

No. 25-1190

In The
Supreme Court of the United States

PATRICK TATE ADAMIAK,
Petitioner,

v.

UNITED STATES,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

**BRIEF *AMICI CURIAE* OF THE NATIONAL ASSOCIATION
FOR GUN RIGHTS; THE RIGHT TO BEAR ASSOCIATION,
LLC; AND PALMETTO STATE ARMORY, LLC IN SUPPORT
OF PETITIONER**

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INTEREST OF *AMICI CURIAE*

The National Association for Gun Rights (“NAGR”) is a nonprofit organization dedicated to defending the right to keep and bear arms guaranteed by the Second Amendment.¹ NAGR has appeared as a party and as *amicus curiae* in numerous Second Amendment cases before this Court and the lower courts, including *NAGR v. Lamont*, No. 25-421 (cert. pending); *Snope v. Brown*, 145 S. Ct. 1534 (2025); and *United States v. Rahimi*, 602 U.S. 680 (2024).

The Right to Bear Association is one of the fastest-growing self-defense membership associations in the country, providing access to legal protection, education, training, and a nationwide attorney network to law-abiding gun owners before and after lawful self-defense incidents. Its members include private citizens, families, law enforcement officers, former military servicemembers, and houses-of-worship safety teams, all of whom rely on the right to keep and bear arms protected by the Second Amendment.

Palmetto State Armory is one of the Nation’s largest manufacturers and retailers of firearms and firearm components. Its mission is to make affordable, high-quality firearms available to law-abiding Americans, and it has long stood with its customers in defense of the Second Amendment. Palmetto State Armory has appeared as an *amicus curiae* in numerous

¹No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made a monetary contribution intended to fund the brief’s preparation or submission. Counsel of record for the parties received timely notice of *amici*’s intent to file.

Second Amendment cases, including *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025), and *Bondi v. VanDerStok*, 604 U.S. 458 (2025).

Amici's interest here is institutional and acute. The Fourth Circuit disposed of Petitioner's as-applied Second Amendment claim in a single sentence, on the strength of two of its own recent decisions, without addressing the conduct charged or requiring the Government to identify any historical analogue for criminalizing it. App. 7a. That mode of disposition implicates the central methodological commitments this Court has articulated in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). It also strikes directly at *amici*'s members, customers, and constituents, many of whom lawfully buy, sell, collect, display, and possess inoperable military-pattern relics and demilled surplus, and who now face the prospect of two-decade prison sentences for doing so.

SUMMARY OF ARGUMENT

Petitioner was sentenced to twenty years in federal prison for possession of items the Government's own witnesses acknowledged could not fire a projectile. The PPSH-pattern remnants charged in Counts One and Two had been cut into pieces and required welding to function. App. 173a–175a, 180a. The grenade-launcher components in Counts Three and Four had been separated and stored apart, and the Government conceded that the receivers were lawfully purchased through a federal firearms licensee and had

multiple lawful uses. App. 183a, 185a. The two RPG-7-pattern launchers in Count Five were accurately stamped “INERT” and “TRAINING AID DUMMY,” lacked any firing mechanism, and bore a drilled hole through the tube. App. 194a–195a, 200a–206a.

The Fourth Circuit nonetheless affirmed in a single sentence, declaring the Second Amendment claim “squarely foreclosed” by circuit precedent. App. 7a. Three considerations counsel review of this determination.

First, the mode of disposition employed below—citation-only foreclosure of an as-applied Second Amendment claim, without examination of the conduct charged, and without any demand that the Government carry its historical burden—is incompatible with the methodology this Court has prescribed. This Court has held that “the constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” *Bruen*, 597 U.S. at 70 (quoting *McDonald*, 561 U.S. at 780). A right that can be dispatched by a single-sentence reference has been made second-class in all but name.

Second, the “dangerous and unusual” exception on which the decision below necessarily depends is conjunctive, not disjunctive. *Heller*, 554 U.S. at 627; *Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring) (“A weapon may not be banned unless it is *both* dangerous *and* unusual.” (emphasis in original)). An item that cannot fire a projectile is not “dangerous.” An item sold openly in a robust commercial market—to collectors, museums, veterans, and

historical societies—is not “unusual.” The items prosecuted here cannot satisfy either prong, much less both.

Third, the Nation’s historical tradition does not merely fail to support the prosecution below. Rather, it affirmatively recognizes civilian possession of military-pattern arms, surplus, and relics as both ordinary and lawful. From the Founding generation’s private artillery companies and privateers, through the post-Civil War commercial surplus market, through the federal Civilian Marksmanship Program established in 1905, through the National Firearms Act’s *own* surplus carve-out at 26 U.S.C. § 5845(f), the historical record is consistent. The court below excused the Government from confronting that record. This Court should not.

ARGUMENT

I. THE FOURTH CIRCUIT’S TERSE DISPOSITION OF AN AS-APPLIED SECOND AMENDMENT CLAIM CANNOT BE RECONCILED WITH THIS COURT’S METHODOLOGY

The Court of Appeals devoted exactly one sentence to Petitioner’s as-applied Second Amendment claim. App. 7a. It made no findings concerning the conduct charged. It identified no historical regulation comparable in burden or justification to the prosecution it sustained. It held simply that the claim was “squarely foreclosed by this court’s holdings in *Bianchi v. Brown*, 111 F.4th 438, 453 (4th Cir. 2024) and *United States v. Hunt*, 123 F.4th 697, 704 (4th Cir. 2024).” *Id.* That treatment of Petitioner’s challenge cuts squarely against the well-established framework for evaluating a defendant’s as-applied claim.

A. This Court has repeatedly held that the Second Amendment is not subject to a body of rules different from the other guarantees of the Bill of Rights

The principle that the Second Amendment occupies the same constitutional plane as other guarantees found within the Bill of Rights is central to the methodology this Court has developed across three foundational decisions.

In *Heller*, the Court determined that the Second Amendment’s scope must be evaluated in light of its “text and history.” 554 U.S. at 595, 628. The Court

expressly declined to adopt the interest-balancing approach urged by the dissent, explaining that “[a] constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.” *Id.* at 634.

McDonald incorporated the right against the States as “fundamental to our scheme of ordered liberty,” 561 U.S. at 767 (emphasis omitted), and the plurality specifically cautioned that lower courts should not treat the Second Amendment as “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees,” *id.* at 780.

Bruen operationalized those commitments. The Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct[.]” 597 U.S. at 17. To overcome that presumption, “the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* That methodology places the burden squarely on the government, *id.* at 24, and requires courts to assess both “how” and “why” the challenged regulation burdens the right to armed self-defense as compared to historical analogues, *id.* at 29. As the Court emphasized, “the Second Amendment protects the possession and use of weapons that are ‘in common use at the time.’” *Id.* at 21 (quoting *Heller*, 554 U.S. at 627). The inquiry is structured, burden-allocating, and compulsory. It is not one that lower courts may decline to perform.

B. The Court of Appeals engaged neither the conduct nor the history

A court applying *Bruen* to an as-applied challenge must do at least two things: identify the conduct, and assess whether the Government has carried its historical burden as to *that* conduct. The Fourth Circuit did neither.

It did not identify the conduct. The opinion below says nothing about the items charged in Counts One and Two having been cut into pieces or about the cooperating witness acknowledging that welding would be required to make them function and testifying that Petitioner “just considered it parts.” App. 180a–181a. It says nothing about the separated barrel-and-receiver components in Counts Three and Four, or about the Government’s concession that the receivers had multiple lawful uses. App. 183a–184a. And it says nothing about the markings on the items charged in Count Five, which plainly—and correctly—stated that the tubes were “INERT” and “TRAINING AID DUMMY.” App. 171a–172a, 194a–195a. That conduct was the heart of Petitioner’s claim. It is the heart of any *Bruen* inquiry. The court below treated it as if it did not exist.

The court did not engage the history either. *Bruen* assigns the historical burden to the government. 597 U.S. at 24. The Government identified no founding-era, antebellum, or Reconstruction-era law criminalizing possession of inert military relics, demilled components, or items expressly labeled as inoperable. The Court of Appeals required none. Its reasoning was, in its entirety, that *Bianchi*—an assault-

weapon decision, 111 F.4th at 452—and *Hunt*—a felon-in-possession decision, 123 F.4th at 704—foreclosed the claim. Whatever the merits of those decisions in their own contexts, neither addressed the question Petitioner raised below. Neither involved demilled parts, neither involved inert relics, and neither purported to answer whether the Second Amendment bears on a prosecution for possessing items that are “INERT.”

C. The asymmetry with other constitutional rights is stark

It would be difficult to identify a comparably perfunctory disposition of a non-frivolous as-applied claim under any other constitutional provision. A defendant pressing an as-applied First Amendment challenge to an obscenity prosecution would not be told that his claim was foreclosed by circuit precedent involving different materials. He would receive an opinion that engaged with what he actually published or distributed and applied the governing standard to that conduct. *See, e.g., Miller v. California*, 413 U.S. 15, 24–25 (1973) (defining the obscenity inquiry by reference to the work-specific application of community standards). A Fourth Amendment claim turning on the reasonableness of a particular search or seizure would receive the same treatment. *See, e.g., Terry v. Ohio*, 392 U.S. 1, 21 (1968) (“[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”). The constitutional default in those settings is meaningful engagement with the

actual conduct at issue, not categorical foreclosure based on earlier decisions.

Caetano illustrates the point within the Second Amendment’s own domain. There, a state court rejected a Second Amendment challenge with reasoning that fell short of the engagement *Heller* requires. 577 U.S. at 411–12. This Court vacated, *id.* at 412, and Justice Alito, joined by Justice Thomas, observed in concurrence that the lower court had applied modes of analysis it would not have tolerated in any other constitutional setting and that the lower court’s reasoning “pose[d] a grave threat to the fundamental right of self-defense.” *Id.* at 421. The court below applied a comparably abbreviated mode of analysis to reach a comparably consequential result.

D. The Court of Appeals’ “squarely foreclosed” methodology is self-reinforcing and cannot self-correct

The Fourth Circuit’s approach has a structural feature that makes it especially resistant to correction: it cites prior circuit precedent that itself declined to conduct meaningful historical analysis at *Bruen*’s second step. *Bianchi* placed the “common use” inquiry at step one, foreclosing the historical inquiry before the Government had to undertake it. 111 F.4th at 448. *Hunt* held that as-applied challenges to federal fire-arms-disqualification statutes are categorically unavailable in the circuit—again, before any historical comparison was conducted. 123 F.4th at 704–05. The decision below combined those holdings and declared Petitioner’s as-applied claim “squarely foreclosed.” App. 7a. The result is a methodology that, by design,

never reaches the historical analysis that *Bruen* prescribes.

The point is not that *Bianchi* and *Hunt* are necessarily wrong on their own facts. The proper mode of a *Bruen* analysis is a question presented in other petitions presently before this Court. *See, e.g., NAGR v. Lamont*, No. 25-421; *Duncan v. Bonta*, No. 25-198. The point is that combining them, as the Fourth Circuit did, to dispose of a fact-bound as-applied challenge involving demilled relics and inert tubes is an exercise of doctrinal mathematics that elides the constitutional question entirely. A right whose vindication depends on engagement with the conduct charged cannot be administered through summary citation. This Court should grant review to ensure that, when an as-applied Second Amendment claim is filed, the alleged conduct is examined and the history is thoroughly consulted. The Fourth Circuit’s opinion does neither.

II. WELDED-SHUT REMNANTS AND “INERT” ITEMS CANNOT SATISFY *HELLER’S* CONJUNCTIVE “DANGEROUS AND UNUSUAL” TEST

The Petition establishes that the Government’s expansion of 26 U.S.C. § 5845’s definitions to reach inoperable and inert items requires historical justification under *Bruen*. But even if the Government were permitted to invoke *Heller’s* “dangerous and unusual” exception in defense of its prosecution, the exception is conjunctive. The items charged here cannot satisfy either prong of the exception and certainly cannot satisfy both.

**A. The conjunctive reading is required by
Heller and confirmed by *Caetano***

Heller's recognition of a "historical tradition of prohibiting the carrying of dangerous and unusual weapons," 554 U.S. at 627 (internal quotation marks omitted), employs a conjunction that is doctrinal in nature, not stylistic. To fall outside of the Amendment's protection, an item must be both dangerous *and* unusual.

Caetano settled the point. There, the Massachusetts Supreme Judicial Court had upheld a stun-gun prohibition by treating "dangerous" and "unusual" as independent, alternative grounds for exclusion. 577 U.S. at 411–12. This Court vacated. *Id.* at 412. And Justice Alito, joined by Justice Thomas, articulated the test with precision: "As the per curiam opinion recognizes, this is a conjunctive test: A weapon may not be banned unless it is *both* dangerous *and* unusual." *Id.* at 417 (emphasis in original).

The conjunctive structure is essential to the coherence of the right. *Heller* defined "Arms" expansively, embracing the broad founding-era usage that included "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." 554 U.S. at 581 (citation omitted). Were "dangerousness" alone sufficient to remove items from the Amendment's protection, virtually every covered arm would qualify, because firearms are by their nature designed to inflict harm. *Caetano*, 577 U.S. at 418 ("If *Heller* tells us anything, it is that firearms cannot be categorically prohibited just because

they are dangerous.”). The exception’s narrow scope is what preserves the breadth of the right.

This Court’s statutory cases reinforce this view. In *Staples v. United States*, the Court emphasized that “there is a long tradition of widespread lawful gun ownership by private individuals in this country.” 511 U.S. 600, 610 (1994). The Court distinguished between ordinary firearms, which “traditionally have been widely accepted as lawful possessions,” and inherently suspect items like hand grenades, “the ownership of which would have [a] quasi-suspect character.” *Id.* at 611–12. The Court’s reasoning turned on operability and character. What mattered was whether the item possessed the characteristics that placed the owner “sufficiently on notice of the likelihood of regulation.” *Id.* at 612. Ordinary firearms did not, but hand grenades did. Items that cannot discharge a projectile do not possess the “quasi-suspect character” of hand grenades or functional machineguns. Indeed, they do not “function” in any capacity whatsoever. They are, if anything, further from the boundary of regulatory notice than the ordinary semiautomatic rifle at issue in *Staples* itself.

B. The items in Petitioner’s possession are not “dangerous”

The record forecloses any sustainable contention that the items charged were operationally dangerous in their condition at the time of possession.

The PPSH remnants charged in Counts One and Two had been cut into separate pieces. The Government’s own witness testified that they required welding to fire. App. 159a–160a, 173a–175a, 180a–181a.

The cooperating witness told the jury that Petitioner “just considered it parts.” App. 180a–181a. The receivers and barrels associated with Counts Three and Four were stored separately within Petitioner’s home. App. 183a. And the Government did not contest that the receivers had been lawfully purchased through a federal firearms licensee. App. 185a.

The two items charged in Count Five present the starkest illustration. The launchers were “INERT” and not intended for use in combat. App. 171a–172a, 194a–195a. The Government confirmed that they lacked any firing mechanism and that a hole had been drilled through the tube. App. 200a–207a. Those markings were affirmative representations that the tubes were *not* weapons. An item correctly so identified is not a “dangerous . . . weapon” within any recognized meaning of that phrase.

The Government’s response below was that the items might, *in theory*, be restored to a functional state. But *Bruen*’s inquiry examines the individual’s conduct. 597 U.S. at 32. The question is what Petitioner *possessed*, not what those items might become after substantial modification that no one had undertaken. To treat a demilled rifle as a rifle, or an inert tube as a weapon, on the basis of a hypothetical future restoration is to substitute conjecture for the conduct the Amendment addresses.

C. The items in Petitioner’s possession are not “unusual”

The “unusualness” inquiry asks whether items are in common use for lawful purposes. *Heller*, 554 U.S. at 627; *Bruen*, 597 U.S. at 47. By that measure,

the possession of demilled, deactivated, replica, and inert military-pattern items is not unusual. It is a commonplace feature of American civilian life.

The record below documents an active commercial market, including online auction listings for cut PPSH receivers, deactivated RPG-2 launchers, and replica grenade launchers. App. 36a–42a. That market supplies collectors, museums, reenactors, historical societies, veterans’ groups, schools, film productions, and ordinary buyers across the country. Demilled and inert items are routinely advertised and sold by retailers and listed in public catalogs. They occupy display cases, private collections, prop inventories, and fireplace mantles. They are, in other words, the ordinary stuff of American military memorabilia.

Moreover, the Court has rejected efforts to confine the “common use” inquiry to the Founding era. *Caetano*, 577 U.S. at 411–12 (rejecting reasoning that confined protection to weapons in common use at the time of the Founding); *Bruen*, 597 U.S. at 28 (“[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding”) (quoting *Heller*, 554 U.S. at 582). A robust, lawful, commercial market in inert and demilled relics establishes ordinary use as definitively as the *Caetano* Court’s recognition of stun-gun ownership did there.

D. The Government’s position would eliminate the exception’s limiting function

If “INERT” items can be classified as “dangerous and unusual” arms whose mere possession is criminal, the exception ceases to perform any limiting function. It becomes an authorization for the Government to classify as contraband any object that resembles an arm falling outside of the Amendment’s scope, regardless of the object’s actual condition, and then to bring federal charges carrying decades of imprisonment.

Heller described the exception as a narrow historical limitation on the scope of the rights, not a generalized license for categorical exclusion. 554 U.S. at 627–28. *Caetano* confirmed its narrow reach. 577 U.S. at 416–17. The decision below gives the exception no discernible boundary.

III. THE NATION’S HISTORICAL TRADITION AFFIRMATIVELY RECOGNIZES CIVILIAN POSSESSION OF MILITARY-SURPLUS AND RELIC ARMS

The historical inquiry under *Bruen* asks whether challenged restrictions are “consistent with this Nation’s historical tradition of firearm regulation.” 597 U.S. at 17. The court below excused the Government from confronting that tradition. That was error. The historical record, properly examined, not only fails to support the prosecution but also affirmatively recognizes civilian possession of military-pattern arms—operable and inoperable alike—as a baseline feature of the American legal order and, at certain points, as a subject of express federal importance.

A. The founding generation drew no distinction between civilian and military arms in private hands

The American tradition of arms possession rested, from the colonial period forward, on civilian ownership of military-pattern weapons. As early as 1768, every enlisted soldier and householder was expected to maintain, at a minimum, “a well fix’d Firelock, Musket, Accouterments and Ammunition.” Stephen P. Halbrook, *The Founders’ Second Amendment: Origins of the Right to Bear Arms* 10 (2012). Indeed, as *Heller* recognized, the founding-era expectation was that citizens would bring “the sorts of lawful weapons that they possessed at home to militia duty.” 554 U.S. at 627.

That tradition extended well beyond muskets. Private possession of cannon and ordnance was lawful, common, and structurally embedded in American military practice. Privately organized and privately armed artillery companies date to the colonial period. The Ancient and Honorable Artillery Company of Massachusetts, chartered in 1638, operated then as a private artillery organization and continues to exist today. *See* Halbrook, *supra*, at 306. And it was commonplace that artillery instruments, such as cannon, were the property of private individuals. *See, e.g., id.* at 43 (discussing the Boston Committee of Correspondence’s charge that “a number of cannon, *the property of a private gentleman*, were a few days ago seized and taken . . . by order of the General” (emphasis added)); David B. Kopel, *The History of Bans on Types of Arms Before 1900*, 50 *J. Legis.* 223, 257–60

(2024) (discussing the extensive private ownership of cannon during war and peacetime).

The most striking evidence of Founding-era norms concerns the privateer fleet. Article I of the Constitution expressly grants Congress the power to “grant Letters of Marque and Reprisal.” U.S. Const. art. I, § 8, cl. 11. This power presupposed and operated through privately armed vessels. During the Revolutionary War, approximately 1,700 letters of marque were issued to privateers. The Continental Navy was modest, consisting of roughly 64 ships. *See* J. Gregory Sidak, *The Quasi War Cases--And Their Relevance to Whether “Letters of Marque and Reprisal” Constrain Presidential War Powers*, 28 Harv. J.L. & Pub. Pol’y 465, 474 (2005) (listing America’s naval resources during the Revolutionary War). By contrast, federal and state governments commissioned roughly 2,000 privateers during the war. *See* Harry M. Ward, *The American Revolution: Nationhood Achieved 1763–1788* 184 (1995). During the War of 1812, American privateers seized more than 1,300 British ships. *See generally* Timothy S. Good, *American Privateers in the War of 1812: The Vessels and Their Prizes as Recorded in Niles’ Weekly Register* (2012). Far from merely tolerating that private arsenal, the Constitution contemplated it as a structural feature of the Nation’s military capacity.

Equally significant is what no law of the period prohibited. Colonial law did not forbid private ownership of cannon. *See* Kopel, *supra* at 257–58. Indeed, “typical militia statutes” of the time “required militia-eligible males to own at least one cutting weapon (such as a sword or bayonet) and at least one firearm.” *Id.* at

242, 244–49 (listing different types of mandated arms, including various kinds of knives, swords, hatchets, pole arms, and firearms); *accord* David B. Kopel & Joseph G.S. Greenlee, *The Second Amendment Rights of Young Adults*, 43 S. Ill. U. L.J. 495, 533–89 (2019). While a 1783 law in Boston prohibited individuals from keeping cannon loaded with gunpowder, the consequence for doing so was merely the confiscation and resale of such artillery, at public auction, to *other private individuals*. See Act of March 1, 1783, ch. 13, 1783 Mass. Acts 218, 218–19. As discussed above, this Court has squarely recognized that “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Heller*, 554 U.S. at 582. And the public understanding of the Amendment’s scope at the time of its passage clearly supported the inclusion of military arms. See Skylar Petitt, *Tyranny Prevention: A “Core” Purpose of the Second Amendment*, 44 S. Ill. U. L.J. 455, 473–75 (2020). The Founders ratified the Second Amendment against a backdrop in which private citizens lawfully possessed the most powerful military arms then in existence.

B. The post-Civil War surplus market was vast, public, and unregulated as a matter of federal firearms law

The mass mobilization of the Civil War produced vast quantities of surplus military materiel. As American soldiers began to return home in 1865, the Department of War ordered that honorably discharged Union veterans be allowed to keep their weapons if they purchased them. General Orders, No. 101, E.D.

Townsend, Assistant Adjutant Gen., Adjutant Gen.'s Off., War Dep't (May 30, 1865), <https://babel.hathitrust.org/cgi/pt?id=umn.31951002285679j&seq=1>. The Secretary of War was then authorized to sell “the old cannon, arms, and other ordnance stores now in possession of the War Department” that it deemed unsuitable for military use. Kellen Heniford, *The Young and the Armed: History for Litigating Firearms Age Restrictions in a Post-Bruen World*, 101 Ind. L. J. Supp. 56, 76 (2026) (quoting Act of July 20, 1868, No. 61, 15 Stat. 259, 259). The practice created a national commercial market in military arms that operated without general federal restrictions for more than half a century. *See id.* at 77 (discussing the prominent military surplus catalogs of the early twentieth century).

Among the most prominent figures in that market was Francis Bannerman, a New York dealer who, beginning in 1865, purchased thousands of surplus arms at government auction, including, in one of his earliest acquisitions, some 11,000 captured Confederate rifles. Joseph E. Persico, *The Great Gun Merchant*, Am. Heritage (1974), <https://www.americanheritage.com/great-gun-merchant>. By the turn of the century, Bannerman had established a significant enterprise, circulating detailed mail-order catalogs nationwide that offered items ranging from Springfield muskets to Navy artillery. *See, e.g.*, Francis Bannerman Sons, Inc., *Catalogue of Military Goods for Sale by Francis Bannerman* (1903), <http://archive.org/details/francis-bannerman-military-goods-catalogue-1903>. This market was not limited merely to exotic weaponry but also included commonplace military arms, such as the Henry lever-action rifle, the

predecessor to the more iconic Winchester rifle. *See* Norm Flayderman, *Flayderman’s Guide to Antique American Firearms and Their Values* 305 (9th ed. 2007) (estimating that roughly 14,000 Henry rifles were sold during the Civil War and immediately after).

The federal government enacted no general restrictions on the civilian possession of surplus military arms during this period. Neither the National Firearms Act of 1934, 48 Stat. 1236, nor any prior federal statute addressed or restricted civilian possession of cannon, artillery pieces, or ordnance relics. Modern artillery was not federally regulated until the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, which introduced the “destructive device” classification. And even that statute carved out surplus ordnance and devices not designed for use as weapons. *See* 82 Stat. 1215. The legislative silence for more than a century and a half of American history reflects a settled understanding that civilian possession of military-pattern arms, including surplus and relics, was a lawful and ordinary feature of American life.

This settled understanding was not disrupted during the Reconstruction era. This Court has recognized 1868—the year of the Fourteenth Amendment’s ratification—as a relevant benchmark for interpreting the scope of constitutional firearms protections. *See Bruen*, 597 U.S. at 34–37. As the plurality in *McDonald* explained, “[a]fter the Civil War, many of the over 180,000 African Americans who served in the Union Army returned to the States of the old Confederacy, where systematic efforts were made to disarm them and other blacks.” 561 U.S. at 771. The Black Codes of

Mississippi, Louisiana, Kentucky, and other States formally prohibited freedmen from possessing firearms. *Id.* at 771–72. It was precisely those disarmament provisions that prompted the Thirty-Ninth Congress to enact the Freedmen’s Bureau Act of 1866 and the Civil Rights Act of 1866, and ultimately to propose the Fourteenth Amendment, in order to secure the right of all citizens, including those who possessed military-surplus arms from their federal service, to keep and bear arms. *See id.* at 773–74. No Reconstruction-era statute restricted civilian possession of surplus military arms. Indeed, the chief concern at that time was precisely the opposite.

C. Federal statutes have affirmatively promoted civilian possession of former military arms for over a century

The historical tradition is not merely permissive. In significant respects, it is affirmative. Three statutory developments illustrate the point.

First, in 1903, Congress established the National Board for the Promotion of Rifle Practice (“NBPRP”), whose duties were substantially expanded under the Militia Act of 1905. Act of March 3, 1905, ch. 1416, 33 Stat. 986. Congress was clear that its intention in establishing the NBPRP was to facilitate “the instruction of able bodied citizens of the United States in marksmanship.” Stephen P. Halbrook, *Second-Class Citizenship and the Second Amendment in the District of Columbia*, 5 Geo. Mason U. Civ. Rts. L.J. 105, 155–56 (1995). To achieve that end, the Secretary of the Army was required to provide for “the loan or sale of rifles and ammunition to citizens over 18 years

old who are members of a gun club.” *Id.* at 156. Title XVI of the National Defense Authorization Act for Fiscal Year 1996 restructured the program as the Corporation for the Promotion of Rifle Practice and Firearms Safety, or the Civilian Marksmanship Program. Pub. L. No. 104-106, tit. XVI, 110 Stat. 186, 515–29. The program continues to sell surplus .22 rimfire rifles, .30-caliber rifles, .45 M1911/M1911A1 pistols, and pump-action shotguns to qualified citizens. *See* 36 U.S.C. §§ 40722, 40732. For more than 120 years, the federal government has treated civilian possession of former military arms not merely as lawful, but as *a positive object of national policy*.

Second, the very statute under which Petitioner was prosecuted, the National Firearms Act, contains an express recognition of the same principle. The statutory definition of “destructive device” excludes “any device which is neither designed nor redesigned for use as a weapon” and “surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 7684(2), 7685, or 7686 of title 10, United States Code.” 26 U.S.C. § 5845(f). Both exclusions are significant. The surplus carve-out is a textual acknowledgment that civilian possession of military surplus is part of the lawful federal order. Congress would not have written the exception if it understood the underlying tradition to operate the other way. And the “neither designed nor redesigned for use as a weapon” exclusion tracks precisely the character of the inert and demilled items at issue here.

Third, the federal antiques and curios provisions of the Gun Control Act, 18 U.S.C. § 921(a)(16), and the ATF’s related regulations, similarly recognize

the lawful possession of historic and collectible firearms. Antique firearms are excluded from the federal definition of “firearm” altogether, *id.* § 921(a)(3), (16), and curio-and-relic licenses authorize collectors to acquire firearms of historical or collector interest as a matter of right, 27 C.F.R. § 478.41. These provisions, like the CMP statutes and NFA carve-outs, reflect the consistent principle that civilian ownership of military-pattern and relic arms is part of the American legal landscape, not an aberration the federal government has tolerated and may revoke at will.

Taken together, these statutes form a coherent legislative acknowledgment that civilian possession of military-pattern arms, surplus, and relics is undoubtedly lawful and, in many cases, affirmatively encouraged.

D. The tradition applies *a fortiori* to inoperable and inert items

If civilian possession of fully *functional* surplus military arms is part of the American historical tradition—and the foregoing demonstrates that it is—then civilian possession of *inoperable*, demilled, and inert versions of those items occupies an even more settled position in the historical record.

The record below demonstrates that the same commercial market that supplies antique muskets and Civil War relics also supplies deactivated Cold War-era equipment, inert training devices, and demilled modern-pattern components. App. 36a–42a. These items are sold by established retailers, listed in public catalogs, and purchased by a broad array of law-abiding Americans. The items that Petitioner

possessed fall comfortably within this well-established commercial and collecting tradition. There is no historical regulation, in any era of American law, that prohibited the possession of an inert relic because it bore the outward form of a once-functional military weapon.

Even *Heller*'s recognition that certain categories of firearms regulations may have historical roots, 554 U.S. at 626–27 & n.26—an assumption this Court has never historically demonstrated and, indeed, cast doubt upon, see *Bruen*, 597 U.S. at 21 (acknowledging that the *Heller* Court did not “undertak[e] an exhaustive historical analysis . . . of the full scope of the Second Amendment’ and moved on to considering the constitutionality of the District of Columbia’s handgun ban” (quoting *Heller*, 554 U.S. at 627)), 30 (recognizing that “the historical record yields relatively few 18th- and 19th-century sensitive places where weapons were altogether prohibited” (internal quotation marks omitted))—yields no analogue here, because no era of American law has treated the possession of inert relics as criminal.

E. The Government did not carry, and the Court of Appeals did not require, the burden *Bruen* assigns

The Government identified no founding-era, antebellum, or Reconstruction-era law criminalizing possession of demilled or inert military relics. It identified none because none exists. Where the historical record yields no comparable regulation, *Bruen* requires the Government to lose. See 597 U.S. at 24. The Court of Appeals excused the Government from that

requirement by foreclosing the as-applied claim at the threshold. App. 7a. That short-circuit cannot be reconciled with the framework this Court has prescribed.

The Second Amendment, like the First and the Fourth, requires a court to examine the conduct at issue and to assess the Government's justification in light of historical practice. The decision below undertook neither inquiry. This Court's review is warranted.

CONCLUSION

The Petition should be granted.

Respectfully submitted,

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