No. 24-1046

IN THE

Supreme Court of the United States

JASON WOLFORD, *et al.*,

Petitioners,

v.

ANNE E. LOPEZ, ATTORNEY GENERAL OF HAWAII,

Respondent.

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

BRIEF OF PETITIONERS

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QUESTION PRESENTED

Whether the Ninth Circuit erred in holding, in direct conflict with the Second Circuit, that Hawaii may presumptively prohibit the carry of handguns by licensed concealed carry permit holders on private property open to the public unless the property owner affirmatively gives express permission to the handgun carrier?

PARTIES TO THE PROCEEDING

Petitioners are Jason Wolford, Alison Wolford, Atom Kasprzycki and the Hawaii Firearms Coalition. Petitioners were the plaintiffs in the district court and the plaintiffs-appellees in the court of appeals.

Respondent is Anne Lopez, in her official capacity as Hawaii's Attorney General.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Petitioners state as follows:

Petitioner Hawaii Firearms Coalition has no parent corporation and no publicly held company owns 10 percent or more of its stock. Petitioners Jason Wolford, Alison Wolford, Atom Kasprzycki are individuals.

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INTRODUCTION

This Court's decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022), compelled the State of Hawaii to stop using a discretionary permitting system to deny law-abiding citizens the permit that is necessary under Hawaii law to carry a concealed handgun outside the home. Prior to *Bruen*, carry permits were almost never granted in Hawaii. *See Young v. Hawaii*, 896 F.3d 1044, 1071 n.21 (9th Cir. 2018), *rev'd* 992 F.3d 765 (9th Cir. 2021) (en banc), *vacated and remanded*, 142 S.Ct. 2895 (2022) ("Hawaii counties appear to have issued only *four* concealed carry licenses in the past *eighteen years.")*. As a direct response to *Bruen*, on June 2, 2023, the Governor of Hawaii signed Senate Bill 1230 into law as Act 52 ("SB 1230" or "Act 52"), which was an unabashed effort to counteract *Bruen*'s holding by making the universe of places where a permit holder can actually carry a handgun exceptionally narrow. SB 1230 included several provisions, including the law at issue here, which together effectively made the exercise of the general right to carry nearly impossible. Act 52's provisions prohibit or create a presumption against carrying in 96.4% of the publicly accessible land in Hawaii. App. 373a-382a. These provisions went into effect July 1, 2023.

Before this Court is H.R.S. § 134-9.5(a), which makes it a crime for a concealed carry permit holder to carry a handgun on private property unless the permit holder has been "given express authorization to carry a firearm on the property by the owner, lessee, operator, or manager of the property." Under H.R.S. § 134-9.5(b), such express authorization may be either by "[u]nambiguous written or verbal

authorization" *or* by "[t]he posting of clear and conspicuous signage at the entrance of the building or on the premises."

The Ninth Circuit upheld the constitutionality of this statute, holding that "a national tradition likely exists of prohibiting the carrying of firearms on private property without the owner's oral or written consent." This holding not only conflicts with decisions in *Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023), *vacated and remanded*, 144 S.Ct. 2709 (2024) (*Antonyuk I*); *Antonyuk v. James,* 120 F.4th 941 (2d Cir. 2024) (*Antonyuk II*), *cert. denied*, 145 S.Ct. 1900 (2025), and *Koons v Platkin*, 156 F.4th 210, 2025 WL 2612055 (3rd Cir. 2025), it effectively "eviscerate[s] the general right to publicly carry arms for self-defense" recognized in *Bruen.* 597 U.S. at 31.

That decision fails every aspect of the analytical framework established by *Bruen*. The Ninth Circuit sustained Hawaii's default rule by relying solely on two outlier State laws separated by almost a century. One law was limited to private lands closed to the public and was a racist statute enacted by a former Confederate state prior to being readmitted to the Union and was designed to strip former slaves of their right to bear arms. The second law was a single Founding era law that the court thought was a "dead ringer" but, in fact, was enacted as a hunting regulation to punish poaching on private land not held open to the public. Neither of these outlier laws is relevantly or distinctly comparable in the "how or why" to the Hawaii default rule. Even taken together, these two outlier laws do not amount to a well-established, representative or enduring national tradition that could justify Hawaii's default rule.

OPINIONS BELOW

The court of appeals' denial of Plaintiffs' petition for rehearing or rehearing en banc is reported at 125 F.4th 1230 and reproduced at Pet.App. 168a. The panel opinion is reported at 116 F.4th 959 and reproduced at Pet.App. 1a. The district court's opinion is reported at 686 F.Supp.3d 1034 and reproduced at Pet.App. 82a.

JURISDICTION

The jurisdiction of the district court was founded on 28 U.S.C. § 1331 and § 1343. The jurisdiction of the court of appeals reviewing the district court's opinion was based on 28 U.S.C. § 1292(a)(1). Petitioners filed a timely appeal and the decision of the court of appeals issued on September 6, 2024. Pet.App. 1a. Plaintiffs-appellees filed a timely petition for rehearing and the Ninth Circuit's order denying rehearing and rehearing en banc was entered January 15, 2025. Pet.App. 168a. Petitioners filed a timely petition for certiorari which was docketed on April 1, 2025, and granted on October 3, 2025, limited to Question 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Second and Fourteenth Amendments to the United States Constitution and relevant portions of the Hawaii law are reproduced at Pet.App. 203a-214a.

STATEMENT OF THE CASE

A. Hawaii's Statutory Scheme

Hawaii's law at issue in this case was enacted in 2023 as a direct response to this Court's decision in *Bruen* in an effort to curb the carry right that *Bruen* recognized.[1] As amended, Hawaii law provides that in Hawaii "[n]o person shall acquire the ownership of a firearm ... until the person has first procured from the chief of police of the county" of his residence or business before a "permit to acquire the ownership of a firearm." H.R.S. § 134-2(a). Such a person is subject to "fingerprinting and photographing by the police department of the county of registration." H.R.S. § 134-2(b)(2). No person may be issued a permit to acquire a handgun unless that person has completed a training course offered by "a law enforcement agency of the State or of any county to the public," a course "offered to law enforcement officers," or a course offered "by a firearms instructor certified or verified by the chief of police of the respective county." H.R.S. § 134-2(g)(2),(3),(4). Such course must include "at a minimum, a total of at least two hours of firing training at a firing range and a total of at least four hours of classroom instruction." H.R.S. § 134-2(g)(4).

Possession of any firearm in Hawaii is generally "confined to the possessor's place of business, residence, or sojourn." H.R.S. §§ 134-23(a), 134-24(a), 134-25(a). To be transported, a firearm must be unloaded and in an "enclosed container." *Id.*

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[1] See S.B. No. 1230, A Bill for an Act Relating to Firearms § 1 (Haw. 2023). The legislative history can be found at https://bit.ly/47DiEFN.

Transport of firearms is limited to specific locations, such as a range or place of repair. *Id.* Any violation of these prohibitions is a felony. H.R.S. §§ 134-23(b), H.R.S. § 134-24(b), H.R.S. § 134-25(b).

Hawaii makes two exceptions to these provisions. The first is for possession of long guns while hunting H.R.S. § 134-5. The second exception is for individuals who have a license to carry a pistol or revolver and ammunition under H.R.S. § 134-9. See H.R.S. § 134-25(a). To obtain such a license, the applicant must be the registered owner of the handgun that he or she wishes to carry. The applicant must complete a training course that includes, *inter alia*, "live-fire shooting on a firing range" and a written examination that the applicant must pass "by a score of at least seventy per cent." H.R.S. § 134-9(e)(4).

An applicant for a carry license must also "[s]ign an affidavit" that acknowledges "[t]he prohibition on carrying or possessing a firearm in certain locations and premises" and "[t]he prohibition on carrying a firearm on private property of another person without the express authorization of the owner, lessee, operator, or manager of the private property." H.R.S. 134-9(a)(5)(A)(i),(iii). The county chiefs of police, who issue the licenses, have discretion to deny a license to any person who "lacks the essential character or temperament necessary to be entrusted with a firearm." H.R.S. § 134-9(h).

H.R.S. § 134-9.1(a) creates a list of 15 separately enumerated classes of property where a person with a carry license "shall not intentionally, knowingly, or recklessly carry or possess a loaded or unloaded firearm, whether the firearm is operable or not, and

whether the firearm is concealed or unconcealed." Pet.App. 206a. That list of prohibited areas includes, in subsection (a)(1), "[a]ny a building or office owned or used by the State or county, and adjacent grounds and parking areas;" in subsection (a)(4), any "bar or restaurant" serving alcohol for on-site consumption; in subsection (a)(9), any "beach, playground, park, or adjacent parking area;" and, in subsection (a)(12), the "premises of any bank" and adjacent parking lots for these areas. Pet.App. 206a-207a. Under H.R.S. § 134-9.1(b), none of these restrictions apply "to a person in an exempt category identified in" H.R.S. 134-11(a), which includes "state and county law enforcement officers" and a variety of other persons "while in the performance of their duties" if "those duties require them to be armed."

H.R.S. § 134-9.5(a) (Pet.App. 213a) flips the default rule on all private property. It provides that a person with a carry license "shall not intentionally, knowingly, or recklessly enter or remain on private property of another person while carrying a loaded or unloaded firearm ... unless the person has been given express authorization to carry a firearm on the property by the owner, lessee, operator, or manager of the property." H.R.S. § 134-9.5(b), provides that such express authorization may take the form of an "[u]nambiguous written or verbal authorization" or "[t]he posting of clear and conspicuous signage at the entrance of the building or on the premises, by the owner, lessee, operator, or manager of the property, or agent thereof, indicating that carrying or possessing a firearm is authorized." Pet.App. 213a. The restriction imposed by Section 134-9.5 does not apply to "a person in an exempt category identified in section 134-11(a)" H.R.S. 134-9-5(d). Carrying a firearm in violation of

Section 134-9.5 is a misdemeanor, punishable by up to a year of imprisonment. H.R.S. § 134-9.5(e).

B. Factual Background

Petitioners are three residents of Maui County and an organizational plaintiff which has members who have been issued concealed carry permits in Hawaii. App. 2a, 3a. All individual plaintiffs possess a valid license to carry a concealed handgun. App. 41a, 47a, 53a. Prior to the enactment of H.R.S. §134-9.5 in 2023, Hawaii Laws 2023, ch.52, all three individual Petitioners carried handguns on private property locations otherwise open to the public, lands now regulated by H.R.S. §134-9.5. App. 45a, 51a, 56a. But for the challenged regulations, individual Petitioners would carry in all the areas at issue in this litigation. App. 2a. The organizational Petitioner, Hawaii Firearms Coalition, likewise has members who carried handguns in these locations. App. 3a. But for the challenged law, the members of the organizational Petitioner would carry in all the areas at issue in this litigation. *Id.*

C. Procedural History

On June 23, 2023, Petitioners filed suit seeking a temporary restraining order and permanent injunction against the enforcement of H.R.S. § 134-9.5. Petitioners also challenged H.R.S. §§ 134-9.1(a)(1) (parking areas "adjacent" to a building or office owned or used by the State or county), § 134-9.1(a)(4) (bars and restaurants serving alcohol), § 134-9.1(a)(9) (any beach, playground, park, or adjacent parking area), § 134-9.1(a)(12) (the premises of any bank or financial institution). The district court granted a temporary

restraining order against the challenged laws, Pet.App. 86a, and converted that order into a preliminary injunction by stipulation of the parties. Pet.App. 215a. The State appealed and, on September 6, 2024, the Ninth Circuit, *sua sponte* consolidated Hawaii's appeal in this case with California's appeals in two other cases (*Carralero v. Bonta* and *May v. Bonta*)[2] involving a post-*Bruen* California statute that imposed a similar default rule and enacted similar location bans. Pet.App. 1a.

Relying on the Second Circuit's initial decision in *Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023) (*Antonyuk I*),[3] the Ninth Circuit held that because "the laws at issue here are state laws," Pet.App. 28a, "[w]e … agree with the Second Circuit [in *Antonyuk*] 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. 29a (emphasis in original). The panel reversed the preliminary injunction with respect to

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[2] *May v. Bonta*, and *Carralero v. Bonta*, 709 F.Supp.3d 940 (S.D. Cal. Dec. 20, 2023) (consolidated), *aff'd in part, reversed in part, sub nom., Wolford v. Lopez*, 125 F.4th 1230 (9th Cir. 2025), *cert. granted*, 2025 WL 2808808 (U.S. Oct. 3, 2025).

[3] The initial decision in *Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023), was vacated and remanded for further consideration in light of this Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024). *Antonyuk v. James*, 144 S.Ct. 2709 (2024) (mem). On remand, and after the decision of the Ninth Circuit in this case, the Second Circuit reaffirmed its initial decision in all respects after "taking account" of *Rahimi*. *Antonyuk v. James*, 120 F.4th 941, 955 (2d Cir. 2024), *cert. denied*, 145 S.Ct. 1900 (2025).

bars and restaurants that serve alcohol, beaches, parks, and similar areas, and parking areas adjacent to all those places. Pet.App. 32a-49a.

The Ninth Circuit also reversed the preliminary injunction as to H.R.S. §134-9.5 but affirmed the preliminary injunction as to California's default rule at issue in *Carralero* and *May*. The court reasoned that in "California, a property owner may consent to the carrying of firearms only by 'clearly and conspicuously post[ing] a sign at the entrance of the building or on the premises indicating that license holders are permitted to carry firearms on the property.'" Pet.App. 11a. "Other forms of permission, such as oral or written consent, do not suffice." *Id.* The court found that difference dispositive, holding that H.R.S. § 134-9.5 was constitutional because Hawaii's law permitted a private property owner to consent either through posting a sign, verbally or in writing. Pet.App. 63a. On January 15, 2025, the Ninth Circuit denied rehearing and rehearing en banc. Pet.App. 168a.[4] In a subsequent order, the court stayed its mandate pending disposition of a petition for certiorari to this Court. Pet.App. 219a.

Judge VanDyke filed a lengthy and vigorous dissenting opinion from the denial of rehearing en banc, joined by Judges Callahan, Ikuta, R. Nelson, Lee and Bumatay. Pet.App. 170a. Judge Collins filed

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[4] The Ninth Circuit separately denied the petition for rehearing en banc filed by the *Carralero* and *May* plaintiffs. See *Carralero v. Bonta*, 125 F.4th 1246 (9th Cir. 2025). The *May* and *Carralero* plaintiffs did not seek further review in this Court.

a separate dissent joined by Judge Bress.[5] Judge VanDyke concluded that en banc review was appropriate to address the acknowledged conflict with *Antonyuk* with respect to Hawaii's presumptive ban. Pet.App. 201a. Judge VanDyke opined that the panel had erred in relying on "outlier" laws consisting of one law from the 1865 Louisiana Black Codes and an inapplicable 1771 New Jersey anti-poaching law that fails *Bruen's* "how and why" test. Pet.App. 185a-189a.

Judge VanDyke also argued that "[t]he nuts-and-bolts of the panel's analysis is also inconsistent with how the Court has instructed lower courts to conduct our text-history-and-tradition analysis." Pet.App. 181a. He maintained that en banc review was necessary because "the panel stretched to draw principles from unrelated laws that simply do not support its stated regulatory principle." Pet.App. 193a.

Judge Collins dissented for "many of the same reasons set forth by Judge VanDyke." Pet.App. 169. Judge Collins thus agreed that en banc consideration was appropriate because "the panel in these cases failed to apply the proper standards for evaluating Second Amendment challenges, as set forth in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), and that, in doing so, the panel largely vitiated

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[5] Judge VanDyke, joined by joined by Judges Callahan, Ikuta, R. Nelson, Lee, and Bumatay and Judge Collins, joined by Judge Bress, also filed separate dissents from the denial of rehearing en banc in *Carralero* and *May*. See *Carralero v. Bonta*, 125 F.4th 1246 (9th Cir. 2025). These dissents in *May* and *Carralero* are substantively identical to the dissents filed in *Wolford*.

'the right to bear commonly used arms in public' that the Supreme Court recognized in *Bruen*." Pet.App. 169a.

SUMMARY OF ARGUMENT

Forty-five States respect the right of their citizens to carry arms for self-defense onto private property open to the public. Five outlier States (Hawaii, California, Maryland, New York and New Jersey) have defied *Bruen* by enacting a new "default rule"[6] that bans carry by permit holders on private property unless permission is obtained from the owner. These same States had "may issue," discretionary carry permit statutes of the type invalidated in *Bruen*. Each of these States reacted to *Bruen* with defiance, enacting legislation designed to thwart the "general right" to carry recognized in *Bruen*.

Hawaii is among the most defiant of these States. It responded to *Bruen* by enacting 15 separate and all-encompassing categorial location restrictions in H.R.S. § 134-9.1 that effectively ban carry in much of the public space in the State. Hawaii added to these restrictions by enacting H.R.S § 134-9.5 to parrot the "default rule" enacted in Maryland, New York and New Jersey. That "default rule" prohibits carry permit holders from carrying onto private property open to the public absent signage or express prior permission by the owner. Together H.R.S § 134-9.1 and H.R.S § 134-9.5, ban carry license holders from carrying in

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[6] The default rule is sometimes also called the "vampire rule" because the rule requires the prior consent of the owner for entry, just like mythical vampires needed permission to enter. See, e.g., https://bit.ly/4qPGl6C.

approximately 96.4% of Maui County where the individual Petitioners live and effectively eviscerate the fundamental Second Amendment right to carry in public. App. 373a-382a.

The Ninth Circuit upheld the constitutionality of H.R.S. § 134-9.5 by finding that "a national tradition likely exists of prohibiting the carrying of firearms on private property without the owner's oral or written consent." Pet.App. 64a. The court found sufficient two outlier laws separated by almost a century. One law was enacted by a former Confederate state prior to readmission to the Union and for the purpose of denying former slaves of their right to bear arms. The second was enacted to deter poachers from hunting game on private land closed to the public. Both laws fail to meet *Bruen*'s "how and why" metrics. Rather, Hawaii's law was enacted for the avowed purpose of discouraging trained and vetted permit holders from exercising Second Amendment rights newly recognized in *Bruen*. Hawaii's law thus illegitimately criminalizes the exercise of a fundamental constitutional right without constitutional justification or historical support. This Court should reverse.

ARGUMENT

Hawaii is once again an extreme outlier. Only five States (Hawaii, California, Maryland, New York and New Jersey) have defied *Bruen* by enacting a new "default rule" that presumptively bans carry by

permit holders on private property.[7] Not by accident, these are the same outlier jurisdictions (minus the District of Columbia and Massachusetts)[8] that had adopted "may issue," discretionary carry permit statutes of the type overturned in *Bruen*. 597 U.S. at 15 n.2. All five of these States have sought to defy *Bruen* by regulating carry permits in ways that nullify the "general right" to be armed in public for self-defense articulated in *Bruen*. By contrast, 29 States do not require law-abiding residents to have a State-issued permit to carry a loaded firearm in public[9] and

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[7] California Penal Code § 26230; H.R.S. § 134-9.5; MD Code, Criminal Law, § 6-411(d); N.J. Stat. Ann. § 2C:58-4.6(a); N.Y. Penal L. § 265.01-d(1).

[8] In the District of Columbia, carry by a permit holder on private property "that is not a residence *shall be presumed to be permitted*" unless the property is posted with "conspicuous signage prohibiting the carrying of a concealed pistol" or unless the permit holder is otherwise so advised by the owner or agent of the owner. D.C. Code, § 7-2509.07(b)(3) (emphasis added). Massachusetts has not enacted a default rule. See generally MA ST 269 § 10 as amended by 2025 Mass. Legis. Serv. Ch. 14.

[9] See Ala. Code § 13A-11-85; Alaska Stat. § 11.61.220(a); Ariz. Rev. Stat. § 13-3102; Ark. Code Ann. §§ 5-73-101, 5-73-120(c)(4); Idaho Code § 18-3302k; 2021 IA HB 756; Ind. Code Ann. § 14-16-1-23; Fla. Stat. § 790.01; Ga. Code Ann. § 16-11-125.1; Kan. Stat. Ann. § 21-6302(4); Kan. Stat. Ann. § 75-7c03; Ky. Rev. Stat. Ann. §§ 237.109, 527.020; LA R.S. 14:95; 12 Me.R.S.A. § 11212-A.3.E, 25 Me.R.S. § 252 2001-A.2.A-1; Miss Code Ann. §§ 45-9-101; 2016 Mo. S.B. 656, amending Mo. Rev. Stat. §§ 571.030; Mont. Code Ann. § 45-8-316; Neb. Rev. Stat. §§ 28-1202.01; 2017 NH SB 12; N.D. Cent. Code §§ 62.1-02-04 – 62.1-02-05, 62.1-04-01 – 62.1-04-05; Ohio Rev. Code Ann. § 2923.111; 2019 OK HB 2597, amending Okla. Stat. tit. 21, §§ 1277, 1290.1 – 1290.26; S.D. Codified Laws §§ 23-7-7 – 23-7-8.6, 22-14-23, 13-32-7; Tenn. Code Ann. § 39-17-1307; Tenn. Code Ann. §§ 39-17-1351 – 39-17-

none of these States has adopted any default rule like Hawaii. Nor have the other States that had "shall issue" permit systems before this Court's decision in *Bruen*. 597 U.S. at 14 n.1.

I. THE *BRUEN* FRAMEWORK

A. Carrying In Public Falls Within The Text Of The Second Amendment

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The Second Amendment guarantees to "the people" the right "to keep and bear arms." In *District of Columbia v. Heller,* 554 U.S. 570 (2008), this Court definitively held that the Second Amendment secures individual rights and recognized an ancient and fundamental right of self-defense as embodied by the Second Amendment.

Two years after *Heller*, the Court reaffirmed that "individual self-defense is 'the central component' of the Second Amendment right," that "citizens must be permitted 'to use handguns for the core lawful purpose of self-defense,'" and held that this right "is fully applicable to the States." *McDonald v. City of Chicago*, 561 U.S. 742, 750, 767-68 (2010) (plurality opinion) (quoting *Heller*, 554 U.S. at 599, 630) (brackets omitted).

1360, 39-17-1309; 2021 TX HB 1927; Utah Code Ann. § 53-5a-102.2; Vt. Stat. Ann. T. 13, §§ 4004, 4016; W. Va. Code § 61-7-3; Wyo. Stat. Ann. § 6-8-104.

Bruen confirmed that "the Second Amendment guarantees a general right to public carry" of arms, 597 U.S. at 33, meaning ordinary, law-abiding citizens have a "right to carry handguns publicly for their self-defense." *Id.* at 9, 34. This "general right to public carry" cannot be restricted absent "*exceptional* circumstances." *Id.* at 70 (emphasis added).

Bruen held that the burden is on the government to justify its regulation by showing it is "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24. The government must "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19. See also *id.* at 60 ("[W]e are not obliged to sift the historical materials for evidence to sustain New York's statute. That is respondents' burden."). If the government fails to meet its burden, then the State's restriction is unconstitutional and must be enjoined.

To determine whether a state's restriction is constitutional, the Court in *Bruen* explained that "the standard for applying the Second Amendment is as follows:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation."

597 U.S. at 24.

The first inquiry under *Bruen* is thus whether the conduct falls within the text of the Second Amendment's right to "keep and bear arms." *Bruen*, 597 U.S. at 20. Petitioners wish to carry firearms on private property open to the public. Hawaii does not dispute that this conduct falls within the plain text of the Second Amendment. And rightly so, as this Court has already concluded that "[n]othing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms." *Bruen*, 597 U.S. at 32. Nor, as the Ninth Circuit correctly recognized, does the text "limit the right to bear arms to publicly owned spaces." Pet.App. 58a. The text instead simply recognizes a right to bear arms, which is precisely what Petitioners wish to do. That is the end of the textual inquiry. Because Hawaii "regulates arms-bearing conduct," *Rahimi*, 602 U.S. at 691, it can justify its restriction on that right only if can show that the restriction is consistent with historical tradition.

Hawaii may argue, as it did below and others have, that H.R.S. § 134-9.5 "is not a state-imposed restriction at all, as it merely 'effectuate[s]' private landowners' decisions regarding guns on their property." *Koons,* 2025 WL 2612055 at *25. That argument was properly rejected by the Third Circuit in *Koons* (*id.*), by the Second Circuit in *Antonyuk I*, 89 F.4th at 379-84, and by the Ninth Circuit below. Pet.App. 58a. H.R.S. § 134-9.5 "constitutes state action" because it is government action that bars individuals, on pain of criminal penalties enforced by the government, from carrying firearms onto private property open to the public. *Koons*, 2025 WL 2612055 at *25. The Ninth Circuit in this case thus correctly held that the plain text of "the Second Amendment

encompasses a right to bear arms on private property held open to the public." Pet.App. 59a.

To be sure, a private property owner has the unquestioned "right to exclude others, including those bearing arms." Pet.App. 59a. Petitioners have no quarrel with that principle. "The right to exclude is 'one of the most treasured' rights of property ownership." *Cedar Point Nursery v. Hassid,* 594 U.S. 139, 149 (2021) (citation omitted). That right, however, belongs to the property owner, not the State. Had Hawaii merely enacted a law that prohibited a knowing failure to obey a property owner's decision to exclude arms, Petitioners would not have challenged it. Cf. *Brown v. Entertainment Merchants Ass'n.*, 564 U.S. 786, 795 n.3 (2011) ("it does not follow that the state has the power to prevent children from hearing or saying anything without their parents' prior consent"). Instead, Hawaii has made it a crime to carry arms even where the owner of property open to public is merely silent. That presumption tramples on the Second Amendment.

B. Hawaii Has Effectively Abolished The Right

Petitioners agree with the United States that the government's regulation "must serve a legitimate purpose; legislatures may not regulate arms simply to frustrate or inhibit the exercise of Second Amendment rights." Amicus Brief of the United States supporting certiorari at 7. The regulation of arms bearing conduct must be "for a permissible reason." *Rahimi*, 602 U.S. at 692. "Even when a law regulates arms-bearing for a permissible reason, though, it may not be

compatible with the right if it does so to an extent beyond what was done at the founding." *Id.* See Daniel D. Slate, *Infringed*, 3 J. Am. Const. Hist. 381, 382-387 (2025); William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 Notre Dame L. Rev. 1467, 1489 (2024). As *Bruen* explains, when comparing a modern firearms regulation to our historical tradition, "both how and why regulations burden a law-abiding citizen's right to armed self-defense" is central to the analysis. 597 U.S. at 29.

These principles are well supported. Historically, commentators considered English game laws to be paradigmatic infringements of the right to bear arms because they were designed to suppress firearm ownership. See 2 William Blackstone, Commentaries on the Laws of England 412 (10th ed. 1787) ("disarming the bulk of the people" was "a reason oftener meant, than avowed, by the makers of forest or game laws"). Similarly, courts in the 19th century explained that states could not, under the "pretence of regulating," seek the "destruction of the right." *State v. Reid*, 1 Ala. 612, 616-617 (1840). These courts thus recognized that total bans on firearms were blatantly unconstitutional. See, e.g., *Nunn* v. *State*, 1 Ga. 243, 249 (1846); *Aymette* v. *State*, 21 Tenn. 154, 160 (1840). *Bruen* likewise focuses on "why" a regulation burdens arms-bearing, 597 U.S. at 29, and further explains that States may not put firearms laws to "abusive ends." *Id.* at 38 n.9. *Rahimi* sounds the same note in stating that firearm regulations must be for "a permissible reason." 602 U.S. at 692.

Hawaii's law fails all these basic principles. Here, as in *Bruen*, the default rule of H.R.S. § 134-9.5, imposes a "broad prohibitory regime" and "severely"

restricts the "general right" of all law-abiding persons to be armed in public without any individualized inquiry as to whether a particular person is dangerous. *Rahimi,* 602 U.S. at 700. With passage of Act 52, individuals with carry licenses may no longer carry firearms on private property open to the public. Retail stores and other private property open to the public are off limits unless the owner has posted a "conspicuous" sign or otherwise gives express permission or posted a sign. The effect and intent are to make it effectively impossible to exercise of the constitutional right to carry. As the Ninth Circuit recognized that reality was "the impetus" for Hawaii's rule." Pet.App. 57a.

In *Bruen,* the Court held that "there is no historical basis for New York to effectively declare the island of Manhattan a 'sensitive place' simply because it is crowded and protected generally by the New York City Police Department." 597 U.S. at 31. Such a rule, the Court explained, swept "far too broadly" because it "would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense." *Id.* Thus, the government may not ban arms simply because the public may "congregate" or gather in a location. *Id.* Hawaii has gone much further, effectively banning firearms in public for the entire State.

The Ninth Circuit dismissed these realities, asserting, *ipse dixit*, that plaintiffs could still carry "onto the public streets and sidewalks through Maui County (and elsewhere in Hawaii), as well as into many commercial establishments." Pet.App. 38a n.4. But as Judge VanDyke pointed out in his dissent, "[t]he panel's assertion that licensed individuals may

still carry in 'many commercial establishments' is belied by the record, which, as the panel acknowledged, evinces what common sense suggests: that 'many property owners will not post signs of any sort or give specialized permission, regardless of the default rule.'" Pet.App. 179a (VanDyke, J, dissenting from the denial of rehearing en banc), quoting the court's opinion at Pet.App. 57a. Petitioners submitted numerous declarations of Maui business owners, all of whom declared that they were not willing to put up a sign but would allow carry if H.R.S. § 134-9.5 were removed. App. 383a-428a.

In short, "Hawaii's law is the same sort of 'broad prohibit[ory]' regime that the Court already rejected, as it still makes most public places off limits notwithstanding the 'general right to public carry.'" *Id*., quoting *Bruen*, 597 U.S. at 33, 50. Hawaii's intent to eliminate the right to carry is both self-evident and illegitimate. Hawaii understood that the default rule "would radically expand the private spaces where guns could not be carried." Ian Ayres and Spurthi Jonnalagadda, *Guests with Guns: Public Support for "No Carry" Defaults on Private Land*, 48 J L. Med. & Ethics, 183, 184 (2020). Such a rule reduces carry by making it "increasingly inconvenient to do so." *Id*. A "default rule" is "sticky." See Omri Ben-Shahar & John A. E. Pottow, *On the Stickiness of Default Rules*, 33 Fla. St. L. Rev. 651, 653 (2006); Joseph Blocher & Darrell A. H. Miller, *What is Gun Control? Direct Burdens Incidental Burdens, and the Boundaries of the Second Amendment*, 83 University of Chicago L. Rev. 295, 316 (2016).

Hawaii's default rule is more than merely inconvenient; it requires licensees to leave their firearms at home whenever they go out in public if there is *any* chance of visiting private property open to the public. Hawaii law requires that a firearm carried by a permit holder be "concealed" on the licensee's person. H.R.S. § 134-9(a), H.R.S. § 134-9.7(a). H.R.S. § 134-9.1(b)(7), creates a limited exception to the sensitive places bans, specified in H.R.S. § 134-9.1(a), for permit holders who carry a firearm "in the immediate area surrounding the person's vehicle within a parking area for the limited purpose of storing or retrieving the firearm."[10]

However, no such exception for vehicle storage is allowed with respect to the ban on carrying a firearm "on private property of another person" imposed by the default rule, H.R.S. § 134-9.5(a). That ban would thus include all privately owned parking lots unless the permit holder had express permission or the owner had posted "clear and conspicuous signage at the entrance of the building or on the premises." *Id.* § 134-9.5(b).[11] The ban imposed by the default rule is thus much *broader* than the bans imposed on the sensitive areas identified in Section 134-9.1(a). The net result is that Hawaii's default rule makes it effectively "impossible for citizens to use [firearms]

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[10] In these areas, storage in a vehicle means "locking the firearm in a safe storage depository that is out of sight from outside of the vehicle." H.R.S. § 134-9.3(a).

[11] H.R.S. § 134-9.5(c) defines "private property" expansively to include "residential, commercial, industrial, agricultural, institutional, or undeveloped property that is privately owned or leased."

for the core lawful purpose of self-defense," *Heller*, 554 U.S. at 630, unless one is content to "aimlessly wander streets and sidewalks." Pet.App. 180a (VanDyke, J., dissenting from the denial of rehearing en banc).

When coupled with the 15 categories of locational bans imposed by Section 134-9.1, "Hawaii's law prohibits, presumptively or outright, the carrying of a handgun on 96.4% of the publicly accessible land in Maui County." Pet.App. 174a (VanDyke, J., dissenting from the denial of rehearing en banc). That result has "effectively nullified the Second Amendment rights of millions of Hawaiians ... to bear firearms as they go about their daily lives in public." *Id.*, Pet.App. 181a. Legislation that restrictive of the exercise of the right to bear arms does not "regulate[] arms-bearing for a permissible reason." *Rahimi*, 602 U.S. at 692. See also Pet.App. 202a (VanDyke, J., dissenting from the denial of rehearing en banc) ("With their new public carry bans, Hawaii and California have effectively disarmed law-abiding Hawaiians and Californians from publicly carrying during most of their daily lives.").

Hawaii's law cannot be justified by claims that such bans are necessary for "public safety."[12] See *Rahimi* 602 U.S. at 695-97 (stressing the limits of affray and surety laws). Even if something as generic as "public safety" could justify a sweeping ban on carrying firearms, "the vast majority of concealed

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[12] The legislative history of Hawaii's law is replete with such claims. See note, 1, *supra*. See also https://bit.ly/4opAjrI (press release of the governor).

carry permit holders are law-abiding." Pet.App. 163a. See also Lott, Moody & Wang, *Concealed Carry Permit Holders Across the United States: 2023* at 43 (2023) ("Permit Holders are Extremely Law-abiding."), available at https://bit.ly/3WwP6EN.[13] Such public safety claims thus ring hollow. See *Bruen,* 597 U.S. at 77 (Alito, J., concurring).

In any event, the individual right of armed self-defense in public may not be restricted across the board by fears that a trained and vetted permit holder might someday, somehow, misuse a firearm. As the Tenth Circuit stated recently, "[n]o meaningful limitation could be placed on the government's power to regulate firearms, disarm the citizenry, or criminalize firearm use if we accepted every regulation that is based on a fear that someone somewhere would likely misuse a gun." *Ortega v. Grisham*, 148 F.4th 1134, 1155 (10th Cir. 2025). "[T]he problem of handgun violence" does not trump the individual rights protected by the Second

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[13] The vast majority of mass shootings occur in gun-free zones precisely because the criminal knows that he (or she) will not encounter armed opposition. Crime Prevention Research Center, Updated Detailed Information on Mass Public Shootings from 1998 to 2024 (Jan. 2, 2025), available at https://bit.ly/4nqqF6M ("82.8 percent of the attacks since 1998 and 94 percent since 1950 have occurred in places where guns are banned"). Laws banning the possession of arms only succeed in "disarm[ing] those only who are neither inclined nor determined to commit crimes." Cesare Beccaria, *On Crimes and Punishments* 87–88 (Henry Paolucci trans, Bobbs-Merrill Co., Inc., 1963) (1764)). See also *Bruen*, 597 U.S. at 74-75 (Alito, J., concurring) ("our country's high level of gun violence" are the "very facts that cause law-abiding citizens to feel the need to carry a gun for self-defense").

Amendment. *Heller*, 554 U.S. at 636. See also *id.* ("the enshrinement of constitutional rights necessarily takes certain policy choices off the table"); *McDonald*, 561 U.S. at 790 (same).

Hawaii has eviscerated the Second Amendment right to carry for no reason other than Hawaii vehemently disagrees with *Bruen*. See *Wilson v. Hawaii*, 145 S.Ct. 18 (2024) (Statements of Justices Thomas, Alito, and Gorsuch, respecting denial of certiorari). Indeed, in opposing the petition for certiorari, Hawaii asserted that its law is constitutional because Hawaii has "limited the carrying of weapons in public spaces since at least 1852." BIO at 24. Hawaii is thus claiming that the former Kingdom of Hawaii's traditions trump both the Founding and our national traditions. That assertion cannot be accepted under the Supremacy Clause. U.S. Constitution, Art. VI, cl. 2. See, e.g., *Cooper v. Aaron*, 358 U.S. 1, 17-19 (1958).

As detailed below, nothing in the *Bruen* framework permits Hawaii's law. There is a complete absence of laws in our historical tradition broadly banning law-abiding citizens from peaceably carrying firearms on private property open to the public without first getting express permission from the proprietor. Of the two outlier laws accepted by the Ninth Circuit, one was racist legislation enacted by a former Confederate state before readmission to the Union. The other was a hunting regulation designed to combat poaching on private land closed to the public. This paucity of analogues confirms what is evident: Hawaii is attempting to thwart constitutional rights newly recognized in *Bruen*. This Court did not brook such resistance after *Brown v. Board of Education*, 347

U.S. 483 (1954). See *Cooper*, 358 U.S. at 18. It should not do so now.

II. HAWAII'S DEFAULT RULE IS WITHOUT HISTORICAL SUPPORT.

A. General Principles.

Rahimi holds that, when analyzing a law that regulates arms-bearing conduct, "the appropriate analysis turns on whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." 602 U.S. at 692. Thus, "[e]ven when a law regulates arms-bearing for a permissible reason ... it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Id*. The very narrow scope of historical carry restrictions and the reasons for such restrictions reveal a basic principle that the "general right to public carry" cannot be banned absent "*exceptional circumstances*." *Bruen*, 597 U.S. at 38 (emphasis added). It is the State's burden to establish those "exceptional circumstances" as consistent with such tradition. *Id.*

That principle is evident in the historical laws this Court considered in *Bruen* and *Rahimi*, Take, for example, the surety laws. As *Bruen* explained, those laws "did not prohibit public carry in locations frequented by the general community." 597 U.S. at 56. See also *Rahimi*, 602 U.S. at 695-96. The Northampton-style laws likewise were not broad efforts to restrict peaceful carry. They instead punished only those who "'go[] armed, with dangerous or unusual weapons, [to] terrify[ ] the good people of the land.'" *Rahimi*, 602 U.S. 697, quoting 4 Blackstone

149 (10th ed. 1787). In *Rahimi,* the Court relied on *State v. Huntly*, 25 N.C. 418, 421-422 (1843). *Rahimi*, 602 U.S. at 697. *Huntly* squarely holds that "[f]or any lawful purpose--either of business or amusement--the citizen is at perfect liberty to carry his gun. It is the wicked purpose--and the mischievous result--which essentially constitute the crime." 25 N.C. at 423. *O'Neill v. State,* 16 Ala. 65, 67 (1849), and *Hickman v. State*, 193 Md.App. 238, 253–255, 996 A.2d 974, 983 (2010), also cited in *Rahimi*, are in accord. In short, peaceful carry did not involve any "misuse of firearms."

Historical tradition also shows that trespass law was not considered an excuse to restrict the right to carry arms in places open to the public. Under long-settled principles of trespass law, people may freely enter private property that is open to the public because the public has an "implied license" to come and go at such locations. *Koons v. Platkin,* 673 F.Supp.3d 515, 610 (D.N.J. 2023), *affirmed in part, vacated in part*, 156 F.4th 210 (3d Cir. 2025). See also Restatement 2d Torts, §§ 167, 892; *Oliver v. United States*, 466 U.S. 170, 193 (1984) (Marshall, J., dissenting) (places of business open to the public are "by positive law and social convention, presumed accessible to members of the public unless the owner manifests his intention to exclude them").

At the Founding, as now, one could not be "a trespasser when one enters a retail establishment for the purpose for which the property is held open to the public." *Koons,* 673 F.Supp.3d at 611. See *On Lee v. United States*, 343 U.S. 747, 751–52, 753 (1952) (finding that "no trespass was committed" in Fourth Amendment case where respondent "entered a place

of business with the consent, if not by the implied invitation, of the petitioner"). 3 Blackstone Commentaries, 212 (10th ed. 1787) (explaining that it is not a trespass to "enter[] into an inn or public house, without the leave of the owner first specially asked; because, when a man professes the keeping of such inn or public house, he thereby gives a general licence of any person to enter his doors").[14]

Of course, consent (or an invitation) may be "conditioned or subsequently revoked by the property owner" so property owners are free to disallow firearms if they so choose. *Koons,* 673 F.Supp.3d at 611. But because "[t]he right to armed self-defense follows the individual everywhere he or she lawfully goes," carrying on property open to the public was permitted under historical trespass law unless the property owner "withdraw[s] consent." *Id.* at 613. See also *Christian v. Nigrelli*, 642 F. Supp.3d 393, 407-08 n.19. (W.D.N.Y. 2022), *aff'd*, *Antonyuk II*, 120 F.4th at 1046–47. In short, there is no tradition, either at the Founding or in the modern era, of requiring prior permission (of any type) from a property owner when entering property open to the public. See Pet.App. 184a-187a (VanDyke, J. dissenting from the denial of rehearing en banc).

B. The Analogue Inquiry.

A regulation of Second Amendment rights may be justified by historical analogues from the "founding

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[14] The same result obtains with respect to invitees or guests who enter private property closed to the public but who do so with consent of the owner.

generation." *Rahimi,* 602 U.S at 692. While an asserted analogue need not be a "historical twin," it must be "well-established and representative." *Bruen*, 597 U.S. at 30. "[C]ourts should not 'uphold every modern law that remotely resembles a historical analogue.'" *Id.* It must be "part of an enduring American tradition of state regulation." *Id*. at 69 (rejecting reliance on law enacted in the Territories). As the Court explained in *Rahimi*, "[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.'" 602 U.S. at 692. *Id.*, 602 U.S. at 698 (a provision must be "'relevantly similar' to those founding era regimes in both why and how it burdens the Second Amendment right").

That focus on "the balance struck by the founding generation" is repeated throughout *Rahimi* where the Court relied exclusively on Founding era analogues and tradition. *Id*. at 694, 698. Thus, in *Rahimi*, the surety laws and the common law of affray on which the Court relied were rooted in the common law at the Founding *and* were codified in Founding era statutes in "at least four States--Massachusetts, New Hampshire, North Carolina, and Virginia." *Rahimi*, 602 U.S. at 697-98.

"Outlier" requirements of a few jurisdictions or of territorial governments are insufficient to establish a historical tradition. *Bruen*, 597 U.S. 30, 67, 30, 65. So too are regulations from only a handful of states or those that cover only a small portion of the population or only persist for a few years. *Id*. at 67-68. *Bruen* expressly rejected placing "meaningful weight" on a

"solitary statute," *id.* at 49, and further held that "three colonial regulations" were insufficient "to show a tradition of public-carry regulation." *Id*. at 46. *Bruen* categorically rejected reliance on laws enacted in the Territories, including expressly "Arizona, Idaho, New Mexico, Oklahoma," holding that such laws "are most unlikely to reflect 'the origins and continuing significance of the Second Amendment.'" *Id.* at 67 (quoting *Heller*, 554 U.S. at 67).

A historical law may serve as an analogue to a modern restriction only if it is "distinctly similar" or "relevantly similar" to laws in existence at the Founding. *Id.* at 29-30. *Bruen* stressed that the analogue inquiry is controlled by two "metrics:" "how and why" any restriction was imposed during the Founding era. *Id.* at 31. "[W]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are '*central*' considerations when engaging in an analogical inquiry." *Id*. (emphasis in original) (quoting *McDonald,* 561 U.S. at 767. "Why and how the regulation burdens the right are central to this inquiry." *Rahimi*, 602 U.S. at 681.

The focus on the "founding generation" is appropriate because "'[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them.'" *Bruen*, 597 U.S. at 4, quoting *Heller*, 554 U.S. at 634–35. The Founding era is at the core of this Court's constitutional jurisprudence. See, e.g., *Gamble v. United States*, 587 U.S. 678, 702 (2019) (treating post-ratification treatises "as mere confirmation of what the Court thought had already been established" concerning

"the public understanding in 1791 of the right codified by the Second Amendment").[15]

Finally, the scope of the Second Amendment is identical without regard to whether a challenged restriction is imposed by the federal government or by a State. See *Timbs v. Indiana*, 586 U.S. 146, 150 (2019) ("there is no daylight between the federal and state conduct" concerning the scope of incorporated constitutional rights); The Second Amendment is not any different. *McDonald*, 561 U.S. at 784-85 (rejecting the argument for a "special incorporation test applicable only to the Second Amendment"). See also *Ramos v. Louisiana*, 590 U.S. 83, 93 (2020) ("This Court has long explained ... that incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government.").

C. Hawaii's Default Rule Is Without Historical Support.

1. Louisiana's 1865 law is not an analogue.

The Ninth Circuit correctly rejected most of the laws on which Hawaii relied as support for its default

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[15] *Bruen*, 597 U.S. at 83 (Barrett, J., concurring) (the Court's decision "should not be understood to endorse freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights"), *Rahimi*, 602 U.S. at 695 (Barrett, J., concurring) ("scattered cases or regulations pulled from history may have little bearing on the meaning of the text"), citing *Samia v. United States*, 599 U.S. 635, 656–57 (2023) (Barrett, J., concurring in part and concurring in judgment).

rule, reasoning that those laws only prohibited the carry of firearms onto "subsets of private land, such as plantations or enclosed lands." Pet.App. 60a. The court found "those laws likely did not apply to property that was generally open to the public" and that "the primary aim of some of those laws was to prevent poaching." Pet.App. 61a. However, the panel then went astray when it relied on two other laws, a New Jersey law enacted in 1771 (Stat.App. 1a) and a Louisiana statute enacted in 1865 (Stat.App. 11a), to sustain Hawaii's default rule. Even assuming two laws enacted nearly a century apart could establish an enduring historical tradition, but see *infra* Part II.C.3, neither of these two laws is remotely analogous to Hawaii's default rule.

The Louisiana 1865 law made it unlawful "for any person or persons to carry fire-arms on the *premises or plantations* of any citizen, without the consent of the owner or proprietor." (Emphasis added). At the time, ""premises or plantations' would have been understood to refer to private land not open to the public." *Antonyuk I*, 89 F.4d at 385-86; *Antonyuk II*, 120 F.4th at 1047. Indeed, Louisiana in 1865 expressly made it unlawful for anyone to "enter upon any plantation without the permission of the owner or agent," whether armed or not. 1865 La. Acts 16. https://bit.ly/49IIcDV. A law controlling access to land barred to the public cannot serve as an analogue for a law restricting access to property held open to the public. Full stop.

The Louisiana law was also part of the Louisiana Black Codes. It was enacted right after the Civil War before Louisiana was readmitted to the Union and before Congress had enacted The Freemen's Bureau

Act of 1866 or the Civil Rights Act of 1866. See *McDonald*, 561 U.S. at 774-75; *Timbs,* 586 U.S. at 168 (Thomas, J., concurring in the judgment)(quoting E. Foner, *Reconstruction: America's Unfinished Revolution 1863–1877*, 199 (1988)). See also Brian Sawers, *Property Law as Labor Control In The Postbellum South*, 33 Law & Hist. Rev. 351, 366 (2015).

The Black Codes were designed to deprive newly freed slaves of their civil rights, including the right to keep and bear arms. See *McDonald,* 561 U.S. at 742, 771, 779; *Heller*, 554 U.S. at 614. See Pet.App. 187a (VanDyke, J., dissenting from the denial of rehearing en banc).[16] Courts should "not infer a historical tradition of regulation consistent with the private building consent rule" from a statute enacted 75 years after the Founding to frustrate the exercise of Second Amendment rights. *Kipke v. Moore,* 695 F.Supp.3d 638, 646 (D.Md. 2023), *appeals pending* No. 24-1799(L) (4th Cir.). See also *Koons v. Platkin,* 673 F.Supp.3d 515, 568-69 (D.N.J. 2023), *affirmed in part, vacated in part*, *Koons v. Att'y Gen.*, --- F.4th ----, 2025 WL 2612055 (3d Cir. Sept. 10, 2025), as amended (Sept. 17, 2025). To the extent such laws reflect any tradition, they are a tradition borne of "history that the Constitution left behind." *Rahimi*, 602 U.S. at 723

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[16] *A Test Case for the President*, New York Tribune, March 7, 1866, in IX Public Opinion: A Comprehensive Summary of The Press Throughout the World on All Important Current Topics, Jan.–June 1866, https://bit.ly/4evpaQE (quoting the Louisiana law as evidence that Louisiana was "nothing but a machine for restoring to political power the rebels" and "reenacting slavery in fact"); 3 Cong. Rec. 1648 (1875) (Report of Representative Hoar) (describing the law as "depriving the great mass of the colored laborers of the State of the right to keep and bear arms").

(Kavanaugh, J., concurring). A Black Code cannot be a proper part of our nation's historical tradition of firearm regulation. This Court should so hold.

2. New Jersey's 1771 law is not an analogue.

That leaves only New Jersey's 1771 law which fails as an analogue for the reasons articulated in *Antonyuk* and *Koons, viz.,* it was an anti-poaching law that, like the 1865 Louisiana law, operated only on lands closed to the public. "[T]he purpose of this statute was to ensure 'the Preservation of Deer and other Game, and to prevent trespassing with Guns, Traps, and Dogs' on others' property." *Koons,* 2025 WL 2612055 at *61 n.79 (Porter, J., concurring in part, dissenting in part). Section 6 of that 1771 New Jersey statute set property qualifications for hunting on "waste and unimproved Lands"--suggesting that the earlier provision had not prohibited hunting on unimproved private land. Other provisions of the 1771 law regulated the time and manner of hunting. Section 18 of the 1771 law provided for repeal of "all former Laws made in this Colony for the Preservation of Deer and other Game, and to prevent trespassing with Guns, and regulating the Size of Traps." New Jersey's Supreme Court has characterized this law as "punish[ing] violations of fish and gaming statutes." *New Jersey v. One 1990 Honda Accord*, 154 N.J. 373, 389–90 (1998).

Such a hunting regulation fails to satisfy either the "how" test, because it restricted carrying arms on land closed to the public (and thus was a trespass restriction), or the "why" test because the anti-poaching reason for its enactment is not "comparably

justified." *Bruen*, 597 U.S. at 29. *Bruen* and *Rahimi* require the State to show that the how and why of the regulation are "distinctly" or "relevantly" similar to the purported analogue. *Bruen*, 597 U.S. at 26, 29. *Rahimi*, 602 U.S. at 681 ("Why and how the regulation burdens the right are central to this inquiry.")(citation omitted). The intent and effect of the 1771 law was to control poaching on enclosed lands that were closed to the public, not to limit the right to carry arms in vast areas open to the public.

The Ninth Circuit thought the 1771 New Jersey law was a "dead ringer" to H.R.S. § 134-9.5 because the court believed it "applied to all private property." Pet.App. 61a. That belief reflects a fundamental misunderstanding of how property law worked at the time. The statute only made it unlawful "to carry any Gun on any Lands not his own, and for which the Owner pays Taxes, or is in his lawful Possession, unless he hath License or Permission in Writing from the Owner." In New Jersey in 1771, "Lands … for which the Owner pays Taxes" did not encompass all private lands; it meant only "improved" or "inclosed" lands. New Jersey, at the time, taxed only improved land. See Brian Sawers, *Keeping Up with the Joneses: Making Sure Your History Is Just as Wrong as Everyone Else's*, 111 Mich. L. Rev. 21, 25-26 (2013). The statute simply codified the American rule that hunters could hunt on unimproved lands not their own, while improved lands remained off limits. *Id.* at 25–26 & nn.36–38 (discussing this specific 1771 law as another example of a law drawing this balance). That is a trespass law, not a broad restriction on carrying firearms on any and all private property without advance express consent.

In *Koons*, the Third Circuit rejected the State's reliance on this 1771 New Jersey law and other anti-poaching laws for that very reason. 2025 WL 2612055 at *25–*26 & n.106 The court found 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.* at *26. "Otherwise, 'it was standard practice for landowners to give the public formal notice in local newspapers that firearms were not permitted on their property." *Id.*, quoting Patrick J. Charles, *The Second Amendment and Heller's "Sensitive Places" Carve-Out Post-Rahimi: A Historiography, Analysis, and Basic Framework,* 58 UIC L. Rev. 813, 865 (2025).

Judge Porter in *Koons* concurred on this point, stating that "[t]hese colonial anti-poaching laws were neither general prohibitions on public carry nor designed to protect a 'sensitive place' in *Heller*'s and *Bruen*'s sense of that term." *Koons*, 2025 WL 2612055 at *61 (Porter, J., concurring in part, dissenting in part). There is no evidence that the New Jersey law was "ever enforced" against anyone who was neither a poacher nor a trespasser. *See Bruen*, 597 U.S. at 58 (looking to enforcement history).

The Second Circuit interpreted the 1771 New Jersey law in the same way in *Antonyuk*. The court ruled that the New Jersey law was not an analogue because it was an anti-poaching statute that applied only to private property that was not open to the public. *Antonyuk II,* 120 F.4th at 1046–47. The court thus ruled that "[n]o matter how expansively we analogize, we do not see how a tradition of prohibiting illegal hunting on private lands supports prohibiting

the lawful carriage of firearms for self-defense on private property open [to] the public." 120 F.4th at 1046. As explained in *Antonyuk I,* "*none* of the State's proffered analogues burdened Second Amendment rights in the same way" because the statutes on which the State relied at most "created a default presumption against carriage only on private lands *not open to the public*." 89 F.4th at 385 (emphasis in original).

The 1771 New Jersey law is also not "relevantly similar" to H.R.S. § 134-9.5, because it did not apply to pistols. Rather, the 1771 law only prohibited carrying "any Gun." At the Founding, "guns" were long guns or cannons, not pistols. See Noah Webster's American Dictionary of the English Language (1828) (defining "gun" and noting that "one species of fire-arms, the pistol, is never called a gun"). Pistols at the Founding were short range weapons suitable for self-defense or close combat, not hunting. They were not regulated by trespass statutes aimed at punishing trespassers using "Guns" to poach game.

The "how" of the 1771 law is also different. Hawaii's presumptive ban applies to *all* private property held open to the public. The New Jersey law had a narrower scope because it affected only "improved" lands. See Sawers, *Keeping Up with the Joneses,* 111 Mich. L. Rev. *First Impressions,* 25–26 (2013). Even if there were any doubt about that, *Bruen* holds that "[t]o the extent there are multiple plausible interpretations of [statutes]," a court must "favor the one that is more consistent with the Second Amendment's command." *Bruen*, 597 U.S. at 44 n.11. The Ninth Circuit did the opposite.

3. The New Jersey and Louisiana laws are too few and the Louisiana law is too late.

Even assuming *arguendo* that the 1865 Louisiana law and the 1771 New Jersey law could be viewed as historical analogues, the State still fails to meet its burden. That is because "two state laws--nearly a century apart--cannot establish a historical tradition at odds with the text of the Second Amendment." Pet.App. 185a (VanDyke, J., dissenting from the denial of rehearing en banc). *Bruen* expressly rejected placing "meaningful weight" on a "solitary statute," 597 U.S. at 49, and further held that "three colonial regulations" were insufficient "to show a tradition of public-carry regulation." 597 U.S. at 46. See also *Bruen*, 597 U.S. at 67 ("we will not stake our interpretation of the Second Amendment upon a law in effect in a single State, or a single city, 'that contradicts the overwhelming weight of other evidence regarding the right'"), quoting *Heller*, 554 U.S. at 632.

The 1865 Louisiana law also came too late. "[T]he constitutional right to keep and bear arms should be understood according to its public meaning in 1791, as that 'meaning is fixed according to the understandings of those who ratified it.'" *Lara v. Commissioner Pennsylvania State Police,* 125 F.4th 428, 441 (3d Cir. 2025), *petition for cert. docketed, sub nom., Paris v. Lara*, No. 24-1329 (June 30, 2025), quoting *Bruen*, 597 U.S. at 28. "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 92 (emphasis added). See also *Koons*, 2025 WL 2612055 at *59 (Porter, J., concurring in part, dissenting in part).

By contrast, in *Rahimi* the surety and affray laws on which the Court relied were rooted in the common law at the Founding and were further codified in Founding era statutes in "at least four States--Massachusetts, New Hampshire, North Carolina, and Virginia." *Rahimi*, 602 U.S. at 697-98. Such well-established tradition gives effect to *Bruen*'s holding that "outlier" regulations cannot establish a national tradition. *Bruen*, 597 U.S. at 30, 55 n.22, 65, & 70. See also *United States v. Connelly*, 117 F.4th 269, 281 (5th Cir. 2024) (rejecting the use of laws from "three states, between 1868 and 1883").

4. The Ninth Circuit engaged in impermissible interest-balancing.

In sustaining Hawaii's default rule, the Ninth Circuit also resorted to a surreptitious form of "judge-empowering 'interest-balancing,'" *Bruen*, 597 U.S. at 22, "under the guise of an analogical inquiry." *Id.* 597 U.S. at 29 n.7. Under that approach, the right almost always loses, especially in the Ninth Circuit. See *Rahimi*, 602 U.S. at 712 (Gorsuch, J., concurring) (noting the Ninth Circuit's "50-0 record").

Such interest-balancing is evident in the panel's distinction between California's default rule, which allows an owner to consent only through signage, and Hawaii's default rule, which allows an owner to consent by signage and by other affirmative means. Pet.App. 63a. The court affirmed a preliminary

injunction against the California rule but reversed a preliminary injunction on Hawaii's rule. The court purported to justify that ruling because it found "no historical support" for California's "stringent limitation" of owner consent. *Id.*

That ruling is a misapplication of the analogue inquiry. The court never purported to base its distinction between Hawaii's rule and California's rule by reference to any regulatory "principle" as required by *Rahimi*. 602 U.S. at 692. As explained above (Part II.A, *supra*), the controlling set of "principles" for access to private land is the common law of trespass which emphatically does not distinguish between owner consent by signage or consent by other means, including by "implied consent" on property held open to the public. These principles embody a tradition dating back to before the Founding and apply equally to both California and Hawaii. The Ninth Circuit's distinction between California's law and Hawaii's law "strains the proverbial gnat while swallowing the camel," Pet.App. 180a n.1 (VanDyke, J., dissenting from denial of rehearing en banc), and is no less "arbitrary" than the rest of the court's reasoning. Pet.App. 80a.

D. Private Property Open To The Public Is Not A "Sensitive Place" And Cannot Be Subject To A Special Rule For Challenges To *State* Laws.

The Court in *Bruen* recognized "sensitive places" as a limitation on the "general right" to carry in public but private property open to the public cannot be a "sensitive place." See D. Kopel & J. Greenlee, *The*

"Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms, 13 Charleston L. Rev. 203, 289 (2018) ("Kopel and Greenlee") ("Private property in general is not part of the sensitive places doctrine."). Such private property is not remotely analogous to courthouses, polling places or legislative assemblies, or to schools or public buildings. *Bruen,* 597 U.S. at 30. Hawaii's default rule does not restrict carry based on the nature of the place or what goes on there; it restricts arms based on whether the owner has given permission. Such a law does not have anything to do with sensitive places, a category of locations historically defined by the need to protect "government deliberation from violent interference." Kopel and Greenlee, at 205.

By definition, a "sensitive place" is also a location where "carrying of firearms" may be "altogether prohibited." *Bruen*, 597 U.S. at 30. The default rule does not impose any such ban. Hawaii law recognizes that a business owner may keep firearms at business locations. See H.R.S. § 134-24(a) ("all firearms shall be confined to the possessor's place of business, residence, or sojourn"). The default rule expressly does not apply to "an owner, lessee, operator, or manager of the property, including an ownership interest in a common element or limited common element of the property." H.R.S. § 134-9.5(c). The owner may also authorize other members of the public to carry on the property through signage or express permission. *Id*. § 134-9.5(b). And H.R.S. 134-9.5(d) makes other exceptions for categories of persons identified in H.R.S. § 134.11(a). These provisions are in stark contrast with Hawaii's expansive sensitive place designations, which ban all members of the

public, owner or not, from carrying firearms in 15 separate categories of places across the State. *Id.* § 134-9.1(a). For all these reasons, H.R.S. § 134-9.5 cannot be defended as a "sensitive place" law.

The Ninth Circuit appears to have nonetheless extended its sensitive places reasoning to Hawaii's default rule. The court held that "sensitive place" regulations are subject to a "more lenient standard." Pet.App. 27a. Under that standard, the court held, there need *not* be "a close match between the historical regulation and the modern one" and a reviewing court may *disregard Bruen*'s ruling "'that three colonial regulations'" did not "'suffice to show a tradition of public-carry regulation.'" *Id.,* quoting *Bruen*, 597 U.S. at 46. That reasoning would account for the Ninth Circuit's willingness to accept *two* outlier, otherwise inapplicable laws (the 1865 Louisiana law and the 1771 New Jersey law) as sufficient in sustaining Hawaii's default rule, a result that the court *expressly* recognized would be otherwise impermissible under *Bruen*. Pet.App. 27a.

The court's reasoning is error twice over. *Bruen* did not purport to sanction a special, "more lenient standard" for "sensitive places." To the contrary, *Bruen* held that exceptions to the general right to carry are limited "to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms." *Bruen*, 597 U.S. at 38. But regardless of that point, nothing in *Bruen* allows courts to import a special "sensitive places" analysis in adjudicating the validity of laws regulating *non*-sensitive places, such as private

property held open to the public or other locations where firearms are not "altogether prohibited." *Id*. at 30. The Ninth Circuit's evident attempt to do so cannot be accepted.

The Ninth Circuit compounded these errors by following the lead of the Second Circuit in adopting still *another* special rule, this time for cases in which a *State* law is being challenged. In *Antonyuk I*, the Second Circuit held that *"[b]ecause* the [New York statute] is a state law, the understanding that prevailed when the States adopted the Fourteenth Amendment ... is, along with the understanding of that right held by the founders in 1791, a relevant consideration." *Antonyuk I*, 89 F.4th at 304-05 (emphasis added).[17] The Ninth Circuit followed suit in this case. The court held that "[i]t bears emphasizing that the laws at issue here are *state* laws," and that "[w]e thus agree with the Second Circuit [in *Antonyuk I*] 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. 28a-29a (emphasis in original).

Putting to one side the separate question of whether 1791 or 1868 is the "primary" period for

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[17] The Second Circuit adhered to that holding in *Antonyuk II,* 120 F.4th at 97, *Giambalvo v. Suffolk County*, 155 F.4th 163, 178 (2d Cir. 2025), and *Frey v. City of New York*, --- F.4th ----, 2025 WL 2679729 at *4 (2d Cir. Sept. 19, 2025).

conducting the analogue inquiry,[18] a special rule just for *State* cases cannot be right. *McDonald* squarely rejected the argument that the Second Amendment could be applied differently just *because* a law was enacted by a *state*. See 561 U.S. at 784-85. This Court made the same point in *Bruen*. 597 U.S. at 37 ("we have made clear that individual rights enumerated in the Bill of Rights and made applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government"). See also *Ramos*, 590 U.S. at 93 ("incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government"); *Timbs*, 586 U.S. 150 ("there is no daylight" between federal laws and State laws in the scope of an incorporated Bill of Rights provision). The Second Amendment does not embody a lesser (or different) form of the right to keep and bear arms *vis-à-vis* States.

The Ninth Circuit "emphasiz[ed]" that the "laws" at issue in this case are "*state*" laws and expressly stated that it was applying its special state latitude to "at least" sensitive places restrictions (which are also analyzed under the court's special "more lenient standard"). That language implies that this special rule is applicable to other kinds of restrictions. The court identified no principled reason (and Petitioners can think of none) why it would give States special solicitude *only* as to sensitive places regulations. It thus seems likely that the court applied its special

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[18] This Court reserved that question in *Rahimi*, 602 U.S. at 692 n.1 and in *Bruen*, 597 U.S. at 37, and declined to grant certiorari on that question in this case.

rule for State cases to Hawaii's default rule, just as it did when it applied its "more lenient standard" for sensitive places to the default rule. Indeed, the Second Circuit has applied this special rule for State cases to sustain New York's *licensing* requirements for *carry permits, Giambalvo v. Suffolk County,* 155 F.4th 163, 178 (2d Cir. 2025), thereby demonstrating that the special rule for State cases is *not* limited to sensitive places. This Court should put a stop to this deeply flawed reasoning before it infects the resolution of any more Second Amendment issues.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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November 17, 2025

STATUTORY APPENDIX

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STATUTORY APPENDIX

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1. N.J. Laws, ch. 540 (Dec. 21, 1771)

LAWS OF THE STATE OF NEW-JERSEY
12152
Revised and Published
UNDER THE AUTHORITY OF THE
LEGISLATURE

* * *

1. Be it enacted *by the Governor, Council and General Assembly of this colony, and it is hereby enacted by the authority of the same,* That all that part of the said town of Shrewsbury, beginning at Cranberry inlet, and running thence up the bay to the mouth of Metetecunk river; thence up the said river to the first bridge, which now is over the said river; thence west until it shall intersect a line to be run, south eighteen degrees east, from the place where Burlington old path crosseth the north branch of Tom's rivet, called Pine-brook; thence, from the intersection of the said lines, south fifty-six degrees west to the old division line, called Keith's line; thence, along said Keith's line, to the line of the town of Stafford; thence, along the same, to the main sea or ocean; and thence bounded by the sea to the above mentioned beginning ; shall be, and is hereby divided off from the said township of Shrewsbury, and made a separate town, to be called by the name of the town of Dover.

2. *And be it further enacted by the authority aforesaid,* That all that part of the aforesaid township of Shrewsbury, beginning at the mouth of Passaquanaqua brook, where it vents into Manasquan river; and from

thence running south to the line of the before mentioned town of Dover; then west along the same line to the line of that part of the said town of Shrewsbury, annexed to the town of Upper-Freehold; thence north eighteen degrees west, to where Burlington old path crosseth the north branch of Tom's river, alias, Pine-brook; thence easterly along the bounds of said Freehold, to where it began; shall be, and is hereby, divided off from the said town of Shrewsbury, and annexed unto the town of Freehold, and for ever hereafter shall be accounted part thereof.

3. *And be it further enacted by the authority aforesaid,* That all that part of the town of Shrewsbury, beginning where Burlington old path crosseth the before mentioned north branch of Tom's river; thence running south eighteen degrees east, to the line of Dover aforesaid; thence south fifty-six degrees west, along said line of Dover, to the before mentioned line called Keith's line; thence along the said line to the line of Upper-Freehold; thence along the line of Upper-Freehold to where it began; shall be, and is hereby, divided off from the said town of Shrewsbury, and annexed unto the town of Upper-Freehold, and for ever hereafter shall be accounted part thereof.

AN ACT for the preservation of deer, and other game, and to prevent trespassing with guns.

Passed the 21st of December, 1771.

WHEREAS the laws heretofore passed in this colony, for the preservation of deer and other game, and to

prevent trespassing with guns, traps and dogs, have, by experience, been found insufficient to answer the salutary purposes thereby intended; Therefore—

1. Be it enacted *by the Governor, Council, and General Assembly of this colony of New-Jersey, and it is hereby enacted by the authority of the same,* That if any person or persons shall presume, at any time after the publication hereof, to carry any gun on any lands not his own, and for which the owner pays taxes, or is in his lawful possession, unless he hath license or permission in writing from the owner or owners, or legal possessor, every such person so offending, and convicted thereof, either upon the view of any justice of the peace within this colony, or by the oath or affirmation of one or more witnesses, before any justice of the peace of either of the counties, cities, or towns corporate of this colony, in which the offender or offenders may be taken or reside, he, she, or they, shall, for every such offence, forfeit and pay to the owner of the soil, or his tenant in possession, the sum of forty shillings, with costs of suit; which forfeiture shall and may be sued for and recovered by the owner of the soil, or tenant in possession, before any justice of the peace in this colony, for the use of such owner or tenant in possession.

2. *And be it enacted by the authority aforesaid,* That if any person shall presume, at any time after the publication of this act, to hunt or watch for deer with a gun, or set in any dog or dogs to drive deer, or any other game, on any lands not his own, and for which the owner or possessor pays taxes, or is in his lawful possession, unless he hath license or permission in writing from such owner or

owners or legal possessor; every such person so offending, and being convicted thereof in manner aforesaid, shall, for every such offence, forfeit and pay to the owner of the soil, or tenant in possession, the sum of forty shillings, with costs of suit; provided, that nothing herein contained shall be construed to extend to prevent any person carrying a gun upon the highway in this colony.

3. *And be it further enacted by the authority aforesaid,* That if the person or persons offending against this act be non-residents of this colony, he or they shall forfeit and pay for every such offence, five pounds, and shall forfeit his or their gun of guns to any person or persons, who shall inform and prosecute the same to effect, before any justice of the peace in any county of this colony, wherein the offender or offenders may be taker or apprehended.

4. Repealed, and supplied by act, February 21, 1820.

5. *And,* for the better and more effectual convicting of offenders against this act, *Be it enacted by the authority aforesaid,* That any and every person or persons in whose custody shall be found, or who shall expose to sale, any green deer-skins, or fresh venison, killed at any time after the first day of January, and before the first day of September aforesaid, and shall be thereof convicted by the oath or affirmation of one or more credible witnesses, shall be deemed guilty of offending against this act, and be subjected to the penalties of killing deer out of season.

6. Repealed by act, February 21, 1820.

7. *And be it enacted by the authority aforesaid,* That if any person or persons, within this colony, shall set any trap or other device whatsoever, larger than what is usually and commonly set for foxes and muskrats, such person, setting such trap or other device, shall pay the sum of five pounds, and forfeit the trap or other device, shall suffer three months imprisonment, and shall also be liable to make good all damages any person shall sustain by setting such trap or other device, and the owner of such trap or other device, or person to whom it was lent, shall be esteemed the setter thereof, unless it shall be proved, on oath or affirmation, what other person set the same, or that such trap or other device was lost by said owner or person, to whom it was lent, and absolutely out of his power; and if the setter of the trap or other device be a slave, and it be his own voluntary act, lie shall (unless the master or mistress shall pay the fine) in lieu of such fine, be publicly whipped with thirty lashes, and committed till the costs are paid; and that the said trap or other device shall be broken and destroyed in the view and presence of the justice of the peace, before whom they are brought: and if any person or persons shall have possession of, or there shall be found in his or their house, any trap or traps, device or devices whatsoever, for taking of deer, such person or persons shall be subjected to the same penalty as if he or they were convicted of setting such trap or traps, or other device.

8. *And,* for encouraging the destruction of such traps and devices, □*e it enacted by the authority aforesaid,* That if any person shall seize any trap or other device for the taking deer, and shall carry such trap or other device to

any magistrate of the county, where such trap or device was seized, such person shall be entitled to an order from the said magistrate to the collector of such county, to pay him the sum of ten shillings, out of any money in his hands raised for the use of the county; which sum shall be allowed to such collector, on the settlement of his accounts.

9. *And be it further enacted by the authority aforesaid,* That every smith or other artificer, who shall hereafter make or mend any such trap or other device aforesaid, he shall forfeit and pay the sum of forty shillings; and the person carrying such trap or other device to the artificer aforesaid, shall forfeit and pay the sum of twenty shillings. And every person, who shall bring into this colony any such trap or device as aforesaid, shall forfeit and pay the sum of forty shillings. And if the person, who shall carry the same to the smith or artificer, shall be so poor as that he shall not be able to pay the forfeiture aforesaid, he shall be committed to the common gaol, until he shall prove who is owner of such trap or device, or who delivered the same to him; and, in such case, the forfeiture aforesaid shall be levied on the goods, or, in failure of goods, on the body of the owner of such trap or device, or the person who delivered the same to the pauper, and the trap or device shall be forfeited and destroyed..

10. *And whereas* a most dangerous method of setting guns has too much prevailed in this province, □*e it enacted by the authority aforesaid,* That if any person or persons, within this colony, shall presume to set any loaded gun in such manner, as that the same shall be intended to go off or discharge itself, or be discharged by any string, rope or

other contrivance, such person or persons shall forfeit and pay the sum of six pounds; and, on non-payment thereof, shall be committed to the common gaol of the county, for six months.

11. *And be it further enacted by the authority aforesaid,* That the fines and forfeitures in this act expressed, and not particularly appropriated, shall be paid, one half to the prosecutor, and the other half to and for the use of the poor of the town, precinct of district, where the offence is committed; and that the execution of this act, and every part thereof, shall be within the cognizance and jurisdiction of any one magistrate or justice of the peace, without any reference to the act for trial of small causes in this colony.

12. *And be it enacted,* That nothing in this law shall be construed to extend to restrain the owners of parks, or of tame deer, from killing, hunting or driving their own deer.

13. *And be it also enacted by the authority aforesaid,* That if any justice of the peace or other magistrate, within this province, shall have information of any persons offending against this act, in killing deer out of season, setting and making traps, non-residents killing deer, and persons setting of guns, and shall not prosecute the same to effect, within two months after such information, lie shall forfeit and pay the sum or sums, to which the offender against this act would have been liable.

14. *And be it enacted by the authority aforesaid, That the Justices, at every Quarter-sessions of the peace, shall*

cause this act to be publicly read and give in charge to the grand-jury, to particularly inquire and present all persons for killing deer out of season, setting or making traps, and all non-residents killing, destroying, hunting and taking any sort of deer, and all persons setting of guns and, upon conviction for either of the said offences, the said justices shall set and impose the fines and penalties herein before mentioned, with costs of suit.

16. *And be it enacted by the authority aforesaid,* That if any person or persons, within this colony, shall, after the publication of this act, watch with a gun, on any uninclosed land within two hundred yards of any road or path, in the night-time, whether the said road is laid out by law or not, or shall stand or station him or themselves upon or within two hundred yards of any road as aforesaid, for shooting at deer driven by dogs, he or they so offending, shall, on conviction, forfeit and pay the sum of five pounds, for every such offence; to be recovered by action of debt, or presentment of the grand-jury as aforesaid, and pay all damages.

17. *Provided always,* That the sixth section of this act, shall not be construed to affect any native Indian; and that nothing in this act shall be construed to prevent the inhabitants of Essex, Bergen, Morris and Sussex, from making, having in their houses, or setting traps of five pounds weight, or more, for bears, wolves, foxes, or any other wild beasts, deer only excepted.

18. *And be it further enacted by the authority aforesaid,* That all former laws made in this colony for

the preservation of deer and other game, and to prevent trespassing with guns, and regulating the size of traps, shall be, and they are hereby repealed.

See supplement passed 21st of February, 1620.

AN ACT for establishing the boundary or partition line between the colonies of New-York and Nova-Caesarea or New-Jersey, and for confirming the titles and possessions.

Passed the 26th of September, 1772.

WHEREAS the boundary or partition line between the colonies of New-York and Nova-Caesarea or New-Jersey, from the station on Hudson's river, to the station on Delaware river, not being duly ascertained, and the extent of their respective jurisdictions remaining uncertain, and the due and regular administration of government, in both colonies, being, by that means, greatly obstructed, the respective legislatures of both the said colonies did, by acts for the purpose passed, concur in submitting the title and property of the lands, affected by the said boundary or partition line in both colonies, to such a method of decision as his most gracious majesty should think proper, by his royal commission or otherwise, to institute and appoint; of which acts his majesty was pleased to declare his approbation, and, by his royal commission, under the great seal of Great-Britain, bearing date the seventh day of

October, in the seventh year of his reign, did authorize and appoint certain persons therein named, or any five of them, to be his majesty's commissioners for ascertaining, settling and determining the boundary aforesaid, between the said colonies. *And whereas* a sufficient number of the commissioners, named in the said commission, on the seventh day of October, in the year of our Lord, one thousand seven hundred and sixty-nine, did determine, that the boundary or partition line, between the said colonies of New-York and New-Jersey, should be a direct and straight line from the fork or branch, formed by the junction of the stream or waters called the Machackamack with the river Delaware or Fishkill, in the latitude of forty-one degrees, twenty-one minutes and thirty-seven seconds, as found by the surveyors appointed by the said commissioners, to a rock on the west side of Hudson's river, marked by the said surveyors, in the latitude of forty-one degrees, being seventy-nine chains and twenty-seven links to the southward on a meridian from Sneydon's house, formerly Corbet's, from which determination the agents for both said colonies, appealed to his majesty in his privy-council. *And whereas* several tracts of land to the northward of the said partition line, so decreed by the said commissioners, have been therefore taken up or sold and hitherto and still are held and

* * *

2. 1865 La. Acts 14

ACTS PASSED BY THE GENERAL ASSEMBLY OF THE STATE OF LOUISIANA AT THE EXTRA SESSION, HELD AND BEGUN IN THE CITY OF NEW ORLEANS ON THE 23d OF NOVEMBER, 1865.

* * *

incurred by his Excellency, J. Madison Wells, Governor of the State of Louisiana, in fitting up the Mechanics' Institute for the use of the General Assembly, the said amount to be paid on the warrant of the Auditor of Public Accounts, to the following persons, and as follows:

C. W. Grandjean, two thousand three hundred and twenty-seven dollars and eighteen cents ... $2,327 18

Allen Hill, two thousand and seventy-six dollars and fifty cents 2,076 50

A. Brosseau & Co., one thousand six hundred and thirty-nine dollars and ninety-two cents 1,639 92

Selby & Donlan, two hundred and eighty-four dollars and thirty-five cents 284 35

J. P. Coulon, three hundred and seventy-one dollars and sixty-five cents 371 65

P. Ward, one hundred dollars 100 00

John Gauche, twenty dollars and fifty cents 20 50

Sampson & Kean, thirty dollars..... 30 00

G. W. R. Bailey, two hundred dollars 200 00

Total.....$7,050 10

SEC. 2. Be it enacted, &c., That this act shall take effect from and after its passage.

DUNCAN S. CAGE,
Speaker of the House of Representatives.

ALBERT VOORHIES,
Lieutenant Governor and President of the Senate.

Approved December 18, 1865.

J. MADISON WELLS,
Governor of the State of Louisiana.

A true copy:
J. H. HARDY,
Secretary of State.

No. 10.] AN ACT

To prohibit the carrying of fire-arms
on premises or plantations of any citizen,
without the consent of the owner.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That it shall not be lawful for any person or persons to carry fire-arms on the premises or plantations of any citizen, without the consent of the owner or proprietor, other than in lawful discharge of a civil or military order; and any person or persons so offending shall be fined a sum not less than one dollar nor more than ten dollars, or imprisoned not less than one day nor more than ten days in the parish jail, or both, at the discretion of any court of competent jurisdiction.

* * *

préparer, pour l'usage de l'Assemblée Générale, les salles de l'Institut des Artisans. Le susdit montant sera payé sur le mandat de l'Auditeur des Comptes Publics, aux personnes ci-après désignées, ainsi que suit:

C. W. Grandjean, deux mille trois cent vingt-sept piastres et dix-huit cents $2,327 18

Allen Hill, deux mille soixante-seize piastres et cinquante cents 2,076 50

A. Broussard & Cie., mille six cent trente-neuf piastres et quatre-vingt-douze cents 1,639 92

Selby & Donlaw, deux cent quatre-vingt-quatre piastres et trente-cinq cents 284 35

J. P. Coulon, trois cent soixante-onze piastres et soixante-cinq cents 371 65

P. Ward, cent piastres 100 00

John Gauche, vingt piastres et cinquante cents..... 20 50

Sampson & Keen, trente piastres 30 00

G. W. R. Bailey, deux cents piastres..... 200 00

Total.....$7,050 10

SEC. 2. Décrètent de plus: Cet acte sortira son effet à compter de son adoption.

DUNCAN S. CAGE,
Orateur de la Chambre des Représentants.

ALBERT VOORHIES,
Lieutenant-Gouverneur et Président du Sénat.

Approuvé le 18 décembre 1865.

J. MADISON WELLS,
Gouverneur de l'État de la Louisiane.

Pour copie conforme:
J. H. HARDY,
Secrétaire d'État.

No. 10.] ACTE

Défendant le port d'armes à feu dans
le domaine ou l'habitation de tout citoyen
sans le consentement du propriétaire.

SECTION 1. Le Sénat et la Chambre des Représentants de l'État de la Louisiane, réunis en Assemblée Générale, décrètent: La loi défend à toute personne de porter des armes à feu dans le domaine ou l'habitation de tout citoyen, sans le consentement du propriétaire, excepté dans l'accomplissement légitime d'un ordre civil ou militaire; toute infraction à cette loi sera punie d'une amende d'au moins une piastre et de dix au plus, ou d'un emprisonnement d'un jour au moins, et qui n'en excédera pas dix, dans la prison de paroisse; les deux peines pourront être infligées à la fois, à la discrétion de toute cour de juridiction compétente.

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