

# Constitutionality and Litigation-Impact Review

Comparison of Amendment No. 36-364 (Revised Yellow Amendment) and VISGO Bill Amendment A35

Prepared for VISGO / Kosei Ohno | Current as of June 9, 2026

Review posture. This memorandum evaluates the two uploaded substitute bills as legislative responses to the public allegations in the U.S. Department of Justice Second Amendment Section lawsuit against the Virgin Islands Police Department and to the claims described in the public order in Ohno v. Brooks. It is a legislative risk assessment, not a final prediction of how any judge will rule and not a substitute for advice from counsel of record.

## 1. Executive Summary

**Bottom line:** A35 is the materially stronger bill for both constitutionality and litigation-risk reduction. The Yellow Amendment makes several useful improvements, especially by moving away from a classic proper-cause system and requiring written decisions, but it leaves several of the DOJ/Ohno litigation magnets in place and adds new ones. A35 is designed around the exact post-Bruen litigation issues: objective shall-issue standards, enforceable deadlines, deemed approval, low fees, no home or firearm inspections, no warrantless port-search theory, reciprocity, de novo review, and clear limits on unpublished VIPD discretion.

Bill	Overall score	Litigation cure strength	Challenge risk	One-sentence conclusion
Amendment No. 36-364 (Yellow Amendment)	5.1 / 10	Medium-low to medium	High	Partial cure of proper-cause and delay issues, but high risk from firearm inspections, broad sensitive-place/private-property defaults, accessory/magazine bans, fees, no deemed approval, and weaker appeal remedies.
VISGO Bill Amendment A35	8.9 / 10	High	Moderate	Best fit for pending litigation. It directly addresses DOJ allegations and Mr. Ohno-specific claims while preserving targeted public-safety measures. Some provisions should be technically reviewed, but most litigation risk shifts away from ordinary law-abiding citizens.

**Recommended legislative approach.** Use A35 as the base bill. If sponsors want to incorporate portions of the Yellow Amendment, the safest provisions to borrow are targeted prohibitions on machine-gun conversion devices and intoxicated carrying/use, but they should be conformed to A35's objective standards, due-process protections, NFA/federal-law language, and proportional penalty structure.

## 2. Specific Prompt and Objective Parameters Used

**Prompt used for the analysis:**

*“Objectively compare Amendment No. 36-364 (Revised Yellow Amendment) and VISGO Bill Amendment A35 against Supreme Court and Third Circuit Second Amendment standards and the public allegations/claims in United States v. Government of the Virgin Islands/VIPD/Brooks and Ohno v. Brooks. Score each bill on a 1–10 scale where 10 is the most constitutional and most effective at reducing pending litigation risk, and 1 is least constitutional/effective. Use only bill text, public litigation records, and binding or persuasive legal standards; identify likely constitutional challenges and recommend the stronger legislative approach.”*

Scoring parameter	Weight	How applied
1. Supreme Court / Third Circuit constitutional fit	25	Text-and-history alignment under Heller, Bruen, Rahimi, McDonald, and relevant Third Circuit authority; avoidance of special-need standards, broad public-carry bans, and categorical bans on commonly possessed arms or accessories without historical support.
2. DOJ litigation issue coverage	25	How directly the bill addresses the DOJ complaint themes: proper cause, delays, home searches, bolted-safe conditions, excessive/unwritten requirements, and practical permit obstruction.
3. Ohno-specific litigation issue coverage	20	How directly the bill addresses the issues described in Ohno v. Brooks: nonresident/driver-license issues, MCX/tactical firearm denial, suppressors/LCMs, home safe inspections, luggage/port searches, fees, per-firearm licensing, appeal standards, and arbitrary discretion.
4. Due process, administrative safeguards, and review	15	Fixed deadlines, deemed approval, written reasons, burdens of proof, emergency-suspension procedures, property disposition, appeals, and judicial review.
5. Fourth, Eighth, Fourteenth Amendment and property safeguards	10	Protection against warrantless searches/inspections, excessive fines/forfeitures, takings/property-loss risks, and vague standards.

Scoring parameter	Weight	How applied
6. Public-safety enforceability and implementation clarity	5	Whether the bill is administrable, clear to citizens and VIPD, and targeted at violent or dangerous conduct rather than ordinary lawful ownership.

**Scoring rule.** Each bill was scored against the same 100-point rubric, then divided by ten. A provision received positive credit only when it was enforceable and likely to reduce constitutional risk. If a provision solved one issue but created a new high-risk challenge, the net score was reduced.

**Assumptions.** The DOJ and Ohno allegations were treated as litigation-risk baselines, not as proven facts. The analysis gives the highest weight to binding Supreme Court rules and to the bill text itself. “More constitutional” means more likely to survive facial and as-applied challenges, and more likely to moot, settle, or narrow the pending claims.

### 3. Legal and Litigation Baseline

The core rule after Bruen is that if the Second Amendment’s text covers the conduct, the Government must justify its regulation by reference to the Nation’s historical tradition of firearm regulation. Bruen struck down “proper cause” because ordinary law-abiding citizens cannot be forced to prove an extraordinary or special need before carrying arms in public for self-defense. Bruen also allows objective shall-issue licensing, but specifically warns that even a shall-issue system can be unconstitutional if lengthy wait times or exorbitant fees deny the right in practice. [R3]

Heller recognizes an individual right to possess arms for self-defense, especially in the home, and cautions that the right is not unlimited. It identifies some longstanding regulations as presumptively acceptable, such as felon/mental-illness prohibitions, sensitive places like schools and government buildings, and commercial-sale conditions, but it also invalidated a home-operability restriction that prevented armed self-defense. [R4]

Rahimi is important because it supports temporary disarmament of persons found by a court to pose a credible threat to another person’s physical safety. That favors narrow, evidence-based restrictions on violent or dangerous persons, not broad presumptions against the general public. [R5]

The DOJ complaint and DOJ press release identify the litigation target as VIPD’s alleged delays, unconstitutional conditions, bolted-safe requirements, proper-cause enforcement, and unreasonable home searches. [R6] The Ohno order describes claims involving a VI driver’s license requirement, denial of a SIG MCX license as an “assault weapon” or convertible/tactical firearm, suppressors and large-capacity magazines, safe inspections, luggage searches, excessive fees, and discretionary appeal standards. [R7]

### 4. Weighted Scorecard

Criterion	Weight	Yellow Amendment	A35	Reason
Supreme Court / Third Circuit constitutional fit	25	14.0	22.5	A35 expressly codifies objective shall-issue standards, no proper-cause, low fees, no inspections, constitutional construction, and more tailored disqualifiers. Yellow improves proper-cause but retains several broad categorical restrictions and sensitive-place defaults.
DOJ litigation issue coverage	25	14.0	24.0	A35 directly responds to delays, home searches, safe/inspection practices, fees, written rules, and deemed approval. Yellow responds to some delay and proper-cause issues but retains firearm inspection and lacks deemed approval.
Ohno-specific issue coverage	20	7.0	18.5	A35 addresses residence/business/vessel eligibility, arbitrary firearm/accessory denials, suppressors/NFA devices, LCM issues, port searches, fees, and de novo review. Yellow would worsen several of those claims.
Due process, administrative safeguards, and review	15	8.0	13.5	A35 creates a Firearms Review Board, de novo court review, government burden, 7/30-day deadlines, deemed approval, and emergency-suspension guardrails. Yellow has written denials but a short writ deadline, no stay, no deemed approval, and broad suspension discretion.
Fourth, Eighth, Fourteenth, and property safeguards	10	5.0	8.5	A35 has explicit no-search, no-inspection, no-search-by-declaration, property-disposition, confidentiality, and excessive-fines construction. Yellow has some safe-storage Fourth Amendment language but retains physical inspection and forfeiture pressure.
Public-safety enforceability and implementation clarity	5	3.0	2.0	Yellow has simpler categorical bans but risks overbreadth. A35 is more rights-protective and targeted, though its length and new institutions require implementation work.
TOTAL	100	51.0 / 100 = 5.1 / 10	89.0 / 100 = 8.9 / 10	Rounded final scores: Yellow 5.1; A35 8.9.

**Why the Yellow Amendment is scored slightly above 5 rather than below 5.** It does contain meaningful improvements: the Commissioner “shall issue” to qualified applicants, the application process has written denial requirements and a 45-day deadline, licenses last five years, and safe-storage penalties require a causal injury/death link. Those changes matter. The low score comes from the provisions that remain vulnerable after Bruen and from the limited ability of the bill to end the pending DOJ and Ohno claims.

**Why A35 is not scored as a perfect 10.** A35 is significantly stronger, but a few provisions need technical legal review: 18-year-old concealed carry, civil-rights liquidated damages, NFA/manufacture mechanics, Project Bleachers appropriation/germaneness, and remaining antique-firearm inspection language. These are fixable without undermining the core settlement value of the bill.

## 5. Litigation Fit: DOJ and Ohno Issues

Issue	Yellow Amendment	A35	Better fit
Proper-cause / special-need standard	Improves by creating a shall-issue license, but less emphatic and still contains discretionary language in appeals/revocation.	Expressly bars special need, character affidavits, proper reason, subjective moral-character, and ad hoc standards.	A35
Processing delays	45-day processing after complete application; may request more information; no deemed approval.	7-day completeness notice, 30-day approval/denial, deemed approval by operation of law, summary relief.	A35
Home searches, bolted safes, physical inspections	Safe-storage section disclaims unauthorized searches, but renewal requires licensees to present all registered firearms for VIPD inspection.	Expressly forbids home visits, home inspections, warrantless searches, and mandatory physical firearm inspections/test-firing/serial verification.	A35
Fees and per-firearm burden	\$150 initial license fee, \$50 registration certificate per firearm, \$50 renewal; retains per-firearm registration certificate structure.	\$25 initial license, \$25 five-year renewal per licensee, no separate per-firearm renewal fee; fees dedicated to administration only.	A35
Unwritten requirements / driver-license issue	Does not comprehensively bar unpublished policies or clarify seasonal/business/vessel residence proof.	No unwritten rules; objective proof of residence address/bona fide business, including seasonal/part-time and vessel residence; no domicile/voting/tax residency requirement.	A35
Ohno MCX / tactical-firearm denial risk	Bans or restricts several firearm categories and leaves Commissioner power to deny registration for prohibited categories; long-arm public carry is barred.	Commissioner may not deny a lawful firearm, magazine, suppressor, ammunition, or component absent express statutory prohibition; ministerial registration.	A35
Suppressors / NFA devices	Bans silencers and says ATF authorization is not recognized, except limited range possession.	Allows federally lawful devices through federal-law compliance and enhanced background check endorsement; preserves federal law.	A35
Large-capacity magazines	Bans >15-round magazines; penalties include civil penalties for licensees and severe felony/location penalties for unlicensed persons.	Does not impose a blanket LCM ban; lawful magazines cannot be denied absent express statutory prohibition.	A35
Port declaration and luggage search issue	No comparable explicit protection against treating declaration as consent to search.	Declaration is administrative only and not consent to search; no independent search authority; warrant/consent/exigency required.	A35
Appeals and judicial review	Petition for writ within 15 days; no automatic stay; one-year reapplication bar after denial.	Optional Firearms Review Board, de novo review, government burden, 30-day filing, expedited relief, enforcement mechanism.	A35
Reciprocity / temporary nonresidents	No broad recognition of out-of-state licenses.	90-day recognition for nonresident holders of valid state/territory/DC permits, with declaration and public list.	A35

## 6. Bill-by-Bill Findings

### 6.1 Amendment No. 36-364 (Revised Yellow Amendment)

#### Principal strengths:

- Moves toward a shall-issue license for applicants who satisfy enumerated criteria, which is a necessary post-Bruen improvement.
- Creates a written application and denial process with a 45-day deadline for completed applications and written reasons for denials.
- Provides a five-year license term and recognizes existing licenses until expiration.

- Contains a safe-storage provision that ties criminal punishment to direct resulting injury/death and says it does not authorize searches beyond the Fourth Amendment and Revised Organic Act.
- Targets intoxicated carrying/use, machine-gun conversion devices, and other public-safety concerns that can be regulated if drafted narrowly.

**Principal constitutional and litigation risks:**

- Renewal inspection risk: requiring every renewal applicant to present all registered firearms for VIPD inspection is difficult to square with DOJ/Ohno claims challenging inspections, home/safe requirements, and administrative obstruction.
- Sensitive-place/private-property risk: government buildings and grounds, hospitals, demonstrations, religious places, special events, and all private property unless affirmatively posted or personally authorized create a broad public-carry restriction that will likely invite Bruen-style challenges.
- Magazine and suppressor risk: categorical bans on magazines over 15 rounds and silencers/suppressors, plus “ATF authorization not recognized,” are likely to generate Second Amendment, federal-law, due-process, and as-applied challenges, especially because Ohno already raised suppressor and LCM issues.
- Delay and discretion risk: no deemed approval, a short 15-day writ deadline, no automatic stay, and suspension based on “danger to the community” leave significant discretion in the same agency whose practices are being challenged.
- Fee and burden risk: \$150 initial license, \$50 per-firearm registration, and ongoing renewal burdens are less defensible after Bruen’s warning about fees that deny ordinary citizens public carry in practice.
- Property and forfeiture risk: surrender/revocation procedures can result in forfeiture if transfer or transport is not arranged within 60 days, creating due-process, takings, and excessive-fines risk without A35-level safeguards.
- Mental-health overbreadth risk: recent voluntary admission to a mental health facility as a disqualifier may be broader than Rahimi-style dangerousness and court-finding principles.

**Net assessment.** The Yellow Amendment may reduce exposure on the narrow issue of proper-cause licensing, but it is unlikely to end the DOJ case or Mr. Ohno’s case. It would likely shift the litigation from “VIPD may-issue obstruction” to “VIPD statutory overbreadth and inspection/fee/accessory bans.”

**6.2 VISGO Bill Amendment A35**

**Principal strengths:**

- Directly implements Bruen’s preferred structure: objective shall-issue standards, no special need, no subjective moral-character or proper-cause requirement, and no unpublished policy basis for denial.
- Addresses DOJ delay claims through a 7-day completeness notice, 30-day approval/denial deadline, deemed approval, temporary extension for timely renewals, and summary relief.
- Addresses DOJ/Ohno search and inspection claims through explicit prohibitions on home visits, home inspections, warrantless searches, and compelled physical inspection/test-firing/serial verification of privately owned firearms.
- Greatly reduces cost burden: \$25 initial license, \$25 renewal every five years per licensee, no separate per-firearm renewal fee, and fee dedication to administration only.
- Addresses Mr. Ohno’s residence/business/vessel/non-domicile issues by defining residence address and bona fide place of business with objective documentation and safe harbors.
- Addresses arbitrary firearm/accessory decisions by barring denial of lawful firearms, magazines, suppressors, ammunition, or components absent express statutory prohibition.
- Creates Firearms Review Board and de novo court review with the government bearing the burden, improving procedural due process and settlement value.
- Provides port-declaration protections: declaration is not consent to search and cannot be used as independent authority to search luggage or effects.
- Creates a one-year voluntary compliance/grace period and civil treatment for first-time nonregistration by otherwise eligible persons, which improves public safety through registration without criminalizing ordinary people first.
- Maintains strong public-safety tools against machine-gun conversion devices, violent/dangerous disqualifiers, unlawful possession in schools/courts/correctional facilities, and intoxicated or criminal misuse when preserved through other provisions.

**Potential vulnerabilities that should be technically reviewed:**

- Age provision: allowing 18-year-olds to obtain a 24-hour concealed handgun license may be defended in some circuits and challenged in others. It should have strong findings and severability, or the Legislature may choose a narrower approach for concealed handguns while preserving long-gun rights and training access.
- Civil-rights liquidated damages: \$10,000 / \$100,000 statutory damages could draw territorial-law, fiscal, immunity, separation-of-powers, or excessive-fines arguments. Consider converting to attorney-fee/actual-damages language or expressly tying damages to final civil-rights judgments.
- NFA and manufacturer provisions: the federal-law-preservation language is good, but technical review by counsel familiar with ATF/NFA mechanics is important to avoid preemption, transfer, or local registration conflicts.
- Project Bleachers appropriation: the policy goal is strong, but counsel should confirm germaneness, single-subject, and appropriations rules under Virgin Islands legislative practice.
- Antique firearm / certificate of uselessness language: any retained inspection requirement for antique collections should be harmonized with A35’s no-warrantless-inspection principle.

**Net assessment.** A35 is the stronger settlement and litigation posture because it fixes the system-level features that DOJ attacked and the individualized practices Mr. Ohno challenged. It is also less likely to criminalize ordinary lawful owners while still targeting violent misuse, unlawful conversion devices, and prohibited persons.

## 7. Which Bill Is More Likely to Encounter Constitutional Challenges?

**The Yellow Amendment is substantially more likely to face immediate constitutional challenges.** The likely plaintiffs would include ordinary licensees, applicants delayed beyond statutory deadlines, persons subject to renewal inspections, lawful owners of standard-capacity magazines or suppressors, nonresidents/temporary residents, persons entering through ports, and persons carrying on private property open to the public.

Challenge category	Yellow Amendment risk	A35 risk	More exposed bill
Second Amendment - public carry	High: broad sensitive-place list and private-property opt-in default likely challenged as public-carry suppression.	Low to moderate: preserves carry in ordinary public places and bars ad hoc place restrictions; residual age and NFA issues remain.	Yellow
Second Amendment - common arms/accessories	High: bans >15-round magazines and suppressors; bans/registration limits on several categories; ATF authorization not recognized.	Moderate: allows federal-law/NFA endorsement path; conversion devices targeted; potential disputes limited to specific categories.	Yellow
Fourth Amendment / Revised Organic Act	Medium-high: safe-storage section disclaims searches, but renewal physical inspection remains; port-search protections are weak.	Low: explicit no home inspections, no firearm inspections, no port declaration-as-consent, warrant/consent/exigency requirement.	Yellow
Procedural due process	Medium-high: no deemed approval, 15-day writ, no automatic stay, broad suspension authority, surrender/forfeiture pressure.	Low-moderate: FRB, de novo review, government burden, emergency standards, written findings.	Yellow
Eighth Amendment / takings / property	Medium-high: forfeiture after transfer window; large penalties; contraband/destruction language.	Low-moderate: property notice, lawful transfer, excessive-fines construction; liquidated damages need review.	Yellow
Equal protection / residency / privileges	Medium: no robust nonresident recognition and less clarity for seasonal/business applicants.	Low-moderate: 90-day recognition and objective residence/business standards; still requires compliance after 90 days.	Yellow
Implementation challenge	Medium: simpler but creates enforcement confusion around private property, 1,000-foot zones, and magazine possession.	Medium: more complex, new Board/civilian division, but clearer objective standards.	Tie / A35 technical

## 8. Recommended Final Drafting Position

1. Adopt A35 as the baseline substitute. It has the highest probability of reducing DOJ/VIPD and Ohno litigation exposure because it removes the practices and statutory ambiguities that create the claims.
2. Do not import the Yellow Amendment’s broad sensitive-place language, private-property opt-in default, renewal firearm-inspection requirement, “ATF authorization not recognized” language, or blanket large-capacity magazine ban without a separate historical-analogue memorandum and a severability strategy.
3. If legislators want targeted public-safety provisions from the Yellow Amendment, incorporate them through A35’s structure: objective definitions, scienter, proportional penalties, due process, federal-law preservation, and no burden on ordinary lawful ownership.
4. Preserve A35’s DOJ-facing provisions without dilution: no proper cause, no home inspections, no mandatory physical firearm inspections, no unwritten rules, low fees, 7/30-day deadlines, deemed approval, Board review, de novo court review, and government burden of proof.
5. Preserve A35’s Ohno-facing provisions: objective residence/business/vessel eligibility, no driver-license-only requirement, no arbitrary denial of lawful firearms or accessories, NFA/suppressor endorsement pathway, port declaration not consent to search, and registration/renewal cost reform.
6. Add an implementation schedule and forms checklist to make the bill operational on day one. A constitutional statute can still become a litigation magnet if VIPD lacks forms, public checklists, training, and deadlines capable of immediate compliance.

## 9. Expected Effect on Pending Litigation

**DOJ case.** A35 is more likely to moot, narrow, or settle core DOJ claims because it addresses the practices DOJ identified: unreasonable delay, proper cause, home searches, bolted-safe conditions, and unconstitutional obstruction. The Yellow Amendment would likely leave DOJ with viable objections to inspection practices, delays without deemed approval, broad discretion, and fees.

**Ohno case.** A35 is more likely to address Mr. Ohno’s claims because it speaks directly to the issues described in the court order: license eligibility without a VI driver’s license or domicile, arbitrary MCX/firearm-type denial, suppressors and LCMs,

excessive fees, per-firearm licensing burdens, home/safe inspections, luggage/port searches, and meaningful appeal standards. The Yellow Amendment is more likely to intensify the Ohno litigation because it bans suppressors and LCMs, keeps physical inspection, and does not resolve the nonresident/business/residence issue as clearly.

**Practical conclusion.** If the legislative goal is to protect public safety while stopping civil-rights litigation, A35 is the safer and more effective bill. The Yellow Amendment is more prosecutor- and police-centered, but that is precisely why it is more likely to be challenged after Bruen.

## 10. References Reviewed

[R1] Amendment No. 36-364 (Revised), Amendment in the Nature of a Substitute to Bill No. 36-0144, Offered by Senator Clifford A. Joseph, Sr., Revised May 27, 2026 (uploaded PDF).

[R2] VISGO Bill Amendment A35, Virgin Islands Safe Communities and Constitutional Firearms Modernization Act (uploaded PDF).

[R3] New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022), especially the proper-cause holding and the statement that objective shall-issue systems may still be challenged if lengthy waits or exorbitant fees deny the right.

[R4] District of Columbia v. Heller, 554 U.S. 570 (2008), especially the individual-right holding, home self-defense holding, sensitive-places/commercial-sale language, and “common use” / “dangerous and unusual” framework.

[R5] United States v. Rahimi, 602 U.S. \_\_\_\_ (2024), holding that a person found by a court to pose a credible threat to another may be temporarily disarmed consistent with the Second Amendment.

[R6] United States v. Government of the Virgin Islands, Virgin Islands Police Department, and Mario Brooks, No. 3:25-cv-00050, Complaint filed Dec. 16, 2025; DOJ press release dated Dec. 16, 2025.

[R7] Ohno v. Brooks, No. 3:25-cv-00014-RAM-EAH, Order filed Nov. 26, 2025, Doc. 45, public PDF from the District Court of the Virgin Islands.

[R8] McDonald v. City of Chicago, 561 U.S. 742 (2010); Range v. Attorney General, 124 F.4th 218 (3d Cir. 2024) (en banc); Caetano v. Massachusetts, 577 U.S. 411 (2016); Bondi v. VanDerStok, 604 U.S. \_\_\_\_ (2025), as referenced in A35 findings and used as background where relevant.

## Appendix A - Line-Item Objective Findings

Question	Conclusion	Reason
Most constitutional overall	A35	It has direct constitutional construction, objective standards, low fees, no inspections/searches, and meaningful review.
Most effective against DOJ litigation	A35	It targets every major DOJ theory: delay, proper cause, home searches, bolted safes, abusive fees/conditions, and unwritten standards.
Most effective against Ohno litigation	A35	It addresses residence/business/vessel proof, no driver-license-only rule, MCX/accessory arbitrariness, suppressors/LCMs, inspections, fees, and port searches.
Most likely to encounter constitutional challenge	Yellow Amendment	Broad sensitive places, private-property opt-in, LCM/suppressor bans, renewal firearm inspection, fees, lack of deemed approval, and forfeiture pressure.
Best public-safety target in Yellow to keep	Conversion-device and intoxicated-use provisions	Retain only after conforming definitions, scienter, due process, proportional penalties, and federal-law preservation to A35.
Most important A35 provisions to preserve	No inspections/searches; deadlines/deemed approval; low fees; FRB/de novo review; reciprocity; no unwritten rules	These are the provisions most likely to reduce the pending litigation and restore public confidence.

This report intentionally separates constitutional risk from policy preference. A provision may be politically attractive and still create litigation risk if it broadly burdens ordinary lawful possession or carry without objective standards and historical support.