No. 24-1046

IN THE
Supreme Court of the United States

JASON WOLFORD, ALISON WOLFORD, ATOM KASPRZYCKI, AND THE HAWAII FIREARMS COALITION,
Petitioners,

v.

ANNE E. LOPEZ, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF HAWAIʻI,
Respondent.

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

SUPPLEMENTAL BRIEF IN OPPOSITION

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INTRODUCTION

As Hawai‘i explained in its brief in opposition, this case does not meet the Court's stringent standard for certiorari. Nothing has materially changed since Hawai‘i submitted that brief. Petitioners still seek to challenge an interlocutory decision that the court below issued on an underdeveloped record compiled in just 21 days for purposes of deciding questions of preliminary relief, not final judgment. There are still unresolved factual disputes regarding the historical record and the reach of Hawai‘i's default-property rule. And Petitioners' litigation decisions—like failing to advance more than a facial challenge to Hawai‘i's sensitive places restrictions—still hamper the Court's ability to give comprehensive guidance to the lower courts.

Petitioners' new cases do not change any of that. Indeed, *Koons* v. *Att'y Gen. N.J.*, Nos. 23-1900 & 23-2043, 2025 WL 2612055 (3d Cir. Sep. 10, 2025), and *Giambalvo* v. *Suffolk County, N.Y.*, No. 23-208-cv, 2025 WL 2627368 (2d Cir. Sep. 12, 2025), are also at the preliminary injunction stage. And *Schoenthal* is limited to the narrow issue of carrying loaded guns on public transportation, an issue not implicated by the case below. *Schoenthal* v. *Raoul*, Nos. 24-2643 & 24-2644, 2025 WL 2504854, at *11-12 (7th Cir. Sep. 2, 2025). The Court should deny review at this preliminary stage and allow this litigation to unfold in the normal course.

ARGUMENT

Petitioners argue that three recent decisions justify review of this interlocutory case. But the cited cases only demonstrate that further percolation is badly needed in the lower courts.

I. Start with *Koons*, where the Third Circuit found that New Jersey's default-property rule likely does not satisfy *Bruen*'s historical inquiry. Petitioners argue that *Koons*'

holding deepens the split on the first question presented, but *Koons*—like *Antonyuk* v. *James*, 120 F.4th 941 (2d Cir. 2024), and the decision below—is at the preliminary injunction stage. That "alone furnishe[s] sufficient ground for the denial of" a petition for certiorari. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916). And the underdeveloped record is particularly problematic in the Second Amendment context because *Bruen* requires a "nuanced" historical analysis. *N. Y. State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 27 (2022); *see also id.* at 39-70 (exemplifying that analysis). Like the court below, the Third Circuit might "change[ ]" its rulings after full briefing at the merits stage, resolving any differences between the two opinions and rendering review in this Court unnecessary. Pet. App. 165a.

The Third and the Ninth Circuits, moreover, are not nearly as far apart as Petitioners suggest. Both courts recognized at *Bruen*'s step one that "carrying onto properties held open to the public is conduct that likely falls within the plain text of the Second Amendment." Pet. App. 58a; *see Koons*, 2025 WL 2612055, at *25 ("where New Jersey seeks to regulate the carry of firearms on private property held open to the public, its regulation implicates the Amendment's plain text"). Both courts then required States to identify "a relevant national historical tradition" supporting the default-property rule. Pet. App. 60a; *accord Koons*, 2025 WL 2612055, at *25. And both courts even agreed that several historical laws, like the 1865 Louisiana law, were sufficiently analogous to the default-property rule. *Compare* Pet. App. 62a (calling the Louisiana law a "dead ringer[ ]" to Hawai'i's law), *with Koons* v. *Platkin*, 673 F. Supp. 3d 515, 622 (D.N.J. 2023) (holding that "the Louisiana, Texas, and Oregon laws support the State and are analogous to the Default Rule").

The courts parted ways only in their factual analysis of some of the historical predicates. For example, the Ninth Circuit decided that the 1771 New Jersey law "prohibited the carry of firearms" on "*all* private property," Pet. App. 61a-62a, while the Third Circuit held, based on the preliminary record before it, that the law was "*seemingly* limited to private property that was not impliedly held open to the public." *Koons*, 2025 WL 2612055, at *26 (emphasis added). That narrow, preliminary disagreement based on different records does not make a circuit split.

II. Petitioners also insist that *Koons*, *Schoenthal*, and *Giambalvo* deepen the split on the second question presented regarding the courts of appeals' historical methodology. That split is illusory; even the United States did not ask the Court to review it. *See* BIO 16-19, 26. And Petitioners' new citations add nothing to their deficient arguments in the Petition.

As we explained, no circuit court has suggested that *Bruen*'s historical inquiry can be conducted based purely on post-Founding-era history. *See* BIO 16-19. Indeed, the court below *affirmed* the preliminary injunction of Hawai'i's sensitive places law as to financial institutions because Hawai'i did not provide any evidence of comparable Founding-era regulations. Pet. App. 70a. To the extent the Ninth Circuit emphasized the more recent history when discussing parks, that was only because "modern" parks did not exist until the 19th century. Pet. App. 33a-34a.

Petitioners' new cases are more of the same. *Koons* of course found that New Jersey's default-property rule was likely unconstitutional because New Jersey did not present sufficiently close Founding-era analogues. 2025 WL 2612055, at *26; *see Koons*, 673 F. Supp. 3d at 622 ("Three Reconstruction-era laws are insufficient in number to satisfy the Step Two inquiry."). *Schoenthal*, for its part, similarly began its analysis by considering "Founding Era

laws." 2025 WL 2504854, at *11-12. And just like the court below, the Seventh Circuit in *Schoenthal* discussed modern laws only because the regulation at issue there—carry on public transit—implicated uniquely modern concerns. *See id.* at *13. Still, the court analogized closely to "[n]umerous historical comparators" like regulations of "crowded and confined spaces" that serve children and other "vulnerable populations." *Id.* *11-18.[1] Finally, *Giambalvo*, too, evaluated "Founding era" precedent. 2025 WL 2627368, at *9. *Giambalvo*, moreover, was not a sensitive-places case at all—it involved New York's licensing provisions. The cases therefore do nothing to bolster Petitioners' effort to create a circuit conflict based on historical methodology.

[1] The Second Circuit has similarly declined to preliminarily enjoin a New York law prohibiting guns on public transit and in Times Square, citing the robust "historical tradition of prohibiting firearms in quintessentially crowded places." *Frey* v. *City of New York*, No. 23-365-CV, 2025 WL 2679729, at *9 (2d Cir. Sept. 19, 2025).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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