No. 23-7517

In the Supreme Court of the United States

CHRISTOPHER L. WILSON,

Petitioner,

v.

STATE OF HAWAI'I,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE HAWAI'I SUPREME COURT

REPLY BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL AND STATUTORY PROVISIONS

INTRODUCTION

Challenging a firearms regulation under the Second Amendment calls on courts to use the test in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). The challenged regulation in *Bruen* was a New York law requiring the police to find "proper cause" before allowing a person to carry a firearm in public. *Id.* at 14-15. In *United States v. Rahimi*, 602 U.S. __, 144 S.Ct. 1889 (2024), the challenged regulation was a federal penal statute disarming people subject to restraining orders. *Id.* at 1896. Here, Christopher Wilson challenged State statutes criminalizing his unlicensed possession of a handgun and ammunition outside the home.

But the Hawai'i Supreme Court refused to apply the *Bruen* test, found no Second Amendment violation, and allowed the State of Hawai'i to prosecute him after he asserted that his conduct was constitutionally protected. This directly conflicts with the Court's recent decisions about the Second Amendment. The *Bruen* test controls.

The State's arguments against certiorari do not address the conflict. It misreads *Bruen* to defend the decision below. Claims about standing to challenge the State's licensing scheme and interpretations of the State constitution are immaterial to the Second Amendment claim that was put squarely before the Hawai'i Supreme Court. And its concerns about the interlocutory nature of its appeal do not preclude this Court from granting certiorari, vacating the decision below, and remanding for further proceedings.

ARGUMENT

A. The existence of the State's licensing scheme does not allow the Hawai'i Supreme Court to disregard the *Bruen* test.

Mr. Wilson brought a constitutional challenge to the State's application of Hawai'i Revised Statutes §§ 134-25 and 134-27. Petitioner's Appendix at 67a. Under the *Bruen* test, his conduct—carrying a handgun with ammunition for self-defense purposes—was covered by the Second Amendment's plain text and, thus, the State had to show how its prosecution for violating the statutes is "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24.

The Hawai'i Supreme Court refused to use the test. Instead, it declared that the "States retain the authority to require that individuals have a license before carrying firearms in public." Pet. App. at 55a. Then it reasoned that because Mr. Wilson did not challenge the licensing scheme, prosecuting him for having the handgun and ammunition did not violate the Second Amendment. *Id.* at 56a. The State argues that this approach is consistent with *Bruen*. Brief in Opposition at 10-11. Not so.

The Court's recent application of the *Bruen* test confirms that the test is not confined to licensing schemes. In *Rahimi*, the Court examined a Second Amendment challenge to 18 United States Code § 922(g)(8). 144 S.Ct. at 1898. Like HRS §§ 134-25 and 134-27, the federal statute criminalized the possession of firearms and made no exceptions for possessing them for self-defense purposes. *Id.*

The conduct here is nearly identical to the regulated conduct in *Rahimi*: the possession of a firearm for self-defense purposes. It makes no difference if the State statutes have the additional element of being unlicensed.

The State also claims that Mr. Wilson was not "law-abiding" and therefore not entitled to constitutional protection. *See* Br. in Opp. at 2 and 18. That, too, conflicts with *Rahimi*. Criminal behavior is not dispositive of Mr. Wilson's constitutional claim. The State's insistence that only "law-abiding" people are entitled to constitutional protections is no different than the Government's assertion that Mr. Rahimi was not "responsible" enough to challenge the law he was violating—an assertion rejected by the Court. *Rahimi*, 144 S.Ct. at 1903.

The term "responsible" was too vague to form a workable rule. *Id.* Despite his history of violence, "no one question[ed] that the law Mr. Rahimi challenge[d] addresse[d] individual conduct covered by the text of the Second Amendment." *Rahimi*, 144 S.Ct. at 1907 (Gorsuch, J., concurring). The term "law-abiding" is just as vague and unworkable as the term "responsible." The Hawai'i Supreme Court needed to apply the *Bruen* test.

Mr. Wilson asserted that his conduct—carrying a handgun with ammunition—was for self-defense purposes. Neither the State nor any of the lower courts disputed that his conduct was covered by the plain text of the Second Amendment. Pet. App. at 71a-72a and 56a. The State, therefore, had to show that the Nation's tradition of firearms regulation justified its application of HRS §§ 134-25 and 134-27. *Bruen*, 597 U.S. at 24; *Rahimi*, 144 S.Ct. at 1896. It cannot.

Rahimi is again illustrative. The Court held that the federal statute "comfortably" fit into the Nation's tradition of firearms regulation. *Id.* at 1901. The Court explained Section 922(g)(8) differed from "the regulation struck down in *Bruen*" which "broadly restrict[ed] arms use by the public generally." *Id.* at 1901.

Our tradition of firearms regulation, however, has allowed people who have been determined to pose a threat to be disarmed. *Id.* at 1903. This made the federal statute akin to ancient surety and going-armed laws "whereas New York's law effectively presumed that no citizen had such a right, absent a special need." *Id.* at 1902.

> Section 911(g)(8)(C)(i) does not make the same faulty presumption. To the contrary, it presumes, like the surety laws before it, that the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others.

Id.

The Hawai'i statutes mandate that "all firearms" and "all ammunition" be "confined to the possessor's place of business, residence, or sojourn" unless the possessor has a license. HRS §§ 134-25(a) and 134-27(a). It is a crime for anyone without a license to carry a handgun or ammunition beyond those places. HRS §§ 134-25(b) and 134-27(a).

Like the unconstitutional regulation in *Bruen,* the statutes impose a broad restriction on the general public's right to carry firearms. And unlike the federal statute in *Rahimi*, HRS §§ 134-25 and 134-27 make no distinction between people like Mr. Rahimi, who had been judicially determined to pose a threat, from people

like Mr. Wilson. The Hawai'i statutes operate under the same "faulty presumption" that was fatal to the New York law in *Bruen*. *Id.* at 1902.

The Hawai'i Supreme Court has relieved the State of its burden under *Bruen*. Pet. App. at 55a-56a. The decision below directly conflicts with modern decisions about the Second Amendment. The State gives no good reason why Hawai'i should be allowed to reject the *Bruen* test for Second Amendment challenges to its firearms regulations.

B. Mr. Wilson's standing to challenge the licensing scheme is irrelevant to the application of the *Bruen* test to HRS §§ 134-25 and 134-27.

Much of the State's argument against certiorari centers around Mr. Wilson's standing to challenge the licensing scheme in HRS § 134-9. Br. in Opp. at 12-19. That is beside the point.

Mr. Wilson did not challenge the licensing scheme. The "challenged regulations" were HRS §§ 134-25 and 134-27, which criminalize the possession and carrying of a handgun or ammunition. The State bears the burden of showing how prosecuting him for violating those statutes fits into the Nation's historical tradition of firearms regulation. *Bruen*, 597 U.S. at 24. *See* Section A at 4. It cannot circumvent its burden by arguing that Mr. Wilson did not have standing to challenge the licensing scheme.

The State cites other lower courts that have also avoided *Bruen* this way. Br. in Opp. at 14 and 15 n. 2. But this Court has never narrowed *Bruen* to civil challenges. The test itself was created in response to the divergent standards arising from criminal prosecutions for gun possession. *See Bruen*, 597 U.S. at 18. And *Rahimi* is

clear: any challenged "firearms regulation," including criminal statutes, is subject to the *Bruen* test. *See* Section A at 2.

The Second Amendment is so fundamental that it "applies equally to the Federal Government and the States." *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010). States cannot avoid legitimate constitutional challenges by parsing out the licensing scheme from the statutes that criminalize the unlicensed possession of firearms. They are not free to nullify the *Bruen* test, allow people in them to be criminally prosecuted for constitutionally protected conduct, and undermine the supremacy of the Second Amendment. Once an individual shows the conduct criminalized by the challenged statute is protected, the State must "justify its regulation" under *Bruen*. That is the only way "a court [can] conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Bruen*, 597 U.S. at 24 (cleaned up).

C. The Hawai'i Supreme Court's interpretation of the right to bear arms under the Hawai'i Constitution has no bearing on its application of the *Bruen* test to Mr. Wilson's Second Amendment claims.

The State argues that the Hawai'i Supreme Court was free to disagree with this Court when it interpreted the Hawai'i Constitution's analogous right to bear and keep arms. Br. in Opp. at 11-12. The State misunderstands the question presented before this Court.

The Hawai'i Supreme Court dismissively adjudicated Mr. Wilson's Second Amendment claims in four paragraphs without applying the *Bruen* test. Pet. App. at 55a-56a. That is the issue here.

While the Hawai'i Supreme Court can hold that the Hawai'i Constitution recognizes only a collective right, the Second Amendment's protection of the individual right to keep and bear arms is paramount. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). The Second Amendment—not the Hawai'i Constitution—is part of the "the supreme Law of the Land" that the justices of the Hawai'i Supreme Court "shall be bound thereby[.]" U.S. Const. Art. VI, Cl. 2. The *Bruen* test determines when a regulation—State or federal—violates a person's Second Amendment rights. It sets the constitutional floor that must be respected by the States. *See* Amicus Brief of Buckeye Institute, *et al.* at 4.

Accordingly, the Hawai'i Supreme Court must "bow to [this Court's] interpretation" of the Second Amendment and apply the *Bruen* test. *State v. Santiago*, 53 Haw. 254, 265, 492 P.2d 657, 553 (Haw. 1971).

D. The Court may review the Hawai'i Supreme Court's conclusive ruling on the Second Amendment.

The State's concerns about having a trial on remand do not prevent this Court from granting certiorari. "Final judgments or decrees rendered by the highest court of a State in which a decision could be had" are subject to review. 28 U.S.C. § 1257(a). And while a "final judgment" in criminal cases from State courts typically encompasses a conviction and sentence, the finality rule is not strictly interpreted. *Florida v. Thomas*, 532 U.S. 774, 777 (2001). This Court has recognized "state-court judgments as final for jurisdictional purposes although there were further proceedings to take place in the state court." *Id.* (cleaned up).

Cases are "final" even when "there are further proceedings—even entire trials—yet to occur in the state courts but where for one reason or another the federal issue is conclusive of further proceedings preordained." *Id.* (quoting *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 479 (1981)). Under these circumstances, "because the case is for all practical purposes concluded, the judgment of the state court on the federal issue is deemed final." *Cox Broadcasting Corp.*, 420 U.S. at 479.

The Court may grant certiorari when there is no defense other than the federal claim on remand. *Id.*

> This Court [may take] jurisdiction on the reasoning that the appellant had no defense other than his federal claim and could not prevail at trial on the facts or any nonfederal ground. To dismiss the appeal would not only be an inexcusable delay . . . but it would also result in a completely unnecessary waste of time and energy in judicial systems already troubled by delays due to congested dockets.

Id. (quoting *Mills v. Alabama*, 384 U.S. 214, 217-128 (1966)).

The Hawai'i Supreme Court's ruling on Mr. Wilson's Second Amendment claims is so definitive that waiting to seek review from this Court after a trial on remand would be a waste of time. To prevail on these charges, the State need only prove that Mr. Wilson carried a handgun or ammunition without a license and in violation of HRS §§ 134-25 and 134-27. The Hawai'i Supreme Court made it clear that carrying to avoid confrontation is not a defense. Seeking review before this Court after trial would result in an inexcusable delay and waste of time and energy.

This Court also grants certiorari when the State court resolves the federal question, remands for further proceedings, "but . . . later review of the federal issue

cannot be had, whatever the outcome of the case." *Cox Broadcasting Corp.*, 420 U.S. at 481.

> [I]n these cases, if the party seeking interim review ultimately prevails on the merits, the federal issue will be mooted; if he were to lose on the merits, however, the governing state law would not permit him again to present his federal claims for review.

Id.

The federal issue has been conclusively adjudicated in Hawai'i. The trial court dismissed the specific charges alleging violations of HRS §§ 134-25 and 134-27 on the grounds that it infringed upon Mr. Wilson's Second Amendment rights. Pet. App. at 85a-88a. Mr. Wilson did not raise a Second Amendment challenge to the remaining counts. *Id.*

Rather than proceeding with trial on the remaining counts, the State chose to appeal from the dismissal order. *Id.* at 10a. The Hawai'i Supreme Court definitively ruled that HRS §§ 134-25 and 134-27 have no impact on Mr. Wilson's Second Amendment rights and remanded the case for trial. *Id.* at 56a. The proceedings on remand in Hawai'i do not give Mr. Wilson any meaningful opportunity to revisit his federal claim and seek additional review. Accordingly, this Court may grant certiorari and review the Hawai'i Supreme Court's resolution of the federal question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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