No. ____

In The
Supreme Court of the United States

ISAIAH JAQJAN FISHER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

John G. Baker
FEDERAL PUBLIC DEFENDER FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
Joshua B. Carpenter
Appellate Chief
Counsel of Record
One Page Avenue, Suite 210
Asheville, NC 28801
Telephone: (828) 232-9992
Joshua_Carpenter@fd.org

Ashley A. Askari
Assistant Federal Public Defender
129 West Trade Street, Suite 300
Charlotte, NC 28202
Telephone: (704) 374-0720
Ashley_Askari@fd.org

QUESTION PRESENTED

Does a handgun or other bearable firearm that is capable of automatic fire qualify as an "arm" within the meaning of the Second Amendment under step one of the *Bruen* framework?

PARTIES TO THE PROCEEDINGS

Petitioner is Isaiah Jaqjan Fisher, who was also the defendant-appellant below. Respondent is the United States of America and was the plaintiff-appellee below.

RELATED CASES

Fourth Circuit Court of Appeals, *United States v. Isaiah Jaqjan Fisher*, No. 24-4527.

United States District Court for the Western District of North Carolina, *United States v. Isaiah Jaqjan Fisher*, 1:23-cr-45-MR-WCM-1.

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PETITION FOR WRIT OF CERTIROARI

Petitioner Isaiah Fisher respectfully petitions for writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

DECISIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unpublished and may be found at 2026 WL 74584, at *1 (4th Cir. Jan. 9, 2026); it is also reprinted at App. 1-4. The district court's order denying Fisher's Motion to Dismiss is unpublished and reprinted at App. 13-20.

JURISDICTION

The Court of Appeals entered judgment on January 9, 2026. App 5. On March 26, 2026, the Chief Justice extended the time in which to file a petition for writ of certiorari through June 8, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment II to the United States Constitution states:

"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) states:

> (1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.
>
> (2) This subsection does not apply with respect to—
>
>> (A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

> (B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

26 U.S.C. § 5845, titled, "Definitions" provides, in pertinent part:

> (b) Machinegun
>
> The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

INTRODUCTION

An "arm" is any "weapon[ ] of offence"; "any thing that a man … takes into his hands, or useth in wrath to cast at or strike another." *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008) (citation modified). And "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022) (quoting *Heller*, 554 U.S. at 582).

As these quotations indicate, the answer to the question presented here—"Does a handgun or other bearable firearm that is capable of automatic fire qualify as an 'arm' within the meaning of the Second Amendment?"—should be a straightforward "yes." But that is not the case if you are in the Fourth Circuit or before other like-minded courts. Since this court's *Bruen* decision, a majority of the circuits misconstrue this Court's precedent to hold that a weapon is not an "arm" unless it is in common use (i.e., it is not "dangerous and unusual") for a lawful purpose (generally self-defense). And, according to these courts, if a weapon is not an arm in common use, it is presumptively outside the scope of Second Amendment protections. This reasoning stems from a misreading of *Bruen* that not only divides the circuits but also produces intra-circuit divisions.

This Court is familiar with the Fourth Circuit's prior holding that AR-15s "are not constitutionally protected arms" under the Second Amendment. *Bianchi v. Brown*, 111 F.4th 438, 448 (4th Cir. 2024) (en banc) *cert. denied sub nom*. *Snope v. Brown*, 145 S. Ct. 1534 (2025). Though this Court declined to grant certiorari, two justices wrote separately to express their concerns. *Snope v. Brown*, 145 S. Ct. 1534 (2025). Justice Thomas characterized the Fourth Circuit's reasoning as "dubious at least twice over," and Justice Kavanaugh called the decision "questionable" while noting "a denial of certiorari does not mean that the Court agrees with a lower-court decision[.]" *Id*. at 1536 (Thomas, J., dissenting from denial of certiorari) (first quote); *id*. at 1534 (Kavanaugh, J., respecting denial of certiorari) (second quote).

The concerns are warranted. In *Bruen*, this Court held: "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." *Bruen*, 597 U.S. at 24. The circuits understood this to create a two-part, burden-shifting analysis. At step one, the party challenging the regulation establishes the Second Amendment "covers an individual's conduct." *Id*. At step two, the government justifies its regulation by pointing to breadth of historical analogues. *Id*.

Some courts and judges, including members of this Court, read step one as a straightforward inquiry asking whether the challenged law "regulates arms-bearing conduct," *United States v. Rahimi*, 602 U.S. 680, 691 (2024), with an understanding that an "arm" is any weapon that one can keep or bear. *See e.g., Worth v. Jacobson*, 108 F.4th 677, 690 (8th Cir. 2024); *see also Snope*, 145 S. Ct. at 1535 (Thomas, J., dissenting from denial of certiorari) (explaining that AR-15s are "clearly 'Arms' under the Second Amendment's plain text" because they are "weapons of offense or armour of defence" so the "burden shifts" to the government to justify its ban). As a part of the step-two analysis, these courts consider, among other things, whether an arm is dangerous and unusual and in common use. *United States v. Bridges*, 150 F.4th 517, 524 (6th Cir. 2025).

The Fourth, Seventh, Tenth, Eleventh, and D.C. Circuits do not take this approach. Instead, they read a later passage in *Bruen* to require the common-use inquiry at step one. *See e.g., Bianchi*, 111 F.4th at 448. Under this theory, the Second Amendment's text covers not all "arms" but instead only those in common use for a lawful purpose.

"This methodological point matters." *United States v. Price*, 111 F.4th 392, 415 (4th Cir. 2024) (Quattlebaum, J., concurring in judgement). The threshold question of what qualifies as an "arm" under step one of *Bruen* is critically important because it determines which party bears the burden. *See Bianchi*, 111 F.4th at 535 (Richardson, J., dissenting) (demonstrating the undue burden placed on litigants challenging a firearm regulation under the majority's step-one analysis). Often, "the burden makes all the difference." *Price*, 111 F.4th at 415 (Quattlebaum, J., concurring in judgement).

As it stands, the division among the circuits means geography determines whether an individual may exercise his fundamental right to possess some of the most popular firearms in the country, including the AR-15 model that is owned by "millions of Americans." *Snope*, 145 S. Ct. at 1534 (Kavanugh, J., respecting denial of certiorari). The disparities are untenable, and this Court's intervention is needed.

This case provides an ideal vehicle either for plenary review or for a summary reversal on the step-one issue.

STATEMENT OF THE CASE

After the deaths of two friends, Isaiah Fisher bought a pistol and an auto-sear, commonly called a "glock switch," for protection.[1] CAJA59. Fisher lawfully owned the firearm. The glock switch, however, was federally prohibited because it fell within the definition of a "machinegun." 18 U.S.C. § 922(o); 26 U.S.C. § 5845(b). In July 2022, Fisher was a passenger in a car stopped by police because the tag light was out. CAJA58. While speaking with the vehicle's occupants, an officer believed he saw a firearm and asked about it. CAJA59. Initially, Fisher denied having a firearm but then corrected himself, letting the officer know he did, in fact, have a gun. CAJA59. Police seized Fisher's ammunition and 9mm caliber pistol with the glock switch attached. CAJA59.

[1] A glock switch is a small accessory that, once affixed, allows a firearm to shoot multiple rounds with the single pull of the trigger. *United States v. Wilson*, 164 F.4th 380, 381 (5th Cir. 2026).

Almost a year later, the federal government charged Fisher with possession of a machinegun. App. 12-14 (citing 18 U.S.C. § 922(o)). By that time, this Court had issued its landmark *Bruen* decision. *Bruen*, 597 U.S. 1 (2022). Based on this new framework, Fisher moved to dismiss the indictment raising facial and as-applied Second Amendment challenges to § 922(o). CAJA13-CAJA25, CAJA42-CAJA49. The government responded, CAJA26-CAJA41, and the district court entered an order denying Fisher's motion. App. 13-20.

After Fisher pleaded guilty, the probation office prepared a presentence report. The report set Fisher's base-offense level at 18 and assigned a single criminal history point based on a 2019 misdemeanor marijuana conviction. This resulted in an advisory sentencing range of 27 to 33 months incarceration. CAJA166.

At sentencing, Fisher asked for a sentence below the guidelines range. CAJA95-CAJA110. And though the parties sought different sentences, the government joined this request. CAJA128-CAJA129. The district court agreed, explaining that, but for the glock switch, Fisher was permitted to own a gun which was "a significant factor in [the court's] mind." CAJA135. The district court sentenced Fisher to 18 months in custody followed by three years of supervised release. CAJA130, CAJA131, CAJA140-CAJA141.

On appeal, Fisher filed an *Anders* brief in which he took issue with the district court's denial of his Motion to Dismiss but acknowledged that the Fourth Circuit's en banc *Bianchi* decision precluded any relief. Op. Br. 8. Specifically, Fisher argued the *Bianchi* majority misconstrued *Bruen*'s analytical framework as well as this Court's "dangerous and unusual" jurisprudence. Op. Br. 4-13. Fisher explained how, under the correct application of *Bruen* and *Cateano*,[2] § 922(o) violates the Second Amendment both facially and as applied to his case. Finally, Fisher asked the Court to reconsider *Bianchi* by addressing the issues anew.

In a per curiam unpublished opinion, a Fourth Circuit panel decided Fisher's arguments failed at *Bruen*'s first step. App. 3. Relying on en banc precedent, the court held that, at step one, "courts ask whether the weapons regulated by the challenged regulation were in common use for a lawful purpose, such as self-defense." App. 3 (citation modified) (citing *Price*, 111 F.4th at 400). But rather than analyzing the common-use issue, the court dispensed with the question, stating, "We know from Supreme Court precedent [in *Heller*] that short-barreled shotguns and machineguns are not in common use for a lawful purpose." App. 3 (citing *Price*, 111 F.4th at 403). With this logic, the panel concluded that "§ 922(o) is constitutional on its face and as applied to Fisher's conduct in possessing a machinegun." App. 3.

REASONS FOR GRANTING THE PETITION

This case presents a recurring and intractable issue of critical importance: what constitutes an "arm" presumptively protected by the Second Amendment. The circuits are struggling to answer this question consistent with *Heller* and *Bruen*, and their errors are now firmly entrenched. It is now clear—a majority of the circuits will not course correct. This Court's intervention is needed.

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[2] *Caetano v. Massachusetts*, 577 U.S. 411 (2016) (addressing the "dangerous and unusual" analysis).

I. The circuits are split.

The circuits are divided into two camps on the question presented here. Five circuits read *Bruen* to say the party challenging a regulation must establish that the banned weapon is an "arm" protected by the Second Amendment. According to these courts, this step-one inquiry includes establishing that the regulated weapon is in common use for a lawful purpose (meaning it is *not* dangerous and unusual). Conversely, two circuits understand *Bruen* to say step one is a straightforward inquiry considering only whether the challenged law regulates "arms-bearing conduct" such as owning a certain kind of firearm. *Rahimi*, 602 U.S. at 691. These courts leave the question of whether an arm is "dangerous and unusual" or "in common use" for step two, where the government "bears the burden to justify its regulation." *Id*.

Approach #1: Consider common use at step one. The Fourth Circuit's en banc *Price* and *Bianchi* opinions demonstrate the majority approach. In *Price*, the appellant raised a Second Amendment challenge to § 922(k), which criminalizes possession of a firearm with an obliterated serial number. The court acknowledged that, under *Bruen*, step one asks courts to "evaluate whether the Second Amendment's plain text covers an individual's conduct." *Price*, 111 F.4th at 400 (quoting *Bruen*, 597 U.S. at 24). The court believed this inquiry involved three questions: "(1) whether the petitioners were 'part of the people whom the Second Amendment protects'; (2) whether the weapons regulated by the challenged regulation were 'in common use' for a lawful purpose, in that case, 'self-defense'; and (3) whether the Second Amendment protected the petitioners' 'proposed course of conduct.'" *Price*, 111 F.4th at 400 (citing *Bruen*, 597 U.S. at 31-32).

The court's analysis turned on the second question—whether the regulated firearm is "in common use" for "self-defense." The en banc majority justified this as a step-one inquiry, stating, if "a weapon is not in common use for a lawful purpose, it can be permissibly excluded from the Second Amendment's protection[.]" *Price*, 111 F.4th at 405 (citation omitted). Stated differently, if an arm is not in common use for a lawful purpose, it is not an "arm" within the meaning of the Second Amendment's plain text. By contrast, the dissenters in *Price* argued that the majority erred by addressing common use at step one. *See e.g. id.* at 428 (Richardson, J., dissenting) ("The majority therefore errs in requiring [appellant] to prove that his weapon is in common use at the plain-text stage.").

The *Price* majority's step-one reading is mirrored in four other circuits. These circuits differ in how they assess whether an arm is "dangerous and unusual" and "in common use" but uniformly consider common use at step one. *See United States v. Rush*, 130 F.4th 633, 640 (7th Cir. 2025); *United States v. Alaniz*, 69 F.4th 1124, 1128 (9th Cir. 2023) ("*Bruen* step one involves a threshold inquiry" that includes "determining whether the weapon at issue is 'in common use' today for self-defense"); *United States v. Morgan*, 150 F.4th 1339, 1345-46 (10th Cir. 2025); *United States v. Alsenat*, 174 F.4th 45, 48 (11th Cir. 2026) (relying on cases analyzing common use at step one of *Bruen* to hold the "Second Amendment "does not protect the possession of machineguns."); *Hanson v. D.C.*, 120 F.4th 223, 232 (D.C. Cir. 2024) (assessing whether large-capacity magazines "are in common use for a lawful purpose such as self-defense" under *Bruen* step one).

Approach #2: Consider common use at step two. The Sixth and Eighth circuits, however, apply a straightforward approach at step one. They ask (1) whether the challenged regulation restricts possession of an arm, and (2) whether that arm is bearable. *Worth*, 108 F.4th at 690; *Bridges*, 150 F.4th at 524 (holding a machinegun is an "arm" within the plain text of the Second Amendment). The Eighth Circuit explained: "*Heller* rejected the idea that the Second Amendment protected only the original contents of the defined term 'arms' and, instead, applied that original definition to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Worth*, 108 F.4th at 690 (quotation marks omitted). From there, the courts acknowledged the government bore the burden of proving the constitutionality of the regulation. *Bridges*, 150 F.4th at 524. Consistent with this approach, the Sixth Circuit applied the "dangerous and unusual" or "common use" analysis at *Bruen* step two. *Id*.

In addition to these circuits, several individual judges have also advocated for a plain-text approach in concurring or dissenting opinions. For example, in his *Bianchi* dissent, Judge Richardson acknowledged the confusion among the circuits but explained that "a wider view of *Bruen*'s framework," establishes that "the step-one inquiry is based on whether the 'plain text' of the Second Amendment covers an individual's conduct." *Bianchi*, 111 F.4th at 502 (Richardson, J., dissenting) (joined by Judges Niemeyer, Agee, Quattlebaum, and Rushing) (citing *Bruen*, 597 U.S. at 17). And nothing in the plain text suggests that the only arms one may "keep and bear" are those that are in common use. *Id*. at 502 (citing *Bevis v. City of Naperville Illinois*, 85 F.4th 1175, 1209 (7th Cir. 2023) (Brennan, J., dissenting)); *see also Duncan v. Bonta*, 133 F.4th 852, 891 (9th Cir. 2025) (Bumatay, J., dissenting) (joined by Judges Ikuta, R. Nelson, and Vandyke); *Price*, 111 F.4th at 409 (Neimeyer, J., concurring in judgment); *Id*. at 418-19 (Quattlebaum, J. concurring in judgment) (joined by Judge Rushing); *Id*. at 428 (Richardson, J., dissenting).

II. The Fourth Circuit is wrong.

The circuit court erred in two ways.

First, the decision below fails to follow this Court's plain-text directive from *Heller* and *Bruen*. Starting with *Heller*, the Court explained there that, under the Second Amendment's plain text, an "arm" is any "weapon of offence; any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." *Heller*, 554 U.S. at 581. The Court further explained that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Id*. at 582. The Court reiterated this plain-text focus in *Bruen*, stating that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 17.

Taken together, this precedent establishes that "[u]nder the plain text of the Second Amendment, the challengers' only burden is to show that [weapons] are bearable 'Arms'—*i.e.*, weapons of offence." *Snope*, 145 S. Ct. at 1537 (Thomas, J., dissenting) (cleaned up).

Rather than conduct this plain-text inquiry, the decision below relied on circuit precedent to ask, at step one, "whether the weapons regulated by the challenged regulation were in common use for a lawful purpose, such as self-defense." App. 3 (cleaned up). This approach is wholly atextual. As Judge Bumatay has explained, "nowhere in the text of the Second Amendment does 'in common use' appear." *Duncan*, 133 F.4th at 900 (Bumatay, J., dissenting) (citation omitted). And the text that does appear in the Second Amendment—"Arms"—cannot reasonably be understood as incorporating "common use" within its meaning. *See Duncan*, 133 F.4th at 900 (Bumatay, J., dissenting) ("Nor is common usage an inherent part of the definition of 'Arm[.]'").

Instead, common use is part of "the historical understanding of the scope of the [Second Amendment] right." *Heller*, 554 U.S. at 625. In fact, "*Heller* itself directly tied the common-use inquiry to "the historical tradition of prohibiting the carrying of dangerous and unusual weapons." *Duncan*, 133 F.4th at 901 (Bumatay, J., dissenting). That inquiry happens at *Bruen*'s second step, where the government "must then justify its regulation by demonstrating [the challenged regulation] is consistent with this Nation's historical tradition." *Bruen*, 597 U.S. at 24.

This threshold methodological question is critical because of the burden-shifting implications. *See Price*, 111 F.4th at 415 (Quattlebaum, J., concurring). By considering the common-use question at step one, the Fourth Circuit shifts the government's burden to the party challenging the statute. This is inconsistent with *Bruen*, as well as the broader constitutional principle that the government must justify any intrusion on fundamental rights. *See Duncan*, 133 F.4th at 901 (Bumatay, J., dissenting) ("as a matter of constitutional law, it makes sense that [the state] carries the burden of disproving 'common use'"). Indeed, as Judge Bumatay points out, the government's burden to justify any regulation of the Second Amendment is "extraordinarily heavy." *Id*. (citation omitted). As it should be. The Second Amendment codified a "fundamental right[ ] necessary to our system of ordered liberty." *McDonald v. Chicago*, 561 U.S. 742, 778, (2010). This right remains intact only if we hold the government to its burden.

Second, the circuit court erred by assuming, at step one, that *Heller* endorsed a categorical restriction on machine guns. The opinion states, "We know from Supreme Court precedent that short-barreled shotguns and machineguns are not in common use for a lawful purpose." App. 3.

Most importantly, this is a step-two question that the parties should have the opportunity to litigate in the first instance below.

On the merits, the conclusion suffers from its own misreading of this Court's precedent. *Heller* never held that machineguns were not in common use. The issue was not before the Court. Nor did the Court "undertake an exhaustive historical analysis … of the full scope of the Second Amendment." *Heller*, 554 U.S. at 627. So it did not assess the historical record to determine whether modern machinegun bans are analogous to founding era regulations. Had it done so, the *Heller* Court would have likely determined there were no comparable analogs, as Judge Oldham has pointed out. *See United States v. Wilson*, 174 F.4th 474, 479-80 (5th Cir. 2026) (Oldham, J., dissenting from denial of rehearing en banc). Of course, modern machine guns did not exist at the founding, but "repeating arms have existed since the fifteen century.

And numerous different repeating arms existed at the American Founding." *Id.* (citations omitted). "[D]espite the prevalence of repeating arms, literally no jurisdiction banned them[.]" *Id*. The lack of any such bans is critical under the *Bruen* framework. *See Bruen*, 597 U.S. at 26-27 ("[I]f earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional.").

The *Heller* Court also did not consider any statistical evidence regarding the commonality of machinegun possession, and the decision below likewise failed to consider such evidence. But whatever the numbers may have been at the time *Heller* was decided, statistics now indicate bearable machineguns are in common use. *Id*. at 475 (Willett, J., respecting the denial of rehearing en banc) ("It is hard to see how the millions of machineguns registered with the Bureau of Alcohol, Tobacco, Firearms, and Explosives make them, in any ordinary sense, unusual.") (citing BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, DATA & STATISTICS, https://perma.cc/KTN4-3Y9V (last visited June, 6, 2026) ("As of June 2025, the total number of machineguns in the [National Firearms Registration and Transfer Record] is approximately 2,382,403.").

By over relying on *Heller*'s dicta, the court below creates a rule that is at odds with the outcome dictated by the *Bruen* framework. It also fails to recognize that "the Second Amendment's historically fixed meaning applies to new circumstances" as well as "modern instruments that facilitate armed self-defense." *Bruen*, 597 U.S. at 28. What constitutes a "modern instrument" facilitating "armed self-defense" will change as society and technology advance. *See Bruen*, 597 U.S. at 47 ("Whatever the likelihood that handguns were considered 'dangerous and unusual' during the colonial period, they are indisputably in 'common use' for self-defense today.") Ignoring these changes inevitably creates the sorts of "law[s] trapped in amber" this Court rejects. *Rahimi*, 602 U.S. at 691.

III. This case presents a clean vehicle to resolve this important and recurring issue.

This case presents a clean vehicle to address the question presented and resolve how courts are to apply step one of the *Bruen* framework.

First, the issue was fully preserved at all stages below. Before the district court, Fisher affirmatively addressed the question presented here. CAJA15-21. On appeal, Fisher, again, raised the issue. Op. Br. 4-13. And while he acknowledged binding precedent precluded relief, Fisher asked the court to reconsider its *Bianchi* holdings. Fisher's "efforts to alert the [Fourth Circuit to the step-one] problem provided that court with ample opportunity to make a reasoned judgment on the issue." *Goeke v. Branch*, 514 U.S. 115, 118 (1995). The court below passed, instead affirming the district court's judgment. App. 3-4. The matter is now ripe for this Court's review. *Goeke*, 514 U.S. at 118.

Second, the step-one inquiry is dispositive in this case. The decision below relied exclusively on the Fourth Circuit's established—but erroneous—step-one analysis. It did not analyze the second step or enter into any type of alternative holding. As a result, if the court erred at step one, the appropriate course would be for this Court to remand and allow the Fourth Circuit to conduct the step-two inquiry for itself in the first instance, with the aid of the guidance provided by this Court's analysis. *See Snope*, 145 S. Ct. at 1538, n* (Thomas, J., dissenting) (noting that the Fourth Circuit's "alternative holding" at step two in *Bianchi* was "not genuinely independent of its misguided common-use analysis" at step one). This places the burden on the correct party, i.e., the government, to demonstrate the constitutionality of § 922(o)'s categorical ban on machineguns, including bearable machineguns owned by peaceful law-abiding citizens like Fisher.

In sum, the specific posture of this case provides the Court with an ideal opportunity to address the threshold question—how to determine what qualifies as an "arm" under the Second Amendment—without needing to simultaneously consider the more nuanced and complicated historical tradition questions. Such an incremental approach makes good sense in this complex and evolving area of law.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

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John G. Baker
FEDERAL PUBLIC DEFENDER FOR THE
WESTERN DISTRICT OF NORTH CAROLINA

/s/Joshua B. Carpenter______
Joshua B. Carpenter
Appellate Chief
Counsel of Record
One Page Avenue, Suite 210
Asheville, NC 28801
(828) 232-9992
Joshua_Carpenter@fd.org

Ashley A. Askari
Assistant Federal Public Defender
129 West Trade Street, Suite 300
Charlotte, NC 28202
(704) 374-0720
Ashley_Askari@fd.org