No. 24-936

IN THE

# Supreme Court of the United States

ANDREW HANSON, *et al.*,
*Petitioners,*

v.

DISTRICT OF COLUMBIA, *et al.*,
*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

## BRIEF IN OPPOSITION


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## COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the court of appeals, on the "early" and "undeveloped" record before it, properly declined to preliminarily enjoin the District of Columbia's restriction on large capacity magazines, which prohibits petitioners from possessing magazines capable of holding more than ten rounds of ammunition, but does not otherwise limit the type or number of magazines they may possess.

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## INTRODUCTION

The District of Columbia restricts the possession of large capacity magazines (LCMs)—firearm magazines capable of holding more than ten rounds of ammunition. The District otherwise places no limit on the number of firearms, the number of magazines, or the amount of ammunition that a person may possess. The District's law mirrors LCM restrictions in 14 states, which represent more than one third of the U.S. population.

Following this Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), petitioners sued, asserting that the District's LCM restriction—which has existed in some form for close to a century—violates their Second Amendment right to self-defense. The district court denied plaintiffs a preliminary injunction, and the D.C. Circuit affirmed. That decision accords with the judgments of every other federal court of appeals to consider an LCM restriction post-*Bruen*. As the D.C. Circuit explained, not only were petitioners unlikely to succeed on the merits on this preliminary and untested record, but they also failed to show irreparable harm, and the remaining equitable factors weighed heavily against an injunction. Rather than proceeding to obtain a decision on the merits, however, petitioners now ask *this* Court to step in at an "early and undeveloped" stage of litigation, App. 5a.

But the Court is "rightly wary of taking cases in an interlocutory posture," *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Thomas, J., statement respecting denial of certiorari), and this case illustrates precisely

why that caution is prudent. Caution is particularly warranted where the question the court of appeals decided is splitless, the court has recently denied similar petitions, and petitioners primarily request error correction in any event. This Court should deny the petition for several independent reasons.

*First*, there is no circuit split. As petitioners and their *amici* acknowledge, the First, Third, and Seventh Circuits have, like the D.C. Circuit, declined to preliminarily enjoin LCM laws. Likewise, the en banc Ninth Circuit recently upheld an LCM restriction on the merits. No federal court of appeals has held otherwise. This consensus on the question presented is enough to deny certiorari.

Petitioners' effort to fabricate a split of authority on other, ancillary questions cannot justify granting review in this case at this stage. Indeed, petitioners recognize that, for many of the issues they flag, the court below "got it right." Pet. 23. Nonetheless, they seek to use this case as a vehicle for scrutiny of decisions in *other* cases. That is not how review in this Court works.

*Second*, this case is a poor vehicle to review any of the issues raised in the petition. As the D.C. Circuit underlined repeatedly, the record at this preliminary stage is "undeveloped" and contains "factual disputes." App. 5a, 12a, 32a. For example, there is a live factual dispute over whether LCMs are, in fact, in common use for self-defense. The D.C. Circuit also made clear, with respect to its determinations on the merits, that its views were subject to change as the record develops. App. 25a. This Court should not leapfrog ahead of the lower courts' consideration of

the issues. Further, the judgment below is supported by independent and alternative grounds on which the Court could deny preliminary injunctive relief—namely petitioners' total failure to satisfy the remaining preliminary injunction factors. That, too, is reason enough to deny the petition.

*Third*, the limited holdings of the court below are correct. "[T]he only merits question" teed up in petitioners' "preliminary motion" is a modest regulatory dispute: "whether the District erred in capping magazine capacity at 10 rounds rather than 17." App. 25a n.8. The court below did not err in holding that "on the present record," the law is consistent with "the Nation's historical tradition of firearm regulation." App. 25a. Petitioners' contrary theory, that LCMs are protected under the Second Amendment due to their common possession alone, is both troubling and circular: under that test, a law's constitutionality would hinge on arbitrary factors like whether it happened to be enacted *before* manufacturers could flood the market. Indeed, that test would unmoor Second Amendment litigation from history and transform it into a counting exercise instead. Nothing in *Bruen* or *District of Columbia v. Heller*, 554 U.S. 570 (2008), requires that absurd result.

In any event, as explained, the court correctly determined that preliminary injunctive relief was unwarranted. Petitioners failed to make any "factual showing of irreparable harm" to their self-defense interest from being able to fire only 11 bullets without pause, rather than 17. App. 32a-37a. And the equities weigh decidedly against a status-quo-

altering injunction and in favor of maintaining the District's "duly enacted law." App. 37a-41a. For that reason too, this Court should deny the petition.

## STATEMENT

### A. The District's Large Capacity Magazine Prohibition.

1. For almost a century, it has been unlawful in the District for a firearm to have the capacity to fire more than a dozen rounds without a pause to reload. As initially enacted by Congress in 1932, District law prohibited the possession of any "firearm which shoots automatically or semiautomatically more than twelve shots without reloading." Act of July 8, 1932, Pub. L. No. 72-275, §§ 1, 14, 47 Stat. 650, 654 (1932), *previously codified at* D.C. Code §§ 22-4501(c), 22-4514(a) (2008). The purpose of the law was to "[p]rohibit[] possession of weapons for which there is no legitimate use." S. Rep. No. 72-575, at 2 (1932). Even the National Rifle Association was "in thorough accord with [the law's] provisions." *Id*. at 5-6.

Following this Court's decision in *Heller*, the D.C. Council amended the law to separate the prohibition on continuous firepower from the possession of otherwise lawful semiautomatic firearms. *See* Comm. on Pub. Safety and the Judiciary, D.C. Council, Report on Bill 17-843, at 2, 9 (Nov. 25, 2008); Firearms Registration Amendment Act of 2008, D.C. Law 17-372, § 3(n), 56 D.C. Reg. 1365 (Feb. 13, 2009) (effective Mar. 31, 2009).

Borrowing language from the then-recently lapsed Violent Crime Control and Law Enforcement Act of 1994, *see* 18 U.S.C. §§ 921(a)(31), 922(w)(1), (2)

(2004), District law now bars the possession, sale, or transfer of any "large capacity ammunition feeding device," commonly known as a large capacity magazine or LCM. D.C. Code § 7-2506.01(b). The Law defines an LCM as "a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition." *Id.* § 7-2506.01(c). There is otherwise no limit on the type or number of magazines (or ammunition) that a person may possess for their lawful firearms. Nor is there any dispute that every one of petitioners' firearms can accept magazines that hold ten or fewer rounds. *See* C.A. App. 131-34, 185, 1053.

The upshot of the District's law thus remains modest but vital: A firearm may be equipped to continuously fire up to 11 rounds before being reloaded (ten in the magazine plus one in the chamber), but cannot knowingly be enhanced by an LCM to continuously fire between 12 and 100 rounds.

2. In 2011, a divided panel of the D.C. Circuit upheld the Law under the Second Amendment. *Heller v. District of Columbia (Heller II)*, 670 F.3d 1244 (2011) (Ginsburg, J., joined by Henderson, J., with Kavanaugh, J., dissenting). Applying the two-step framework then in use, the court of appeals asked whether, at the first step, the Law "impinges upon a right protected by the Second Amendment." *Id.* at 1252. The court observed that the Second Amendment does not encompass the right "to keep and carry any weapon whatsoever" but instead protects only "the 'sorts of weapons . . . in common use at the time for lawful purposes like self-defense.'" *Id.*

at 1248, 1260 (cleaned up) (quoting *Heller*, 554 U.S. at 624, 626, 627). Ultimately, the court assumed without deciding that the Law satisfied this inquiry because, while the record indicated that millions of LCMs were *possessed*, the court could not "be certain whether [LCMs] are commonly *used* or are *useful specifically for* self-defense." 670 F.3d at 1261 (emphases added). Then-Judge Kavanaugh agreed that the record was insufficient: "In order to apply *Heller*'s test . . . we must know whether magazines with more than 10 rounds have traditionally been banned *and* are not in common use." *Id.* at 1296 n.20 (Kavanaugh, J., dissenting) (emphasis added). Because additional "[e]vidence" would have been "helpful," he would have "remand[ed] to the District Court for analysis of that issue." *Id.*

The court of appeals then turned to the second step of the framework and—applying intermediate scrutiny—held that the Law was constitutional. *Id.* at 1262-64. In total, prior to *Bruen*, seven courts of appeals upheld similar large capacity magazine prohibitions. *See Or. Firearms Fed'n, Inc. v. Brown*, 644 F. Supp. 3d 782, 796 (D. Or. 2022) (collecting cases).

**B. Proceedings Below.**

1. After this Court decided *Bruen*, petitioners—four concealed-carry licensees—brought this challenge to the District's law. C.A. App. 10-11, 30 (Compl. ¶¶ 1-4, 59-60 (Second Amendment), 61 (Due Process Clause)).

Based solely on their Second Amendment claim, petitioners moved to preliminarily enjoin the Law "facially and/or as-applied to them." C.A. App. 48; *see*

C.A. App. 35-69. In support of this extraordinary request, they submitted no evidence and made only a few points in support of their likelihood of prevailing on the merits—and barely any argument on the other preliminary injunction factors. *See* C.A. App. 44-65; C.A. (Suppl.) App. 1076 (arguing that, given their likelihood of success, "the remaining preliminary injunction factors necessarily fall in their favor"). Only on the penultimate page of their brief in support of their motion did petitioners ask the court to enter a permanent injunction "unless the District can make an adequate showing of the need to develop a factual record." C.A. App. 67-68; *see* C.A. (Suppl.) App. 1109-10.

The district court allowed the District 90 days to respond, but that timetable, the District argued, did not provide for full discovery, making a consolidation with the merits both improper and prejudicial. C.A. App. 122-23. Petitioners' failure to submit any evidence until their reply brief further limited record development. App. 110a; C.A. App. 564-985.

2. After hearing argument, C.A. App. 986-1018, the district court denied petitioners' request for a preliminary injunction. C.A. App. 1019.

The district court reasoned that petitioners failed to show a likelihood of success under *Bruen* for two alternative, independent reasons. App. 111a. *First*, petitioners failed to show that "the Second Amendment's plain text covers" their possession of LCMs. App. 111a (quoting *Bruen*, 597 U.S. at 17). Although LCMs are "[A]rms," App. 112a-116a, they are not "typically possessed *for self-defense*" because people do not commonly use them for that purpose.

App. 127a (emphasis added) (paraphrasing *Heller*). Indeed, "the added benefit of [an LCM]—being able to fire more than ten bullets in rapid succession—has virtually never been realized" in defensive gun use. App. 126a (cleaned up); App. 122a-127a (citing cases, studies, and declarations showing that defenders fire, on average, only two shots). By contrast, LCMs have a demonstrated "'ability to reload rapidly,' 'hit multiple human targets very rapidly,' and 'deliver extraordinary firepower,'" even when attached to lawful handguns. App. 120a (quoting *Kolbe v. Hogan*, 849 F.3d 114, 137 (4th Cir. 2017) (en banc)). This enhanced firepower made LCMs "*most* useful in military service." App. 118a-119a (quoting *Heller*, 554 U.S. at 627), 122a.

*Second*, petitioners were unlikely to succeed on the merits because the District had demonstrated that its Law "is consistent with this country's historical tradition of firearm regulation." App. 128a (citing *Bruen*, 597 U.S. at 17). Among other things, the court highlighted numerous states' century-old restrictions on high-capacity weapons that could fire rapidly without reloading. App. 136a; *see* App. 136a-145a; *see also* App. 130a (discussing as persuasive authority a case that relied on 1800s restrictions on "Bowie knives, blunt weapons, slungshots, and trap guns" as analogues). In restricting "enhanced firing capacity" not used by "ordinary individuals" in self-defense, the laws imposed a comparably "light" burden on the right of armed self-defense, and were comparably justified in protecting the public against "the carnage of mass shootings." App. 138a-140a.

The court thus denied petitioners' motion for a preliminary injunction because they had little likelihood of succeeding on the merits. App. 111a n.3; *see* C.A. App. 1019. Petitioners promptly sought a stay of the district court proceedings pending their interlocutory appeal, arguing that "no Party will be harmed by a stay." C.A. App. 1063. Their requested stay has been in effect for almost two years. C.A. App. 7.

3. The court of appeals affirmed the district court's order in a divided per curiam opinion. App. 1a-99a (Millett and Ginsburg, JJ., with Walker, J., dissenting). The court held that petitioners had "failed to make the 'clear showing' required for [preliminary relief] on this early and undeveloped record." App. 5a (quoting *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008)).

At the outset, the court of appeals noted petitioners' concession that they "had not made the requisite showing for a facial challenge to the District's [law]" and that their as-applied challenge was limited to "handgun magazines holding between 12 and 17 rounds." App. 8a n.2; *cf.* Pet. 7. In addressing petitioners' likelihood of success on the merits, the court accordingly sought to determine only whether a law "allowing [petitioners] ten but not seventeen rounds likely violates [their] Second Amendment rights." App. 8a.

Quoting from this Court's instructions in *Bruen*, the court of appeals explained that it would first determine whether "the Second Amendment's plain text covers" these LCMs (*Bruen* step one), before turning to whether the prohibition is "consistent with

this Nation's historical tradition of firearm regulation" (*Bruen* step two). App. 8a (quoting *Bruen*, 597 U.S. at 17).

On the textual inquiry, the court agreed with the district court that LCMs were "very likely 'Arms,'" App. 10a, but diverged from the court's "common use" analysis. *Cf.* App. 9a n.3. The court began by rejecting the argument that common use can be found "solely by looking to the number of a certain weapon in private hands." App. 10a. The court then explained that "for present purposes" it would "presume" that petitioners would succeed in showing that 17-round LCMs were commonly used for self-defense given their "sufficiently wide circulation" and "the disputed facts in the record about [their] role in" defensive gun use. App. 12a.

The court of appeals also rejected the district court's corollary conclusion that LCMs were "outside the scope of the Second Amendment because they are most useful in military service." App. 11a. In *Heller*, the court explained, this Court had "contrasted weapons 'in common use at the time' of the Founding with 'dangerous and unusual weapons,' which are 'most useful in military service.'" App. 11a (quoting 554 U.S. at 627). This meant only that "[t]he latter type of weapon 'may be banned' not because of its military use but because of the 'historical tradition of prohibiting the carrying of dangerous and unusual weapons.'" *Id.*

Having determined that the Second Amendment's text covers LCMs, the court of appeals explained why that did not end the analysis: finding that "an arm is in common use" does not "render[] any restriction of

that arm unconstitutional." App. 12a-13a. Where "an arm is 'in common use for self-defense,'" the government can still justify its regulation as "consistent with this Nation's historical tradition of firearms regulation." App. 13a (quoting *Bruen*, 597 U.S. at 17).

The court next concluded that the District had "identified a relevant historical analogue." App. 19a. Quoting from *Bruen*, the court explained that "the appropriate level of generalization is one that aligns the regulation in question with the 'how' and 'why' of the historical analogue." App. 14a (quoting 597 U.S. at 30). In other words, the regulation need only "comport with the principles underlying the Second Amendment[;] . . . it need not be a dead ringer or a historical twin.'" App. 25a (quoting *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (cleaned up)); *see* App. 88a (Walker, J., dissenting) ("agree[ing] with the majority that the history-and-tradition test allows for historical analogues less specific than . . . bans on plus-ten magazines").

As applied to the law at issue here, this required that the District "identify an historical regulation that restricts possession of an arm . . . [in response to its use] to facilitate crime and, specifically, to perpetrate mass shootings." App. 15a. The District had fit that bill by relying on "historical restrictions on particularly dangerous weapons and on the related category of weapons particularly capable of unprecedented lethality." App. 19a; *see* App. 22a n.7. The restrictions on (among others) Bowie knives, pocket pistols, and sawed-off shotguns were sufficient "at this interlocutory juncture . . . to show" that the

District's law likely passed constitutional muster. App. 25a. Indeed, the court explained, while it might be of "dubious utility" to consider the District's law, which draws the line on "magazine capacity at 10 rounds rather than 17," to be a "ban" at all, "many of [the cited] examples [were] also outright bans on an entire class of weapons," thereby "impos[ing] a burden on the right to armed self-defense comparable to (if nor greater than) the burden imposed by the District's [law]." App. 25a & n.8.

The court accordingly held that "[o]n the present record," petitioners were "not sufficiently likely to succeed on the merits [so as] to warrant the entry of a preliminary injunction." App. 25a, 31a. But the court underscored that its conclusions could change in light of a "more developed record." App. 25a.

Next, "to determine whether [the court] should act *despite* [its] uncertainty on an undeveloped record and amid factual disputes," App. 32a, the court turned to the remaining preliminary injunction factors and found that petitioners had also failed to meet any of them. *See* App. 31a-41a. None were close calls. Specifically, petitioners had failed to "offer any factual showing of irreparable harm to [their] self-defense interest" from "having the ability to fire 11, but not 18, rounds without pausing" while the litigation continued. App. 34a. Nor had they "evidenced [any] urgency in obtaining [preliminary] relief." App. 36a. The balance of equities also tipped decisively against petitioners given both the difficulty of unwinding an influx of LCMs into the District and the District's "homeland security issues . . . as the seat of the federal government and the location of

countless sensitive governmental institutions and protected personnel." App. 38a.

The court underlined that Judge Walker in dissent nowhere disputed this analysis. App. 32a. He would have directed only the entry of a *permanent* injunction as to LCMs of 17 rounds or fewer because he found "inevitable" the conclusion, App. 99a n.233 (quoting *Wrenn v. District of Columbia*, 864 F.3d 650, 667 (D.C. Cir. 2017)), that such "[m]agazines . . . are arms in common use for lawful purposes" and "[t]herefore, the government cannot ban them," App. 48a.

The court responded, however, that this was not a case where "the merits of the plaintiffs' challenge are certain and don't turn on disputed facts." App. 32a (quoting *Wrenn*, 864 F.3d at 667). No one—not the dissenter and not petitioners—had ever argued that "the Second Amendment prohibits *any* cap on magazine capacity." App. 32a (emphasis added). And "[n]o precedent dictates with certainty that, in confronting the unprecedented criminal and lethal misuse [LCMs] have allowed, the District erred in capping magazine capacity at 10 rather than 17." App. 32a. Given the "undeveloped record" and ongoing "factual disputes," entry of a permanent injunction at this preliminary stage and "before trial" was thus improper. App. 32a.

## REASONS FOR DENYING THE PETITION

### I. There Is No Division Of Authority For This Court To Resolve.

This Court typically grants certiorari to resolve conflicts between appellate courts of last resort. *See* S. Ct. R. 10. A "genuine conflict" meriting this Court's

review exists when "two courts have decided the same legal issue in opposite ways, based on their holdings in different cases with very similar facts." Stephen M. Shapiro et al., *Supreme Court Practice* § 4.3, at 4-11 (11th ed. 2019). Petitioners do not even try to establish—because they cannot—any conflict between the decision below and decisions of other federal courts of appeals on the constitutionality of LCM laws. And their potpourri of other supposed splits fails to justify a grant of certiorari. That alone is reason to deny the petition.

### A. There is no circuit split on the constitutionality of LCM laws.

The D.C. Circuit's refusal to preliminarily enjoin the District's law on an underdeveloped record is in accord with every other federal court of appeals to have considered the LCM issue since *Bruen*. To date, the First, Third, and Seventh Circuits have declined to preliminarily enjoin state laws proscribing the possession of LCMs. *See Ocean State Tactical, LLC, et al. v. Rhode Island*, 95 F.4th 38, 52, 54 (1st Cir. 2024) (finding a lack of likely success on the merits), *petition for cert. filed* (U.S. Aug. 2, 2024); *Capen v. Campbell*, --- F.4th ----, 2025 WL 1135269, at *12-13 (1st Cir. Apr. 17, 2025) (same); *Bevis v. City of Naperville, Illinois*, 85 F.4th 1175, 1197 (7th Cir. 2023) (same), *cert. denied sub nom. Harrel v. Raoul*, 144 S. Ct. 2491 (2024); *Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 197 (3d Cir. 2024) (finding challengers failed to meet the other preliminary injunction factors and underscoring that "[a] preliminary injunction is not a

shortcut to the merits"), *cert. denied sub nom. Gray v. Jennings*, No. 24-309 (U.S. Jan. 13, 2025).

No federal court of appeals has reached a different conclusion. To the contrary, the Ninth Circuit, sitting en banc, recently reversed the entry of a permanent injunction and affirmed the constitutionality of California's LCM law. *See Duncan v. Bonta*, 133 F.4th 852 (9th Cir. 2025). In that decision, which was resolved on summary judgment, the court emphasized the same basic point reached in a preliminary posture by its sister circuits: restrictions on LCMs pass constitutional muster under the principles this Court articulated in *Heller*, *Bruen*, and *Rahimi*. *See, e.g.*, *id.* at 859-61; *see Bianchi v. Brown*, 111 F.4th 438, 473 (4th Cir. 2024) (en banc) (upholding Maryland's assault weapons law, which also restricts LCMs), *petition for cert. filed sub nom. Snope v. Brown*, No. 24-203 (U.S. Aug. 21, 2024).

With judgments issued by courts across the country in alignment, there is no division of authority for this Court to resolve, and certainly no reason to attempt to resolve it through an interlocutory case like this one. Instead, consistent with its ordinary practice, the Court should continue to let the constitutionality of LCM laws percolate in the lower courts. *See Spears v. United States*, 555 U.S. 261, 270 (2009) (Roberts, C.J., dissenting) ("We should not rush to answer a novel question" that "could benefit from further attention in the court of appeals").

### B. The "splits" petitioners identify are not presented, illusory, or both.

Desperate to find a division of authority on *something*, petitioners claim that the decision below

"deepens no fewer than four circuit splits." Pet. 20. Hardly. Several of these supposed "splits" are not fairly presented, others are mischaracterized, and all are at best divergences in the *reasoning* employed by lower courts, not the judgments rendered. But this Court, like all appellate courts, reviews "judgments of the lower courts, not statements in their opinions." *Amgen Inc. v. Sanofi*, 598 U.S. 594, 615 (2023). Thus, any "splits" in reasoning cannot justify the exercise of this Court's discretionary review.

1. Petitioners first note that there is "no consensus" as to whether the "common-use inquiry belongs at *Bruen* step one, or *Bruen* step two." Pet. 20-21; *see* Nat'l Rifle Assoc. Amicus Br. 10-11 (similar). By petitioners' telling, there is a clear "divergence" between the D.C. and Fifth Circuits on one hand, which consider common use at step one, and the Seventh and Ninth Circuits on the other, which "apply it at step two." Pet. 20-21. Not quite.

To start, the D.C. Circuit did not decide this issue. It just assumed that the common-use inquiry belonged at *Bruen* step one, App. 9a n.3, making this a peculiar case to resolve any purported split.

Next, and in any event, the D.C. Circuit's assumption that the common-use inquiry belongs at step one comports with decisions of the Second, Fourth, Fifth, Eighth, Ninth, and Tenth Circuits.[1]

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[1] *See, e.g.*, *Antonyuk v. James*, 120 F.4th 941, 981 (2d Cir. 2024); *Bianchi*, 111 F.4th at 453; *United States v. Price*, 111 F.4th 392, 402 (4th Cir. 2024) (en banc); *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 588

Petitioners suggest that the Ninth Circuit instead places the inquiry at step two. *See* Pet. 21 & n.13. But the decision they rely upon—*Teter v. Lopez*, 76 F.4th 938 (9th Cir. 2023)—was vacated and remanded by the en banc court, 125 F.4th 1301 (9th Cir. 2025). And the Ninth Circuit recently underscored (again en banc) that its decision in *United States v. Alaniz*, 69 F.4th 1124 (9th Cir. 2023), which placed the inquiry at step one, "remains good law." *Duncan*, 133 F.4th at 866 n.2. Indeed, only out of an "abundance of caution" did the *Duncan* court consider arguments about "ownership statistics" at step two. *Id.*

As to the Seventh Circuit, that court has only "assume[d]" that common use is a "step two inquiry." *Bevis*, 85 F.4th at 1198; *see United States v. Rush*, 130 F.4th 633, 644 n.10 (7th Cir. 2025) (same). The First Circuit too has considered common-use statistics at step two without foreclosing their consideration at step one. *See Ocean State Tactical*, 95 F.4th at 43, 45; *Capen*, 2025 WL 1135269, at *6, 7 (same).

At most then, no clear division on this issue has crystallized. And to the extent different practices exist, they have thus far led to uniform judgments that LCM laws are constitutional.

2. Petitioners next ask this Court to provide "guidance" on the appropriate "degree of generality" for historical analogues at *Bruen*'s second step. Pet.

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(5th Cir. 2025); *United States v. Rahimi*, 61 F.4th 443, 454 (5th Cir. 2023), *rev'd* 602 U.S. 680 (2024); *United States v. Veasley*, 98 F.4th 906, 910 (8th Cir. 2024); *Duncan*, 133 F.4th at 866 n.2; *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 114 (10th Cir. 2024).

21-22. That is an odd request given that, as detailed below, *infra* at p. 29, the basis of their petition is that *any* application of *Bruen*'s second step is error. Pet. 15-20; States Amicus Br. 8 (same).

Even overlooking this logical flaw, there is no split warranting review. Petitioners suggest that the Seventh Circuit's approach "exemplifies a regulatory blank check" while the approach of one district court in California "exemplifies a regulatory straightjacket." Pet. 22 (citing *Bevis*, 85 F.4th at 1200 and *Duncan v. Bonta*, 695 F. Supp. 3d 1206, 1214 (S.D. Cal. 2023)) (cleaned up). But the California district court decision has already been reversed by the Ninth Circuit. *See Duncan*, 133 F.4th at 872-84. And even if it had not been, this Court "will not grant certiorari to review a decision of a federal court of appeals merely because it is in direct conflict on a point of federal law with a decision rendered by a district court." Shapiro et al., *Supreme Court Practice* § 4.8, at 4-27.

3. Petitioners also ask this Court to answer writ large: "What is an 'Arm' for purposes of the Second Amendment." Pet. 22. But this Court is not in the business of proffering advice untethered from the facts of the case, let alone reviewing issues resolved in petitioners' *favor*. Here, petitioners acknowledge that the court of appeals "got this [analysis] right" when it concluded that LCMs "likely" are "Arms." Pet. 23; App. 9a-10a. This Court need go no further.

In any event, petitioners exaggerate the "split" they have identified as it relates to LCMs. To be sure, the Seventh and Ninth Circuits have held that LCMs are not "Arms." Pet. 23; *see Bevis*, 85 F.4th at 1195

("the answer is no"); *Duncan*, 133 F.4th at 865-69 (same). But the court below held only that LCMs "very likely are 'Arms'"; it did not definitively decide the issue. App. 10a. And the First Circuit, too, has only assumed, but not decided, that LCMs are "Arms." *See Ocean State Tactical*, 95 F.4th at 43; *Capen*, 2025 WL 1135269, at *12-13; Pet. 23 (acknowledging as much). A purported split where the only two courts to have actually decided the issue *agree* is not worthy of review. Indeed, it is not a split at all.

4. Finally, petitioners ask this Court to clarify whether weapons that are most useful for military service may nonetheless receive Second Amendment protection. But, again, petitioners concede that the court below "answered this question correctly." Pet. 24. Further review of that question—by this Court, in this case—is thus unwarranted.

Moreover, petitioners' purported split on the question is overblown. The First and Fourth Circuits both recognized the uncontroversial proposition—faithful to *Heller*—that unusually dangerous weapons "no more useful for self-defense[] than a normal handgun" can be regulated "without infringing upon the right to bear arms." *Ocean State Tactical*, 95 F.4th at 48; *see Capen*, 2025 WL 1135269, at *9; *Bianchi*, 111 F.4th at 450 (explaining that "excessively dangerous arms" are "better suited for offensive criminal or military purposes"). To the extent there is any difference with the D.C. Circuit's analysis, or with the Seventh Circuit's, this Court already denied review of this issue in a case where it was *actually* presented. *See Bevis*, 85 F.4th 1175, *cert. denied sub nom. Harrel,* 144 S. Ct. 2491 (2024). The

Court should likewise deny review here—resolution of the issue can, and should, "await a day when the issue is posed less abstractly." *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959).

## II. This Case Is A Poor Vehicle For Review.

This case is also a poor vehicle for review of the question presented, for two separate reasons. *First*, this is an interlocutory appeal. Faced with an "undeveloped" record that contains "factual disputes," App. 32a, the court of appeals made only preliminary holdings subject to change. *See, e.g.*, App. 5a, 25a. Review at this early procedural juncture is thus premature. *Second*, petitioners' failure to meet the remaining factors of the preliminary injunction inquiry provides independent and alternative grounds on which to affirm the denial of preliminary injunctive relief. Either reason suffices to make this case a poor vehicle.

### A. Review of this interlocutory appeal is premature given the undeveloped record.

This Court does not generally grant certiorari to review interlocutory appeals. *See Abbott v. Veasey*, 580 U.S. 1104, 1105 (2017) (Roberts, C.J., statement respecting denial of certiorari) (noting that even when "there is no barrier to [this Court's] review," the "issues will be better suited for certiorari review" "after entry of final judgment"). "Prudence . . . dictates awaiting a case in which the issue was fully litigated below, so that [this Court] will have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question." *Yee v. City of Escondido*, 503 U.S. 519, 538 (1992); *see Hidalgo v. Arizona*, 583 U.S. 1196,

1201 (2018) (Breyer, J., concurring) (similar). There is no reason to depart from that practice here, particularly where other courts have reached final determinations on complete records.

1. This case is a quintessential example of why this Court disfavors interlocutory review. After petitioners moved for a preliminary injunction, the district court granted the District 90 days for limited discovery, which the District argued did not allow for the "time-intensive historical research" necessary to defend against petitioners' request for a permanent injunction. C.A. App. 80, 122-23. Record development was further stymied by petitioners' failure to submit *any* evidence in support of their arguments until their reply brief, *see* 110a; C.A. App. 33-73, 564-985, which, in turn, forestalled proper ventilation of the issues. It thus stretches credulity to suggest, as petitioners have, that the parties "tarried" over the "historical record" or that allowing this case to proceed to trial would "accomplish absolutely nothing." Pet. 32-33.

The D.C. Circuit saw the record before it for what it was: "preliminary," "abbreviated," "early," and "undeveloped." App. 5a, 14a, 18a, 32a. Indeed, the D.C. Circuit reiterated no fewer than eight times that its preliminary holdings were tied to the limited record before it. *See* App. 9a ("[o]n the current record"); App. 12a ("it appears on this record"); App. 14a ("on this preliminary record"); App. 18a ("on the abbreviated record before us"); App. 19a ("on the limited record before us"); App. 22a n.7 (same); App. 25a ("on the present record"); App. 32a ("on the record before us").

The court accordingly made a series of assumptions only "for present purposes" because of its "uncertainty on an undeveloped record and amid factual disputes." App. 12a, 32a. For example, the court explained that "for present purposes" it would "presume" that petitioners would succeed in showing that 17-round LCMs were commonly used for self-defense. App. 12a. But it noted "the disputed facts in the record about [LCMs'] role" in defensive gun use. App. 12a. Conversely, although the court found that the District had carried its burden at *Bruen* step two of identifying a "relevantly similar" tradition of firearms regulation, the court took care to note that further "evidence disputing the linkage between" LCMs "and mass shootings" could "render inapposite the tradition of banning weapons capable of unprecedented lethality." App. 25a-26a.

This case is thus very similar to *Harrel v. Raoul*, 144 S. Ct. 2491 (2024), where this Court denied several similar petitions for certiorari of interlocutory orders, and where the parties then engaged in additional discovery on remand as the cases proceeded towards trial. In *Barnett v. Raoul*, No. 23-cv-209 (S.D. Ill. Nov. 8, 2024), *appeal docketed*, No. 24-3060 (7th Cir. Nov. 12, 2024), for example, the parties not only disclosed 26 expert witnesses, but also took 12 depositions and had multiple witnesses testify during a bench trial. *See* Joint Mot. to Stay Litigation at 4, *Nat'l Ass'n for Gun Rts. v. City of Naperville*, No. 22-cv-4775, (N.D. Ill. Apr. 1, 2025), ECF 110 (detailing the evidence presented in *Barnett*). That is a far cry from any production or testing of evidence that has occurred here. And the development and distillation of the evidence through

the "crucible of adversarial testing" will "yield insights (or reveal pitfalls)" that this Court may find useful before applying *Bruen* and its progeny to LCM laws. *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment).

Although petitioners labor mightily to create a sense of urgency that the Court must grant *this* petition, *see* Pet. 26-29, there are many cases in courts across the country where the issues raised in the petition will soon be teed up for this Court's review on a proper trial or summary judgment record. *See, e.g.*, *Duncan*, 133 F.4th 852 (decision issued on summary judgment record); *Viramontes v. County of Cook*, No. 24-1437 (7th Cir. argued Nov. 12, 2024) (appeal from cross-motions for summary judgment); *Washington v. Gator's Custom Guns, Inc., et al.*, No. 102940-3 (Wash. argued Jan. 14, 2025) (appeal from cross-motions for summary judgment); *Barnett v. Raoul*, No. 24-3060 (7th Cir. filed Nov. 12, 2024) (appeal of permanent injunction following a bench trial, briefing to conclude June 2025); *Fitz v. Rosenblum*, No. 23-35478 (9th Cir. filed July 17, 2023) (appeal from trial, stayed pending *Duncan*); *Or. Firearms Fed'n v. Brown*, No. 23-35540 (9th Cir. filed Aug. 15, 2023) (appeal from trial, stayed pending *Duncan*); *Rupp v. Bonta*, No. 24-2583 (9th Cir. filed Apr. 24, 2024) (appeal from cross-motions for summary judgment, stayed pending *Duncan*). In short, if this Court wishes to review the constitutionality of LCM laws, it should await a clean vehicle following a final judgment before weighing in.

2. Petitioners cannot wish away this appeal's interlocutory posture by pointing out that they have

also—cursorily and unsuccessfully—invited the courts below to issue a *permanent* injunction instead. *See* Pet. 29-33. Petitioners made only a passing request for a permanent injunction below. C.A. App. 67-68; C.A. (Suppl.) App. 1109-10. And, in any event, as petitioners correctly acknowledge, the court of appeals issued a single judgment: it "held only that the district court's order denying a preliminary injunction was . . . due to be affirmed." Pet. 30-31. That affirmance is what petitioners are asking this Court to review.

Although this Court sometimes grants review of cases in an interlocutory posture if they pose purely legal questions, Pet. 31-32, that is not the case here, as the court of appeals explained. "No precedent dictates with certainty that, in confronting the unprecedented criminal and lethal misuse [LCMs] have allowed, the District erred in capping magazines at 10 rather than 17." App. 32a. And the record contains "disputed facts" "about the role of [LCMs] for self-defense" that should be resolved before permanently deciding this case. App. 12a. Indeed, even petitioners have previously admitted that a "need to develop a factual record" would foreclose their request for a permanent injunction, C.A. App. 67, and that need refutes petitioners' claim that "this case presents a clean vehicle for a grant of certiorari," Pet. 30.

### B. There are alternative and independent grounds for affirmance.

The judgment below is supported by two alternative and independent grounds for affirmance. These grounds were left unaddressed by Judge

Walker below, App. 32a, and petitioners either fail to mention or make no serious attempt to address them in this Court. Despite petitioners' suggestion to the contrary, they pose a serious "vehicle problem." Pet. 32. A grant of certiorari is unwarranted where the answer to the question presented would not change the result. *See, e.g.*, *Warner Chappell Music, Inc. v. Nealy*, 601 U.S. 366, 376 (2024) (Gorsuch, J., dissenting) ("Better . . . to answer a question that does matter than one that almost certainly does not."); *Montana v. Imlay*, 506 U.S. 5, 6 (1992) (Stevens, J., concurring in dismissal of case as improvidently granted) (similar).

*First*, the judgment below is independently supported by petitioners' failure to show a "favorable balancing of equities and interests" warranting "the exceptional relief of a status[-]quo-altering injunction." App. 41a. That is an independent basis to deny a preliminary injunction. *See Winter*, 555 U.S. at 23, 26, 32 (underscoring that an inadequate showing on the balance of the equities and public interest "require[d] denial of the requested injunctive relief" even assuming irreparable injury and without "address[ing] the merits"); *Benisek v. Lamone*, 585 U.S. 155, 158-61 (2018) (similar).

Below, the District made an "unrebutted showing" that it would "experience an influx" of LCMs if the Law were enjoined, that those LCMs could be put to "extraordinarily lethal" criminal uses, and that "suspending its law could drastically compromise the District's ability to enforce its magazine cap far into the future." App. 37a-40a. The District also has a

"particular and unique interest in reducing lethality" as the "seat of the federal government." App. 38a.

*Second*, the judgment is independently supported by petitioners' failure to make the required "clear showing" of irreparable harm. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024). As the court of appeals emphasized, without objection from Judge Walker, petitioners have made *no* "factual showing of irreparable harm" to their asserted interest in self-defense from "having the ability to fire 11, but not 18, rounds without pausing" to reload. App. 34a. At most, they suggest that in some "rare" and "unusual" instances, more than ten rounds may be needed for self-defense. App. 35a. But this sort of speculative harm does not suffice. *See Nken v. Holder*, 556 U.S. 418, 434 (2009); *Murthy v. Missouri*, 144 S. Ct. 7, 8-9 (2023) (Alito, J., dissenting from grant of stay application) (collecting additional authorities). Nor have petitioners argued that "*any* restriction on magazine capacity would inflict irreparable harm." App. 36a. Instead, they take issue only with where the District has drawn the line. App. 36a. That generalized critique of "close line-drawing" does not "bespeak irreparable harm." App. 36a. On top of that, petitioners "evidenced no urgency in obtaining relief." App. 36a. Petitioners sought a stay of the trial proceedings pending resolution of their appeal—and that stay has now been in effect for almost two years. C.A. App. 7; C.A. App. 1063.

Petitioners' response is telling. They candidly acknowledge that the failure to show irreparable harm *would* be a "procedural impediment" and a "vehicle problem." Pet. 29, 32. But they claim that

their argument that a purported infringement of their Second Amendment rights constitutes per se injury solves that problem. Pet. 32. It does not. For one thing, whether petitioners have suffered a per se injury is not the question presented in the petition, and this Court recently denied review of precisely that issue in *Delaware State Sportsmen's Ass'n*, 108 F.4th 194, *cert. denied sub nom. Gray v. Jennings*, No. 24-309 (U.S. Jan. 13, 2025). Regardless, "[p]resuming irreparable harm is the exception, not the rule." *Del. State Sportsmen's Ass'n*, 108 F.4th at 203. In each of the cases petitioners cite, *see* Pet. 32, application of that narrow exception was justified by unique First Amendment concerns, which are not implicated here.

Moreover, even if some irreparable harm could be detected, that may still be "insufficient on its own to warrant a preliminary injunction," App. 32a, because "[t]he award of an interlocutory injunction . . . has never been regarded as strictly a matter of right, even though irreparable injury may otherwise result to the plaintiff." App. 32a-33a (quoting *Yakus v. United States*, 321 U.S. 414, 440 (1944)); *see Winter*, 555 U.S. at 23 (vacating injunctive relief even assuming irreparable injury to plaintiffs). While the purpose of an injunction is "merely to preserve the relative positions of the parties until a trial on the merits," *Starbucks Corp.*, 602 U.S. at 346, imposing an injunction here would "alter a 15-year status quo," App. 32a. The D.C. Circuit's decision to avoid that outcome further supports the judgment below.

## III. The Decision Below Is Correct.

Petitioners' arguments, in the main, amount to a request for error correction. But this Court rarely

grants certiorari simply to consider whether a lower court was wrong. And here, the panel majority was *right* that a status-quo-altering injunction was unwarranted "on this early and undeveloped record." App. 5a. The D.C. Circuit's decision is persuasive and well-supported. Yet Petitioners take little interest in what the court actually decided, failing even to argue that anything this Court would do would entitle them to a *preliminary* injunction. To the extent they address that question, their contrary arguments lack merit.

1. On the merits, after presuming that LCMs were arms in common use, the court of appeals determined that the District's law is likely constitutional under *Bruen* because it is consistent with this Nation's historical tradition of firearms regulation. Specifically, the Law is supported by analogous "restrictions on particularly dangerous weapons and on the related category of weapons particularly capable of unprecedented lethality." App. 19a; App. 22a n.7. That was a faithful application of *Bruen*. The court emphasized that a proper analogue was "an historical regulation that restricts possession of an arm based on a justification similar to that for [the District's law], namely, to respond to" the arm's use "to facilitate crime and, specifically, to perpetrate mass shootings." App. 15a. The court underscored that its analysis did not turn on "Bowie knives specifically"—instead, its analysis also reached pocket pistols and sawed-off shotguns. App. 22a-26a. But Bowie knives elegantly illustrate the relevant tradition because the diverse array of historical prohibitions, including those that banned their carry, *see* App. 20a; C.A. App. 292-93, 306-09, 346-442, were

enacted at a time when Bowie knives were commonly possessed. C.A. App. 287, 289-93; *contra* Nat'l Rifle Assoc. Amicus Br. 3 (asserting there is "no evidence" that Bowie knives were in common use" when they were regulated). And courts at the time affirmed the constitutionality of these laws. App. 20a-21a.

2. Petitioners barely address this analysis. Instead, their sole response is to insist that this Court must grant certiorari because, in their view, under *Heller*, "the Second Amendment does not allow categorical bans of arms commonly possessed for lawful purposes." Pet. 19-20. Elsewhere petitioners go even further, suggesting that "*whatever* the reason" arms become commonly possessed, "a complete prohibition of their use . . . [is] invalid." Pet. 15 (cleaned up) (emphasis added); *see* Nat'l Rifle Assoc. Amicus Br. 2-4 (arguing the Second Amendment creates a "right . . . to possess common arms"). According to petitioners, *Heller* already "conducted the analysis necessary to determine whether there exists . . . a history and tradition of categorically banning *any* arms that are commonly used for lawful purposes." Pet. 19; States Amicus Br. 7 (similar). Therefore, when courts face a "ban" on a commonly possessed weapon, they should ignore whether there are "relevantly similar historical firearms regulation[s] that . . . justif[y] the restriction." Pet. 18 (internal quotation marks omitted) (paraphrasing *Bruen*).

This argument fails on multiple fronts. At the outset, the factual predicates of this argument simply do not exist in this case. That is because "the only merits question [petitioners presented] on th[eir]

preliminary motion" is a *regulatory* one: "whether the District erred in capping magazine capacity at 10 rounds rather than 17." App. 25a n.8. "Treating" this "line-drawing regulation" like a "categorical ban," especially when petitioners "do not even dispute that a line *can* constitutionally be drawn at some" number of rounds, App. 25a n.8 (emphasis added), is thus inapt. Beyond that, it is a serious problem for petitioners that the court below *did not find* that LCMs are in common use for self-defense or other lawful purposes. It simply found them to be common and presumed the rest. If this Court were to consider the inflexible rule petitioners propose, it should at least do so in a case where the factual predicates are clearly met.

What is more, even if the Law were viewed as a "categorical ban," petitioners nowhere explain how the distinction between "bans" and "regulations" allows them to disregard the second step of *Bruen* and *Rahimi*, *see* Pet. 17. After all, "[o]ne could . . . easily reframe the law at issue in *Rahimi*—which 'prohibit[ed]' individuals shown to be a credible threat to the physical safety of an intimate partner from possessing a firearm—as an outright ban on the possession of firearms by this class of individuals." App. 25a n.8. By petitioners' telling, that would be the end of the analysis, and this Court would have struck down 18 U.S.C. § 922(g)(8). But that is not what the Court did. *See Rahimi*, 602 U.S. at 690-701 (reviewing historical evidence and concluding the challenged law fit within a historical tradition of firearms regulation).

At base, it is petitioners' purported rule for "categorical bans," and not the decision below, that is out of step with this Court's case law. *Bruen*—relying on *Heller*—sets forth the universal "standard for applying the Second Amendment": "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. Petitioners cannot simply ignore the second half of *Bruen*'s framework for anything they determine to be a "categorical ban."

Nor can petitioners claim some kind of conflict with this Court's precedents by replacing the references in *Bruen* and *Heller* to firearms "in common use" with their preferred formulation—firearms "in common possession." *E.g.*, Pet. 19, 20. As the court below recognized—in concert with other courts of appeals to consider the issue—"common use" must mean something more than a weapon's mere numerosity. App. 10a-11a; *see Duncan*, 133 F.4th at 882-83; *Ocean State Tactical*, 95 F.4th at 50-51; *Bianchi*, 111 F.4th at 460-61; *Bevis*, 85 F.4th at 1198-99.

Indeed, that recognition follows a fortiori from *Heller*—which petitioners hold out as the "alpha and omega of this case." Pet. 10. In determining that handguns were the "quintessential self-defense weapon," *Heller* examined the handgun's distinguishing functionality. 554 U.S. at 629. It catalogued the practical "*reasons* that a citizen may

prefer [one] for home defense"—including that they are easier to access in an emergency, are easier to lift and aim than a long gun, and can be used with a single hand "while the other hand dials the police." *Id.* (emphasis added). *Heller* emphasized that handguns are, in fact, "the most preferred firearm in the nation to 'keep' *and use* for protection of one's home and family." *Heller*, 554 U.S. at 628-29 (emphasis added) (quoting *Parker v. District of Columbia*, 478 F.3d 370, 400 (D.C. Cir. 2007)). That quoted passage, in turn, cited a study that concluded, among other things, that almost 80% of all defensive gun uses involved handguns. *See* Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence & Nature of Self-Defense with a Gun*, 86 J. Crim. L. & Criminology 150, 175, 182-83, 185-86 (1995). Thus, *Heller*'s "common use" analysis focused on a weapon's objective and actual uses—not simply its popularity. And *Bruen* therefore, unsurprisingly, directed that to "be within the ambit of the Second Amendment," the weapon must be "in common use today for self-defense." *Bianchi*, 111 F.4th at 460 (quoting *Bruen*, 597 U.S. at 32).

Petitioners' logic, by contrast "totally detaches the Second Amendment's right to keep and bear arms from its purpose of individual self-defense." *Bianchi*, 111 F.4th at 460. If Second Amendment protection actually turned solely on numerosity, it is unclear how this Court could have determined that stun guns (which number approximately 200,000 in the United States) are protected by the Second Amendment, while machineguns (which number more than 700,000) can be banned. App. 10a-11a. Indeed, in other cases, challengers touting this theory have said

the quiet part out loud: "the government could not prohibit possession of a 'machine gun,' a 'bazooka,' or 'any firearm'" that was sufficiently numerous. *Bianchi*, 111 F.4th at 460 (quoting Oral Argument at 14:00-14:58, *Bianchi*, No. 21-1255 (4th Cir. 2024), tinyurl.com/nu6x5r7e). Gun manufacturers and retailers would only need to quickly flood the market with a product before regulations could be enacted, and their products would be immune from regulation for all time. That is indefensible. It would gut the "ability of representative democracy to respond" to emerging societal crises caused by new technologies. *Id.* at 472. This Court's case law nowhere requires such an absurd and unprincipled outcome.

3. In any event, as explained above, the court of appeals' denial of preliminary relief is independently justified by petitioners' failure to demonstrate the remaining preliminary injunction factors. Petitioners failed to "offer any factual showing of irreparable harm to [their] self-defense interest" from merely being able to fire 11 bullets without stopping to reload, rather than 18 bullets. App. 34a. Indeed, petitioners' "own evidence" indicated that "'the average amount of rounds fired in self-defense is usually less than 10' and 'generally only two or three.'" App. 35a-36a (quoting C.A. App. 721). There was thus no basis to award petitioners "the same relief" they could "obtain at the end of trial before that trial even starts." App. 32a. And, as petitioners nowhere challenge in this Court, they also failed to show how the balance of the equities and public interest weighed in their favor. A preliminary injunction in this case would alter—not maintain—the status quo, allowing a potential flood of LCMs into

the District that would be nearly impossible to unwind if the District ultimately prevails on the merits. For that reason, too, the court of appeals' decision was correct.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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