

In the
Supreme Court of the United States

JASON WOLFORD, *ET AL.*,
Petitioner,

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 FOR PROSECUTORS AGAINST GUN
VIOLENCE AS *AMICUS CURIAE* IN SUPPORT OF
RESPONDENTS**

ALVIN L. BRAGG, JR.
*District Attorney,
New York County*
STEVEN C. WU*
Chief, Appeals Division
JOHN T. HUGHES
BRENT E. YARNELL
Assistant District Attorneys
One Hogan Place,
New York, NY 10013
(212) 335-9326
wus@dany.nyc.gov

*Counsel of Record
December 24, 2025

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Interest of Amicus Curiae.....	1
Summary of Argument	3
Argument.....	5
The Second Amendment Does Not Forbid States from Enacting a Default Rule that Protects Private Property Owners’ Right to Exclude Firearms	5
A. States Have Long Used Default Rules to Protect a Business Owner’s Right to Exclude Customers Who Exhibit Dangerous or Disruptive Conduct on the Premises.	6
B. No-Carry Default Rules Protect Business Owners’ Right to Exclude Firearms By Ensuring that Property Restrictions Reflect the Preferences and Expectations of the Local Community.....	11
C. A Default Rule Reflecting Local Business Owners’ Widely Held Preference to Exclude Firearms Advances Public Safety.....	15
Conclusion	19

TABLE OF AUTHORITIES

CASES

<i>Bond v. United States</i> , 233 A.3d 506 (D.C. 1967).....	10
<i>Cedar Point Nursery v. Hassid</i> , 594 U.S. 139 (2021).....	6
<i>Dominguez v. State</i> , 363 S.W.3d 926 (Tex. App. 2012)	9, 13
<i>Duncan v. Theratx, Inc.</i> , 775 A.2d 1019 (Del. 2001)	13
<i>Florida v. Jardines</i> , 569 U.S. 1 (2013).....	7, 13
<i>Johnson v. State</i> , 786 So.2d 1162 (Fla. 2001)	9, 13
<i>New York State Rifle & Pistol Ass’n, Inc. v. Bruen</i> , 597 U.S. 1 (2022).....	5, 14
<i>People v. Lloyd</i> , 579 N.Y.S.2d 405 (N.Y. App. Div. 1992)	9
<i>Six Carpenters’ Case</i> , 8 Co. Rep. 146a, 77 E.R. 695, 1610 WL 1 (1610) ..	8
<i>Winder v. Blake</i> , 49 N.C. (4 Jones) 332 (N.C. 1857)	8
<i>Wolford v. Lopez</i> , 116 F.4th 959 (9th Cir. 2024)	2

STATUTES

Cal. Penal Code § 26.230(a)(26).....	2
Md. Code Ann., Crim. Law § 6-411(d)	2
N.J. Stat. Ann. § 2C:58-4.6(a)(24)	2

N.Y. Penal Law § 265.01-d(1)	2
------------------------------------	---

OTHER AUTHORITIES

3 William Blackstone, <i>Commentaries on the Laws of England</i> (1768)	8, 11
Anjali Hemphill, <i>10 Hurt, Including 4 Bystanders Shot in Park, in 3 Separate Harlem and Queens Shootings</i> , NBC 4 New York (Sept. 27, 2022) ...	16
Arlin J. Benjamin Jr. et al., <i>Effects of Weapons on Aggressive Thoughts, Angry Feelings, Hostile Appraisals, and Aggressive Behavior: A Meta-Analytic Review of the Weapons Effect Literature</i> , 22 <i>Personality & Soc. Psych. Rev.</i> 347, 359 (2018).....	16
Georgett Roberts et al., <i>8 Innocent Bystanders—In One Month—Caught in the Crossfire of NYC’s Out-of-Control Shooting Surge</i> , N.Y. Post (Oct. 26, 2022).....	16
Gun Violence, Manhattan Dist. Att’y’s Off., https://www.manhattanda.org/our-work/gun-violence (last visited Dec. 22, 2025).	1
Howard Schultz, An Open Letter from Howard Schultz, Chairman, President and CEO of Starbucks Coffee Company, WALL STREET JOURNAL (Sept. 18, 2013), https://perma.cc/5QUS-QFXN (accessed on Dec. 21, 2025).....	12
Jonathan Sarnoff, <i>The Information Costs of Exclusion</i> , 91 <i>U. Chi. L. Rev.</i> 1021 (2024)	18
Joseph Blocher & Darrell A.H. Miller, <i>What is Gun Control? Direct Burdens, Incidental Burdens, and the Boundaries of the Second Amendment</i> , 83 <i>U. Chi. L. Rev.</i> 295 (2016)	12

Joseph Blocher, <i>Firearm Localism</i> , 123 Yale L.J. 82 (2013).....	16
Julia A. Wolfson et al., <i>U.S. Public Opinion on Carrying Firearms in Public Places</i> 107 Am. J. Pub. Health 929, 932 (2017), https://ajph.aphapublications.org/doi/epdf/10.2105/AJPH.2017.303712 (accessed on Dec. 22, 2025).....	13
Kerry Shaw, <i>What is a ‘Gun Free Zone,’ and What’s Behind the Movement to Get Rid of Them?</i> THE TRACE (Mar. 16, 2017), https://www.thetrace.org/2017/03/gun-free-zone-facts/ (accessed Dec. 21, 2025).....	15
Lisa Rozner & Kevin Rincon, <i>Police: Bystander John Edwards Shot and Killed Amid Night of Gun Violence in NYC</i> , CBS New York (July 5, 2022)	16
Mark R. Sigmon, <i>Hunting and Posting on Private Land in America</i> , 54 Duke L.J. 549, 558 (2004) ..	9
Parija Kavilanz, <i>Lululemon stands by decision to fire employees who intervened in robbery</i> , CNN (June 7, 2023), https://www.cnn.com/2023/06/06/business/lululemon-fires-employees-stop-robbery (accessed on Dec. 16, 2025).....	17
Sullivan & Cromwell LLP, <i>S&C Memo: Second Circuit Blocks Portions of New York Gun Law</i> 4 (Dec. 14, 2023), https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/Second-Circuit-Blocks-Portions-New-York-Gun-Law.pdf (accessed on Nov. 20, 2025)	12

Susan B. Sorenson & Daniel W. Webster, <i>What Works: Policies to Reduce Gun Violence, in Gun Violence: Prediction, Prevention, and Policy</i> 27 (Am. Psych. Ass’n 2013).	16
Thomas M. Cooley, <i>A Treatise on the Law of Torts or the Wrongs which Arise Independent of Contract</i> 303 (2d ed. 1888), https://www.google.com/books/edition/A_Treatise_on_the_Law_of_Torts_Or_The_Wr/7Wo9AAAAIAAJ?hl=en&gbpv=1 (accessed on Dec. 14, 2025)	7-8, 11
Thomas W. Merrill & Henry E. Smith, <i>Making Coasean Property More Coasean</i> , 54 J.L. & Econ. S77 (2011)	7, 12
Thomas W. Merrill & Henry E. Smith, <i>Property: Principles and Policies</i> (3d ed. 2017)	8
Thomas W. Merrill, <i>Property and the Right to Exclude</i> , 77 Neb. L. Rev. 730 (1998)	6
ZEROEYES, 2024 Gun Violence Report (Feb. 11, 2025), https://perma.cc/2PSZ-59QV (accessed on Dec. 16, 2025).....	17

INTEREST OF AMICUS CURIAE

Prosecutors Against Gun Violence (“PAGV”) is an independent, nonpartisan coalition that identifies and advances prosecutorial and policy solutions to the national crisis of gun violence.¹ PAGV is composed of fifty prosecutors, serving tens of millions of residents, in jurisdictions spanning nearly thirty states. As prosecutors, PAGV’s members play a critical role in protecting public safety, a paramount objective of state and local government. This mission includes promoting best practices for prosecuting gun offenses, defending commonsense gun restrictions, and working with constituents to understand the best means of enforcing existing laws.

PAGV Co-Chair Alvin L. Bragg is the District Attorney of New York County (“DANY”). DANY enforces state and local criminal laws in Manhattan, the most densely populated county in the country with nearly 1.7 million residents. Combatting gun violence is one of DANY’s top priorities.² DANY routinely prosecutes defendants who use firearms to perpetrate violent crimes, including murders, assaults, and robberies. Beyond criminal prosecutions, DANY also devotes considerable resources to addressing the underlying causes of

¹ PAGV certifies that this brief was not written in whole or in part by counsel for any party and that no person or entity other than PAGV, its members, and its counsel has made any monetary contribution to this brief’s preparation or submission. PAGV’s membership roster appears at <https://prosecutorsagv.org/about>.

² Gun Violence, Manhattan Dist. Att’y’s Off., <https://www.manhattanda.org/our-work/gun-violence> (last visited Dec. 22, 2025).

violent crimes, a crucial component of law enforcement's effort to stop gun violence.

PAGV Co-Chair Zach Klein is the Columbus City Attorney. Among other responsibilities, his office prosecutes criminal cases in the City of Columbus, which is the largest city in Ohio with more than 900,000 residents, the county seat for Franklin County, and the State's capital. The Columbus City Attorney's Office prosecutes misdemeanor offenses inside the City of Columbus, including cases of domestic violence as well as weapons-under-disability charges. In addition, the Columbus City Attorney's Office has been a leading voice for commonsense gun regulations, including suing the State of Ohio to force it to fix its background check system, successfully defending the city's weapons-under-disability law, and engaging in other litigation efforts to overturn Ohio's firearms preemption law, which prohibits municipalities from passing their own gun laws.

PAGV has a direct interest in this litigation, which considers whether the Constitution forbids a state—here, Hawaii—from enacting a default rule forbidding “the carry of firearms on private property held open to the public unless the owner or operator consents.” *Wolford v. Lopez*, 116 F.4th 959, 992 (9th Cir. 2024). PAGV members enforce comparable no-carry default rules in New York, California, and Maryland, and a similar law has also been enacted in New Jersey. *See* N.Y. Penal Law § 265.01-d(1); Cal. Penal Code § 26.230(a)(26); Md. Code Ann., Crim. Law § 6-411(d); N.J. Stat. Ann. § 2C:58-4.6(a)(24).

The experience of PAGV and its members confirms that, in localities where most business owners and consumers do not want members of the

public to carry firearms within retail stores, restaurants, and similar establishments that are open to the public, a no-carry default rule can help address what has become a significant source of gun violence throughout the United States. PAGV thus urges this Court to affirm the decision of the Ninth Circuit upholding Hawaii's no-carry default rule.

SUMMARY OF ARGUMENT

Every party agrees that private property owners have an unrestricted right to exclude those bearing firearms, including on property that is otherwise open to the public. Petitioners and the United States further agree that states can make it a crime to enter private property in violation of an owner's wish to exclude firearms. These undisputed principles support the validity of Hawaii's no-carry default rule, which simply enforces the presumed preferences of property owners based on the state legislature's determination of local customs and expectations in that jurisdiction.

This type of property rule has a long historical tradition. During the Founding Era, a business owner's right to exclude was protected through custom-based default rules that removed any need for an owner to give his customers advanced notice that their implied license to enter his shop or tavern did not entitle them to engage in dangerous or disruptive conduct on the premises. Default rules forbidding certain behaviors within the property are essential to protect the owner's right to exclude those behaviors because it is often impractical for owners to communicate their preferences to any and all strangers who happen to step inside the premises. And starting in the nineteenth century, criminal

trespass laws incorporated custom-based default rules in identifying misconduct that triggers criminal liability when someone lawfully enters a property but then exceeds the scope of his license to be there.

In jurisdictions where most business owners do not want customers to carry firearms within their stores and restaurants, a no-carry default rule protects business owners' right to exclude firearms by ensuring that the baseline property rules reflect local preferences and expectations. A no-carry default rule lessens the burden on local businesses to communicate and enforce their desire to exclude guns, and it allows law enforcement like PAGV's members to enforce those bans instead, thus sparing private property owners from having to assume the risks involved in trying to expel gun-carrying customers. Moreover, in communities where most businesses and consumers prefer for retail establishments to be free from guns, a no-carry default rule reflects the traditional regulatory practice of aligning baseline property rules with local customs and expectations. The legislatures who have enacted no-carry default rules are well-positioned to evaluate the preferences of local business owners.

Amici's experience confirms that default rules that reflect local business owners' preference for excluding firearms advance public safety. As businesses across the country have made clear, the presence of firearms raises the risk of gun violence, which not only harms customers, but is also antithetical to commerce. Businesses have great difficulty confronting customers who are engaged in potentially disruptive or dangerous behavior, and introducing a firearm makes such interactions more treacherous still. Moreover, when the default rule is

aligned with the majority preference, it is easier for customers to comply with each particular business's policy, because fewer stores will deviate from the default rule, which will result in a simpler regulatory landscape for the customer to navigate.

ARGUMENT

THE SECOND AMENDMENT DOES NOT FORBID STATES FROM ENACTING A DEFAULT RULE THAT PROTECTS PRIVATE PROPERTY OWNERS' RIGHT TO EXCLUDE FIREARMS

The threshold question in any Second Amendment challenge is whether the constitutional text even applies to the gun owner's "proposed course of conduct." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 32 (2022). Contrary to petitioners' framing (Pet. Br. 16), the relevant conduct here is not carrying firearms in public, but rather bringing firearms onto private property without the owner's consent (Resp. Br. 13-14). That conduct is not governed by the Second Amendment at all. A person has no freestanding constitutional right to enter or remain on private property—let alone a right to do so armed with a deadly weapon. As no parties dispute, a property owner has wide authority to exclude others from its property, including the "unquestioned" right to exclude those that bear firearms (Pet. Br. 17). And every party also agrees that states have the power to enforce criminal penalties against those who bring firearms onto private property against the owner's wishes (Pet. Br. 17; U.S. Br. 19).

No-carry default rules like Hawaii's respect the exclusionary rights of private property owners and

thus do not implicate the Second Amendment, as respondent correctly argues (Resp. Br. 20-21). In effect, these laws simply refuse to presume that an individual has consent to bring a firearm into a retail establishment when the owner has not actually expressed consent to that potentially dangerous conduct. Properly understood, these laws draw their historical lineage not from restrictions on gun ownership, but rather from a long tradition under both the common law and criminal law of enforcing private property owners' preferences. And as PAGV's members know from their direct experience, in the states that have enacted these statutes, these policies enjoy significant support from business owners who are concerned about the risks posed by firearms in dense commercial spaces and who rationally prefer not to confront gun owners on their own. Nothing in the Second Amendment forbids default rules that reflect private property owners' enforceable preferences.

A. States Have Long Used Default Rules to Protect a Business Owner's Right to Exclude Customers Who Exhibit Dangerous or Disruptive Conduct on the Premises.

An owner's right to exclude is "the '*sine qua non*' of property." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 150 (2021) (quoting Thomas W. Merrill, *Property and the Right to Exclude*, 77 Neb. L. Rev. 730, 730 (1998)) (emphasis in original). Default rules prohibiting interference with private property absent the owner's consent are essential for protecting the owner's right to exclude, because it is usually impractical for owners to communicate their preferences to any and all strangers who may

contemplate some form of interference. See Thomas W. Merrill & Henry E. Smith, *Making Coasean Property More Coasean*, 54 J.L. & Econ. S77, 90, 98–99 (2011) (due to “severe information cost[s],” protection of private property requires “defaults,” which are “largely unspecified,” that “impose automatic duties of noninterference on all persons who may or may not encounter the owned property”). Under the nation’s historical tradition of private-property regulation, an owner who opens property to the public implicitly invites strangers to engage in some kinds of interference, such as stepping onto the premises. But that “implicit license” to enter the property has been limited by what is “customary” under the circumstances. *Florida v. Jardines*, 569 U.S. 1, 8 & n.2 (2013); see Thomas M. Cooley, *A Treatise on the Law of Torts or the Wrongs which Arise Independent of Contract* 303, 316–17 (2d ed. 1888) (“Custom must determine in these cases what the limit is of the implied invitation.”).³ And the scope of any implicit license has always been defined by default rules forbidding certain conduct on the premises without the owner’s express consent.

In particular, the law has traditionally recognized that the implied invitation to enter private property that is open to the public does not displace default rules prohibiting potentially dangerous or disruptive conduct within the premises. At common law, those principles were expressed through the doctrine that potentially dangerous or disruptive conduct went beyond the “limit” of the “implied license” to enter a

³ Available at https://www.google.com/books/edition/A_Treatise_on_the_Law_of_Torts_Or_The_Wr/7Wo9AAAAIAAJ?hl=en&gbpv=1 (accessed on Dec. 14, 2025).

“retail shop” or tavern, even if the owner had not expressly forbidden such conduct. Cooley, *supra*, 303, 316–17. This doctrine predated the Founding Era: it was laid down in the Six Carpenters’ Case of 1610, and was also noted by Blackstone. *Six Carpenters’ Case*, 8 Co. Rep. 146a, 77 E.R. 695, 696, 1610 WL 1 (1610) (a person is a trespasser *ab initio* if his conduct within a common inn or tavern constitutes an abuse of the license conferred by law to enter such locations); 3 William Blackstone, *Commentaries on the Laws of England* 212–13 (1768) (same). A wide variety of behavior was deemed to exceed the scope of the implied license to enter a shop or tavern, including “riotous conduct,” Cooley, *supra*, 316–17; loitering within a tavern, Blackstone, *supra*, 212–13; carrying away an object from the premises without permission, *Six Carpenters’ Case*, 8 Co. Rep. at 146b, 77 E.R. at 696; and assembling in a shop “for some political or other purpose, for which the shop had not been thrown open,” Cooley, *supra*, at 303. Courts recognized that these default rules delineating the scope of the implied license to enter the premises were necessary to protect the shopkeeper’s personal safety and his interest in his property “because it cannot be known before hand what manner of person the customer may be.” *Winder v. Blake*, 49 N.C. (4 Jones) 332, 335 (N.C. 1857).

When criminal trespass statutes emerged in the nineteenth century, their “principal function” was to “substitute a police officer for agents of the landowner in enforcing the right to exclude,” which eliminated the need for trespass victims to resort to “self-help.” Thomas W. Merrill & Henry E. Smith, *Property: Principles and Policies* 335–36 (3d ed. 2017). Because these trespass statutes were designed

to provide an extra enforcement mechanism for preexisting rights that were often defined by custom, criminal enforcement thus depended on the already-settled expectations of both property owners and members of the public about what type of behavior would generally be tolerated in businesses and other private spaces open to the public. *See, e.g., Dominguez v. State*, 363 S.W.3d 926, 933–34 (Tex. App. 2012) (area behind jewelry counter in pawnshop was not open to the public even though “there was no door, chain, or other impediment to public entry”); *People v. Lloyd*, 579 N.Y.S.2d 405, 405 (N.Y. App. Div. 1992) (space behind secretary’s desk was “clear[ly] . . . off-limits to persons otherwise allowed to be in the reception area”). Those expectations and customs could vary from jurisdiction to jurisdiction, depending on prevailing practice and the circumstances of the community, which is why the precise scope of a person’s implied license to enter private property has often been treated as “a question of fact for the jury to decide.” *Johnson v. State*, 786 So.2d 1162, 1164 (Fla. 2001); *see also, e.g., Dominguez*, 363 S.W.3d at 933 (whether jewelry-counter area was open to the public was a question for the “factfinder”). For example, although many states permit individuals to hunt on another’s land in accordance with traditional local custom, “other states have statutes requiring hunters to get explicit permission from landowners before they hunt.” Mark R. Sigmon, *Hunting and Posting on Private Land in America*, 54 Duke L.J. 549, 558 (2004) (collecting statutes).

Amici for petitioners thus err in suggesting that historical restrictions on the scope of the implied license were limited to those for which the owner had given express notice (U.S. Br. at 26). If local custom

or expectations already made clear that property owners generally did not tolerate certain practices, then both the common law and criminal trespass statutes forbade such conduct even if any particular property owner did not explicitly say so. As one court explained in upholding an implicit rule forbidding visitors from entering an area that was customarily reserved for staff, such a visitor could be liable for criminal trespass or burglary even though “there is no sign or warning forbidding entry.” *Bond v. United States*, 233 A.3d 506, 514 (D.C. 1967). Amici for petitioners also err in suggesting that, “if the entrant misbehaved,” the store owner was required to “revoke[]” the license before the entry would be deemed to have violated the law (Claremont Institute Amicus Br. 21). In fact, a customer who exceeded the scope of the implied license became a trespasser as a matter of law before the owner ever intervened. The contrary rule would imply that a patron who engaged in highly disruptive conduct while the tavernkeeper was back in the kitchen would not commit a trespass until the tavernkeeper returned and expressly told him to stop. Trespass rules have not traditionally operated in this way, and criminal enforcement would be impractical if it always had to be preceded by private intervention by the property owner.

Default rules that forbid customers from engaging in conduct deemed dangerous or disruptive by private property owners also spare owners from the risk of confronting customers who violate local custom or expectations. Petitioners and their amici believe that it is the responsibility of property owners in the first instance to define the scope of the implied license to enter when entrants violate those rules (Pet. Br. 27; U.S. Br. 19). But the common law has

long recognized the harms that property owners may face in attempting to expel disruptive customers, such as a drunk and unruly patron who loiters all night within a tavern, *see* Blackstone, *supra*, *213, or one who engages in “riotous conduct,” Cooley, *supra*, 316–17. Indeed, criminal enforcement of trespass laws through prosecutors like PAGV’s members emerged in part to prevent property owners from putting themselves on the front line, and to enforce local customs and traditions without the need for private intervention. No-carry default rules like Hawaii’s serve these traditional aims.

B. No-Carry Default Rules Protect Business Owners’ Right to Exclude Firearms By Ensuring that Property Restrictions Reflect the Preferences and Expectations of the Local Community.

A default rule requiring customers to obtain consent before carrying a firearm within a store or restaurant simply means that, when the owner opens the establishment and thereby relaxes the baseline presumption that strangers may not enter the premises, the owner does not automatically relax a separate baseline presumption that strangers may not effect armed entry. Properly understood, a no-carry default rule protects the owner’s right to exclude firearms in the same way that other default rules governing the scope of a customer’s implied right to enter have traditionally protected the owner’s right to exclude various types of dangerous or disruptive conduct. Petitioners and their amici thus err in contending that a default rule against carrying firearms within retail establishments “does not vindicate the right of owners to control their premises” (Claremont Institute Amicus Br. 20). On

the contrary, in jurisdictions where most business owners already wish to exclude firearms, the no-carry default rule reduces their “delineation . . . and enforcement costs,” Merrill & Smith, 54 J.L. & Econ. at 95, because it lessens the need for them to communicate and enforce their widely held preference.⁴ Moreover, by making it easier for police and prosecutors to enforce the owners’ decision to ban firearms, the no-carry default rule spares the owners and their staff from having to confront armed and potentially dangerous customers, which they are reasonably reluctant to do.⁵

In communities where most businesses and consumers expect that customers will not carry firearms, a no-carry default rule reflects the traditional regulatory practice of aligning private-

⁴ See Joseph Blocher & Darrell A.H. Miller, *What is Gun Control? Direct Burdens, Incidental Burdens, and the Boundaries of the Second Amendment*, 83 U. Chi. L. Rev. 295, 316 (2016) (the no-carry default rule reduces the need for “posting signs” and relying on private enforcement mechanisms, such as “interrogating potential customers” or “implementing pat-downs and metal detectors”); Sullivan & Cromwell LLP, *S&C Memo: Second Circuit Blocks Portions of New York Gun Law* 4 (Dec. 14, 2023) (without no-carry default rule, shopkeepers wishing to ban firearms “will need to communicate such prohibition by posting signage,” and “will then need to consider whether they implement a mechanism to enforce such a prohibition”), https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/Second-Circuit-Blocks-Portions-New-York-Gun-Law.pdf (accessed on Nov. 20, 2025).

⁵ See Howard Schultz, An Open Letter from Howard Schultz, Chairman, President and CEO of Starbucks Coffee Company, WALL STREET JOURNAL (Sept. 18, 2013) (expressing concern about employees having to “confront armed customers” to enforce a firearm ban), <https://perma.cc/5QUS-QFXN> (accessed on Dec. 21, 2025).

property default rules with local customs and expectations. See *Jardines*, 569 U.S. at 8 & n.2; see also *Duncan v. Theratx, Inc.*, 775 A.2d 1019, 1021 n.4 (Del. 2001) (noting the general preference for “majoritarian default rules”). As discussed above, under traditional principles of criminal trespass law, the precise scope of a customer’s implied license to enter a retail establishment has often been left for the jury to determine based on local customs and expectations. See, e.g., *Johnson*, 786 So.2d at 1164; *Dominguez*, 363 S.W.3d at 933. Given that juries are thus presumably empowered to make case-by-case determinations about whether the implied license to enter a particular retail establishment includes permission to carry a gun, a statutory default rule provides greater notice to potential customers contemplating such conduct. Petitioners and their amici dispute this position by insisting that there is a “default right to carry” firearms on any property open to the public (U.S. Br. 9). But this argument ignores the practical realities of the jurisdictions that have enacted these default rules.

For one thing, as petitioners do not deny, many of these jurisdictions do not have a long tradition of people carrying firearms in public areas. Indeed, surveys show that a majority of Americans believe that individuals should not be allowed to carry firearms in retail stores, restaurants, service settings, or sports stadiums.⁶ Those expectations in turn define the local customs and traditions that have long been

⁶ Julia A. Wolfson et al., *U.S. Public Opinion on Carrying Firearms in Public Places* 107 Am. J. Pub. Health 929, 932 (2017), <https://ajph.aphapublications.org/doi/epdf/10.2105/AJPH.2017.303712> (accessed on Dec. 22, 2025).

understood to limit the scope of any implied license to enter private property. Although some of that practice may have been influenced by licensing regimes that *Bruen* has now called into question, this experience nonetheless informs the expectations of both property owners and members of the public.

More fundamentally, petitioners and their amici ignore the fact that these no-carry default rules were enacted by legislatures with the input of the very private property owners whose wishes these statutes seek to enforce, as well as the communities who partake in the public areas affected by these rules. Whether private property owners wish to invite firearms onto their premises is an empirical question; so too is the question of whether such property owners would prefer to generally forbid firearms, except as to those they specifically permit to carry (such as private security guards), or whether they would prefer to confront gun owners individually. Legislatures, not individual plaintiffs like petitioners, are best equipped to understand the preferences of private property owners and reflect them in state-wide default rules. And legislatures are also best equipped to understand the expectations of their local communities and to enact rules that prevent members of the public from being surprised with firearms where they would not traditionally expect to see them.

The startling position adopted by petitioners and their amici is that these local customs and expectations *do not matter*, and that in every community the scope of the implied license to enter should be exactly the same when it comes to firearms. But that position ignores not only reality, but also the long common-law and criminal-law tradition of respecting the actual views of those affected by

private property regimes. Petitioners' one-size-fits-all approach ignores this venerable tradition.

C. A Default Rule Reflecting Local Business Owners' Widely Held Preference to Exclude Firearms Advances Public Safety.

The default rule chosen by Hawaii and other states not only reflects the rational preferences of both private property owners and members of the public who use their premises—it also protects the public from the risks of gun violence. Retail stores, restaurants, and entertainment venues across the country have recognized the danger that arises when customers carry firearms on the premises. Guns are banned at many such establishments, including Walt Disney World, Costco, Ikea, California Pizza Kitchen, Whole Foods, AMC Theaters, and Waffle House. Kerry Shaw, *What is a 'Gun Free Zone,' and What's Behind the Movement to Get Rid of Them?* THE TRACE (Mar. 16, 2017).⁷ Others have simply requested that customers refrain from carrying firearms—including Chipotle, Levi Strauss, Starbucks, Target, and Trader Joe's. *Id.*

Enforcing businesses' right to exclude firearms protects public safety by decreasing the risk that customers with guns will get into disputes that escalate into violence. Studies confirm that the mere presence of a gun increases aggression, and thus increases the likelihood that the encounter will

⁷ Available at <https://www.thetrace.org/2017/03/gun-free-zone-facts/> (accessed Dec. 21, 2025).

escalate into a violent conflict.⁸ Firearms also make the crimes that do occur significantly more deadly: about 17.1% of assaults involving a gunshot wound resulted in a homicide, while death is a result of only 0.009% of assaults that do not involve a weapon.⁹ When a violent conflict with a gun occurs in a densely populated area, bystanders too often become victims of the violence.¹⁰ And the risks posed by gun-bearing customers is even greater in dense urban communities like New York City.¹¹ Faced with such risks, businesses have increasingly adopted non-intervention policies that are premised on the legitimate fear that directly confronting a gun-

⁸ See, e.g., Arlin J. Benjamin Jr. et al., Effects of Weapons on Aggressive Thoughts, Angry Feelings, Hostile Appraisals, and Aggressive Behavior: A Meta-Analytic Review of the Weapons Effect Literature, 22 Personality & Soc. Psych. Rev. 347, 359 (2018).

⁹ Susan B. Sorenson & Daniel W. Webster, What Works: Policies to Reduce Gun Violence, in Gun Violence: Prediction, Prevention, and Policy 27 (Am. Psych. Ass'n 2013).

¹⁰ See, e.g., Georgett Roberts et al., 8 Innocent Bystanders—In One Month—Caught in the Crossfire of NYC's Out-of-Control Shooting Surge, N.Y. Post (Oct. 26, 2022); Anjali Hemphill, 10 Hurt, Including 4 Bystanders Shot in Park, in 3 Separate Harlem and Queens Shootings, NBC 4 New York (Sept. 27, 2022); Lisa Rozner & Kevin Rincon, Police: Bystander John Edwards Shot and Killed Amid Night of Gun Violence in NYC, CBS New York (July 5, 2022).

¹¹ See Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 100 (2013) (collecting analyses demonstrating that “gun crime is clearly an urban problem”).

bearing customer carries an unacceptable risk of escalating a situation that could turn violent.¹²

Available data show that customers who carry guns within commercial establishments contribute to a large proportion of gun violence in the United States. One study found that, in 2024, retail spaces suffered more gun-related incidents than any other kind of location, and restaurants suffered the third largest number of such incidents relative to other kinds of locations.¹³ Moreover, those gun-related incidents appear to result mostly from firearm-carrying customers, rather than robbers or other criminals. In 2024, gun-related incidents most frequently resulted from the escalation of a dispute.¹⁴ Removing guns thus significantly decreases the risk of harm from such conflicts.

It is thus reasonable for jurisdiction like Hawaii to enact no-carry default rules that reflect the widely held views of private property owners and the expectations of members of the public who use their premises. Creating a mismatch between these default rules and community expectations will likely exacerbate confusion about whether guns are welcome in particular stores, thus increasing the number of instances in which gun-bearing customers erroneously violate owners' wishes. In jurisdictions where most business owners already wish to ban

¹² See Parija Kavilanz, *Lululemon stands by decision to fire employees who intervened in robbery*, CNN (June 7, 2023), at <https://www.cnn.com/2023/06/06/business/lululemon-fires-employees-stop-robbery> (accessed on Dec. 16, 2025).

¹³ ZEROEYES, 2024 Gun Violence Report 23–24 (Feb. 11, 2025), <https://perma.cc/2PSZ-59QV> (accessed on Dec. 16, 2025).

¹⁴ *Id.* at 9.

firearms, a no-carry default rule will result in fewer deviations from the baseline, which can reduce the need for customers to make store-by-store determinations about whether guns are allowed.¹⁵ The Second Amendment does not prohibit states from enacting default rules that carry out these sensible policies.

¹⁵ See Jonathan Sarnoff, *The Information Costs of Exclusion*, 91 U. Chi. L. Rev. 1021, 1023 (2024) (it is easier to comply with simple, standardized rules).

CONCLUSION

This Court should affirm the decision of the Ninth Circuit.

Respectfully submitted,

ALVIN L. BRAGG, JR.

District Attorney,

New York County

STEVEN C. WU*

Chief, Appeals Division

JOHN T. HUGHES

BRENT YARNELL

Assistant District Attorneys

One Hogan Place,

New York, NY 10013

(212) 335-9326

wus@dany.nyc.gov

**Counsel of Record*

December 24, 2025