

No. 25-238

IN THE
Supreme Court of the United States

CUTBERTO VIRAMONTES, ET AL.,
Petitioners,

v.

COOK COUNTY, ILLINOIS, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

For over three decades, the democratically elected officials of respondent Cook County, Illinois, have been faced with the overwhelming, mounting, and unrefuted evidence showing that assault rifles are the weapon of choice for criminals and terrorists set on quickly massacring innocents, but are rarely put to lawful public use. They have thus determined that this warrants a prohibition on the possession of those weapons within the County's target-rich and crowded urban confines. That judgment finds support in this nation's history and tradition, which demonstrate that legislatures have long strictly regulated weapons that, like assault weapons, are either (1) fundamentally incompatible with ancient common-law principles of moderate, proportionate self-defense; or (2) not commonly borne in public for a lawful purpose. Reflecting this fact, every circuit to consider the issue has upheld assault weapons regulations against constitutional challenge. While petitioners dispute that consensus, they concurrently refuse to comply with the procedural rules governing discovery and the presentation of evidence, resulting in the repeated summary rejection of their claims below.

The question presented is: Whether this Court should grant review to consider the constitutionality of Cook County's assault weapons Ordinance, where petitioners have forfeited their constitutional arguments by failing to compile an adequate supporting factual record in the proceedings below.

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STATEMENT

I. Assault Weapons.

On May 24, 2022, a gunman armed with an assault weapon murdered nineteen children – none older than 11 years – and two teachers at Robb Elementary School in Uvalde, Texas. See generally U.S. Department of Justice, CRITICAL INCIDENT REVIEW: ACTIVE SHOOTER AT ROBB ELEMENTARY SCHOOL (2024). Afterward, a pediatrician observed that the children “had been pulverized by bullets fired at them, decapitated,” their “flesh had been ripped apart” to such an extent “that the only clue as to their identities was blood-spattered cartoon clothes still clinging to them.” R. 81 ¶4. While these children were dying, the law enforcement officers who swore an oath to protect them waited outside and “focused on calls for additional SWAT equipment,” paralyzed by the sheer destructive capacity of the war weapon they faced. CRITICAL INCIDENT REVIEW, *supra*, at xvii.

None of this was new, nor was it unforeseen – by the time of the Robb Elementary massacre, it was common knowledge that assault weapons are the weapons of choice for criminals hoping to massacre and terrorize innocent citizens. Indeed, since 1984, assault weapons have already been used in multiple such events:

- 2022 Highland Park parade, 7 dead;
- 2022 Buffalo supermarket, 10 dead;

- 2019 El Paso Wal-Mart, 23 dead;
- 2019 Dayton Historic District, 9 dead;
- 2018 Marjory Stoneman Douglas High School, 17 dead;
- 2018 Pittsburgh Tree of Life Synagogue, 11 dead;
- 2017 Las Vegas Route 91 Harvest music festival, 58 dead;
- 2017 Sutherland Springs Church, 26 dead;
- 2016 Pulse Nightclub, 49 dead;
- 2014 San Bernadino Regional Building, 14 dead;
- 2012 Sandy Hook Elementary, 27 dead, mostly small children;
- 2012 Aurora, Colorado, 12 dead;
- 2009 Geneva County, Alabama, 10 dead;
- 1989 Standard Gravure, 8 dead;
- 1989 Cleveland Elementary School, 5 dead, all small children; and
- 1984 San Ysidro McDonald's, 22 dead, including a baby and unborn child.

Nor was the Robb Elementary massacre the last in this line of assault weapon atrocities. In just the brief time *since judgment was entered in this case*, assault weapons have further solidified their well-deserved reputation as the weapons of choice of mass shooters and terrorists:

- On July 13, 2024, an individual armed with an assault rifle attempted to assassinate President Trump during a campaign rally, killing an audience member and wounding the President and two others.
- On September 4, 2024, a 14-year-old armed with an assault rifle opened fire on his classmates at Apalachee High School in Barrow County, Georgia, killing two students and two teachers.
- Only three days later, on September 7, 2024, a man armed with an assault rifle opened fire from a cliff overlooking Interstate 75 in Kentucky, striking several vehicles and individuals before taking his own life.
- On January 1, 2025, a terrorist drove a truck into a New Orleans crowd celebrating the New Year, then opened fire with an assault weapon.
- On July 28, 2025, a man armed with an assault rifle and bearing a grudge against the National Football League opened fire on an office at 345 Park Avenue in New York City, killing four

individuals, including a New York police officer.

- On August 27, 2025, an individual armed with an assault weapon opened fire on a school-wide Mass at Annunciation Catholic School in Minneapolis, Minnesota, wounding 26 children and three elderly parishioners, and killing two children, aged 8 and 10.
- On September 17, 2025, a man armed with an assault rifle opened fire on law enforcement officers executing an arrest warrant in North Codorus Township, Pennsylvania, killing three officers from the Northern York Regional Police Department.
- On September 27, 2025, a man armed with an assault rifle opened fire on a tavern in Southport, North Carolina, killing three and injuring six.
- The very next day, on September 28, 2025, an individual armed with an assault weapon attacked a service at the Church of Jesus Christ of Latter-day Saints in Grand Blanc Township, Michigan, killing two elderly church members and wounding five others.

To understand how a single weapon could be utilized to such devastating effect in the Uvalde massacre, those which preceded it, and all those that continue to follow it, one must understand the assault

rifle's origins as a weapon of war. In 1944, Germany's government began arming its troops with the Sturmgewehr 44. Chris Bishop, *THE ENCYCLOPEDIA OF WEAPONS OF WORLD WAR II* 218 (Sterling 2002). This weapon "was the first of what are today termed assault rifles. It could fire single shots for selective fire in defence, and yet was capable of producing automatic fire for shock effect in the attack or for close quarter combat." *Id.* Following the war, in 1957, the United States Army invited Armalite, a firearms manufacturer, to produce a lightweight, high-velocity rifle that could operate in both semiautomatic and fully automatic modes with firepower capable of penetrating a steel helmet or standard body armor at 500 yards. R. 81 ¶298. Armalite devised the AR-15 to meet these specifications. *Id.* ¶299. In December 1963, the Army adopted the AR-15, rebranding it the "M-16." *Id.* ¶302.

The AR-15 has the same performance characteristics, in terms of muzzle velocity, range, and ammunition, as the M-16. R. 81 ¶304, 325. The AR-15 also has the same destructive capacity as weapons developed for use in war-time offensives by the military. *Id.* ¶325. Its performance characteristics all contribute to its uncommon lethality as compared to handguns. *Id.* ¶¶56-57, 59-70. Military-style assault rifle rounds travel between two and three times as fast as rounds from a handgun. *Id.* ¶60. The physical impact of assault weapon fire on human tissue is vastly different than the impact from a handgun and leads to greater fatality and injury. *Id.* ¶56-57. Bullets from assault weapons are more likely to fracture

bones due to their higher energy release. *Id.* ¶73. Assault rifle impacts to extremities frequently result in amputations, even where a handgun injury would be treatable. *Id.* ¶74. Similarly, if a handgun injury requires surgery, typically only one is needed, but assault weapon injuries frequently require multiple operations and massive blood transfusions because major blood vessels and multiple organs are damaged. *Id.* ¶71. These injuries are even more deadly for children. *Id.* ¶75. In the words of one trauma surgeon, “A handgun [wound] is simply stabbing with a bullet. It goes in like a nail. [But with the AR-15,] it’s as if you shot somebody with a Coke can.” R. 81-4 ¶¶101-02.

As this table illustrates, R. 82 at 7, there is no meaningful difference between the performance capacity of the M-16 and the AR-15:

Weapon	Ammunition	Kinetic Energy	Muzzle Velocity	Effective Range	Semiautomatic Cyclic Rate
M-16 / AR-15 Rifle	.223 / 5.56mm	1220- 1350 ft-lbs.	2800- 3100 ft/sec	602- 875 yards	300 rounds/ min.
AK-47 / AK 74 Rifle	7.62x39 mm	1450- 1650 ft-lbs.	2300- 2600 ft/sec	550- 800 yards	300 rounds/ min.
FN- FAL Rifle	7.62x51 mm	2350- 2550 ft-lbs.	2800- 3000 ft/sec	575- 800 yards	300 rounds/ min.
Glock Model 17 Pistol	9x19m m	355- 500 ft-lbs.	1100- 1300 ft/sec	50 yards max.	300-400 rounds/ min.
Colt M1911 Pistol	.45 ACP	350- 375 ft-lbs.	775- 850 ft/sec	50 yards max.	300-400 rounds/ min.
Walther PPK Pistol	.380/ 9mm Kurz	300- 500 ft-lbs.	900- 1100 ft/sec	50 yards max.	300-400 rounds/ min.

These performance characteristics allow assault weapons to deliver more gruesome injuries and, with them, nearly certain death. A weapon's killing capacity is primarily determined by the kinetic energy imparted by the bullet, its effective range, and the rate at which the weapon fires projectiles. R. 81 ¶59. The ammunition often used in AR-15s, the 5.56mm/.223 caliber cartridge, was adopted by the military for use in assault weapons specifically because of its light weight and ability to deliver reliable lethality. *Id.* ¶¶298, 271-77. The lethality of this type of weapon and ammunition were immediately evident in Vietnam, where an AR-15 left a back wound that "caused the thoracic cavity to explode," and a "heel wound" where "the projectile entered the bottom of the right foot causing the leg to split from the foot to the hip," both of which resulted in "instantaneous" death. R. 81-4 ¶98. In another instance, three shots fired from an AR-15 decapitated the enemy combatant and severed his right arm. *Id.* ¶97.

The extraordinary lethality of assault weapons is a function of the velocity with which they expel ammunition, the yaw effect experienced by the bullets they fire, and their range. Assault weapon rounds have a muzzle velocity of approximately 3200 feet per second, compared to approximately 1200 feet per second for a 9mm pistol. R. 81 ¶60. The kinetic energy of an AR-15 round is approximately 1303 foot-pounds, as compared to 400 foot-pounds from a 9mm round. *Id.* ¶60. This increased kinetic energy alone increases the likelihood of serious injury and death, *id.* ¶¶58-61, particularly in children with smaller body mass, *id.*

¶75. In addition, unlike rounds fired from a handgun, assault weapon rounds have a tendency to yaw, or rotate on their axis, *id.* ¶¶66-67, and on impact send out a radial wave of kinetic energy, *id.* ¶62. The energy release from an AR-15 round is over three times greater than that from a round fired from a Thompson Machine Gun. *Id.* ¶62. As a result, rounds fired from an AR-15 cause a temporary cavity in the human body up to 12.5 times larger than the diameter of the round itself. *Id.* ¶62. Finally, the effective range of an assault weapon is up to 500 yards, compared to 50 yards for a typical handgun. *Id.* ¶60.

While these characteristics make assault weapons more lethal, they also make them less useful for ordinary self-defense. Because of their overpowered performance characteristics, assault weapons may over-penetrate common household materials, increasing the risk of harm to innocent bystanders. R. 81 ¶23. Also, self-defense rarely involves lengthy shootouts, *id.* ¶28, and most confrontations involving armed self-defense occur at close range, at distances between 3-7 yards. R. 81-11 ¶25. Reflecting that fact, the record in this matter is bereft of evidence of even a single instance in which assault weapons were *ever* used in lawful self-defense.

There are many reasons for assault weapons' popularity in mass shootings. Their inherent lethality makes them an alluring choice for mass murder, compared to less lethal weapons like knives or handguns. At war, the ability to fire continuously without reloading translates to combat effectiveness.

R. 81 ¶281. But when used against noncombatant civilians, these features translate to mass, indiscriminate harm. *Id.* ¶8. More troubling, the mere presence of a firearm tends to encourage violence; the use of assault weapons in previous massacres increases the likelihood that aspiring mass shooters will use them as a form of mimicry. *Id.* ¶¶123-124. This natural psychological effect is only compounded by the fact that assault weapons manufacturers market them as cool and intimidating military weapons. *Id.* ¶¶189-190.

Assault weapons also encourage mass shootings by deterring effective, prompt law enforcement intervention. Effective responses to assault weapon shootings require specialized protective equipment, R. 81 ¶¶198-199, 204, 222-223 – during the Pulse Nightclub massacre, officers needed an armed personnel carrier to breach the club’s exterior wall, *id.* ¶200. This is because assault weapons discharge ammunition at a velocity that will pierce standard issue body armor. *Id.* ¶221. Indeed, 20% of all active-duty law enforcement officers slain in 2016 and 2017 were killed by assault weapons, *id.* ¶203, six of whom were killed when an assault weapon round penetrated body armor, R. 81-11 ¶18. Even if an officer is wearing body armor capable of stopping an assault weapon round, the impact can still cause significant trauma. R. 81 ¶224. As a result, law enforcement will feel “outgunned” in a mass shooting situation, *id.* ¶¶219-220, and thus more likely to delay any intervention in a mass shooting, R. 81-4 ¶132. Such delays give shooters more time to kill, as demonstrated by the

number of children slaughtered in Uvalde while law enforcement waited outside. See CRITICAL INCIDENT REVIEW, *supra*, at xvi.

The trauma that assault weapon massacres have inflicted on the public at large has been staggering. Three out of four young Americans “report mass shootings being a primary source of stress” and around one in five report that the possibility of a school shooting causes them daily stress. R. 81 ¶177. In fact, at least 5% to 10% of people in a community who experience but are not the primary victims of a mass shooting develop Post-Traumatic Stress Disorder. *Id.* ¶172. Survivors of mass shootings are at a greater risk of mental health problems, and the people associated with schools and organizations impacted by mass shootings are psychologically impacted even if they are not physically injured. R. 81-16 at 14. Even those not directly victimized are affected – research has shown that active shooter drills to prepare students for such massacres “are associated with increases in depression (39 percent), stress and anxiety (42 percent), and physiological health problems (23 percent) overall, including children from as young as 5 years old.” CRITICAL INCIDENT REVIEW, *supra*, at 392.

II. The County’s Ordinance & This Litigation.

In 1993, in the wake of the Cleveland Park Elementary assault weapon massacre, Cook County enacted an ordinance prohibiting the sale, transfer, acquisition, ownership, or possession of “assault

weapons,” specifically listing 60 rifles and pistols designated by model name or type. Cook County Ordinance No. 93-O-37.

In 2006, after the federal assault weapons ban was allowed to expire, the County reenacted its ordinance as the Blair Holt Assault Weapon Ordinance, No. 54-210 – 54-215 (the “Ordinance”). R. 81 ¶130. That Ordinance makes it illegal to “manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire, carry or possess” assault weapons and large-capacity magazines in Cook County. *Id.* ¶131. An “assault weapon” is defined as a semiautomatic firearm that can accept a detachable magazine and has one or more military-style features, such as a folding or telescoping stock, a pistol grip without a stock, a barrel shroud, or a muzzle brake. *Id.* ¶¶132-136. The Ordinance also lists specific, but nonexclusive, examples of prohibited assault weapons. *Id.* ¶152.

Decades later, Viramontes filed this suit against Cook County, Cook County Board President Toni Preckwinkle, State’s Attorney Kimberly Foxx, and Sheriff Thomas Dart (collectively, “the County”), claiming that he desires assault weapons banned by the Ordinance and that it thus infringes on his Second Amendment rights. R. 1. Shortly thereafter, Viramontes moved for judgment on the pleadings in the County’s favor, R. 20, arguing that *Wilson v. Cook County*, 937 F.3d 1028 (7th Cir. 2019), and *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), foreclosed his claims, R. 21 at 1. According to

Viramontes, a factual record would “be wholly irrelevant,” *id.* at 5, as he sought to overrule *Wilson* and *Friedman*, *id.* at 3-4.

The County opposed that motion, asking to proceed with discovery and develop a record establishing that assault weapons are dangerous and unusual and therefore fall wholly outside of Second Amendment protection, an issue not resolved by *Wilson* or *Friedman*. R. 24 at 4-5. In response, Viramontes claimed that only “social science evidence” was necessary, and that such evidence constituted “legislative facts” exempt from the ordinary rules of evidence and discovery. R. 24 at 7. The district court denied Viramontes’ motion, R. 23, and discovery commenced.

While discovery proceeded, this Court decided *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), holding that Second Amendment challenges proceed in two steps – the first, where the plaintiff must prove that the regulated behavior is protected by the Second Amendment’s text, and if that showing is made, a second step where the defendant must show its actions are consistent with this nation’s traditions and history, *id.* at 19. The district court then extended discovery regarding this country’s historical traditions, R. 38, 39, and the County disclosed eleven experts, R. 81 ¶¶36-54. Viramontes disclosed no experts of his own. R. 37, 104 at 11.

The parties then filed cross-motions for summary judgment. In its motion, the County explained that

assault weapons are not “arms” as the Second Amendment uses that term because they are both “dangerous and unusual,” given their regular use in mass shootings and their inherent unsuitability for lawful self-defense, R. 82 at 10-12, 18, and the lack of evidence that they are commonly used for lawful purposes, *id.* at 12. Furthermore, the County explained, regulations of assault weapons are consistent with the longstanding historical tradition of regulating militaristic weapons, dating all the way back to ancient Athens, and of regulating weapons capable of causing rapid mass death, as demonstrated by strict historical regulations on gunpowder, *id.* at 37-39. The County also moved to strike Viramontes’ responses to the County’s statements of undisputed material facts, explaining that his response both (1) failed to comply with the requirements of N.D. Ill. Local Rule 56.1, which governs the manner of presentation of facts in all summary judgment motions in the Northern District of Illinois; and (2) rested on inadmissible evidence. R. 104.

While the County’s motions were pending, the Seventh Circuit held in *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023), that a preliminary injunction of the County’s ordinance, and several materially identical state and local laws, was inappropriate because (1) the evidence in that case failed to show that assault weapons are “arms” within the Second Amendment’s meaning; and (2) bans on assault weapons are consistent with this nation’s history and traditions. *Id.* at 1192-1203.

The County then filed a notice of supplemental authority explaining that *Bevis* supported its motion for summary judgment. R. 122. In response, Viramontes noted *Bevis*' statement that "[b]etter data on firing rates might change the analysis," 85 F.4th at 1197, but, having offered no evidence on that subject in his Rule 56.1 statements, identified only the evidence offered by the County as providing that "[b]etter data," R. 123 at 1. Specifically, Viramontes noted the M-16 fires "45-65 rounds per minute in semiautomatic mode and 150-200 rounds per minute in automatic mode." *Id.* at 2 (citing R. 98, ¶¶326-27). By contrast, Viramontes claimed, the AR-15 has an "effective rate of fire that is one third the rate of the M-16 in automatic mode," but cited no record evidence for this proposition. *Id.* Viramontes did not argue that *Bevis* could be otherwise distinguished. This Court denied certiorari in *Bevis. Harrel v. Raoul*, 144 S. Ct. 2491 (2024).

The district court granted the County's motion for summary judgment. Pet. App. 7a-26a. As the court noted, "the parties have expressly agreed that, if they are still good law, *Friedman* and *Wilson* control the case," Pet. App. 22a, and "*Bevis* made a point of stressing *Friedman*'s continuing vitality," *id.* (cleaned up). The court also noted that Viramontes failed to distinguish *Bevis* by offering any evidence "meaningfully" differentiating the "firing-rate differentials between M16s and AR- 15s." *Id.* at 24a-25a. As the court observed, "it is not at all clear that the papers, surveys, and other online sources to which Plaintiffs cite are even admissible in this case,"

because they were not properly disclosed in discovery. *Id.* at 23a. But even considering that evidence, nothing in *Bevis* indicated that Viramontes’ argument regarding effective firing rates would have changed the analysis. *Id.* at 23a. In fact, “the evidence in this case appears to have been broadly similar to that addressed in *Bevis*,” *id.* at 25a, n.5, and “the Seventh Circuit had this [effective-firing-rate] evidence before it in some form when deciding *Bevis*,” as indicated by Judge Brennan’s discussion of it in his dissent, *id.* Accordingly, the Ordinance survived Second Amendment scrutiny. *Id.*

Viramontes appealed. In his opening brief, Viramontes argued that *Bevis* was wrongly decided. 7R.14 at 18–35. Alternatively, he argued that even if *Bevis* applied, the Seventh Circuit “should still reverse the district court because modern semiautomatic rifles, such as the AR-15, are utterly dist[inct] from fully automatic M16s in their function, and they are particularly well-suited to lawful purposes, including self-defense. *Id.* at 36–37.

In response, the County argued that Viramontes’s claims were foreclosed by Seventh Circuit precedent. It noted that Viramontes had failed to distinguish his case from *Bevis*, which upheld the constitutionality of the same ordinance at the preliminary injunction stage. The County emphasized that “despite *Bevis*’s repeated caution that its analysis of the facts was purely preliminary and could be revisited if further development of the evidence so warranted, Viramontes declined this invitation” and “opposed

conducting discovery on his own claims.” 7R. 20 at 17. The County also faulted Viramontes for raising various arguments attempting to distinguish his case from *Bevis* which were never asserted in the lower court and thus forfeited. *Id.* at 19. Nor had Viramontes offered any compelling reason to overturn precedent. *Id.* at 22–54.

At oral argument, the panel focused primarily on Viramontes’s failure to develop an adequate factual record. Chief Judge Sykes opened by noting that *Bevis*, had already upheld the same Cook County ordinance under *Bruen* and pressed counsel to explain why *Bevis* was not dispositive when Viramontes “didn’t put in any record that would undercut the *Bevis* decision.” Oral Arg. 1:44–1:52. When counsel insisted that there was a substantial record, Judge Sykes responded that “there was really no record development on your side in terms of expert witnesses or reports or production of any kind” and that Viramontes’s “record, quote, unquote, came in response to the other side’s Rule 56 statement.” Oral Arg. 2:48–3:15.

Judge St. Eve was likewise “troubled” by this approach. Oral Arg. 3:29–3:32. She observed that although Viramontes “labeled them as legislative facts,” he “put in surveys, which are so often subject to *Daubert* challenges, and a lot of materials that the district court didn’t have the opportunity to take the first run at on summary judgment.” Oral Arg. 3:51–4:07. To underscore that point, Judge St. Eve noted that she had compiled a “list of articles and surveys”

cited in Viramontes's appellate brief that were never cited in his summary-judgment briefing. Oral Arg. 4:15–4:23. In response, Viramontes maintained that such materials were “legislative facts” properly raised on appeal, and emphasized that he had also “included over 2,000 pages of materials” in response to Defendants' statement of material facts in the district court. Oral Arg. 4:23–4:42. Judge St. Eve replied that “producing the materials” was “very different than relying on them in your summary judgment and presenting them to the district court for the district court to consider.” Oral Arg. 4:42–4:52. Counsel then argued that the Seventh Circuit could “blind itself to the materials we're bringing to this court for the first time” yet continued to insist that much of his evidence had, in fact, been adequately presented to the district court. Oral Arg. 4:56–5:17.

The County similarly highlighted Viramontes's decision to “forgo the normal adversarial process” and to “avoid[] the local rules governing practice.” Oral Arg. 10:05–10:21. Counsel emphasized that it was improper for Viramontes to supplement the record by introducing new factual materials in response to a Rule 56.1 statement. Oral Arg. 10:25–10:42. As an illustrative example, the County pointed to Viramontes's reliance on a report by Professor William English. The County argued that there were various problems with English's methodology; however, Viramontes's failure to disclose him as an expert deprived the County of any opportunity to test those flaws in the district court. Oral Arg. 12:47–12:58.

The Seventh Circuit affirmed summary judgment for Cook County, emphasizing that Viramontes’s appeal “falter[ed] for want of an adequate record.” Pet. App. 4a. The court underscored that *Bruen* places the initial burden on challengers to show that their conduct falls within the Amendment’s text, yet Viramontes made the tactical choice to forgo record development during discovery and then attempted to fill the gap after the close of discovery with 105 exhibits “to supplement the record that he had previously elected not to build.” *Id.* at 8a. Nor did Viramontes offer any “compelling reason” to revisit *Bevis*. *Id.* at 4a. And although *Bevis* had “left open the possibility that a better-developed record might affect the final analysis, Viramontes’s failure to build an adequate record here doom[ed] his challenge.” *Id.* at 5a (internal citations omitted).

REASONS FOR DENYING THE PETITION

Throughout this litigation, Viramontes and his counsel have labored under the apparent assumption that proceedings in this nation’s district and appellate courts – proceedings seeking to invalidate the judgment of democratically elected officials, no less – are mere annoyances to be discharged as quickly as possible in service of a singular goal: review by this Court.

As a result, while the County diligently endeavored to compile a record to defend its Ordinance from his constitutional challenge, Viramontes neglected to even participate in discovery,

and declared that he had no obligation to comply with basic procedural rules governing the presentation of facts on summary judgment. It thus came as no surprise that the district court summarily rejected Viramontes' challenge to the Ordinance for simple want of supporting evidence. Even less surprising was the Seventh Circuit's summary affirmance of that judgment on the exact same ground – after all, basic principles of *stare decisis* required the court follow its precedent absent a compelling reason to do otherwise, and Viramontes did not even attempt to compile a record fit for that task in his mad dash to this Court.

Viramontes' petition for certiorari reflects his careless approach to constitutional litigation and accordingly should be denied for three reasons. First, he identifies no circuit split on the ultimate question whether the Second Amendment permits bans on assault weapons, nor even an outcome-determinative disagreement amongst the circuits any of issue relating to the constitutionality of assault weapon bans. Second, this case is an exceedingly poor vehicle, for the simple reason that Viramontes forfeited his constitutional arguments by disregarding basic principles of party presentation that *Bruen* itself emphasized – at every phase of the proceedings below. Third, and finally, the judgment below is correct because the factual and historical record the County compiled in this case make clear that assault weapons are dangerous and unusual, and may thus be banned.

I. This Case Implicates No Outcome-Determinative Circuit Conflict Warranting Certiorari.

Viramontes’ petition stumbles immediately out of the gate over the fact that there is no conflict amongst the circuits regarding the constitutionality of assault-weapons bans. To the contrary, literally every circuit to consider the issue has upheld bans on assault weapons under *Bruen*. *E.g.*, *Nat’l Ass’n for Gun Rights v. Lamont*, 2025 U.S. App. LEXIS 21570 (2d. Cir. 2025); *Capen v. Campbell*, 134 F.4th 660 (1st Cir. 2025); *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024) (en banc); *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023).

Seeming to recognize this fact, Viramontes tries to manufacture a conflict by complaining about supposed inconsistencies between the circuits on the subsidiary legal question whether assault weapons constitute “Arms” for purposes of *Bruen*’s first, textual step. Pet. 15-19. Even assuming, purely for sake of argument, that the circuits disagree on this issue, any such conflict is no help to Viramontes because the Seventh Circuit’s judgment below rested on its prior precedent in *Bevis*, which held that constitutional challenges to assault-weapons bans fail *both* of *Bruen*’s steps. 85 F.4th at 1192-97 (text); *id.* at 1197-1202 (history). Indeed, Viramontes effectively admits as much when he concedes that a determination that a particular weapon is an arm for purposes of the Second Amendment’s text “d[oes] not entail the invalidity of the prohibition” on its possession. Pet. 18.

The fact that the judgment below would be unaffected if assault weapons are Second Amendment arms is fatal to any argument that this Court grant review on the same basis. As this Court has long reminded litigants, it “reviews judgments, not statements in opinions.” *Black v. Cutter Laboratories*, 351 U.S. 292, 297 (1956). Reflecting this fact, it is a cornerstone principle of certiorari jurisprudence that this Court will not review an issue when “it is not clear that [its] resolution of [that issue] will make any difference” to the petitioner. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994) (per curiam); see, e.g., *Goins v. United States*, 306 U.S. 622 (1939) (per curiam) (dismissing petition where supposed error “could not have prejudiced the petitioner”).

That the circuits are supposedly divided on an issue does not change this fact. “While this Court decides questions of public importance, it decides them in the context of meaningful litigation. Its function in resolving conflicts among the Courts of Appeals is judicial, not simply administrative or managerial.” *The Monrosa v. Carbon Black Export*, 359 U.S. 180, 184 (1959) (dismissing petition). Thus, certiorari is inappropriate to resolve even a “clear conflict,” when that conflict’s “resolution . . . is irrelevant to the ultimate outcome of the case.” Stephen M. Shapiro, et al., *SUPREME COURT PRACTICE* 249 (10th ed. 2013).

The same fundamental principles also foreclose Viramontes’ attempt to shoehorn this case into this

Court’s certiorari standards by complaining about supposed confusion among the courts of appeals about which step in the *Bruen* analysis involves consideration of the common use of a firearm. Pet. 19-21. The specific placement of that inquiry in the analysis is relevant to the ultimate outcome of a case only when the result of that inquiry hinges on who bears the burden of proof, which shifts to the government at *Bruen*’s second step. 597 U.S. at 24. But Viramontes does not claim that the mere reassignment of the burden of proof would have been determinative. Nor could he, given his strategic decision not to compile a fulsome record in compliance with the basic rules of procedure and discovery.

That leaves only Viramontes’ last-gasp attempt to sow the specter of uncertainty regarding the meaning of “common use.” Pet. 19-20. But Viramontes conspicuously identifies no conflict amongst the circuits on that issue, so this effort is for naught.¹ And even setting the lack of any circuit conflict to one side, Viramontes rendered any such conflict inconsequential to the judgment here, by failing to comply with the basic rules and procedures of the adversarial process. Having declared himself exempt from the ordinary rules of litigation, Viramontes

¹ While Viramontes offers two citations to supposed authority on the proper analysis of common use, Pet. 19, those citations are not to formal academic journals, but rather to submissions to a “per curiam” webpage with no discernible acceptance criteria, see <https://journals.law.harvard.edu/jlpp/submission> (discussing “per curiam” submissions). Needless to say, such submissions carry no more persuasive weight here than a blog post or personal website.

offered literally no admissible evidence contradicting the County's evidence that assault weapons are commonly used for nothing but massacres and terror. Rather, to prevent meaningful adversarial testing of the factual premises underlying his argument, he offered only untimely and improperly disclosed hearsay – namely, a survey of unidentified, supposed gun owners about their *intended* use of assault weapons, and a discredited article by a firearm-industry-financed professor who was not a witness in this case, expert or otherwise. 7R. 14 at 50-52.

Viramontes' reliance on this hearsay made it impossible for him to prevail under *any* conceivable standard of "common use." It is black-letter law that inadmissible hearsay may not be considered on summary judgment, *e.g.*, *Cairel v. Alderden*, 821 F.3d 823, 830 (7th Cir. 2016), leaving it undisputed on this record that assault weapons are commonly put to use for mass shootings. As a result, no matter what legal standard this Court might announce in this case governing the evaluation of common use, the judgment would have to be affirmed because Viramontes came forward with no admissible evidence to meet that standard. The resolution of that issue is thus "irrelevant to the ultimate outcome of the case," making certiorari review manifestly inappropriate. Shapiro, *supra*, at 249.

II. This Case Is An Exceedingly Poor Vehicle.

Compounding the lack of conflict amongst the circuits is the fact that this case is an exceedingly poor

vehicle for review, for the precise reason identified by the Seventh Circuit: Viramontes simply did not bother to compile a record sufficient to support his constitutional challenge. Rather, in his rush to lose fast and seek review in this Court, Viramontes not only failed to comply with his basic discovery obligations – most egregiously, by offering evidence from his supposed experts without properly disclosing those experts in advance – but also failed to comply with the basic procedural rules governing the presentation of evidence to the district court on summary judgment. Compounding matters, Viramontes *admitted* to the Seventh Circuit that “not all” of the evidence he hoped to offer in favor of his constitutional claims had even been made “part of the ‘record’ on appeal,” forcing him to use two citation formats in his appellate briefs, one for evidentiary material offered in the district court, and another for material offered for the first time on appeal. 7R. 14 at 44 n.2.² Even in his petition, Viramontes continues to eschew basic principles of adversarial and appellate

² Viramontes offered a cursory argument below that he was entitled to not only ignore basic rules of discovery and procedure, but also ambush the County with entirely new evidence on appeal, because he deemed his evidence all “legislative” in nature. 7R. 14 at 44 n.2. But Viramontes does not renew this frivolous argument in his petition, thus forfeiting it for purposes of this Court’s review. See, e.g., *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 28 (1993) (per curiam) (“we will consider questions not raised in the petition only in the most exceptional cases”). And even assuming, for sake of argument, that *any* of his evidence was of legislative facts, that would not excuse his failure to comply with the ordinary rules of party presentation still applicable to such facts. See Fed. R. Evid. 201, Notes of Advisory Committee.

litigation, by offering up entirely new, inadmissible evidentiary material. *E.g.*, Pet. 24 (citing a hearsay podcast, of all things).³

Viramontes’ inexplicable refusal to even *attempt* to comply with basic principles of adversarial and appellate litigation has resulted in his forfeiture of his entire constitutional challenge to the County’s Ordinance. As this Court explained in *Bruen*, Second Amendment litigation – like all other litigation – adheres to the basic “principle of party presentation” that is a cornerstone of “our adversarial system of adjudication,” as well as to the ordinary “evidentiary principles and default rules” governing that system. 597 U.S. at 25 n.6 (cleaned up). As a result, courts considering a Second Amendment claim are within their rights to decide that claim “based on the historical record compiled by the parties.” *Ibid.* One of the cornerstone rules of our adversarial system is fair notice in the trial court of the evidence on which legal arguments rest. This baseline rule gives litigants the fullest possible opportunity to meet that evidence with evidence and argument of their own. See, *e.g.*, *Berwick Grain Co. v. Illinois Dep’t of Agriculture*, 116 F.3d 231, 234 (7th Cir. 1997) (“The appellate stage of the litigation process is not the place to introduce new evidentiary materials” because saying otherwise would deny appellees of “fair notice of the record they

³ It is no small irony that Viramontes declares certain facts “well-evidenced,” only to offer in support of those facts hearsay materials *that are not in evidence*. Pet. 24. But such ironies are the natural consequence of ignoring, as Viramontes did here, basic rules of our adversarial system of justice.

are to confront on appeal”). Reflecting this fact, a finding of “[w]aiver is particularly justified when an argument . . . is based on facts not presented to the district court.” *Dixon v. SmithKline Beecham Corp.*, No. 97-1849, 1997 U.S. App. LEXIS 28897, at *3 (7th Cir. Oct. 17, 1997)

This forfeiture renders this case an exceptionally poor candidate for review. It is well settled by now that this Court is simply not in the business of considering arguments forfeited below, at least absent truly compelling reasons for doing so. *E.g.*, *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 609 (2015); *Duignan v. United States*, 274 U.S. 195, 200 (1927) (collecting authority). Viramontes’ belated acknowledgement of the lower courts’ concerns regarding his failure to adequately develop a record, Pet. 33, does not even dispute the resulting forfeiture, let alone identify a compelling reason for this Court to overlook it.

Rather, Viramontes declares that the sufficiency of his record should be irrelevant because he hopes to argue that the Seventh Circuit adopted an incorrect “standard” in *Bevis* that it then applied to this case. Pet. 33. But, again, *Bruen* made clear that the standard it announced contemplated a constitutional analysis “based on the historical *record* compiled by the parties.” 597 U.S. at 25 n.6 (emphasis added). Accordingly, *Bevis* did not simply pull an abstract legal principle out of the ether, as Viramontes tries to imply, but instead applied *Bruen* to the *evidence* the parties to that case presented regarding this nation’s

historical traditions – a fact Viramontes effectively admits when he complains about the historical evidence on which *Bevis* relied. Pet. 33. That is precisely why the Seventh Circuit made clear in *Bevis* that its ruling, arising out of a preliminary injunction, was tentative and subject to be revisited if further development of the evidence demonstrated that *Bevis* erred. 85 F.4th at 1197.

It should go without saying that a litigant challenging a court's application of the expressly record-centric *Bruen* standard is limited by the record it places before the court. Particularly, where, as here the court expressed a caveat that the conclusion in *Bevis* was contingent on future development of the record. This procedural history does not support Viramontes' claim of judicial ambivalence to the contents of the record compiled in support of that challenge. To say otherwise would turn the entire *Bruen* analysis on its head, by effectively allowing courts to once again expand or limit the Second Amendment based on judges' personal views of sound firearms policy rather than on the objective evidence showing how the founding generation understood that right.

Even less persuasive is Viramontes' cursory dismissal of the need for further percolation in the lower courts. Pet. 34. Viramontes offers no explanation why he thinks further percolation would be for naught, presumptively because he believes that future plaintiffs will follow his lead and eschew development of an evidentiary record. But that only

provides compelling reason to *deny* review. This court should make clear that plaintiffs must take their role in the adversarial system seriously and compile a record sufficient to meaningfully evaluate what regulations are consistent with this nation's history and tradition. It is only by that process of developing evidence and judicial perspectives on the same that the issues presented will ever percolate to the point that they are ready for this Court to step in and render a final authoritative ruling. Viramontes should not be permitted to short-circuit that process by simply walking away from his obligations under *Bruen*.

In fact, this case only demonstrates that significant percolation among the lower courts will be necessary before the constitutionality of assault weapons regulations – indeed, the constitutionality of any regulation of a particular kind of weapon – is ripe for this Court's final adjudication. As *Heller* explained, the Second Amendment “extends only to *certain types* of weapons,” based on “the *character* of the weapon.” 554 U.S. at 622-23 (2008) (emphases added). And as explained in more detail below, the County has compiled significant historical research indicating that a weapon's compatibility with the ancient common-law principle of moderate, proportionate self-defense plays a significant role in determining whether and to what extent it is of such a character that it may be regulated or banned altogether. And while one circuit has accepted that self-defense principles play a central role in this analysis, *Bianchi*, 111 F.4th at 452; *accord id.* at 451, given that *Heller* specifically instructs that the Second

Amendment was adopted for the specific purpose of protecting that right, 554 U.S. at 599, the precise extent of the role those principles should play has to date gone largely unexplored in the lower courts. Unless and until that issue has been given a full opportunity to percolate, the constitutionality of assault weapons regulations will not yet be ripe for consideration.

III. The Judgment Below Was Correct.

A. Viramontes’s Claims Are Rightly Foreclosed By *Bevis*.

Viramontes conceded that the “legal conclusions of *Bevis* are binding here,” but argued that he introduced “better data” that could change its analysis. App. at 18a. In affirming the district court’s ruling, the Seventh Circuit found Viramontes failed to build any record that would alter the analysis in *Bevis* and the conclusion that the Ordinance is constitutional. App. at 4a-5a. The judgment below, and its reliance on *Bevis*, was correct.

Under *Bruen*, the plaintiff bears the burden of demonstrating that his challenge falls within the Second Amendment’s plain text. 597 U.S. at 24. This means the determinative question here is whether the assault weapons prohibited by the Ordinance are “arms” such that they fall within the scope of the Second Amendment’s protection. In determining what falls outside Second Amendment’s ambit, *Heller* recognized, and *Bevis* specifically adopted, the

historical tradition of prohibiting “dangerous and unusual weapons,” explaining that “weapons that are most useful in military service—M-16 rifles and the like” may be banned. *Heller*, 554 U.S. at 627; *Bruen*, 597 U.S. at 21; *Bevis*, 85 F.4th at 1193-97. A weapon is presumptively protected by the Second Amendment’s text if it is “in common use’ today for self-defense.” *Bruen*, 597 U.S. at 32.

The court in *Bevis* rejected plaintiffs’ argument that this Court had already decided that weapons like the AR-15 are in common use, finding that such assault weapons are “much more like machine guns and military-grade weaponry than they are like the many different types of firearms that are used for individual self-defense.” *Bevis*, 85 F.4th at 1195. Since the weapons regulated by the Ordinance are not materially different from the M16, *Bevis* reasoned, relying on *Heller*, they are not protected by the Second Amendment and may be regulated or banned. *Id.* at 1197. Viramontes failed to present any evidence that the regulated weapons are markedly different from the M16 and military-grade weaponry, therefore *Bevis* controls.

Although *Bevis* found the weapons regulated by the Ordinance are not arms protected under the plain text of the Second Amendment, it proceeded to step two of the *Bruen* analysis to determine if the Ordinance is consistent with the history and tradition of this nation’s firearms regulation. While *Bevis* did not decide whether common use should be considered in the first step or second step, it found plaintiffs’

reliance on the number of weapons owned as conclusive evidence of common use to be unpersuasive. *Bevis*, 85 F.4th at 1198-99. Instead, the court focused on the modern analogues of weapons used for individual self-defense, which would exclude weapons exclusively used by the military. *Id.* at 1199.

Focus on the commonness of actual open, public use of a firearm, rather than on mere ownership, best respects the common-use principle's origins in the law of affray as adopted in early American jurisprudence as recognized in *Bruen* and *United States v. Rahimi*. *Bruen*, 597 U.S. at 51; *Rahimi*, 602 U.S. 680 at 697 (2024), citing *State v. Huntly*, 25 N. C. 418, 421-422 (1843). *Huntly* recognized a common law offense of affray where a man "arms himself with dangerous and unusual weapons in such a manner, as will naturally cause a terror to the people" but the question was not whether the weapon was unusual to own, but whether it was unusual "wherewith to be armed and clad." *Id.* at 421, 422 (emphasis added). Here, Viramontes put forth insufficient evidence that the weapons regulated by the Ordinance are in common use for a lawful purpose, therefore his claims were properly foreclosed by *Bevis*.

Bevis further found that the Ordinance was consistent with the history and tradition supporting a distinction between weapons and accessories designed for military or law-enforcement use, and weapons designed for personal use. 85 F.4th at 1202. Enveloped in this tradition are the longstanding principles of moderate, proportionate self-defense. As

Heller emphasized, “self-defense” is “the *central component* of the right” to keep and bear arms codified by the Second Amendment. 554 U.S. at 599 (emphasis in original).

Specifically, the moderation principle was central to English self-defense. As explained by Blackstone, the acts that constituted excusable homicide at English common law end at “the bounds of moderation, either in the manner, the instrument, or the quantity,” so an act otherwise permissible by the law becomes “manslaughter at least, and in some cases (according to the circumstances) murder” if a person uses a weapon or implement excessive for an otherwise-lawful task. 4 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 182-83 (Oxford 2016)⁴. This principle carried over into American criminal law; one of the earliest reported American decisions regarding self-defense rejected that defense because it was not “necessary for the prisoner to avail himself of the instrument” — there, a club — “which occasioned the death. On his own confession, much less would have been sufficient,” making his actions “clearly manslaughter.” *State v. Wells*, 1 N.J.L. 486, 493 (N.J. 1790). *Bevis*’s ruling, which draws a distinction between weapons designed for military use and weapons designed for personal use, is consistent with the principle of moderate self-defense and its focus on proportionality and avoidance of excessive force.

⁴ We cite Blackstone’s pagination of the Commentaries, provided in the Oxford edition, not to the Oxford book’s internal pagination, for ease of reference across editions.

B. Viramontes's challenges to *Bevis* are based on misreadings of *Heller*.

While Viramontes characterizes the Seventh Circuit's decisions as overreaching and confused misapplications of *Bruen*, he takes contradictory positions and subtly urges a reading of *Bruen* that would contradict *Heller*.

First, Viramontes overstates the Seventh Circuit's decision and baselessly argues that under its logic, any firearms other than handguns could be banned. Pet. 3, 23, 25. Viramontes seems to suggest that because assault weapons are widely sold to civilians, the Seventh Circuit's decision means anything less widely sold can be banned. This is simply not true. Indeed, according to his own assertions, traditional rifles and shotguns are less widely sold than AR-15s. *See* Pet. 4. Yet there is no basis to suggest these categories of firearms could be banned under *Bevis* because those firearms are decidedly not "exclusively or predominantly useful in military service," *Bevis*, 85 F.4th at 1194, and Viramontes makes no attempt to argue that they are. In misstating the Seventh Circuit's law, Viramontes suggests that both steps of *Bruen* could be replaced with one dispositive question: how many of these firearms have been sold? That is clearly not the upshot of *Bevis* or the test outlined in *Bruen*. Nevertheless, Viramontes confusingly seems to say the *Bevis* court's analysis both should have asked that question at the first step ("If the Second Amendment does not protect the most popular rifles in the country,

it is hard to see how it protects any firearms at all other than the handguns this Court held protected in *Heller*.” Pet. 23) and went too far in doing so (*Heller* “made clear that at a minimum all firearms are ‘arms’ within the meaning of the Second Amendment’s plain text.” Pet. 27.).

Viramontes also argues that the Ordinance was subjected to no “Second Amendment scrutiny” (despite the fact that *Bevis* applied both the first and second steps of *Bruen*). Viramontes argues that if a plaintiff cannot meet his burden at the first step of *Bruen*, the restriction “gets no scrutiny whatsoever.” Pet. 25. Petitioners’ implication again seems to be that the first step of *Bruen* should not exist at all, resulting in plaintiffs bearing no burden whatsoever.

Indeed, Viramontes’s conception of the step one “plain text” is at odds with *Bruen* and *Heller*. See Pet. 13, 16. Contrary to Viramontes’s telling, *Heller* did not consider all weapons to be arms within the protection of the Second Amendment. Pet. 13, citing 554 U.S. at 581-582. *Heller* specifically notes that the definition of “arms” does contain additional qualifications beyond “weapons of offense or armour of defence.” 554 U.S. at 581-582. *Heller* explains the historical meaning of the word “arms:” “the term was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity.” 554 U.S. at 581. *Heller* explained that the Second Amendment “protected” only those arms “in common use at the time,” describing this as “an important limitation on the right.” *Id.* at 627.

“Protected” here refers to the presumptive protection of certain “arms,” meaning again that “arms” carries within it its own limitations, according to *Heller*. Justice Scalia’s next sentence supports this reading. He writes, “We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Id.* at 627. Justice Scalia uses historical evidence here to support his definition of arms, not merely as an example of a historical analogue, as Viramontes argues. Pet. 19, 27; *Bevis*, 85 F.4th at 1193 (quoting *Heller*, 554 U.S. at 625). Justice Scalia illustrates his use of this technique again, writing “[T]he Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns. That accords with the historical understanding of the scope of the right.” *Heller*, 554 U.S. at 625. This is reflected in *Bruen*, which indicated the definition of “arms” does not include all firearms when it referred to weapons “in common use” within its discussion of the plain text of the Amendment and before moving on to its step two analysis. 597 U.S. at 32. *Bevis* follows this same line of reasoning. See 85 F.4th at 1192.

Viramontes appears to concede that arms do not include all firearms when he later argues that “if an arm is ‘in common use,’ under *Heller*, it should be viewed as *per se* protected.” Pet. 22. Moreover, Viramontes’s issue with this approach rings hollow given the fact that the *Bevis* court also performed a step-two analysis, applying the Second Amendment

scrutiny Viramontes claims the court failed to apply. *Id.* at 1201.

Finally, Viramontes uses his flawed concept of “arms” to argue that the Seventh Circuit wrongfully reads the Second Amendment as being “relevant solely to the preservation of individual self-defense” by “reading certain arms out of the plain text.” Pet. 29-30. Viramontes cites no portion of *Bevis* that contains this reading. Regardless, Viramontes ignores the background of militias provided by *Heller*, which explained “the traditional militia was formed from a pool of men bringing arms ‘in common use at the time’ for lawful purposes like self-defense.” 554 U.S. at 624. Viramontes’s criticism of *Bevis* on this point carries little weight, given *Heller*’s holding that “the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes[.]” *Id.* at 625. *Heller* did not hold, as Viramontes seems to imply, that military-style weapons are protected “arms” because military action by civilians is lawful. Instead, *Heller* characterized self-defense as the “core lawful purpose” of firearm use. 554 U.S. at 630.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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