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

MOTION AND SUPPLEMENTAL BRIEF FOR PETITIONERS

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MOTION OF PETITIONERS FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

Pursuant to Rule 25.7, Petitioners request leave to file the attached supplemental brief to notify the Court of newly issued authority by the Fourth Circuit in *Kipke v. Moore*, 165 F.4th 194 (4th Cir. 2026) and the Second Circuit Court of Appeals in *Brett Christian, Firearms Policy Coalition, Inc., Second...*, --- F.4th ---- 2026 WL 1378796 (2026). Both of these opinions are relevant to the disposition of this case because they both address the constitutionality of private property default rules which are virtually identical to the private property default rule at issue in this case. Good cause for this motion exists because both opinions postdate briefing.

Respectfully submitted,

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Petitioners respectfully submit the following Supplemental Brief pursuant to Supreme Court Rule 25.6 to address the Fourth Circuit's decision in *Kipke v. Moore*, 165 F.4th 194 (4th Cir. Jan. 20, 2026), and the Second Circuit's decision in *Christian v. James,* Nos. 24-2847, 25-384--- F.4th ---- 2026 WL 1378796 (2d Cir. May 18, 2026). *Kipke* and *Christian* strongly support Petitioners' arguments in this case.

ARGUMENT

I. THE FOURTH CIRCUIT HAS FOUND MARYLAND'S PRIVATE PROPERTY DEFAULT RULE UNCONSTITUIONAL

At issue in *Kipke* was Maryland's default rule presumptively barring carry on private property without the prior permission of the owner or a sign allowing such carry. *See* MD Code, Criminal Law, § 6-411(d). That statute is virtually identical to Hawaii's, H.R.S. § 134-9.5(a). The Fourth Circuit unanimously held that "Maryland's restriction on bringing firearms onto private property held open to the public without express consent is unconstitutional." *Kipke,* 165 F.4th at 219. The court stated that "we diverge from the Ninth Circuit's conclusion that similar statutes merely operate to 'arrang[e] the default rules that apply specifically to the carrying of firearms onto private property.'" *Id.*, citing *Wolford v. Lopez*, 116 F.4th 959, 995 (9th Cir. 2024), *cert. granted*, 146 S.Ct. 79 (Oct. 3, 2025) (mem.).

In so holding, the Fourth Circuit rejected Maryland's argument that the presumptive ban merely dealt with property rights rather than the Second Amendment rights of the plaintiffs, stating

that "[w[ith or without the private-property consent rule, Maryland property owners have the right to exclude unwanted people (including those with guns) from their property." *Id.* The court went on to reject the same historical analogues on which the Ninth Circuit relied in *Wolford*, reasoning that "[m]any of the historical statutes Maryland cites appear to regulate hunting on others' property without permission" and that such "statutes do not support a broader tradition of excluding all weapons for all purposes from the private property of others without express permission." *Id* (citations omitted). Then the Fourth Circuit found that "the other statutes Maryland cites (a 1771 New Jersey statute, an 1865 Louisiana statute, an 1866 Texas statute, and an 1893 Oregon statute) appear to be outliers." *Id.*

II. THE SECOND CIRCUIT HAS FOUND NEW YORK'S PRIVATE PROPERTY DEFAULT RULE UNCONSTITUIONAL

In *Christian,* the Second Circuit reached the same conclusion on an appeal from a final judgment with respect to the presumptive ban on private property enacted by New York. That law had been preliminarily enjoined by the district court in a judgment previously affirmed by the Second Circuit in *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024). *See Christian,* 2026 WL 1378796 at *2 n.3.

In *Christian*, the Second Circuit followed *Antonyuk* and affirmed the district court's permanent injunction. The court concluded that "the Private Property Provision, as applied to private property open to the public, is unconstitutional because the

State did not carry its burden of demonstrating that the restriction falls within our Nation's historical tradition of gun regulations, as required under the framework set forth in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022)." *Id* at *1.

In so holding, the Second Circuit ruled that New York's proffered analogues were not "relevantly similar" because they "were explicitly motivated by a substantially different reason (deterring unlicensed hunting) than the [Private Property Provision] (preventing gun violence)." *Id* at *5. The court concluded "that all of these proffered analogues 'appear to, by their own terms, have created a default presumption against carriage only on private lands not open to the public,' and that '[t]he State has produced no evidence that those terms were in fact otherwise understood to apply to private property open to the public or that the statutes were in practice applied to private property open to the public.'" *Id.* (quoting *Antonyuk v. Chiumento*, 89 F.4th 271, 386 (2d Cir. 2023), *cert. granted, judgment vacated sub nom. Antonyuk v. James*, 144 S. Ct. 2709 (2024), *reaffirmed by Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024).

In particular, the Second Circuit held that a 1771 New Jersey law was not a proper analogue because it "sits among other sections that are all aimed at preventing unlawful hunting," *id.* at *6, and was thus properly construed as "aimed at preventing 'trespassing with Guns, Traps and Dogs.'" *Id.* at *7. Noting that "at common law, it was not a trespass to enter into properties held open to the public," the court concluded that "the 1771 New Jersey law was

focused on trespass on private property that was not open to the public." *Id.*

Christian also rejected New York's reliance on the 1865 Louisiana law and 1866 Texas law, stating that "[w]e disagree [with New York] that the facially neutral but racially motivated laws at issue here can properly serve as meaningful analogues for our historical inquiry." *Id.* at *8. The court observed that such laws were "often enforced in ways that predictably—and perhaps exclusively—fall on the very racial groups the legislature set out to target." *Id.* Such laws, the court ruled, "do not necessarily evince a historical tradition of limiting the right against all individuals across the board in the same manner." *Id.* Rather, these laws represented a "sorry history of departing from norms and traditions when racial minorities are in the legislature's crosshairs." *Id.*

Finally, *Christian* recognized that "the likely practical effect of the enforcement of the Private Property Provision will be to significantly hinder the ability of individuals to meaningfully exercise that Second Amendment right to defend themselves in public." *Id.* at *9. That was because "many private property owners will likely not post signs indicating whether firearms are permitted or forbidden on their premises" and thus "effectively prohibit individuals from carrying firearms on any private property, even private property that is open to the general population." *Id.*

Judge Menashi, in a separate concurring opinion, "agree[d] with the historical analysis of the majority opinion," but stated that he "would additionally

conclude that the Private Property Provision—as applied to private property open to the public—is unconstitutional because it reflects an impermissible purpose to disapprove of arms-bearing in general." *Id.* at *15 (Menashi, J., concurring in part and dissenting in part). Judge Menashi reasoned that the New York default rule was inappropriately premised on the notion that "the carrying of a firearm should be restricted because guns are dangerous," noting that "our tradition has never permitted pretextual regulations intended to inhibit the right to keep and bear arms." *Id.* at *14. Judge Menashi thus concluded that "[a] constitutional right might historically have been regulated in the name of the public good, but '[c]oncern for the public good had to be genuine; it could not be a mere formal recitation that served as pretext for an illegitimate end.'" *Id.* at *15 (quoting Daniel D. Slate, Infringed, 3 J. Am. Const. Hist. 381, 391 (2025). In short, "a regulation of firearms cannot serve 'a pretextual repressive purpose.'" *Id.*

CONCLUSION

For the foregoing reasons, and for the reasons stated in the prior briefing and at argument, this Court should find Hawaii's private property default rule violates the Second Amendment and reverse the judgment below.

Respectfully submitted,

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