No. 25-566

IN THE

Supreme Court of the United States

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

Petitioners,

v.

RONNELL HIGGINS, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE CONNECTICUT DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC TRANSPORTATION, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

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January 12, 2026

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STATEMENT OF QUESTION PRESENTED

Whether the court of appeals properly declined to enjoin Connecticut's assault weapon laws on the preliminary and undeveloped record before it, where Petitioners have waived any objection to two independent and alternative grounds to affirm.

PROCEEDINGS RELATED TO THIS CASE

The following proceedings are related to this case within the meaning of Supreme Court Rule 14.1(b)(iii).

- *Grant v. Lamont*, No. 23-1344 (2d Cir. Aug. 22, 2025)

- *Grant v. Lamont*, No. 3:22-cv-01223 (D. Conn. Aug 28, 2023)

The following case was related for argument with *Grant v. Lamont*, No. 23-1344 (2d Cir. Aug. 22, 2025):

- *National Ass'n for Gun Rights v. Lamont*, No. 23-1162 (2d Cir. Aug. 22, 2025)

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INTRODUCTION

In 2012, a mass murderer killed 26 children and teachers at Sandy Hook Elementary School in Connecticut. He used an AR-15 style rifle and large capacity magazines, firing 154 rounds in less than five minutes. Connecticut responded by strengthening its restrictions on assault weapons while preserving residents' right to self-defense with thousands of other lawful weapons, including many semiautomatic rifles and handguns. Fourteen states and the District of Columbia have enacted comparable laws. Every circuit court to consider these restrictions after *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022), has upheld them, and this Court has so far denied every petition seeking review. This is not the case to change course.

First, Petitioners claim that a firearm's common use for lawful purposes answers the *Bruen* analysis without any inquiry into whether the restriction falls within the historical tradition of banning "dangerous and unusual weapons." *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008). That is a shift from their position below, where they argued that a weapon's popularity alone is dispositive without any inquiry into whether individuals choose it for lawful purposes. But regardless, every circuit court to consider either version of this claim has rejected it. So there is no relevant circuit split to resolve on either analytical frameworks or ultimate outcomes. And to the extent Petitioners seek guidance on other methodological questions the court of appeals did not decide, those

purported conflicts are not outcome determinative and should not be resolved through this case.

Second, this is a uniquely poor vehicle to address the question presented. Petitioners barely mention, and do not challenge, the court of appeals' holding that they failed to satisfy the balancing of the equities and public interest factors for obtaining a preliminary injunction under *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7 (2008). Those are alternative and independent grounds to affirm, and Petitioners' waiver precludes this Court from granting relief no matter how it views the merits.

So too does the record at this preliminary stage. Even assuming Petitioners' newly offered theory of the Second Amendment were correct, for them to succeed the record had to show, at minimum, that: (1) assault weapons are *commonly owned* by Americans; and (2) the subset of Americans who use them commonly do so *for self-defense*. *See Bruen*, 597 U.S. at 29. But Respondents' undisputed evidence showed that only a tiny percentage of Americans own assault weapons and that they are not useful and almost never used for self-defense, refuting any notion that Americans commonly choose them for that purpose. By contrast, Petitioners only submitted evidence about how many assault weapons have been manufactured and registered, not how many Americans own them. More importantly, they refused to present *any* evidence about *why* Americans own them, arguing instead that a weapon's popularity alone is dispositive even if it is chosen for unlawful purposes. That includes cannons, which Petitioners stubbornly insisted were not banned because they

were popular at the Founding. It also includes nuclear weapons, which Petitioners told the court of appeals would be fully protected if they become popular. Petitioners retreat from that indefensible position in their petition, citing various articles and studies discussing why some Americans purportedly choose to own assault weapons. But that evidence is inadmissible and was not before the district court in any event, so this Court cannot consider it.

The preliminary posture of this case, arising on the denial of a preliminary injunction, exacerbates these vehicle problems. Whether assault weapons are in common use for self-defense is at least a disputed question of fact upon which Petitioners' claim depends. But Petitioners offered "no evidence" that assault weapons are commonly chosen, used, or suitable for that purpose, Pet.App. 88a-89a, and the court of appeals assumed the answer to this question without deciding it. "This Court is rightly wary of taking cases in an interlocutory posture" like this precisely because it should not decide important constitutional questions when potentially dispositive factual disputes remain unresolved. *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Thomas, J., concurring). And it need not rush to do so here because other cases with full factual records and final judgments are already pending before the Court or will be soon. *See, e.g.*, *Barnett v. Raoul,* No. 24-3060 (7th Cir.) (argued Sept. 22, 2025); *Ass'n of N.J. Rifle & Pistol Clubs v. Platkin*, No. 24-2415 (3d Cir.) (argued en banc on October 15, 2025) ("*ANJRPC*").

Third, the court of appeals was correct on the merits. The Second Amendment does not bar states from banning particularly dangerous weapons that are neither used nor useful for self-defense just because manufacturers flood the market before states respond. That is especially true when the weapons' unique dangers are brought to the fore by new societal developments nobody predicted when the technology came out, like the current mass shooting epidemic. The court of appeals instead rightly held that historical tradition allows states to respond to and prevent emerging and unprecedented societal harms by banning the dangerous and unusual weapons causing them. This Court should let that common sense holding stand.

STATEMENT OF THE CASE

I. Connecticut's Assault Weapon Restrictions

Petitioners bring facial challenges to Connecticut's longstanding gun safety laws, General Statutes §§ 53-202a-c, which restrict possession of assault weapons. The Connecticut Legislature initially recognized the threat to public safety posed by these particularly dangerous weapons when it adopted Connecticut's original assault weapon ban in 1993. *See* 1993 Conn. Pub. Acts 93-306. Like other laws that have existed for decades at the federal, state, and local level, the 1993 statute prohibited only a small subset of semiautomatic weapons.

Four months after Sandy Hook, Connecticut's Legislature responded with an "Act Concerning Gun

Violence Prevention and Children's Safety," which included the challenged statutes. These statutes strengthened Connecticut's existing assault weapon law by prohibiting additional semiautomatic firearms that are on an enumerated list or have certain listed features.

Connecticut's assault weapon restrictions apply to selective-fire[1] firearms; types of semiautomatic rifles, pistols, and shotguns with combat-style features; and 49 specific makes of assault rifles enumerated by name or style. Of these 49 assault rifles, 20 are variants of the AK-47; 13 are variants of the AR-15/M-16; and 3 are variants of the HK 91 or FN type. The statutes also ban certain semiautomatic pistols. Of the 22 assault pistols listed in the statutes, 6 are variants of the AK-47 and 7 are variants of the M-16/AR-15. And Connecticut restricts some types of shotguns, including the Street Sweeper and Striker 12 revolving cylinder shotguns and the Izhmash Saiga 12, a semi-automatic shotgun based on the AK design with modifications to accept shotgun shells. Conn. Gen. Stat. § 53-202a(1).

The statutes also restrict weapons based on a list of features that may be manufactured already attached to a weapon or manufactured separately and attached to enhance a firearm's lethality. These prohibitions include semiautomatic, centerfire rifles that can accept a detachable magazine and have one of the following features: telescoping stocks, forward

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[1] A selective-fire weapon is one with the capability to be adjusted to fire in different modes, like semi-automatic, fully automatic, or burst mode. C.A.App. 1173-1176.

pistol grips, shrouds, flash suppressors, or grenade launchers. Conn. Gen. Stat. § 53-202(a)(1)(E)(i).

In 2023, Connecticut amended these laws to close a loophole that allowed certain assault weapons to evade regulation. Petitioners focused below on Connecticut's restriction of these "Connecticut Others," which are firearms that kill and maim just like assault rifles but are specifically manufactured to dodge the pre-2023 assault weapon definition by, for example, omitting shoulder stocks so they arguably do not meet the statutory definition of a "rifle." *See* 2023 Conn. Pub. Acts 23-53. The law restricts "Other" firearms—even if they do not meet the statutory definition of pistols, rifles, or shotguns—if they have one or more of the features enumerated under the original features test or if they have an arm brace or stabilizing brace that allows them to be fired from the shoulder. *Id.* The 2023 Act allowed gun owners to retain their existing "Others" after May 1, 2024, by obtaining a certificate of possession. C.A.App. 329.

Notwithstanding these laws, Connecticut citizens have always enjoyed robust rights to possess a wide array of firearms including many semiautomatic handguns, rifles, and shotguns. Subject to licensing requirements, Connecticut residents may acquire as many approved firearms and as much ammunition as they want. And the restrictions carve out exceptions for classes of residents including law enforcement personnel and those who owned the weapons before the laws' effective date. *See* Conn. Gen. Stat. §§ 53-202d(a), 53-202b(b)(1).

The prohibited weapons, including the Others Petitioners focused on below and the AR-15 style weapons they focus on now, are "essentially civilian versions of military weapons used by armed forces around the world." C.A.App. 329. Designed in response to the U.S. military's request for an improved infantry weapon, AR-15s were designed as battlefield weapons capable "of placing a large volume of fire" on "multiple or moving targets." C.A.App. 427. Because of its "phenomenal lethality" the Army adopted the AR-15 as its standard-issue rifle, rebranding it as the M-16 as a selective fire rifle. The military specifically instructs troops that semi-automatic fire, rather than fully automatic fire, is the more efficient and "devastatingly accurate" manner to use the M-16. C.A.App. 427. In other words, the primary distinction between an AR-15 and an M-16—the fully automatic feature—is *not* what makes either weapon such an effective instrument of war. Even if it were, AR-15s can be rigged for automatic fire with simple aftermarket adaptations. C.A.App. 1175-76. The AR-15 chambers .223 caliber rounds "designed to mushroom and fragment" in a victim's body, boring a hole in human tissue that one trauma surgeon described as less like a nail puncture than like being shot by "a Coke can." *Id.* Indeed, Respondents' expert Martin Schrieber, a decorated Army trauma surgeon with almost 40 years of service in both war zones and the U.S., found these weapons transform American streets into battlegrounds. "The assault weapon wounds that I have seen in a civilian context," he states, "are virtually identical in nature to the wounds that I saw in combat." C.A.App. 1034. Wounds from handguns and other weapons, by

contrast, "differ substantially… both in impact on the body and their relative fatality and complication rates." *Id.* Assault weapon blasts to the head, neck, and trunk are usually fatal; blasts to the abdomen "can destroy organs in a way that looks like an explosion has happened"; blasts to the extremities "frequently result in amputation." C.A.App. 1034-35. Assault weapons, he concluded, "are designed for the purpose of maximum killing in wartime," and they do exactly that. C.A.App. 1035.

II. Proceedings Below

Petitioners Eddie Grant Jr., Jennifer Hamilton, Michael Stiefel, the Connecticut Citizens Defense League ("CCDL"), and the Second Amendment Foundation ("SAF") brought this action on September 29, 2022, challenging Connecticut's pre-2023 assault weapon ban. C.A.App. 71. On February 3, 2024, Petitioners filed an emergency motion for temporary restraining order and preliminary injunction ("TRO") after the Bureau of Alcohol, Tobacco, Firearms, and Explosives finalized C.F.R. 479.11, which closed the "Others" loophole on the federal level. The district court denied the TRO for lack of standing, as Petitioners faced no credible and imminent threat of enforcement of the ATF rule. On June 6, 2023, nearly nine months after bringing suit and only after Public Act No. 23-53—which restricted Others—was signed into law, Petitioners filed a motion for preliminary injunction. But they provided minimal evidence to support this request for extraordinary relief, instead offering only cursory declarations from the individual plaintiffs, a CCDL representative, a CCDL member, a sparse

declaration from a firearm-industry funded expert, and the text of C.F.R. 479.11 as exhibits.

None of Petitioners' exhibits addressed the two factual questions their claim minimally depends on—whether Americans: (1) commonly own assault weapons or Others; (2) for the purpose of self-defense. As to the first question, Petitioners' purported expert cited two firearm industry surveys about manufacturing of firearms categories over 30 years and production of "modern sporting rifles" in the same period. Neither survey addressed how many individual Americans actually *own* assault weapons or Others. C.A.App. 102-107. Though these surveys addressed manufacturing numbers of "rifles," "shotguns," "handguns," and "modern sporting rifles," none of these categories match the weapons banned by the challenged laws. Petitioners attempted to remedy this by citing a vacated decision from the Southern District of California, *See Miller v. Bonta*, 542 F. Supp. 3d 1009, 1022-23 (S.D. Cal. 2021) (vacated and remanded), but this citation is not evidence and provided no helpful information regardless. As to Others, Petitioners' expert conceded no statistics exist to even estimate manufacturing numbers, let alone how many individual Americans might own them. C.A.App. 102-109. Petitioners' Connecticut-specific numbers only showed how many assault weapons were registered in Connecticut and how many requests for tax authorization numbers for Others were received, again failing to address how many individual Connecticut residents *own* assault weapons or Others.

More importantly, Petitioners' evidence did not address the second question of *why* Americans choose to own assault weapons, much less show that Americans subjectively choose them for self-defense. Nor did Petitioners submit any evidence showing these weapons are appropriate or ever used for self-defense in practice.

By contrast, Respondents submitted a mountain of admissible evidence—more than one thousand pages, including eight expert declarations—on these topics and more. Their evidence showed that assault weapons are not commonly owned—only about 2% of the American population legally owns them. C.A.App. 452. It also showed that assault weapons are not used for self-defense, with only 2% of the 2,714 incidents in the Heritage Foundation's "Defensive Gun Uses" database as of October 2022, involving assault weapons in any way, fired or not. C.A.App. 963-964. Nor are they suitable or useful for self-defense: they are less maneuverable in tight areas like a home, are less likely to hit a target in close quarters than other weapons, and are more likely to penetrate walls, causing collateral damage. C.A.App. 422-425.

The individual Petitioners' own testimony confirmed Respondents' evidence. On examination they could not articulate why assault weapons or Others might be needed or useful for self-defense, expressly acknowledging instead that handguns are better for that purpose because they are "shorter" and "easier to maneuver." C.A.S.App. 165-67; 172-72. And though each individual Petitioner owned well over a dozen firearms at the time of their

depositions, including rifles, pistols, revolvers, shotguns, and Others, none has ever used any of their firearms for self-defense either by discharging or even brandishing the weapon. *Id.* 086; 142; 262-63.

Beyond the "common use" question central to Petitioners' claim, Respondents presented overwhelming and unrebutted evidence that assault weapons, including Others, are unusually dangerous weapons most useful for unlawful purposes like mass shootings and killing law enforcement. For example, their evidence showed that "[a]ssault weapons and/or high-capacity magazines were used in all fifteen gun massacres since 2015 in which at least six were killed (other than the shooter)." C.A.App. 393. It also showed that assault weapons are particularly lethal and dangerous: they result in more shots fired, persons wounded, and wounds per victim. C.A.App 384; 1031. In mass shootings, assault weapons paired with LCMs "cause an average of 299 percent more deaths and injuries than regular firearms, and 41 percent more than semiautomatic handguns." C.A.App. 1177-78. Considering all shootings nationally between 1982 and 2022 where more than four people were killed in a public place, an average of 36 fatalities or injuries resulted when an assault weapon was used, versus ten otherwise. *Id.*

After showing the challenged laws address a societal concern not present at the time of the Founding—an epidemic of mass murder perpetrated with technology that proliferated in the late twentieth century—Respondents included a robust

analysis of historically analogous regulations, discussed and presented by three historical experts. Analogous regulations on newly emerging, particularly dangerous weapons included pre-colonial and early colonial laws banning weapons like clubs, certain knives, launcegays, crossbows, handguns, trap guns, percussion cap guns, hagbuts, and demy hakes. *See, e.g.*, 7 Rich. 2, ch. 13 (1383); 33 Hen. 8, ch. 6 § 1, § 18 (1541); 1763-1775 N.J. Laws 346, ch. 539, § 10 (1771). And they included later "ubiquitous" bans on carry and possession of dirk and Bowie knives which, like assault weapons, were especially lethal and responsible for "an alarming proportion of the era's murders and serious assaults." Pet.App. 53a. Respondents also included Twentieth century analogues similarly banning precursors to today's assault weapons—Tommy Guns and short-barreled shotguns. Pet.App. 58a-59a.

The district court denied the injunction. Pet.App. 76a-77a. First, citing its decision in *Nat'l Ass'n for Gun Rights v. Lamont*, No. 3:22-1118 (JBA), 2023 U.S. Dist. LEXIS 134880 (Aug. 3, 2023) ("*NAGR*"), the court determined Petitioners did not present any "different or additional evidence" as to Others that would "warrant a different result" than in *NAGR*. It went on to determine *as a factual matter* that the record before it at the preliminary injunction stage did not support the conclusion "that [Others] are commonly used for self-defense where pre-June 2023 assault weapons were not." Pet.App. 89a. It noted the preliminary record had "no evidence specific to common use of the 2023 assault weapons category besides the statistics of how many

Connecticut 'others' are registered with the state and the individual testimony of each [Petitioner] regarding how they use their 2023 assault weapon, neither of which shows whether the firearms are commonly used for self-defense." *Id.* Second, the court found that the challenged regulations are consistent with our country's historical tradition of prohibiting particularly dangerous weapons. Pet.App. 91a.

The court of appeals affirmed in a joint decision resolving this case and *National Ass'n for Gun Rights v. Lamont*, No. 23-1162 (2d Cir.). As for the first *Winter* factor—likelihood of success on the merits—the court assumed without deciding that the challenged weapons are "presumptively entitled to Constitutional protection" and proceeded to *Bruen's* second step, where it analyzed our country's historical tradition of firearm regulation. Pet.App. 35a. In doing so it specifically declined to address several questions Petitioners' claim depends on, including whether assault weapons or Others are "Arms," whether they are in common use for self-defense, and what types of evidence the "common use" test requires. Pet.App. 35a. It instead assumed without deciding that Petitioners were correct on those issues but nevertheless affirmed because historical "regulations that singled out the unusually dangerous weapons of their day are 'relevantly similar' to the challenged statutes" and support the regulations here. Pet.App. 36a, 51a. In particular, the court held there is "a longstanding tradition of restricting novel weapons that are particularly suited for criminal violence—a tradition that was 'liquidate[d] and settle[d]' by 'a regular

course of practice' of regulating such weapons throughout our history." Pet.App. 52a (citing *Bruen*, 597 U.S. at 35-36).

But the court did not just affirm because Petitioners failed to establish a likelihood of success on the merits. It also addressed the other *Winter* factors—which Petitioners barely addressed—and found Petitioners fell short of their burden there too, especially on the balancing of the equities and public interest prongs. Pet.App. 61a-66a. Indeed, the individual Petitioners already owned well over a dozen firearms each, including Others. And while they could have purchased additional Others before Connecticut's Governor signed the 2023 amendments into law, they chose to wait until the law was signed before attempting to do so. So the court of appeals concluded they faced no hardship from the challenged laws and that the equities and public interest weighed against a preliminary injunction. Pet.App. 66a. This petition followed.

REASONS FOR DENYING THE PETITION

I. There Is No Split of Authority to Resolve.

No split of authority exists to justify this Court's review here, whether on legal tests or outcomes. To the contrary, every circuit court to address the validity of laws like Connecticut's since *Bruen* has upheld them. And every circuit court to consider the specific claims Petitioners present—that popularity or common use for lawful purposes alone is dispositive—has likewise rejected them. There is no reason for this Court to review this

unanimity among the lower courts. And to the extent Petitioners seek abstract guidance on other analytical points the court of appeals did not address or decide, those purported "splits" are irrelevant and not a basis for granting this petition.

A. The Circuit Courts unanimously reject Petitioners' claim.

Every federal court of appeals to consider an assault weapon ban since *Bruen* has upheld it. And none have agreed with Petitioners' specific contentions that popularity or common use for lawful purposes is dispositive after *Bruen*. This Court should deny the petition for that reason alone.

First, there is no circuit split on outcomes, as the circuit courts are unanimous in upholding assault weapon laws or declining to enjoin them at the preliminary injunction stage because the challengers were unlikely to succeed on the merits. *See Capen v. Campbell*, 134 F.4th 660, 662 (1st Cir. 2025); *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024) (en banc), *cert. denied sub nom. Snope v. Brown*, 145 S. Ct. 1534 (2025); *Bevis v. City of Naperville*, 85 F.4th 1175, 1175 (7th Cir. 2023). And one circuit court declined to enjoin assault weapon laws at the summary judgment stage. *Viramontes v. Cook Cnty.*, No. 24-1437, 2025 U.S. App. LEXIS 13331 (7th Cir. June 2, 2025), *petition for cert. filed*, No. 25-238. No circuit court has diverged.

Second, and more importantly, every circuit court to consider the specific claims presented here—that a firearm's popularity or common use for

lawful purposes is dispositive—has either explicitly or implicitly rejected it.

Like the Second Circuit, the First Circuit assumed without deciding that AR-15s are commonly used for lawful purposes and therefore presumptively protected, but nevertheless upheld similar bans because they are consistent with history and tradition. *Capen*, 134 F.4th at 667. The Fourth Circuit confronted and rejected the question more directly, squarely holding that common use is not dispositive. *Bianchi*, 111 F.4th at 460 ("the Supreme Court did not posit a weapon's common use is conclusive evidence that it cannot be banned"). And while the Seventh Circuit has held that assault weapons are not protected for various reasons—a conclusion the court of appeals did *not* reach here—it too held that common use is not dispositive and that such laws would also be upheld under *Bruen's* historical analogue analysis. *See Bevis*, 85 F.4th at 1197-98.

Similarly, every Circuit to consider "popularity" has outright rejected Petitioners' original contention that popularity alone—divorced from any inquiry into use, usefulness, or historical tradition—renders a weapon unbannable. The court of appeals here squarely rejected Petitioners' contention that just because a weapon is allegedly popular it is protected and found it "distort[s] the precedents on which the[] argument relies," and "strain[s] both logic and administrability." Pet.App. 30a. As did the Fourth Circuit, concluding that Petitioners' popularity test would hinge the right on what it aptly called a "trivial counting exercise" that

would "lead[] to absurd consequences" where arms like the M-16 or "the W54 nuclear warhead" can "gain constitutional protection merely because [they] become[] popular before the government can sufficiently regulate [them]"—a position Petitioners embraced at oral argument before the lower courts. *Id.* The First and Seventh Circuits agree. *See Capen*, 134 F.4th at 670 (rejecting argument that "the constitutionality of arms regulations is to be determined based on the ownership rate of the weapons at issue, regardless of . . . usefulness for self-defense"); *Bevis*, 85 F.4th at 1198 (noting machine guns were popular, but that did not insulate them from regulation). Both framings of Petitioners' argument on common use have been unanimously rejected by the lower courts.

Third, although Petitioners do not question it in their petition, the court of appeals are not split on the historical analogue analysis either. Every circuit court to address step two of the *Bruen* test as to assault weapon restrictions has found that history and tradition support them. *See Capen*, 134 F.4th at 660 (tradition of "protect[ing] the public from the danger caused by weapons that create a particular public safety threat"); *Bianchi*, 111 F.4th at 462 ("[t]he statute is one of many in a storied tradition of legislatures perceiving threats posed by excessively dangerous weapons and regulating commensurately"); *Bevis*, 85 F.4th at 1199 (finding a "long-standing tradition of regulating the especially dangerous weapons of the time"); *Viramontes*, 2025 U.S. App. LEXIS 13331, at *2 (same).

B. The purported "conflicts" Petitioners identify are not relevant or outcome determinative.

Because no split exists on the issues the court of appeals decided, Petitioners resort to purported "conflicts" on other issues having nothing to do with this case or anything the court of appeals said in its opinion. In their view, this Court should "provide guidance" on these issues even though they were not decided by the court of appeals and cannot make a difference for these Petitioners. Pet. 20-25. But this Court does not "decide the merits of possible constitutional challenges that could be brought by other plaintiffs" and are "not necessary to resolve th[is] case," especially on constitutional questions to which the Court "seek[s] to avoid even *non*advisory opinions." *Moody v. NetChoice, L.L.C.*, 603 U.S. 707, 755 (2024) (Barrett, J., concurring) (emphasis in original) (quoting *City of Chi. v. Morales*, 527 U.S. 41, 77 (1999) (Scalia, J., dissenting)).

First, Petitioners claim the circuits are "confused" on whether assault weapons are arms; where the common use analysis fits in the *Bruen* analytical framework; and what the common use inquiry entails. Pet. 20-25. None of that is relevant here, as the court of appeals *assumed* that assault weapons are commonly used arms presumptively protected by the Second Amendment and specifically declined to address these issues. Pet.App. 35a. So there is no basis to resolve this purported "confusion" here. Stephen M. Shapiro, et al., *Supreme Court Practice*, p. 249 (10th ed. 2013) (the Court does not grant petitions to resolve questions a

lower court did not decide and that cannot change the outcome of the case).

Second, even if they were relevant, these purported "disagreements" are at best differences in reasoning, not outcomes. But the question before this Court on review is whether "the *judgment* [was] correct, not the *ground* on which the judgment professes to proceed." *Camreta v. Greene*, 563 U.S. 692, 717 (2011) (Kennedy, J. dissenting) (emphasis in original) (quoting *M'Clung v. Silliman*, 19 U.S. 598 (1821)). There is no split on that question for the reasons discussed.

II. This is a Uniquely Poor Vehicle to Address the Question Presented.

Even if a relevant split of authority existed, the Court cannot resolve it here because Petitioners have waived any challenge to two alternative and independent grounds to affirm. Even if that were not so, the Court cannot grant Petitioners relief on the preliminary record before the Court, which if anything shows assault weapons are *not* in common use for self-defense and at best leaves a host of disputed and potentially dispositive factual questions unresolved. If the Court is inclined to address this issue, it should do so in one of the several pending cases with full factual records that have proceeded to final judgment.

A. Petitioners waived any challenge to the lower courts' alternative and independent grounds for affirmance.

This Court's rules unambiguously provide that "[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court." Sup. Ct. R. 14.1(a); *see Travelers Cas. & Sur. Co. of Am. v. PG&E,* 549 U.S. 443, 455 n.5 (2007) (declining to review question not fairly included in the question presented); *Parke v. Raley*, 506 U.S. 20, 28 (1992) (similar). This principle alone bars review here.

The only question presented or "fairly included" in the petition is the merits of Petitioners' Second Amendment claim. But this case arises from the denial of a preliminary injunction, not a final judgment on the merits. And to get a preliminary injunction Petitioners had to meet each of the four factors identified in *Winter*, 555 U.S. at 20. The court of appeals held they did not meet at least two of the non-merits prongs—balancing of the equities and public interest—and independently affirmed the district court's denial of relief for these reasons. Pet.App. 66a. Petitioners challenge neither holding, precluding this Court from considering them as would be necessary to grant Petitioners relief. The Court should deny the petition on that basis alone. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994) (per curiam) (the Court will not review an issue when "it is not clear that [its] resolution of [that issue] will make any difference" to the petitioner).

At any rate, even if these issues were preserved, the Court still could not grant relief because there is no question Petitioners failed to meet their burden on both factors. They barely tried, arguing instead that resolution of the merits factor in their favor effectively does away with the other three *Winter* factors. Pet.App. 61a. Their sole reference to these issues in the petition reflects the same, as they complain that the court of appeals affirmed on these independent grounds "[f]or reasons that flowed from its merits analysis." Pet. 15. But that is incorrect, as the court of appeals independently analyzed each factor and the lack of a record supporting them. PetApp. 61a-66a. And Petitioners' suggestion below—which they do not pursue in their petition—that the other *Winter* factors are concomitant with the merits is wrong. A "preliminary injunction is not a shortcut to the merits," *Del. State Sportsmen's Ass'n v. Del. Dep't of Safety & Homeland Sec.,* 108 F.4th 194, 197 (3d Cir. 2024), and this Court has never held otherwise, even in cases involving alleged violations of constitutional rights. Rather, a preliminary injunction is "'an extraordinary remedy never awarded as of right,'" and it "does not follow as a matter of course from a plaintiff's showing of a likelihood of success on the merits." *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (quoting *Winter*, 555 U.S. at 24). The default rule remains "that a plaintiff seeking a preliminary injunction must make a clear showing" on *all* the *Winter* factors. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (quoting *Winter*, 555 U.S. at 20, 22); *see NetChoice, L.L.C. v. Fitch*, 145 S. Ct. 2658, 2658 (2025) (Kavanaugh, J. concurring) (even where a law is likely unconstitutional, balance of harms

and equities sufficient to deny application for interim relief). Petitioners identify no legal authority suggesting otherwise.

Even if Petitioners had made some attempt to preserve argument on these factors, they could not succeed. Petitioners' only alleged hardship is a claim that they cannot keep themselves safe pending trial without wielding multiple redundant combat weapons. But each individual Plaintiff already owns well over a dozen firearms, including rifles, pistols, revolvers, shotguns, and Others. Mr. Grant, for instance, owns about five Others in "AR15 configurations." C.A.S.App. 056. No Petitioner has ever used any of their firearms for self-defense whether by discharging the weapon or brandishing it. *Id.* 086; 142. And their lack of urgency undercuts their claim of irreparable harm. Each Petitioner testified that they could have legally purchased Others until the new law was signed by the Governor and retained those weapons afterward. *Id.* 081; 188-90; 297-98. But each Petitioner waited until the law was signed before supposedly asking about buying a specific type of Other from local gun dealers, with no credible explanation for the delay. *Id.* 081; 179-80; 297-99.

Unlike the supposed harm the challenged law works on Petitioners' preferences, Respondents showed a mandatory injunction would work immediate and severe hardship on them, the State of Connecticut, and the public. The public interest in avoiding mass shootings dramatically outweighs a single Petitioner's interest in owning one more gun that he or she is unlikely to ever use for any

legitimate self-defense purpose. An injunction would have cut directly against the public interest, striking down public safety legislation demanded by Connecticut citizens and enacted by their elected representatives in response to one of the most atrocious mass shootings in American history. Respondents showed an injunction would severely, negatively, and potentially irreversibly harm Connecticut and its citizens: enjoining the statute would have effectively meant ordering the State to deploy a costly short-term scheme to license and track assault weapon purchases, and it would be nearly impossible to retrieve the weapons if the State were ultimately to succeed. *See* C.A.App. 366 (describing Connecticut's purchase and carry requirements). Petitioners failed to rebut any of these showings and failed to even mention them in their petition. Pet. 32. These unchallenged and independent grounds for affirmance alone are reason to deny the petition.

B. The factual record at this preliminary stage bars relief.

Petitioners' shifting theory of the Second Amendment is that a firearm's popularity, or its common use for lawful purposes, by themselves answer the *Bruen* analysis and preclude further inquiry into whether the restriction fits within any historical tradition of firearm regulation, including, but not limited to, the long tradition of banning "dangerous and unusual weapons." *Heller*, 554 U.S. at 627. That is not the standard after *Bruen*. But even if it were, the Court could not rule for Petitioners at this preliminary stage because the

unrebutted evidence in the record shows that Americans do *not* commonly own assault weapons for self-defense, and that the weapons are neither used nor useful for that purpose.

At minimum, for Petitioners to succeed on their claim the record would have to show that: (1) assault weapons and Others are *commonly owned* by Americans; and (2) they are commonly owned *for self-defense*. *See Bruen*, 597 U.S. at 29. In Respondents' view there also would have to be evidence that the weapons are both used and useful for self-defense in practice, as the Second Amendment does not bar states from restricting weapons with no functional relationship to the "core" right the Amendment seeks to protect. *See Heller*, 554 U.S. at 630; *see also Bruen*, 597 U.S. at 29 (reemphasizing that "individual self-defense is the *central component* of the Second Amendment right," and that "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are *central* considerations when engaging in an analogical inquiry") (citations and quotation marks omitted; emphasis in original). But even if "actual use" and "usefulness" are not standalone inquiries, *see Snope*, 145 S. Ct. at 1537-38 (Thomas J., dissenting), the fact that a particular weapon is not useful for self-defense and is never actually used for that purpose at the very least informs the inquiry into whether Americans subjectively choose it for that purpose. The record at the preliminary stage here does not even support these most basic predicates to Petitioners' claims.

First, the undisputed evidence shows that only a tiny percentage of Americans own assault weapons today—less than 2% nationally—and even fewer own the "Others" that were the focus of Petitioners' claim below. C.A.App. 452. That does not qualify as "common ownership" by any measure.

Petitioners did not attempt to dispute this minuscule ownership data. In fact, Petitioners' expert conceded that no accurate statistics on ownership levels exist. So he relied instead on data about how many rifles, shotguns, handguns, and "modern sporting rifles" have supposedly been *manufactured* in thirty years. But as the district court pointed out, data about categories of "rifles," "shotguns" and "handguns" are not helpful because not all rifles, shotguns, and handguns meet Connecticut's definition of assault weapons. So too for statistics relating to "modern sporting rifles," which include some assault weapons but also many that are not. Further, manufacturing levels do not equate to *ownership* numbers and fail to account for: (1) weapons that have been manufactured but not sold; (2) weapons that have been sold to professional or governmental entities like law enforcement instead of individual Americans; and (3) individuals (like these Petitioners) who own multiple firearms. The relevant metric for the ownership inquiry is current private ownership rates—*i.e.,* how many individual Americans choose to own these weapons—not how many have been manufactured, been registered in Connecticut, or are in circulation.

Second, and more importantly, Petitioners submitted *no evidence about why* Americans choose to own assault weapons or Others, much less

showing that the small subset of Americans who own them commonly do so for self-defense. They refused to do so before the district court because, in their view, a weapon's statistical popularity alone is dispositive under *Bruen* without regard to whether Americans choose it for lawful purposes. *See* Amended Motion for Preliminary Injunction, *Grant, et al., v. Lamont, et al.,* Case 3:22-cv-01223-JBA, ECF 51-1, Pgs. 23-28. Petitioners shift course before this Court, now conceding that the common use analysis is measured by "popularity *for lawful purposes*." Pet. 25 (emphasis added). But that does not remedy their failure to make *any* record showing that Americans commonly choose these weapons for self-defense in the district court.[2] The only other thing touching on subjective motivations for choosing certain weapons were bare allegations in the complaint, but "mere allegations," are not "factual evidence." *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (citation omitted). Further, the Petitioners provided *no evidence* about *actual use* of assault weapons or Others.[3]

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[2] The individual Petitioners made bare assertions that they would like to own Others "for self-defense and other lawful purposes." C.A.App. 88; 93; 96. But these bald statements were unsubstantiated, and Petitioners submitted *no evidence* supporting their motion about reasons for owning AR-15s as opposed to Others—despite their change in tactics emphasizing such weapons in the petition.

[3] To the extent Petitioners improperly attempted to smuggle in unauthenticated, inadmissible internet studies and articles on these topics in their brief at the court of appeals and in the petition, they were never presented to the district court. The court of appeals properly disregarded any such citations there, and this Court also cannot properly consider them for purposes of this petition or any subsequent appeal.

By contrast, Respondents again submitted a mountain of unrebutted evidence showing that assault weapons and Others are neither used nor useful for self-defense, undercutting any notion that Americans choose them for that purpose. For instance, they showed that using an assault weapon in self-defense is not advisable and almost never happens. The evidence showed "the vast majority of the time that an individual in the United States is confronted by violent crime, they do not use a gun for self-defense," and that between 2007-2011, 99.2 percent of victims of violent crimes did not defend with a gun at all, let alone an assault weapon or other. C.A. App. 421. Of the 2,714 incidents in the Heritage Foundation's "Defensive Gun Uses" database as of October 2022, only 2% involved assault weapons, discharged or not. C.A.App. 96-964. And of all 406 U.S. "active shooter" incidents between January 1, 2000, and December 21, 2021, "only one . . . involved an armed civilian intervening with an assault weapon." C.A.App. 451.

This lack of actual use makes sense, since the undisputed evidence also showed assault weapons are physically unsuited to typical self-defense scenarios. They are significantly heavier and longer than typical handguns, making them less concealable, more difficult to use, and less readily accessible, particularly for an inexperienced user. C.A.App. 423. They are remarkably lethal against large numbers at range—but most self-defense, especially in the home, occurs "within a distance of three yards." C.A.App. 425. And because they are so overpowered, assault weapons pose a terrifying risk to bystanders, since rounds from assault weapons

can easily penetrate most materials used in standard home construction, car doors, and similar materials. C.A.App. 423. Indeed, the evidence showed that gun manufacturers do not even advertise assault weapons for self-defense, instead marketing them as weapons of mass aggression. *See* C.A.App. 405 (advertisement that owning an assault rifle will "bring out the warrior in you"); C.A.App. 1235.

Even the individual Petitioners could not credibly testify that assault weapons and Others are often chosen for, used, or useful for self-defense. All recognized that "shorter" barreled weapons were "more maneuverable" and so better suited to self-defense. And none could identify a situation where they believed an assault weapon would be better suited to self-defense.

C. Petitioners' claim depends on disputed questions of fact.

The preliminary posture of this case exacerbates these evidentiary deficiencies. Whether some evidence in the record supports Petitioners' claim or not, at the very least the parties hotly contest these disputed and potentially dispositive questions about ownership and use (among many others). And because Petitioners presented no admissible evidence on any of the factual predicates for their argument, Respondents could not properly confront their 'evidence' through the usual process of discovery, depositions of "experts," or trial. These "crucible[s] of adversarial testing" "could yield insights (or reveal pitfalls)" that this Court should

be able to consider if it decides to review questions like those posed here. *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment).

More importantly, all these fact questions remain unresolved by the lower courts. Pet.App. 88a (noting that petitioners did not meet their burden at the preliminary stage here); *see also* Pet.App. 35a (declining to decide these questions). And they are potentially dispositive, as a finding that assault weapons are not commonly used for self-defense would obviate the need for this Court to resolve the constitutional question.

The Court would be better served addressing these issues in a case where they have been conclusively resolved through a final judgment on a full factual record. *See Harrel*, 144 S. Ct. at 2491-93 (Thomas, J., concurring) (noting that "[t]his Court is rightly wary of taking cases in an interlocutory posture," but that it should "review . . . *once the cases reach final judgment*") (emphasis added); *Snope*, 145 S. Ct. at 1535 (Kavanaugh, J.) (noting that additional decisions from circuit courts will assist this Court's decision-making); *Spears v. United States*, 555 U.S. 261, 270 (2009) (Roberts, C.J., dissenting). There are several such cases already pending before the Court, with more sure to arrive soon. *See, e.g.*, *ANJRPC,* No. 24-2415 (3d Cir.) (argued en banc on October 15, 2025); *Barnett,* No. 24-3060 (7th Cir.) (argued Sept. 22, 2025). Both of these cases went to final judgment on full and contested evidentiary records addressing the common ownership and use questions Petitioners

declined to address here. *See, e.g.*, *Barnett v. Raoul*, 756 F. Supp. 3d 564, 620-25, 652 (S.D. Ill. 2024); *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Platkin, 742* F. Supp. 3d 421, 433 (D.N.J. 2024). All would be better vehicles for review than this.[4]

III. The Decision Below is Correct.

Petitioners' merits arguments amount to little more than error correction. But that "is outside the mainstream of the Court's functions and . . . not among the 'compelling reasons' . . . that govern the grant of certiorari." *Tolan v. Cotton*, 572 U.S. 650, 661 (2014) (Alito, J., concurring) (citing *Supreme Court Practice*, § 5.12(c)(3), p. 352). And here the court of appeals rightly held that Petitioners are not entitled to extraordinary preliminary relief on this record, both on the merits and the equitable *Winter* factors Petitioners fail to address. Petitioners' contrary arguments lack merit.

To start, Petitioners spend much time arguing that AR-15s are "Arms" as contemplated by the Second Amendment. But neither the district court nor the court of appeals ruled to the contrary: after assuming without deciding that assault weapons are presumptively protected by the Second Amendment, the court of appeals addressed *Bruen's* historical analogue inquiry. It determined that the challenged laws are likely constitutional at that step because they are "relevantly similar" to "historical antecedents that imposed targeted restrictions on

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[4] *See also, e.g.*, *Miller v. Bonta*, No. 23-2979 (9th Cir.) (argued Jan. 24, 2024); *Rupp v. Bonta*, No. 24-2583 (9th Cir.); *Banta v. Ferguson*, No. 24-6537 (9th Cir).

unusually dangerous weapons of an offensive character—dirk and Bowie knives, as well as machine guns and submachine guns—after they were used by a single perpetrator to kill multiple people at one time or to inflict terror in communities." Pet.App. 37a; *see also* Pet.App. 52a (quoting *Bruen*, 597 U.S. at 35-36) (discussing "longstanding tradition of restricting novel weapons that are particularly suited for criminal violence—a tradition that was 'liquidate[d] and settle[d]' by 'a regular course of practice" of regulating such weapons throughout our history). The court of appeals carefully tracked this tradition from pre-colonial English laws "prohibiting 'riding or going armed, with dangerous or unusual weapons [to] terrify[ ] the good people of the land," to dirk and Bowie knife prohibitions of the 19th century, all the way to the 20th century National Firearms Act prohibitions on machine guns. Pet.App. 52a-61a. Acknowledging that these laws did not provide an "historical twin" for the challenged restrictions, the court of appeals still found Respondents had met their burden "at this preliminary stage" to show "relevantly similar" analogues exist. Pet.App. 36a.

The court of appeals buttressed that conclusion with the "nuanced" approach *Bruen* requires for regulations addressing both dramatic technological changes and unprecedented societal concerns. It found "no evidence before the twentieth century that any firearms could be used to carry out mass shootings" because they simply lacked the capacity to do so, and that mass shootings are a societal concern unimaginable at the Founding. Pet.App. 38a. This conclusion is unsurprising given

Petitioners' concession that the "prevalent firearms" at the Founding and Reconstruction eras were "technologically distinguishable" from modern AR-15 style rifles. While flintlock muzzle-loaders "held just one round at a time (and often had to be pre-loaded); had a maximum accurate range of 55 yards; had a muzzle velocity of roughly 1,000 feet per second; required at least thirty seconds for the shooter to manually reload a single shot; and were frequently liable to misfire," modern AR-15s and other assault weapons are "dramatically and reliably lethal." Pet.App. 41a-42a. And there was similarly "no direct historical precedent for the contemporary, growing societal concern over and fear of mass shootings resulting in ten or more fatalities." Pet.App. 42a.

Petitioners respond that the court of appeals' historical review amounts to "interest balancing." Pet. 29-30. This distorts the court's ruling. Petitioners' issue is not with interest balancing. In reality, Petitioners take issue with the court's consideration of the "why" part of the *Bruen* analysis. The court considered dangerousness of the restricted weapons when it answered—as instructed by this Court—*why* Connecticut enacted the restrictions in the first place and *how* they work. It did not consider whether the "*why*" of these laws amounts to a "substantial state interest" or consider any relationship between the justification for the law and the interests it served. *New York State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242, 264 (2d Cir. 2015). The court instead followed this Court's direction to examine the "reasons" for the law and compare those to historical analogues—which it did,

properly. *United States v. Rahimi*, 602 U.S. 680, 711 (2024) (Gorsuch, J., concurring). Petitioners' arguments would erase the "why" of the *Bruen* analysis and eliminate any consideration of a State's reasoning for enacting any firearm laws. That is not what *Bruen*, *Heller*, and *Rahimi* require and to dismiss that as impermissible "interest balancing" would make the application of this Court's test practically impossible.

Petitioners' primary argument fares no better. They claim the court of appeals could not engage in any of the historical analysis *Bruen* requires because, as a matter of law, a firearm cannot be "dangerous and unusual" if it is "in common use for lawful purposes." Conducting a thorough historical analysis and relying on the Respondents' unopposed historical expert testimony, the court of appeals rejected Petitioners' conjunctive reading of "dangerous and unusual." Pet.App. 31a. Given the unopposed historical evidence, the court determined that Petitioners' argument "strips coherence from the historical limitation to the Second Amendment right applicable to dangerous and unusual weapons." *Id.* at 32a.

The court of appeals was similarly correct to reject Petitioners' argument that the applicable test is confined to one inquiry only: whether a weapon is in common use for lawful purposes. It explained that *Bruen* and *Heller* "do not hold that the Second Amendment *necessarily* protects *all* weapons in common use." Pet.App. 30a (emphasis in original). Rather, this Court held that "the Second

Amendment protects *only* the carrying of weapons that are those 'in common use at the time,' as opposed to those that 'are highly unusual in society at large.'" *Bruen*, 597 U.S. at 47 (emphasis added) (quoting *Heller*, 554 U.S. at 627). Put differently, weapons that are *not* in common use can safely be said to be *outside* the ambit of the Second Amendment. But the reverse does not necessarily follow. If a weapon happens to be in common use, it does not guarantee that it cannot be banned, and this Court has never held otherwise. Indeed, as the district court recognized, Petitioners' proposed "common use" test—which hinges solely on ownership or production statistics without any inquiry into dangerousness—would render the National Firearms Act ("NFA"), and by extension both *United States v. Miller,* 307 U.S. 174 (1939), and *Heller*, constitutionally suspect. When the NFA was enacted, Thompson submachine guns or "Tommy Guns"—which were a large focus of the law—were common. *See Friedman v. City of Highland Park*, 784 F.3d 406, 408 (7th Cir. 2015) (noting Tommy guns were "all too common" before being federally prohibited and that the "popularity" of such dangerous weapons does not mean they are protected). But this Court expressly reaffirmed the NFA's constitutionality in *Heller*, noting that striking down machine gun restrictions would be "startling." *Heller*, 554 U.S. at 624.

Further, *Heller's* focus on handguns as the "quintessential self-defense weapon" makes clear that "common use for lawful purposes" means far more than simple numerosity. *Id.* at 629. It emphasized that handguns are "the most preferred

firearm in the nation to 'keep' *and use* for protection of one's home and family." *Id.* at 628-29 (emphasis added). And it described in detail *why* Americans prefer handguns for that purpose, including their ease of access and operation in confrontations compared to long guns (like AR-15s). *Id.* So under *Heller*, "common use" necessarily requires an analysis of a weapon's actual use and functionality for self-defense—not its popularity in the abstract.

Any other reading would "totally detach[] the Second Amendment's right to keep and bear arms from its purpose of individual self-defense." *Bianchi*, 111 F.4th at 460. But *Bruen* reinforced that "individual self-defense is the *central component* of the Second Amendment right," and that "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are *central* considerations" in the analysis. *Bruen*, 597 U.S. at 29 (citations and quotation marks omitted; emphasis in original). Any assessment of whether a firearm ban's "burden on the right of armed self-defense" is comparable to its historical analogues necessarily requires an inquiry into whether the firearm is used or useful for self-defense in the first place. The uncontested record here shows that assault weapons are neither.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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Dated: 12th of January, 2026.