in *Koons*, all of these laws have been addressed by the applicable courts of appeals save Maryland. Maryland's default rule is currently before the Fourth Circuit in *Kipke v. Moore*, No. 24-1799 (4th Cir.) (argued May 7, 2025). That case will likely be decided by the time this Court hears this case if this petition is granted. Thus, full percolation will have been achieved by the time Petitioners' case is reviewed by this Court.

*Koons* creates at least three additional circuit splits with the Ninth Circuit's decision below. The first split concerns whether the government may deny Second Amendment rights while acting as a proprietor. The Third Circuit found that "*Bruen's* framework applies to firearm restrictions even when New Jersey acts as a proprietor" thus holding that "carry restrictions affecting government property are subject to the same historical inquiry as other firearm regulations, rather than a categorical carveout." *Koons*, 2025 WL 2612055 at \*24. In so holding, the court expressly "respectfully part[ed] ways" with the Ninth Circuit's holding in this case that "the State, too, may exercise its proprietary right to exclude [the

carry of firearms], just as a private property owner may.” *Id.*, quoting *Wolford*, 116 F.4th at 970–71. See Pet.App. at 4a. Given the vast scope of government owned or controlled property, that conflict is obviously important.

Second, *Koons* also held that “[t]wo principles—regulation of carrying firearms in places set aside for learning and education, and regulating the carry of firearms where vulnerable populations congregate—support New Jersey’s prohibition of carrying firearms in modern hospitals.” *Koons*, 2025 WL 2612055 at \*39. In contrast, in this case, the Ninth Circuit held that “Plaintiffs are likely to succeed on their challenge to California’s prohibition of firearms at hospitals and other medical facilities.” Pet.App. at 74a. The two holdings are obviously in conflict and present an important issue.

Third, *Koons* also held that New Jersey could prohibit carrying firearms at permitted public gatherings. “New Jersey’s regulation prohibiting the carry of firearms within 100 feet of any gathering for which a governmental permit is required carries on this deeply rooted history by protecting locations of public gathering and demonstration from the historically recognized disruptive presence of firearms.” *Koons*, 2025 WL 2612055 at 28.

This holding is in direct conflict with the Ninth Circuit’s that holds “because no jurisdiction had prohibited the carry of firearms at public gatherings until after the ratification of the Fourteenth Amendment, we hold that Plaintiffs are likely to succeed on their challenge to California Penal Code section 26230(a)(10).” Pet.App. at 70a

## II. THE CIRCUIT SPLIT PRESENTED IN QUESTION 2 HAS FURTHER DEEPENED.

Other aspects of the holdings in *Koons* have deepened the circuit splits on Question 2 presented by Petition. Those splits have likewise been deepened by Seventh Circuit’s recently released opinion in *Schoenthal v. Raoul*, Nos. 24-2643, 24-2644, --- F.4th ---, 2025 WL 2504854 at \*12 (7th Cir. Sep. 2, 2025), and the Second Circuit’s decision in *Giambalvo v. Suffolk County*, New York, --- F.4th ---- 2025 WL 2627368 (2025). Plenary review on Question 2 is thus warranted as well as on Question 1.

Question 2 presents the important question of whether the courts should primarily focus on 1791 in conducting the analogue inquiry and, relatedly, whether state analogues from the post-Founding era period support defining the controlling principles at a high level of generality. The majority in *Koons* principally relied on post-Founding era analogues to divine an “astonishing number, breadth, and generality of the majority’s principles justifying New Jersey’s location-based elimination of the right to bear arms.” *Koons*, 2025 WL 2612055 at \*44-\*45 (Porter, J., concurring in part, dissenting in part). In so holding, the majority in *Koons* used “markedly different levels of generality when considering historical analogues,” and “analogizes more broadly and at a higher level of generality to fashion principles supporting modern regulations.” While professing adherence to *Bruen* (*id.* at \*7-\*8), the *Koons* majority relied almost entirely on “highly elastic” comparisons to post-Founding era state laws and *private* codes without regard to principles anchored to the



Founding. *Id.* at \*46-\*47 (Porter, J., concurring in part, dissenting in part).

This reliance on post-Founding era laws and use of high levels of generality was even more explicit in *Schoenthal*, where the Seventh Circuit found that Illinois’ ban on the carry of firearms on public transportation was constitutional. The court justified that result by reference to post-Founding era analogues because the case involved a challenge to a state law and “the states were not bound by the Second Amendment until the Fourteenth Amendment was ratified in 1868.” 2025 WL 2504854 at \*12, citing *Antonyuk II* and *Wolford*. According to the Seventh Circuit, post-Founding analogues justify a total ban on arms “in confined and crowded spaces, without any terror requirements.” 2025 WL 2504854 at \*11.

Likewise, in *Giambalvo*, the Second Circuit heavily relied on post-Founding era analogues to sustain a denial of preliminary injunctive relief in a challenge to New York’s and Suffolk’s County’s licensing laws for carry permits. Following *Antonyuk II*, the court ruled that “[b]ecause the CCIA is a state law, the prevailing understanding of the right to bear arms in 1868 and 1791 are both focal points.” *Giambalvo*, 2025 WL 2627368 at \*7. The court ruled that it was bound by the same holding in *Antonyuk II*, because it “addresses a pure issue of law that cannot be impacted by further development of the record.” *Giambalvo*, 2025 WL 2627368 at \*6 n.4. According to the Second Circuit, the state may condition carry permits on a showing of undefined “good moral character” and impose a variety of “catch-all disclosure requirements,” all of which invite arbitrary

and subjectively based denials of the right to bear arms. *Giambalvo*, 2025 WL 2627368 at \*7.

In *Koons* the Third Circuit found that New Jersey may prohibit firearms on public transit where the law allowed the transport of firearms which are unloaded and locked up. *Koons*, 2025 WL 2612055 at \*28 and n.178. Similarly, the Ninth Circuit’s holding in this case that “Plaintiffs are likely to succeed on their challenge to California Penal Code section 26230(a)(10),” but only because the California law banned firearms on public transit without an exception for “an unloaded and secured firearm.” Pet. App. 75a.

Similarly, in *Schoenthal*, the Seventh Circuit followed the Ninth Circuit’s decision in this case in sustaining the Illinois ban on firearms on public transit with an exception for unloaded and stowed firearms. *Schoenthal*, 2025 WL 2504854 at \*18-\*19. In Maryland, the state law sustained by the trial court in *Kipke* and at issue in that appeal,<sup>1</sup> bans the mere possession of all firearms on mass transit and makes no exception for unloaded and cased firearms. Md. Code, Transp. § 7-705(b)(6).

All these bans on public transit effectively disarm law-abiding citizens in locations where the need for armed self-defense may be at premium. See, e.g., <https://www.cbsnews.com/news/ukrainian-refugee->

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<sup>1</sup> See *Kipke v. Moore*, 695 F.Supp.3d 638, 656-57 (D.Md 2023) (preliminary order), 2024 WL 3638025 (D.Md. Aug. 2, 2024) (final judgment), *appeals pending Kipke v. Moore and Novotny v. Moore*, Nos. 24-1799(L), 24-1827, 24-1834, 24-1836 (4th Cir.) (consolidated).

iryna-zarutskia-stabbing-charlotte-nc-light-rail/. An unloaded firearm locked in a case is no more useful for self-defense than a firearm that is banned entirely. The decisions in this case and in *Koons*, *Schoenthal* and *Giambalvo* flow from the use of high levels of generality to ban the right of armed self-defense in crowded areas and otherwise restrict the right of self-defense in ways foreign to the Founding era.

All these decisions present the same methodological questions at issue in this Petition. The Ninth Circuit held in this case that “[i]t bears emphasizing that the laws at issue here are *state* laws” and “[w]e thus agree with the Second Circuit that, at least when considering the ‘sensitive places’ doctrine, we look to the understanding of the right to bear arms both at the time of the ratification of the Second Amendment in 1791 and at the time of the ratification of the Fourteenth Amendment in 1868.” Pet. App. at 28a-29a (emphasis the court’s). That approach gives the lower courts unbridled license to place exclusive reliance on post-Founding era analogues.

These holdings effectively eviscerate the right to armed self-defense and are irreconcilable with the holdings of other circuits that hold that the focus is on the Founding era. These circuits hold that post-Founding era laws may be considered, at most, only as *confirmation* of Founding era traditions, not as substitutes. See Petition at 25-27. That approach is faithful to this Court’s precedents. As stated in *Bruen*, “the scope of the protection applicable to the Federal Government *and States* is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.” 597 U.S. at 37 (emphasis added).

“[T]here is no daylight between the federal and state conduct” concerning the scope of incorporated constitutional rights. *Timbs v. Indiana*, 586 U.S. 146, 150 (2019). “The constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Bruen*, 597 U.S. at 70 (citation omitted).

### III. FURTHER GUIDANCE IS NEEDED

There is no reason to wait to resolve these conflicts merely because it has arisen in the preliminary injunction context. As *Giambalvo* states, *Antonyuk II* is binding authority in the Second Circuit because it decided “a pure issue of law that cannot be impacted by further development of the record.” *Giambalvo*, 2025 WL 2627368 at \*6 n.4.<sup>2</sup> *Antonyuk II* was viewed the same way in *Schoenthal* where the Seventh Circuit relied on the same post-Founding analogues on which *Antonyuk II* and the Ninth Circuit’s decision in this case relied. 2025 WL 2504854 at \*12-\*13. These decisions establish broad and erroneous methodological principles that will control all Second Amendment litigation, not merely preliminary relief. See, e.g., Pet.App. at 29a-32a.

The appropriate era for the analogue inquiry required by *Bruen* is of particular importance. The court in *Schoenthal* read post-Founding era analogues as broadly justifying total bans in any “crowded and

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<sup>2</sup> That reality was confirmed in this case by opposing counsel who told the Ninth Circuit that no further factual development was necessary or approval. See Reply of Petitioners at 2.

confined places.” *Id.* at \*13. *Koons* did likewise for any “crowded public forum,” and for “crowded spaces,” “crowded venues” and “crowded public transit.” 2025 WL 2612055 at \*30, \*33, \*34, \*39. That is an incredibly high level of generality. This Court “has not established the appropriate level of generality.” *Koons*, 2025 WL 2612055 at \*46 (Porter, J., concurring in part, dissenting in part), citing the concurring opinions of Justices Gorsuch, Kavanaugh, Barrett, and Jackson, and the dissenting opinion of Justice Thomas in *United States v. Rahimi*, 602 U.S. 680, 712 (2024). The case is a perfect vehicle for doing so.

As in *Koons* and *Schoenthal*, in this case, “the panel drew the exceedingly broad principle of ‘prohibiting firearms at crowded places.’” Pet. App. 99 (VanDyke, J., dissenting from the denial of the petition for rehearing en banc). The upshot is these rulings allow a state to “prohibit one from exercising the Second Amendment’s central component nearly everywhere that ordinary human action occurs, and wherever ‘people typically congregate.’” *Id.* at \*45, quoting *Bruen*, 597 U.S. at 30–31. That makes “the general right to publicly carry arms for self-defense” utterly illusory. *Id.* at 31.

These results have made a mockery of this Court’s holding that “[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.’” *Rahimi*, 602 U.S. at 692, quoting *Bruen*, 597 U.S. at 29. The lower courts are in obvious need of further guidance.

Plenary review is thus warranted on Question 2 as well as on Question 1.

**CONCLUSION**

For the foregoing reasons, and for the reasons stated in the Petition and Reply, this Court should grant the Petition on both Questions presented.

Respectfully submitted,

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