IN THE
SUPREME COURT OF THE UNITED STATES

No. 24A1191

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

Applicants,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Respondents.

APPLICATION TO THE HON. ELENA KAGAN FOR A FURTHER EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell, California Rifle & Pistol Association, Inc. (collectively, "Applicants"), hereby move for a second extension of time of 30 days, to and including August 18, 2025, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be July 18, 2025.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the Ninth Circuit rendered its decision, en banc, on March 20, 2025 (First App. for Extension, Exhibit 1). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. On May 30, 2025, undersigned counsel for Applicants, Erin E. Murphy, applied for an extension of time of 30 days, to and including July 18, 2025, for the filing of a petition for a writ of certiorari.

3. On June 5, 2025, Justice Kagan granted that application.

4. In support of the first application for an extension, counsel explained that this case involves a sweeping, criminal prohibition on long-lawful arms owned by tens of millions of law-abiding Americans. Since January 1, 2000, California has banned the manufacture, importation, sale, and transfer of "any ammunition feeding device with the capacity to accept more than 10 rounds," with some exceptions not relevant here. Cal. Penal Code §§32310, 16740. The 2000 version of the law operated as a prospective ban on acquisition, but it did not prohibit possession. Accordingly, while individuals who did not already possess prohibited magazines could no longer legally obtain them, citizens who had obtained such magazines before the law took effect could continue to keep and bear them.

5. In July 2016, however, California amended the law to prohibit even the mere possession of magazines capable of holding more than ten rounds of ammunition, with no grandfather clause, thus prohibiting continued possession by those who had lawfully obtained them. As a result, anyone in possession of such a magazine had to physically dispossess herself of her property by surrendering it to law enforcement for destruction, removing it from the state, or selling it to a licensed firearms dealer. *Id.* §32310(a), (d). Failure to do so is a crime punishable by up to a year in prison and/or fines. *Id.* §32310(c).

6. Fearing imprisonment for their once lawful conduct, Applicants—five individuals (Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell) and one association (California Rifle & Pistol Association, Inc.)—sued to enjoin enforcement of California's restrictions. Both the individual Applicants and many members of associational Applicant California Rifle & Pistol Association had acquired now-banned magazines when it was lawful to do so and wished to continue to possess them or would acquire such magazines if the law did not prohibit them from doing so.

7. The case then went on a long, winding journey through the federal court system. In brief: The district court granted a limited preliminary injunction in 2017, ensuring that law-abiding citizens would not be dispossessed of their lawfully acquired property before their constitutional challenges could be resolved. *Duncan v. Becerra*, 265 F.Supp.3d 1106, 1139 (S.D. Cal. 2017). A panel of the Ninth Circuit affirmed that injunction. *Duncan v. Becerra*, 742 F.App'x 218, 220-22 (9th Cir. 2018). In the meantime, Applicants assembled a thorough record on the history and constitutional protection of the banned magazines; and after reviewing that voluminous record, the district court granted summary judgment to Applicants, holding that the ban violates both the Second Amendment and the Takings Clause. *Duncan v. Becerra*, 366 F.Supp.3d 1131 (S.D. Cal. 2019). The state appealed and asked the district court to grant a partial stay pending appeal that would leave the injunction in place (as it had been from the outset) as to the state's effort to require individuals who lawfully obtained now-banned magazines to dispossess themselves

of them. The district court agreed, *Duncan v. Becerra*, 2019 WL 1510340, at *3 (S.D. Cal. Apr. 4, 2019), and the case went back up to the Ninth Circuit. A divided panel once again affirmed, holding that California's "near-categorical ban" on acquiring and possessing magazines in common use by law- abiding citizens for lawful purposes "strikes at the core … right to armed self-defense" and violates the Second Amendment under both strict and intermediate scrutiny. *Duncan v. Becerra*, 970 F.3d 1133, 1140, 1164-68 (9th Cir. 2020). A majority of active judges, however, voted to rehear the case en banc. *Duncan v. Becerra*, 988 F.3d 1209 (9th Cir. 2021) (mem.). On November 30, 2021, a divided en banc panel reversed and remanded. *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021) (en banc); *see also id.* at 1140 (Bumatay, J., joined by Ikuta and Nelson, dissenting); *id.* at 1159 (VanDyke, J., dissenting). On Applicants' unopposed motion, the en banc Court unanimously stayed the mandate as it related to the possession ban pending certiorari to the Supreme Court. 19-55376.Dkt.193. Not long thereafter, this Court decided *New York State Rifle and Pistol Association v. Bruen*, 597 U.S. 1 (2022), clarifying the appropriate framework for deciding Second Amendment challenges, and then granted certiorari in this case, vacated the judgment, and remanded for further consideration in light of *Bruen*. *Duncan v. Bonta*, 142 S.Ct. 2895 (June 30, 2022). The Ninth Circuit, in turn, remanded the case to the district court to reconsider its decision in light of *Bruen*. *Duncan v. Bonta*, 49 F.4th 1228 (9th Cir. 2022) (en banc) (mem.). On remand, the district court again granted summary judgment to Applicants once again and permanently enjoined the state from enforcing its magazine ban. *Duncan v. Bonta*,

695 F.Supp.3d 1206 (S.D. Cal. 2023). The state appealed, and the Ninth Circuit immediately reconvened an en banc panel and granted an emergency stay pending its resolution of the matter. *Duncan v. Bonta*, 83 F.4th 803 (9th Cir. 2023) (en banc) (order). The state did not seek, and the Ninth Circuit did not grant, a stay of the injunction with respect to the retroactive aspect of the possession ban. *See id.* at 805.

8. On March 20, 2025, a divided en banc panel reversed and remanded for entry of judgment for the state. *Duncan v. Bonta*, 133 F.4th 852 (9th Cir. 2025) (en banc). At the threshold, the majority dismissed Applicants' Takings claim because, in its view, *Bruen* had nothing to say on that front. *Id.* at 864. As to the Second Amendment, the majority spilled a bit more ink, but came to the same conclusion—i.e., that *Bruen* did nothing to change its prior conclusion, or much of its analysis. In particular, the en banc majority held that "[a] large-capacity magazine is … an accessory or accoutrement, not an 'Arm' in itself," and as a result that California's ban on "[p]ossession" does not even implicate the Second Amendment. *Id.* at 860, 865-69. By the majority's lights, although such magazines "undoubtedly provide[] a benefit for a shooter" in all scenarios, including self-defense, a component that "enhances" a firearm, or makes it "superior in some way" does not warrant any protection under "the Second Amendment's text." *Id.* 868.

9. Alternatively, the en banc panel proceeded to consider whether California's ban is consistent with this Nation's history and tradition of firearm regulation. First, however, the majority questioned "the precise status of *Bruen*'s 'more nuanced approach'" to history and tradition, though it "readily conclude[d]"

that such an approach "is appropriate here," because "[t]his case implicates *both* unprecedented societal concerns *and* dramatic technological changes." *Id.* at 872-73. Ignoring the mass murder perpetrated against slaves and other disfavored groups from before the Founding, the majority deemed "[m]ass shootings" a new "societal concern" that requires a "more nuanced approach," because they would have been unheard of to the Founding generation. *Id.* at 873. Moreover, 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." *Id.* at 873-74.

10. That said, the majority "declin[ed] to apply the more nuanced approach," and represented that it would take "the most conservative path" and apply *Bruen* in a straightforward "analysis." *Id.* The majority did not, however, identify any historical tradition of flatly banning arms commonly owned by law-abiding citizens for lawful purposes (because there is none). Instead, it rejected any reference to *Bruen*'s "common use" inquiry as a "facile invitation" to rely on "ownership-statistics" to define the scope of the Second Amendment right, *id.* at 882-83, and it justified California's ban by reference to "two" broad traditions—which it (mis)characterized at a cartoonishly-high level of generality—that purportedly sought to "protect innocent persons from infrequent but devastating harm," and "from especially dangerous uses of weapons once those perils have become clear." *Id.* at 874-82.

According to the majority, the former historical tradition is clearly proven by the Founding generation's regulation of "the storage of gunpowder." *Id.* at 874-75. *But see District of Columbia v. Heller*, 554 U.S. 570, 632 (2008) (noting that "gunpowder-storage laws" were "fire-safety laws" that did "not remotely burden the right of self-defense as much as an absolute ban on [a class of arms]"). As to the latter, the majority referenced regulations concerning the use of "trap guns," and the carry of dangerous and unusual weapons like "Bowie knives." *Duncan*, 133 F.4th at 875-82. In short, the majority held that this Nation's historical tradition of firearms regulation supports the prohibition of "technological advances in weapons," whenever "criminals" make use of such improvements for nefarious ends that harm public safety, and that California's ban fits well within that tradition. *Id.* at 876.

11. Judges Ikuta, Nelson, Bumatay, and VanDyke dissented. *Id.* at 890-91 (Nelson, J., dissenting); *id.* at 891-915 (Bumatay, J., joined by Ikuta, Nelson, VanDyke, dissenting); *id.* at 915-27 (VanDyke, J., dissenting). Together, they found the majority's conclusion that a "'large-capacity magazine is no different than' a 'belt[] that hold[s] bullets'" to betray an "ignorance of both firearms operations and constitutional law." *Id.* at 893 (citation omitted). As the dissenters (rightfully) explained, "magazines holding more than ten rounds are the *most common* magazines in the country," they "come standard with the most popular firearms sold nationwide," and there is "[n]othing in the historical understanding of the Second Amendment that" justifies their outright prohibition. *Id.* at 892-93.

12. As noted in the previous extension application, Applicants anticipate filing a petition that demonstrates the profound error in the Ninth Circuit's en banc decision, which contorted this Court's clear precedent. Indeed, despite acknowledging that the magazines California has banned "undoubtedly provide[] a benefit" for the user, and that "the Second Amendment's text necessarily encompasses the corollary right to possess a magazine for firearms that require one," the Ninth Circuit held that so-called "large-capacity magazines" are completely unprotected by the Second Amendment. *Id.* at 868-69. But as even the D.C. Circuit recognized just recently, the Ninth Circuit's (il)logic—that a magazine with the capacity to hold less than 10 bullets is presumptively protected by the Second Amendment, whereas the same device that holds 11 (or more) is not—simply ignores that "[a] magazine" no matter the capacity "is necessary to make meaningful an individual's right to carry a handgun for self-defense," and that "[t]o hold otherwise would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level." *Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024). As to historical tradition, the Ninth Circuit derided this Court's common-use test—which prohibits bans on arms which are "'in common use' today" *Bruen*, 597 U.S. at 17, 32 (quoting *Heller*, 554 U.S. at 627)—as too "simplistic" and a "facile invitation" to rely on an "ownership-statistics theory" of the Second Amendment. *Duncan*, 133 F.4th at 883. Making matters worse, the court deemed California's ban sufficiently justified not by reference to a well-established historical tradition, but by reference to the state's purported interest in regulating

arms "to protect innocent persons." *See id.* at 877. And rather than coloring even that vague, blank-check of a tradition with historical analogues, the Ninth Circuit referenced Founding-era gunpowder-storage laws that this Court and others have already deemed irrelevant, *see Heller*, 554 U.S. 570, 632; *Hanson*, 120 F.4th at 235, as well as nineteenth century laws prohibiting certain uses (not possession) of non-bearable weapons, and the carry (or concealed carry) of other *dangerous and unusual* weapons of the time, *see Duncan*, 133 F.4th at 883. At bottom, the decision below defies, rather than applies this Court's Second Amendment precedent.

13. The same is true with respect to this Court's Fifth Amendment precedent, which the Ninth Circuit simply refused to consider in its most recent en banc decision. *See id.* at 864. Despite this Court's explicit remand for a second look, the Ninth Circuit reached the same conclusion as before—that a law dispossessing citizens without compensation of property that they lawfully acquired and have long possessed without incident does not implicate, much less violate the Takings Clause.

14. While counsel has been working diligently in preparing this petition, Ms. Murphy also has substantial briefing and argument obligation between now and July 18, 2025, including an opening brief in *United States of America v. Occidental Chemical Corporation*, Nos. 25-1049, 25-1272 (3d Cir.), due on July 7; a petition for a writ of certiorari in *Freedom Foundation v. International Brotherhood of Teamsters, Local 117*, No. 24A1065 (U.S.), due on July 10, 2025; and a reply brief in support of a motion for attorney's fees and costs in *His Tabernacle Family Church, Inc. v. James*, No. 6:22-cv-06486 (W.D.N.Y.), due on July 15.

15. An extension will also ensure that counsel has adequate time to consider and address the implications of the denials of petitions for writ of certiorari this Court recently issued in *Ocean State Tactical v. Rhode Island*, No. 24-131 (U.S.), *Snope v. Brown*, No. 24-203 (U.S.), and *Hanson v. District of Columbia*, No. 24-936 (U.S.), which implicate similar issues.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including August 17, 2025, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Applicants state as follows: California Rifle & Pistol Association, Inc. does not have a parent corporation and no publicly held corporation owns more than ten percent of its stock. All other Applicants are natural persons.