No. 25-238

In the Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,
v.
COOK COUNTY, ILLINOIS, *et al.*,
Respondents.

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

RESPONSE TO SUGGESTION OF MOOTNESS

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INTRODUCTION

Respondent Cook County's suggestion of mootness ("Sugg.") is phrased in jurisdictional terms, but it is really an argument about the scope of the question presented. Is the question limited to whether the Constitution protects the right to possess AR-15 platform rifles? Or does it reach other, similar semiautomatic rifles as well? Its plain terms show it is the latter: "Whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform *and similar* semiautomatic rifles." Pet. i (emphasis added).

If anything is "similar" to an AR-15, an AK-47-style rifle such as the IMI Galil sought by Petitioner Khaya would qualify. Pet.App.8a n.3. Indeed, Cook County's own ordinance groups these rifles together by name and features, classifies them as so-called "assault weapons," and bans them. The County has not contested any of this until now—and in fact has in its briefing defined the AK-47 as an "AR-15 platform weapon[ ]." Resp. Br. 8. It has accordingly waived, or at least forfeited, any argument that the AK-47-based Galil falls outside the question presented.

But even if the AR-15 platform itself were an indispensable part of this case, the accompanying declarations make clear that the rifle would still be at issue after Petitioner Viramontes's departure, both with respect to Petitioner Khaya and the Petitioner Organizations. As both a jurisdictional and vehicle matter, Viramontes's involvement is unnecessary.

ARGUMENT

I. There Is Still a Live Controversy.

Article III standing requires "at least one petitioner" to have "a personal stake in the outcome of the

controversy," *Horne v. Flores*, 557 U.S. 433, 445 (2009) (cleaned up), not a personal stake in the question presented as framed by the parties or the Court, *contra* Sugg. 3. Even so, Khaya has a personal stake in both. He desires to own an IMI Galil semiautomatic rifle, Pet.App.8a, and as the County concedes, Sugg. 3, the challenged ordinance bars him from doing so. The requested relief would redress that injury, both by relieving Khaya from Cook County's ban and by awarding him nominal damages. *See* Pet.App.20a–21a. He thus continues to have standing. The County's argument really is about the scope of the question presented, not subject-matter jurisdiction. *See, e.g.*, Sugg. 4 (questioning whether "Khaya's claim would fall within the question presented"). And as discussed below, the semiautomatic rifle Khaya seeks clearly falls within the scope of that question.

Even if this were a standing issue, however, the County's arguments for why Khaya lacks it go to the merits. The County contends that Khaya lacks standing because the Galil he seeks is not similar to an AR-15, is not in common use, and is not intended by Khaya for self-defense. *See* Sugg. 3–4. But that clashes with what Petitioners argue on the merits. *See, e.g.*, Pet'rs' Br. 12 n.4 (explaining that the "AK-47 rifle platform," which includes the IMI Galil, "is similar to the AR-15"), 25–28 (arguing that AR-15s and similar semiautomatic rifles implicate the plain text of the Second Amendment under *Bruen*'s first step), 34–35 (arguing that AR-15s and similar semiautomatic rifles are in common use for lawful purposes, including self-defense, under *Bruen*'s second step). And "[f]or standing purposes," the Court "accept[s] as valid the merits" of Petitioners' claims. *FEC v. Cruz*,

596 U.S. 289, 298 (2022) (citing *Warth v. Seldin*, 422 U.S. 490, 500 (1975)).

Still, the County's arguments warrant a brief response. For reasons discussed in more detail below, AK-47-style rifles such as the Galil *are* similar to AR-15s, as demonstrated by the record, the County's own ordinance, and the briefing to date. As for common use, the County improperly zeros in on a specific *model* of semiautomatic rifle, rather than focusing on the *class* of firearms targeted by the ban. *See District of Columbia v. Heller*, 554 U.S. 570, 629 (2008) (assessing common use by analyzing "handguns" as a group rather than a specific type of handgun); *see also* Pet'rs' Br. 34–35. Indeed, the County fixates not only on a specific model but on specific "variants" of that model. Sugg. 3–4. Finally, the fact that Khaya said he would "most likely" use the rifle "at the range" is irrelevant, because target shooting is also a lawful purpose. Pet.App.8a. This Court has never suggested that a plaintiff must *prove* that it is *likely* he will need to use a firearm for self-defense in order for that class of firearm to be in common use *for* self-defense or any other lawful purpose.

II. The Question Presented Covers AK-47-Style Rifles Such as the IMI Galil.

Turning to the scope of the question presented—in particular, the meaning of "AR-15 platform and similar semiautomatic rifles," Pet. i—the language is not limited to rifles within the AR-15 family. If "similar semiautomatic rifles" meant only AR-15 variants, the phrase would do no work, because "AR-15 platform" would already cover those firearms. "Similar semiautomatic rifles" therefore must include rifles outside the AR-15 family.

The framing of the question presented tracks how the Second Amendment analysis works, which again considers whether a particular *class* of firearms (*e.g.*, semiautomatic rifles *like* the AR-15) is protected, not whether a particular *model* (*e.g.*, the Smith & Wesson M&P 15 or the IMI Galil) is. *See, e.g.*, *Heller*, 554 U.S. at 629 (analyzing "handguns" as a class); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 32 (2022) (same); *Caetano v. Massachusetts*, 577 U.S. 411, 411–12 (2016) (per curiam) (analyzing "stun guns" as a class); *Association of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.*, 183 F.4th 211, 238 (3d Cir. 2026) (en banc) (analyzing banned "semi-automatic rifles" as a class and noting that "all covered semi-automatic rifles share common features, regardless of the model or manufacturer").

Compared to the AR-15 platform, AK-47-style firearms such as the IMI Galil are "similar semiautomatic rifles" and thus fall within the scope of the question presented. These firearms share common features, including pistol grips, the ability to support adjustable or folding stocks, and the ability to accept detachable magazines. Beyond their function, the images below illustrate the visual similarity of the platforms:



M&P 15 (AR-15 platform), SMITH & WESSON, https://perma.cc/MJJ6-VLY6.



Evan Brune, *The Israeli Galil: Then & Now*, AMERICAN RIFLEMAN (Nov. 5, 2023), https://perma.cc/4PPJ-KX2J.

It is no surprise, then, that AR-15s, AK-47s, and Galils each qualify as "assault weapons" under Cook County's ordinance, as the County acknowledges. *See* Sugg. 3; *see also* Pet.App.9a ("The weapons Viramontes and Khaya would like to own are among those banned by the Ordinance."). The ordinance defines "assault weapons" in two ways. First, it covers firearms with particular features, namely, "the capacity to accept a large capacity magazine detachable or otherwise and one or more" other features, such as "[a] folding, telescoping or thumbhole stock" and "[a] shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned." Pet.App.29a–30a; Code of Ordinances of Cook County, Ill. ("C.C. Ord.") § 54-211(1). In their standard configurations, the AR-15 and Galil each satisfy that test. Second, the ordinance lists many semiautomatic rifles by name, including the AR-15, AK-47, and Galil. Pet.App.31a–34a; C.C. Ord. § 54-211(7)(A)(i), (7)(A)(iii), (7)(A)(xx), (7)(A)(xxxvi). The County cannot treat these rifles as interchangeable

for purposes of regulation but somehow meaningfully different for purposes of this litigation.

Indeed, until now, the County's litigation position has been that the rifles are interchangeable. At summary judgment, the County identified the Galil as an "AR-15 style semiautomatic rifle." Pet.App.8a n.3. It also grouped AR-15s, AK-47s, and other semiautomatic rifles together in both its cert- and merits-stage briefing, often under the catchall term "assault weapons." *See, e.g.*, Br. in Opp. 7–10; Resp. Br. 4–5 (citing a shooting with an "AK-47 style rifle" to illustrate the alleged dangers of "AR-15 platform weapons"). In its cert-stage brief, the County defined "assault weapon" in a way that clearly covers the Galil—"a semiautomatic firearm that can accept a detachable magazine and has one or more" of the "features" discussed above. Br. in Opp. 12. Similarly, in its merits-stage brief, the County defined all firearms banned by name in Section 54-211(7) of the ordinance—among which are the AR-15, AK-47, and Galil—as "AR-15 platform weapons." Resp. Br. 8. And the County conceded that the ordinance "targets" a "class of firearms," Resp. Br. 25, and specifically "applies to AK-47-style weapons," Sugg. 3.

Perhaps most notably, the County defended the ban *as applied to Khaya* by arguing that it covers only "an unusually dangerous platform of weapons while leaving other arms available for lawful self-defense," such as Khaya's ".22 caliber semiautomatic Rossi rifle" and "handgun." Resp. Br. 26. The County thus clearly placed the Galil sought by Khaya in the same category as an AR-15.

What the County did *not* say is also significant. For example, Petitioners explained in their briefing

that "[t]he AK-47 rifle platform, in its semiautomatic, civilian configuration, is similar to the AR-15 and includes many of the same external design features." Pet'rs' Br. 12 n.4. The County offered no rebuttal. Nor did it push back on Petitioners' repeated grouping of the rifles together, *see, e.g.*, Pet. 7–10; Pet'rs' Br. 11–13, 26, 28, 34, including by describing the AR-15 as "broadly representative of the class of banned semiautomatic rifles" and by stating that it "epitomize[s]" the type of firearms targeted by the ordinance, Pet'rs' Br. 14–15, 16. The County had every incentive to contest these points if it disagreed, as doing so could, if successful, narrow the scope of relief and save certain applications of the ordinance. For all these reasons, the County has waived, or at least forfeited, any argument that the AK-47-based Galil is not similar to the AR-15. *See* Sup. Ct. R. 15.2.

Contrary to the County's claim, Petitioners have never denied the similarity. *See* Sugg. 3. Petitioners simply clarified in their Rule 56.1 statement that the Galil is derived from the AK-47, not the AR-15. Pet.App.8a n.3. In other words, the statement addressed design lineage, not similarity. Although that clarification places the Galil outside the first category of arms covered by the question presented ("AR-15 platform"), it does not remove the Galil from the second ("similar semiautomatic rifles").

III. Petitioner Khaya and Members of the Petitioner Organizations Seek to Possess AR-15 Platform Rifles.

At any rate, even without Viramontes, the AR-15 is still very much part of this case, both with respect to Petitioner Khaya and the Petitioner Organizations. As his accompanying declaration attests, Khaya also

desires to possess an AR-15 platform rifle and would acquire one if it were lawful for him to do so. *See* 1a. So too, Ed Smolen—a member of Petitioners Firearms Policy Coalition and Second Amendment Foundation, a resident of Cook County, and an owner of an AR-15 that he keeps out of state—would possess his AR-15 at his residence in Cook County if doing so were lawful. *See* 2a; *see also Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718 (2007) (accepting affidavit from organization listing members with standing after prior members aged out during pendency of litigation); *Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021, 1037 (6th Cir. 2022) (explaining that, to avoid mootness, "associational standing" may be established "after the original member's claim is extinguished by identifying some other named member who would have a live claim in his own right"); *Worth v. Jacobson*, 108 F.4th 677, 685–87 (8th Cir. 2024) (similar).

Accordingly, even if maintaining a live controversy or avoiding vehicle problems turned on a Petitioner desiring an AR-15 (it does not), that condition would be met. The County itself suggested that it would be satisfied that the case is not moot if Viramontes submitted a declaration stating that he is still a member of the Petitioner Organizations and still desires to obtain an AR-15. *See* Sugg. 5–6. No declaration from Viramontes is necessary: Associational standing has rested from the outset on Khaya as well. *See* Pet.App.8a. Smolen's declaration also supports associational standing. *See Universal Life Church*, 35 F.4th at 1037.

CONCLUSION

The Court should deny Cook County's request to dismiss the case as moot or improvidently granted.[1]

Respectfully submitted,

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[1] The County correctly concedes that even if this case were dismissed as moot or improvidently granted, the Court could still decide the same question presented in the consolidated case. *See* Sugg. 1 n.1.

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SUPPLEMENTAL DECLARATION OF CHRISTOPHER KHAYA

I, Christopher Khaya, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a natural person, a resident of Cook County, Illinois, an adult over the age of 21, a citizen of the United States and the State of Illinois, and legally eligible under federal and state law to possess and acquire firearms. I am a member of Petitioners Second Amendment Foundation and Firearms Policy Coalition, Inc.

2. I wish to exercise my right to keep and bear common semiautomatic arms and so-called assault weapons for lawful purposes in Cook County.

3. In particular, throughout this litigation, I have expressed a desire to possess an IMI Galil semiautomatic rifle.

4. I also have explained that there may be other firearms that I would like to possess. One additional such firearm is a semiautomatic AR-15 platform rifle, which I would acquire and possess in Cook County were it lawful for me to do so. While the IMI Galil incorporates elements of the AR-15 design, it is largely based on the AK-47.

I declare under penalty of perjury that the foregoing is true and correct.

Date: October 21, 2026 /s/ *Christopher Khaya*

DECLARATION OF ED SMOLEN

I, Ed Smolen, am competent to state and declare the following pursuant to 28 U.S.C. § 1746:

1. I am a law-abiding citizen of the United States and a resident of Elmwood Park, Illinois, which is in Cook County. I have resided in Elmwood Park since 2000.

2. I am over 21 years of age and am eligible, under federal and state law, to possess, acquire, purchase, and receive firearms.

3. I am a member of Firearms Policy Coalition, Inc., and I have been a member for several years. I am also a member of Second Amendment Foundation.

4. I have owned an AR-15 platform semiautomatic rifle since 2011 but keep it out of state.

5. If it were lawful to do so, I would possess my AR-15 at my residence in Cook County for lawful purposes including self-defense.

I declare under penalty of perjury that the foregoing is true and correct.

Date: November 10, 2026

/s/ *Ed Smolen*

Ed Smolen