No. __-_____

IN THE

Supreme Court of the United States

GERALD KEMONDRE TAYLOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a handgun affixed with a machinegun conversion device constitutes an "arm" under the Second Amendment's plain text, thus requiring the government to justify the machinegun-possession prohibition under 18 U.S.C. § 922(o)(1) by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED CASES

(1) *United States v. Taylor*, No. 24-4392, U.S. Court of Appeals for the Fourth Circuit. Judgment entered September 30, 2025.

(2) *United States v. Taylor*, No. 3:23-cr-00129, U.S. District Court for the Eastern District of Virginia. Judgment entered July 10, 2024.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Gerald Taylor respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The unpublished per curiam opinion of the court of appeals affirming Mr. Taylor's conviction appears at App. 1a and can be found at *United States v. Taylor*, No. 24-4392, 2025 WL 2784820 (4th Cir. Sept. 30, 2025). The district court's memorandum opinion appears at App. 5a and can be found at *United States v. Taylor*, No. 3:23-cr-129, 2024 WL 478041 (E.D. Va. Feb. 7, 2024).

JURISDICTION

The district court in the Eastern District of Virginia had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The court of appeals had jurisdiction over Petitioner's appeal pursuant to 28 U.S.C. § 1291 and issued its judgment on September 30, 2025. On December 23, 2025, in Application 25A738, the Chief Justice granted Petitioner's request for an extension of time in which to file this petition until January 28, 2026. On January 22, 2026, the Chief Justice granted Petitioner's request for a further extension of time in which to file this petition until February 11, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the Constitution 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.

INTRODUCTION

The courts of appeals are sharply divided on how to determine what types of weapons constitute "arms" under the Second Amendment's plain text.

In *District of Columbia v. Heller*, this Court held that the Second Amendment confers an individual right to possess and carry weapons in case of confrontation. 554 U.S. 570, 592–595 (2008). Later, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024), this Court established a two-step test, rooted in the Second Amendment's text and history, for assessing the constitutionality of firearm regulations. At step one, courts must assess whether the regulated conduct is covered by the plain text of the amendment. *Bruen*, 596 U.S. at 24. If it is, then at step two, the government bears the burden of justifying the challenged regulation by showing that it is consistent with this Nation's history and tradition of firearm regulation. *Id.*

The Second Amendment's text states that "the people" have the right to "keep and bear Arms." U.S. Const. amend. II. At *Bruen* step one, lower courts have struggled to determine what type of firearms qualify as "Arms." Although this Court in *Heller* stated that "all firearms constitute[] 'arms'" under the Second Amendment, 554 U.S. at 581, the Fourth Circuit (and at least one other circuit) has held that the term "arms" only extends to weapons that are "in common use for a lawful purpose." App. 2a (citation omitted). Meanwhile, other courts have assumed that the term "arms" encompasses all firearms, and instead, analyzed whether such firearms are in common use for a lawful purpose at *Bruen* step two—where the burden is on the government to justify its regulation.

Given the uncertainty and division in the lower courts, this Court should grant the petition to provide a clear and uniform answer. This question—how to determine what constitutes "arms" under the Second Amendment's plain text—is exceptionally important because it is a threshold question that arises in every Second Amendment case. And because litigants will continue to challenge regulations prohibiting certain types of weapons this issue will continue to arise in lower courts. Resolving this core issue provide much needed guidance to lower courts and give litigants clarity about what each party must do to meet its burden.

STATEMENT OF THE CASE

Proceedings in the District Court

In October 2024, a grand jury indicted Petitioner Gerald Taylor in the Eastern District of Virginia on one count of illegally possessing a firearm in violation of 18 U.S.C. § 922(o). C.A.J.A. 7.[1] The indictment alleged that Mr. Taylor possessed a handgun with a "conversion device" or "switch" that converted it to machinegun. C.A.J.A. 7.

Mr. Taylor moved to dismiss the indictment, arguing that it violated his Second Amendment right to keep and bear arms. C.A.J.A. 9. He argued that § 922(o)'s ban on machinegun possession violated the "text and history" standard established in *Bruen*. C.A.J.A. 9-17. The district court denied the motion, fully adopting the reasoning set forth in *United States v. Lane*, 689 F. Supp. 3d 232 (E.D. Va. 2023). App. 7a-8a. In *Lane*, the court concluded that § 922(o) was constitutional under

[1] Citations to the joint appendix filed in the Court of Appeals will be identified as "C.A.J.A." The joint appendix can be found at Docket Entry 18 on the Court of Appeals docket.

Bruen because machineguns "do not fit within the plain meaning that the Supreme Court has ascribed to 'Arms' covered by the Second Amendment." *Lane*, 689 F. Supp. 3d at 250.

After the district court denied his motion, Mr. Taylor entered a conditional guilty plea. C.A.J.A. 71. As part of the agreement, he waived his right to appeal his conviction and sentence except as to the district court's denial of his motion to dismiss the indictment under the Second Amendment. C.A.J.A. 73-74. The district court sentenced Mr. Taylor to 24 months' imprisonment to be followed by three years of supervised release. C.A.J.A. 88-89.

Proceedings in the Court of Appeals

Mr. Taylor timely appealed to the Fourth Circuit and renewed his Second Amendment challenge. C.A.J.A. 94. Before Mr. Taylor filed his opening brief, the Fourth Circuit issued a pair of en banc decisions on the Second Amendment. First, in *United States v. Price*, 111 F.4th 392 (4th Cir. 2024), the court held that 18 U.S.C. § 922(k), which prohibits possession of firearms with an obliterated serial number, did not violate the Second Amendment. And in *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024), the court upheld Maryland's ban on assault weapons, including AR-15s. In those cases, the Fourth Circuit expanded on the *Bruen* "text and history" test. The court explained that at step one of the *Bruen* test courts must assess whether "the Second Amendment's plain text covers the conduct at issue." *Price*, 111 F.4th at 398. As part of that inquiry, the Fourth Circuit explained, courts must assess whether the weapon being regulated is in common use for a lawful purpose, such as self-defense. *Id*. at 400-02. Although machineguns were not at issue in *Price*, the Fourth Circuit

stated, "[w]e know from Supreme Court precedent that short-barreled shotguns and machine guns are not in common use for a lawful purpose …." *Id.* at 402 (citing *Heller*, 554 U.S. at 625-27).

Relying on that quote, and the framework established in *Price* and *Bianchi*, the Fourth Circuit affirmed Mr. Taylor's conviction and rejected his Second Amendment challenge. App. 1a-3a. The court concluded that machineguns are not in common use for a lawful purpose and held that § 922(o) is constitutional on its face and as applied to Mr. Taylor. App. 2a-3a.

REASONS FOR GRANTING THE PETITION

This Court should grant this petition to provide needed clarity on what types of weapons constitute "arms" under the Second Amendment's plain text. The lower courts are conflicted on how to resolve this question, so this Court needs to step in to provide a uniform answer. This Court should also grant this petition because this issue is exceptionally important and recurring. Determining which firearms constitute "arms" under the Second Amendment is a fundamental issue that arises in every case. There must be a clear and definite answer for both lower courts and litigants. Moreover, this case is an excellent vehicle for this issue because the issue was presented below and was outcome determinative.

I. The Court of Appeals are divided over how to determine what types of weapons are covered by the plain text of the Second Amendment.

The lower courts cannot agree on what types of weapons constitute "arms" under the Second Amendment's plain text. Some courts, including the Fourth Circuit, have held that only firearms "in common use" today for a lawful purpose

qualify as an "arm" under the Second Amendment's plain text. *See* App. 2a; *United States v. Morgan*, 150 F.4th 1339, 1346 (10th Cir. 2025), *cert. denied* 2025 WL 3507095 (2025). These courts place the burden on the defendant to prove that the challenged firearm is in common use at *Bruen* step one. *See, e.g.*, *Morgan*, 150 F.4th at 1346 ("Mr. Morgan has not met his burden" of showing common use).

But other courts have either held, or simply assumed, that all firearms constitute "arms" under the Second Amendment's plain text. *See United States v. Bridges*, 150 F.4th 517, 524 (6th Cir. 2025) (concluding that a machinegun is "undoubtedly an 'Arm[]'" under the Second Amendment's text); *see also Nat'l Ass'n for Gun Rts. v. Lamont*, 153 F.4th 213, 235 (2d Cir. 2025) (assuming that assault weapons "are bearable arms within the meaning of the Second Amendment and that their acquisition and possession is presumptively entitled to constitutional protection"). These courts analyze whether the regulated firearm is in common use for a lawful purpose at step two of the *Bruen* analysis, where the burden rests with the government. *See, e.g.*, *Bridges*, 150 F.4th at 525-26.

The Seventh Circuit acknowledges that "[t]here is no consensus on whether the common-use issue belongs at *Bruen* step one or *Bruen* step two." *Bevis v. City of Naperville*, 85 F.4th 1175, 1198 (7th Cir. 2023). In the face of that uncertainty, the Seventh Circuit has seemingly adopted both approaches. In *Bevis*, the court assumed common usage was "a step two inquiry," *id.*, but the court still required the challengers to show, at step one, that the challenged firearms were weapons "that ordinary people would keep at home for purposes of self-defense, not weapons that are exclusively or predominantly useful in military service, or weapons that are not

possessed for lawful purposes," *id.* at 1194. In a more recent case, involving a challenge to the federal ban on short-barreled rifles, the Seventh Circuit held that such rifles are not "'arms' protected by the Second Amendment's text" because "[t]he record does not show such firearms are commonly used by ordinary, law-abiding citizens for a lawful purpose like self-defense." *United States v. Rush*, 130 F.4th 633, 640 (7th Cir. 2025).

No matter where the common-use inquiry resides, courts are also divided on how to even conduct that inquiry because this Court "has not elucidated a precise test for determining whether a regulated arm is in common use for a lawful purpose." *Price*, 111 F.4th at 403; *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Statement of Thomas, J.) (noting that this Court's precedent "leaves open essential questions such as what makes a weapon 'bearable,' 'dangerous,' or 'unusual.'"). Without guidance, lower courts have looked to various measures to determine whether a firearm is in common use for a lawful purpose: statistics about gun ownership or gun use; "common sense" notions about how a weapon is used; and the dangerousness or lethality of the weapons. *Morgan*, 150 F.4th at 1347-48*; Price*, 111 F.4th at 405-06; *Bianchi*, 111 F.4th at 450-53; *Bevis*, 85 F.4th at 1199.

At bottom, the lower courts are deeply divided on this threshold issue, in multiple ways. As a result, those courts "have been unable to produce 'consistent, principled results." *Rahimi*, 602 U.S. at 743 (Jackson, J., concurring). And, for that reason, the law on the Second Amendment has developed in a patchwork-like fashion, differing from circuit to circuit. The inconsistency that has developed "illustrates why

this Court must provide more guidance on which weapons the Second Amendment covers." *Harrel*, 144 S. Ct. at 2492 (Statement of Thomas, J.).

II. The Fourth Circuit is wrong.

The Fourth Circuit is one of the courts that has held that the plain text of the Second Amendment only covers weapons that are commonly used for a lawful purpose. App. 2a. Applying that test, the court concluded that machineguns are not in common use for a lawful purpose. App. 2a-3a. The Fourth Circuit's approach and its ultimate conclusion are wrong for several reasons.

First, the Fourth Circuit erroneously applies the in common use test at *Bruen* step one. But the "in common use" inquiry is rooted in "the historical understanding of the scope of the right," not the plain text of the amendment. *Heller*, 554 U.S. at 625. The historical understanding of the Second Amendment right is assessed at step two, where the government has the burden to "justify its regulation" by pointing to "historical evidence about the reach of" the Second Amendment. *Bruen*, 597 U.S. at 24-25. By moving the historical inquiry to the first step, the Fourth Circuit's approach "place[s] the burden of producing historical evidence on the wrong party." *Snope v. Brown*, 145 S. Ct. 1534, 1537 (2025) (Thomas, J., dissenting from the denial of certiorari).

Placing the burden on the defendant is no small matter because "[i]n some cases, the burden makes all the difference." *Price*, 111 F.4th at 415 (Quattlebaum, J., dissenting). That is particularly true in the Fourth Circuit, where the defendant would have an obligation to show that the firearm at issue is "better suited" for self-defense than "offensive criminal or military purposes." *Bianchi*, 111 F.4th 450. And

in some courts, the defendant will have to introduce statistical evidence to show that their weapon is commonly used for a lawful purpose. *See Morgan*, 150 F.4th 1347 (faulting the defendant for providing "little or no evidence to show that private individuals commonly use his type of machineguns for self-defense").

Second, the Fourth Circuit's "common use" test makes little sense. Although the Fourth Circuit has claimed it is not engaged in a "counting exercise," *Bianchi*, 111 F.4th at 460, it still considers counting statistics, *see Price*, 111 F.4th at 406-07. But using statistics to look at the popularity of guns that have been banned is nonsensical. Indeed, "it would be absurd to say that the reason why a particular weapon can be banned is that there is a statute banning it, so that it isn't commonly owned." *Friedman v. City of Highland Park*, 784 F.3d 406, 409 (7th Cir. 2015). "A law's existence can't be the source of its own constitutional validity." *Id.*

In addition to statistics, the Fourth Circuit also uses "common sense" to "consider whether there are any reasons a law-abiding citizen would want to use a particular weapon for a lawful purpose." *Price*, 111 F.4th at 405. That "common sense" approach includes considering the weapon's dangerousness or whether the weapon would be "better suited for offensive criminal or military purposes." *Bianchi*, 111 F.4th at 451. But using "common sense" is merely a pretense for judges to rely on their subjective beliefs about the dangerousness or utility of certain guns. *See, e.g.*, *Price*, 111 F.4th at 405-408 (interpreting "arms" to exclude firearms with obliterated serial numbers by speculating that such guns "would be preferable only to those seeking to use them for illicit activities"); *id.* at 426-427 (Richarson, J., dissenting) (criticizing the majority for "speculating about why a law-abiding citizen

would prefer an unmarked firearm and drawing illogical inferences"); *Bianchi*, 111 F.4th at 454-458 (concluding that AR-15s "thrive[] in combat, mass murder, and overpowering police"); *id.* at 527 (Richardson, J., dissenting) (faulting the majority for relying on "tropes and hyperbole to portray the AR-15 as a menacing weapon with no other utility than the slaughtering of enemy combatants and innocents").

An inquiry that focuses on "common sense" notions about the dangerousness or use of particular weapons also creates a line-drawing problem. All firearms—including handguns—are dangerous and have public safety implications. But this Court has concluded that handguns are constitutionally protected even though they "are used in the majority of mass shootings, murders, and suicides in our nation each year." *Price*, 111 F.4th at 424 (Gregory, J., dissenting). A test that focuses on dangerousness will only force judges to draw arbitrary lines between different types of firearms.

Third, the Fourth Circuit's conclusion that machineguns are not in common use for a lawful purpose rests entirely on this Court's decision in *Heller*. *See Price*, 111 F.4th 403 (citing *Heller*, 554 U.S. at 629). But *Heller* was about the constitutionality of a handgun ban, so its statements about machineguns are dicta. *Heller* itself makes it clear that courts should not follow dicta in cases about the scope of the Second Amendment, where the amendment "was not at issue and was not argued." 554 U.S. at 625 n.25. The same logic should extend to *Heller*'s own speculation about the legality of machinegun bans. The *Heller* Court was not presented with detailed arguments about the constitutionality of machinegun bans. The Court's speculation about machinegun usage or the legality of machinegun bans,

without the aid of adversarial testing, does not alleviate the Fourth Circuit of its responsibility to independently assess the constitutionality of § 922(o).

III. The issues presented are important and recurring.

The issue of which weapons the Second Amendment's plain text covers is one of exceptional importance. It should not be a mystery what types of weapons constitute "arms" under the Second Amendment's plain text. That fundamental question, which arises in *every* Second Amendment case, must have a clear and definite answer. This threshold question is also often dispositive (as it was here), especially when the lower courts place the burden on defendants and other challengers to meet amorphous "in common use" tests.

This issue is also unlikely to go away anytime soon. Many jurisdictions regulate the types of weapons individuals can possess, so these issues will continue to arise as litigants challenge the constitutionality of these regulations. This Court should grant the petition to provide clear guidance to lower courts, including "a comprehensive framework for evaluating restrictions on types of weapons." *Harrel*, 144 S. Ct. at 2492 (Statement of Thomas, J.).

IV. This case is a good vehicle to decide these important questions.

This case is the right vehicle to provide a framework for assessing what weapons are covered by the plain text of the Second Amendment. Mr. Taylor has properly preserved his Second Amendment claim throughout the lifespan of this case, so there are no lurking standard of review or preservation issues to complicate matters. There is no reason to think that Second Amendment challenges to § 922(o)—or challenges to other regulations banning certain types of weapons—will subside any

time soon, so this Court should grant certiorari in this case in order to settle the issue quickly.

CONCLUSION

For the reasons given above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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