No. _____

In the Supreme Court of the United States

DAVID SNOPE, an individual and resident of Baltimore County, *et al.*,

Petitioners,

v.

ANTHONY G. BROWN, in his official capacity as Attorney General of Maryland, *et al.*,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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August 21, 2024

QUESTION PRESENTED

Whether the Constitution permits the State of Maryland to ban semiautomatic rifles that are in common use for lawful purposes, including the most popular rifle in America.

PARTIES TO THE PROCEEDING

Petitioners David Snope, Firearms Policy Coalition, Inc., Second Amendment Foundation, and the Citizens Committee for the Right to Keep and Bear Arms were the plaintiffs before the District Court and the plaintiffs-appellants in the Court of Appeals. Petitioners were joined by Dominic Bianchi, Micah Schaefer, and Field Traders LLC as plaintiffs in the district court and plaintiff-appellants in the Fourth Circuit. Bianchi and Schaefer no longer reside in Maryland and Field Traders LLC no longer does business there.

Respondents are Anthony G. Brown, in his official capacity as Attorney General of Maryland, Colonel Roland L. Butler, in his official capacity as Secretary of State Police of Maryland, R. Jay Fisher in his official capacity as Sheriff of Baltimore County, and Everett L. Sesker, in his official capacity as Sheriff of Anne Arundel County.

The Court of Appeals substituted Brown as defendant to this proceeding after his election as Attorney General of Maryland. *See Bianchi v. Brown*, No. 21-1255, Doc. 74 (Aug. 8, 2023). The originally named defendant sued in his official capacity as Attorney General of Maryland was Brian E. Frosh. Similarly, the Court of Appeals substituted Sesker for Jim Fredericks, the former sheriff of Anne Arundel County and original defendant to this action. *See Bianchi v. Brown*, No. 21-1255, Doc. 106 (Mar. 13, 2024).

Butler is substituted for Colonel Woodrow W. Jones III, the former head of the Maryland State Police and defendant in the courts below, pursuant to Fed. R. App. P. 43.

CORPORATE DISCLOSURE STATEMENT

Firearms Policy Coalition, Inc., has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

Second Amendment Foundation has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

Citizens Committee for the Right to Keep and Bear Arms has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Bianchi v. Brown*, No. 23-863 (U.S. May 20, 2024)

- *Bianchi v. Frosh*, No. 21-902 (U.S. Aug. 1, 2022)

- *Bianchi v. Brown*, No. 21-1255 (4th Cir. Aug. 6, 2024)

- *Bianchi v. Frosh*, No. 20-cv-3495 (D. Md. Mar. 4, 2021)

There are no other proceedings in state or federal court, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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From the founding of this country, the rifle has been a paradigmatic American arm, facilitating the struggle for independence from the British and serving as "the companion" and "tutelary protector" of the westward pioneers. *District of Columbia v. Heller*, 554 U.S. 570, 609 (2008). The modern iteration of this paradigmatic arm is the AR-15 platform rifle, a semiautomatic firearm that is popular for self-defense, hunting, range training, and as a bulwark of liberty, due to its accuracy, ease of use, and ergonomic design. Indeed, AR-15s and other semiautomatic rifles are the best-selling rifles in the country. They are owned by millions of Americans and have accounted for approximately 20% of all firearm sales in the country for over a decade.

And yet, in the decision below, a majority of the Fourth Circuit sitting en banc held that the AR-15 is not even an "arm" within the meaning of the Second Amendment, because, in its view, the AR-15 is too like fully automatic M16 rifles and other "military weapons." That reasoning unfortunately is becoming a commonplace misapplication of this Court's precedents.

That lower courts are determined to uphold bans on common firearms is not a new problem, and this flawed line of reasoning is only its most recent manifestation. Following *Heller*, there were many challenges to similar bans on types of firearms but time and again—usually through the application of intermediate scrutiny—those laws were upheld. Then, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court made explicit that interest balancing is off the table and that laws

infringing the plain text of the Second Amendment may be upheld only if the government proves that the challenged law is consistent with the Second Amendment as originally understood. The intermediate scrutiny approach was therefore repudiated.

In their efforts to find a new standard through which to uphold laws banning certain types of firearms, the circuit courts appear to be coalescing around the rationale offered by the Fourth Circuit. Several other courts in the past year have similarly suggested that firearms that are, in a court's estimation, too like firearms used by the military may be banned, whether as a matter of text or history. *See, e.g.*, *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023). These arguments are noteworthy for the way that they flip *Heller* on its head. In *Heller*, this Court rejected the argument that handguns could be banned from private use because the Second Amendment protected only ownership of firearms in connection with militia service. The Court held that the Second Amendment did not *only* protect the use of arms for militia purposes but rather for *all* lawful purposes, including individual self-defense. *Heller*, 554 U.S. at 581, 627. The decision below, like other decisions embracing the same rationale, reads *Heller*'s interpretation of the Second Amendment as *protecting* individual self-defense as a *limit* on the scope of the Amendment's protections, effectively reading the Amendment's stated purpose of preserving the militia out of the Constitution altogether.

Certiorari is required to correct this increasingly widespread misunderstanding of *Heller* and to ensure that the Second Amendment itself is not truncated into a limited right to own certain state-approved

means of personal self-defense. And in fact, members of the *majority* in this case joined a chorus of lower court judges asking for this Court's guidance, noting the significance of the questions implicated here and the need for the Court's further direction to bring order to the law.

This case is a perfect vehicle for this Court to provide that guidance and correct the cabining of the Second Amendment right. Unlike previous "arms ban" cases that made similar errors and resulted in petitions for writs of certiorari post-*Bruen*, this case presents a final decision on the merits by a court of appeals (sitting en banc, no less) and it tees up these issues with respect to common semiautomatic rifles, including the paradigmatic AR-15 platform rifle, a firearm that is *unquestionably* in common use today. The Court should grant the petition.

OPINIONS BELOW

The order of the en banc Court of Appeals affirming the district court's dismissal of this case is not yet reported, but is available at 2024 WL 3666180, and is reproduced at Pet.App. 1a–211a. The order of this Court denying certiorari before judgment is not reported but is available at 2024 WL 2262406, and reproduced at Pet.App. 212a. The order of this Court granting certiorari, vacating the judgment of the Court of Appeals, and remanding for further consideration in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), is reported at 142 S. Ct. 2898 and reproduced at Pet.App. 213a. The pre-*Bruen* order of the Court of Appeals affirming the district court's dismissal of the case is reported at 858 F. App'x 645 and reproduced at Pet.App. 214a–215a. The order of the District Court dismissing Petitioners'

complaint is not reported in the Federal Supplement, but it is available at 2021 WL 12192789 and is reproduced at Pet.App. 216a–217a.

JURISDICTION

The judgment of the en banc court of appeals was entered on August 6, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The relevant portions of Amendments II and XIV to the United States Constitution and the Maryland Code are reproduced in the Appendix beginning at Pet.App.218a.

STATEMENT

I. Maryland's Ban on Common Firearms

The State of Maryland tendentiously dubs scores of common semiautomatic rifle models "assault weapons" and bans them outright. Subject to certain minor exceptions, MD. CODE ANN., CRIM. LAW §§ 4-302, 4-303(b), Maryland's ban criminalizes the sale, transfer, or possession of any of the following:

> (i) a semiautomatic centerfire rifle that can accept a detachable magazine and has any two of the following:
>
> 1. a folding stock;
>
> 2. a grenade launcher or flare launcher; or
>
> 3. a flash suppressor;
>
> (ii) a semiautomatic centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds;

> (iii) a semiautomatic centerfire rifle that has an overall length of less than 29 inches.

Id. § 4-301(h)(1); *see also id.* §§ 4-301(d); 4-303(a). The ban also specifically applies to a list of 45 enumerated rifle types, including AR-15s, AK-47s, and many other popular semiautomatic rifles. *Id.* § 4-301(b); MD. CODE ANN., PUB. SAFETY § 5-101(r)(2). "AR-15," to take a prominent example, is the common nomenclature for a platform of semiautomatic rifles originally designed and patented by Eugene Stoner in 1956. While the original AR-15 was designed to fire both automatically and semiautomatically and was eventually adopted by the U.S. Military as the M16, Colt Manufacturing Company acquired the patent, removed the automatic fire capability, and began selling the semiautomatic rifle to the civilian market. Thus, the modern "AR-15" discussed by the lower court and Petitioners refers to the semiautomatic rifle platform, produced under many model names by many manufacturers, commonly owned by law-abiding individuals across the country. Maryland's ban applies to all "copies" of AR-15-platform rifles and the other semiautomatic rifles specified by name, "regardless of which company produced and manufactured" the rifles. *Id.* § 5-101(r)(2).

If an ordinary, law-abiding citizen keeps or bears a rifle banned by Maryland, Respondents may seize and dispose of that arm. MD. CODE ANN., CRIM. LAW § 4-304. Moreover, any ordinary, law-abiding citizen who possesses such a rifle commits a criminal offense and is subject to severe sanctions, including imprisonment for up to three years for the first offense. *Id.* §§ 4-303, 4-306(a).

Maryland dubs the semiautomatic rifles that it bans "assault weapons," but that is nothing more than argument advanced by a political slogan in the guise of a definition. As even anti-gun partisans have admitted, "assault weapon" is a political term designed to exploit "the public's confusion over fully automatic machine guns versus semi-automatic" firearms. JOSH SUGARMANN, ASSAULT WEAPONS AND ACCESSORIES IN AMERICA (1988), https://perma.cc/9EXR-42DL. In truth, the firearms Maryland calls "assault weapons" are mechanically identical to any other semiautomatic firearm—arms that are exceedingly common and fully protected by the Second Amendment. *See Friedman v. City of Highland Park*, 136 S. Ct. 447, 449 (2015) (mem.) (Thomas, J., dissenting from the denial of certiorari). Unlike an automatic machinegun, which continues to fire until its magazine is empty so long as its trigger is depressed, every *semiautomatic* firearm, including the ones banned by Maryland, fires only a single shot for each pull of the trigger. *See Staples v. United States*, 511 U.S. 600, 602 n.1 (1994).

These firearms are in common use, and they "traditionally have been widely accepted as lawful possessions." *Id.* at 612. Indeed, Maryland bans firearms that are among the most popular in America—including the AR-15 platform rifle, "the best-selling rifle type in the United States." Nicholas J. Johnson, *Supply Restrictions at the Margins of* Heller *and the Abortion Analogue:* Stenberg *Principles, Assault Weapons, and the Attitudinalist Critique*, 60 HASTINGS L.J. 1285, 1296 (2009). The popularity of the AR-15 and similar semiautomatic firearms is amply attested by a variety of sources.

Consumer surveys. Several consumer surveys demonstrate the commonality of AR-15 and similar semiautomatic rifles. In 2022, Washington Post-Ipsos conducted a survey of a random sample of 2,104 gun owners. *Poll of current gun owners* at 1, WASH. POST-IPSOS (2022), https://perma.cc/YSJ5-STNS ("Wash-Post Poll"). The survey asked whether individuals owned AR-15-style rifles. Twenty percent answered yes, *id.*, which indicates that "about 16 million Americans own an AR-15." Emily Guskin, et al., *Why do Americans own AR-15s?*, WASH. POST (Mar. 27, 2023), https://wapo.st/3IDZG5I. The survey also asked *why* individuals owned AR-15s. Reasons given included protect self, family and property (91%, with 65% stating this was a major reason), target shooting (90%), in case law and order breaks down (74%), and hunting (48%). WashPost Poll at 1–2. Sixty-two percent of AR-15 owners reported firing their AR-15 rifles at least a few times a year. *Id.* at 2.

In 2021, Georgetown Professor William English conducted a survey of 16,708 gun owners. William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* at 1, GEORGETOWN UNIV. RSCH. PAPER NO. 4109494 (May 13, 2022), https://perma.cc/7P4G-UBB8. The English survey asked whether gun owners had "ever owned an AR-15 or similarly styled rifle?" *Id.* at 33. "30.2% of gun owners, about 24.6 million people, indicated that they" had owned such a rifle. *Id.* Of those who owned such rifles, the average person had owned 1.8 and the median 1. *Id.* The English survey asked why gun owners had owned such a rifle. Answers included recreational target shooting (66%), home defense (61.9%), hunting (50.5%), and defense outside the home (34.6%). *Id.* at 33. English also asked about defensive

use of firearms. The survey responses indicated that gun owners engage in 1.67 million defensive gun uses a year. *Id.* at 9. This is consistent with other survey data; "[a]lmost all national survey estimates indicate[d] that defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million[.]" Alan I. Leshner, et al., *Priorities for Research to Reduce the Threat of Firearm-Related Violence* 15, NAT'L RSCH. COUNCIL (2013), https://perma.cc/M67H-FMQK. English found that 13.1% of defensive gun users used a rifle, English at 14–15, which amounts to over 200,000 defensive uses of rifles a year.

Also in 2021, the National Shooting Sports Foundation (NSSF), the Firearm Industry Trade Association, conducted a survey of 2,185 owners of AR- and AK-platform rifles. *Modern Sporting Rifle: Comprehensive Consumer Report* at 10, NSSF (July 14, 2022), https://perma.cc/TAY2-CG2X. Owners were asked to rate on a scale of 1 to 10 (with 1 being not at all important and 10 very important) how important various reasons were for owning the rifles. Responses included recreational target shooting (8.7), home/self-defense (8.3), and varmint hunting (5.8). *Id.* at 18. Sixty-seven percent of respondents indicated that they had used their rifle at least five times in the previous twelve months. *Id.* at 41. Another NSSF survey estimated that over 21 million Americans had trained with these types of rifles in 2020. *Sport Shooting Participation in the U.S. in 2020* at *iii*, NSSF (2021), https://perma.cc/P549-STFN.

Firearm Dealer Surveys. In addition to surveying consumers, the NSSF also conducts surveys of

firearm dealers. Results from the most recent survey were published in 2021. *See 2021 Firearms Retailer: Survey Report*, NSSF (2021), https://perma.cc/N59Q-6UJJ. Retailers were asked what percentage of firearms they sold were of various types. For 2020, at the top was semiautomatic pistols, at 44.2% in 2020. *Id.* at 9. AR/modern sporting rifle was second, at 20.3%, followed by shotgun (12.4%), traditional rifle (11.3%), and revolver (7.2%). *Id.* And 2020 was not an outlier. NSSF's 2019 retailer survey indicated that ARs and other similar rifles constituted between 17.7% and 20.3% of firearm sales in every year from 2011 from 2018 (excepting 2017, when no results were reported). *2019 Firearms Retailer: Survey Report* at 6, NSSF (2019), *available at Miller v. Becerra*, No. 3:19-cv-1537, Doc. 22-13 at 107 (S.D. Cal. Dec. 16, 2019).

Firearm Production Data. NSSF also has analyzed firearm production data to determine how many AR- and AK-style rifles have been produced for the American market. *Firearm Production in the United States With Firearm Import and Export Data* at 7, NSSF (2023), https://perma.cc/P6A8-DZK2. From 1990 to 2021, it estimates that number to be 28,144,000. *See id.* at 7. Domestic production of AR- and similar rifles accounted for approximately 20% of all domestic firearms produced for the American market for the decade of 2012 to 2021. *See id.* at 2–7.

In sum, AR-platform and other semiautomatic rifles are in common use for lawful purposes: millions of Americans own tens of millions of them; they account for approximately 20% of all firearm sales in the past decade, and leading reasons for owning them include owning self-defense, target shooting, and hunting.

> AR-style rifles are popular with civilians … around the world because they're accurate, light, portable, and modular. … [The AR-style rifle is] also easy to shoot and has little recoil, making it popular with women. The AR-15 is so user-friendly that a group called 'Disabled Americans for Firearms Rights' … says the AR-15 makes it possible for people who can't handle a bolt-action or other rifle type to shoot and protect themselves.

FRANK MINITER, THE FUTURE OF THE GUN 46–47 (2014).

Although irrelevant to this Court's analysis, given *Heller*'s holding that firearms in common use for lawful purposes cannot be banned, it is notable that use of these firearms for unlawful purposes is exceedingly rare. From 2013 to 2022, rifles of any kind were used in an average of 356 homicides per year. *Crime Data Explorer: Expanded Homicide Offenses Characteristics in the United States*, U.S. DEP'T OF JUST., FBI (last visited Aug. 15, 2024), https://bit.ly/3IF5A6M (select year "2022" and include previous "past 10 years"). Assuming every one of these rifles was a different AR-15 or similar semiautomatic rifle, that would mean that approximately 99.999% of these rifles are not used in a homicide in a given year. And other items are used much more frequently in homicide, including: handguns (an average of 6,743 handgun murders from 2013 through 2022); knives (an average of 1,544), and hands and feet (an average of 671). *Id*. Thus, handguns are used in homicide in this country nearly *twenty times* more frequently than rifles. "[I]f we are constrained to use [Maryland's] rhetoric, we would have to say that *handguns* are the quintessential

'assault weapons' in today's society." *Heller v. District of Columbia*, 670 F.3d 1244, 1290 (D.C. Cir. 2011) ("*Heller II*") (Kavanaugh, J., dissenting).

II. The ban's effect on Petitioners

Petitioner Snope is an ordinary, law-abiding, adult citizen of the United States and the state of Maryland. Pet.App. 237a. He is legally qualified to purchase and possess firearms, and he wants to acquire banned semiautomatic firearms—including AR-15-, AK-47-, and Dragunov-style rifles—for self-defense and other lawful purposes, but has been barred from doing so by Maryland's Ban. Pet.App.253a. Similarly, Firearms Policy Coalition, Inc., Second Amendment Foundation, and the Citizens Committee for the Right to Keep and Bear Arms each have members in Maryland, including Petitioner Snope, who are otherwise eligible to acquire banned firearms and would do so but for the ban. Pet.App. 238a–239a.

III. Procedural history

A. On December 1, 2020, Petitioners filed this suit in the District of Maryland, alleging that Maryland's categorical ban on the possession of common semiautomatic rifles is unconstitutional under the Second Amendment, which is applicable to Maryland under the Fourteenth Amendment. The district court had jurisdiction under 28 U.S.C. Sections 1331 and 1343. Petitioners' complaint conceded that their Second Amendment claim was foreclosed at the district-court level by the Fourth Circuit's decision in *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc), *abrogated by Bruen*, 597 U.S. 1 (2022); Pet.App. 236a. Because Petitioners shared Judge Traxler's view of *Kolbe* as "clearly at odds with the Supreme Court's approach in

Heller," *Kolbe*, 849 F.3d at 155 (Traxler, J., dissenting), Petitioners sought to have *Kolbe* overturned by a court competent to do so.

B. In light of *Kolbe*, the district court ordered Petitioners to show cause why their case should not be dismissed *sua sponte* for failure to state a claim. Pet.App. 217a–218a. As they had in their complaint, Petitioners conceded that *Kolbe* was controlling in the district court, and on March 3, 2021, the court dismissed Petitioners' complaint. Pet.App. 218a.

C. Petitioners appealed to the Fourth Circuit. Petitioners conceded that the *en banc* decision in *Kolbe* was controlling at the panel level. On September 17, 2021, the Fourth Circuit affirmed the district court's order dismissing the case. Pet.App. 215a. Petitioners timely sought certiorari from this Court. *See* Pet. for Writ of Certiorari, *Bianchi v. Frosh*, No. 21-902 (U.S. Dec. 16, 2021). This Court granted the petition, vacated the Fourth Circuit's judgment, and remanded for further consideration in light of *Bruen*. *See* Pet.App. 213a.

D. On remand, the Fourth Circuit directed the parties to submit supplemental briefs regarding the application of *Bruen* to this case and set the case for argument before a panel of the Fourth Circuit in December 2022. *See* Pet.App. 9a. Following argument, the panel majority reached a decision quickly, but the case was held for more than a year as no dissent was circulated. Pet.App. 98a n.2. Finally, rather than releasing that opinion, the Fourth Circuit *sua sponte* granted initial en banc review. *Id.* . While the case was pending before the en banc Court, Petitioners sought certiorari before judgment, which this Court denied. Pet.App. 212a.

E. 1. On August 6, 2024, the en banc Fourth Circuit affirmed the dismissal of Petitioners' claims. In doing so, it held that AR-15 platform rifles, the prototypical rifle banned by Maryland and the most popular semiautomatic rifle in the country, is not even an "arm" "within the ambit of the Second Amendment." Pet.App. 3a. Reaffirming that it viewed *Kolbe* as good law because *Bruen* did not "disturb our principal holding that the covered assault weapons were outside the ambit of the Second Amendment," Pet.App. 18a, the court held that AR-15s could be banned because they share features with M16 rifles that make them "most useful in military service." Pet.App 28a (quoting *Heller*, 554 U.S. at 627). The court adopted a narrow view of the purpose of the Second Amendment, limited only to personal protection, from which it followed that "the Second Amendment protects only those weapons that are typically possessed by average Americans for the purpose of self-preservation and are not ill-suited and disproportionate to achieving that end." Pet.App. 46a. Because it did not believe the AR-15 was appropriate for such a purpose, the majority held it was categorically outside the Amendment's scope. *Id.*

The court also found that, if it had to analyze history under *Bruen*, Maryland's ban on AR-15s would survive that review as well. Pet.App. 48a. Without identifying any Founding-era evidence apart from gunpowder regulations, the court held that there was a historic tradition of legislatures "responding to the calls of their citizens to *do something* about the horrors wrought by excessively dangerous weapons, while preserving the core right of armed self-defense," that would permit Maryland to ban popular semiautomatic rifles because they are not well suited, in the

court's judgment, to advancing "the Second Amendment's purpose of personal protection." Pet.App. 69a.

2. Chief Judge Diaz joined the majority opinion in full and wrote separately, joined by five other members of the majority, to concur and highlight his view that "*Bruen* has proven to be a labyrinth for lower courts, including our own." Pet.App. 75a. As a result, Chief Judge Diaz continued, "courts, tasked with sifting through the sands of time, are asking for help," and this Court's recent decision in *Rahimi* "offered little instruction or clarity about how to answer … persistent (and often, dispositive) questions." *Id.*

3. Judge Gregory concurred in the judgment, declining to join the majority opinion because it was "comprised of the very sort of means-end scrutiny that *Bruen* explicitly forbids." Pet.App. 86a–87a. Although he recognized that semiautomatic rifles are in common use for lawful purposes, he believed the Ban is constitutional because it bans arms that are "dangerous and unusual" due to their ability "to cause grave damage, from a great distance, without detection." Pet.App. 95a.

4. Judge Richardson, joined by four colleagues, dissented. In his view, the case should have been resolved in Petitioners favor, since they "seek to own weapons that are indisputably 'Arms' within the plain text of the Second Amendment," so that the Ban is presumptively unconstitutional. Pet.App. 96a–97a. "While history and tradition support the banning of weapons that are both dangerous *and* unusual, Maryland's ban cannot pass constitutional muster as it prohibits the possession of arms commonly possessed by law-abiding citizens for lawful purposes." *Id.* Judge Richardson criticized several errors made by the

majority in reaching a contrary conclusion. While the majority treated the Second Amendment as existing merely to further individual self-defense, the dissent demonstrated that from the Glorious Revolution to the Founding of this country, the right to keep and bear arms was understood to encompass both individual *and* collective defense, including defense against "government tyranny." Pet.App. 122a; *see also* Pet.App. 100a–119a. The dissent rejected the argument that any firearm that is sufficiently "like [an] M-16" was unprotected as inconsistent with the text, purpose, and history, of the Second Amendment, and based on a fundamental misunderstanding of *Heller*. Pet.App. 131a. It also demonstrated that even accepting the majority's framing, the semiautomatic AR-15 is not like a fully automatic M-16 but is well suited for individual self-defense and widely owned for that purpose. Pet.App. 186a–202a .

Like Judge Gregory, the dissent criticized the majority for "engaging today in precisely the kind of interest balancing that *Heller*, *McDonald*, and *Bruen* rejected," noting that limiting the Second Amendment to cover only weapons that are "reasonably related or proportional to the end of self-defense" would "require federal judges to decide which weapons are most suitable for a country of individuals with different needs and abilities." Pet.App. 182a. Analyzing the majority's own historical sources more closely than the majority did, the dissent noted that there is no historical tradition of banning common firearms on account of their purported danger and that many of the majority's own sources supported a right to keep and carry any arm "in common use." Pet.App. 142a–168a.

REASONS FOR GRANTING THE PETITION

I. The issues presented by this case are critically important.

A. The decision below blesses a ban on the most popular rifles in America.

Though Maryland bans a variety of modern semiautomatic rifles under the "assault weapon" moniker, the focus of both the majority and dissent in the lengthy opinion below was a single exemplar: the most popular rifle in America, the AR-15. The majority believed that AR-15s can be banned, holding that they are not even an "arms" within the plain-text scope of the Second Amendment. The majority based this holding on its view that "like the M16, the AR-15 is 'most useful in military service.' " Pet.App. 43a (citation omitted).

As discussed in detail below, this interpretation of the Second Amendment has no basis in the text of the Constitution and is directly contrary to this Court's binding precedent. But it is also staggering in its practical implications. The AR-15 is the most popular rifle, and among the most popular firearms of any type, in the country. *See Harrel v. Raoul*, 144 S. Ct. 2491, 2493 (2024) (Thomas, J.) (calling the AR-15 "America's most common civilian rifle"); *Garland v. Cargill*, 602 U.S. 406, 430 (2024) (Sotomayor, J., dissenting) (referring to AR-15 style rifles as "commonly available, semiautomatic rifles"); *Heller II*, 670 F.3d at 1287 (Kavanaugh, J., dissenting) ("The AR-15 is the most popular semi-automatic rifle."); *Duncan v. Becerra*, 970 F.3d 1133, 1148 (9th Cir. 2020) (calling the AR-15 the "most popular rifle in American history"), *reh'g en banc granted, op. vacated sub nom.*

Duncan v. Bonta, 19 F.4th 1087 (9th Cir. 2021). ATF, the federal agency charged with regulating the commercial firearms industry, recently described it as "one of the most popular firearms in the United States" for "civilian use." *Definition of 'Frame or Receiver' and Identification of Firearms*, 87 Fed. Reg. 24,652-01, 24,652, 24,655 (Apr. 26, 2022) (to be codified at 27 C.F.R. pts. 447, 478, and 479).

The popularity of the AR-15 is among the most well-evidenced, and frequently discussed, facts about firearms in the country. *See, e.g.*, *How the AR-15 became America's gun*, WASH. POST (Mar. 28, 2023), https://bit.ly/4fI7y5B. There are, by almost all estimates, considerably more modern semiautomatic rifles like the AR-15 in the United States than there are Ford F-150s, America's most popular automobile. *Compare* NSSF, *Commonly Owned: NSSF Announces Over 24 Million MSRs in Circulation* (July 20, 2022), https://perma.cc/A3P7-GE4M, *with* Brett Foote, *There Are Currently 16.1 Million Ford F-Series Pickups on U.S. Roads*, FORD AUTH. (Apr. 9, 2021), https://bit.ly/3GLUtaB. And that is in spite of the laws, like Maryland's here, that prohibit tens of millions of Americans from some of our most populous states from acquiring them.

Yet, under the majority's approach below this exceptionally popular semiautomatic firearm can be banned without the slightest Second Amendment scrutiny, a tacit blessing on the states that have perversely responded to *Bruen* by enacting new restrictions of this kind. *See, e.g.*, *Protect Illinois Communities Act*, Pub. Act. 102-1116 (Ill. 2023). If for no other reason than the fact that the decision turns a firearm possessed for lawful purposes by millions of

Americans into an item with not even presumptive constitutional protection, the Court should grant certiorari to review this case.

B. Under the rationale of the decision below, the Second Amendment permits anything short of a complete ban on all firearms.

That Maryland's ban reaches the most popular rifle in the country suggests that, if the decision below is correct, then *no* firearm in the country is protected except for the handguns that this Court squarely considered in *Heller*. In fact, if the *Heller* Court would have employed the analysis used by the Fourth Circuit here, that case likely would have come out the other way.

The new Fourth Circuit test is even more toothless than the old interest balancing regime. Before, courts would at least profess to scrutinize modern laws to ensure there was some relationship between a ban and the aims of public safety. Not so any longer. Under the decision below, the Second Amendment provides no check at all on infringing legislation. The majority put it plainly: the Second Amendment "does not require courts to turn their backs to democratic cries" for regulation impacting the Second Amendment right. Pet.App. 72a. Indeed, the court "shudder[ed] to imagine the hubris with which a court would disable representative government" by daring to enforce the hard limits the Constitution sets on laws restricting lawful activity with firearms. *Id.* It is hard to imagine a court writing such a thing about any other provision of the Bill of Rights. If the Second Amendment is not to be relegated to second-class status, if it truly is intended to "elevate[ ] above all other

interests the right of law-abiding, responsible citizens to use arms for self-defense," then the decision below must be overturned. *Bruen*, 597 U.S. at 17.

It is instructive to consider that *Heller* likely would have been decided in favor of the District of Columbia if the Fourth Circuit's rationale had been applied in that case. D.C.'s attempt to ban handguns would have been merely "yet another chapter in [the] chronicle" of "regulating those weapons that were invented for offensive purposes and were ultimately proven to pose exceptional dangers to innocent civilians." Pet.App. 69a. The majority placed special weight on the dangers posed by AR-15s in violent crime. *See, e.g.*, Pet.App. 36a. But rifles—likely due in large part to the fact that they cannot be concealed—are only very rarely used in crime; handguns are overwhelmingly the weapons of choice of criminals. *See* Mariel Alper & Lauren Glaze, *Source and Use of Firearms Involved in Crimes: Study of Prison Inmates, 2016* at 5 tbl. 3, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS. (Jan. 2019), https://perma.cc/WSX9-FK2S. "[I]f we are constrained to use [Maryland's] rhetoric, we would have to say that *handguns* are the quintessential 'assault weapons' in today's society." *Heller II*, 670 F.3d at 1290 (Kavanaugh, J., dissenting). And if we are constrained to use the Fourth Circuit's reasoning, a ban on handguns like the one struck down in *Heller* would be only part of the process "in which rights must sometimes bend to better accommodate the rights of others." Pet.App. 71a.

C. The Fourth Circuit's misreading of *Heller*'s treatment of M-16 rifles has become a dominant source of misconstruing the Second Amendment.

After this Court struck down the courts of appeals' interest-balancing regime in *Bruen*, "the debate as to what constitutes a 'bearable arm' covered by the Second Amendment has revitalized relevance." *United States v. Daniels*, 77 F.4th 337, 358 n.8 (5th Cir. 2023) (Higginson, J., concurring). And as part of that debate, it is already clear that the Fourth Circuit's cramped reading of the Amendment to exclude firearms that purportedly are sufficiently similar to military weapons is the error of choice for courts seeking to approve bans on common semiautomatic arms.

As a case in point, consider the First Circuit. Prior to *Bruen*, the court considered the Massachusetts ban on so-called "assault weapons" and specifically declined to decide whether arms "most useful in military service" could be carved out of the Second Amendment's protection, given that it could simply uphold the law by applying intermediate scrutiny. *Worman v. Healey*, 922 F.3d 26, 36, 41 (1st Cir. 2019). Following *Bruen*, the court struck a different note. In *Ocean State Tactical, LLC v. Rhode Island*, reviewing an appeal from denial of a preliminary injunction related to Rhode Island's post-*Bruen* ban on so-called "large capacity magazines," the court declared that "weapons that are most useful in military service" fall "outside the ambit of the Second Amendment." 95 F.4th 38, 48–49 (1st Cir. 2024). The court relied on the purported fact that "semiautomatic weapons fitted with LCMs much more closely resemble the proscribable 'M16 rifles and the like' than they do traditional

handguns" to support its conclusion that the Rhode Island ban was likely constitutional. *Id*.

Or consider the way that the Seventh Circuit shifted from its pre-*Bruen* analysis—which weighed the propriety of a weapons ban by asking "whether a regulation bans weapons that were common at the time of ratification or those that have some reasonable relationship to the preservation or efficiency of a well regulated militia, and whether law-abiding citizens retain adequate means of self-defense," *Friedman v. City of Highland Park*, 784 F.3d 406, 410 (7th Cir. 2015) (cleaned up)—to a blanket rule that "militaristic' weapons" do not even count as arms within the meaning of the Amendment's plain text. *Harrel*, 144 S. Ct. at 2492 (Thomas, J.) (quoting *Bevis v. City of Naperville*, 85 F.4th at 1194). For *Bevis*, as with *Ocean State Tactical* and the decision below, the genesis of this cramped reading of the Second Amendment was this same misreading of *Heller*.

It should be mentioned that even accepting this framing of the issue—that arms must be useful to individual self-defense by civilians to be protected—the AR-15 *should* still be protected. As the dissent explained at length, AR-15s are extremely well suited to self-defense, they are chosen for that purpose by millions of Americans, and they are utterly unlike military rifles in that they lack "[t]he defining feature of a military rifle … selective-fire capability." Pet.App.. 193a (Richardson, J., dissenting); *see also id.* at 186a–202a(discussing the AR-15's suitability for self-defense). But that the argument is counterfactual has proven no more of an impediment to the courts employing it than has its lack of a foundation in the decisions of this Court or the text of the Constitution. To

correct this fundamental and widespread misunderstanding, this Court must intervene.

II. The lower courts need guidance on how to apply *Heller* and *Bruen* in this context, as many jurists have recognized.

The critical problems reflected by the decision below require this Court's intervention for resolution. Last term in *Rahimi*, three justices of this Court acknowledged the need for ongoing guidance to the lower courts in Second Amendment cases. *United States v. Rahimi*, 144 S. Ct. 1889, 1923 (2024) (Kavanaugh, J., concurring) ("Second Amendment jurisprudence is still in the relatively early innings."); *id.* at 1923–25 (Barrett, J., concurring) ("Courts have struggled with th[e] use of history in the wake of *Bruen*."); *id.* at 1927, 1930 (Jackson, J., concurring) ("[C]ourts, which are currently at sea when it comes to evaluating firearms legislation, need a solid anchor for grounding their constitutional pronouncements."). The question of "what types of weapons are 'Arms' protected by the Second Amendment," *Harrel*, 144 S. Ct. at 2492 (statement of Thomas, J.), is among those on which the lower courts are most in need of guidance. In fact, Judge Diaz and several other members of the *majority* in this case wrote separately to join other lower courts in "asking for help" in applying *Bruen* to a case like this. *See* Pet.App. 75a (Diaz, J. concurring).

As Justice Thomas noted in *Harrel*, there are "essential questions" that lower courts are wrestling with in this area of the law, including "what makes a weapon 'bearable,' 'dangerous,' or 'unusual.' " 144 S. Ct. at 2492. To that list, and the issues identified above, Petitioners would add another: how common

use factors into the analysis of a ban on firearms. "There is no consensus [in the lower courts] on whether the common-use issue belongs at *Bruen* step one or *Bruen* step two." *Bevis*, 85 F.4th at 1198. In the decision below, the majority treated it as an element of the plain text, while the dissent treated it as the dispositive fact in the historical analysis. *See* Pet.App. 184a–185a (Richardson, J., dissenting) In another en banc Second Amendment decision, issued the same day as this one, the Fourth Circuit noted how judges on both sides of the merits had fractured on this doctrinal issue. *See United States v. Price*, No. 22-4609, 2024 WL 3665400, at *5 n.3 (4th Cir. Aug. 6, 2024). Judge Quattlebaum (joined by Judge Rushing, both dissenters in this case), for instance, ultimately concluded "common use" is part of the historical test, but referred to the issue as "*Bruen*'s puzzle." *Id.* at *16–17 (Quattlebaum, concurring).

Other courts have likewise wrestled with the question to inconsistent results. *See Antonyuk v. Chiumento*, 89 F.4th 271, 321 (2d Cir. 2023) (text), *vacated sub nom. Antonyuk v. James*, No. 23-910, 2024 WL 3259671 (U.S. July 2, 2024); *United States v. Rahimi*, 61 F.4th 443, 454 (5th Cir. 2023) (text), *rev'd* 144 S. Ct. 1889 (2024); *United States v. Alaniz*, 69 F.4th 1124, 1129 (9th Cir. 2023) (text); *Teter v. Lopez*, 76 F.4th 938, 949–50 (9th Cir. 2023) (history), *reh'g en banc granted, op. vacated*, 93 F.4th 1150 (9th Cir. 2024) (mem.). A straightforward reading of *Bruen* and *Heller* demonstrates that the correct answer is that "common use" is a historical rule of decision that comes into play at the historical analysis in *Bruen*. Indeed, *Bruen* confirms that *Heller*'s common use test remains the binding rule of decision in arms ban cases. *See e.g.*, Mark W. Smith, *What Part of "In*

Common Use" Don't You Understand?: How Courts Have Defied Heller *In Arms-Ban-Cases—Again*, PER CURIAM, HARV. J.L. & PUB. POL'Y, (Sept. 27, 2023), https://perma.cc/N9UN-KL78. But just as *Bruen* was required to make *Heller*'s rejection of interest balancing more explicit, it is apparent that more explicit guidance also is required to assist the lower courts in cases turning on "common use."

III. The decision below conflicts with *Heller* and *Bruen*.

Under *Bruen* and *Heller*, this case should have been very straightforward. Indeed, the dissent's resolution of the case could be summarized in two sentences: Petitioners "seek to own weapons that are indisputably 'Arms' within the plain text of the Second Amendment. While history and tradition support the banning of weapons that are both dangerous *and* unusual, Maryland's ban cannot pass constitutional muster as it prohibits the possession of arms commonly possessed by law-abiding citizens for lawful purposes." Pet.App. 96a–97a (Richardson, J., dissenting).

The majority's resolution was nowhere near so straightforward or faithful to this Court's precedents. In holding that the Second Amendment's plain text does not extend to all firearms, limiting the Second Amendment to a mere purposive declaration that the government must leave citizens *some* means by which to engage in individual self-defense, rejecting the historic principle that arms in common use are protected and cannot be banned, and purporting to derive from history the very same interest balancing that this Court rejected in *Heller* and *Bruen*, the majority's

reasoning is squarely at odds with the pronouncements of this Court.

A. *Heller* requires finding the banned rifles are "arms" within the meaning of the Second Amendment's plain text.

As discussed above, the Fourth Circuit's opinion in this case held that modern semiautomatic rifles like the AR-15 fall entirely outside the Second Amendment's protections because, in its judgment, such firearms have "the same basic characteristics, functionality, capabilities, and potential for injury as' the M16." Pet.App. 42a (quotations and citation omitted). The major difference between them, "the M16's capacity for automatic fire" did not adequately distinguish them, in the majority's view, which held that that difference "pales in significance compared to the plethora of combat-functional features that makes the two weapons so similar." Pet.App. 35a. That similarity, combined with what the majority claimed was their "all too frequent use in terrorism, mass killing, and police murder shows that the AR-15 offers firepower ill-suited and disproportionate to fulfilling the Second Amendment's purpose of armed self-defense. Therefore, just like the M16, the AR-15 is 'most useful in military service' and 'may be banned.' " Pet.App. 42a–43a.

This reasoning is wrong at every step. First, and most importantly, there is no "most useful in military service" exception to the Second Amendment's text. That claim was "demonstrably inconsistent with *Heller*," Pet.App. 129a (Richardson, J., dissenting), when *Kolbe* was decided. It is based on two major misinterpretations of *Heller*. *Heller* did not treat a firearm's utility to the military as a limitation on the plain text

term "arms." Rather, it made clear that at a minimum all firearms are "arms" within the meaning of the Second Amendment's plain text, *Heller*, 554 U.S. at 581–82, and only suggested that certain "weapons that are most useful in military service—M-16 rifles and the like—may be banned" consistent with the Second Amendment as part of its *historical analysis*, *id.* at 627. Furthermore, it never suggested that history supported banning certain arms *because* of their utility to the military, but in spite of it. *See id.* Both *Kolbe* and the decision below erred in reading *Heller*'s explanation of that incongruous outcome (incongruous because the Amendment itself declares it was intended to preserve the militia, a military-style fighting force) as a *reason* to limit the Amendment's application to certain firearms today.

These errors are even more inexcusable after *Bruen* made *Heller*'s text-and-history approach explicit. 597 U.S. at 26. As this Court just recently reaffirmed, when determining the constitutionality of modern restrictions on the right to keep and bear arms, there are no hidden carve-outs to the Second Amendment's text. Laws impacting activity within the plain text are only permissible if *history* demonstrates that they are consistent with "the principles underlying the Second Amendment." *Rahimi*, 144 S. Ct. at 1898. The Fourth Circuit did not attempt to ground the restriction in history, and it would have failed to do so had it tried.

Second, as discussed above, if there were such a "military firearm" exception, it would not apply to modern *semi*automatic rifles, which lack the fully automatic or select fire capability of the rifles used by the military, like the M16. The military *used* to use

the semiautomatic M1 Garand before adopting the automatic M16. Notably, that rifle—according to General Patton, "the best battle implement ever devised," *see Springfield Armory: The Best Battle Implement Ever Devised*, NAT'L PARK SERV., https://perma.cc/TRF9-KFFF (last visited Aug. 20, 2024)—is *not* banned by Maryland, while the semiautomatic AR-15, which *never* has been a military firearm, is banned.

Third, the majority arrives at this claimed limitation on the scope of the Second Amendment only by "reading it in light of its alleged sole purpose: the right of individual self-defense." Pet.App. 178a (Richardson, J., dissenting). Although the *Bruen* analysis requires reading the Second Amendment in light of its history, neither history nor purpose can trump the plain text. "[A] court may not 'extrapolate' from the Constitution's text and history 'the values behind [that right], and then enforce … its guarantees only to the extent they serve (in the courts' views) those underlying values.' " *Rahimi*, 144 S. Ct. at 1908 (Kavanaugh, J., concurring) (quoting *Giles v. California*, 554 U.S. 353, 375 (2008)); *see also* Pet.App. 178a (Richardson, J., dissenting) ("[T]he Supreme Court rejected this exact approach to constitutional interpretation in *Giles v. California*, 554 U.S. 353 (2008).").

The Fourth Circuit ignored that guidance and claimed to be justified in reading certain "arms" out of the plain text by a purportedly similar treatment of the First Amendment. The First Amendment, despite a similarly expansive text, contains "inherent … limitation[s] that certain types of activity that fall within a literal reading of the word 'speech' are not protected." Pet.App. 17a. As the dissent noted, the First

Amendment is a poor example to select to make this point, since the exceptions to its protections that this Court has recognized are found in *history*, not a purposive reading of the text, Pet.App. 181a n. 65 (Richardson, J., dissenting), as in fact *Bruen* itself pointed out. 597 U.S. at 24–25.

Fourth, the majority was wrong to read the Second Amendment as relevant solely to the preservation of individual self-defense. *See, e.g.*, Pet.App. 19a. That was just one purpose among many for which the right was included in the Constitution, and other purposes—germane to the possession of the banned rifles—included "defense of the community at large against violence and government tyranny." Pet.App. 122a (Richardson, J., dissenting). As *Heller* explained, the right to keep and bear arms "was by the time of the founding understood to be an individual right protecting against *both* public *and* private violence." 554 U.S. at 594 (emphasis added). The text of the Second Amendment itself proclaims that one of its purposes was to preserve the "militia" and, to state the obvious, the militia did not exist to promote individual self-defense but rather was "useful in repelling invasions and suppressing insurrections," "render[ed] large standing armies unnecessary," and enabled the people to be "better able to resist tyranny," *Id.* at 597–98.

Fifth, as both Judge Gregory in concurrence and Judge Richardson in dissent pointed out, the majority's rationale on this point—that the banned firearms are "better suited" for military or criminal purposes and "ill-suited and disproportionate" to self-defense, Pet.App. 23a, 42a—engages in the sort of interest balancing that is forbidden under *Bruen*. The majority pointed to *Heller*'s remark that the handgun was the

"quintessential self-defense weapon … for home defense," to justify its delving into the features of the AR-15 to determine whether it is an appropriate rifle for civilian use. *See* Pet.App. 42a (quoting *Heller*, 554 U.S. at 629). But while *Heller* suggested reasons why some may prefer handguns for self-defense, it ultimately deferred to the judgment of the American people, holding that "whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid." 554 U.S. at 629. The majority's approach is precisely the opposite.

B. History demonstrates that only arms that are both dangerous and unusual may be banned.

The majority's historical analysis is similarly directly contrary to the decisions of this Court. In *Heller*, this Court explained that the only tradition of historical regulation that can excuse a wholesale ban on a type of arms is the tradition of restricting "dangerous and unusual weapons." 554 U.S. at 627. By definition, this principle does not extend to arms "in common use." *Id.* That should have made this case a very straightforward one. As discussed above, even accepting the State's "assault weapon" framing, modern semiautomatic rifles like the AR-15 indisputably are in common use.

Of course, the banned rifles are not actually a discrete subset of firearms, but rather just particular semiautomatic firearms that the State has banned, and this Court has already held semiautomatic firearms are common and "traditionally have been widely accepted as lawful possessions." *Staples*, 511 U.S. at 612. Indeed, semiautomatic firearms have been

commercially available for over a century. *See Heller II*, 670 F.3d at 1287 (Kavanaugh, J., dissenting); David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 J. CONTEMP. L. 381, 413 (1994). According to industry estimates, there were over 43 million semiautomatic rifles sold in the United States between 1990 and 2018. *See Firearm Production in the United States With Firearm Import and Export Data* at 17, NSSF (2020), https://perma.cc/AWV4-63PN.

There is no question that the semiautomatic rifles banned by Maryland are numerically common and thus protected. They are legally available in over 40 states and are a type of firearm (semiautomatic rifle) that is in common use for lawful purposes. They are not "unusual" in any sense of the word. But the Fourth Circuit below rejected this straightforward application of *Heller* and *Bruen*, and, "[f]aced with this mountain of evidence" that the banned rifles are in common use, "ignore[d] it completely." Pet.App. 176a (Richardson, J., dissenting).

The Fourth Circuit was not silent about common use, but the majority did not treat common use an essential part of its analysis, as its discussion of AR-15 rifles demonstrates. Faced with the fact that AR-15s indisputably are in common use, the majority derided the test as "a trivial counting exercise [that] makes a mockery of the careful interest balancing between individual self-defense and societal order that our legal tradition has carved into the heart of the right to keep and bear arms." Pet.App. 45a. That statement is a tell, one of many in the majority opinion, that the Fourth Circuit has completely ignored this Court's prescient instruction not to "engage in independent means-end

scrutiny under the guise of an analogical inquiry." *Bruen*, 597 U.S. at 29 n.7. Indeed, throughout its putatively historical analysis, the Fourth Circuit returns again and again to the theme that history itself endorses the sort of interest balancing on which *Bruen* closed the door, going so far as to claim that "the arc of weapons regulation in our nation has mimicked a call and response composition, in which society laments the harm certain excessively dangerous weapons are wreaking, and the state, pursuant to its police power, legislates in kind." Pet.App. 48a; *see also* Pet.App. 53a ("[L]egislatures, since the time of our founding, have responded to the most urgent and visible threats posed by excessively harmful arms with responsive and proportional legislation … while nonetheless protecting the core right of their citizens to defend themselves with arms in pressing circumstances."). This reasoning threatens to revive the pre-*Bruen* analysis and render *Bruen* irrelevant in the Fourth Circuit.

Furthermore, the majority's historical reasoning is simply wrong. The exceptionally broad principle it purports to derive from historical regulations ranging from gunpowder storage laws at the Founding to the National Firearms Act of 1934, is that the "police power" permits firearms bans that are sufficiently supported by the popular will, so long as some firearms remain available. *See* Pet.App. 69a ("[W]e see states and localities responding to the calls of their citizens to *do something* about the horrors wrought by excessively dangerous weapons, while preserving the core right of armed self-defense."); Pet.App. 21a ("[T]here are societal interests that can prevail over the right to protect oneself with force."). But this is utterly unlike *any* historical principle this Court has

ever derived. *See, e.g.*, *Rahimi*, 144 S. Ct. at 1903 (rejecting broad principle that only "responsible" people had Second Amendment rights); *see also id.* at 1909 (Gorsuch, J., concurring) (Courts should not "try[] to glean from historic exceptions overarching 'policies,' 'purposes,' or 'values' to guide them in future cases."). And it is not at all justified by the historical record which, at most, shows that historically arms that are both dangerous *and* unusual can be banned, while common weapons are protected. *See, e.g.*, Pet.App. 150a (Richardson, J., dissenting). *Heller* already taught as much, and the law in the Fourth Circuit is now directly contrary to *Heller*.

IV. This case presents an ideal vehicle to resolve these questions and further percolation is unnecessary.

Last term, Justice Thomas called for this Court to review a case that "ultimately allows [a state] to ban America's most common civilian rifle … once the case[] reach[es] a final judgment." *Harrel*, 144 S. Ct. at 2493. This case does just that. The decision of the Fourth Circuit is final; the en banc court specifically declined to remand the case, preferring instead to resolve the Second Amendment challenge to the Maryland ban once and for all. *See* Pet.App. 46a n.2. The constitutionality of the Maryland ban is therefore settled unless and until this Court intervenes. *See Harrel*, 144 S. Ct. at 2491 (denying certiorari on petition from a decision declining to preliminarily enjoin Illinois's ban on so-called "assault weapons" and certain ammunition magazines).

Furthermore, this case cleanly presents the question of when, if ever, a state can constitutionally ban a firearm in common use. Maryland's ban targets

modern semiautomatic rifles such as the AR-15 rifle platform, the most popular rifle platform in America and the second-best-selling firearm of any type in the Nation behind only semiautomatic handguns.

It is unlikely that additional percolation will clarify "what types of weapons are 'Arms' protected by the Second Amendment," *Harrel* 144 S. Ct. at 2492 (statement of Thomas, J.), As discussed above, the courts of appeals are already coalescing around a misreading of this Court's precedents that would eviscerate the Second Amendment's protections for as long as it is permitted to endure. Waiting longer to review is unlikely to produce a circuit split, though circuit judges already are divided on the issue. *See, e.g.*, *Bevis*, 85 F.4th at 1206–1228 (Brennan, J., dissenting). In fact, there was briefly a split on whether arms with "military value" can be banned. *See Teter*, 76 F.4th at 949 ("[I]t is irrelevant whether the particular type of firearm at issue has military value," because the only thing that matters under the Second Amendment's plain text is whether it fits within "the general definition of 'arms.' "). But the Ninth Circuit vacated that decision and granted rehearing en banc, 93 F.4th 1150 (9th Cir. 2024) (mem.), ensuring, at least for the time being, the courts of appeals will maintain uniformity in error. What is more, further percolation likely will be of little benefit to this Court, as the majority, concurring, and dissenting opinions of the en banc Fourth Circuit taken as a whole exhaustively canvassed the issues presented by cases like this one.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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