

No. 26-5483

**In The
Supreme Court Of The United States**

STEVEN ERIC WALKER,

Petitioner,

v.

UNITED STATES, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit
(No. 23-55525)

**SUPPLEMENTAL BRIEF OF PETITIONER
PURSUANT TO RULE 15.8**

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**SUPPLEMENTAL BRIEF OF PETITIONER
PURSUANT TO RULE 15.8**

Supreme Court Rule 15.8 permits a party, while a petition for a writ of certiorari remains pending, to file a supplemental brief calling the Court's attention to "new cases, new legislation, or other intervening matter not available at the time of the party's last filing," provided the supplemental brief is "restricted to new matter." Sup. Ct. R. 15.8.

Petitioner's petition remains pending. On September 22, 2026, after the petition was filed, the Ninth Circuit issued its en banc decision in *Yukutake v. Lopez*, No. 21-16756 (9th Cir. Sept. 22, 2026). Petitioner submits this brief solely to bring that intervening decision to the Court's attention and explain its bearing upon the methodological, burden-allocation, pleading, and uniformity issues already presented in the petition. See Pet. 8–19, 33–39. Petitioner raises no new Question Presented and seeks no relief beyond that requested in the petition.

The petition asks whether a court may categorically reject a Second Amendment claim involving presumptively protected conduct without first requiring the Government to carry the historical burden prescribed by *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022), and whether that may occur *sua sponte* at the pleading stage before the Government answers. Pet. ii, 8–19.

Yukutake now presents a sharply divided en banc decision addressing the same antecedent methodological question.

The *Yukutake* majority acknowledged *Bruen*'s ordinary framework: when the Second Amendment's plain text covers the conduct at issue, the Constitution

presumptively protects that conduct and the Government bears the burden of establishing consistency with the Nation’s historical tradition. *Yukutake*, slip op. 15–16; see *Bruen*, 597 U.S. at 24; *United States v. Hemani*, 608 U.S. 772, 780–81 (2026). This Court recently reiterated that when a challenged law falls within the Second Amendment’s plain text, “it is presumptively unconstitutional,” subject to the Government’s opportunity to establish consistency with the historical understanding of the right. *Wolford v. Lopez*, 609 U.S. 185, 196 (2026).

The Ninth Circuit majority nevertheless characterized *Bruen*’s footnote 9 as an “apparent carve-out” for certain shall-issue regulations. *Yukutake*, slip op. 13. Following the Fifth Circuit and that Ninth’s intervening decision in *United States v. DeBorba*, 177 F.4th 1005, 1012 (9th Cir. 2026), the majority declined to decide whether the challenged restrictions should be analyzed at *Bruen* step one or step two. Instead, and without applying the presumptive-unconstitutionality standard reiterated in *Wolford*, the majority asked whether the plaintiffs had rebutted a presumption of lawfulness by showing that the regulations had been put toward “abusive ends.” *Yukutake*, slip op. 19–21.

That disagreement bears directly upon the petition’s contention that categorical judicial doctrines cannot displace the constitutional sequence prescribed by this Court or relieve the Government of its historical burden. See Pet. 13–19. Judge Nelson, joined in relevant part by four other members of the en banc court, explained that “[t]he order matters. So does the allocation of burdens”: the Second Amendment’s text determines whether the constitutional presumption attaches, while history and

tradition determine whether the Government has rebutted it. *Yukutake*, slip op. 25–26 (R. Nelson, J., dissenting). The dissent further concluded that footnote 9 “does not create a new test, analytical prong, or safe harbor from *Bruen*.” *Id.* at 31–33.

The significance of that division extends beyond disagreement over which historical analogues control. Petitioner argued that the recurring methodological question is whether the Government’s historical showing remains the dispositive constitutional inquiry or whether categorical judicial doctrines may replace that inquiry. Pet. 17–19. *Yukutake* now expressly acknowledges a “wide range of methodological approaches” among the courts of appeals. *Yukutake*, slip op. 18–20. The majority identified approaches under which courts resolve the footnote 9 question at *Bruen*’s plain-text stage, proceed through the history-and-tradition inquiry, or employ a presumptive-lawfulness inquiry without completing the ordinary two-step analysis. *Id.*

That methodological division implicates the concern Justice Barrett recently identified in *Wolford*: courts may not “smuggle additional limits, drawn from our regulatory tradition, into the plain-text stage of the inquiry.” *Wolford*, 609 U.S. at 214 n.1 (Barrett, J., concurring). Judge Nelson likewise contrasted the Fifth Circuit’s treatment of footnote 9 as an independent safe harbor with the Second Circuit’s application of *Bruen*’s historical inquiry. *Yukutake*, slip op. 32–33 (R. Nelson, J., dissenting). The disagreement therefore concerns not simply the historical evidence, but the constitutional sequence, the governing presumption, and which party bears the burden of justification.

The intervening decision also bears upon the petition's second question concerning dismissal at the pleading stage. *See* Pet. 8–15. In concluding that the challenged provisions were not abusive, the *Yukutake* majority relied in part upon the proposition that “nothing in Plaintiffs’ Complaint suggests” that either restriction crossed the constitutional line it drew. *Yukutake*, slip op. 21. Judge VanDyke separately identified the resulting pleading problem: if “abusiveness” presents a legal question, additional factual allegations would not alter the inquiry under *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); if it presents a factual question, a categorical constitutional determination without factual development is premature. *Yukutake*, slip op. 72–73 & n.9 (VanDyke, J., dissenting).

That concern bears directly upon the procedural posture presented here. Petitioner’s complaint was dismissed *sua sponte* before service, before either governmental defendant answered, and before the Government was required to develop a historical record or carry the constitutional burden prescribed by *Bruen*. *See* Pet. 8–13. *Yukutake* thus illustrates the pleading consequences that can follow when a categorical threshold inquiry precedes the Government’s historical showing. Finally, *Yukutake* reinforces the uniformity concern presented at Pet. 33–39. This Court recently reaffirmed that “[m]erely local attitudes can neither shrink nor inflate the meaning of fundamental Bill of Rights guarantees.” *Wolford*, 609 U.S. at 206. Judge Nelson invoked that principle in *Yukutake* before applying *Bruen*’s ordinary burden allocation. *Yukutake*, slip op. 24–26 (R. Nelson, J., dissenting). Yet *Yukutake* demonstrates that courts of appeals continue to employ materially different

methodologies for determining when the Government's historical burden attaches.

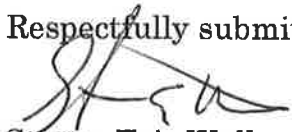
The resulting disagreement concerns the constitutional method itself—the same uniformity problem identified in the petition.

The en banc majority ultimately acknowledged the unresolved methodological question: “Hopefully, the Supreme Court will make clear which analysis it thinks is correct.” *Yukutake*, slip op. 22. That acknowledgment by an intervening en banc decision of the court whose judgment is under review further demonstrates that the methodological and procedural questions presented by this petition remain unsettled and warrant this Court's review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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September 22, 2026