No. 25-198

In the
Supreme Court of the United States

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

Petitioners,

v.

ROB BONTA, in his official capacity
as Attorney General of the State of California,

Respondent.

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

SUPPLEMENTAL BRIEF FOR PETITIONERS

C.D. MICHEL
ANNA M. BARVIR
SEAN A. BRADY
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd.
Suite 200
Long Beach, CA 90802

PAUL D. CLEMENT
ERIN E. MURPHY
Counsel of Record
MATTHEW D. ROWEN
NICHOLAS A. AQUART
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com

Counsel for Petitioners

March 11, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
SUPPLEMENTAL BRIEF FOR PETITIONERS 1
REASON TO GRANT THE PETITION 2
CONCLUSION 5

TABLE OF AUTHORITIES

Cases

Benson v. United States,
2026 WL 628772 (D.C. Mar. 5, 2026)..... 1, 2, 3, 4

Bevis v. City of Naperville,
85 F.4th 1175 (7th Cir. 2023) 4

District of Columbia v. Heller,
554 U.S. 570 (2008)..... 4

Hanson v. District of Columbia,
120 F.4th 223 (2024)..... 1, 3

N.Y. State Rifle & Pistol Ass'n v. Bruen,
597 U.S. 1 (2022)..... 2

Ocean State Tactical v. Rhode Island,
145 S.Ct. 2771 (2025)..... 1

SUPPLEMENTAL BRIEF FOR PETITIONERS

In opposing certiorari, California did not deny the cert-worthiness of the question whether states may ban ubiquitous ammunition feeding devices. Nor did it claim any vehicle problems. The state instead made a plea for patience, arguing that "[n]othing material ha[d] changed" since *Ocean State Tactical v. Rhode Island*—where three Justices voted to grant certiorari to resolve in an interlocutory posture the same issues that this case presents in a final-judgment posture, 145 S.Ct. 2771 (2025)—and urging the Court to wait for a "genuine conflict in the lower courts." BIO.8. The wait is over. While lower courts were already in disarray over whether (and, if so, which) magazines are "Arms," who bears the burden to demonstrate "common use," and what that showing entails, *see* Pet.16-20, there is now a square split on the ultimate question. On March 5, 2026, the D.C. Court of Appeals held that the District's ban on magazines that can hold more than 10 rounds violates the Second Amendment. *Benson v. United States*, 2026 WL 628772 (D.C. Mar. 5, 2026). In doing so, *Benson* explicitly parted ways with the Ninth Circuit's decision in this case and the D.C. Circuit's decision in *Hanson v. District of Columbia*, 120 F.4th 223 (2024), which blessed the same D.C. law. The need for plenary review is acute, and this is the right case in which to provide it. Indeed, if this Court does not grant review now that the en banc Ninth Circuit has resolved this case in the state's favor on final judgment, then countless law-abiding Californians will be converted into criminals overnight simply because they have chosen to exercise their Second Amendment rights. The Court should grant the petition.

REASON TO GRANT THE PETITION

In a thorough and decisive opinion spanning over 50 pages, D.C.'s highest court held that the District's ban on feeding devices that hold more than 10 rounds of ammunition is unconstitutional. *Benson*, 2026 WL 628772, at *1. As the court put it, the "District's magazine capacity ban violates the Second Amendment" because "11+ magazines are unquestionably arms" presumptively covered by the Second Amendment, "they are in not only common but ubiquitous use for lawful purposes, and there is no history or tradition of blanket bans on arms in such common use." *Id.* at *2; *see also id.* at *14. That decision is directly and expressly at odds with the decision below. Indeed, the D.C. court diverged from the Ninth Circuit not only on the bottom line, but on every subsidiary issue relevant to the analysis.

To begin, the en banc Ninth Circuit held that "[a] large-capacity magazine is … an accessory or accoutrement, not an 'Arm' in itself," and that California's ban therefore does not even *implicate* the Second Amendment. Pet.App.3. The D.C. Court of Appeals expressly disagreed, explaining that "the Ninth" Circuit was wrong to conclude that "11+ magazines are not arms at all," *Benson*, 2026 WL 628772, at *10 n.10. *Benson* instead held that "[m]agazines of all capacities are … arms covered by the plain text of the Second Amendment" because they plainly "facilitate[] armed self-defense." *Id.* at *7; *see N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 28 (2022). Taking direct aim at the decision below, the court explained "[t]he fatal flaw in" the Ninth Circuit's decision: "the relevant question is not whether 11+

magazines are strictly *necessary* for armed self-defense, but whether they *facilitate* it, as magazines of any capacity do." *Benson*, 2026 WL 628772, at *8 (first emphasis added). "[O]n the District's and *Duncan*'s reasoning," the court explained, nothing would "preclude[] states from banning magazines with any capacity to hold live rounds, permitting only 'dummy' magazines, and leaving users to manually reload after each shot." *Id.* at *7-8 & n.7. The court also agreed with the dissenting judges here that, under the decision below, states are free to "outlaw the semi-automatic firing mechanism" altogether because, "by itself, that is a harmless component of a firearm and it is not a necessary feature of any gun." *Id.* at *8; *see* Pet.App.84-86.

Benson also confirms that "courts are divided on the import of the common use inquiry," and that "'[t]here is no consensus on whether the common-use issue' is a threshold textual inquiry … or a historical inquiry." 2026 WL 628772, at *8 (quoting *Hanson*, 120 F.4th at 232 n.3); *see* Pet.18-20. At the outset, *Benson* rejected the view of the Second, Fourth, and Tenth Circuits that common use is part of the threshold textual inquiry on which the citizen bears the burden. *See* Pet.18. And the court again parted company with the decision below, holding that "when an instrument is in such common use that it is no longer 'unusual' and ranks among the most popular arms possessed by law-abiding citizens … then by that virtue alone it cannot be banned outright because there is no historical precedent for a ban on ubiquitous arms." 2026 WL 628772 at *9. *Contra* Pet.App.51-54.

When it comes to what the common-use inquiry entails, *Benson* crystallizes the already-extant conflict. Expressly rejecting the Ninth and Seventh Circuit's "reasoning that an 'ownership-statistics' approach to assessing what arms are in common use is too 'simplistic,'" *id.* at *11 (quoting Pet.App.51) (citing *Bevis v. City of Naperville*, 85 F.4th 1175, 1198-99 (7th Cir. 2023)), the court reviewed exactly those statistics in holding that 11-plus-round magazines are in fact ubiquitous, just as the Sixth and D.C. Circuits had done before it, *id.* at *9 (citing numerous studies). *See* Pet.19. *Benson* dismissed the Ninth Circuit's concerns about machineguns and other much less common arms as attacking a "strawman," as "[u]nder no view are 11+ magazines anything but in common and ubiquitous use." 2026 WL 628772, at *11. So "[j]ust as handguns cannot be banned because they are 'the most preferred [type of] firearm in the nation,' … the 11+ magazines that tend to accompany them are the most preferred type of magazine and likewise cannot be banned." *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008)).

Finally, on historical tradition, *Benson* once again split with the decision below. *Compare id.* at *11-13, *with* Pet.App.34-46. Indeed, the D.C. court chided the Ninth Circuit for adopting an approach to historical tradition that is "indistinguishable from the interests-balancing tests that the circuit courts routinely applied after *Heller*" and that this Court "decisively repudiated in *Bruen*." 2026 WL 628772, at *14.

In short, the conflict is now clear, and the stakes remain exceptionally high. While the courts below have at least stayed the retrospective and confiscatory

aspect of California's magazine ban throughout this long-running litigation, even that minimal protection will disappear if this Court does not step in now that the case has reached final judgment. Countless law-abiding Californians would therefore risk becoming criminals overnight, simply because they lawfully acquired property that the Second Amendment protects their right to possess. Californians have been patiently waiting for nearly a decade to see their constitutional rights vindicated. This Court should finally give them the relief to which they are entitled.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

C.D. MICHEL
ANNA M. BARVIR
SEAN A. BRADY
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd.
Suite 200
Long Beach, CA 90802

PAUL D. CLEMENT
ERIN E. MURPHY
Counsel of Record
MATTHEW D. ROWEN
NICHOLAS A. AQUART
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com

Counsel for Petitioners

March 11, 2026