

Nos. 25-238, 25-566

In the Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,

v.

COOK COUNTY, ILLINOIS, *et al.*,
Respondents.

EDDIE GRANT, JR., *et al.*,
Petitioners,

v.

RONNELL HIGGINS, *et al.*,
Respondents.

*On Writ of Certiorari to the United States Courts of
Appeals for the Second and Seventh Circuits*

**BRIEF OF AMICUS CURIAE JAVIER
HERRERA, M.D., IN SUPPORT OF
PETITIONERS**

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QUESTION PRESENTED

Whether the Second and Fourteenth Amendments guarantee the right to possess commonly used semiautomatic rifles.

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INTEREST OF AMICUS CURIAE

Dr. Javier Herrera works as an emergency-medicine physician and a volunteer medic for a Chicago-area SWAT team. He has long been a law-abiding gun owner directly burdened by the Cook County ban at issue here. He owns semiautomatic handguns and AR-15 rifles for lawful purposes including hunting, sport shooting, training with his SWAT team, and self defense. But Cook County makes it a crime for him to keep his firearms and standard ammunition in his Chicago home. That in-the-home ban makes regular training with an AR-15 practically impossible, including standard weapons training with his SWAT team. Dr. Herrera has therefore brought a Second Amendment challenge to the same Cook County firearms ban, along with other state- and city-level prohibitions on AR-15-style rifles. *See Herrera v. Raoul*, No. 23-1793 (7th Cir.).¹

Dr. Herrera, like many others in Cook County, has a direct and substantial interest in the constitutional question presented here. There should be no dispute that commonly owned firearms and standard ammunition may be kept in law-abiding Americans' homes. In his own case, Dr. Herrera presented a substantial historical record showing just that. He submits this brief to bring that historical record to the Court's attention. Cook County's claim that the Nation has a tradition of prohibiting ordinary citizens from possessing commonly owned rifles in

¹ Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or his counsel made a monetary contribution to its preparation or submission.

their homes is ahistorical. The history points in exactly the opposite direction. At the time of the Founding and after, American citizens were expected to possess common arms to defend themselves and their communities, to know how to use those common arms, and to keep them readily available at home.

SUMMARY OF ARGUMENT

I. The Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation.” *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). The Amendment provides that “the right of the people to keep and bear arms, shall not be infringed.” U.S. Const. amend. II. The plain text of this Amendment protects the right of law-abiding citizens to keep one of the most popular firearms in the United States in their homes. But in the Seventh Circuit, these common civilian weapons are not even “Arms.” *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023). That wayward approach has already been rejected by this Court. *See Wolford v. Lopez*, 146 S.Ct. 2032, 2049 (2026). The first question in a Second Amendment case is “simply whether a challenged law” is covered by the “plain text.” *Id.* Cook County’s ban on possessing commonly owned civilian rifles at home violates the plain text.

II.A-B. Categorical bans on keeping common firearms in the home are irreconcilable with the Nation’s history of firearms regulation. Historically weapons “typically possessed by law-abiding citizens for lawful purposes” are protected. *Heller*, 554 U.S. at 625. By every measure this Court has ever used, AR-15-style rifles are common. There are tens of millions

in circulation for lawful purposes, and they are lawful in 41 States. And history shows that from the colonial era through the Founding and beyond, civilians were not just permitted to keep commonly owned firearms in their homes; they were *required* to do so for both their own self defense and the common defense of their communities. That tradition is consistent with the Second Amendment's animating principle of ensuring a citizenry capable of military service, rather than relying exclusively on a standing army. See *United States v. Miller*, 307 U.S. 175, 178-79 (1939). Yet the Seventh Circuit has forged a detour around common use and ignored the militia acts. The Seventh Circuit announced that arms could be banned because they are "useful in military service." *Bevis*, 85 F.4th at 1194. That test is historically backwards.

II.C. Nor can the relevant history justify banning in-home possession of common civilian arms. Historically, laws regulated when civilians could carry arms *beyond* their homes, not *within* their homes. Public-carry regulations of Bowie knives and the like never reached inside the home. Nor did they reach common arms useful for both an individual's self defense and the collective defense. Such regulations for firearms "highly unusual in society at large," 554 U.S. at 627, bear no resemblance to Cook County's criminalization of the keeping of commonly owned rifles in law-abiding citizens' homes.

ARGUMENT

I. The plain text of the Second Amendment covers the possession of common rifles in the home.

A. This Court employs a two-step framework for Second Amendment cases. *See New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 24 (2022). The first step is to ask whether the “plain text of the Amendment’s language” covers the regulated conduct. *Wolford*, 146 S.Ct at 2043 (quoting *Bruen*, 597 U.S. at 24). That is: does the law apply to “the people,” does it concern “any form of ‘Arms,’ i.e., any weapon customarily used for offensive or defensive purposes,” and does it restrict the “keep[ing]” or “bear[ing]” of those arms. *Wolford*, 146 S.Ct. at 2043-44. If it does, then it is “presumptively unconstitutional,” and a government must show that its regulation is consistent with “the historical understanding of the codified right.” *Id.* at 2044.

Cook County’s law flunks step one. Law-abiding citizens like Dr. Herrera cannot keep commonly owned rifles in their homes. That ban on the possession of a bearable arm by the people necessarily implicates the Second Amendment’s plain text. *See Bruen*, 597 U.S. at 32; *Heller*, 554 U.S. at 628-29.

B. To illustrate what the challenged bans “mean[] in practice,” consider how the Cook County ban impacts Dr. Herrera. *See Wolford*, 146 S.Ct. at 2048. Dr. Herrera knows from first-hand experience how quickly the need for self defense can arise. During his medical residency in Cook County, Illinois, an

armed attacker entered the hospital and killed Dr. Herrera's attending physician and two others. *See* Appellant-Br. (R.63) at 5, *Herrera v. Raoul*, No. 23-1793 (7th Cir. 2023). Dr. Herrera was present that day and rendered aid in the aftermath of the shooting. *Id.*

That was not the last time Dr. Herrera's work brought him close to armed violence. To serve his community, Dr. Herrera chose to volunteer as a SWAT team medic, accompanying a team that responds to hostage situations, active shooters, and high-risk warrants. *Id.* The officers carry AR-15 rifles. *Id.* at 6. Dr. Herrera's job is to provide medical care, not law enforcement. But doing that job safely sometimes requires knowing what to do with the weapons around him. For his own "safety and everyone else's safety," Dr. Herrera wants to be confident handling the AR-15 rifles carried by the officers around him. *Id.* at 7. If an officer is injured, Dr. Herrera may need to "immediately secure, unload, and make safe" that officer's rifle. *Id.* This is not a speculative hypothetical—on past missions, Dr. Herrera has been asked to secure AR-15-style rifles while officers attended to other matters. *Id.* Ordinarily, a medic in Dr. Herrera's position should attend weapons training with his SWAT team to prepare for just that scenario. But as a practical reality, not in Cook County.

Cook County bans Dr. Herrera from keeping his rifle in his home for self defense and makes ordinary training needlessly difficult. Because Dr. Herrera cannot keep his rifle at home, participating in a training session with it requires an extraordinary detour: Dr. Herrera would have to drive outside Cook County to retrieve his lawfully owned rifle, return for

training, drive back outside the county to return his rifle, and then return home. On a normal day, that takes more than four hours. Dr. Herrera cannot regularly make that drive given his professional obligations.

Like Petitioners, Dr. Herrera has challenged Cook County’s in-home ban. *See* Am. Compl. (Doc. 103), *Herrera v. Raoul*, No. 1:23-cv-532 (N.D. Ill. 2023). He simply asks to keep *inside his own home* a firearm owned by millions of other Americans—to defend himself and to remain proficient with it.

Cook County’s ban burdens conduct at the core of the right. “[T]he inherent right of self-defense [is] central to the Second Amendment right.” *Heller*, 554 U.S. at 628. And that right applies “most notably ... within the home,” *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality op.), “where the need for defense of self, family, and property is most acute,” *Heller*, 554 U.S. at 628. And the right to keep and bear arms “implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use.” Cooley, *General Principles of Constitutional Law* 271 (Rothman ed. 1981); *see Heller*, 554 U.S. at 617-18.

And Dr. Herrera has unusually concrete reasons to value that freedom. He has seen what happens when an armed gunman walks through a hospital door and fires on a crowd. He has experienced situations where violent criminals are armed. He knows well that “survival might well depend on the availability of a firearm to ward off assailants.” *Wolford*, 146 S.Ct. at 2042. The Second Amendment

protects the right of ordinary citizens to keep arms for precisely that most basic reason—so that when confronted with violence, a law-abiding person need not be helpless in his own defense.

C. The Seventh Circuit’s holding that Dr. Herrera’s in-home possession of an AR-15 did not implicate the plain text of the Second Amendment “border[ed] on the frivolous” at the time, *Heller*, 554 U.S. at 582, and this Court rebuked its approach last term. And yet, the Seventh Circuit has concluded that AR-15s are not “arms” covered by the Second Amendment’s plain text. It reached this conclusion by importing an additional inquiry into “the understanding of the scope of the right” into the first, plain text step. *Bevis*, 85 F.4th at 1193. As this Court has since said, any such inquiry was “out of place at *Bruen*’s first step,” where “the question is simply whether a challenged law falls within the Second Amendment’s plain text.” *Wolford*, 146 S.Ct. at 2049 (cleaned up). Since the challenged bans fall within the plain text, they are “presumptively unconstitutional.” *Id.* at 2044.

II. History refutes—rather than supports—a tradition of banning commonly owned firearms.

No history could justify the government’s insistence that its ban “is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. When assessing historical regulations, courts must ask “how and why the regulations burden a law-abiding citizen’s right to armed self-defense,” because “whether modern and historical regulations

impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are *central* considerations when engaging in an analogical inquiry.” *Bruen*, 597 U.S. at 29 (cleaned up). Applied here, there is no historical tradition of banning commonly owned firearms from law-abiding Americans’ homes. History points in the opposite direction—before and after the Founding, law-abiding citizens were expected to have common firearms suitable for their own defense and the common defense of their communities in their homes.

A. Semiautomatic rifles are common civilian arms.

The Second Amendment protects possession of commonly owned weapons in the home while tolerating regulations of “dangerous *and* unusual weapons.” *Heller*, 554 U.S. at 627 (emphasis added). So while the possession of machine guns or short-barreled shotguns may be regulated, *id.* at 625-27, there is no similar historical tradition for banning “the sorts of weapons” that are “in common use” entirely from law-abiding citizens’ homes. *Id.* at 627 (quoting *Miller*, 307 U.S. at 179); *see also Bruen*, 597 U.S. at 21 (“[T]he Second Amendment protects the possession and use of weapons that are in common use at the time.” (cleaned up)); *Heller v. District of Columbia* (“*Heller II*”), 670 F.3d 1244, 1272 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (Dangerous and unusual weapons “are equivalent to those weapons not ‘in common use.’”). Governments thus may not ban the possession of “weapons that are unquestionably in common use today” in law-abiding citizens’ homes. *Bruen*, 597 U.S. at 47.

This case is simple under that common-use test. “The AR-15 is the most popular semi-automatic rifle in America and is therefore undeniably in common use today.” *Harrel v. Raoul*, 144 S.Ct. 2491, 2492 (2024) (Thomas, J., statement respecting denial of certiorari) (cleaned up). “Americans today possess an estimated 20 to 30 million AR-15s,” and “AR-15s are legal in 41 of the 50 States, meaning that the States ... that prohibit AR-15s are something of an outlier.” *Snope v. Brown*, 145 S.Ct. 1534, 1534 (2025) (Kavanaugh, J., statement respecting denial of certiorari). Indeed, just one year ago, this Court unanimously acknowledged that “[t]he AR-15 is the most popular rifle in the country,” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025), citing an article that claimed over 20 million AR-15-style rifles had been sold in the United States in just the last few decades, see Gross, *How the AR-15 Became the Bestselling Rifle in the U.S.*, NPR (Apr. 20, 2023), perma.cc/2R8E-XM5Y. Over a decade ago, “[r]oughly five million Americans own[ed] AR-style semiautomatic rifles” and “[t]he overwhelming majority of citizens who own and use such rifles do so for lawful purposes, including self-defense and target shooting.” *Friedman v. City of Highland Park*, 136 S.Ct. 447, 449 (2015) (Thomas, J., dissenting from denial of certiorari). But in more recent years, one national survey found that 30.2% of gun owners—about 26.4 million Americans—have owned an AR-15 or similarly styled rifle, “with approximately 40 million AR-15 type rifles and 20 million other similarly styled rifles owned in total.” English, *2026 National Firearms Survey 2* (Aug. 26, 2026). And the State’s own estimate in Dr. Herrera’s case conceded

that semiautomatic gun owners (6.4 million²) are more common than lawyers (1.3 million³), teachers (4 million⁴), and Ford F-150s.⁵ Even by cautious estimates, that number is far greater than the “approximately 200,000 civilians [that] owned stun guns” at issue in *Caetano v. Massachusetts*, 577 U.S. 411, 420 (2016) (Alito, J., concurring in judgment).

But the Seventh Circuit declined to consider just how common it is for Americans to own semiautomatic rifles. In *Bevis*, the Seventh Circuit “decline[d] to base [its] assessment of the constitutionality of these laws on numbers alone,” *Bevis*, 85 F.4th at 1198-99. Insisting that this Court’s test was both “slippery” and “circular,” the court made much of *Heller*’s statement that M-16s can be banned. *Id.* at 1185-86, 1190, 1198. From that statement, the court drew a distinction between “military and civilian weaponry” that excluded consideration of which weapons civilians actually use for lawful purposes. *Id.* at 1201.

The Seventh Circuit’s maneuver equates commonly owned civilian firearms with military-issue fully-automatic firearms, such as an M-16. A civilian cannot claim the Constitution allows him to possess that military-issued firearm whenever and wherever because those arms may be regulated pursuant to the

² Klarevas Decl. (Doc. 52-4) ¶27 & n.23, *Herrera v. Raoul*, No. 1:23-cv-532 (N.D. Ill. 2023).

³ American Bar Association, *ABA Profile of the Legal Profession* 22 (2022), perma.cc/WFN4-6RKF.

⁴ National Center for Education Statistics, *Teacher Characteristics and Trends* (2022), perma.cc/L8HX-NW25.

⁵ *Miller v. Bonta*, 542 F. Supp. 3d 1009, 1022 (S.D. Cal. 2021), *vacated* 2022 WL 3095986 (9th Cir.)

“historical tradition” of regulating “dangerous *and* unusual weapons.” *Heller*, 554 U.S. at 627 (emphasis added). But that same tradition protects civilian weapons that are commonly used for lawful purposes.

Similarly, the Second Circuit has dismissed this Court’s commonality inquiry as a “trivial counting exercise,” then ruled that “historical tradition” supports banning arms that are “*unusually dangerous* because of their characteristics.” *Nat’l Ass’n for Gun Rts. v. Lamont*, 153 F.4th 213, 233 (2d Cir. 2025) (cleaned up). It went on to explain that “unusually dangerous” encompasses whatever arms “are so lethal” that legislators can conclude they “are not used or intended to be used for lawful purposes.” *Id.* at 234.

But this approach returns to a world before *Heller*. An arm that is “chosen by American society” and not “highly unusual in society at large” does not become unusual simply because a legislature thinks that it is particularly dangerous. *Heller*, 554 U.S. at 627-28. “[T]he American people have considered the handgun to be the quintessential self-defense weapon,” *id.* at 629, no matter how dangerous the District of Columbia thought it was. And they have similarly chosen semiautomatic rifles like the AR-15 as the quintessential self-defense rifle.

B. There is a historical tradition allowing citizens to keep commonly owned rifles at home.

The Seventh Circuit and Second Circuit also ignored a long historical tradition of keeping long arms in the home. The Statute of Winchester

commanded in 1285 that “every man have in his house arms for keeping the peace.” 13 Edw. 1, st. 2, c. 5 (1285). The English right “began as a duty”—the longstanding obligation of ordinary subjects to keep arms for the common defense was “transformed into a right” at the Glorious Revolution. Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 1, 9 (1994). The 1689 Bill of Rights guaranteed “[t]hat the subjects which are Protestants may have arms for their defence,” English Bill of Rights, 1 W. & M., ch. 2, §7, in 3 Eng. Stat. at Large 441 (1689)—a guarantee adopted after prior monarchical disarmaments, *see Heller*, 554 U.S. at 593.

Both before and after the Founding, civilians were required to keep long guns that could be used for common defense in their homes. In his case, Dr. Herrera collected these laws, which show that tradition is precisely the opposite of what the Seventh Circuit claimed. *See Historical Firearm Laws* (Doc. 63-1), *Herrera v. Raoul*, No. 1:23-cv-532 (N.D. Ill. 2023). Historically, militia laws required citizens to furnish themselves with muskets, carbines, or rifles, as well as the required ammunition, and to train with them, or face fines. *See Miller*, 307 U.S. at 178-82 (collecting examples); *see also* Historical Firearm Laws, *supra*, at 83-156. Various colonial legislatures from Georgia to Connecticut even required citizens to keep or carry arms. *See Young v. Hawaii*, 992 F.3d 765, 795-96 (9th Cir. 2021) (en banc) (collecting statutes), *vacated on other grounds*, 142 S.Ct. 2895 (2022); *see also* Historical Firearm Laws, *supra*, at 83-156.

This tradition continued after the Founding. The first Militia Act, for example, required civilians to “provide [themselves] with a good musket or firelock ... or with a good rifle,” along with “twenty balls suited to the bore of [the] rifle, and a quarter of a pound of powder.” 1 Stat. 271, §1 (May 8, 1792). Later militia acts maintained and expanded these requirements. *E.g.*, Militia Act of 1803, §2, 2 Stat. 207 (Mar. 2, 1803) (“[E]very citizen duly enrolled in the militia, shall be constantly provided with arms, accoutrements, and ammunition, agreeably to the direction of the said act[.]”); Militia Act of 1862, 12 Stat. 597 (July 17, 1862) (including black Americans). It was not until 1903 that Congress repealed the 1792 Act. *See* Dick Act, 32 Stat. 775 (Jan. 21, 1903).

These laws fit with the Second Amendment’s reference to a “well-regulated militia.” U.S. Const. amend. II. The “militia” refers to “all citizens capable of bearing arms” for our collective defense, not a standing army. *Presser v. Illinois*, 116 U.S. 252, 265 (1886); *see* Leider, *Federalism and the Military Power of the United States*, 73 Vand. L. Rev. 989, 1008-09 (2020) (“the militia” referred “to the entire national able-bodied population subject to military service”). The English experience with unrepresentative armed factions raised concerns that a standing army could subvert the Constitution. *See* Cooley, *Treatise on the Constitutional Limitations* 428-29 (5th ed. 1883) (“A standing army is peculiarly obnoxious in any free government ... more dreaded by the people [in England] as an instrument of oppression than a tyrannical monarch or any foreign power”); Cooley, *supra*, at 271 (describing standing army as “condemned by the traditions and sentiments of the

people, as being ... dangerous to the liberties of the people” and that “general preparation of the people for the defence of their institutions with arms is preservative of them”). The answer to this concern was to guarantee civilians the right to keep and bear arms so that the citizenry could contribute to the common defense. The militia is the “natural defence of a free country,” Justice Story explained, and “[t]he right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic.” 3 Story, *Commentaries on the Constitution of the United States* §1890 (1833).

Put another way, by ensuring ordinary citizens remained proficient with commonly used arms, the country’s defense was not dependent only on professional soldiers but also aided by able-bodied civilians. Civilian possession and familiarity with arms suitable for common defense ensured a citizenry prepared to take up those arms in the nation’s defense when war came. See Leider, *Deciphering the “Armed Forces of the United States,”* 57 Wake Forest L. Rev. 1195, 1279 (2022); see generally Baude & Leider, *The General-Law Right to Bear Arms*, 99 Notre Dame L. Rev. 1467 (2024). And the States could not “prohibit the people from keeping and bearing arms so as to deprive the United States of their rightful resource for maintaining the public security, and disable the people from performing their duty to the general government.” *Presser*, 116 U.S. at 265; see U.S. Const. art. I, §8, cl. 15-16 (describing Congress’s power to call and organize militias).

Through the nineteenth century, jurists reiterated that the Second Amendment ensured that

the people could keep and bear firearms to be ready for the common defense. Michigan Chief Justice Thomas Cooley wrote that “the meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms; and they need no permission or regulation of law for the purpose.” Cooley, *General Principles*, *supra*, at 271 (quoted in *Heller*, 554 U.S. at 616-17); *see also* Pomeroy, *An Introduction to the Constitutional Law of the United States* 152-53 (1868) (quoted in *Heller*, 554 U.S. at 618) (“[A] militia would be useless unless the citizens were enabled to exercise themselves in the use of warlike weapons.”). The Tennessee Supreme Court likewise explained that arms “are to be kept, evidently with a view that the citizens making up the yeomanry of the land, the body of the militia, shall become familiar with their use in times of peace, that they may the more efficiently use them in times of war.” *Andrews v. State*, 50 Tenn. 165, 178 (1871). The Louisiana Supreme Court praised the open bearing of arms as “calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country.” *State v. Chandler*, 5 La. Ann. 489, 490 (1850). And the Texas Supreme Court, while sustaining limits on Bowie knives and similar weapons, anchored its decision by differentiating those implements as “belong[ing] to no military vocabulary.” *English v. State*, 35 Tex. 473, 477 (1871).

This history confirms that the Second Amendment protects, at a minimum, in-home possession of common civilian weapons used for lawful purposes that could also be useful as “ordinary military equipment.” *See Heller*, 554 U.S. at 577-78, 624-25 (quoting *Miller*, 307 U.S. at 179). The militia

were civilians who, when summoned, “were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.” *Miller*, 307 U.S. at 179. Those arms being useful for both self and collective defense was a feature, not a defect, of the Second Amendment’s protection. *See, e.g., Wilson v. State*, 33 Ark. 557, 560 (1878) (cannot “prohibit the citizen from wearing or carrying a war arm”); *Aymette v. State*, 21 Tenn. 154, 158 (1840) (“arms ... usually employed in civilized warfare”); *State v. Kerner*, 107 S.E. 222 (N.C. 1921) (“arms” are those “whose use was necessary for their protection against the usurpation of illegal power—such as rifles, muskets, shotguns, swords, and pistols”); *English*, 35 Tex. at 474 (“Arms of what kind? Certainly such as are useful and proper to an armed militia.”); *State v. Workman*, 14 S.E. 9, 10 (W. Va. 1891) (“in regard to the kind of arms ... it must be held to refer to the weapons of warfare to be used by the militia”); Cooley, *General Principles*, *supra*, at 271 (“arms ... suitable for the general defence of the community against invasion or oppression”). The militia acts confirm that popular civilian firearms that could contribute not just to an individual’s self defense but also to the common defense were expected to be kept in the home.

This history does not mean that military-issue weapons—undoubtedly useful for the common defense—can also be freely possessed without any regulation. *Heller* recognized that the government regulates fully automatic machine guns like the M16 and other “sophisticated arms that are highly unusual in society at large.” 554 U.S. at 627. Such weapons, with fully automatic capabilities for cover fire and other military operations, are beyond the *individual*

right protected by the Second Amendment. But the semiautomatic AR-15 is definitively not the M16. It “is the *civilian* version of the military’s M-16 rifle, and is, unless modified, a semiautomatic weapon,” *Staples v. United States*, 511 U.S. 600, 603 (1994) (emphasis added). “Semiautomatic firearms, which require shooters to reengage the trigger for every shot, are not machineguns.” *Garland v. Cargill*, 602 U.S. 406, 410 (2024). As Judge Brennan observed in *Bevis*: “The AR-15 is a civilian, not military, weapon. No army in the world uses a service rifle that is only semiautomatic.” *Bevis*, 85 F.4th at 1222 (Brennan, J., dissenting).

History refutes the Seventh Circuit’s conflation of longstanding regulations of military-issued firearms with commonly used civilian firearms, which also happen to be useful for common defense. In the Seventh Circuit, governments may ban any weapon that seems “militaristic.” 85 F.4th at 1199. This conclusion gets history and *Heller* backwards. History shows that popular civilian weapons useful for both self defense and common defense were expected to be in the home. And these weapons have long been considered part of the core protection of the Second Amendment. *Heller* understood this history, distinguishing between commonly owned civilian arms and fully automatic weapons that are “highly unusual in society at large.” *Heller*, 554 U.S. at 627.

C. Regulations restricting unusual weapons and when citizens may carry weapons outside their homes are not analogous to banning common weapons inside their homes.

The courts below claimed that each ban on AR-15-style rifles could be justified by analogizing to public-carry regulations of novelty weapons, like Bowie knives, and also by twentieth-century machinegun laws. But when measured against the “how” and “why” methodology established by this Court, each body of history invoked by the Seventh Circuit in *Bevis* and the Second Circuit in *Lamont* fails to justify either court’s conclusions.

1. Laws regulating “dangerous and unusual” weapons are no answer to the historical expectation that common weapons useful for common defense would be kept in the home.

Those laws regulated public carry, not in-home possession. The “historical tradition of prohibiting the *carrying* of ‘dangerous and unusual weapons’” is thus entirely irrelevant to any analysis here. *Heller*, 554 U.S. at 627 (emphasis added); see *Bruen*, 597 U.S. at 47. *Heller* cited treatises describing the common-law “offence of riding or going armed, with dangerous or unusual weapons”—the “dangerous and unusual weapons” of the modern formulation—which “is a crime against the public peace, *by terrifying the good people of the land.*” 4 Blackstone, *Commentaries on the Laws of England* 148-49 (1769) (emphasis added). And the Statute of Northampton describes the offense’s shape: A person could neither “go nor ride

armed by night nor by day, in fairs, markets ... upon pain to forfeit their armour.” 2 Edw. 3, c. 3 (1328). Such laws—regulating what people do outside their homes—are no analogue to a complete in-home ban of common firearms.

Nor did this tradition reach ordinary carry of “common weapons.” 1 Burn, *The Justice of the Peace, and Parish Officer* 15-16 (1762); see Bruen, 597 U.S. at 47; see also “Affray,” 1 Cunningham, *A New and Complete Law Dictionary* (1764). Legal commentator William Hawkins took pains to make clear that this offense reached only those people who sought to terrify the citizenry and did *not* cover citizens carrying common arms in a manner not meant to intimidate. “[N]o wearing of Arms is within the meaning of this Statute, unless it be accompanied with such Circumstances as are apt to *terrify* the People,” and “persons of quality are in no danger of offending against this statute by wearing *common weapons*.” 1 Hawkins, *A Treatise of the Pleas of the Crown* 135-36 (1716) (emphasis added). The exemption for “common weapons” is no accident of phrasing—it is the direct ancestor of *Heller*’s common-use rule, embedded in the very tradition the governments invoke.

This tradition did not even reach every manner of carrying weapons. It reached only those meant to terrify the public. When a man was prosecuted for walking armed into a church, the King’s Bench explained that the statute’s “meaning ... was to punish people who go armed to *terrify* the King’s subjects.” *Sir John Knight’s Case*, 87 Eng. Rep. 75, 76 (K.B. 1686) (emphasis added). The Founders knew and

implemented the same rule—a rule restricted to public carry that terrified the citizenry and not reaching possession of normal weapons. James Wilson defined the offense as carrying “dangerous and unusual weapons, in such a manner, as will naturally diffuse a terrour among the people.” 3 *The Works of the Honourable James Wilson* 79 (1804). William Rawle agreed that the only punishable conduct under this offense was “the carrying of arms abroad by an individual, attended with circumstances giving just reason to fear that he purposes to make an unlawful use of them.” Rawle, *A View of the Constitution of the United States of America* 126 (1829). Colonial and founding-era justice-of-the-peace manuals said the same. See Webb, *The Office and Authority of a Justice of Peace* 92-93 (1736); Hening, *The New Virginia Justice* 18 (1795). Even if carrying a dangerous arm was “unusual,” the citizen remained “at perfect liberty to carry his gun” “[f]or any lawful purpose—either of business or amusement,” *unless* he had a “wicked purpose.” *State v. Huntly*, 25 N.C. 418, 422-23 (1843). It was “the wicked purpose—and the mischievous result—which essentially constitute[d] the crime.” *Id.* at 423; see *O’Neill v. State*, 16 Ala. 65, 67 (1849) (similar).

2. These limitations continued through the nineteenth century. Carry restrictions did not reach into law-abiding citizens’ homes. Indeed, between 1819 and 1927, many of these statutes expressly protected possession and use of weapons while traveling or while *at home*. An 1881 Arkansas law, for example, expressly permitted carrying Bowie knives and other weapons while “on a journey, and on his premises.” *McDonald v. State*, 102 S.W. 703, 703 (Ark.

1907); see *Haile v. State*, 38 Ark. 564, 566 (1882) (recognizing the same premises exception).

Even outside the home, these laws were concerned with particular weapons that were not considered suitable for common defense. Both *Bevis* and *Lamont* grounded their historical analyses in the variety of laws that banned “dangerous and concealable” weapons like “Bowie knives,” “cane-swords,” “slingshots,” “metal knuckles,” and more. See, e.g., *Bevis*, 85 F.4th at 1201. And true enough, a handful of courts from that era passed on the validity of those laws. But the courts upholding those laws did so because the particular weapons at issue—Bowie knives, clubs, and the like—were unlike the “ordinary military equipment” that would be commonly kept at home by civilians. *Aymette*, 21 Tenn. at 158; see *Miller*, 307 U.S. at 178. Indeed, so unlike normal military weapons were these items that if “a soldier on duty [was] found with any of these things [such as dirks, daggers, or brass-knuckles] about his person, he would be punished for an offense against discipline.” *English*, 35 Tex. at 477.

These laws thus targeted dangerous and *unusual* concealed weapons and never broadly prohibited keeping common weapons useful for individual and collective defense. *Aymette*, 21 Tenn. at 159-60; see, e.g., *Cockrum v. State*, 24 Tex. 394, 402 (1859) (affirming that the “right to carry a bowie-knife for lawful defense is secured, and must be admitted,” despite its being “an exceeding destructive weapon”); *Nunn v. State*, 1 Ga. 243, 251 (1846) (explaining that prohibitions “against bearing arms *openly*” are unconstitutional and “void,” even if concealed carry

could be banned); *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90, 90, 93-94 (1822) (invalidating statute proscribing concealed carry of “a pocket pistol, dirk, large knife, or sword in a cane”). And the constitutionality of these laws also depended on the presence of exceptions preserving the right to keep arms for self defense, for the collective defense, and within a person’s own home. *See State v. Kerner*, 107 S.E. 222, 224 (N.C. 1921) (“[t]he maintenance of the right to bear arms is a most essential one to every free people and should not be whittled down by technical constructions”); *Aymette*, 21 Tenn. at 159. The earliest concealed-carry statutes in existence demonstrate this point—Kentucky’s 1813 concealed-carry law exempted persons “travelling on a journey.” 1813 Ky. Acts 100, ch. 89, §1. When examining a similar law, the Alabama Supreme Court acknowledged that limited restrictions on concealed carry could not constitutionally stretch into sweeping prohibitions on keeping arms for defense. “[A] statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional.” *State v. Reid*, 1 Ala. 612, 616-17 (1840).

Absolute bans on the Nation’s most common type of rifle—even within one’s own home and when kept for self defense—do not fall under this tradition of concealed-carry limitations. By their own terms, these narrower public-carry restrictions cannot be likened to a prohibition on possession of common rifles. *See Bruen*, 597 U.S. at 48 (emphasizing that such a law “restricted only concealed carry, not all public carry,” and that “its restrictions applied only to certain

‘unusual or unlawful weapons’”); *Heller*, 554 U.S. at 629; *see also* Historical Firearm Laws, *supra*, at 20-55, 227-468 (compiling public-carry statutes). The restrictions on carrying Bowie knives and cane-swords did not “impose a comparable burden on the right of armed self-defense” as an at-home ban does. *Bruen*, 597 U.S. at 29.

3. Twentieth-century machinegun statutes are also no analogue. They regulated automatic fire, not semiautomatic rifles like the AR-15-style rifles at issue here. *See* Historical Firearm Laws, *supra*, at 469-559 (statutes); *contra* *Bevis*, 85 F.4th at 1201-02; *Lamont*, 153 F.4th at 240-47. Each of those laws restricts fully automatic weaponry. The Uniform Machine Gun Act, for example, exempted semiautomatic rifles of certain calibers and would not have covered today’s AR-15-style rifles. *See, e.g.*, Historical Firearm Laws, *supra*, at 519-38.

Similarly, federal law treats a pistol or rifle as a restricted “machinegun” only if capable of firing automatically, 26 U.S.C. §§5845(b), 5861, and imposes strict registration requirements on the machinegun’s “manufacturer, importer, and maker,” *id.* §5841(b). Nothing about the argument against bans on AR-15-style rifles casts any doubt on those restrictions. As these laws show, governments can regulate the uncommon fully automatic functionality of firearms without banning a whole class of popular semiautomatic rifles. *See* *Staples*, 511 U.S. at 603, 611-12; *Cargill*, 602 U.S. at 410-11. What the machinegun laws cannot do is supply an analogue for banning arms those very laws left untouched. Such “narrow” historical precursors cannot justify “a broad

prohibitory regime.” *United States v. Rahimi*, 602 U.S. 680, 700 (2024).

A pair of enactments aimed at limiting automatic weaponry cannot establish an enduring American tradition of banning *semiautomatic* rifles. And the chronology confirms the point—the first modern state-enacted “assault weapon” ban did not appear until 1989. Thus, it is the modern ban—not the AR-15-style rifle—that is the true aberration. The “lack of a distinctly similar historical regulation” for the common rifles here “is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.” *Bruen*, 597 U.S. at 26.

* * *

The Seventh Circuit and Second Circuit sought to justify sweeping prohibitions on the right to keep common weapons in the home based on supposed traditions assembled from mismatched fragments—medieval lance restrictions, Bowie-knife carry laws, and machinegun registration. None of these laws reveal any lasting principle that justifies banning Dr. Herrera’s rifle from Dr. Herrera’s home. But the history that these courts ignore confirms a right to keep common semiautomatic rifles in the home: Citizens were expected to keep long guns suitable for self defense and common defense in their homes.

The decisions below thus fail at every turn. *Bevis* treats an arm’s military utility as a reason to exclude it from the Amendment, even though the Founding generation required citizens to keep arms suitable for common defense. The courts below erred by invoking

regulations of dangerous persons, concealed carry, and exceptional weapons to justify something history did not recognize—a categorical ban on peaceable citizens keeping common arms in their homes. That is not analogical reasoning under *Bruen*. It is interest balancing at a higher level of generality, with history supplying the vocabulary rather than the rule. The Second Amendment does not permit government to disarm millions of law-abiding Americans because their chosen rifle is effective, popular, or useful for the very purposes for which citizens have long kept arms.

CONCLUSION

The judgments below should be reversed.

Respectfully submitted,

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September 4, 2026

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