No. 25-296

In The Supreme Court of the United States

JAKE STANLEY DEWILDE,

PETITIONER,

V.

PAMELA BONDI, ATTORNEY GENERAL, *ET AL.*,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The M-16 rifle is the lineal descendant of the musket and the standard-issue service rifle utilized by the U.S. military. The question presented is:

> Whether the Second Amendment to the Constitution permits the government to prohibit the possession, by responsible, law-abiding Americans, of the standard-issue service rifle of the U.S. military, the M-16.

PARTIES TO THE PROCEEDING

Petitioner (plaintiff-appellant below) is Jake Stanley DeWilde.

Respondents (defendants-appellees below) are Pamela Bondi, Attorney General of the United States and Daniel Driscoll, Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives in their official capacities.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *DeWilde v. United States Attorney General*, No. 24-8071 (10th Cir. Jun. 10, 2025)

- *DeWilde v. United States Attorney General*, No. 2:24-cv-00084 (D. Wyo. Oct. 16, 2024)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

OTHER AUTHORITIES

ORDERS BELOW

The Tenth Circuit's order affirming the dismissal of Petitioner's complaint (App. 1a) is Order and Judgment, *DeWilde v. United States Attorney General*, No. 24-8071 (10th Cir. Jun. 10, 2025). The Tenth Circuit's order denying rehearing en banc (App. 8a) is Order, *DeWilde v. United States Attorney General*, No. 24-8071 (10th Cir. Jun. 23, 2025). The district court's order dismissing Petitioner's complaint (App. 10a) is Order, *DeWilde v. United States Attorney General*, No. 2:24-cv-00084 (D. Wyo. Oct. 16, 2024).

JURISDICTION

The judgment of the court of appeals was entered on June 10, 2025. The order of the court of appeals denying rehearing en banc was entered on June 23, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. II provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

18 U.S.C. § 922(o) provides, in relevant part:

> **(1)** Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

26 U.S.C. § 5845(1) provides, in relevant part:

> **(a)** Firearm
>
> The term "firearm" means
>
> ***
>
> (6) a machinegun;
>
> ***

STATEMENT OF THE CASE

I. Introduction

This case concerns one of the most disputed questions in Second Amendment litigation today: *what* arms does the Second Amendment protect? "[I]f weapons that are most useful in military service–M-16 rifles and the like–may be banned, then the Second Amendment right is completely detached from the prefatory clause."[1] But "[l]ogic demands that there be a link between the stated purpose and the command."[2] While the Court has "never squarely addressed what types of weapons are 'Arms' protected by the Second Amendment,"[3] history, tradition, and precedent answer the question in this case. The protections of the Second Amendment must extend at least to the "lineal descendant"[4] of the arm used by the Founders to secure our independence in the American Revolution and provide for the common defense of our nation: the M-16.

II. Legal Background

Congress first sought to regulate machineguns under the National Firearms Act of 1934 ("NFA"). During Congressional debate on the legislation, the Attorney General was questioned as to whether the government possessed such powers. Attorney General

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[1] *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008).
[2] *Id.*, at 577.
[3] *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (July 2, 2024) (Statement of Thomas, J.).
[4] Brief for the United States as Amicus Curiae, p. 22, *Heller*, 554 U.S. 570.

Cummings advised Congress that "if we made a statute absolutely forbidding any human being to have a machine gun, you might say that there is some constitutional question involved. But when you say '[w]e will tax the machine gun...' you are easily within the law."[5]

Thus, the NFA was codified, and machineguns have since been subject to its stringent regulations. Prior to making or transferring a machinegun, an individual must submit to the ATF an application along with a two-hundred-dollar tax remittance; submit to and pass a background check; submit fingerprints; submit a government-compliant facial photograph; and register their machinegun in the National Firearms Registration and Transfer Record ("NFRTR"), the central national registry of all NFA firearms.

More than fifty years later, Congress codified 18 U.S.C. § 922(o). The text of section 922(o) was offered by Representative William Hughes as House Amendment 777 to House Resolution 4332 (the "Firearm Owners' Protection Act" or "FOPA") on April 10, 1986. Without floor discussion or debate, the amendment was voted on by the Committee of the Whole. Representative Charles Rangel, Chairman of the committee, recorded that the amendment passed by Voice Vote. Section 922(o) was codified into law on May 19, 1986.

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[5] National Firearms Act: Hearings Before the House Committee on Ways and Means, 73rd Cong., 2d Sess., 8 (1934).

III. Factual and Procedural History

Petitioner brought a single-count complaint against the United States Attorney General and the Director of the BATFE (Respondents, or collectively, the "government") in the United States District Court for the District of Wyoming, invoking jurisdiction under 28 U.S.C. §§ 1331, 1343, 1346. App. 32a. His complaint alleged that he applied to the BATFE requesting approval to make and possess an M-16, but his application was disapproved solely because the possession of his M-16 would violate 18 U.S.C. § 922(o). *Id.*, at 33a. He sought (1) a declaration that section 922(o) violates the Second Amendment and (2) injunctive relief requiring the government to approve his application to make an M-16. *Id.*, at 34a.

The government moved to dismiss Petitioner's complaint under Fed. R. Civ. P. 12(b)(6). The district court granted the government's motion to dismiss. App. 10a. Petitioner appealed the district court's order to the Tenth Circuit Court of Appeals, invoking jurisdiction under 28 U.S.C. § 1291. The Tenth Circuit affirmed the district court's order against Petitioner. App. 1a.

Following entry of the Tenth Circuit's order and judgment, Petitioner requested rehearing *en banc*. "The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. A poll was requested and a majority of the active judges voted to deny rehearing en banc." App. 9a.

REASONS FOR GRANTING THE PETITION

I. The Tenth Circuit's analysis conflicts with the precedent of every circuit, including its own.

In 2022, the Court clarified the constitutional standard courts must apply when confronted with a Second Amendment challenge:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

New York State Rifle & Pistol Assn., Inc. v. Bruen, 597 U.S. 1, 24 (2022).[6]

Every federal court of appeals, including the Tenth Circuit, has recognized *Bruen*'s clarified constitutional standard that governs Second Amendment cases. *See United States v. Price*, No. 22-4609, slip op. at 7 (1st Cir. Aug. 6, 2024) ("*Bruen* set forth a new framework under which courts must now analyze Second Amendment challenges."); *Antonyuk v. Chiumento*, No. 22-2908, slip op. at 40 (2nd Cir. Dec. 8, 2023) ("[W]e read *Bruen* as setting out a two-step framework."); *Range v. United States Attorney General*, No. 21-2835, slip op. at 11 (3rd Cir. Dec. 23, 2024) ("After *Bruen*, we must first decide whether the

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[6] Quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10 (1961).

text of the Second Amendment applies to a person and his proposed conduct. If it does, the government now bears the burden of proof." (citation omitted)); *Maryland Shall Issue, Inc. v. Moore*, No. 21-2017, slip op. at 9 (4th Cir. Aug. 23, 2024) (*Bruen* "established a new, two-step framework for evaluating Second Amendment challenges."); *Reese v. ATF*, No. 23-30003, slip op. at 6 (5th Cir. Jan. 30, 2025) ("*Bruen* clarified the framework for determining when a given statute or regulation unconstitutionally infringes on [the Second Amendment] right."); *United States v. Williams*, No. 23-6115, slip op. at 4 (6th Cir. Aug. 23, 2024) ("[*Bruen*] clarified the analytical framework that applies to Second Amendment challenges."); *United States v. Rush*, No. 23-3256, slip op. at 8 (7th Cir. Mar. 10, 2025) ("*Bruen* set forth a two-step test for evaluating the constitutionality of a statute under the Second Amendment." (citation omitted)); *United States v. Veasley*, No. 23-1114, slip op. at 3 (8th Cir. Apr. 17, 2024) ("A two-part test, based on 'text and historical understanding,' governs" a "Second Amendment" "challenge[]" (quoting *Bruen*, 597 U.S. at 17)); *United States v. Duarte*, No. 22-50048, slip op. at 5 (9th Cir. May 9, 2024) ("We must therefore reconsider § 922(g)(1)'s constitutionality, this time applying *Bruen*'s two-step, text-and-history framework."); *Rocky Mountain Gun Owners v. Polis*, No. 23-1251, slip op. at 25 (10th Cir. Nov. 5, 2024) ("To ascertain the constitutionality of a law burdening an individual's exercise of the Second Amendment, we apply a two-part burden-shifting framework first established in *Bruen*."); *United States v. Lowe*, No. 22-13251, slip op. at 4 (11th Cir. Aug. 5, 2024) ("*Bruen* scrapped the old two-step test courts of appeals had been applying. Instead, the Court explained, a

historical inquiry governs Second Amendment challenges." (citation omitted)); *Hanson v. District of Columbia*, No. 23-7061, slip op. at 8 (D.C. Cir. Oct. 29, 2024) ("*Bruen* established a two-step test" for determining whether a statute "violates [an individual's] Second Amendment rights." That is "governing precedent.").

Despite the uniform recognition, by every circuit, of the governing constitutional test for Second Amendment cases pursuant to *Bruen*, the Tenth Circuit failed to identify and consider that test. Indeed, the only references the court made to *Bruen* were in a single sentence quoted from Petitioner's opening brief. *See* App. 4-5a.

Petitioner raised a facial challenge to the constitutionality of § 922(o), asserting that there was no circumstance under the statute permitting his possession of an M-16 rifle. At *Bruen*'s first prong, the court should have determined whether "the Second Amendment's plain text covers [Petitioner's proposed course of] conduct." 597 U.S. at 24; *compare with United States v. Rahimi*, 602 U.S. 680, 708 (2024) (Gorsuch, J., concurring) ("In this case, no one questions that the law Mr. Rahimi challenges addresses individual conduct covered by the text of the Second Amendment.")

Instead, the court eschewed *Bruen*'s constitutional standard altogether, and instead imposed its own "no set of circumstances" test derived from *United States v. Salerno*, 481 U.S. 739, 745 (1987). Rather than considering whether Petitioner's proposed conduct – possession of an M-16 rifle – falls within the plain text of the Second Amendment, the court imagined a hypothetical scenario – "ownership of... [an] airplane-

mounted automatic cannon" – and *sua sponte* determined that the challenged statute would apply to that hypothetical. App. 6a. But "[t]he delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases thus imagined," *United States v. Raines*, 362 U.S. 17, 22 (1960), and the "*Salerno* formulation" "has never been the decisive factor in any decision of this Court, including *Salerno* itself." *Chicago v. Morales*, 527 U.S. 41, 55 n.22 (1999).

"[T]he Court has [] never held that [facial challenges] cannot be brought under any otherwise enforceable provision of the Constitution." *Los Angeles v. Patel*, 576 U.S. 409, 415 (2015) (citation omitted). "Instead, the Court has allowed such challenges to proceed under a diverse array of constitutional provisions." *Id.* (citing *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011) (First Amendment); *District of Columbia v. Heller*, 554 U. S. 570 (2008) (Second Amendment); *Chicago v. Morales*, 527 U.S. 41 (1999) (Due Process Clause of the Fourteenth Amendment); *Kraft Gen. Foods, Inc. v. Iowa Dept. of Revenue and Finance*, 505 U.S. 71 (1992) (Foreign Commerce Clause)). "The Court's precedents demonstrate not only that facial challenges to statutes... can be brought, but also that they can succeed." *Id.*

To be sure, the lower court observed that "the language in *Salerno* to describe facial challenges 'is accurately understood not as setting forth a *test* for facial challenges, but rather as describing the *result* of a facial challenge in which a statute fails to satisfy the appropriate constitutional standard.'" App. 6a (quoting *Doe v. City of Albuquerque*, 667 F.3d 1111, 1127 (10th Cir. 2012)). But the court incorrectly

determined that "the district court did apply the appropriate constitutional standard, extending the Second Amendment right only to those arms a person can 'bear.'" *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 584 (2008)).

The court was wrong because the Second Amendment's text is "unqualified,"[7, 8] and limitations on the right to keep and bear arms must be demonstrated at the second prong of *Bruen* by demonstrating an analogous historical tradition. But, as explained, the court did not identify the appropriate constitutional standard under *Bruen*, much less apply the analysis this Court requires.[9]

II. The Tenth Circuit's decision does not comport with *Bruen*.

If the court had applied the appropriate constitutional standard under *Bruen*, it should have found that the government cannot prohibit the possession of an M-16 under the Second Amendment.

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[7] 597 U.S. at 17, 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10 (1961)); *also Rahimi*, 602 U.S., at 737 (2024) (Barrett, J., concurring).

[8] Even if the text of the Second Amendment was limited to bearable arms (it is not), it is undisputed that the arm at issue in this case, the M-16, is a bearable arm.

[9] Petitioner submits that the lower court's failure to apply the appropriate constitutional standard under *Bruen* alone warrants granting the petition, vacating the judgment, and remanding for application of *Bruen* in this case. The "ideal" of "the 'Rule of Law'"—"key to our democracy—thrives on legal standards that foster stability, facilitate consistency, and promote predictability." 602 U.S., at 746 (Jackson, J., concurring).

A. The possession of an M-16 is protected by the plain text of the Second Amendment.

Under *Bruen*, Petitioner "need only show that 'the plain text' of the Second Amendment covers his conduct."[10] Such a showing requires "little difficulty"[11] in this case. Petitioner is a law-abiding American and a statutory member of the militia. App. 42a (citing 10 U.S.C. § 246). As a member of the people, he is "guarantee[d] the individual right to possess" arms. 554 U.S. 570, 592. The arm Petitioner proposes to possess, an M-16, is a bearable machinegun. App. 37a. A machinegun is a firearm. 26 U.S.C. § 5845(1)(a). "All firearms constitute[] 'arms.'" 554 U.S. at 581.[12] "[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms." *Id.*, at 582.[13] Because "the Second Amendment's plain text covers" Petitioner's "conduct, the Constitution presumptively protects that conduct." 597 U.S. at 24. Section 922(o) is thus presumptively unconstitutional.

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[10] *Snope v. Brown*, 605 U.S. ____ (2025) (Thomas, J., dissenting from the denial of certiorari) (slip op., at 4) (quoting 597 U.S., at 32).

[11] *Id.*, quoting 597 U.S., at 32.

[12] Quoting 1 J. Trusler, The Distinction Between Words Esteemed Synonymous in the English Language 37 (3d ed.1794).

[13] "[T]he [Second] Amendment does not apply only to the catalogue of arms that existed in the 18th century, but rather to all weapons satisfying the '*general definition*' of 'bearable arms.'" (602 U.S., at 740 (Barrett, J., concurring) (quoting 597 U.S., at 28-29)) (emphasis in original).

B. The government has not demonstrated a historical tradition of banning the standard-issue service rifle used by the U.S. military and the militia.

"To justify its regulation," "the government must demonstrate that [section 922(o)] is consistent with this Nation's historical tradition of firearm regulation." *Id.* The government need not identify a "historical twin," but must at least identify a "historical analogue" that "is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S., at 692. Thus, for the analogue to be "sufficient," it must maintain the "shared principle" of prohibiting the possession of the standard-issue service rifle of the U.S. military. *Id.*, at 704 (Sotomayor, J., concurring). The government did not, and cannot, demonstrate that shared principle.

Of course, the court below did not perform the constitutional analysis under *Bruen*. The court's order makes no mention of any variation of history, tradition, analogues, or principles. But even if the court had followed "the principle of party presentation,"[14] the historical record presented by the government was completely devoid of any historical prohibition remotely similar to section 922(o).

That deficiency is unsurprising, because our Nation's history demonstrates the opposite of such a prohibition. The Second Militia Act of 1792 required that "every citizen" of "the militia" possess "a good musket or firelock."[15] The Militia Act of 1808 eliminated the requirement of members to provide

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[14] 597 U.S. at 25 n.6 (quoting *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020)).

[15] Militia Act of 1792, ch. 33, § 1, 1 Stat. 271.

their own muskets, but appropriated "the annual sum of two hundred thousand dollars" "for the purpose of providing arms and military equipments for the whole body of the militia."[16] The Militia Act of 1903 improved "the efficiency of the militia," and preceded the creation of the "National Board for the Promotion of Rifle Practice (NBPRP)" by "Congress and President Theodore Roosevelt."[17] The NBPRP was created with the understanding that "marksmanship skills developed through regular practice and competition contribute to the nation's defense."[18] The NBPRP became known as the congressionally-chartered "Civilian Marksmanship Program" (CMP). *Id.* In addition to "marksmanship and training programs," the CMP is the designated organization for "purchas[ing] U.S. government surplus rifles." *Id.*

The Court's precedents are consistent with this history. In a Second Amendment challenge to the NFA, the Court considered whether the weapon at issue was "any part of the ordinary military equipment or that its use could contribute to the common defense." *United States v. Miller*, 307 U.S. 174, 178 (1939) (citing *Aymette v. State*, 2 Humphreys (Tenn.) 154, 158). That supports the tradition of men "'called for [militia] service'" being able to "'appear bearing arms supplied by themselves and of the kind in common use at the time.'" 554 U.S., at 624 (quoting 307 U.S., at 179). "'In the colonial and revolutionary war era, [small-arms] weapons used by militiamen

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[16] Militia Act of 1808, ch. 55, 2 Stat. 490.

[17] About The CMP, https://thecmp.org/about/ (last accessed July 8, 2025).

[18] CMP Brochure, https://thecmp.org/wp-content/uploads/CMPBrochure-w.pdf?ver043020 (last accessed July 8, 2025).

and weapons used in defense of person and home were one and the same.'" 554 U.S. at 625.[19] But because *Miller* was "an uncontested and virtually unreasoned case,"[20] the Court must now "consider... *what* types of weapons *Miller* permits." *Id.* at 624.

III. The question presented is exceptionally important.

In stark contrast with our actual historical tradition, section 922(o) represents the first and only occasion in our Nation's history that the possession of the standard-issue service rifle of the United States military has been prohibited by ordinary, law-abiding Americans and the militia. The Tenth Circuit's decision effectively nullifies "the purpose for which the right [to keep and bear arms] was codified." *Heller*, 554 U.S., at 599. But "a well regulated Militia" is "necessary to the security of a free State," U.S. CONST. amend. II, and "a militia would be useless unless the citizens were enabled to exercise themselves in the use of *warlike weapons*." 554 U.S., at 618 (quoting J. Pomeroy, An Introduction to the Constitutional Law of the United States § 239, pp. 152–153 (1868)) (emphasis added).

What's more, the prohibition in section 922(o) has cascaded into a growing trend among individual states to impose increasingly broad restrictions on entire classes of constitutionally-protected arms. State-level restrictions on so-called "assault weapons"

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[19] Citing *State* v. *Kessler,* 289 Ore. 359, 368, 614 P. 2d 94, 98 (1980) (citing G. Neumann, Swords and Blades of the American Revolution 6–15, 252–254 (1973)).

[20] 554 U.S. at 624 n.24.

and "high-capacity magazines" have evolved into categorical bans on "the most popular rifle in America"[21] owned by "millions of Americans."[22] To be sure, "history show[s] that the way tyrants had eliminated a militia consisting of all the able-bodied men was not by banning the militia but simply by taking away the people's arms." *Heller*, 554 U.S., at 598.

IV. This case presents a perfect vehicle to resolve the question presented.

This case has reached final judgment, with the Tenth Circuit declining to rehear *en banc*. The lone question presented squarely invokes and confronts the full text of the prefatory and operative clauses of the Second Amendment. And Petitioner perfectly exemplifies the Americans that were top of mind when the Founders ratified the Second Amendment. He swore an oath of loyalty and allegiance to the United States and her Constitution pursuant to his enlistment in the United States Marine Corps. During his service, he was trained and qualified in the employment of the M-16. Having been honorably discharged, he is now a statutory member of the unorganized militia as codified at 10 U.S.C. § 246. Petitioner is unquestionably among the body of Americans the Founders referred to in the prefatory and operative clauses of the Second Amendment.

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[21] *Snope v. Brown*, 605 U.S. ____ (2025) (Thomas, J., dissenting from the denial of certiorari) (slip op., at 7).

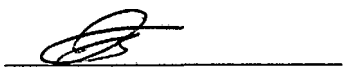
[22] *Id.* (Kavanaugh, J., respecting the denial of certiorari) (slip op., at 2).

The Court should "not wait"[23] to answer the question presented. If the Second Amendment protects any arms, it protects the musket and every lineal descendant thereof, including the M-16.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,



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[23] *Snope v. Brown*, 605 U.S. ____ (2025) (Thomas, J., dissenting from the denial of certiorari) (slip op., at 7).