

No. 25-198

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**

SUPPLEMENTAL BRIEF FOR PETITIONERS

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SUPPLEMENTAL BRIEF FOR PETITIONERS

On July 17, 2026, the Third Circuit sitting en banc held that New Jersey's ban on magazines capable of holding more than ten rounds of ammunition violates the Second Amendment. *See Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.*, Nos. 24-2415, 24-2450 & 24-2506, --- F.4th ----, 2026 WL 2075513. In doing so, the en banc Third Circuit explicitly rejected the en banc Ninth Circuit's decision in this case. There is thus now an open and acknowledged circuit split on whether the Second Amendment protects the right of the people to possess these ubiquitous arms, with two courts having weighed in through en banc decisions that are unlikely to be disturbed by anything other than a decision from this Court definitively answering that question. The Court accordingly may wish to grant certiorari in this case (and/or *Gator's Custom Guns, Inc. v. Washington*, No. 25-153 (U.S.)), so it may resolve that question alongside the consolidated cases the Court has granted addressing whether states may ban AR-15-style rifles consistent with the Second Amendment. *See Viramontes v. Cook Cnty.*, No. 25-238 (U.S. cert. granted June 30, 2026), *consolidated with Grant v. Higgins*, No. 25-566 (U.S.).

REASON TO GRANT THE PETITION

In *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Attorney General of New Jersey*, the Third Circuit held by a 10-5 vote that New Jersey's "law restricting possession of magazines that can hold more than 10 rounds of ammunition" violates the Second Amendment. 2026 WL 2075513, at *5 n.12; *see id.* at *21-25. In doing so, the en banc Third Circuit

explicitly rejected the en banc Ninth Circuit’s opinion in this case.

After “hold[ing] that New Jersey’s complete prohibition on the possession of semi-automatic rifles runs afoul of the Second Amendment’s protections,” *id.* at *21; *see id.* at *6-21, the court turned to New Jersey’s magazine ban. It “beg[a]n with *Bruen*’s step-one textual analysis.” *Id.* at *22. New Jersey “urge[d]” the Third Circuit “to adopt the Ninth Circuit’s view that LCMs are not arms but accessories of weaponry, referred to as ‘accoutrements’ in the Founding era.” *Id.* (quoting Pet.App.18-19). The Third Circuit rebuffed the invitation, rejecting the Ninth Circuit’s view as “at odds with the Supreme Court’s instruction in *Bruen*.” *Id.* at *23. As the court explained, *Bruen* made clear that “the Second Amendment’s definition of ‘arms’ ... covers modern instruments that *facilitate armed self-defense*.” *Id.* (quoting *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 28 (2022)). And “even where a particular arm does not require the use of a magazine” (or one of a particular capacity), “a magazine unquestionably facilitates the arm user’s ability ‘to cast at or strike another.’” *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008)). “Accordingly,” the Third Circuit held, “magazines are arms.” *Id.*

The Third Circuit reached that conclusion for *all* magazines, regardless of their capacity. *Id.* at *22 (“The text of the Second Amendment covers *all* magazines, not just magazines that [a state] considers ‘standard capacity.’” (emphasis added)). In doing so, the court once again parted company with the Ninth Circuit. Although the Ninth Circuit’s front-line

holding was that no magazine is covered by the plain text, it reached the perplexing conclusion in the alternative that “a magazine that can hold ten rounds is an ‘Arm[]’ covered by the plain text of the Second Amendment but a magazine that can hold eleven rounds is not.” *Id.* at *23 (describing *Duncan*); see Pet.App.15, 20-21. The Third Circuit did not mince words in rejecting that position: “[I]t cannot be that a magazine that can hold ten rounds is an ‘Arm[]’ covered by the plain text of the Second Amendment but a magazine that can hold eleven rounds is not.” 2026 WL 2075513, at *23; see also Cert.Reply.4-5. The Third Circuit was equally emphatic in rejecting the Ninth Circuit’s view that larger magazines somehow lose Second Amendment protection so long as “firearms can operate with smaller capacity magazines.” 2026 WL 2075513, at *23. As the court explained, “the text of the Second Amendment does not limit ‘Arms’ to the minimum equipment necessary to operate a weapon.” *Id.*; see Pet.22-23. The Third Circuit therefore held that “magazines—including those that can hold more than 10 rounds of ammunition”—“are ‘Arms’ within the text of the Second Amendment” and thus “presumptively entitled to constitutional protection.” 2026 WL 2075513, at *23.

“[T]urn[ing] to *Bruen*’s second step,” *id.*, the Third Circuit again decisively departed from the Ninth Circuit. In holding that laws banning the possession of ubiquitous magazines are consistent with historical tradition, the Ninth Circuit purported to identify a tradition of prohibiting “technological advances in weapons” when “criminals” have put such improvements to dangerous ends. Pet.App.38. The

court went on to dismiss this Court's common-use test as too "simplistic," "undefined," "speculative," and "facile," Pet.App.51-54, and then held for good measure that ten-plus-round magazines are not in common use because people rarely fire more than ten rounds "in armed self-defense," Pet.App.54.

The Third Circuit rejected all of that, holding that historical tradition protects arms that are in "common use" for lawful purposes, 2026 WL 2075513, at *9-11 & n.20, that ten-plus-round magazines "are in common use for lawful purposes" regardless of how frequently people fire ten rounds at an attacker, and that no other "historical tradition ... supports New Jersey's LCM Provisions," *id.* at *24. Whereas the Ninth Circuit held that Founding-era laws regulating the storage of gunpowder evince a tradition "of laws seeking to protect innocent persons from infrequent but devastating harm by regulating a component necessary to the firing of a firearm," Pet.App.39, the Third Circuit held that "Founding-era gunpowder storage laws ... are not useful analogues to a regulation aimed at preventing firearm violence" and "are not 'relevantly similar' to the LCM Provisions." 2026 WL 2075513, at *24 & n.49. And whereas the Ninth Circuit held that *criminals'* choices can countermand *law-abiding citizens'* choices about what to keep and bear for self-defense, the Third Circuit was unequivocal: "Bans on weapons in common use for lawful purposes are unlawful." *Id.* at *25.

Unlike the last time an appellate court created a circuit split on this issue, see *Benson v. United States*, 352 A.3d 719 (D.C. 2026) (three-judge panel striking down District's ban on ten-plus-round magazines),

reh'g en banc granted, opinion vacated, 355 A.3d 190 (D.C. 2026), the Third Circuit's en banc decision is not subject to any further review beyond this Court. And the disagreement between the Third and Ninth Circuit's decisions is exceptionally consequential, as it leaves law-abiding citizens in California, Oregon, Washington, and the rest of the Ninth Circuit (not to mention the First, Fourth, and Seventh Circuits) unable to keep and bear arms that are now constitutionally protected in New Jersey, Delaware, and Pennsylvania, and that remain ubiquitous in most of the rest of the country. The Court accordingly may wish to grant certiorari to resolve this question now, rather than continue to hold this petition pending resolution of *Viramontes* and *Grant*. That is the best way to ensure that petitioners will not have to endure yet another round of GVRs and certiorari-stage proceedings before they can get a definitive answer to the question that they brought this lawsuit to answer more than ten years ago.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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