No. _____

In the
Supreme Court of the United States

VIRGINIA DUNCAN; RICHARD LEWIS;
PATRICK LOVETTE; DAVID MARGUGLIO;
CHRISTOPHER WADDELL; and
CALIFORNIA RIFLE & PISTOL ASSOCIATION, INC.,

Petitioners,

v.

ROB BONTA, in his official capacity
as Attorney General of the State of California,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that states may not ban arms that "law-abiding citizens" "typically possess[] … for lawful purposes." *Id.* at 625. And it reiterated in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), that "the Second Amendment protects the possession and use of weapons that are 'in common use at the time.'" *Id.* at 21 (quoting *Heller*, 554 U.S. at 627). California nonetheless persists in banning feeding devices capable of holding more than ten rounds of ammunition, even though tens of millions of law-abiding Americans have long lawfully owned hundreds of millions of these devices as integral components of legal firearms. Adding insult to injury, California's ban applies retrospectively, requiring citizens to dispossess themselves of lawfully acquired property without any compensation from the state. This Court previously GVR'd in light of *Bruen*, but rather than follow this Court's marching orders, a divided en banc panel once again upheld the ban. In doing so, the Ninth Circuit not only doubled down on its pre-*Bruen* precedent, but reached the remarkable conclusion that California's sweeping ban on common arms does not even *implicate* the Second Amendment.

The questions presented are:

1. Whether a ban on the possession of exceedingly common ammunition feeding devices violates the Second Amendment.

2. Whether a law dispossessing citizens, without compensation, of property that they lawfully acquired and long possessed without incident violates the Takings Clause.

PARTIES TO THE PROCEEDING

Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell, and the California Rifle & Pistol Association, Inc., are petitioners here and were plaintiffs-appellees below.

Rob Bonta, in his official capacity as Attorney General of California, is respondent here and was defendant-appellant below.

CORPORATE DISCLOSURE STATEMENT

Petitioners Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, and Christopher Waddell are individuals. Petitioner California Rifle & Pistol Association has no parent corporation, and no publicly held company owns 10 percent or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

Duncan v. Bonta, No. 23-55805 (9th Cir.) (en banc) (order staying injunction in part issued Oct. 10, 2023; opinion issued Mar. 20, 2025; mandate stayed in part pending certiorari Apr. 10, 2025).

Duncan v. Bonta, No. 17-cv-1017 (S.D. Cal) (order granting summary judgment, declaring California Penal Code §32310 unconstitutional and enjoining enforcement issued Sept. 22, 2023).

Duncan v. Bonta, No. 21-1194 (U.S.) (order granting petition for writ of certiorari, vacating judgment, and remanding for further consideration in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), issued June 30, 2022).

Duncan v. Bonta, No. 19-55376 (9th Cir.) (en banc) (opinion issued Nov. 30, 2021; mandate stayed in part pending certiorari Dec. 20, 2021; petition granted, opinion vacated June 30, 2022; order remanding issued Sept. 23, 2022).

Duncan v. Becerra, No. 19-55376 (9th Cir.) (panel opinion issued Aug. 14, 2020; rehearing en banc granted, opinion vacated Feb. 25, 2021).

Duncan v. Becerra, No. 17-cv-1017 (S.D. Cal.) (order granting preliminary injunction issued June 29, 2017; order granting summary judgment issued Mar. 29, 2019; order staying in part judgment pending appeal issued Apr. 4, 2019).

Duncan v. Becerra, No. 17-56081 (9th Cir.) (memorandum opinion affirming preliminary injunction issued July 17, 2018).

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PETITION FOR WRIT OF CERTIORARI

When this Court vacated and remanded the prior judgment in this case in light of *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), one might have expected the Ninth Circuit to reassess its decision to bless California's sweeping ban on long-lawful magazines. After all, *Bruen* reiterated that "the Second Amendment protects the possession and use of weapons that are 'in common use at the time.'" *Id.* at 21 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008)). And given *Bruen*'s reaffirmation of the rule of decision that controlled *Heller*—that states may not ban arms that "law-abiding citizens" "typically possess[] … for lawful purposes," 554 U.S. at 625—it should have been easy to see that California's ban on feeding devices that can accept more than ten rounds of ammunition violates the Second Amendment, as tens of millions of law-abiding Americans lawfully own hundreds of millions of these devices as integral components of constitutionally protected and legal firearms.

For the district court, that was indeed easy to see. But the Ninth Circuit would have none of it. The court bypassed the ordinary panel-review process, reconvened an en banc panel that now consisted mostly of judges not in active service, granted "emergency" relief to the state over the dissent of most of the active judges on that panel, and ultimately held that California's sweeping and confiscatory ban on some of the most common arms in America does not even *implicate* the Second Amendment right to keep and bear arms.

That decision cannot be reconciled with this Court's precedents or the constitutional traditions they embody. Indeed, despite professing surface-level adherence to *Heller*, *Bruen*, and *Rahimi*, the Ninth Circuit ultimately cast those decisions aside, pawning off interest-balancing as careful consideration of constitutional text and historical tradition.

At the outset, the Ninth Circuit engaged in supposed "plain-text" analysis that was anything but. This Court has repeatedly recognized that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms," *Bruen*, 597 U.S. at 28 (quoting *Heller*, 554 U.S. at 582), and made clear that "the Second Amendment's definition of 'arms'" extends to all bearable "instruments that facilitate armed self-defense," *id.* Nevertheless, the Ninth Circuit held that ten-plus-round magazines are not "arms" covered by the plain text, and that ammunition feeding devices are presumptively protected "arms" *only if* their capacity is no greater than "necessary" for self-defense. That decision deepens acknowledged circuit splits over whether these ubiquitous instruments are "Arms" at all, as well as over how to assess which "Arms" are entitled to protection. And it gets a profoundly important constitutional question profoundly wrong.

Things only get worse from there. Although its threshold-textual holding logically meant that the case was over, the Ninth Circuit proceeded to muse about historical tradition—and what it had to say was eerily reminiscent of the interest-balancing approach *Bruen* interred. The court justified California's ban by declaring that the millions of Americans who possess

ten-plus-round magazines do not really *need* them. And it doubled down on its hostility to *Bruen*'s framework, making the claim that even if such magazines are "arms," the very same historical regulations that *Heller* held imposed *no burden on the right at all* suffice to justify California's ban.

That all smacks of a result in search of a reason. And it vividly "illustrates why this Court must provide more guidance" on which arms the Second Amendment protects. *Harrel v. Raoul*, 144 S.Ct. 2491, 2492 (2024) (Thomas, J., respecting the denial of certiorari). Indeed, the Ninth Circuit refused to even engage with the historical tradition this Court has recognized protecting arms in common use, deriding the common-use test as too "simplistic," "undefined," and "speculative," and a "facile invitation" to rely on an "ownership-statistics theory" of the Second Amendment. App.51-54. As that decision makes all too clear, lower courts set on blessing arms bans will continue "contorting what little guidance" they are willing to concede this Court has offered—and the only way to make it stop is to squarely decide the issue once and for all. *Harrel*, 144 S.Ct. at 2492.

Adding insult to injury, California's ban applies retrospectively, turning law-abiding citizens who lawfully acquired magazines decades ago into criminals unless they dispossess themselves of or destroy their property. There is no constitutional tradition in this country of the government simply declaring items lawfully possessed for decades to be contraband—let alone items that the Constitution explicitly entitles the people to "keep." Traditionally, even when the government tried to limit less-common

firearms, it did so only prospectively, out of respect for the Second Amendment, the Fifth Amendment, and the governed. The only thing more patent than California's disrespect for those rights, and the people to whom they belong, is the Ninth Circuit's disrespect for this Court and its place in the Article III hierarchy.

This is an ideal vehicle to resolve these critically important issues. Not only has this case (which began nearly a decade ago) reached final judgment, but it did so after the parties compiled a full record, and the constitutional question was resolved on the merits by an en banc panel. The constitutionality of California's ban is thus finally settled unless and until this Court intervenes. And although the Ninth Circuit has been willing to continue to stay the retrospective aspect of that ban while petitioners seek this Court's review, a denial of certiorari would convert countless law-abiding Californians into criminals overnight. The stakes could not be higher—nor could the need for course correction.

OPINIONS BELOW

The decision below, 133 F.4th 852, is reproduced at App.1-150. The Ninth Circuit's opinion staying the permanent injunction in part, 83 F.4th 803, is reproduced at App.263-303. The district court's opinion granting summary judgment and entering a permanent injunction on remand post-*Bruen*, 695 F.Supp.3d 1206, is reproduced at App.304-96.[1]

[1] The district court's opinion granting a preliminary injunction in 2017, 265 F.Supp.3d 1106, is reproduced at App.781-849. The opinion affirming the 2017 preliminary injunction, 742 F.App'x 218, is reproduced at App.650-64. The district court's 2019 opinion granting summary judgment, 366 F.Supp.3d 1131, is

JURISDICTION

The Ninth Circuit issued the decision below on March 20, 2025. Justice Kagan extended the time to file a petition for writ of certiorari to August 17, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second, Fifth, and Fourteenth Amendments are reproduced at App.858. California Penal Code §§32310 & 16740 are reproduced at App.859-60.

STATEMENT OF THE CASE

A. Factual and Legal Background

1. Since 2000, California has banned the manufacture, importation, sale, and transfer of any "large-capacity magazine," which the state defines as "any ammunition feeding device with the capacity to accept more than 10 rounds," with some exceptions not relevant here. App.859, 860. The 2000 version of the law prevented future acquisition of prohibited magazines, but it did not ban possession.

In July 2016, however, California decided that this modest nod toward reliance interests and the Takings Clause was actually a "loophole" that needed closing. California thus amended the law to prohibit the continued possession of so-called LCMs, even though everyone affected had possessed the pre-ban

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reproduced at App.665-780. The vacated panel opinion affirming the 2019 grant of summary judgment, 970 F.3d 1133, is reproduced at App.569-649. The Ninth Circuit's first en banc opinion, 19 F.4th 1087, is reproduced at App.398-568. This Court's order GVR'ing that judgment, 142 S.Ct. 2895, is reproduced at App.397.

magazines lawfully and safely since at least 2000. The legislation required those in possession of lawfully acquired (and theretofore lawfully possessed) magazines to surrender, permanently alter, or otherwise dispossess themselves of the magazines. S.B. 1446, 2015-2016 Reg. Sess. (Cal. 2016).

Later that year, voters approved a ballot initiative, Proposition 63, that took a similar approach. *See* App.8-9. Proposition 63 requires Californians currently in possession of a magazine capable of holding more than ten rounds of ammunition to surrender it to law enforcement for destruction, permanently alter it, remove it from the state, or sell it to a licensed firearms dealer, who in turn is subject to the law's transfer and sale restrictions. App.9-10. Failure to dispossess oneself of a lawfully acquired magazine is punishable by up to a year in prison. App.8-9.

2. California's broad (mis)classification of what makes a feeding device "large capacity" captures arms that tens of millions of Americans have long lawfully kept and borne for lawful purposes, including self-defense. Hundreds of millions of ten-plus-round feeding devices have been sold in the past few decades alone, making them far more common than the F-150, the most popular vehicle in the country. *See* Nat'l Shooting Sports Found., *Detachable Magazine Report, 1990-2021* (2024), perma.cc/4VXU-DJWA; Brett Foote, *There Are Currently 16.1 Million Ford F-Series Pickups on U.S. Roads*, Ford Auth. (Apr. 9, 2021), perma.cc/AH7W-MT8G. In fact, the average American gun owner owns *more* ten-plus-round magazines than magazines that hold ten rounds or

fewer. *See* William English, Ph.D., *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* 24-25 (revised Sept. 28, 2022), doi.org/10.2139/ssrn.4109494.

That should come as no surprise. The magazines California bans have long been lawful in most of the country, and they remain lawful in most states today. *See Magazine Gun Laws by State*, XTech Tactical (updated Mar. 18, 2025), perma.cc/2J5Y-UKBS. Tracking consumer preference, many modern handguns—the "quintessential self-defense weapon," *Heller*, 554 U.S. at 629—come standard with such magazines, *see, e.g.*, *Gun Digest 2018* at 386-88, 408 (Jerry Lee & Chris Berens eds., 72d ed. 2017), as do all the best-selling semiautomatic rifles, *see* Nat'l Shooting Sports Found., *Modern Sporting Rifle Comprehensive Consumer Report* 31 (July 14, 2022), perma.cc/SSU7-PR95. *Cf. Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025) ("The AR-15 is the most popular rifle in the country."); *Garland v. Cargill*, 602 U.S. 406, 429-30 (2024) (Sotomayor, J., dissenting) (noting that "semiautomatic rifles" like AR-15s are "commonly available"). And the most common reasons cited for owning them are target shooting (64.3% of owners), home defense (62.4%), hunting (47%), and defense outside the home (41.7%). English, *supra*, at 23.

What the D.C. Circuit said over a decade ago thus remains true today: "There may well be some capacity above which magazines are not in common use," but "that capacity surely is not ten." *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011). Nevertheless, California not only continues to ban

these common arms, but seeks to confiscate them from law-abiding citizens who lawfully acquired them.

B. Procedural Background

1. Patrick Lovette is an "honorably retired 22-year United States Navy veteran" who has lawfully possessed ten-plus-round magazines for "more than 20 years." App.787. Virginia Duncan, David Marguglio, and Christopher Waddell are law-abiding citizens who would like to acquire one or more magazines that California bans. App.787. California Rife & Pistol Association, Inc., is a nonprofit organization representing similarly situated Californians. App.787.

Shortly before the new possession ban was scheduled to take effect, petitioners brought this lawsuit challenging it under, *inter alia*, the Second Amendment and the Takings Clause. While petitioners challenged the ban in its entirety, they sought a preliminary injunction only of the new possession ban. The district court granted the motion. App.847-48. The state took an interlocutory appeal, and a divided three-judge panel affirmed. App.651-56.

2. Meanwhile, petitioners assembled a thorough factual and historical record. The district court ultimately granted them summary judgment on both claims. App.665.

The case then went back to the Ninth Circuit, where a different divided three-judge panel affirmed. App.569-649. Because the panel held that the law

violates the Second Amendment, it did not reach the takings claim.[2]

3. That validation of Second Amendment rights by the Ninth Circuit was not long for this world. A majority of the circuit's then-active judges voted to rehear the case en banc, App.407, and, in 2021, a divided en banc panel reversed, App.398.

First, the majority applied intermediate scrutiny and the old "two-step" test to reject petitioners' Second Amendment challenge. App.408-12, 417. The majority then held that forcing people to dispossess themselves of lawfully acquired magazines does not effect a physical taking, positing that "[n]othing in the case law suggests that any time a state adds to its list of contraband … it must pay all owners for the newly proscribed item." App.435. The majority tried to distinguish *Horne v. Department of Agriculture*, 576 U.S. 350 (2015), and *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), on the grounds that the state is not "tak[ing] title to, or possession of, the" magazine, and because they "concerned regulations of non-dangerous, ordinary items." App.436-37. In the majority's view, the Takings Clause does not "requir[e] a government to pay whenever it concludes that certain items are too dangerous to society for persons to possess." App.437.[3]

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[2] Judge Lynn, sitting by designation, dissented, and would have upheld the ban in its entirety. App.634-49.

[3] Judge Bumatay authored a dissent, joined by Judges Ikuta and R. Nelson. App.497-539. Judge VanDyke separately dissented. App.540-68.

4. Petitioners sought certiorari. While their petition was pending, this Court decided *Bruen*, which clarified the appropriate framework for deciding Second Amendment challenges and reiterated that "the Second Amendment protects the possession and use of weapons that are 'in common use.'" 597 U.S. at 21 (quoting *Heller*, 554 U.S. at 627). The Court then granted that petition, vacated the Ninth Circuit's opinion, and remanded for further consideration in light of *Bruen*. App.397. The Ninth Circuit, in turn, remanded to the district court, over the dissents of Judges Bumatay and VanDyke. 49 F.4th 1228 (9th Cir. 2022).

5. On remand, the parties filed voluminous briefs and factual submissions focused on the issues *Bruen* made central to Second Amendment analysis. The district court then once again granted summary judgment for petitioners and permanently enjoined the state from enforcing its confiscatory ban. App.304-97.

6. The Ninth Circuit, however, once again would have none of it. Bypassing the ordinary motions- and three-judge-panel merits-review processes, the original en banc panel (with one change)[4] reconvened and hastily granted an "emergency" stay of the district court's injunction over the dissent of most of the active judges on that panel. The en banc majority's stay opinion cited *Bruen* only once—for the truism that

[4] Because Judge Watford had left the bench in the interim, Judge Wardlaw was randomly drawn to replace him. *See* App.254 n.1.

"the right secured by the Second Amendment is not unlimited." App.265.[5]

7. Two years later, the same en banc panel—which now consisted mostly of *non*-active judges—reversed again. App.4. The majority first dismissed petitioners' takings claim based on its earlier analysis. App.12-13. And while the majority spilled more ink on the Second Amendment, it ultimately concluded that *Bruen* did not change its bottom line—or much of its analysis, for that matter.

First, the majority held that "[a] large-capacity magazine is … an accessory or accoutrement, not an 'Arm' in itself," and that California's ban therefore does not even *implicate* the Second Amendment. App.3. The majority was forced to concede that the Second Amendment "encompasses a right to possess a magazine for firearms that require one," but it concluded that the Second Amendment does not presumptively protect magazines that hold more than ten rounds—even though they come "standard" with the most "popular" firearms in America, App.7, 20-21—because a magazine does not need a particular number of rounds for a firearm to function.

Although it could have stopped there, the majority proceeded to consider whether California's ban is consistent with historical tradition. At the outset, the majority "readily conclude[d]" that a "more nuanced approach" to historical tradition "is appropriate here,"

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[5] The state did not seek, and the Ninth Circuit did not grant, a stay with respect to the retroactive aspect of the possession ban. App.263-65. That aspect of the ban has therefore never taken effect. *See* CA9.Dkt.104.

positing that this case "implicates *both* unprecedented societal concerns *and* dramatic technological changes." App.31. Ignoring the mass murder perpetrated against enslaved persons and other disfavored groups in American history, the majority deemed "[m]ass shootings" a new "societal concern" that would have been unheard of to the Founding generation. App.31-32. Similarly discounting the progressive advancement of firearm technology over the years, the majority concluded that "[l]arge-capacity magazines, when attached to a semi-automatic firearm, also represent a dramatic technological change" because (like all modern firearms) they are more accurate and efficient than "weapons at the Founding." App.32-33.

The majority nonetheless "declin[ed] to apply the more nuanced approach" and instead professed to take "the *most conservative* path" of conducting a "straightforward" historical "analysis." App.33-34. But it then threw caution out the window. The majority did not identify any tradition of banning firearms, or even feeding devices, commonly owned by law-abiding citizens for lawful purposes (because none exists). It instead derided the "common use" inquiry as a "simplistic approach" and a "facile invitation" to rely on "ownership-statistics" to define the scope of the Second Amendment right. App.51-54. It then deemed California's ban part of two (supposed) broad traditions of laws that sought to "protect innocent persons from infrequent but devastating harm" and "from especially dangerous uses of weapons once those perils have become clear." App.39.

The majority derived the former from early gunpowder-storage regulations, App.41, even though *Heller* specifically rejected the notion that those "fire-safety laws" are analogous to "an absolute ban on [a class of arms]," 554 U.S. at 632. The majority derived the latter from regulations of "trap guns" (which are not bearable arms at all) and concealed-carry laws and other carry-related restrictions. App.44-46. Ultimately, the court held that states may prohibit "technological advances in weapons" whenever "criminals" have (or will) put such improvements to dangerous ends. App.38.

Judges Ikuta, R. Nelson, Bumatay, and VanDyke dissented, as they had the first time around. App.72; *see* n.3, *supra*. Together, they found the majority's plain-text analysis to betray an "ignorance of both firearms operations and constitutional law." App.76. Rebutting the majority's (mis)characterization of magazines as mere "accoutrements," they explained that because "the Second Amendment's protection of 'Arms' must extend to their functional components," by necessity "magazines of all stripes, including those holding more than ten rounds, are protected." App.84-86. Finally, they explained that so-called LCMs "are the *most* common magazines in the country" and that "[n]othing in the historical understanding of the Second Amendment" justifies their prohibition. App.73-75.[6]

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[6] Judges R. Nelson and VanDyke also issued separate dissents. App.70-71, 124-50. Judge Berzon, joined by Chief Judge Murguia and Judges Hurwitz, Paez, S. Thomas, and Wardlaw, in turn issued a concurrence objecting to "Judge VanDyke's novel form of 'dissent'" in particular, because it linked to an informative, self-

REASONS FOR GRANTING THE PETITION

The decision below deepens acknowledged circuit splits over whether magazines capable of holding more than ten rounds are "Arms" within the meaning of the plain text of the Second Amendment and whether they are in common use. Those issues cry out for resolution, as does the related question of whether these common devices may be banned consistent with historical tradition. And this is an especially appropriate case in which to resolve those questions—and not just because the decision below got them patently wrong. Unlike most addressing these issues, the decision below is neither preliminary nor tentative; this lawsuit has been going on for nearly a decade, and it has now reached final judgment on a full record. For this Court to remain on the sideline anyway would send a clear signal that the Second Amendment really is second class, and that the tens of millions of Americans who currently keep and bear for self-defense arms that a handful of states dysphemistically call "LCMs" may continue to do so only by legislative grace, not constitutional right.

While that is more than reason enough for this Court to step in, it is hardly the only reason. The last time California's ban was before it, the Ninth Circuit declared that it would not change its rights-defying tune on the Second Amendment "[u]nless and until the Supreme Court" made it. App.411. This Court seemed to think it had done just that in *Bruen*, by rejecting "interest balancing" as fundamentally flawed and

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made video of Judge VanDyke demonstrating elementary facts about firearms and magazines that the panel (according to the concurrence) rightfully "ignored." App.55-69.

making clear that "the Second Amendment protects the possession and use of weapons that are 'in common use.'" 597 U.S. at 21 (quoting *Heller*, 554 U.S. at 627). But instead of following *Bruen*'s instructions, or even its mood music, the Ninth Circuit resorted to more of the same. Indeed, the decision below is nothing short of "*interest balancing* … masquerading as respect for the Second Amendment's historical scope." App.120 (Bumatay, J., dissenting).

Bruen was not an invitation for lower courts to keep doing what they had been doing for the past decade, just with some new window dressing. But unless this Court holds with the utmost clarity that functional components of firearms are indeed "Arms" and that bans on common arms are indeed unconstitutional, the Ninth Circuit and others intent on returning to the pre-*Heller* regime by any means necessary will continue to defy and deny. That is not a state of affairs this Court should tolerate any longer.

The need for intervention is particularly acute here because this law applies retrospectively. The confiscatory aspect of California's ban has effectively been enjoined since its 2017 inception. But even that longstanding grace (or, less charitably, nod to the basic takings problem with that aspect of the ban) will evaporate if this Court denies certiorari. Unless this Court intervenes now, countless Californians will become criminals overnight simply for having lawfully acquired property that the Constitution expressly protects their right to "keep." Californians have been patiently waiting nearly ten years for this Court to vindicate their constitutional rights once and for all. The time has finally come to do so.

I. This Court Should Resolve Whether States May Ban Commonly Owned Arms.

A. The Decision Below Deepens a Circuit Split Over Whether—and, If So, Which—Magazines Are "Arms."

1. The Ninth Circuit held that so-called "large-capacity magazines are neither 'arms' nor protected accessories," and so are not even *presumptively* protected by the Second Amendment. App.15 (capitalization omitted). The court accepted that "[t]he meaning of 'Arms'" "broadly includes nearly all weapons used for armed self-defense." App.17. Yet, in its view, magazines are "accessories, or accoutrements, rather than arms," because "[w]ithout an accompanying firearm" a magazine is a "harmless" "box," "useless in combat for either offense or defense." App.19. The court thus deemed *all* magazines outside "the category of … arms" presumptively protected by the Second Amendment. App.19. Nevertheless, it held that "the Second Amendment's text necessarily encompasses the corollary right to possess a magazine for firearms that require one." App.20. But because "a *large-capacity* magazine … is not necessary to operate any firearm," the court held that "California's ban on large-capacity magazines does not fall within the plain text of the Second Amendment." App.19-20.

The Seventh Circuit reached the same conclusion about Illinois' analogous ban in *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023), *cert. denied sub nom. Harrel v. Raoul*, 144 S.Ct. 2491 (2024). Illinois bans "feeding devices that have in excess of 10 rounds for a rifle and 15 rounds for a handgun." *Id.* at 1197. The court in *Bevis* held that those ubiquitous

magazines are not "Arms" because it deemed them "more like … military-grade weaponry" than anything that, in its view, people should need for self-defense. *Id.* at 1195, 1197. *But cf. United States v. Bridges*, --- F.4th ----, 2025 WL 2250109, at *5 (6th Cir. Aug. 7, 2025) (holding, *contra Bevis*, that "the Second Amendment's plain text covers [the] possession of a machinegun").

The Washington Supreme Court recently held the same about that state's ten-plus-round-magazine ban in *Washington v. Gator's Custom Guns, Inc.*, 568 P.3d 278 (Wash. 2025), *cert. filed*, No. 25-153 (U.S. Aug. 6, 2025). Like the Ninth Circuit here, the Washington court there held that because so-called "LCMs are not required for a[ny] firearm to function," they "are not 'arms'"—even though "they are designed to be attached to a weapon in order to … increas[e] that firearm's ammunition capacity." *Id.* at 284-86.

2. The D.C. Circuit split from its sister circuits, holding in *Hanson v. District of Columbia*, 120 F.4th 223 (D.C. Cir. 2024), that ten-plus-round magazines "very likely are 'Arms' within the meaning of the plain text of the Second Amendment." *Id.* at 232. "To hold otherwise," the court explained, "would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level, 'such as a firing pin.'" *Id.* (quoting *Kolbe v. Hogan*, 813 F.3d 160, 175 (4th Cir. 2016), *rev'd en banc*, 849 F.3d 114 (4th Cir. 2017)).

The Third Circuit has also held, albeit pre-*Bruen*, that "a magazine," regardless of capacity, is "an arm under the Second Amendment." *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.*, 910 F.3d 106, 116-

17 (3d Cir. 2018). And the First Circuit has "assume[d]" post-*Bruen*, albeit without deciding, "that [magazines] are 'arms' within the scope of the Second Amendment." *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 43 (1st Cir. 2024).

B. The Decision Below Deepens a Circuit Split Over Whether Common Use Is Part of the Plain-Text or the Historical-Tradition Inquiry.

As the decision below noted, courts are also divided over "'whether the common-use issue' is a threshold, textual inquiry or a historical inquiry" and what it entails. App.16 n.2 (quoting *Hanson*, 120 F.4th at 232 n.3).

1. The Second, Fourth, and Tenth Circuits have squarely held that "common use" is part of the plain-text inquiry. *See Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 113-14 (10th Cir. 2024); *Antonyuk v. James*, 120 F.4th 941, 981 (2d Cir. 2024); *United States v. Price*, 111 F.4th 392, 400-02 (4th Cir. 2024) (en banc). The Sixth Circuit, by contrast, recently held just as squarely that common use must be evaluated as part of the historical-tradition inquiry at "*Bruen*'s second step." *Bridges*, 2025 WL 2250109, at *5-6.

Other circuits are betwixt and between. The Ninth Circuit initially placed common use in the threshold-textual inquiry in *United States v. Alaniz*, 69 F.4th 1124, 1128 (9th Cir. 2023). Here, however, the en banc majority situated common use "in the historical analysis"—albeit only "out of an abundance of caution" and after claiming it was "not reach[ing] the" where-it-belongs issue. App.16 n.2. The Seventh Circuit took an equally puzzling tack in *Bevis*, where

it first held that the textual "definition of 'bearable Arms' extends only to weapons in common use," 85 F.4th at 1193, but then confusingly "assume[d] (without deciding …) that [common use] is a step two inquiry," *id.* at 1198. The D.C. Circuit is likewise ambivalent. *See Hanson*, 120 F.4th at 232 n.3 ("assum[ing], without deciding, this issue falls under *Bruen* step one").

2. Courts are also divided over what the common-use inquiry entails—and over whether ten-plus-round magazines satisfy it.

The Sixth Circuit has squarely held that whether an arm is "in common use" turns on whether it is "'typically possessed by law-abiding citizens for lawful purposes' like 'self-defense.'" *Bridges*, 2025 WL 2250109, at *6 (quoting *Heller*, 554 U.S. at 624-25). The court thus looks to "[]ownership data" and whether the typical person who owns the arm does so lawfully. *Id.* at *7-8. The D.C. Circuit followed a similar path in *Hanson*, holding that ten-plus-round magazines likely are in common use based on their "sufficiently wide circulation" and evidence "about the[ir] role … for self-defense." 120 F.4th at 233.

Here, however, the Ninth Circuit deemed those same metrics irrelevant to the inquiry, App.51-54, and instead held that ten-plus-round magazines are not in common use because people rarely fire more than ten rounds "in armed self-defense," App.54. In doing so, the Ninth Circuit joined the First, Fourth, and Seventh Circuits in deriding common use and denying its import (despite this Court's holdings and place atop the federal judicial hierarchy). *See Bianchi v. Brown*,

111 F.4th 438, 460 (4th Cir. 2024) (en banc); *Ocean State*, 95 F.4th at 45-51; *Bevis*, 85 F.4th at 1198-99.

* * *

In sum, the circuits are divided both over whether magazines capable of holding more than ten rounds of ammunition are "Arms" at all and over how to determine which "Arms" are ultimately entitled to Second Amendment protection. That vividly "illustrates why this Court must provide more guidance" on those critical questions. *Harrel*, 144 S.Ct. at 2492 (Thomas, J., respecting the denial of certiorari).

C. The Decision Below Cannot Be Reconciled With This Court's Precedent.

1. Under this Court's precedent (not to mention common sense), whether ammunition feeding devices fall within the plain text of the Second Amendment is not a difficult question; they plainly do. Indeed, it is hard to fathom how a device that serves no purpose other than making a constitutionally protected firearm operate as intended could be outside the scope of the Second Amendment entirely.

As *Heller* explained, and *Bruen* and *Rahimi* reiterated, "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms." *Bruen*, 597 U.S. at 28 (quoting *Heller*, 554 U.S. at 582); *accord United States v. Rahimi*, 602 U.S. 680, 691 (2024); *Caetano v. Massachusetts*, 577 U.S. 411, 411 (2016) (per curiam). That presumptive protection covers "any thing that a man … takes into his hands, or useth in wrath to cast at or strike another," *Heller*, 554 U.S. at 581—which an ammunition feeding device surely is. As their name suggests, feeding devices are

not passive holders of ammunition, like cartridge boxes of yore. They are integral to the design of semiautomatic firearms and the mechanism that makes them work, actively feeding ammunition into the firing chamber. App.582.

A semiautomatic firearm equipped with a feeding device containing the ammunition necessary for it to function is thus indisputably a "thing that a man … takes into his hands," *Heller*, 554 U.S. at 581, and a "bearable" instrument that "facilitate[s] armed self-defense," *Bruen*, 597 U.S. at 28. After all, "without bullets, the right to bear arms would be meaningless." *Rhode v. Bonta*, --- F.4th ----, 2025 WL 2080445, at *7 (9th Cir. 2025) (quoting *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014)).

The Ninth Circuit's textual analysis therefore should have been straightforward. Instead, despite claiming to follow this Court's teachings, the court engaged in a threshold inquiry unmoored from the plain text of the Second Amendment and this Court's cases interpreting it. According to the Ninth Circuit, ammunition feeding devices that can hold more than ten rounds are mere "accoutrements" rather than "arms," so banning them does not even *implicate* the Second Amendment. App.3, 15-23.

That holding not only "displays ignorance of both firearms operations and constitutional law," App.76 (Bumatay, J., dissenting), but elides this Court's clear teachings. *Bruen* instructs that what matters under the threshold-textual analysis is the conduct in which the challenger seeks to engage. 597 U.S. at 32. And the conduct in which petitioners want to engage is possessing magazines *to use with their firearms*. It

therefore makes no difference whether a magazine is "harmless" "[w]ithout an accompanying firearm," App.19, as petitioners do not want magazines just for the sake of having them, and the state does not want to prohibit people from keeping them around as empty boxes. Indeed, by the Ninth Circuit's (il)logic, a firearm would not be an "Arm" either, as it too could be deemed "harmless" unless equipped with ammunition and a device to feed it. That is why the threshold inquiry focuses on the conduct in which the individual seeks to engage, not abstract technicalities divorced from the real-world right that the Second Amendment protects.

The Ninth Circuit's backup theory fared no better. While it begrudgingly decided that "the Second Amendment's text necessarily encompasses a right to possess a magazine for firearms that require one," App.20, it put so-called LCMs on the other side of the constitutional line because no firearm requires a ten-plus-round magazine. But nothing in the text of the Second Amendment confines the people to the bare minimum of a functional arm. After all, a bearable instrument that facilitates self-defense in Size Small does not cease accomplishing that end in Size Medium or Large. If anything, having more rounds at the ready *better* facilitates a citizen's ability to defend herself in case of confrontation—regardless of whether she ends up needing to expend every (or any) round. Once again, moreover, the court's (il)logic proves far too much, as a semiautomatic firearm does not typically need a magazine of *any* particular capacity to function; it can function with any capacity magazine that fits, and it can fire a round in the chamber with no magazine at all. And the court failed to explain

why a firearm "needs" a ten-round magazine—or, for that matter, a five-round, or even three-round magazine—but not an 11-round one, thus leaving utterly unclear where (if anywhere) it would draw the constitutional line.

At bottom, the Ninth Circuit's what-do-you-really-need view of the Second Amendment is fundamentally inconsistent with the notion that the Second Amendment protects a fundamental right. That is why, under this Court's precedents, what (some judges or legislators think) is "necessary" for self-defense makes no difference. What matters at the threshold is whether the state is interfering with the people's ability to keep or bear bearable instruments that "facilitate armed self-defense." *Bruen*, 597 U.S. at 28. Magazine bans undisputedly do just that—regardless of whether they set the limit at 15, ten, or something even lower still. The state thus bears the burden of proving that its law comports with historical tradition.

2. The Ninth Circuit's analysis of common use was, if anything, even less consistent with this Court's cases. This Court has made clear that "arms" cannot be prohibited "consistent with this Nation's historical tradition" if they are in "common use today" for lawful purposes, as opposed to "dangerous and unusual." *Bruen*, 597 U.S. at 17, 27, 47; *accord Heller*, 554 U.S. at 625, 629. Arms must be "*both* dangerous *and* unusual" for a ban to comply with the Second Amendment. *Caetano*, 577 U.S. at 417 (Alito, J., concurring in the judgment).

Yet the magazines California has singled out are typically possessed by millions of law-abiding citizens for lawful purposes, including self-defense. Indeed,

"approximately half of [all] privately owned magazines hold more than ten rounds," including magazines that come "standard" with many of the most "popular rifles" and handguns in America. App.7. The amount in circulation today is in the hundreds of millions. *See* App.94-95 (Bumatay, J., dissenting). In short, there can be no serious dispute that ten-plus-round magazines are typically possessed by law-abiding citizens for lawful purposes.

The majority did not deny that reality. Instead, it denied its relevance: The majority dismissed common use entirely, dubbing it too "simplistic," "undefined," "speculative," and "facile." App.51-54. But it is not for inferior federal courts to grade this Court's work, let alone to reject its holdings as unworkable. That goes double when the criticisms have already been ventilated in dissenting opinions, *see Heller*, 554 U.S. at 720-21 (Breyer, J., dissenting), and rejected by a majority of this Court. "[T]he Second Amendment protects those weapons that are in 'common use' by law-abiding citizens," full stop. *Snope v. Brown*, 145 S.Ct. 1534 (2025) (Kavanaugh, J., respecting denial of cert.); *see also id.* ("*Bruen* and *Rahimi* did not disturb the historically based 'common use' test"). The undisputed ubiquity of the arms California bans thus suffices to confirm that the ban is unconstitutional.

3. The same conclusion holds even if one examines the historical record anew. After all, *Heller* and *Bruen* embraced the common-use inquiry precisely because there is no historical tradition in our Nation of flatly banning magazines (or firearms based on their capacity to fire without being reloaded).

Unsurprisingly, the majority did not purport to find one. It instead distorted the "how" and "why" inquiries to achieve its pre-*Bruen* ends. At the outset, the majority "conclude[d]" that a "more nuanced approach" to history "is appropriate here." App.31. Harkening to the *Bruen* dissent, the majority asserted that "[m]ass shootings" are a new "societal concern" unfamiliar to the Founding generation. App.32; *see Bruen*, 597 U.S. at 83 (Breyer, J., dissenting). That white-washed view of history ignores the atrocities perpetrated against enslaved persons and other disfavored groups from before the Founding.

Making matters worse, the court posited that states must be afforded greater leeway when restricting arms that are more accurate and efficient than "weapons at the Founding." App.32-33. But technological advancements that improve the accuracy, capacity, and functionality of firearms are exactly what law-abiding citizens want, as they increase the chances of hitting (or scaring off) one's target and decrease the risk of causing collateral damage in a stressful self-defense situation. Those same qualities unfortunately are also attractive to criminal actors. But if the government could ban any arm that is dangerous in the hands of those who would use it to inflict maximum injury, then it is hard to see what arms it could not ban.

That is precisely why our historical tradition is one of protecting arms that are commonly chosen by law-abiding citizens, not focusing on how dangerous arms would be in the hands of criminals. Simply put, advancements in accuracy and capacity that are welcomed by law-abiding citizens are not the sort of

"dramatic technological changes" with which *Bruen* was concerned—as evidenced by the Court's emphatic focus on whether arms are "in common use *today*." 597 U.S. at 27, 47 (emphasis added); *see* App.30 n.5. Again, that is not to deny that people have misused the arms California bans for unlawful and awful purposes. But that was equally true of the handguns banned in *Heller*. The majority did not dispute that handguns "are specially linked to urban gun deaths and injuries" and "are the overwhelmingly favorite weapon of armed criminals." 554 U.S. at 682 (Breyer, J., dissenting); *see also Bruen*, 597 U.S. at 83 (Breyer, J., dissenting) (highlighting recent "mass shootings"). It just found that irrelevant to whether handguns are constitutionally protected, because that question turns on whether law-abiding citizens commonly own and use them for lawful purposes. *Contra* App.51-54.

Having watered down the historical-tradition inquiry, the Ninth Circuit professed that it was in fact *rejecting* this Court's more "nuanced approach" in favor of a "straightforward" application of *Bruen* and *Rahimi*. App.33-34. But nothing that followed was in line with either decision. Although it purported to compare the mechanics by which historical laws and California's ban operate, the majority could not help but default to its pre-*Bruen* analysis of examining the "*magnitude* of the burden," positing that California's law could not possibly violate the Second Amendment because it purportedly places only a "minimal burden" on the right to keep and bear arms, as "[f]iring more than ten rounds occurs only rarely, if ever, in armed self-defense." App.47 n.11. It was the *dissent* in *Bruen*, however, that advocated for a test focused on "the degree to which the [challenged] law burdens the

Second Amendment right." *Bruen*, 597 U.S. at 131 (Breyer, J., dissenting). The *Bruen* majority embraced a test that examines "how" a law "burdens" the right as compared to its historical analogues, not whether a court thinks the burden a law imposes is very meaningful.

Things got no better when the court finally turned to the historical record. Unable to find any historical capacity limits or laws prohibiting possession of arms in common use for lawful purposes (because there are none), the court purported to divine from three disparate categories of laws two broad "traditions," which it (mis)characterized at a singularly "high level of generality that" completely "water[ed] down the [Second Amendment] right." *See Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

The first, according to the court, is "of laws seeking to protect innocent persons from infrequent but devastating harm by regulating a component necessary to the firing of a firearm." App.39. The court derived this tradition from laws regulating the storage of gunpowder. App.34-35, 41-43. But *Heller* expressly rejected the argument that "gunpowder-storage laws" support possession bans, as they were self-evidently "fire-safety laws," not efforts to keep law-abiding citizens from keeping or bearing common arms. 554 U.S. at 632. And the D.C. Circuit has aptly explained why that argument "is silly": Laws designed to ensure that combustible material would not *accidentally* combust when *not* in use are self-evidently different from laws that confine what arms citizens may use and possess. *Hanson*, 120 F.4th at 235. Only by ignoring "how" and "why" these

historical laws regulated could the Ninth Circuit deem them analogous to a ban on feeding devices capable of holding more than ten rounds.

The second tradition fares no better. Calling on nineteenth-century laws prohibiting the use (not possession) of (non-bearable) "trap-guns," and the concealed carry (not possession) of *dangerous and unusual* weapons of the time (like "Bowie knives"), the court divined an exceedingly generic tradition of laws that protect people "from especially dangerous uses of weapons once those perils have become clear." App.34, 44-50. That should sound familiar: It is the exact kind of ahistorical tradition this Court *rejected* in *Heller*. *See Heller*, 554 U.S. at 713 (Breyer, J., dissenting) (arguing that an "outright prohibition" is justified "where a governmental body has deemed a particular type of weapon especially dangerous").

In any event, the court's "especially dangerous" principle misconstrues the "how" and "why" of the temporally insignificant laws that purportedly undergird it. Trap guns, unlike magazines, are *not* "necessary to the firing of a firearm." App.49. Indeed, they are not bearable arms at all; they are devices used to rig an independently operable firearm to fire a projectile automatically when a trap (e.g., a trip wire) is triggered. *See* David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. Legis. 223, 365-66 (2024). Laws prohibiting traps thus do not impose *any* "burden [on] a law-abiding citizen's right to armed self-defense," *Bruen*, 597 U.S. at 29; they criminalize the rigging of a firearm with a device to expel a projectile without a human bearing the arm or pulling the trigger. The

"how" is thus fundamentally different from a ban on possession of a bearable arm. So too is the "why." *See* App.109 (Bumatay, J., dissenting) (explaining that "trap gun regulations … were meant to prevent the occasional tripping of trap guns by innocent persons").

As for the restrictions on Bowie knives and the like, those laws almost uniformly either prohibited only the concealed carry of certain weapons (or carry with intent to do harm) or simply provided heightened punishments for using one in the commission of a crime. *See* App.98-102 (Bumatay, J., dissenting). Of course, neither *Bruen* nor *Rahimi* demands "a historical twin." *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 30). But restrictions on how people may carry and use arms are not remotely analogous to laws that not only "broadly restrict arms" lawfully used "by the public generally," but take the extreme step of banning their possession outright. *Id.* at 698. Indeed, *Bruen* concluded that concealed-carry bans could not even justify *carry* bans, 597 U.S. at 48-55; they cannot justify possession bans *a fortiori*. In short, California's confiscatory ban simply does not "work[] in the same way and … for the same reasons" as the court's (mis)identified analogues. *Rahimi*, 602 U.S. at 711 (Gorsuch, J., concurring).[7]

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[7] That holds true even if one accepts the Ninth Circuit's pejorative reframing of the question as whether the Second Amendment protects "the shooting of an eleventh (or successive) round without a brief pause," App.45, as there simply is no tradition of confining people to firearms capable of firing a certain number of rounds successively. *See* App.95-98, 106-07 (Bumatay, J., dissenting). At any rate, California's law does not prohibit firing "eleven" straight shots; a law-abiding citizen could store one bullet in the chamber and insert a ten-round magazine,

In the end, the Ninth Circuit betrayed all pretense of faithful adherence to *Bruen* by positing that the bare fact that "weapons themselves" were subject to *some* historical regulation suffices to justify banning one of their component parts. App.50. Thus, in the Ninth Circuit's view, "the government" may "sidestep the Second Amendment" entirely "with a regulation prohibiting possession at the component level." *Hanson*, 120 F.4th at 232. That cannot possibly be what this Court meant in *Heller*, *Bruen*, or *Rahimi*. It is time to make that clear.

II. This Court Should Resolve Whether States May Compel Law-Abiding Citizens To Dispossess Themselves Of Lawfully Acquired Property Without Compensation.

California's decision not only to prospectively ban commonly owned magazines capable of holding more than ten rounds of ammunition, but to *confiscate* them from law-abiding citizens who lawfully acquired them long before the ban was enacted, is one of the rare government initiatives that violates not one, but two provisions of the Bill of Rights. The Ninth Circuit's contrary holding finding no Takings Clause violation is profoundly wrong.

A physical taking requiring just compensation occurs whenever the government "dispossess[es] the owner" of lawfully acquired property. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 324 n.19 (2002); *Loretto*, 458 U.S. at 435 &

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enabling the firearm to fire 11 shots consecutively without violating California law. That just goes to show how arbitrary the state's cutoff is.

n.12. That is true of personal property no less than real property; the "categorical duty to pay just compensation" applies "when [the state] takes your car, just as when it takes your home." *Horne*, 576 U.S. at 358. California's confiscatory ban runs afoul of those settled principles, as it forces citizens to dispossess themselves of lawfully acquired property without any compensation from the state.

If the confiscatory aspect of California's law takes effect, then citizens who lawfully acquired what the state now deems a "large capacity magazine" will be able to avoid criminal liability only if they "[r]emove [it] from the state," "[s]ell [it] to a licensed firearms dealer," "[s]urrender [it] to a law enforcement agency for destruction," or "permanently alter[] [it] so that it cannot accommodate more than 10 rounds." App.859-60. Obviously, being forced to "[s]urrender" lawfully acquired property is a taking; even the Ninth Circuit did not dispute that much. But because California allows owners to "modify[]" their once-lawful property "to accept a smaller number of bullets," to "mov[e] it out of state," or to "sell it," the court held that the law does not "effect a physical taking." App.435.[8]

But none of those so-called "options" allows law-abiding citizens to keep their property as it was when they lawfully acquired it. A law mandating that private party *A* sell his property to private party *B* effects a physical taking. *See Kelo v. City of New London*, 545 U.S. 469, 473-75 (2005) (so holding); *see also* Taking, *Black's Law Dictionary* (12th ed. 2024)

[8] Because "*Bruen* had no effect on" the initial en banc decision's "takings analysis," the Ninth Circuit "adopt[ed] and affirm[ed] [its] earlier rejection of this claim." App.12-13.

("taking" includes "transfer of possession"). So does a law forcing citizens to "[r]emove" their lawfully acquired property "from the[ir] state" of residence. *See* App.860. After all, a mandatory transfer out of state directly interferes with the owner's right to *possess* the property, not just to use it as she pleases.

Californians' remaining "option"—to permanently alter their magazines to accept fewer than ten rounds—does not change the equation. That is obviously true with respect to magazines that cannot be modified; dispossession is the only option for that property. And even as to magazines that *can* be, the shrink-or-surrender "option" does not eliminate the taking. It made no difference in *Horne* that the raisin growers could have avoided the taking by "plant[ing] different crops" or selling "their raisin-variety grapes as table grapes or for use in juice or wine." 576 U.S. at 365. Likewise, in *Loretto*, it made no difference that the property owner could have avoided the taking by converting her building into something other than an apartment complex. 458 U.S. at 439 n.17. As this Court has repeatedly admonished, "property rights 'cannot be so easily manipulated.'" *Horne*, 576 U.S. at 365 (quoting *Loretto*, 458 U.S. at 439 n.17).[9]

The Ninth Circuit tried to distinguish *Horne* and *Loretto* on the ground that they "concerned regulations of non-dangerous, ordinary items." App.436; App.12-13. Setting aside that the magazines

[9] At a minimum, forcing citizens to permanently alter their property or render it inoperable places an unconstitutional condition on its possession, which itself is a taking for which just compensation must be paid. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605 (2013).

California bans are ordinary and useful in averting danger, the Takings Clause does not vary in force based on unelected judges' views of the relative merits of different categories of property. Even if it did, surely the Takings Clause would provide *more* protection to the one class of property that the Constitution specifically entitles the people to "keep."

The court's attempt to analogize to regulatory takings cases likewise misses the forest for the trees. *See* App.435. The principal problem with the state's confiscatory ban is not that it deprives market actors of the expected economic use of their property (although it does). It is that it deprives them of possession of their property. A complete deprivation of one's ability to possess one's property as it was when one acquired it is no mere "use" restriction that can be dismissed as a regulatory taking; it is the whole enchilada. *See Andrus v. Allard*, 444 U.S. 51, 65-66 (1979). After all, a person cannot use physical property at all unless she can possess it.

It is bad enough for a court to allow a state to prohibit possessing what the Constitution protects. To hold that states may freely confiscate what the Constitution protects without even providing just compensation adds constitutional insult to constitutional injury. Even if California's ban on common arms could somehow be reconciled with the Second Amendment, there is no Second Amendment exception to the Takings Clause.

III. The Questions Presented Are Exceptionally Important, And This Is An Excellent Vehicle To Resolve Them.

Whether and when the government may ban—and even confiscate from law-abiding citizens—common arms are questions of profound importance. After all, the scope of the right to keep and bear arms depends, first and foremost, on what arms it covers. And that issue has taken on even greater significance since *Bruen*, as several states that expressed open hostility to that decision responded to it by imposing even *greater* restrictions on which arms law-abiding citizens may keep and bear. Yet, as the decision below demonstrates, the same courts that were reversed in *Bruen* for refusing to take *Heller* at face value are now doing the same thing with *Bruen*.

For example, relying explicitly on its own pre-*Bruen* circuit precedent, the Seventh Circuit held that the most common rifle in America is not an "Arm" at all because it looks like an M-16—and then rejected a challenge to a magazine ban without even *mentioning* text or historical tradition. *Bevis*, 85 F.4th at 1197. The First Circuit held that a ban on ten-plus-round magazines does not meaningfully burden Second Amendment rights because "self-defense fusillade[s] of more than ten rounds" are (thankfully) rare. *Ocean State*, 95 F.4th at 45. The Third Circuit, meanwhile, refused to even consider the merits of a challenge to Delaware's ban, on the theory that individuals who wish to possess banned arms would not be entitled to relief *even if the ban is likely unconstitutional*, because "they already own" other arms. *Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Pub. Safety & Homeland*

Sec., 108 F.4th 194, 205 (3d Cir. 2024). *But see Heller*, 554 U.S. at 629 ("It is no answer to say … that it is permissible to ban … handguns so long as … other firearms … [are] allowed.").

All of that raises the troubling prospect of déjà vu all over again, with the same courts that distorted *Heller* in service of upholding restrictive carry regimes now distorting *Bruen* and *Rahimi* in service of upholding sweeping arms bans. Indeed, courts are routinely examining arms bans as if the only thing this Court has ever said on the matter is that the Second Amendment right is not unlimited—even though *Heller* not only invalidated a ban on common arms, but explained exactly why historical tradition compelled that result. Yet courts have openly refused to even consider the common-use test that *Heller* employed and *Bruen* reiterated, insisting that this Court cannot possibly have meant what it has (at least) twice said, since that might actually require them to hold some or all these bans unconstitutional.

If courts truly think what this Court has said about assessing the constitutionality of arms bans is too "simplistic," App.51, then it is incumbent upon this Court to say more. And while recent cases to reach this Court have arisen in a preliminary posture, this case does not suffer from that procedural problem. The decision below aptly captures the rights-defying approach of the circuits more broadly, and it is neither preliminary nor tentative. To sit on the sideline in the face of a final judgment holding that states may ban ubiquitous feeding devices that come standard with ubiquitous firearms is to signal that the Second Amendment really is second class. This Court should

instead grant review, provide the guidance that lower courts profess to lack, and ensure that law-abiding citizens in defiant, outlier states are not forced to surrender either their constitutional rights or their property.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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