(ORDER LIST: 604 U.S.)

MONDAY, DECEMBER 9, 2024

ORDERS IN PENDING CASES

24A328 GOOD LAWGIC, LLC, ET AL. V. MERCHAN, JUSTICE

The application for stay addressed to Justice Alito and referred to the Court is denied.

24A430 AKERMAN, MARTIN V. NATIONAL GUARD BUREAU

The application to suspend the effect of the denial of the petition for a writ of certiorari addressed to Justice Kagan and referred to the Court is denied.

24M43 MOINI, MEHDI V. GRANBERG, ELLEN M.

The motion for leave to file a petition for a writ of certiorari under seal with redacted copies for the public record is granted.

24M44 HAMMETT, LAURA L. V. PORTFOLIO RECOVERY ASSOC., LLC

The motion of petitioner for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

23-1002) HEWITT, TONY R. V. UNITED STATES
)
23-1150) DUFFEY, COREY D., ET AL. V. UNITED STATES

The motion of the Solicitor General for divided argument is granted.

23-1122 FREE SPEECH COALITION, ET AL. V. PAXTON, ATT'Y GEN. OF TX

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for divided argument, and for enlargement of time for oral argument is granted.

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24-109) LOUISIANA V. CALLAIS, PHILLIP, ET AL.
)
24-110) ROBINSON, PRESS, ET AL. V. CALLAIS, PHILLIP, ET AL.

The motion of Edward Galmon, Sr., et al. for leave to intervene is denied.

24-5283 IN RE KENTON G. FINDLAY

24-5304 SELBY, ANGELA G. V. McDONOUGH, SEC. OF VA

24-5556 REID, KENNETH R. V. WARDEN, CANAAN USP

24-5570 IN RE JOSEPH R. DICKEY

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

24-5696 SAVOY, GREGORY V. FRANCHOT, COMPTROLLER OF MD

24-5704 MOODY, LORI M. V. HORAN, EDWARD W.

24-5914 PERRY, ANTHONY V. RAIMONDO, SEC. OF COMMERCE

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until December 30, 2024, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

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CERTIORARI DENIED

23-1277 PPI ENTERPRISES, LLC V. WINDHAM, NH

24-103 ZUNIGA-AYALA, SABINO V. GARLAND, ATT'Y GEN.

24-118 PHARMACEUTICAL RESEARCH V. McCLAIN, AR COMM. OF INS.

24-119 SAFAHI, ALAN V. UNITED STATES

24-120 SCHIEFERLE, DAVID V. UNITED STATES

24-121 WON, JOHN V. UNITED STATES

24-125 ALAHMEDALABDALOKLAH, AHMED V. UNITED STATES

24-346 BEADLES, ROBERT V. RODRIGUEZ, JAMIE, ET AL.

24-353 JEFFERSON, ELELAKE J. V. PENNSYLVANIA

24-356 MUNROE, SONYA V. AETNA MEDICARE, ET AL.

24-359 ALVAREZ, ADRIANA V. TX WORKFORCE COMMISSION

24-368 RUDDER, LEVI V. USDC ND TX

24-369 HASSELL CONSTRUCTION CO., ET AL. V. HARRIS COUNTY DISTRICT, ET AL.

24-374 HOMRIGHAUSEN, RICHARD P. V. OHIO

24-376 JOHNSON, BRENNARIS M. V. WASHINGTON

24-378 BABAKR, MUZAFAR V. FOWLES, JACOB T., ET AL.

24-389 COULTER, JEAN V. COULTER, JAMES P., ET AL.

24-398 VERASTIQUE, JANTZEN, ET AL. V. DALLAS, TX, ET AL.

24-400 TOM, JENNIFER V. O'MALLEY, COMM'R, SOCIAL SEC.

24-403 McINTOSH, CAI H. V. WASHINGTON

24-405 IN, EX REL. WALTON V. SUPERIOR COURT OF IN, ET AL.

24-406 HUNADY, MATTHEW V. CHISESI, DONNA

24-414 LARSON, REUBEN V. COMMUNITYWORKS ND, ET AL.

24-418 ZIMMER BIOMET HOLDINGS, INC. V. INSALL, MARY

24-419 DJOKRO, HARTONO, ET AL. V. GARLAND, ATT'Y GEN.

24-426 PLAN BENEFIT SERVICES, ET AL. V. CHAVEZ, HERIBERTO, ET AL.

24-460 MILLER, COREY V. HOOPER, WARDEN

24-471 GUERRA BLANCO, JONATHAN V. UNITED STATES

24-478 AZALI, OMNISUN V. OHIO

24-480 SISIA, KIMBERLY K. V. STATE FARM

24-488 FADI GEORGES G. V. TEXAS

24-492 SCAFIDI, MARINO V. LAS VEGAS POLICE DEPT., ET AL.

24-493 SHIPTON, MICHAEL V. BALTIMORE GAS & ELEC., ET AL.

24-519 NKONGHO, EUNICE B. V. UNITED STATES

24-522 SAFFARINIA, EGHBAL V. UNITED STATES

24-526 DRABINSKY, GARTH V. ACTORS' EQ. ASSN.

24-541 PALM BEACH POLO, INC. V. WELLINGTON, FL

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24-5347 BENNETT, DEVIN A. V. MISSISSIPPI

24-5403 LEVESY, TYNIA V. SCOLESE, DIR., NRO, ET AL.

24-5544 WALD, EVAN V. NEW YORK

24-5663 ASHETZIE, GEORGE V. ILLINOIS

24-5667 SMITH, WILLARD V. OKLAHOMA

24-5669 PETERSON, BECKY M. V. NEBRASKA

24-5676 ALTAMIRANO, HENRY V. BREITENBACH, WARDEN, ET AL.

24-5682 NGUYEN, LAN T. V. LUEBCKE, KATHRYN, ET AL.

24-5691 EDWARDS, ANTOINE V. SCOTT, BRADLEY, ET AL.

24-5692 HAHN, JAMIE P. V. REAVES, WARDEN, ET AL.

24-5693 MONTGOMERY, JOHN C. V. SEGREST, JOHN W.

24-5705 HICKS, NORRIS V. BD. PARDONS AND PAROLE, ET AL.

24-5710 BUCK, DAVID W. V. ILLINOIS

24-5713 ACOSTA, HECTOR V. TEXAS

24-5716 GREEN, DALE B. V. DIXON, SEC., FL DOC

24-5726 HUDSON, WILLIAM V. EMIG, WARDEN, ET AL.

24-5728 CLARK, ANTHONY R. V. OKLAHOMA

24-5729 COAST, JEROME V. GEORGIA

24-5769 TYSON, TANYA V. QUIKTRIP CORPORATION

24-5781 ROBINSON, MARQUICE D. V. HOLMAN, MICHAEL, ET AL.

24-5804 ABDEL-FATTAH, KHALED V. ENO, MARK T.

24-5814 HOWALD, JOHN R. V. UNITED STATES

24-5823 BERNAZARD, JOSE V. MILLER, SUPT., GREEN HAVEN

24-5838 BOSWELL, JOSEPH V. UNITED STATES

24-5857 RIOS, DIMAS D. V. UNITED STATES

24-5860 RIVERA, ELLIOT V. UNITED STATES

24-5872 GANNON, LAUREN I. V. TEXAS

24-5880 SCHMIDT, ERIC V. UNITED STATES

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24-5881 ATKINS, DESHON A. V. HOLBROOK, WARDEN

24-5882 GREENFIELD, TYRONE V. UNITED STATES

24-5887 ROMERO, CHRISTIAN V. UNITED STATES

24-5888 HERMAN, TERRION D. V. R. BROWN

24-5890 STEWART, USHERY V. UNITED STATES

24-5891 CANNON, KIMBERLY V. FLORIDA

24-5894 PIERCE, ROBERT V. SALMONSEN, JIM, ET AL.

24-5895 GODWIN, JONATHAN V. DIXON, SEC., FL DOC, ET AL.

24-5898 FELTON, HERMAN V. UNITED STATES

24-5900 SCALES, MICHAEL V. UNITED STATES

24-5902 BIBBS, DEMETRIUS D. V. UNITED STATES

24-5905 XIAN, HUOSHENG V. UNITED STATES

24-5909 WILSON, BAY T. V. UNITED STATES

24-5919 BOOHER, KENT V. UNITED STATES

24-5921 KOTERAS, CHRISTOPHER V. AKERS, WARDEN

24-5922 ALLEN-SHINN, CHRISTOPHER G. V. UNITED STATES

24-5926 THOMAS, GLENN V. UNITED STATES

24-5928 WANJIKU, ERICK G. V. UNITED STATES

24-5931 WESLEY, TERRELL D. V. BAKER, WARDEN

24-5938 SCHNEKENBURGER, JOHN C. V. UNITED STATES

24-5940 BEASLEY, CHARLTON V. UNITED STATES

24-5941 CUEVAS, SANTOS V. HIGHBERGER, ACTING SUPT., OR

24-5949 RAMIREZ, ANASTACIO G. V. GAMBOA, WARDEN

24-5950 IVERSEN, TERRY E. V. PEDRO, SUPT., EASTERN OR

24-5951 MOYA, MANUEL V. UNITED STATES

24-5957 DAVIS, JERAMY V. UNITED STATES

24-5972 MORALES-VELEZ, ALEX N. V. UNITED STATES

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24-5973 HUERTAS, OSIEL V. UNITED STATES

The petitions for writs of certiorari are denied.

24-5673 BRUNSON, JONATHAN E. V. HERRING, SUPT., MAURY

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

24-5749 THOMAS, NOEL V. V. NORTH CAROLINA MUTUAL, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

24-5787 ZHANG, TAIMING V. X CORP.

The petition for a writ of certiorari before judgment is denied.

24-5934 BALTER, RICHARD V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

HABEAS CORPUS DENIED

24-5958 IN RE JEREMY D. FOSTER

The petition for a writ of habeas corpus is denied.

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MANDAMUS DENIED

24-5660 IN RE PAKUJA C. VANG

24-5662 IN RE NOEL BROWN

The petitions for writs of mandamus are denied.

REHEARINGS DENIED

23-1211 SCARBOROUGH, E. T. V. COURT OF COMMON PLEAS, ET AL.

23-6450 DIZON, ALFRED C. V. VECTRUS SYS. CORP.

23-7435 HARRIS, MARIETTE V. ELLIS, MILES W., ET AL.

23-7444 IN RE CAROLYN J. FLORIMONTE

23-7487 ONYIDO, BASIL U. V. GARLAND, ATT'Y GEN.

23-7570 BLACKSTOCK, LEONARD V. TENNESSEE

23-7720 SAKUMA, PATSY N. V. APARTMENT OWNERS, ET AL.

23-7785 SANCHEZ, JARED P. V. BROWN UNIVERSITY, ET AL.

24-4 IN RE E. EDWARD ZIMMERMANN

24-74 IN RE ALPHONZA L. P. THOMAS BEY

24-91 TARGETED JUSTICE, INC., ET AL. V. GARLAND, ATT'Y GEN., ET AL.

24-100 DYSON, DOUG V. DEAKINS, TIFFANY, ET AL.

24-148 THEERACHANON, WITTAYA V. FIA CARDS SERVICES, ET AL.

24-5020 JOHNSON, VELINA M. V. INLAND REAL ESTATE, ET AL.

24-5034 BARENZ, RALPH L. V. ALASKA

24-5037 KEMP, WILLIAM J. V. RIVELLO, SUPT., ET AL.

24-5084 GILCHRIST, TERRENCE E. V. CRAIG, SIMONE

24-5117 BROWN, TERRANCE N. V. UNITED STATES

24-5163 SPRINGS, THOMAS L. V. PAYNE, DIR., AR DOC

24-5171 ROSS, JEFFREY W. V. BICKHAM, WARDEN

24-5256 BOYDSTON, MICHAEL D. V. TEXAS

24-5291 PRINTEMPS-HERGET, ETHAN V. DeJOY, POSTMASTER GEN.

24-5414 ENMON, CLEVELAND J. V. UNITED STATES

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24-5418 BARNES, DONALD G. V. DANFORTH, WARDEN

24-5471 IN RE KEITH GIRVAN

The petitions for rehearing are denied.

23-7657 WILLIS, LESLIE V. PNC FINANCIAL SERVICES, ET AL.

The petition for rehearing is denied. Justice Alito took no part in the consideration or decision of this petition.

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SUPREME COURT OF THE UNITED STATES

BOSTON PARENT COALITION FOR ACADEMIC EXCELLENCE CORP. *v.* THE SCHOOL COMMITTEE FOR THE CITY OF BOSTON, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 23–1137. Decided December 9, 2024

The petition for a writ of certiorari is denied.

Statement of JUSTICE GORSUCH respecting the denial of certiorari.

A group of parents and students challenged a Boston public school admissions policy, arguing that it defied the Fourteenth Amendment's Equal Protection Clause. After the First Circuit rejected the challenge and upheld Boston's policy, the parents and students sought review here. In their petition for certiorari, they argue that the First Circuit misapplied *Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College*, 600 U. S. 181 (2023), and other of this Court's precedents.

The difficulty, as I see it, is that Boston has replaced the challenged admissions policy. See 89 F. 4th 46, 54 (CA1 2023). The parents and students do not challenge Boston's new policy, nor do they suggest that the city is simply biding its time, intent on reviving the old policy. Strictly speaking, those developments may not moot this case. But, to my mind, they greatly diminish the need for our review. As a result, I concur in the Court's denial of the petition for certiorari.

Our decision today, however, should not be misconstrued. A "denial of certiorari does not signify that the Court necessarily agrees with the decision (much less the opinion) below." *Kennedy* v. *Bremerton School Dist.*, 586 U. S. 1130 (2019) (ALITO, J., statement respecting denial of certiorari).

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And, in fact, JUSTICE ALITO expresses today a number of significant concerns about the First Circuit's analysis, concerns I share and lower courts facing future similar cases would do well to consider. See *post*, at 3–5 (opinion dissenting from denial of certiorari).

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SUPREME COURT OF THE UNITED STATES

BOSTON PARENT COALITION FOR ACADEMIC EXCELLENCE CORP. *v.* THE SCHOOL COMMITTEE FOR THE CITY OF BOSTON, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 23–1137. Decided December 9, 2024

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting from the denial of certiorari.

The following events might sound familiar. See *Coalition for TJ* v. *Fairfax Cty. School Bd.*, 601 U. S. ___ (2024) (ALITO, J., dissenting from denial of certiorari).

Boston is home to three "exam schools," which are ranked among the top public high schools in the United States. For 20 years, an applicant's GPA, standardized test score, and school preference were the sole metrics for admission to those schools. In 2019, however, the Boston School Committee (Committee) began to consider changes to the schools' admission practices for the purpose of altering their "racial/ethnic demographics." 89 F. 4th 46, 52 (CA1 2023). To that end, the Committee convened a working group to recommend revised procedures for the 2021–2022 application cycle.

After studying the issue, the working group presented a two-step proposal to the Committee in October 2020. First, students with the highest GPAs citywide would fill 20% of the exam-school seats. Second, each zip code in Boston would receive a share of the remaining 80% of seats proportionate to its population of school-age children. For those seats, the plan would rank applicants by GPA within each zip code and give assignment priority to zip codes with lower median household incomes. After the working group presented this proposal, Committee member Dr. Lorna Rivera expressed her approval. She emphasized that the

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Committee must "be explicit about racial equity" and "increas[ing] those admissions rates, especially for Latinx and black students." Record 433–434.

Heeding Dr. Rivera's call, the Committee put race front and center when it came time to vote on the proposal several weeks later. The meeting kicked off with a lengthy statement from "anti-racist activist" Dr. Ibram X. Kendi, who "urge[d the Committee] to approve this antiracist policy proposal" that would "close racial and economic gaps." *Id.*, at 567, 647. Later, during the public-comment period, the Committee called on three citizens whose names suggested they were of Asian descent. Forgetting to mute himself on Zoom, the Committee Chairperson, Michael Loconto, mocked their names. See *id.*, at 892–893. Vice-Chairperson Alexandra Oliver-Dávila and Dr. Rivera could hardly contain their amusement, noting over text message they "almost laughed out loud" at Loconto's gaffe. *Id.*, at 2380.

That was not all Oliver-Dávila and Rivera had to say. As leaked text messages later revealed, Oliver-Dávila told Rivera that she expected "the white racists [to] start yelling [a]t us" during the public-comment period. *Id.*, at 2397. She went on to note that she "hate[s] WR," a reference to the predominantly white West Roxbury neighborhood of Boston. *Id.*, at 2401. Rivera agreed, stating she too was "[s]ick of westie whites." *Ibid.* Loconto, Oliver-Dávila, and Rivera voted to approve the working group's proposal, but they all later resigned as a result of their racist remarks.

The new policy worked as intended. Between the 2020–2021 and 2021–2022 school years, black students increased from 14% to 23%; Latino students increased from 21% to 23%; white students decreased from 40% to 31%; and Asian students decreased from 21% to 18%.

The Boston Parent Coalition (Coalition), an organization of parents and children who have or will apply to the exam schools, filed suit. The Coalition claimed the new admission

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policy, though facially race neutral, violated the Equal Protection Clause.[1]

Except in extraordinary circumstances, intentional discrimination based on race or ethnicity violates that clause. See *Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College*, 600 U. S. 181, 220 (2023). But in this case, despite overwhelming direct evidence of intentional discrimination, the lower courts concluded that the Coalition's equal-protection claim failed because it did not show "disparate impact." The First Circuit reasoned that, even under the new policy, white and Asian students remained "stark[ly] over-represent[ed]" compared to their population levels. 89 F. 4th, at 58 (citing *Coalition for TJ* v. *Fairfax Cty. School Bd.*, 68 F. 4th 864, 881 (CA4 2023)).

This reasoning is indefensible twice over. First, the lower courts' disparate-impact analysis was clearly flawed. I addressed this point last Term in *Coalition for TJ*, 601 U. S. ___ (opinion dissenting from denial of certiorari). There, the Fourth Circuit concluded that a facially race-neutral admission policy caused no disparate impact on Asian students because they "were still overrepresented" compared to their population level. *Id.*, at ___ (slip op., at 7). As I

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[1] Boston later replaced the challenged 2021–2022 admission policy with a new policy that the Coalition does not challenge here. But, unlike respondents, I fail to see how that moots this case. First, the Coalition seeks nominal damages to redress the unconstitutional effects of the 2021–2022 admission policy. See Record 2103; *Uzuegbunam* v. *Preczewski*, 592 U. S. 279, 292 (2021). Second, the opportunity to reapply under the new policy does not foreclose equitable relief related to the 2021–2022 admission policy. Indeed, I see no reason why the District Court could not order equitable relief entirely independent of the new policy's requirements. For example, it could order the admission of the remaining students in the Coalition without any requirement for reapplication. Furthermore, if this case truly became moot on its way here, we would ordinarily vacate the judgment below. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

explained, that is a "patently incorrect and dangerous understanding" of disparate impact. *Id.*, at ___ (slip op., at 1). But we failed to stamp out the Fourth Circuit's error when we had the chance. Now, the error has metastasized and spread to the First Circuit. Nonetheless, it bears repeating that under our decision in *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252 (1977), all a party must show in order to rely on disparate impact as circumstantial evidence of discriminatory intent is that an admission policy reduced one racial group's chance of admission and increased another racial group's chance of admission.

Second, and worse yet, the lower courts mistakenly treated evidence of disparate impact as a necessary element of an equal-protection claim. To my knowledge, we have never said as much. To be sure, we have said disparate impact is "[p]ossible evidence" of such a claim, *Department of Homeland Security* v. *Regents of Univ. of Cal.*, 591 U. S. 1, 34 (2020) (plurality opinion), and "may provide an important starting point," *Arlington Heights*, 429 U. S., at 266. We have also emphasized that disparate impact "is *not* the sole touchstone."[2] *Washington* v. *Davis*, 426 U. S. 229, 242 (1976) (emphasis added). Further, a rigid rule requiring disparate-impact evidence would make little sense. We would, of course, recognize an equal-protection violation if the government had a malicious "intent or purpose" to discriminate against an *individual* based on his or her race or ethnicity. *Arlington Heights*, 429 U. S., at 265. Proof that the government's action also injured *the racial or ethnic*

[2] The Courts of Appeals appear to be divided on whether disparate impact is a necessary element of an *Arlington Heights* claim. Compare *Chinese Am. Citizens Alliance of Greater N. Y.* v. *Adams*, 116 F. 4th 161, 165 (CA2 2024), with *Lewis* v. *Ascension Parish School Bd.*, 806 F. 3d 344, 358–359 (CA5 2015); *Doe* v. *Lower Merion School Dist.*, 665 F. 3d 524, 549 (CA3 2011); and *Anderson* v. *Boston*, 375 F. 3d 71, 89 (CA1 2004).

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group to which the plaintiff belongs, however, is not essential.

In making such an error, the First Circuit rendered legally irrelevant graphic direct evidence that Committee members harbored racial animus toward members of victimized racial groups.[3] As the Committee members made "explicit," they worked to decrease the number of white and Asian students at the exam schools in service of "racial equity." Record 433. That is racial balancing by another name and is undoubtedly unconstitutional.

* * *

We have now twice refused to correct a glaring constitutional error that threatens to perpetuate race-based affirmative action in defiance of *Students for Fair Admissions*. I would reject root and branch this dangerously distorted view of disparate impact. The Court, however, fails to do so today, so I must respectfully dissent.

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[3] The parties dispute whether Oliver-Dávila's and Rivera's leaked text messages are properly before us. That issue, however, is not an obstacle to our correction of the First Circuit's legal error. Moreover, I doubt the District Court was correct to exclude these later-discovered texts under Rule 60(b)(2) of the Federal Rules of Civil Procedure due to the Coalition's alleged lack of diligence in procuring them. Before the Coalition filed this action, one of its members submitted a public-records request for, among other things, text messages between Oliver-Dávila and Rivera during the meeting to vote on the proposal. The Boston Public Schools inexplicably omitted the racist texts in its response. The later revelation of the texts is thus an obvious basis for reconsideration.

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER L. WILSON *v.* HAWAII

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF HAWAII

No. 23–7517. Decided December 9, 2024

The petition for a writ of certiorari is denied.

Statement of JUSTICE THOMAS, with whom JUSTICE ALITO joins, respecting the denial of certiorari.

In *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1 (2022), we singled out Hawaii's firearms-licensing regime as "analog[ous]" to the New York regime we held unconstitutional. *Id.*, at 15. We explained that States cannot condition an individual's exercise of his Second Amendment rights on a showing of "special need." *Id.*, at 70–71. Yet, the Hawaii Supreme Court ignored our holding in the decision below. See 154 Haw. 8, 543 P. 3d 440 (2024). It instead stated that petitioner Christopher Wilson could not invoke the Hawaii regime's unconstitutionality as a defense in his criminal proceedings because he had never applied for a license. That conclusion contravenes the settled principle that Americans need not engage in empty formalities before they can invoke their constitutional rights, and it wrongly reduces the Second Amendment to a "second-class right." *McDonald* v. *Chicago*, 561 U. S. 742, 780 (2010) (plurality opinion). Although the interlocutory posture of the petition weighs against correcting this error now, I would grant certiorari in an appropriate case to reaffirm that the Second Amendment warrants the same respect as any other constitutional right.

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I

In December 2017, police arrested Wilson after he wandered onto private property while hiking. At the time, he was carrying a loaded pistol without a license. The county

prosecutor charged him with misdemeanor criminal trespass and firearms offenses. These offenses included charges for carrying guns and ammunition in public without a license. See Haw. Rev. Stat. §§134–25, 134–27 (2011).

At the time, Hawaii had a "may issue" licensing regime. That regime allowed local police chiefs to grant licenses in narrow circumstances, but left the ultimate decision to their discretion. A police chief could grant a concealed-carry license only if the applicant had shown that he had an "exceptional case," with "reason to fear injury to [his] person or property." §134–9(a). And, a police chief could grant an open-carry license only if the applicant had shown "urgency" or "need," "good moral character," and that he would be "engaged in the protection of life and property." *Ibid.* The result of this scheme was that very few Hawaiians could obtain licenses: In 2017, the year of Wilson's arrest, Hawaii police granted zero licenses to private citizens. See Dept. of the Atty. Gen., Firearm Registrations in Hawaii, 2017, p. 9 (May 2018), https://ag.hawaii.gov/cpja/files/2018/05/Firearm-Registrations-in-Hawaii-2017.pdf.

Wilson persuaded the Circuit Court to dismiss his unlicensed-carry charges. The Circuit Court recognized that Hawaii's near-total restrictions on public carry could not be squared with *Bruen*, and it accordingly held that prosecuting Wilson for unlicensed carry would violate the Second Amendment and the parallel provision in Article I, §17, of the Hawaii Constitution.

The Hawaii Supreme Court disagreed. See 154 Haw. 8, 543 P. 3d 440. It spent the bulk of its opinion explaining why the Hawaii Constitution does not confer an individual right to bear arms, with analysis that doubled as a critique of this Court's Second Amendment jurisprudence. The court specifically took aim at our focus on original meaning. See *id.*, at 19–23, 543 P. 3d, at 451–455. Bemoaning the policy consequences, the court asserted that an originalist interpretation of the Second Amendment "disables the

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states' responsibility to protect public safety, reduce gun violence, and safeguard peaceful public movement," by putting firearms restrictions "mostly out of bounds." *Id.*, at 22, 543 P. 3d, at 454. And, it denigrated the need for public carry in particular, rejecting as un-Hawaiian "a federally-mandated lifestyle that lets citizens walk around with deadly weapons." *Id.*, at 27, 543 P. 3d, at 459. On the Hawaii Supreme Court's view, a sounder approach to constitutional interpretation would give due regard to the "spirit of Aloha" and would preclude any individual right to bear arms, or at least subject it to "levels of scrutiny and public safety balancing tests." *Id.*, at 21, 27, 543 P. 3d, at 453, 459.

Remarkably, the Hawaii Supreme Court's recognition of the "federally-mandated" right to public carry disappeared when it turned to Wilson's Second Amendment defense. There, the court invoked state standing law to avoid any meaningful Second Amendment analysis. It held that, because Wilson had not applied for a license and had not been charged with violating the licensing statute itself (which was not a criminal statute), he lacked standing to challenge the particulars of the licensing regime. *Id.*, at 12–13, 543 P. 3d, at 444–445. Instead, he could argue only that the Second Amendment categorically forbids state licensing regimes. Because that is not the case, the court held, Hawaii's prohibitions on unlicensed carry "do not graze Wilson's Second Amendment right." *Id.*, at 27, 543 P. 3d, at 459.

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II

The decision below is the latest example of a lower court "fail[ing] to afford the Second Amendment the respect due an enumerated constitutional right." *Silvester* v. *Becerra*, 583 U. S. 1139, 1140 (2018) (THOMAS, J., dissenting from denial of certiorari). As this Court has repeatedly emphasized, "[t]he constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights

guarantees.'" *Bruen*, 597 U. S., at 70 (quoting *McDonald*, 561 U. S., at 780 (plurality opinion)). So, the Hawaii Supreme Court cannot single out the Second Amendment for disfavor, even if it does not believe that "right is *really worth* insisting upon." *District of Columbia* v. *Heller*, 554 U. S. 570, 634 (2008).

By invoking state standing law to dodge Wilson's constitutional challenge, the Hawaii Supreme Court failed to give the Second Amendment its due regard. To be sure, a state-law standing determination ordinarily is an adequate and independent state ground precluding our review. But, as this Court has elsewhere recognized, only "constitutionally proper" rules can create adequate and independent state grounds. *Trevino* v. *Thaler*, 569 U. S. 413, 421 (2013).

The Hawaii Supreme Court should have asked the threshold question whether the Second Amendment allows state standing law to restrict the defenses that criminal defendants facing firearms-related charges may raise. The answer is "no," as our case law on constitutional challenges to licensing regimes makes clear.

A defendant can always raise unconstitutionality as a defense "where a statute is invalid upon its face and an attempt is made to enforce its penalties in violation of constitutional right." *Smith* v. *Cahoon*, 283 U. S. 553, 562 (1931). A "long line of precedent" confirms this point. See, *e.g.*, *City of Lakewood* v. *Plain Dealer Publishing Co.*, 486 U. S. 750, 755–757 (1988) (collecting cases).

Thus, a state-law holding that a defendant "lacked standing to attack the constitutionality of the ordinance because [he] made no attempt to secure a permit under it" is "not an adequate nonfederal ground of decision" where the "ordinance . . . on its face violates the Constitution." *Staub* v. *City of Baxley*, 355 U. S. 313, 319 (1958). This is true where, as here, an individual waits to raise the issue until "he is prosecuted for failure to procure" a license. *Thornhill* v. *Alabama*, 310 U. S. 88, 97 (1940). And, it is true even if the

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defendant's "conduct could be proscribed by a properly drawn statute." *Freedman* v. *Maryland*, 380 U. S. 51, 56 (1965).

Our rejection of state procedural restrictions on the invocation of constitutional defenses follows from the fact that constitutional rights are "self-executing prohibitions on governmental action." *City of Boerne* v. *Flores*, 521 U. S. 507, 524 (1997). A constitutional violation accrues the moment the government undertakes an unconstitutional act. For example, a violation of the Takings Clause occurs "at the time of the taking." *Knick* v. *Township of Scott*, 588 U. S. 180, 194 (2019). And, the availability of state-law compensation remedies cannot delay or undo the accrual of a takings claim. See *id.*, at 193–194.

The same principles apply to the Second Amendment. That Amendment is similarly self-executing, and a State transgresses it as soon as the State implements a licensing regime that is inconsistent with the Nation's "historical tradition of firearm regulation." *Bruen*, 597 U. S., at 17. Judicial review of a license denial may be one way that an individual can challenge state overreach. But, because the constitutional violation occurs as soon as an individual's right to bear arms is inhibited, States cannot mandate that would-be gun owners go through an unconstitutional licensing process before they may invoke their Second Amendment rights. Any other rule would impermissibly demote the Second Amendment "to the status of a poor relation" among constitutional rights. *Knick*, 588 U. S., at 189 (internal quotation marks omitted).

Had the Hawaii Supreme Court followed its duty to consider the merits of Wilson's defense, the licensing scheme's unconstitutionality should have been apparent. We have made clear that the Second Amendment is a right "guaranteed to all Americans," whose exercise cannot be conditioned on a showing of "special need." *Bruen*, 597 U. S., at

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70–71 (internal quotation marks omitted). Yet, in restricting license eligibility to Hawaiians with "'exceptional case[s],'" or who otherwise could show special "urgency" or "need," the Hawaii regime did just that. Hawaii's onerous restrictions closely paralleled those in the New York regime we held unconstitutional in *Bruen*. See *id.*, at 13–15, and n. 2; see also *id.*, at 79 (KAVANAUGH, J., concurring) (recognizing that *Bruen*'s holding applied to all States with "'may-issue' regimes"); *Young* v. *Hawaii*, 45 F. 4th 1087, 1092 (CA9 2022) (en banc) (O'Scannlain, J., dissenting) ("we need not conduct the [*Bruen*] inquiry now because the Supreme Court has already done it for us").

The Hawaii regime's obvious unconstitutionality may be why the Hawaii Legislature has since amended the State's licensing statute to create a "shall issue" regime, at least for concealed carry. The new regime allows any applicant who meets certain baseline requirements to obtain a license without any "special need" limitation. See 2023 Haw. Sess. Laws no. 52, §7, p. 126 (codified at Haw. Rev. Stat. §134–9(a)).

Had the Hawaii Supreme Court followed the legislature's lead and tried to give effect to our Second Amendment jurisprudence, it would have found the licensing regime at issue unconstitutional and upheld the dismissal of Wilson's public-carry charges. The court's contrary path "resist[s] our decisions," *Rogers* v. *Grewal*, 590 U. S. ___, ___ (2020) (THOMAS, J., dissenting from denial of certiorari) (slip op., at 3), and demotes the Second Amendment to a "second-class right," *McDonald*, 561 U. S., at 780 (plurality opinion). This Court cannot tolerate "such blatant defiance" in any constitutional context. *Rogers*, 590 U. S., at ___ (slip op., at 5).

III

All this said, correction of the Hawaii Supreme Court's error must await another day. Wilson moved to dismiss

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only some of his charges, most notably leaving for trial a trespassing charge on which his Second Amendment defense has no bearing. He thus seeks review of an interlocutory order over which we may not have jurisdiction. See 28 U. S. C. §1257(a); *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 476–487 (1975). I agree with the Court's decision to deny certiorari in this posture.

In an appropriate case, however, we should make clear that Americans are always free to invoke the Second Amendment as a defense against unconstitutional firearms-licensing schemes. Perhaps Wilson himself will present that case, should he file a post-trial petition for certiorari. Regardless, this issue is an important and recurring one. See, *e.g.*, Brief in Opposition 14–16, and n. 2 (collecting cases); cf. *Baughcum* v. *Jackson*, 92 F. 4th 1024, 1035 (CA11 2024) (recognizing, for Article III standing purposes, that litigants did not need to make the "futile gesture" of first applying for a carry license, where "they do not meet the state's requirements for license holders"). And, this Court's intervention clearly remains imperative, given lower courts' continued insistence on treating the Second Amendment "right so cavalierly." *Silvester*, 583 U. S., at 1140 (opinion of THOMAS, J.).

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SUPREME COURT OF THE UNITED STATES

CHRISTOPHER L. WILSON *v.* HAWAII

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF HAWAII

No. 23–7517. Decided December 9, 2024

Statement of JUSTICE GORSUCH respecting the denial of certiorari.

In December 2017, Christopher Wilson went for a nighttime hike with friends in the West Maui Mountains. The group strayed onto private property, and the owner called the police. When the police arrived, they searched Mr. Wilson and found he had a handgun—but not a license to carry one in public. So Hawaii prosecuted Mr. Wilson for trespass and for carrying a firearm in public without a license. Mr. Wilson moved to dismiss the gun-related charges against him, arguing that Hawaii's prosecution violated the Second Amendment by unduly restricting his right to carry a firearm for self-defense. The circuit court agreed with Mr. Wilson and granted his motion. But, after the State pursued an interlocutory appeal, the Hawaii Supreme Court reversed.

The Hawaii Supreme Court's decision raises serious questions. For one, the court failed to address Mr. Wilson's contention that Hawaii's prosecution is inconsistent "with this Nation's historical tradition of firearm regulation" and so defies the Second Amendment. See *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1, 17 (2022); *United States* v. *Rahimi*, 602 U. S ___ (2024) (slip op., at 6–7). Instead, the court simply asserted, "States retain the authority to require that individuals have a license before carrying firearms in public." 543 P. 3d 440, 459 (Haw. 2024). That much is surely true. But it's just as true that state licensing regimes can sometimes be so restrictive that they violate the Second Amendment. *Bruen*, 597 U. S., at 38–39, n. 9.

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And the court never analyzed whether Hawaii's law crossed that line in this case.

For another, the Hawaii Supreme Court's reason for declining to consider the merits of Mr. Wilson's defense poses questions of its own. The court observed that Hawaii charged Mr. Wilson with violating two statutes—§134–25 and §134–27. Respectively, those laws forbid carrying handguns and ammunition in public without a license. Haw. Rev. Stat. §§134–25, 134–27 (2011). And, the court continued, those charges did not, as a matter of state law, afford Mr. Wilson standing to challenge a distinct statute, §134–9, regulating the issuance of licenses to carry guns and ammunition in public. After all, the court stressed, the State had not charged Mr. Wilson under §134–9, nor had he pursued the civil administrative process available for citizens seeking a public-carry license. See §134–9.

The trouble with this line of reasoning, as Mr. Wilson notes, is that the two statutes under which he was charged work hand-in-glove with the third. In fact, §134–25 and §134–27 expressly incorporate §134–9, providing that guns and ammunition may not be carried in public "[e]xcept as provided in . . . 134–9." See §§134–25, 134–27. And, as Mr. Wilson sees it, the charges against him under the first two statutes are constitutionally problematic because the exceptions in the third are not broad enough to accommodate the demands of the Second Amendment. Put another way, Mr. Wilson argues that the three statutes together—the prohibitions, even when read in light of the exceptions—restrict his right to carry in public for self-defense purposes more than the Constitution allows. Because the Hawaii Supreme Court failed to grapple with that argument, Mr. Wilson now seeks review here.

It is perhaps an understandable request. This Court does not generally review decisions premised on state law like the Hawaii Supreme Court's standing analysis in this case. But under the Constitution and our precedents, it is this

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Court's role to ensure that "criminal defendants [enjoy] a meaningful opportunity to present a complete defense." *Holmes* v. *South Carolina*, 547 U. S. 319, 324 (2006) (internal quotation marks omitted). The Fourteenth Amendment's Due Process Clause and the Sixth Amendment, this Court has said, guarantee that opportunity by precluding state-law rules that "infring[e] upon a weighty interest of the accused and are arbitrary or disproportionate." *Ibid.* (internal quotation marks omitted, alteration in original). Applying that standard, the Court has repeatedly found unconstitutional the application of state-law "rules that exclud[e] important defense evidence but that d[o] not serve any legitimate interests." *Id.*, at 325; accord, *Chambers* v. *Mississippi*, 410 U. S. 284, 295 (1973).

To be sure, this case isn't a carbon copy of *Holmes* or *Chambers*. In those disputes, the Court faced state-law rules excluding the admission of evidence rather than a state-law rule precluding the presentation of a constitutional defense. But it's unclear how that distinction might help Hawaii's cause. Either type of state law threatens to deprive a criminal defendant of "a fair opportunity to defend against the State's accusations." *Chambers*, 410 U. S., at 294. Admittedly, too, this Court once approved a "wartime emergency measure" preventing criminal defendants from challenging the validity of an administrative rule underlying the charges against them because they could have challenged the rule in earlier civil administrative proceedings. *Yakus* v. *United States*, 321 U. S. 414, 429–431 (1944). But it's difficult to see how a decision "motivated by the exigencies of wartime," *United States* v. *Mendoza-Lopez*, 481 U. S. 828, 838 n. 15 (1987), might be extended beyond that context. All of which seemingly returns us to the usual rule that criminal courts are obliged to consider all "proper issues, whether of law or of fact, relating to the validity of the law for violation of which the defendant[] [is] charged." *Yakus*, 321 U. S., at 480 (Rutledge, J., dissenting).

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In saying that much, I do not mean to suggest Mr. Wilson's Second Amendment defense has merit. I observe only that no one knows the answer to that question because the Hawaii Supreme Court failed to address it. And that failure invites with it the distinct possibility that Mr. Wilson may be convicted of, and ordered to serve time in prison for, violating an unconstitutional law.

Still, it may not be too late to avoid that result. Mr. Wilson's case has not yet proceeded to trial, let alone through the post-judgment appellate process. The Hawaii Supreme Court issued its ruling in the course of an interlocutory appeal. And often courts revisit and supplement interlocutory rulings later in the course of proceedings. Perhaps the Hawaii Supreme Court will take advantage of that opportunity in this case. If not, Mr. Wilson remains free to seek this Court's review after final judgment.

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SUPREME COURT OF THE UNITED STATES

PARENTS PROTECTING OUR CHILDREN, UA *v.* EAU CLAIRE AREA SCHOOL DISTRICT, WISCONSIN, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 23–1280. Decided December 9, 2024

The petition for a writ of certiorari is denied.

JUSTICE KAVANAUGH would grant the petition for a writ of certiorari.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting from the denial of certiorari.

This case presents a question of great and growing national importance: whether a public school district violates parents' "fundamental constitutional right to make decisions concerning the rearing of" their children, *Troxel* v. *Granville*, 530 U. S. 57, 70 (2000) (plurality opinion), when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that process. We are told that more than 1,000 districts have adopted such policies. See Pet. for Cert. i.

The policy in this case is illustrative. In 2021, the Eau Claire Area School District issued "Administrative Guidance for Gender Identity Support." App. to Pet. for Cert. 64. The guidance instructs school personnel to create "Student Gender Support Plan[s]" for students "[w]hen appropriate or necessary." *Id.*, at 65. The plans can address a student's restroom use, participation in athletics, and "social, medical, surgical, and/or legal processes." *Id.*, at 65–66. Furthermore, because "[s]ome transgender . . . students are not 'open' at home," the policy contemplates circumstances under which "parents are not involved in creating" their child's Gender Support Plan. *Id.*, at 66–72. As school personnel were told in an equity training session: "parents

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are not entitled to know their kids' identities. That knowledge must be earned." *Id.*, at 78, 80.

Petitioner, an association of parents whose children attend schools in the district, sued to enjoin the policy, citing their fundamental right to "make decisions" concerning the upbringing of their children. *Id.*, at 54. The lower courts never reached the merits, however, because they concluded that petitioner lacked standing. Relying principally on our decision in *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398 (2013), the Seventh Circuit suggested that a parent could not challenge the district's policy unless the parent could show that his or her child is transitioning or considering a transition. 95 F. 4th 501, 505 (2024). But the challenged policy and associated equity training specifically encourage school personnel to keep parents in the dark about the "identities" of their children, especially if the school believes that the parents would not support what the school thinks is appropriate. Thus, the parents' fear that the school district might make decisions for their children without their knowledge and consent is not "speculative." *Ibid.* (citing *Clapper*, 568 U. S., at 410). They are merely taking the school district at its word.

I would grant the petition so that we can address this questionable understanding of *Clapper* and related standing decisions. I am concerned that some federal courts are succumbing to the temptation to use the doctrine of Article III standing as a way of avoiding some particularly contentious constitutional questions. While it is important that federal courts heed the limits of their constitutional authority, it is equally important that they carry out their "virtually unflagging obligation . . . to exercise the jurisdiction given them." *Colorado River Water Conservation Dist.* v. *United States*, 424 U. S. 800, 817 (1976).

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