No. 23-7517

IN THE
Supreme Court of the United States

CHRISTOPHER L. WILSON,
Petitioner,
v.
STATE OF HAWAII,
Respondent.

On Petition for a Writ of Certiorari to the Hawaii Supreme Court

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTION PRESENTED

Petitioner Christopher Wilson is a criminal defendant charged in state court with state-law firearms offenses. As alleged in the charging documents, at the time of his arrest, Petitioner was trespassing on private property while carrying an illegally-acquired firearm without a license to carry. Despite never registering his firearm as required under state law—and despite never even attempting to apply for a license to carry—Petitioner asserts that this Court's decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), requires that the charges against him be dismissed. The Hawaii Supreme Court rejected Petitioner's arguments and remanded the case for trial.

Petitioner now urges this Court to intervene, even though:

- This case is in an interlocutory posture, with no final judgment and a limited factual record;
- The petition identifies no circuit split;
- The petition relies upon numerous mischaracterizations of the record, the law, and the decision below;
- Threshold state-law standing issues preclude this Court's review;
- The lower courts have overwhelmingly held that criminal defendants charged with carrying firearms without a license cannot use a subsequent prosecution as a vehicle to challenge the provisions of state firearms licensing regimes after the fact where, as here, no application for a license to carry was ever filed; and

- The standing rule Petitioner proposes would jeopardize important public safety interests and contradict well-settled principles of standing law.

The question presented is:

Whether a state court's determination that a state criminal defendant lacks standing to challenge specific provisions of a state's firearms-licensing regime in a prosecution for the unlicensed carry of a firearm ("place to keep") is reviewable by this Court and, if so, whether federal law mandates that this prosecution be dismissed prior to trial and on an interlocutory basis

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INTRODUCTION

If Petitioner had wished to advance the legal argument that one or more aspects of the firearms licensing system that existed in Hawaii before July 2022 was unduly restrictive, he could have filed a civil action like the plaintiffs in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), and sought an injunction or a declaratory judgment. But that is not what Petitioner did. Instead, as alleged in the charging documents, Petitioner simply carried his illegally-acquired, unregistered firearm without obtaining a license to carry—and, indeed, without ever even *attempting* to apply for a license to carry. When Petitioner was arrested, he was carrying his illegally acquired firearm while committing the

offense of first-degree criminal trespass. Unlike the *Bruen* plaintiffs, nothing about Petitioner's conduct in this case was remotely "law-abiding." *Bruen*, 597 U.S. at 9.

The petition for certiorari should be denied for numerous reasons. The decision under review primarily addressed a challenge under the Hawaii Constitution—the interpretation of which is not reviewable by this Court. Contrary to Petitioner's misleading assertions and overheated rhetoric, the Hawaii Supreme Court did not "refuse[] to apply the *Bruen* test." Pet. at 9. Rather, the decision below: (1) independently interpreted and applied the Hawaii Constitution, Pet. App. 15a-55a; (2) rejected Petitioner's argument that *Bruen* somehow gives him an absolute right to carry in public without first obtaining a license to carry, Pet. App. 55a-56a; and (3) applied state-law standing principles to conclude that Petitioner lacked standing to raise a Second Amendment challenge to particular provisions of the state's licensing scheme (HRS § 134-9) because he was not charged under that statute and never applied for a license to carry under that statute, Pet. App. 56a.

First, with respect to the Hawaii Supreme Court's holding under the Hawaii Constitution (Pet. App. 15a-55a), that state-law decision is not reviewable by this Court; the Hawaii Supreme Court is free to interpret the Hawaii Constitution differently from the Federal Constitution. It is not a "refusal to apply" (Pet. at 9) the U.S. Constitution for a state court to conclude that a state constitutional provision should be interpreted differently.

Second, the Hawaii Supreme Court rejected

Petitioner's argument that firearms licensing is somehow categorically unconstitutional under *Bruen*. As the court correctly held, that argument misreads *Bruen*. *See* Pet. App. 55a ("States retain the authority to require that individuals have a license before carrying firearms in public.") (citation omitted); *see also id.* ("[T]he Court's decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense.") (quoting *Bruen*, 597 U.S. at 79-80 (Kavanaugh, J., concurring)).

Third, the Hawaii Supreme Court's decision applied state-law standing principles, which properly govern in a state-court proceeding like this one. Pet. App. 56a; *see, e.g.*, *Superpumper, Inc. v. Leonard*, 495 P.3d 101, 106 n.2 (Nev. 2021) (quotation omitted) ("The issue of standing in state courts is a matter of state law, and thus state courts are not bound by federal standing principles."). Petitioner's failure to establish standing precludes further review by this Court with respect to the specifics of the carry licensing regime in HRS § 134-9—including Petitioner's complaints about allegedly discretionary aspects of the pre-2022 licensing scheme.

Remarkably, the word "standing" does not even appear in the petition. As such, it clearly fails to establish that the Hawaii Supreme Court's application of standing principles was erroneous. Standing in state court is a matter of state law, not federal law. Because Petitioner lacked standing as a matter of state law, that lack of standing plainly forecloses review of any Second Amendment issues. *See* Pet. App. 12a (holding that "Hawai'i law offers criminal defendants broad standing to challenge the

constitutionality of criminal laws *they are charged with violating*," but explaining that the challenge to section 134-9 falls outside of this rule) (emphasis added).

Even if, *arguendo*, the Hawaii Supreme Court were somehow required to apply federal standing principles, as opposed to state-law standing principles, its decision was nevertheless correct. As explained below, Petitioner never even attempted to apply for a license to carry a firearm.

Finally, in any event, this case is a poor candidate for this Court's review because this Court has "jurisdiction to review only "[f]inal judgments or decrees" of state courts. 28 U.S.C. § 1257(a). "[F]inality typically requires 'an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.'" *Doe v. Facebook, Inc.*, 142 S. Ct. 1087, 1088-89 (2022) (statement of Thomas, J.) (quoting *Market Street R. Co. v. Railroad Comm'n of Cal.*, 324 U.S. 548, 551 (1945)). This strongly counsels against review at this stage. [1] And "at the very least this threshold jurisdictional issue would complicate [this Court's] review." *Gordon Coll. v. DeWeese-Boyd*, 142 S. Ct. 952, 955 (2022) (statement of Alito, J.). Consistent

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[1] *See, e.g.*, *Wrotten v. New York*, 560 U.S. 959 (2010) (statement of Sotomayor, J.) ("Granting the petition for certiorari at this time would require us to resolve the threshold question whether the [state court's] decision constitutes a '[f]inal judgmen[t]' under 28 U.S.C. § 1257(a). Moreover, even if we found the judgment final, in reviewing the case at this stage we would not have the benefit of the state courts' full consideration.").

with its interlocutory posture, this case also has a limited factual record at this stage. *See* Pet. App. 7a (recognizing that "[t]he facts are slim" at this stage, given the posture of the case and absence of any trial record).

STATEMENT

A. Hawaii's Firearm Licensing System.

There are two requirements to carry a firearm in Hawaii. First, to legally own a firearm, HRS § 134-2 requires obtaining a permit to acquire the firearm. Petitioner was charged with failure to obtain such a permit, did not seek dismissal of that charge, and indeed and has never challenged the constitutionality of this requirement.

The second requirement to carry a firearm publicly is to obtain a carry license pursuant to HRS § 134-9. HRS § 134-25, Hawaii's place to keep statute with respect to firearms, contains an exception to the general prohibition on public carry for anyone who has obtained a carry license under HRS § 134-9 (or those who comply with the hunting-related exceptions in HRS § 134-5):

> (a) Except as provided in sections 134-5 and 134-9, all firearms shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following:
>
> (1) A place of repair;

(2) A target range;

(3) A licensed dealer's place of business;

(4) An organized, scheduled firearms show or exhibit;

(5) A place of formal hunter or firearm use training or instruction; or

(6) A police station.

"Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm.

(b) Any person violating this section by carrying or possessing a loaded or unloaded pistol or revolver shall be guilty of a class B felony.

With a carry license under HRS § 134-9, an individual may publicly carry a firearm as provided in that section, without respect to HRS § 134-25's place to keep requirements.

Similar to HRS § 134-25, Hawaii's place to keep statute with respect to ammunition, HRS § 134-27, contains an exception for carry licenses obtained pursuant to HRS § 134-9:

(a) Except as provided in sections 134-5 and 134-9, all ammunition shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry ammunition in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following:

(1) A place of repair;

(2) A target range;

(3) A licensed dealer's place of business;

(4) An organized, scheduled firearms show or exhibit;

(5) A place of formal hunter or firearm use training or instruction; or

(6) A police station.

"Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the ammunition.

(b) Any person violating this section shall be guilty of a misdemeanor.

With a carry license under HRS § 134-9, an individual may carry ammunition publicly as provided in that section, without regard to HRS § 134-27's place to keep requirements.

B. Factual Background

On December 8, 2017, the State of Hawaii filed a felony information and non-felony complaint against Wilson in the Circuit Court of the Second Circuit. The Felony Information and Non-Felony Complaint alleged four counts, as follows:

> Count One: Place to Keep Pistol or Revolver, in violation of Section 134-25(a) of the Hawaii Revised Statutes.
>
> Count Two: Place to Keep Ammunition, in violation of Section 134-27(a) of the Hawaii Revised Statutes.

> Count Three: Permit to Acquire Ownership of a Firearm, in violation of Section 134-2(c) of the Hawaii Revised Statutes.
>
> Count Four: Criminal Trespass in the First Degree, in violation of Section 708-813(1)(b) of the Hawaii Revised Statutes.

The incident underlying these charges took place on December 7, 2017. At around 11:00 p.m. on December 6, 2017, Duane Ting was alerted by a security system that trespassers had entered a property he owned and used for a zipline business. He contacted the Maui Police Department, then went to the property to look for the trespassers. Ting located and detained several trespassers on his property, including Wilson. When Maui Police Department officers arrived, Wilson admitted he had a handgun tucked in the waistband of his pants. The officers recovered a loaded .22 caliber handgun from Wilson. A records check conducted by the Maui Police determined that Wilson had not obtained, or even applied for, a permit to acquire the firearm or a license to carry it. Pet. App. 7a.

Wilson filed a motion to dismiss counts one and two (the two "place-to-keep" offenses) on May 14, 2021, arguing that prosecuting him for carrying a loaded pistol without a carry license violated his constitutional right to bear arms. The State opposed the motion, and the state circuit court denied it.

Wilson filed another motion to dismiss counts one and two on July 29, 2022, again on the basis of his right to bear arms. This time, Wilson relied on this Court's then-recently issued decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022).

The State again opposed the motion. The circuit court granted it at a hearing on August 17, 2022, and entered Findings of Fact, Conclusions of Law, and an Order on August 30, 2022.

The circuit court concluded that HRS §§ 134-25 and 134-27 violated Wilson's constitutional rights as applied. According to the circuit court, the State had failed to meet its burden under *Bruen* to justify the place to keep statutes. The State moved for reconsideration, and the circuit court denied the motion.

C. The Hawaii Supreme Court's Decision.

The State then filed a notice of appeal and sought transfer of the appeal to the Hawaii Supreme Court. Transfer was granted and the Hawaii Supreme Court ultimately vacated the circuit court's decision and remanded the case for trial on all four charges against Wilson. Pet. App. 56a. The Hawaii Supreme Court determined that (a) Hawaii's "place-to-keep" laws, which require a license to carry firearms publicly, did not violate the Second Amendment, and (b) Wilson lacked standing to challenge Hawaii's firearm carry licensing system, due to his failure to apply for a license. *Id.*

The Hawaii Supreme Court also declined to follow *Bruen* with regard to the Hawaii Constitution's provision on the right to bear arms, and detailed its interpretation of that state constitutional right. Pet. App. 15a, et seq.

REASONS FOR DENYING THE PETITION

A. Hawaii's "place-to-keep" laws merely prohibit publicly carrying firearms and

ammunition without a license to do so—and, as such, are not unconstitutional.

Wilson claims this is a case about the supremacy clause. It is not. The Hawaii Supreme Court's ruling as to the Second Amendment in this case was exceedingly narrow and in full compliance with this Court's precedent: it found only that conditioning public carry of firearms upon obtaining a carry license does not violate the Constitution. In reaching this conclusion, the Hawaii Supreme Court explicitly cited and followed *Bruen*. Pet. App. 55a (citing *Bruen*, 597 U.S. at 21; *id.* at 79-80 (Kavanaugh, J., concurring)).

As noted, Hawaii's place to keep statutes, HRS § 134-25 and § 134-27, contain an exception to the general prohibition on public carry for anyone who has obtained a carry license under HRS § 134-9 (or those who comply with the hunting-related exceptions in HRS § 134-5). Thus, the place to keep laws merely bar carrying of firearms and ammunition in public without a duly issued license to do so. As the Hawaii Supreme Court correctly found, conditioning carrying a firearm in public on obtaining a carry license fully complies with *Bruen*:

> HRS § 134 25(a) and § 134 27(a) do not violate the Second Amendment to the United States Constitution. [T]he right secured by the Second Amendment is not unlimited. ... [T]he right [is] not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Bruen*, 597 U.S. at 21, 142 S.Ct. 2111. States retain the authority to require that individuals have a license before carrying firearms in public. *Id.* at 79 80, 142

> S.Ct. 2111 (Kavanaugh, J., concurring) ("[T]he Court's decision does not prohibit States from imposing licensing requirements for carrying a handgun for self defense.")

Pet. App. 55a (brackets in original).

The Hawaii Supreme Court did not flout *Bruen,* as Wilson wrongly suggests. Rather, the Hawaii Supreme Court correctly found that because *Bruen* does not prohibit the States from "imposing licensing requirements for carrying a handgun for self defense[,]" HRS §§ 134-25 and 134-27—which do exactly that—do not violate the Second Amendment.

To be sure, portions of the Hawaii Supreme Court's opinion were critical of *Bruen.* Those criticisms, however, were solely related to the Hawaii Supreme Court's decision to reject *Bruen* when it interpreted article I, section 17 of the Hawaii Constitution, *i.e.*, the state constitutional provision on the right to bear arms. As the ultimate authority on the meaning of the Hawaii Constitution, this was the Hawaii Supreme Court's prerogative, a principle this Court has long recognized. *See, e.g., Glenn v. Field Packing Co.*, 290 U.S. 177, 178 (1933) ("[T]he decision appears to be supported by principles laid down by the Court of Appeals of Kentucky, but, so far as the application of the state Constitution is concerned, the ultimate determination of the validity of the statute necessarily rests with that court."). Put simply, this Court has no jurisdiction to review the Hawaii Supreme Court's interpretation of the Hawaii Constitution, including how broadly its right to bear arms sweeps.

Rather than a violation of the Supremacy Clause, as Wilson claims (Pet. at 13-14), the Hawaii Supreme

Court's decision is merely federalism in action. This Court interpreted the Second Amendment in *Bruen*, while the Hawaii Supreme Court chose a different course when it interpreted the Hawaii Constitution. Outcomes such as this are a core feature of federalism. "Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect." *Arizona v. United States*, 567 U.S. 387, 398 (2012).

Wilson ignores these federalism principles and asks this Court to reverse the Hawaii Supreme Court solely because it chose not to follow *Bruen* when interpreting the Hawaii Constitution. The relief Wilson seeks is wholly unwarranted.

B. Petitioner lacks standing to challenge the specific provisions of Hawaii's carry licensing system in this prosecution.

To the extent Wilson wishes to challenge HRS § 134-9 by claiming that the process to obtain a carry license thereunder was too restrictive in light of *Bruen*, the decisive issue is Wilson's lack of standing. This gives rise to a simple question: does one who never even attempts to avail himself of the process to obtain a firearm carry license have standing to complain that said process is too restrictive? As the Hawaii Supreme Court correctly found, the answer to this question is "no," and thus Wilson lacks standing to challenge HRS § 134-9. Pet. App. 14a ("Had Wilson followed the HRS § 134-9 application process, and been denied, then he might have standing to challenge that law's constitutionality in his criminal case. But those are not his facts.").

One would not glean this from the Petition, which never even *mentions* standing. Instead, rather than grapple with the Hawaii Supreme Court's standing ruling, Wilson misleadingly asserts that the Court failed to follow *Bruen*. But that is obviously incorrect as to HRS § 134-9; the Hawaii Supreme Court never had occasion to apply *Bruen* to Hawaii's carry licensing law, because it appropriately found that Wilson lacked standing to challenge that law.

For the same reason, this Court may not reach the merits of the Second Amendment issue with respect to HRS § 134-9. Standing is a threshold issue that must be established before the merits can be decided. *See Warth v. Seldin*, 422 U.S. 490, 517-18 (1975) ("The rules of standing . . . are threshold determinants of the propriety of judicial intervention."); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) ("[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III.").

The Hawaii Supreme Court found that Wilson did have standing to challenge the two statutes he was charged with violating: HRS § 134-25 (place to keep pistol or revolver) and HRS § 134-27 (place to keep ammunition). However, as noted *supra*, the Court determined that Wilson did not have standing to challenge HRS § 134-9, the statute that established the carry licensing process, due to his failure to apply thereunder. Indeed, Wilson never actually challenged HRS § 134-9 before the trial court; instead, in the proceedings below, he claimed—falsely—that the place to keep statutes had no exceptions allowing persons to carry weapons in public, refusing to engage

with, or even acknowledge the existence of, HRS § 134-9. See Petition, Appendix "D" (motion to dismiss, page 5 [claiming there are "no exceptions" to the place to keep laws' prohibition on public carry of firearms and ammunition]). That, of course, contradicts the statues' plain language.

Thus, Wilson based his *Bruen* argument on the fallacy that the place to keep statutes disallowed public carry of firearms with no exceptions. By framing the issue this way, and refusing to even mention HRS § 134-9, Wilson failed to preserve or properly assert a *Bruen*-based challenge to Hawaii's carry licensing process.

Additionally, the question of whether Wilson had standing in state court to raise a challenge to section 134-9 under these circumstances was a matter of state law, not federal law. "The issue of standing in state courts is a matter of state law, and thus state courts are not bound by federal standing principles." *Superpumper, Inc. v. Leonard*, 495 P.3d 101, 106 n.2 (Nev. 2021) (quotation omitted). The Hawaii Supreme Court appropriately resolved Wilson's standing as a matter of state law, and that state-law holding is not reviewable by this Court.

In any event, the Hawaii Supreme Court's ruling that Wilson lacked standing was entirely consistent with how other States have decided this issue. For example, in *State v. Ortiz*, No. 2022 15 C.A., 2024 WL 3333921, at *6 (R.I. July 9, 2024), the Supreme Court of Rhode Island found a defendant convicted of possessing a firearm without a carry license who had failed to even apply for a license lacked standing to challenge the licensing system, and thus rejected the

defendant's *Bruen*-based challenge to Rhode Island's law. A host of other decisions are in accord.[2]

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[2] *See, e.g.*, *People v. Castillo*, 226 A.D.3d 573, 574, 207 N.Y.S.3d 525 (N.Y. App. Div. 2024) ("[D]efendant lacked standing to challenge New York's gun licensing scheme because he did not apply for a gun license"); *People v. Williams*, 78 Misc.3d 1205(A), 183 N.Y.S.3d 297 (N.Y. Sup. Ct. 2023) ("Since this defendant has not applied for or been denied a pistol permit, he does not have standing to challenge the New York pistol permit licensing law. The defendant has suffered no prejudice and has no interest in this statute."); *People v. Williams*, 175 N.Y.S.3d 673, 675 (N.Y. Sup. Ct. 2022) ("This Court joins the chorus of other judges in holding that the *Bruen* decision does not preclude the prosecution for unlawful possession of a firearm of a defendant who did not previously apply for, and was denied, a license. The Court further finds that the *Bruen* decision has no bearing on the constitutionality of the statutes criminalizing possession of a firearm because, as expressly stated in *Bruen*, states maintain the right under the Federal Constitution to require gun licenses for lawful possession." (Citations omitted)); *see generally Williams v. State*, 10 A.3d 1167, 1169 (Md. App. 2011) ("[B]ecause Williams failed to apply for a permit to wear, carry, or transport a handgun, he lacks standing"); *United States v. Decastro*, 682 F.3d 160, 164 (2d Cir. 2012) ("As a general matter, to establish standing to challenge an allegedly unconstitutional policy, a plaintiff must submit to the challenged policy."). As the Second Circuit recognized in *Decastro*, this is consistent with standing principles applied by this Court:

> *Allen v. Wright*, 468 U.S. 737, 746, 755 (1984) (holding that parents lacked standing to challenge the tax-exempt status of allegedly racially discriminatory private schools to which their children had not applied); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166-68 (1972) (holding that an African American lacked standing to challenge the

What's more, Wilson's theory of standing would be untenable. As this Court has long recognized,

> to allow applicants to proceed without the required permits to run businesses, erect structures, purchase firearms, transport or store explosives or inflammatory products, hold public meetings without prior safety arrangements or take other unauthorized action is apt to cause breaches of the peace or create public dangers.

Poulos v. New Hampshire, 345 U.S. 395, 409 (1953). On Wilson's account, an individual who believes that a particular provision of a firearms licensing regime may be unlawful need not apply for a license, seek appellate review, file a lawsuit, or develop their claim—they can simply ignore the entire regulatory framework, jeopardizing public safety in the process. That is not a reasonable approach to the law of standing, as a host of courts—including the Hawaii Supreme Court in this case—have correctly recognized.

As explained above, Wilson lacks standing to challenge a licensing process he ignored. Crucially, Wilson's failure to even apply for a carry license deprived the State of the ability to assess his application. [3] *Bruen*, of course, does not prohibit

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discriminatory membership policy of a club to which he never applied).

Id.

[3] As one court recently observed:

> The insufficient record supporting defendants' constitutional challenge illustrates why a motion to dismiss

conditioning carrying a firearm on obtaining a license. As Justice Kavanaugh noted in his concurrence in *Bruen*, "the Court's decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense." *Bruen*, 142 S.Ct. at 2161 (Kavanaugh, J., concurring); *see also id.* at 2162 (Kavanaugh, J., concurring) ("Properly interpreted, the Second Amendment allows a 'variety' of gun regulations.").

Here, there was in fact an unquestionably constitutional reason to deny Wilson a carry permit, and nothing in *Bruen* remotely calls that principle into question: *Wilson did not legally possess the weapon he wished to carry.* As noted *supra*, to legally own a firearm in Hawaii, HRS § 134-2 requires one to obtain a permit to acquire the firearm. Wilson was charged with failure to obtain such a permit, did not seek dismissal of that charge—and, indeed, Wilson has never attempted to challenge the constitutionality of this requirement. The second requirement to carry a firearm was to obtain a carry license under HRS § 134-9. Obviously, had Wilson applied for a license to

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> criminal charges is not the proper venue for demonstrating that defendants would have been granted a gun-carry permit but for the justifiable need requirement. If defendants had applied for gun-carry permits, there would be a complete record of why they were not granted the permits. In other words, we would not be left to speculate that defendants were denied the permits because of the justifiable needs requirement. Moreover, law-abiding citizens are not free to ignore a statute and presume that they would have been granted a permit but for one potentially invalid provision of a permit statute.

State v. Wade, 301 A.3d 393, 403 (N.J. App. Div. 2023).

carry a weapon he illegally possessed, he would have been denied. But such a denial would have clearly been constitutional in light of *Bruen*'s consistent reminders that the Second Amendment protects the right of law-abiding individuals to carry firearms. *See, e.g.*, *Bruen*, 142 S.Ct. at 2132-33 (evaluating "two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense."); *id.* at 2159 (Alito, J., concurring) ("All that we decide in this case is that the Second Amendment protects the right of law abiding people to carry a gun outside the home for self-defense[.]"); *see also United States v. Rahimi*, 144 S.Ct. 1889, 1902 (2024) ("Our tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others.").

Carrying an illegally obtained firearm is plainly not the conduct of a "law-abiding citizen," and thus is not something the States are obligated to countenance. This is especially true in light of *Rahimi*'s holding that the government can disarm individuals who threaten the safety of others; here, Hawaii could not determine whether Wilson posed a threat to the safety of others when he obtained his firearm because he declined to even seek the required permit to do so.

Unlike the plaintiffs in *Bruen* or in *District of Columbia v. Heller*, 554 U.S. 570 (2008), Wilson declined to even attempt to obtain the pertinent firearm license from local authorities before asserting his Second Amendment challenge. He instead chose to ignore the law, obtain a firearm without a permit to acquire, then carry that firearm without a carry license. The Hawaii Supreme Court correctly

determined that Wilson's failure to apply for a carry license under HRS § 134-9 deprived him of standing to challenge the law. That holding was a state-law issue, not a federal issue. It is not reviewable by this Court.

C. This case's interlocutory posture further counsels in favor of denying the petition.

This is an interlocutory appeal, a factor which weighs strongly against granting certiorari. As authorized under Hawaii law, the State took an interlocutory appeal after the trial court dismissed two of the four counts against Wilson. The Hawaii Supreme Court then sent the case back for trial on all four charges, but the trial has not yet taken place. Crucially, no facts as to what occurred have been established and the record is confined to a few declarations of counsel.[4] If Wilson is convicted, he will have the opportunity to raise his objections in an

[4] For example, Wilson continues to argue he was illegally carrying his illegally obtained firearm for "self-defense" purposes. Pet. at 3. But, as noted by the Hawaii Supreme Court, Wilson's motion to dismiss merely "declared" that he was carrying the firearm for self-defense. Pet. App. 8a-9a. Wilson never points to any direct evidence of his motivation for carrying the firearm anywhere in the record. In addition, the fact that Wilson was carrying the firearm while committing another crime, i.e., criminal trespass, gives rise to the inference he had purposes other than self-defense for carrying his illegally obtained firearm, such as to facilitate his criminal conduct. In any case, a trial would provide a factual record as to what actually occurred, as opposed to Wilson's bald and self-serving claims.

appeal of the final judgment, which would result in a far more developed record. The entire case could also be rendered moot in the event Wilson is not convicted of the charges at issue.[5]

The interlocutory posture of this case renders it a poor candidate for certiorari. *See, e.g.*, *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (statement of Thomas, J.) ("This Court is rightly wary of taking cases in an interlocutory posture."). That is particularly true because this is a criminal matter:

> [I]nterlocutory or "piecemeal" appeals are disfavored. "Finality of judgment has been required as a predicate for federal appellate jurisdiction." *Abney v. United States*, 431 U.S., at 656, 97 S.Ct., at 2039 . . . The rule of finality has particular force in criminal prosecutions because "encouragement of delay is fatal to the vindication of the criminal law." *Cobbledick v. United States*, 309 U.S., at 325, 60 S.Ct., at 541.

U.S. v. MacDonald, 435 U.S. 850, 853-54 (1978).

The fact that this is a review of a *state court*

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[5] Additionally, Wilson is alleged to have carried his unlicensed, unlawfully acquired firearm while committing the criminal offense of first-degree trespass. Pet. App. 7a; *see also* Pet. App. 20a ("Wilson's criminal trespass charge" is a "trial matter"). If Wilson is found by a jury to have been committing this offense while carrying the firearm at issue, that will further illustrate that Wilson's particular course of conduct is unprotected. *See generally United States v. Love*, 647 F. Supp. 3d 664, 670 (N.D. Ind. 2022) (observing that "*Bruen* is rife with historical observations that would exclude from Second Amendment protections individuals that carry firearms to facilitate crime.").

decision under 28 U.S.C. § 1257(a) further counsels against review. This Court has "jurisdiction to review only "[f]inal judgments or decrees" of state courts. 28 U.S.C. § 1257(a). "[F]inality typically requires 'an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.'" *Doe v. Facebook, Inc.*, 142 S. Ct. 1087, 1088-89 (2022) (statement of Thomas, J.) (quoting *Market Street R. Co. v. Railroad Comm'n of Cal.*, 324 U.S. 548, 551 (1945)). And even if, *arguendo*, the decision below qualified as a final judgment under section 1257(a), "at the very least this threshold jurisdictional issue would complicate [this Court's] review." *Gordon Coll. v. DeWeese-Boyd*, 142 S. Ct. 952, 955 (2022) (statement of Alito, J.).

A. None of the considerations under this Court's Rule 10 favor granting the petition.

The factors identified in this Court's Rule 10 make clear that this case is an exceptionally poor vehicle for this Court's review.

To start, there is no circuit split on the issues in this case, nor did the Hawaii Supreme Court render a decision in a manner which conflicts with a decision of another state supreme court or federal circuit court. *See* Rule 10(b). Certainly, Wilson's petition identifies no such division of authority.

As to Rule 10(c), the Hawaii Supreme Court's decision is not on an important question that has gone unaddressed by this Court. Whether the Hawaii Supreme Court correctly applied state-law principles in its standing decision is obviously not the sort of question that would qualify.

Finally, Wilson's suggestion that "summary reversal is the appropriate remedy" (Pet. 14) is far off the mark. Summary reversal is "strong medicine," *Pavan v. Smith*, 582 U.S. 563, 569 (2017) (Gorsuch, J., dissenting), and an "extraordinary remedy." *Major League Baseball Players Assn. v. Garvey*, 532 U.S. 504, 512-513 (2001) (Stevens, J., dissenting). Even if Wilson were right that the Hawaii Supreme Court's decision was erroneous (he is not), "error correction . . . is outside the mainstream of the Court's functions and . . . not among the 'compelling reasons' . . . that govern the grant of certiorari." S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, *Supreme Court Practice* § 5.12(c)(3), p. 5-45 (11th ed. 2019), quoted in *Barnes v. Ahlman*, 140 S. Ct. 2620, 2622, 207 L. Ed. 2d 1150 (2020) (mem.) (Sotomayor, J., dissenting).

"A summary reversal is a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting); *Office of Personnel Management v. Richmond*, 496 U.S. 414, 422 (1990) ("Summary reversals of courts of appeals are unusual under any circumstances"). Summary reversal is not appropriate here.[6]

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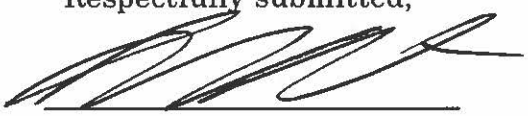
[6] Wilson baldly asserts that "[n]or is this the first time the Court used a summary reversal order to correct Hawai'i courts," (Pet. at 15), but the case he cites for that proposition does not support it. *Maugaotega v. Hawaii*, 549 U.S. 1191 (2007) (mem.), was a grant of certiorari, vacatur, and remand

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,



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("GVR") following a decision in an intervening argued case. GVRs are not summary reversals. *See Lawrence v. Chater*, 516 U.S. 163, 168 (1996).