

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, IN HIS OFFICIAL CAPACITY AS
COMMISSIONER OF THE CONNECTICUT
DEPARTMENT OF EMERGENCY SERVICES AND
PUBLIC PROTECTION, *et al.*,
Respondents.

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

**BRIEF OF GLOBAL ACTION ON GUN
VIOLENCE AS *AMICUS CURIAE*
SUPPORTING RESPONDENTS**

JONATHAN K. BAUM
KATTEN MUCHIN
ROSENMAN LLP
525 W Monroe Street
Chicago, IL 60661-3693
(312) 902-5479
jonathan.baum@katten.com

CHRIS COLE
Counsel of Record
KATTEN MUCHIN
ROSENMAN LLP
1919 Pennsylvania Avenue NW
Suite 800
Washington, D.C. 20006
(202) 625-3550
chris.cole@katten.com

October 28, 2026

[Additional Counsel Listed On Inside Cover]

MARK T. CIANI
SARAH EICHENBERGER
KATTEN MUCHIN
ROSENMAN LLP
50 Rockefeller Plaza
New York, NY 10020-1605
(212) 940-6509
mark.ciani@katten.com
sarah.eichenberger@katten.com

MICHAELA C. HOLCOMBE
KATTEN MUCHIN
ROSENMAN LLP
615 S College Street, Suite 1700
Charlotte, NC 28202-3354
(704) 344-3074
michaela.holcombe@katten.com

JONATHAN LOWY
JAKE STEISEL
GLOBAL ACTION ON
GUN VIOLENCE
805 15th Street NW, #601
Washington, D.C. 20005
(202) 415-0691
JLowy@actiononguns.org
JSteisel@actiononguns.org

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTERESTS OF AMICUS CURIAE	1
INTRODUCTION AND STATEMENT	1
ARGUMENT.....	5
I. The Statutes Are Constitutional Because Assault Weapons Are Dangerous and Unusual.....	5
A. The Dangerous and Unusual Standard	5
B. Assault Weapons Are Dangerous and Unusual.....	6
1. Assault Weapons Are Dangerous ..	7
a. Criminal Use of Assault Weapons Highlights Their Lethality.....	8
b. International Criminal Demand for Assault Weapons Highlights Their Lethality.....	10
2. Assault Weapons Are Unusual.....	14
a. Determining Whether Firearms Are Constitutionally Protected by Examining Whether They Are “in Common Usage” Is Improper and Ineffective.....	14
b. Assault Weapons Are Uncommon	16

TABLE OF CONTENTS—Continued

	Page
II. <i>Bruen’s</i> Framework Is Particularly Ill-Suited to Assault Weapons and Should Be Reconsidered.....	22
A. <i>Bruen</i> Is Unworkable When Applied to Assault Weapons	25
1. There Were No Firearms Remotely Analogous to Modern Assault Weapons During the Founding Era	25
2. <i>Bruen’s</i> Historical Analogue Test Does Not Work When Applied to Assault Weapons.....	27
B. <i>Bruen’s</i> Carve-Out for “Unprecedented” and “Dramatic” Changes Is a More Apt Test	29
CONCLUSION	32

TABLE OF AUTHORITIES

CASES	Page(s)
<i>10 Ring Precision, Inc. v. Jones</i> , 722 F.3d 711 (5th Cir. 2013).....	13
<i>Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.</i> , 910 F.3d 106 (3d Cir. 2018)	30, 31
<i>Barnett v. Raoul</i> , 180 F.4th 1035 (7th Cir. 2026)	6, 8, 9
<i>Bevis v. City of Naperville</i> , 85 F.4th 1175 (7th Cir. 2023)	15
<i>Bianchi v. Brown</i> , 111 F.4th 438 (4th Cir. 2024)	6
<i>Caetano v. Massachusetts</i> , 577 U.S. 411 (2016).....	5-6
<i>Capen v. Campbell</i> , 134 F.4th 660 (1st Cir. 2025).....	6
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	3-6, 22
<i>Duncan v. Bonta</i> , 19 F.4th 1087 (9th Cir. 2021)	23
<i>Duncan v. Bonta</i> , 133 F.4th 852 (9th Cir. 2025)	6
<i>Friedman v. City of Highland Park</i> , 784 F.3d 406 (7th Cir. 2015).....	7, 15
<i>Hanson v. District of Columbia</i> , 120 F.4th 223 (D.C. Cir. 2024)	7
<i>Heller v. District of Columbia</i> , 670 F.3d 1244 (D.C. Cir. 2011).....	7, 9

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Kolbe v. Hogan</i> , 849 F.3d 114 (4th Cir. 2017).....	7, 30, 31
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010).....	5
<i>N.Y. State Rifle & Pistol Ass’n v. Cuomo</i> , 804 F.3d 242 (2d Cir. 2015).....	7, 30, 31
<i>Nat’l Ass’n for Gun Rts. v. Lamont</i> , 153 F.4th 213 (2d Cir. 2025).....	6, 8
<i>Nat’l Shooting Sports Found., Inc. v. Jones</i> , 716 F.3d 200 (D.C. Cir. 2013).....	12, 13
<i>New York State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022).....	3-7, 22-25, 29-31
<i>Ocean State Tactical, LLC v. Rhode Island</i> , 95 F.4th 38 (1st Cir. 2024).....	6
<i>Pesqueira-Galaviz v. United States</i> , No. EP-12-CR-2611-FM-1, 2016 WL 11645460 (W.D. Tex. June 1, 2016)	13
<i>Ron Peterson Firearms, LLC v. Jones</i> , 760 F.3d 1147 (10th Cir. 2014).....	13
<i>United States v. Carranza</i> , No. 2:10-CR-0532-RLH-GWF, 2011 WL 4007579 (D. Nev. Aug. 5, 2011), <i>report and recommendation adopted</i> , No. 2:10-CR-0532-RLH-GWF, 2011 WL 4005398 (D. Nev. Sept. 7, 2011).....	13

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024).....	4, 23, 24, 30
<i>Vidal v. Elster</i> , 602 U.S. 286 (2024).....	31
<i>Worman v. Healey</i> , 922 F.3d 26 (1st Cir. 2019)	7, 30, 31
<i>Zapata v. HSBC Holdings plc</i> , No. 1:16-CV-030, 2017 WL 6939209 (S.D. Tex. Sept. 14, 2017)	13
 CONSTITUTION	
U.S. Const. amend. II 3, 5, 6, 14, 16, 19, 22-25, 29	
U.S. Const. amend. XIV	25
 STATUTES	
18 U.S.C. § 922(o)	15
18 U.S.C. § 932	17
18 U.S.C. § 933	17
Firearm Owners’ Protection Act, Pub. L. No. 99-308, § 102(9), 100 Stat. 449, 452- 53 (1986).....	15
National Firearms Act, Chapter 757, 48 Stat. 1236 (1934).....	15
An Act Against Carrying Concealed Weapons, and Going Armed in Public Places in an Unnecessary Manner, 1813 La. Acts 172, 172–75	28

TABLE OF AUTHORITIES—Continued

	Page(s)
An Act Forbidding and Punishing Affrays, ch. 49, 1786 Va. Acts 35	27
An Act Prohibiting Carrying of Weapons Concealed or Otherwise, Chapter 61, 1864–65 N.M. Laws 406, 406–08	28
An Act Relative to Crime and Punishment, Chapter 26, 1831 Ind. Acts 180, 192	28
An Act to Guard and Protect the citizens of this State, Against the Unwarrantable and too Prevalent Use of Deadly Weapons, 1837 Ga. Laws 90, 90-91	28
An Act to Prevent Routs, Riots, and Tumultuous Assemblies, and the Evil Consequences Thereof, Chapter 8, 1786 Mass. Acts 502, 502–503	27-28
 COURT FILINGS	
Affidavit in Support of Complaint, <i>United States v. Prince</i> , No. 2:26-cr-00166-JJT (D. Ariz. June 12, 2025)	13
 OTHER AUTHORITIES	
ATF, <i>Assault Weapons Profile</i> (1994)	9
ATF, <i>Firearms Trace Data: Mexico 2020– 2025</i> (Aug. 25, 2026), https://www.atf.gov/ firearms/report/firearms-trace-data/firea rms-trace-data-mexico-2020-2025 ...	10, 11, 18, 19

TABLE OF AUTHORITIES—Continued

	Page(s)
ATF, National Firearms Commerce and Trafficking Assessment (NFCTA): Firearm Trafficking Investigations-Volume IV (2025), https://www.atf.gov/media/18606/download	16-17
ATF, <i>Properly Identify a Firearm for the Purpose of Tracing</i> (Mar. 17, 2023), https://www.atf.gov/firearms/tools-services-law-enforcement/	11
Bernadette Meyler, <i>Fiction at the Court</i> , 138 Harv. L. Rev. F. 22 (2024)	32
Brian DeLay, <i>The Myth of Continuity in American Gun Culture</i> , 113 Cal. L. Rev. 1 (2025).....	25-28
C.J. Chivers et al., <i>With AR-15s, Mass Shooters Attack with the Rifle Firepower Typically Used by Infantry Troops</i> (Feb. 28, 2018), https://www.nytimes.com/interactive/2018/02/28/us/ar-15-rifle-mass-shootings.html	26
Christopher S. Koper, U.S. Dep’t of Just., <i>An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003</i> (2004).....	8, 10

TABLE OF AUTHORITIES—Continued

	Page(s)
Clara Fong, Kelly Percival & Thomas Wolf, <i>Judges Find the Supreme Court’s Bruen Test Unworkable</i> , Brennan Ctr. for Just. (June 26, 2023), https://www.brennancenter.org/our-work/research-reports/judges-find-supreme-courts-bruen-test-unworkable	24
David Hemenway, <i>Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates</i> , 87 J. Crim. L. & Criminology 1430 (1997).....	21
Deborah Azrael et al., <i>A Critique of Findings on Gun Ownership, Use and Imagined Use from the 2021 National Firearms Survey: Response to William English</i> , 78 SMU L. Rev. 239 (2025).....	21
Emily Bazelon, <i>How “History and Tradition” Rulings Are Changing American Law</i> , N.Y. Times Mag. (Apr. 29, 2024), https://www.nytimes.com/2024/04/29/magazine/history-tradition-law-conservative-judges.html	23
Emily Guskin, <i>Why do Americans own AR-15s?</i> , Washington Post (Mar. 27, 2023)....	22
Eric Ruben, Rosanna Smart & Ali Rowhani-Rahbar, <i>One Year Post-Bruen: An Empirical Assessment</i> , 110 Va. L. Rev. Online 20 (2024)	29

TABLE OF AUTHORITIES—Continued

	Page(s)
Eugenio Weigend Vargas, Patrick M. Carter & Jason E. Goldstick, <i>State Level Bans on Assault Weapons and Firearms Trafficking to Mexico, 2015-2024</i> , 41 J. Interpersonal Violence 6844 (2026)	13
F Riehl, <i>A Historical Review of ArmaLite</i> , ArmaLite (Oct. 31, 2011), https://www.ammoland.com/2011/10/historical-review-of-armalite/	7
Hew Strachan, <i>European Armies and the Conduct of War</i> (1983)	25
Jacob D. Charles, <i>The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History</i> , 73 Duke L. J. 67 (2023).....	24
Jacqui Wakefield, Christopher Giles & Joshua Cheetham, <i>Smugglers' Paradise: How US Guns Flow to Gang-Ravaged Haiti</i> , BBC (April 17, 2025), https://www.bbc.com/news/articles/cly15pp707go	19
James A. Densley & Jillian K. Petersen, <i>Assault Weapon Platform Lethality in US Mass Public Shootings 1966-2025</i> , Sci. Reps. (2026).....	9
John Berrigan, Deborah Azrael & Matthew Miller, <i>The Number and Type of Private Firearms in the United States</i> , 704 ANNALS Am. Acad. Pol. & Soc. Sci. 70 (2022).....	20

TABLE OF AUTHORITIES—Continued

	Page(s)
Jonathan Lowy & Kelly Sampson, <i>The Right Not To Be Shot: Public Safety, Private Guns, and the Constellation of Constitutional Liberties</i> , 14 Georgetown J. L. & Pub. Pol’y 187 (2016)	29
Joonsoo Yi, <i>How U.S. Gun Laws Fuel the Border Crisis</i> , 28 N.Y.U. J. Legis. & Pub. Pol’y 601 (2026)	10
Joseph Blocher & Eric Ruben, <i>Originalism-by-Analogy and Second Amendment Adjudication</i> , 133 Yale L. J. 99 (2023)	24
Joseph Bradley, <i>Guns for the Tsar: American Technology and The Small Arms Industry in Nineteenth-Century Russia</i> (1990)	26
Kristen Rand, Violence Pol’y Ctr., <i>Long Range Terror: How U.S. 50 Caliber Sniper Rifles Wreak Havoc in Mexico</i> (2025), https://vpc.org/studies/longrange-terror.pdf	16
Louis Klarevas, Andrew Conner & David Hemenway, <i>The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990-2017</i> , 109 Am. J. Pub. Health 1754 (2019)	9
Marianne W. Zawitz, U.S. Dep’t of Just., <i>Guns Used in Crime</i> 6 (1995), https://bjs.ojp.gov/content/pub/pdf/GUIC.PDF	19
Mark A. Lemley, <i>The Imperial Supreme Court</i> , 136 Harv. L. Rev. F. 97 (2022)	31

TABLE OF AUTHORITIES—Continued

	Page(s)
Mónica Romero, <i>Inside the LeBarón Massacre in Mexico: US-Purchased Rifles and 1,893 Rounds</i> , EL PAÍS (Nov. 8, 2025, at 23:40 EST), https://english.elpais.com/international/2025-11-09/a-snapshot-of-the-lebaron-massacre-in-mexico-semi-automatic-guns-purchased-in-the-us-and-1893-bullets.html	1-2
Nelson Lund, <i>Second Amendment Originalism, “General Law,” and Rahimi’s Two-Fold Failure</i> , 78 SMU L. Rev. 459 (2025)	30
NSSF, <i>2019 Firearms Retailer: Survey Report</i> (2019).....	20
NSSF, <i>2021 Firearms Retailer: Survey Report</i> (2021), https://perma.cc/N59Q-6UJJ	20
NSSF, <i>Firearm Production in the United States with Firearm Import and Export Data</i> (2023), https://perma.cc/P6A8-DZK2	21
NSSF, <i>NSSF Releases Most Recent Firearm Production Figures</i> (Jan. 15, 2025), https://perma.cc/HJQ9-MHLV	20, 21
NSSF, <i>NSSF Releases Most Recent Firearm Production Figures</i> (Jan. 15, 2026), https://www.nssf.org/articles/nssf-releases-most-recent-firearm-production-figures-3/	21

TABLE OF AUTHORITIES—Continued

	Page(s)
Philip J. Cook & Jens Ludwig, <i>Defensive Gun Uses: New Evidence from a National Survey</i> , 14 J. Quantitative Criminology 111 (1998).....	21
Press Release, U.S. Att’y’s Off., Dist. of Ariz., 28 Charged with Firearms Offenses in HSTF Takedown (Aug. 4, 2026), https://www.justice.gov/usao-az/pr/28-charged-firearms-offenses-hstf-takedown ...	17
Press Release, U.S. Att’y’s Off., Dist. of Nev., Northern Nevada Man Pleads Guilty to Trafficking 140 Firearms to Mexican Drug Trafficking Organizations, Money Laundering, and Harboring Illegal Aliens (Aug. 14, 2026)	14
Press Release, U.S. Att’y’s Off., W. Dist. of Tex., Texas Man Found Guilty in HSTF Case Involving Large-Scale Cartel Firearm Trafficking (Mar. 20, 2024), https://www.justice.gov/usao-wdtx/pr/texas-man-found-guilty-hstf-case-involving-large-scale-cartel-firearm-trafficking	18
Press Release, U.S. Dep’t of Just., Off. of Pub. Affs., Gun Trafficker Sentenced for Attempting to Send Firearms to Drug Cartel Members in Mexico (Apr. 2, 2024)	14

TABLE OF AUTHORITIES—Continued

	Page(s)
Press Release, U.S. Dep’t of Just., State- ment of Deputy Attorney General James Cole Regarding Information Requests for Multiple Sales of Semi-Automatic Rifles with Detachable Magazines (July 11, 2011)	12
Robert J. Spitzer, <i>Gun Law History in the United States and Second Amendment Rights</i> , 80 L. & Contemp. Probs. 55 (2017).....	28
Samantha Barrera, Note, <i>Unreason by Analogy: Principle over Pedanticism and the Nuanced Approach to Bruen</i> , 67 Ariz. L. Rev. 517 (2025)	30
Saul A. Cornell, <i>The Police Power and the Authority to Regulate Firearms in Early America</i> , Brennan Ctr. for Just. (2021), https://www.brennancenter.org/sites/default/files/2021-06/Cornell_final.pdf	31
Stephen Breyer, <i>Pragmatism or Textualism</i> , 138 Harv. L. Rev. 717, 769 (2025).....	30
Topher L. McDougal & Sean Campbell, <i>Here’s How We Figured the Number of Guns Illegally Trafficked from the US across the Border to Mexico</i> , Conversa- tion (May 23, 2025, 9:48 EDT), https:// theconversation.com/heres-how-we-figu red-the-number-of-guns-illegally-traffick ed-from-the-us-across-the-border-to-mex ico-255074	11

TABLE OF AUTHORITIES—Continued

	Page(s)
U.S. Dep’t of Just. Off. Inspector Gen., I-2011-001, Review of ATF’s Project Gunrunner (2010)	12
U.S. Dep’t of Treasury, <i>Study on the Sporting Suitability of Modified Semi- automatic Assault Rifles</i> (1998).....	9-10
U.S. Gov’t Accountability Off., GAO-09- 709, Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning Coordination Challenges (2009).....	10, 12
U.S. Gov’t Accountability Off., GAO-16- 223, Firearms Trafficking: U.S. Efforts to Combat Firearms Trafficking to Mexico Have Improved, but Some Collaboration Challenges Remain (2016)	13
U.S. Gov’t Accountability Off., GAO-21- 322, Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis (2021)	11
U.S. Gov’t Accountability Off. GAO-26- 108061, Firearms Trafficking to Mexico: Better Data and Performance Monitoring Would Help Agencies Direct Resources to Counter Cartels (2026)	10, 11, 13, 17-19
<i>U.S. Obligations Under the Merida Initiative: Hearing Before the Subcomm. on the W. Hemisphere of the H. Comm. on Foreign Affs.</i> , 110th Cong. 29 (2008).....	12

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Washington Post-Ipsos Poll of 2104 Gun Owners</i> , Ipsos (Oct. 2022) https://www.ipsos.com/sites/default/files/ct/news/documents/2023-03/Washington%20Post-Ipsos%20AR-15%20Polling.pdf	22
4 William Blackstone, <i>Commentaries</i> (1769).....	6
William English, <i>2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned</i> (Geo. Univ. McDonough Sch. Of Bus., Rsch. Paper No. 4109494, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4109494..	22
William J. Krouse, Cong. Rsch. Serv. <i>Gun Control Legislation</i> (2012), https://www.everycrsreport.com/files/20120611_RL32842_bafe5f1e692edf991087a42ef67119863c5b09ff.pdf	19
William Michael Treanor, <i>Judicial Review Before Marbury</i> , 58 Stan. L. Rev. 455 (2005).....	31
Wm. Alan Bartley & Geoffrey Fain Williams, <i>What Is an Assault Weapon? Definitions, Attributes, and Implications Regarding Legislation</i> , 57 Gonz. L. Rev. 515 (2021–22).....	8

INTERESTS OF AMICUS CURIAE¹

Amicus curiae Global Action on Gun Violence (“GAGV”) is a non-profit organization dedicated to reducing gun violence in the U.S. and the world using litigation, human-rights advocacy, and research, with a focus on stopping cross-border gun trafficking. GAGV represents and assists the Government of Mexico to stop the trafficking of firearms—including assault rifles—from the U.S. to the cartels. GAGV has presented reports and testimony at the Organization of American States, the Inter-American Commission for Human Rights, United Nations bodies, and international conferences.

INTRODUCTION AND STATEMENT

On December 14, 2012, a gunman walked into Sandy Hook Elementary School in Newtown, Connecticut, carrying a semi-automatic AR-15 assault rifle. Within five minutes, he fired 154 rounds, murdering twenty children and six adults.

On November 4, 2019, cartel gunmen in Mexico’s Sonora desert fired 1,893 bullets on a three-car convoy en route to a wedding, massacring nine dual U.S.-Mexican citizens, including six children. Two of the firearms recovered and traced from the LeBaron Massacre were, like the Sandy Hook gunman’s, assault rifles sold in the U.S. Mónica Romero, *Inside the LeBarón Massacre in Mexico: US-Purchased Rifles and 1,893 Rounds*, EL PAÍS (Nov. 8, 2025, at 23:40 EST), <https://english.elpais.com/international/2025-11-09/a-snapshot-of-the-lebaron-massacre-in-mexico->

¹ No counsel for any party authored this brief in whole or in part. No person or entity—other than *amici*, their members, or their counsel—made a monetary contribution specifically for the preparation or submission of this brief.

[semi-automatic-guns-purchased-in-the-us-and-1893-bullets.html](#).

Neither massacre was an aberration. Modeled after military weapons and engineered to maximize casualties, “assault weapons” have been used to perpetrate many of the deadliest mass casualty events in modern U.S. history. The human toll of even a small fraction of these attacks is staggering: 21 killed in a Uvalde, Texas elementary school; 10 in a Buffalo, New York supermarket; 10 in a Boulder, Colorado supermarket; 9 in a Dayton, Ohio bar; 23 in an El Paso, Texas Wal-Mart; 11 in a Pittsburgh, Pennsylvania synagogue; 17 in a Parkland, Florida high school; 26 in a Sutherland Springs, Texas church; 49 in an Orlando, Florida nightclub; 60 at a Las Vegas, Nevada music festival; 7 at a 4th of July parade in Highland Park, Illinois.

In Mexico, after the U.S. federal Assault Weapons Ban expired in 2004, U.S.-sold assault rifles became a weapon of choice for cartels. These trafficked rifles are routinely used to commit murders, perpetrate massacres, attack law enforcement and military personnel, and intimidate civilian populations. By enabling cartels to project violence and fear, assault rifles trafficked from the U.S. contribute to widespread insecurity, displacement, migration into the United States, and cross-border drug-trafficking operations.

Assault weapons are sought after by mass killers and transnational criminal organizations because they are catastrophic force multipliers, giving shooters the benefit of rapid firepower while depriving victims of time to flee and first responders of time to intervene. To protect their residents and prevent further mass casualty atrocities, Connecticut and Cook County, Illinois prohibited the sale, transfer, and possession of assault weapons (together, the “Statutes”).

Petitioners would have the Court hold that the Second Amendment enshrines a right to possess these specific destructive rifles, so long as they are sufficiently popular. But the Bill of Rights does not consecrate a right to *any specific* weapons on the basis of popularity or otherwise. And neither *Heller* nor *Bruen* should be read as placing a constitutional imprimatur on weapons of such extraordinarily deadly force.

Although the Framers did not face anything resembling modern guns or gun violence, they were nonetheless circumspect about firearms, and founding-era laws reflected common-sense prohibitions on the sale and use of “dangerous and unusual” weapons. *District of Columbia v. Heller*, 554 U.S. 570 (2008), departed from nearly 230 years of precedent in holding that the Second Amendment protects individuals’ right to possess *a handgun* in the home for lawful self-defense purposes. But even as it did so, the Court tied that right to weapons “in common use at the time,” recognizing “the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’” as a settled limit on the individual right to keep and bear arms. *Id.* at 627.

New York State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1 (2022), altered the paradigm. While *Bruen* ostensibly did not disturb *Heller*’s “common use” test, it rejected the means-end scrutiny that lower courts applied after *Heller* and required the government to show that a challenged regulation is “consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 17.

While the challenged Statutes are properly regulated under *Bruen*, that test is ill-suited to modern weapons. *Bruen* itself acknowledged that “dramatic technologi-

cal changes” may call for a more nuanced approach, *id.* at 27, and *United States v. Rahimi*, 602 U.S. 680, 692 (2024), confirmed that courts should look to the principles underlying historical regulation, not demand a “historical twin.”

Petitioners overlook that caveat and, to establish constitutional protection for assault rifles, seek to take *Heller* and *Bruen* one step further. They argue that, notwithstanding their inherent dangerousness, assault weapons are constitutionally protected because they are “in common use.” Petitioners’ argument distorts *Heller*’s phrase, which tied commonality to whether guns are possessed by law-abiding citizens for lawful purposes. But the record here does not support that finding for assault weapons. Indeed, Petitioners rely on sales figures and surveys that include significant numbers of assault rifles sold in the U.S. and ultimately trafficked to cartels in Mexico. That cannot support constitutional enshrinement. Petitioners’ interpretation also risks making popularity the litmus test of constitutional protection. Under their reading of “common use,” the most devastating weapons could be placed beyond regulation if companies flood the market with them before they are regulated, meaning that constitutional rights would ebb and flow with sales figures. In Petitioners’ paradigm, AR-15s could be constitutionally protected if they are in “common use” today (they are not), but the right to possess them would vanish if they became disfavored.

This case presents the Court with a chance to elaborate on whether and how to apply the “common use” standard, and whether the Statutes fit within the Nation’s tradition of regulating weapons that pose unusual dangers to public safety. They do—especially when applying a means-end framework that the Court

should reinstate. Legislatures have long singled out particularly dangerous arms. Petitioners’ contrary arguments risk creating breathtakingly broad Second Amendment rights that, taken to their logical conclusion, would trump many inviolate rights enshrined in the Bill of Rights.

The Statutes meet the “dangerous and unusual” standard, and *Bruen*’s history and tradition test should not be used to invalidate legislative solutions that pass constitutional muster under any appropriate standard of review.

ARGUMENT

I. The Statutes Are Constitutional Because Assault Weapons Are Dangerous and Unusual.

A. The Dangerous and Unusual Standard.

The assault weapons prohibited by the Statutes are dangerous and unusual firearms capable of extraordinary lethality. Thus, the Second Amendment does not immunize them from regulation, and the Statutes are constitutional.

While *Heller* held that law-abiding, responsible individuals have the right to own and possess handguns inside the home for self-defense, the Court has repeatedly endorsed the longstanding principle that legislative restrictions on “dangerous and unusual weapons” do not violate the Second Amendment. 554 U.S. at 627. *See also McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010); *Caetano v. Massachusetts*, 577 U.S. 411, 412 (2016). Citing Blackstone’s Commentaries, *Heller* relied on “historical tradition,” dating to the 1328 Statute of Northampton and continuing through English—and later, American—law, of regulating and

prohibiting *either* dangerous *or* unusual weapons. See 4 William Blackstone, *Commentaries* *148–49 (1769). In *Bruen*, the Court stated that the Second Amendment “protects only” the carrying of weapons in common use and noted *Heller*’s holding that handguns are in common use as the quintessential self-defense weapon. *Bruen*, 597 U.S. at 47.

Petitioners invite this Court to take another step away from *Heller*’s respect for “historical tradition” by arguing that assault weapon sales numbers and unreliable survey data alone establish their entitlement to constitutional protection, irrespective of the danger they pose to society. This Court should decline that invitation because assault weapons are dangerous and uncommon.

B. Assault Weapons Are Dangerous and Unusual.

The assault weapons at issue are not protected by the Second Amendment, even under *Heller* and *Bruen*, because they are “dangerous and unusual” and often criminally used to inflict great harm. Every post-*Bruen* federal Court of Appeals to consider the constitutionality of their regulation has upheld restrictions on assault weapons or large-capacity magazines. See, e.g., *Nat’l Ass’n for Gun Rts. v. Lamont*, 153 F.4th 213, 246 n.40 (2d Cir. 2025); *Barnett v. Raoul*, 180 F.4th 1035 (7th Cir. 2026); *Capen v. Campbell*, 134 F.4th 660 (1st Cir. 2025); *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38 (1st Cir. 2024); *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024) (en banc); *Duncan v. Bonta*, 133 F.4th 852 (9th Cir. 2025) (en banc); *Hanson v. District of Columbia*, 120 F.4th 223 (D.C. Cir. 2024).

Pre-*Bruen* courts reached the same result. The Fourth Circuit described the AR-15 as an “exceptionally lethal weapon[] of war” subject to regulation. *Kolbe v. Hogan*, 849 F.3d 114, 124 (4th Cir. 2017) (en banc). The First and D.C. Circuits both emphasized why regulation was so important: to curtail the ability of shooters to strike more victims at record speeds. *Worman v. Healey*, 922 F.3d 26, 31, 39 (1st Cir. 2019); *Heller v. District of Columbia*, 670 F.3d 1244, 1262 (D.C. Cir. 2011) (“*Heller II*”). The Seventh Circuit wisely pinpointed their “common use” by mass killers, asking: “[w]hy else are they the weapons of choice in mass shootings?” *Friedman v. City of Highland Park*, 784 F.3d 406, 411 (7th Cir. 2015). And the Second Circuit sanctioned legislative efforts to curtail this “unusual” and “particularly hazardous” category of weapons to that has inflicted disproportionate harm. *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 262 (2d Cir. 2015).

These decisions illustrate the reality that Petitioners ignore: assault weapons are dangerous, unusual, and uniquely susceptible to unlawful use.

1. Assault Weapons Are Dangerous.

Assault weapons are dangerous by design. They are generally semiautomatic versions of fully automatic military weapons. For example, the AR-15 was originally designed as a military weapon and issued primarily to combat troops. See F Riehl, *A Historical Review of ArmaLite*, ArmaLite (Oct. 31, 2011), <https://www.ammoland.com/2011/10/historical-review-of-armalite/>. The Department of Justice recognized that assault weapons possess features “useful in military and criminal applications but unnecessary in shooting sports or self-defense,” and that several then-banned assault weapons, including AR-15 and AK models, are

patterned after military rifles that accept military magazines. See Christopher S. Koper, U.S. Dep’t of Just., *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994–2003*, 4 (2004).

As the Seventh Circuit recently acknowledged, an AR-15 has several features essentially identical to those of the (indisputably) banned M16, including the speed at which it fires, its range, and its “wounding capabilities.” *Barnett*, 180 F.4th at 1053. *Barnett* reasoned (correctly) that assault weapons equipped with large-capacity magazines embody a “dramatic technological change” that enables “mass killings speedily carried out by lone shooters,” *id.* at 1055, while their “advanced military-like features enable them to inflict catastrophic injuries,” *id.* at 1056 (quoting *Lamont*, 153 F.4th at 237). Even a study otherwise skeptical of assault-weapons bans admits that “[t]he total combined effects of rapid fire, availability of large capacity magazines, and intermediate power cartridges appear to make these types of weapons more deadly.” Wm. Alan Bartley & Geoffrey Fain Williams, *What Is an Assault Weapon? Definitions, Attributes, and Implications Regarding Legislation*, 57 Gonz. L. Rev. 515, 545 (2021–22).

a. Criminal Use of Assault Weapons Highlights Their Lethality.

Assault weapons are designed to kill many people quickly, and that is precisely why they are popular among people who intend to perpetrate mass violence. As the U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”) stated: “You will not find these guns in a duck blind or at the Olympics. They are mass produced mayhem.” ATF, *Assault Weapons Profile* 19 (1994). The Seventh Circuit recently observed that

“[t]he more people killed, the more likely it is that the killer used an assault weapon and large-capacity magazines,” and noted that between 1991 and 2022, **75% of shootings in the United States with at least twenty fatalities** involved assault weapons. *Barnett*, 180 F.4th at 1058.

Recent data confirm the point. A 2026 study examining mass shootings from 1966 to 2025 found that incidents involving assault weapons resulted in significantly more deaths and injuries on average than incidents that did not involve such weapons. James A. Densley & Jillian K. Petersen, *Assault Weapon Platform Lethality in US Mass Public Shootings 1966–2025*, Sci. Reps. (2026). When focusing on incidents involving AR-platform weapons, these averages increased.² *Id.* Another study found that high-fatality mass shootings from 1990 to 2017 involving large-capacity magazines had a 62% higher average death toll. Louis Klarevas, Andrew Conner & David Hemenway, *The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990–2017*, 109 Am. J. Pub. Health 1754 (2019).

These findings echo what courts and federal agencies have long recognized: “assault weapons are preferred by criminals . . . because of their high firepower.” *See Heller II*, 670 F.3d at 1263 (citing U.S. Dep’t of Treasury, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles* 34–35, 38

² An average of 8.9 people were killed and 11.3 injured in mass shootings where an assault weapon was fired, increasing to 10.1 and 13 with AR-platforms, compared to 6 killed and 4.8 injured in non-assault weapon shootings. Densley & Petersen, *Assault Weapon Platform Lethality in US Mass Public Shootings 1966–2025*, *supra*, at 5.

(1998)). And they are uniquely associated with organized crime. Koper, *supra*, at 14.

b. International Criminal Demand for Assault Weapons Highlights Their Lethality.

Transnational criminal organizations’ use of U.S.-manufactured and sold assault weapons underscores their lethality—and accounts for a significant number of U.S. assault weapon sales. Although U.S. assault weapons are trafficked to many countries, Mexico best illustrates the deadly collateral damage caused by assault weapons originating in the U.S.³

In 2025, more than 70% of the 32,144 firearms recovered in Mexico and submitted to the ATF for tracing were determined to be U.S.-sourced, totaling 22,817 firearms. *See* ATF, *Firearms Trace Data: Mexico 2020–2025* (Aug. 25, 2026), <https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-da>

³ The U.S. has recognized the spillover of international crime fueled by U.S. assault weapons across the U.S. border into Mexico. *See, e.g.*, U.S. Gov’t Accountability Off. (“GAO”), GAO-09-709, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning Coordination Challenges* (2009) [hereinafter GAO 2009 Report]; GAO, GAO-26-108061, *Firearms Trafficking to Mexico: Better Data and Performance Monitoring Would Help Agencies Direct Resources to Counter Cartels* (2026) [hereinafter GAO 2026 Report]. In 2020, ATF established “Operation Southbound” to disrupt firearms trafficking to Mexico, while the U.S. Homeland Security Investigations (“HSI”) began Operation Without a Trace to “investigate the financing, transportation, and communications methods deployed by firearms traffickers,” Joonsoo Yi, *How U.S. Gun Laws Fuel the Border Crisis*, 28 N.Y.U. J. Legis. & Pub. Pol’y 601, 614–615 (2026).

ta-mexico-2020-2025.⁴ Of those 32,144 recovered firearms, approximately 40% were rifles,⁵ totaling 12,669 firearms. *See id.* Independent research corroborates the scale of the problem: a 2025 study estimated that between 72,819 and 258,101 firearms were trafficked from the U.S. into Mexico in 2022 alone. Topher L. McDougal & Sean Campbell, *Here's How We Figured the Number of Guns Illegally Trafficked from the US across the Border to Mexico*, Conversation (May 23, 2025, 9:48 EDT), <https://theconversation.com/heres-how-we-figured-the-number-of-guns-illegally-trafficked-from-the-us-across-the-border-to-mexico-255074>. “Estimates by the U.S. and Mexican governments, among others, range from around 250,000 to 1 million firearms trafficked from the U.S. to Mexico each year.” GAO 2026 Report at 1 n.1. The GAO characterized this trafficking as a national security threat facilitating the illegal drug trade and linked to organized crime. *See* GAO, GAO-21-322, *Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis* (2021).

Criminal organizations in Mexico seek out U.S. assault weapons precisely because of their lethal efficiency. Around 2008, after the federal Assault Weapons Ban expired in 2004, the “weapons of choice” for drug trafficking organizations in Mexico shifted

⁴ Over 15% had an undetermined country of origin and could not be ruled out as being U.S.-sourced. ATF, *Firearms Trace Data: Mexico 2020–2025*, *supra*.

⁵ This category includes semi-automatic rifles like the AR-15. ATF, *Properly Identify a Firearm for the Purpose of Tracing* (Mar. 17, 2023), <https://www.atf.gov/firearms/tools-services-law-enforcement/national-tracing-center/properly-identify-a-firearm-purpose-tracing>.

from handguns to assault rifles. *U.S. Obligations Under the Merida Initiative: Hearing Before the Subcomm. on the W. Hemisphere of the H. Comm. on Foreign Affs.*, 110th Cong. 29 (2008) (statement of William J. Hoover, Assistant Dir., Off. of Field Operations, ATF). An estimated 25% of firearms seized in Mexico that same year were “high-caliber and high-powered such as AK and AR-15 type semiautomatic rifles.” GAO 2009 Report at 17. In November 2010, the U.S. Department of Justice Office of the Inspector General confirmed that cartels operating in Mexico preferred military-style rifles such as assault weapons. U.S. Dep’t of Just. Off. Inspector Gen., I-2011-001, Review of ATF’s Project Gunrunner 37–38 (2010).

Cross-border trafficking of assault rifles led the ATF, in 2011, to require dealers in four Southwest border states to report multiple sales of certain semi-automatic weapons, including AR-15 and AK-47 pattern rifles. See *Nat’l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 206 (D.C. Cir. 2013) (upholding the requirement after ATF determined that such sales were a significant indicator of trafficking to Mexican drug cartels). The Deputy Attorney General explained the requirement: “law enforcement agencies have determined that certain types of semi-automatic rifles . . . are highly sought after by dangerous drug trafficking organizations and frequently recovered at violent crime scenes near the Southwest Border.” Press Release, U.S. Dep’t of Just., Statement of Deputy Attorney General James Cole Regarding Information Requests for Multiple Sales of Semi-Automatic Rifles with Detachable Magazines (July 11, 2011). In 2016, the GAO reported that the firearm of choice for Mexican drug trafficking organizations was still “high caliber assault rifles,” with long guns constituting over

half the firearms seized and traced in Mexico over the preceding five years. GAO, GAO-16-223, *Firearms Trafficking: U.S. Efforts to Combat Firearms Trafficking to Mexico Have Improved, but Some Collaboration Challenges Remain* 10–12 (2016). In September 2026, GAO confirmed: “Transnational criminal organizations (TCO) in Mexico seek to acquire semiautomatic firearms—AR-15s, AK-47s, and .50-caliber rifles[,]” and TCOs in Mexico armed with these guns “illegally acquired from the U.S. pose a significant and serious threat to Mexican law enforcement, military, and the general public.” GAO 2026 Report at 1, 8. As one analysis of trace data concluded, the “firearms trafficked to Mexico tend to be of higher caliber and greater lethality.” Eugenio Weigend Vargas, Patrick M. Carter & Jason E. Goldstick, *State Level Bans on Assault Weapons and Firearms Trafficking to Mexico, 2015–2024*, 41 *J. Interpersonal Violence* 6844, 6855 (2026).

Numerous courts have recognized that “assault style rifles are in high demand by drug trafficking organizations in Mexico.” *United States v. Carranza*, No. 2:10-CR-0532-RLH-GWF, 2011 WL 4007579 at *11 (D. Nev. Aug. 5, 2011), *report and recommendation adopted*, No. 2:10-CR-0532-RLH-GWF, 2011 WL 4005398 (D. Nev. Sept. 7, 2011); *see also Nat’l Shooting Sports Found., Inc. v. Jones*, 716 F.3d at 205; *10 Ring Precision, Inc. v. Jones*, 722 F.3d 711, 715 (5th Cir. 2013); *Ron Peterson Firearms, LLC v. Jones*, 760 F.3d 1147, 1153 (10th Cir. 2014); *Zapata v. HSBC Holdings plc*, No. 1:16-CV-030, 2017 WL 6939209, at *1 (S.D. Tex. Sept. 14, 2017); *Pesqueira-Galaviz v. United States*, No. EP-12-CR-2611-FM-1, 2016 WL 11645460, at *1 (W.D. Tex. June 1, 2016). Federal prosecutions bear this out. *See, e.g.*, Affidavit in Support of Complaint ¶ 6 & n.1, *United States v. Prince*, No. 2:26-cr-00166-JJT (D. Ariz. June 12, 2025) (listing assault rifles among the

“Weapons of Choice” for “drug trafficking organizations”). And prosecutors recognize these “military-style” weapons are in high demand by Mexican cartels. *See, e.g.*, Press Release, U.S. Att’y’s Off., Dist. of Nev., Northern Nevada Man Pleads Guilty to Trafficking 140 Firearms to Mexican Drug Trafficking Organizations, Money Laundering, and Harboring Illegal Aliens (Aug. 14, 2026) (“Trafficking military-style firearms and ammunition to drug trafficking organizations in Mexico fuels violence, strengthens criminal networks and threatens communities on both sides of the border.”); Press Release, U.S. Dep’t of Just., Off. of Pub. Affs., Gun Trafficker Sentenced for Attempting to Send Firearms to Drug Cartel Members in Mexico (Apr. 2, 2024).

Assault weapons are overwhelmingly used by criminals of all kinds; are not suited for self-defense, hunting, or recreation; and facilitate international criminal activity and violence. They are dangerous weapons beyond the reach of Second Amendment protection.

2. Assault Weapons Are Unusual.

Petitioners’ rejoinder is that dangerous assault weapons are not unusual because they are in common use. Petitioners are wrong.

a. Determining Whether Firearms Are Constitutionally Protected by Examining Whether They Are “in Common Usage” Is Improper and Ineffective.

A test defining “arms” by modern metrics while using founding-era history to judge the constitutionality of their regulation presents several problems.

For example, when should “common use” be measured? When the Federal Assault Weapons Ban prohibited the manufacture and transfer of AR-15s, these weapons were uncommon. After the federal ban expired in 2004 and gunmakers resumed the manufacture and sale of AR-15s, their circulation increased. But a standard that finds a ban constitutional “before 2004, but unconstitutional thereafter” is profoundly unprincipled. *See Bevis v. City of Naperville*, 85 F.4th 1175, 1199 (7th Cir. 2023). Worse, it is circular: a weapon is uncommon because it is banned, and it can be banned only because it is uncommon. *See Friedman v. City of Highland Park*, 784 F.3d 406, 409 (7th Cir. 2015). A legislature that acts early would always prevail, while one that acts after manufacturers flood the market (and the harms of a particular weapon materialize) could be powerless.

Machine guns exhibit this circularity problem. They are not in common use precisely because Congress has heavily restricted them since 1934 and has banned new civilian sales since 1986. *See* National Firearms Act, ch. 757, 48 Stat. 1236 (1934); Firearm Owners’ Protection Act, Pub. L. No. 99-308 § 102(9), 100 Stat. 449, 452–53 (1986) (current version at 18 U.S.C. § 922(o)). This circularity runs both ways. If popularity can confer constitutional protection, a decline in popularity could take it away, meaning that courts would be required to revisit their precedents whenever sales figures shift—an unusual way to determine constitutional law.

It is also illogical and dangerous to determine constitutional protection based on the success of marketing. Take .50 caliber sniper rifles: guns with an effective range of roughly one mile, capable of penetrating an airplane’s fuselage and reinforced armor.

See Kristen Rand, Violence Pol’y Ctr., *Long Range Terror: How U.S. 50 Caliber Sniper Rifles Wreak Havoc in Mexico* 5–6 (2025), <https://vpc.org/studies/longrange-terror.pdf>. Although they are legal in most U.S. states, they are rarely used to perpetrate domestic crimes, perhaps because of their high price and bulk. Nonetheless, significant numbers are trafficked to Mexico, where cartels use them to battle law enforcement and shoot military helicopters out of the sky. *Id.* at 13. Under Petitioners’ common use test, if manufacturers slashed prices and marketed them aggressively to increase U.S. sales, these weapons of war could become commonplace and, potentially, constitutionally protected. A test that produces such a result cannot, and should not, comport with the Second Amendment.

b. Assault Weapons Are Uncommon.

Even putting aside these concerns, the reality is that assault weapons are uncommon. As described above, any evidence about the common use of assault weapons in the U.S. must account for the popularity of trafficked assault weapons from the U.S. with international criminal cartels throughout the Americas. Petitioners, and their amici, ignore this demand for assault weapons purchased in the U.S. when citing production and sales data as evidence for their purported popularity.

“Most crime guns flow from lawful firearm commerce and possession into criminal hands through illegal diversions such as: straw purchasing, unregulated private transfers (including unlicensed dealing), theft, and corrupt [dealers].” ATF, National Firearms Commerce and Trafficking Assessment (NFCTA): Firearm Trafficking Investigations—Volume IV, pt. 1, at 26 (2025), <https://www.atf.gov/media/18606/download>

load. Cartels in Mexico “primarily use straw purchasers” to acquire firearms in the U.S. GAO 2026 Report at 10. “[A] straw purchase occurs when a person who is a convicted felon (or otherwise prohibited by federal law from purchasing a firearm) or who wishes to remain anonymous uses a third party—the straw purchaser—to execute the paperwork necessary to buy a firearm from a federal firearms licensee.” *Id.* at 5 n.7. Although the transaction is facially unlawful, *see, e.g.*, 18 U.S.C. §§ 932, 933, the straw purchaser typically passes the background check and completes the paperwork as the purported buyer. As a result, in sales data, the transaction appears indistinguishable from a lawful sale to a law-abiding consumer. Neither manufacturers’ records nor surveys or statistics relying on them reveal what percentage of reported “civilian” purchases were intended for criminal ends.

Two recent cases—one with firearms recovered before they could be trafficked to Mexico and one where the firearms were recovered in Mexico—illustrate this point. *First*, on July 21, 2026, a federal grand jury in Arizona returned a 158-count indictment against twenty-one individuals alleged to have participated in a scheme that recruited straw purchasers to acquire firearms, including “AK-style rifles” for trafficking to Mexico. Press Release, U.S. Att’y’s Off., Dist. of Ariz., 28 Charged with Firearms Offenses in HSTF Takedown (Aug. 4, 2026), <https://www.justice.gov/usao-az/pr/28-charged-firearms-offenses-hstf-take-down>. This investigation was connected to other recent federal cases, including traffickers caught with (1) forty-two AK-style rifles; (2) three M249 rifles; and (3) a M249 rifle, a Barrett .50 BMG rifle, an FN SCAR rifle, and twelve AK-style rifles. *Id.* *Second*, on May 4,

2026, a federal jury in Texas convicted a man who straw purchased “24 AK-47 styled firearms, all of which ended up in Toluca, Mexico for use by Mexican cartels.” Press Release, U.S. Att’y’s Off., W. Dist. of Tex., Texas Man Found Guilty in HSTF Case Involving Large-Scale Cartel Firearm Trafficking (Mar. 20, 2024), <https://www.justice.gov/usao-wdtx/pr/texas-man-found-guilty-hstf-case-involving-large-scale-cartel-firearm-trafficking>.

For purposes of gun industry statistics, these rifles count as purchases by “law-abiding” Americans because the straw purchasers passed a background check. The same is true of the 22,817 U.S.-sourced firearms recovered in Mexico and submitted to ATF for tracing in 2025, ATF, *Firearms Trace Data: Mexico 2020–2025*, (Aug. 25, 2026), <https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-mexico-2020-2025>, the 4,944 firearms seized at the U.S.-Mexico border between 2020 and 2025, GAO 2026 Report at 16, and all the trafficked firearms interdicted by law enforcement before reaching the border.

But that is only the tip of the iceberg. While there were 12,669 rifles recovered in Mexico and submitted to ATF for tracing in 2025, ATF, *Firearms Trace Data: Mexico 2020–2025*, *supra*, this total only reflects the number of rifles in 2025 that were: (1) used by criminals in Mexico; (2) recovered by Mexican law enforcement; (3) submitted to ATF for tracing; and (4) sufficiently identifiable for tracing. But law enforcement cannot recover or trace every gun, and as these weapons are highly prized, often selling “for double the purchase price or more in Mexico,” there are almost certainly many more such weapons retained by criminals in Mexico. GAO 2026 Report at 4. Indeed, estimates suggest that “between 250,000 to

1 million firearms [are] trafficked from the U.S. to Mexico each year.” *Id.* at 1. Assuming rifles constitute roughly the same proportion of trafficked firearms as they do among recovered firearms (39.4% in 2025), *see* ATF, *Firearms Trace Data: Mexico 2020–2025*, *supra*, there are close to between 100,000 and 400,000 rifles trafficked to Mexico each year. Further, Mexico is not the only international destination for U.S.-sourced assault weapons; these weapons are also trafficked to gangs in Haiti and other countries where, like in Mexico, they are used to fuel armed violence, undermine public security, and terrorize local populations. *See, e.g.*, Jacqui Wakefield, Christopher Giles & Joshua Cheetham, *Smugglers’ Paradise: How US Guns Flow to Gang-Ravaged Haiti*, BBC (April 17, 2025), <https://www.bbc.com/news/articles/cly15pp707go>.

Each recovered and unrecovered rifle begins as a manufactured firearm and retail sale that Petitioners’ statistics count as evidence of “common use.” Firearms acquired for trafficking to foreign criminal organizations—with no Second Amendment rights—cannot reasonably be treated as evidence that those weapons are commonly possessed by law-abiding U.S. citizens for lawful purposes.

Even with the criminal demand for assault weapons, they comprise only a small percentage of the total firearms in circulation. *See* William J. Krouse, Cong. Rsch. Serv., *Gun Control Legislation* 6–7 (2012), https://www.everycrsreport.com/files/20120611_RL32842_bafe5f1e692edf991087a42ef67119863c5b09ff.pdf (assault weapons likely constituted less than 1% of guns owned prior to the federal assault weapons ban); Marianne W. Zawitz, U.S. Dep’t of Just., *Guns Used in Crime* 6 (1995), <https://bjs.ojp.gov/content/pub/pdf/GUIC.PDF> (similar). Petitioners’ data indicates that

assault weapons constitute only 11.3% of all firearms available in the U.S. market between 1990 and 2022. See NSSF, *NSSF Releases Most Recent Firearm Production Figures* (Jan. 15, 2025), <https://perma.cc/HJQ9-MHLV> [hereinafter *NSSF 2025 Production Figures*].

Petitioners’ arguments to the contrary lack credible, current evidence. They rely on retailer surveys derived from the gun industry trade association, the National Shooting Sports Foundation (“NSSF”), which not only fail to account for straw-purchased assault weapons, but also report inflated percentages of assault weapons sold without providing the actual number of assault weapons sold or the number sold to unique consumers. See NSSF, *2021 Firearms Retailer: Survey Report 9* (2021), <https://perma.cc/N59Q-6UJJ>; NSSF, *2019 Firearms Retailer: Survey Report 10*, (2019). Indeed, as of 2019, nearly half of all firearms in the United States were owned by just ten percent of the adult gun-owning population. See John Berrigan, Deborah Azrael & Matthew Miller, *The Number and Type of Private Firearms in the United States*, 704 ANNALS Am. Acad. Pol. & Soc. Sci. 70, 77 (2022). The concentration of firearms in the hands of a small number of Americans is highly relevant. Even tens of millions of assault weapons held in the arsenals of a few would be *uncommon*, like model trains sold exclusively to not-so-common, not-so-usual enthusiasts. That niche firearm enthusiasts amass assault weapons does not mean those firearms are “in common use” and certainly does not entitle them to constitutional protection.

In addition, Petitioners point to gun manufacturer surveys (again, from the NSSF), that fail to report how many manufactured weapons were sold to consumers—

—and fail to account for demand driven by criminal organizations. See NSSF, *Firearm Production in the United States with Firearm Import and Export Data* 7 (2023), <https://perma.cc/P6A8-DZK2>. Manufacturer data further shows that historical production of semi-automatic rifles constitutes just 11% of overall firearm production. See NSSF *2025 Production Figures*. Even that number may be decreasing; AR-15 production has declined by over 60% since 2021. See NSSF, *NSSF Releases Most Recent Firearm Production Figures* (Jan. 15, 2026), <https://www.nssf.org/articles/nssf-releases-most-recent-firearm-production-figures-3/>.

Petitioners also rely heavily on a William English survey that has been criticized for its methodology and findings. See Deborah Azrael et al., *A Critique of Findings on Gun Ownership, Use and Imagined Use from the 2021 National Firearms Survey: Response to William English*, 78 SMU L. Rev. 239 (2025). The English survey did not ask survey participants about the number of AR-style rifles *currently* owned, but instead how many each participant *ever* owned, failing to account for weapons that were once owned but then destroyed, sold, or otherwise transferred. *Id.* at 243, 250. Certain survey participants also may have been classified as gun owners when they were not. *Id.* at 247. As numerous statisticians have noted, survey evidence verifying gun ownership is inherently unreliable, because, among other things, it relies on a self-selected minority of responders who presumably would not include individuals planning to use weapons for criminal purposes. See David Hemenway, *Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 J. Crim. L. & Criminology 1430 (1997); Philip J. Cook & Jens Ludwig, *Defensive Gun Uses: New Evidence from a National Survey*, 14 J. Quantitative Criminology 111 (1998).

Even taken at face value, Petitioners’ cited survey evidence indicates that just 6% of U.S. adults own AR-15-style assault weapons, hardly amounting to “common use.” See *Washington Post-Ipsos Poll of 2104 Gun Owners*, Ipsos (Oct. 2022) <https://www.ipsos.com/sites/default/files/ct/news/documents/2023-03/Washington%20Post-Ipsos%20AR-15%20Polling.pdf> (20% of gun owners reported owning an AR-15-style firearm); Emily Guskin, *Why do Americans own AR-15s?*, Washington Post (Mar. 27, 2023), <https://www.washingtonpost.com/nation/interactive/2023/american-ar-15-gun-owners/> (noting that this number equals 6% of adults). Even the English survey puts the figure no higher than 10%—again, not “common use.” See William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* 1–2 (Geo. Univ. McDonough Sch. Of Bus., Rsch. Paper No. 4109494, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4109494 (reporting that, of the 31.9% of respondents that own a firearm, 30.2% of that subset reported having owned an AR-15-style firearm).

Petitioners’ and their amici’s evidence fails to show that assault weapons are common and to exclude assault weapons purchased for criminals, including cartels in Mexico. No Second Amendment inquiry should credit firearm sales to criminals.

II. Bruen’s Framework Is Particularly Ill-Suited to Assault Weapons and Should Be Reconsidered.

Although the Statutes are unquestionably constitutional under *Heller*, *Bruen*, and their progeny, this case presents a unique opportunity for the Court to reconsider and revise *Bruen*’s test, at least as it applies to assault weapons.

To begin, “a framework that relies exclusively on text, history, and tradition to adjudicate Second Amendment claims provides only the aura, but not the reality, of objectivity.” *Duncan v. Bonta*, 19 F.4th 1087, 1118 (9th Cir. 2021) (Berzon, J., concurring); *see also* Emily Bazelon, *How “History and Tradition” Rulings Are Changing American Law*, N.Y. Times Mag. (Apr. 29, 2024), <https://www.nytimes.com/2024/04/29/magazine/history-tradition-law-conservative-judges.html> (reporting Justice Barrett’s acknowledgment that a judge’s hunt for historical sources could be like “looking over a crowd and picking out your friends”). Judges, who are not historians, are forced to either abstract an 18th-century pedigree for a modern regulation or declare an entire category of public-safety regulations constitutionally untouchable. *See Bruen*, 597 U.S. at 107, 113 (Breyer, J., dissenting). The result is a one-way ratchet: the Second Amendment protects an ever-larger scope of 21st-century “arms” while tying the government’s authority to a fixed catalog of now-antiquated 18th- and 19th-century statutes that regulated far less-dangerous weapons.

Although the Court has stated that *Bruen*’s history and tradition test is neither a regulatory straitjacket nor a means of “trapp[ing] [laws] in amber,” *United States v. Rahimi*, 602 U.S. 680, 691 (2024), that assurance provides limited guidance and little solace. Regardless of how liberally one construes a distant past, finding an analogue for a type of weaponry that was inconceivable at the Founding—to say nothing of locating an analogue to the modern laws regulating it—is a herculean task. And, once a court identifies a regulation that *can* serve as an analogue, *Bruen* provides no guidance as to whether it *should* be used as an analogue, suggesting, instead, that courts may discount laws that are too old, too recent, too

discriminatory, or simply too anomalous. *See Bruen*, 597 U.S. at 46 (discounting three of the government’s proposed colonial-era analogues in part because it “doubt[ed] that [just] three colonial regulations could suffice to show a tradition of public carry regulation”); *Rahimi*, 602 U.S. at 746 (Jackson, J., concurring) (noting the majority failed to clarify “[h]ow many analogues add up to a tradition”).

Bruen has spawned divergent outcomes “on virtually every consequential Second Amendment issue” decided in its wake. *Rahimi*, 602 U.S. at 741–43 (Jackson, J., concurring); *see also* Joseph Blocher & Eric Ruben, *Originalism-by-Analogy and Second Amendment Adjudication*, 133 Yale L. J. 99, 105–06 (2023) (cataloguing “unpredictable case outcomes” following *Bruen*); Jacob D. Charles, *The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History*, 73 Duke L. J. 67, 145 (2023) (courts have devised “bespoke subrules” to implement *Bruen*); Clara Fong, Kelly Percival & Thomas Wolf, *Judges Find the Supreme Court’s Bruen Test Unworkable*, Brennan Ctr. for Just. (June 26, 2023), <https://www.brennancenter.org/our-work/research-reports/judges-find-supreme-courts-bruen-test-unworkable>. This pattern is neither temporary nor fixable by lower courts. *Rahimi*, 602 U.S. at 741 (Jackson, J., concurring) (“Make no mistake: Today’s effort to clear up the [post-*Bruen*] ‘misunderst[andings],’ is a tacit admission that lower courts are struggling. In my view, the blame may lie with us, not with them.” (citation modified)). Rather, the indeterminacy *Bruen* has caused will exist for as long as the Court mandates a test with no settled evidentiary threshold and no principled account of how much similarity is enough.

**A. *Bruen* Is Unworkable When Applied to
Assault Weapons.**

Bruen's history and tradition methodology, though infirm in any context, collapses when applied to assault weapons because no such weapons existed in the founding era.

**1. There Were No Firearms Remotely
Analogous to Modern Assault
Weapons During the Founding Era.**

Bruen instructs courts to look to the founding era without precisely defining that era, leaving lower courts to vacillate between 1791, when the Second Amendment was ratified, and 1868, when the Fourteenth Amendment incorporated the Bill of Rights against the States. *Bruen*, 597 U.S. at 38. Neither era, though, had firearms that were effective mass killing tools and available to civilians—so there was no legislative impetus to ban them.

Early American firearms were primitive by modern standards. Although, by 1791, the cumbersome matchlock ignition system characteristic of seventeenth-century firearms had largely been replaced by the flintlock, flintlocks were, like all muzzle-loaders of the era, “liable to misfire” and glacially slow to reload, making them “awkward tools either for perpetrating or resisting crimes of passion.” Brian DeLay, *The Myth of Continuity in American Gun Culture*, 113 Cal. L. Rev. 1, 15, 22, 25, 32 (2025) (citing Hew Strachan, *European Armies and the Conduct of War* 16–17 (1983)).

Between 1791 and 1868, firearms technology progressed, but not to a point where it resembled anything approaching a modern assault weapon. The first practical repeating handguns—Colt-style revolvers and multi-barrel “pepperboxes”—were more

practical than eighteenth-century muskets, but the majority held seven or fewer rounds, and the three revolvers produced in the nineteenth century holding more than ten rounds were so “extraordinarily unusual and made in tiny quantities” that they are “best characterized as ‘experimental.’” *Id.* at 37–38; *see also id.* at 26 (citing Joseph Bradley, *Guns for the Tsar: American Technology and The Small Arms Industry in Nineteenth-Century Russia*, 12–19 (1990)). Even these more advanced guns were cumbersome to use: each chamber had to be charged with powder, loaded with a ball, rammed, and then capped by hand, such that reloading a six-shot revolver could take a minute and a half or more. *Id.* at 38. The result was a glacial rate of fire—a sharp contrast to the AR-15 used, for example, in the Parkland, Florida high school shooting, which discharged at a rate of 1.5 rounds per second, or 90 shots per minute, faster than the 12 to 15 rounds per minute rate that the military trains soldiers to fire. *See* C.J. Chivers et al., *With AR-15s, Mass Shooters Attack with the Rifle Firepower Typically Used by Infantry Troops* (Feb. 28, 2018), <https://www.nytimes.com/interactive/2018/02/28/us/ar-15-rifle-mass-shootings.html>.

Even the first reliable large-capacity firearms, the Henry rifle (1860) and the Winchester Model 1866, were “relatively slow to load”: they had fixed magazines, the shooter cycled the action by hand to eject each casing and chamber the next round, and an empty magazine had to be refilled one round at a time. DeLay, *supra*, at 39–40, 42, 44. They were also scarce and hardly a cause for legislative action: of the approximately 9,000 that were not shipped to foreign militaries and remained for the domestic market, more than 90% went to Union soldiers during the Civil War. *Id.* at 41.

In short, no firearm in existence prior to 1868 remotely resembled a modern assault rifle, and certainly none that “functioned well enough to become militarily and commercially significant” at any point before the nineteenth century. *Id.* at 15. Relatedly, there were not barrages of public massacres using anything akin to modern assault weapons until late in the twentieth century, obviating any legislative impetus to ban or restrict them.

2. Bruen’s Historical Analogue Test Does Not Work When Applied to Assault Weapons.

The absence of a founding-era firearm akin to a modern assault weapon should have no bearing on modern legislatures’ ability to regulate the technology.

Governments legislate for existing problems, not existential ones. Although America had a “diverse, extensive, and sometimes deeply intrusive tradition of regulating firearms in the name of public safety,” no founding era law regulated the use of a type of firearm—assault weapons—that would have been inconceivable to generations of musket and pistol-wielding Americans. *See DeLay, supra*, at 35. Instead, the laws enacted before 1868 make clear that when Americans *did* regulate guns, they did so because of their public safety risk and without regard to their perceived “commonality.”

Virginia, for example, prohibited “armed” men from engaging in terrorizing conduct in public places. An Act Forbidding and Punishing Affrays, ch. 49, 1786 Va. Acts 35. Massachusetts prohibited people from gathering while “armed with clubs, or other weapons.” An Act to Prevent Routs, Riots, and

Tumultuous Assemblies, and the Evil Consequences Thereof, ch. 8, 1786 Mass. Acts 502, 502–503.

An 1813 Louisiana law criminalized carrying “any concealed weapon, such as a dirk, dagger, knife, [or] pistol.” An Act Against Carrying Concealed Weapons, and Going Armed in Public Places in an Unnecessary Manner, 1813 La. Acts 172, 172–75. An 1837 Georgia law made it unlawful to “sell” or “keep” most types of “pistols.” An Act to Guard and Protect the citizens of this State, Against the Unwarrantable and too Prevalent Use of Deadly Weapons, 1837 Ga. Laws 90, 90–91. An 1831 Indiana law prohibited any person other than a “traveller” from “wear[ing] or carry[ing] a dirk, pistol, sword in a cane, or other dangerous weapon concealed.” An Act Relative to Crime and Punishment, ch. 26, 1831 Ind. Acts 180, 192. And a New Mexico law in the 1860s barred “any class of pistols whatever.” An Act Prohibiting Carrying of Weapons Concealed or Otherwise, ch. 61, 1864–65 N.M. Laws 406, 406–08. In all, scholars have catalogued roughly 760 early laws regulating the use and storage of firearms, each of which was aimed at curbing the use of dangerous weapons regardless of their perceived popularity. Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 L. & Contemp. Probs. 55, 61 (2017).

But no founding era regulation restricted anything akin to assault weapons because “repeating firearms and high-capacity weapons were much too rare and too irrelevant to public safety to attract regulatory attention.” DeLay, *supra*, at 35; *cf.* Spitzer, *supra*, at 68–69 (explaining that new firearm technologies drew regulation not when they were invented but rather once they began to circulate widely). However, one can

safely assume from the myriad gun laws that *had* been enacted in the founding era, that if legislatures had confronted repeated atrocities akin to the massacre at Sandy Hook, they would have regulated assault weapons just as they regulated the knives and primitive firearms then available.

Elevating the absence of law to a nearly inviolate entitlement supersedes a host of inalienable rights, including the right to life and the rights to assemble, speak, and exist safely in public spaces. See Jonathan Lowy & Kelly Sampson, *The Right Not To Be Shot: Public Safety, Private Guns, and the Constellation of Constitutional Liberties*, 14 Georgetown J. L. & Pub. Pol’y 187, 190 (2016) (presenting the right to life as a “counterweight” to Second Amendment rights). It also defies the longstanding common law adapting constitutional rights to protect public safety. As Justice Breyer noted in his *Bruen* dissent, “I believe the Amendment allows States to take account of the serious problems posed by gun violence. . . . [and] I fear that the Court’s interpretation ignores these significant dangers and leaves States without the ability to address them.” *Bruen*, 597 U.S. at 91 (Breyer, J., dissenting); see also Eric Ruben, Rosanna Smart & Ali Rowhani-Rahbar, *One Year Post-Bruen: An Empirical Assessment*, 110 Va. L. Rev. Online 20 (2024) (documenting hundreds of decisions relying on *Bruen* to invalidate various gun laws). Surely, the Founders would have feared this, too.

B. *Bruen*’s Carve-Out for “Unprecedented” and “Dramatic” Changes Is a More Apt Test.

Bruen’s majority acknowledged that history and tradition may not be appropriate benchmarks in every instance, and that “cases implicating unprecedented

societal concerns or dramatic technological changes may require a more nuanced approach.” *Bruen*, 597 U.S. at 27. Although *Bruen* endorsed this carve-out, the majority was, respectfully, wrong to allude to it as a last resort. Given that virtually *all* modern firearm regulations involve “unprecedented societal concerns”—mass shootings, extremist violence, and cross-border trafficking—stemming from “dramatic” technological changes—ghost guns, 3D-printed firearms, high-capacity magazines, and semiautomatic rifles—the “nuanced approach” should be the sum of the analysis. See Samantha Barrera, Note, *Unreason by Analogy: Principle over Pedanticism and the Nuanced Approach to Bruen*, 67 Ariz. L. Rev. 517 (2025).

A “nuanced approach” does not have to mean a “new” approach. Indeed, before *Bruen*, every lower court used a nuanced, fact-specific approach, assessing compelling and substantial government interests and ensuring that challenged legislation was reasonably related to legislators’ stated aims. See *Kolbe v. Hogan*, 849 F.3d 114, 139 (4th Cir. 2017); *Worman v. Healey*, 922 F.3d 26, 39 (1st Cir. 2019); *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 910 F.3d 106, 117 (3d Cir. 2018); *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 261 (2d Cir. 2015). This approach is both flexible and pragmatic, allowing legislatures to address gun violence through tailored, evidence-based solutions rather than by anachronism. See Stephen Breyer, *Pragmatism or Textualism*, 138 Harv. L. Rev. 717, 769 (2025); Nelson Lund, *Second Amendment Originalism, “General Law,” and Rahimi’s Two-Fold Failure*, 78 SMU L. Rev. 459, 489 (2025). And, as many courts of appeals have determined, regulations prohibiting possession, ownership, sale, or transfer of

assault weapons amply meet that standard.⁶ See *Kolbe*, 849 F.3d at 139; *Worman*, 922 F.3d at 39; *Ass’n of N.J. Rifle & Pistol Clubs*, 910 F.3d at 117; *Cuomo*, 804 F.3d at 261.

Adopting a “nuanced” approach would not increase the discretion *Bruen* expressly sought to remove any more than *Bruen* and its progeny have created unpredictability and discretion in applying the history and tradition test. If anything, the *Bruen* test’s reliance on analogy grants courts wider discretion, risking unprincipled and results-driven jurisprudence. See *Vidal v. Elster*, 602 U.S. 286, 324 (2024) (Barrett, J., concurring) (a “rule rendering tradition dispositive is itself a judge-made test”).

Despite what *Bruen* ostensibly set out to do, its practical effect was to concentrate gun rights policymaking “in one place: the Supreme Court.” Mark A. Lemley, *The Imperial Supreme Court*, 136 Harv. L. Rev. F. 97, 97 (2022). The irony is that vesting the judiciary with this type of power would have been anathema in a founding era in which courts generally deferred to legislatures, making *Bruen*’s history and tradition test decidedly *untraditional*. See William Michael Treanor, *Judicial Review Before Marbury*, 58 Stan. L. Rev. 455, 557 (2005); Saul A. Cornell, *The Police Power and the Authority to Regulate Firearms in Early America*, Brennan Ctr. for Just. (2021), https://www.brennancenter.org/sites/default/files/2021-06/Cornell_final.pdf. Means-end scrutiny, by contrast, returns “policy” judgments to where “history and

⁶ Other restrictions on assault weapons—such as licensing requirements—would also benefit from a means-end scrutiny test because the *Bruen* historical analogue test would be equally unworkable in those instances.

tradition” deposited them: in the hands of the legislature. *See* Bernadette Meyler, *Fiction at the Court*, 138 Harv. L. Rev. F. 22, 36–37 (2024).

CONCLUSION

For the foregoing reasons, the Court should find that the Statutes are constitutional and use this opportunity to develop a workable framework for the challenges posed by assault weapons.

Respectfully submitted,

JONATHAN K. BAUM
KATTEN MUCHIN
ROSENMAN LLP
525 W Monroe Street
Chicago, IL 60661-3693
(312) 902-5479
jonathan.baum@katten.com

MARK T. CIANI
SARAH EICHENBERGER
KATTEN MUCHIN
ROSENMAN LLP
50 Rockefeller Plaza
New York, NY 10020-1605
(212) 940-6509
mark.ciani@katten.com
sarah.eichenberger@katten.com

CHRIS COLE
Counsel of Record
KATTEN MUCHIN
ROSENMAN LLP
1919 Pennsylvania Avenue NW
Suite 800
Washington, D.C. 20006
(202) 625-3550
chris.cole@katten.com

MICHAELA C. HOLCOMBE
KATTEN MUCHIN
ROSENMAN LLP
615 S College Street, Suite 1700
Charlotte, NC 28202-3354
(704) 344-3074
michaela.holcombe@katten.com

JONATHAN LOWY
JAKE STEISEL
GLOBAL ACTION ON
GUN VIOLENCE
805 15th Street NW, #601
Washington, D.C. 20005
(202) 415-0691
JLowy@actiononguns.org
JSteisel@actiononguns.org

October 28, 2026