

No. _____

In the
Supreme Court of the United States

Jamaion Wilson,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition presents two questions.

First, whether the Fifth Circuit’s continued reliance on *Hollis v. Lynch*, 827 F.3d 436 (5th Cir. 2016) and refusal to require the government to prove a historical tradition of firearm regulation under this Court’s Second Amendment framework conflicts with *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022)?

Second, should the Court hold this petition pending the outcome of *Viramontes v. Cook County*, No. 25-238 (U.S. Jun. 30, 2026), and *Grant v. Higgins*, No. 25-566 (U.S. Jun. 30, 2026), given lower courts’ determinations that for Second Amendment purposes, AR-15’s are indistinguishable from M16 machineguns?

PARTIES TO THE PROCEEDING

Petitioner is Jamaion Wilson, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

RELATED PROCEEDINGS

United States v. Jamaion Wilson, No. 4:24-CR-00027-P, U.S. District Court for the Northern District of Texas. Judgment entered on July 15, 2024.

United States v. Jamaion Wilson, No. 24-10633, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on January 12, 2026. Rehearing en banc denied on April 30, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jamaion Wilson seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's published opinion is available at *United States v. Wilson*, 164 F.4th 380 (5th Cir. 2026). It is reprinted in Appendix A. The published opinion denying rehearing en banc is available at *United States v. Wilson*, 174 F.4th 474 (5th Cir. 2026), and is reprinted in Appendix B. The district court's judgment and sentence in *United States v. Wilson*, No. 4:24-CR-00027-P (N.D. Tex. Jul. 15, 2024), is reprinted in Appendix C.

JURISDICTION

The Fifth Circuit entered its judgment on January 12, 2026, and denied rehearing en banc on April 30, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment to the U.S. 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.

U.S. Const. amend. II.

Section 922(o) of Title 18 provides:

- (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.

18 U.S.C. § 922(o).

STATEMENT OF THE CASE¹

I. District Court Proceedings

Petitioner Jamaion Wilson was indicted for violating 18 U.S.C. § 922(o) for possessing a handgun equipped with a “Glock switch,” also known as a machinegun conversion device. Record in the Court of Appeals 25, 197. He moved to dismiss, arguing that § 922(o) violated the Second Amendment both facially and as-applied to his conduct. Record in the Court of Appeals 42-47. He acknowledged that the Fifth Circuit had upheld § 922(o) against a Second Amendment challenge in *Hollis v. Lynch*, 827 F.3d 436 (5th Cir. 2016). Record in the Court of Appeals 44-45. There, the court held that machineguns were not “in common use” and therefore, were both “dangerous” and “unusual” and subject to regulation under the “historical tradition” recognized in *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008) of “prohibiting the carrying of dangerous and unusual weapons.” *Hollis*, 827 F.3d at 445–51 (citing *Heller*, 554 U.S. at 627).

Petitioner argued, however, that *Hollis* did not control in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), and “updated statistical information.” Record in the Court of Appeals 45. In contrast to the 175,977 privately-owned machineguns that *Hollis* relied on to determine that machineguns were not in “common use,” he argued that the number had grown to 741,146, and did not include machinegun conversion devices, which had exploded in number in recent years.

¹ The following statement of facts sets forth only those relevant to the issues raised in this petition.

Record in the Court of Appeals 45. Believing that *Hollis* controlled, the district court denied his motion. Record in the Court of Appeals 60. Petitioner pleaded guilty without a plea agreement and was sentenced to 10 years. Record in the Court of Appeals 88-89, 195.

II. Appellate Proceedings

Petitioner maintained his argument on appeal that § 922(o) violates the Second Amendment “as applied to the possession of machineguns.” Appellant’s Initial Br. 20, *United States v. Wilson*, 164 F.4th 380 (5th Cir. 2026) (No. 24-10633), 2024 WL 5152938. He argued that the district court wrongly relied on *Hollis* because machineguns “now likely number in the millions” and are “no longer unusual.” *Id.* at 25. He claimed § 922(o)—“criminalizing simple possession of a machinegun”—contradicts the “plain meaning of the Second Amendment,” which guarantees the right to “keep...Arms.” *Id.* at 21-22 (citing *Bruen*, 597 U.S. at 17, 20). He also contended that the Amendment’s original meaning doesn’t permit prohibitions “on the simple possession of bearable arms, unusual or otherwise,” because there was no tradition of prohibiting “especially dangerous weapons” at the Founding. *Id.* at 25-26.

The panel disagreed. *See United States v. Wilson*, 164 F.4th 380, 386 (5th Cir. 2026). Since “[n]othing in *Bruen* unequivocally” overruled *Hollis*, *id.* (cleaned up), it declined to “disregard” the decision “based solely on evolving facts,” *id.* at 385 (cleaned up). It found Petitioner’s statistics “misleading at best” because the 740,000 number included machineguns possessed by government entities—which are “irrelevant” to the common-use inquiry. *Id.* Even if Petitioner’s numbers were accurate, it didn’t

matter to the panel because “*Hollis* had already anchored its holding in binding Supreme Court guidance,” *id.* at 385–86, *i.e.*, on *Heller*’s dicta that machineguns are “dangerous and unusual weapons” that are “unprotected.”

The panel also noted that Petitioner’s facial and as-applied challenges “collapse into one” because “machinegun possession is all the statute prohibits.” *Id.* at 383 n.7. In its view, “Wilson’s arguments focus exclusively on whether the government may facially ban machineguns; he never suggests that the statute is only unconstitutional as applied to his specific conduct.” *Id.*²

Judge Ho authored a dubitante opinion, expressing an interest in rehearing the case en banc because “there’s good reason for concern that our precedent misapplies the ‘dangerous and unusual’ test.” *Id.* at 394 (Ho, J., dubitante) (citing *Bruen*, 597 U.S. at 47 (noting that weapons which were once ‘dangerous and unusual’ can cease to be so.)).

Petitioner sought rehearing en banc, making two arguments. First, the panel failed to acknowledge that *Bruen* abrogated *Hollis*. Appellant’s Pet. for Rehr’g En

² Petitioner disagrees. He was clearly challenging § 922(o) as applied to his conduct: possession of a bearable machinegun. He began by quoting the text of the Second Amendment, which protects the right to “keep and bear Arms.” Initial Br. at 21. He noted that § 922(o) “criminalizes the simple possession of a machinegun” and “forbids citizens to ‘keep ... Arms’ and would seem therefore to contradict the plain meaning of the Second Amendment.” *Id.* at 22.

When discussing whether machineguns are in “common use,” Petitioner discussed the “3000 or so machineguns” that ATF seized each year, as well as the increasing numbers of machinegun conversion devices, *id.* at 25—both references to bearable, handheld machineguns. And before discussing the historical evidence, Petitioner reiterated his claim: “the original meaning of the Second Amendment does not permit any prohibition on the simple possession of *bearable arms*, unusual or otherwise.” *Id.* (emphasis added).

Banc 4-10, ECF No. 105, *United States v. Wilson*, 24-10633 (5th Cir. Feb. 9, 2026). Second, he contended that the Fifth Circuit needed to revisit *Hollis*, because its conclusion that machineguns are “dangerous and unusual” is questionable in light of the fact that machineguns are no more dangerous than the AR-15, “the most popular civilian rifle in America.” *See id.* at 10 (quoting *Snope v. Brown*, 605 U.S. —, 145 S. Ct. 1534, 1535 (2025) (Thomas, J., dissenting from denial of certiorari)). He argued that if the Fifth Circuit uses a “common use” test it should—as other courts have done—abandon *Hollis*’s method of counting registered arms and states where they are legal. *Id.* at iv-v (citing *Bianchi v. Brown*, 111 F.4th 438, 460 (4th Cir. 2024) (en banc), *cert. denied sub nom.*, *Snope v. Brown*, 605 U.S. —, 145 S. Ct. 1534 (2025) (“Such a trivial counting exercise makes a mockery of the careful interest balancing between individual self-defense and societal order that our legal tradition has carved into the heart of the right to keep and bear arms.”) And, it should require the government to *prove* the appropriate figure to use for the “common use” inquiry, *and* that the number is insufficient to establish “common use.” *See id.* at v.

The Fifth Circuit voted 10-7 to deny rehearing en banc. *See United States v. Wilson*, 174 F.4th 474 (5th Cir. 2026) (Willett, J., respecting the denial of rehearing en banc). Judge Willett, who voted to deny rehearing, authored an opinion that was joined by Chief Judge Elrod, who also voted to deny rehearing, and Judge Duncan, who voted in favor of rehearing. *See id.* Judge Willett characterized as “dubious” *Hollis*’s holding that “machineguns are not just dangerous but also unusual—and thus may be prohibited under our historical tradition of prohibiting the carrying of

dangerous and unusual weapons.” *Id.* at 475 (cleaned up). He explained: “[A]lthough the Supreme Court has offered only ‘minimal guidance’ for determining whether a weapon is dangerous and unusual, 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.”³ “So in an appropriate case” he would “welcome en banc review to determine whether § 922(o) exceeds constitutional limits—under the Commerce Clause, the Second Amendment, or both.” *Id.* at 476. In his view, however, this was not the “appropriate case” because: (1) Petitioner did not raise a Commerce Clause challenge; and (2) he viewed Petitioner as having only preserved a facial challenge—which, in his mind, makes it nearly impossible for him to prevail, because if “even one such weapon” qualifying as a machinegun “falls outside the Second Amendment’s protection,” his challenge fails. *Id.* at 476–77 (claiming that the statutory definition of “machinegun” includes “massive guns mounted on military aircraft and antiaircraft batteries”) (cleaned up).⁴

³ *Id.* (citing Bureau of Alcohol, Tobacco, Firearms, and Explosives, Data & Statistics, <https://perma.cc/KTN4-3Y9V> (last visited Apr. 20, 2026) (“As of June 2025, the total number of machineguns in the [National Firearms Registration and Transfer Record] is approximately 2,382,403.”)) (other citations omitted).

⁴ As explained in *supra* footnote 2, Petitioner disagrees with the premise that he did not present an as-applied challenge. His brief clearly challenged § 922(o) as applied to his possession of a bearable machinegun.

In any event, as discussed in his response to the government’s 28(j) letter concerning *DeWilde v. Attorney General*, No. 24-8071, 2025 WL 1637695 (10th Cir. Jun. 10, 2025), Petitioner disagrees with the notion that he cannot prevail in a facial challenge in the Fifth Circuit. See Appellant’s Response to 28(j) Letter filed by Appellee, ECF No. 75, *United States v. Wilson*, No. 24-10633, (5th Cir. Jul. 25, 2025).

In *DeWilde*, the *pro se* plaintiff “expressly disclaim[ed]” any as-applied challenge, arguing that § 922(o) could never be constitutionally applied. 2025 WL

Judge Ho wrote an opinion dissenting from the denial of rehearing en banc. *See Wilson*, 174 F.4th at 477–79 (Ho, J., dissenting from the denial of rehearing en banc). He noted that two of the judges who voted to deny rehearing “go out of their way to express avowed agreement that our circuit precedent is indeed out of step with the Constitution and Supreme Court precedent and needs to be revisited.” *Id.* at 478. So, because a majority of the court “appear[s] to acknowledge difficulties with our circuit precedent,” “the only issue is whether this case is the right vehicle.” *Id.* He disagreed with his colleagues’ “prudential concern that *Hollis* may not be ‘cleanly presented’ here,” *id.* arguing that it is “just as ‘cleanly presented’ here as it was when we granted en banc review in *Abraham Watkins Nichols Agosto Aziz & Stogner v. Festeryga*, 138 F.4th 252 (5th Cir. 2025),” *id.* at 479. Though the concurrence “tries to distinguish *Abraham Watkins* by observing that there are additional issues presented here—namely, that *Wilson* failed to present a ‘genuinely’ as-applied claim,” Judge Ho explained that the court could have “done the exact same thing” it did in that case, which also presented “additional issues.” *Id.* “We could have gone en banc to reconsider *Hollis*—and then returned the case back to the original panel to resolve the remaining issues.” *Id.*

1637695, at *1. The Tenth Circuit rejected the facial challenge because § 922(o) covers some non-bearable weapons like “airplane-mounted automatic cannons.” *Id.* at *2. But that conclusion is at odds with binding Fifth Circuit precedent. *Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 127 F.4th 583, 600 (5th Cir. 2025) sustained a facial challenge to § 922(b)(1), despite an even broader definition of “firearm,” § 922(a)(3), that reaches missiles, rockets, and bombs. Under *Reese*, a statute can be facially unconstitutional even if it applies to non-bearable weapons.

Judge Oldham also authored an opinion dissenting from the denial of rehearing en banc, which Judge Ho joined. *See id.* at 479–80 (Oldham, J., dissenting from the denial of rehearing en banc). He argued that the Fifth Circuit’s “approach to categorical bans on classes of weapons cannot be reconciled with Supreme Court precedent.” *Id.* at 480. He explained that there is “no historical justification for banning machine guns,” because “numerous different repeating arms existed at the American Founding.” *Id.* (citing David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. Legis. 255–57 (2024)). “And, despite the prevalence of repeating arms, literally no jurisdiction banned them: ‘There were no prohibitions on any particular type of arm, ammunition, or accessory in any English colony that later became an American state. The only restriction in the English colonies involving specific arms was a handgun and knife carry restriction enacted in Quaker-owned East New Jersey in 1686.’” *Id.* at 480 (citing Kopel & Greenlee at 238). Thus, *Hollis*’s holding that repeating arms “fall entirely outside the Second Amendment’s scope” lacks “historical support,” which “conflicts with *Bruen*’s requirement that courts focus on history and tradition.” *Id.* “So, unless the Supreme Court changes the governing standard,” concluded Judge Oldham, “our precedent cannot justify a ban on entire classes of weapons.” *Id.*

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari because the Fifth Circuit’s continued reliance on *Hollis* and refusal to hold the government to its burden to prove a historical tradition runs afoul of this Court’s precedent as articulated in *Bruen*.

In the alternative, this Court should hold the instant petition until it decides a pair of cases on which it recently granted certiorari: *Viramontes v. Cook County*, No. 25-238 (U.S. Jun. 30, 2026), and *Grant v. Higgins*, No. 25-566 (U.S. Jun. 30, 2026). Those cases present the question of whether state and local AR-15 bans violate the Second Amendment, and will require the Court to confront issues bearing on the resolution of this case such as: (1) At what point in the *Bruen* inquiry should courts conduct the “common use” inquiry? (2) Does the determination of “common use” involve a counting exercise, and if so, does it only count arms in private hands for self-defense? (3) Is there a historical tradition that would justify banning a whole class of arms based merely on their *characteristics*—as opposed to the *manner* in which they are carried? (4) What does “dangerous and unusual mean?” For a myriad of reasons, the result in *Viramontes* and *Grant* can prove outcome determinative in this case.

Most importantly, the fate of the semi-automatic AR-15 will likely dictate that of the M16 machinegun, its fully automatic counterpart—which courts have declared indistinguishable for Second Amendment purposes. *See, e.g., Bevis v. City of Naperville, Illinois*, 85 F.4th 1175, 1197 (7th Cir. 2023) (“Because it is indistinguishable from [the M16] machinegun, the AR-15 may be treated in the same

manner without offending the Second Amendment.”); *Kolbe v. Hogan*, 849 F.3d 114, 125 (4th Cir. 2017) (“The difference between the fully automatic [M16] and semiautomatic versions of those firearms [the AR-15 and AK-47] is slight.”); *Nat’l Ass’n for Gun Rights v. Lamont*, 153 F.4th 213 (2d Cir. 2025) (“The AR-15 was initially developed for modern military combat” and “has the same basic structure and operation, as well as near-equivalent muzzle velocity as its military counterpart, the M-16.”).

Given this Court’s decision to review the constitutionality of regulations prohibiting the AR-15, it makes good sense to hold this petition pending the resolution of those cases.

I. This Court should grant certiorari because the decision below relied on *Hollis*, which conflicts with this Court’s precedent.

This Court should grant certiorari because the Fifth Circuit’s “approach to categorical bans on classes of weapons cannot be reconciled with Supreme Court precedent.” *Wilson*, 174 F.4th at 480 (Oldham, J., dissenting from the denial of rehearing en banc). By finding itself bound by *Hollis*—which upheld § 922(o) against a Second Amendment challenge without requiring the government to prove a historical tradition—the court below “decided an important federal question in a way that conflicts with [a] relevant decision[] of this Court”—namely, *Bruen*. See Sup. Ct. R. 10(c).

True, *Hollis* was decided at Means-End Scrutiny Step 1, but it nevertheless conflicts with *Bruen*. *Bruen* refined the test derived from *Heller*, anchoring Step 1’s analysis to the *plain text* of the Amendment and placing the burden on the

government under Step 2. Because *Hollis* did not do these two things, it has no precedential value after *Bruen*.

A. *Hollis* failed to recognize that the plain text of the Amendment covers machinegun possession, rendering § 922(o) presumptively unconstitutional.

The Second Amendment to the United States Constitution mandates that 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.” U.S. CONST. amend. II. In *District of Columbia v. Heller*, this Court held that the Second Amendment codified an individual right to possess and carry weapons. 554 U.S. 570, 628 (2008).

After *Heller*, the lower courts “adopted a two-step inquiry for analyzing laws that might impact the Second Amendment.” *Hollis*, 827 F.3d at 446. Known as “Means-End Scrutiny,” the test first required courts to ask “whether the conduct at issue falls within the scope of the Second Amendment right.” *United States v. McGinnis*, 956 F.3d 747, 754 (5th Cir. 2020)(quoting *Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 194 (5th Cir. 2012)). This first step involved determining “whether the law harmonizes with the historical traditions associated with the Second Amendment guarantee.” *Id.* If the conduct was outside the scope of the Second Amendment, the law was constitutional. *Id.* Otherwise, courts proceeded to the second step to determine whether to apply strict or intermediate scrutiny. *Id.*

In *Bruen*, this Court announced a new framework for analyzing Second Amendment claims, abrogating the two-step inquiry adopted by the Fifth Circuit and

others. *See* 597 U.S. at 19. Under this new framework, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 17. The government then “must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* Only then may a court conclude that the individual’s conduct falls outside of the Second Amendment’s “unqualified command.” *Id.* (citation omitted).

The court below determined, however, that *Bruen* did not “unequivocally” overrule *Hollis. Wilson*, 164 F.4th at 387 (cleaned up). It reasoned: “*Hollis* was decided exclusively at step one—the step *Bruen* found ‘broadly consistent with *Heller*.’” *Id.* (citing *Bruen*, 597 U.S. at 19). “Relying directly on *Heller*’s historical analysis, *Hollis* explained ‘that a law that regulates a class of weapons that are not in common use will be upheld at step one.’” *Id.* (citing *Hollis*, 827 F.3d at 447, 451). Rather than relying on “the now-discarded means-end scrutiny,” claimed the court, *Hollis* “rested on *Heller*’s ‘dangerous and unusual weapons’ language, which *Bruen* reaffirmed.” *Id.*

This is wrong. *Bruen* “established a new historical paradigm,” *United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024), which dictates that “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Bruen*, 597 U.S. at 24. In contrast to the old Step 1, which looked to “whether the challenged law impinges upon a right protected

by the Second Amendment,” *Hollis*, 827 F.3d at 446, *Bruen* directed courts to examine the *text* of the Amendment to determine its scope. *Bruen*, 597 U.S. at 24.

The Second Amendment’s plain text clearly covers the right to possess a machinegun. “Although machineguns come in various forms, a machinegun—such as a handgun modified for fully automatic fire—is undoubtedly an ‘Arm[]’ that one can ‘keep and bear.’” *United States v. Bridges*, 150 F.4th 517, 524 (6th Cir. 2025) “Thus, the Second Amendment’s plain text covers [Petitioner’s] possession of a machinegun, and ‘the Constitution presumptively protects that conduct.’” *Id.* (citing *Bruen*, 597 U.S. at 24).

Nothing in the Amendment’s *text* limits its reach based on whether the arm is “dangerous or unusual.” *See Bruen*, 597 U.S. at 32 (handgun possession outside the home is protected because “[n]othing in the Second Amendment’s text draws a home/public distinction[.]”); *Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 127 F.4th 583, 591 (5th Cir. 2025) (that “[t]here are no age or maturity restrictions in the plain text of the Amendment” suggests “that the Second Amendment lacks a minimum age requirement.”).

If the government claims that history and tradition support Congress’s power to exclude certain arms, it must prove its case under Step 2. *See Snope*, 145 S. Ct. at 1535–36 (Thomas, J., dissenting from denial of certiorari) (“Because AR–15s are ‘Arms,’ the burden shifts to Maryland to show that banning AR–15s is ‘consistent with this Nation’s historical tradition of firearm regulation.’”); *Teter v. Lopez*, 76 F.4th 938, 950 (9th Cir. 2023), *vacated and remanded as moot*, 125 F.4th 1301 (2025) (en

banc) (*Heller* “did not say that dangerous and unusual weapons are not *arms*.”) (emphasis in original); *Bridges*, 150 F.4th at 524–29 (conducting “dangerous and unusual” inquiry under Step 2).

Failing to conduct the analysis at Step 2 can lead to the wrong outcome because it shifts the burden to the wrong party. “Where we slot in the dangerous-and-unusual analysis makes a difference because the government bears the burden at Step 2, where much of the action happens, but not at Step 1.” *Id.* at 547 (Nalbandian, J., concurring). “Courts that slot this analysis into Step 1 improperly relieve the government of that burden.” *Id.*

B. *Hollis* wrongly assumed a historical tradition prohibiting the possession of “dangerous and unusual weapons,” rather than requiring the government to prove one.

Not only did *Hollis* fail to hold the government to its burden to prove a historical tradition under Step 2, but it misinterpreted *Heller*’s statement that the limitation protecting weapons “in common use at the time” is “fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons.” *Hollis*, 827 F.3d at 445 (citing *Heller*, 554 U.S. at 627) (cleaned up).

Heller cited 12 historical sources in support of this claim. *See* 554 U.S. at 627 (citing 4 Blackstone 148–149 (1769); 3 B. Wilson, Works of the Honourable James Wilson 79 (1804); J. Dunlap, The New–York Justice 8 (1815); C. Humphreys, A Compendium of the Common Law in Force in Kentucky 482 (1822); 1 W. Russell, A Treatise on Crimes and Indictable Misdemeanors 271–272 (1831); H. Stephen, Summary of the Criminal Law 48 (1840); E. Lewis, An Abridgment of the Criminal

Law of the United States 64 (1847); F. Wharton, A Treatise on the Criminal Law of the United States 726 (1852); *State v. Langford*, 10 N.C. 381, 383–384 (1824); *O’Neill v. State*, 16 Ala. 65, 67 (1849); *English v. State*, 35 Tex. 473, 476 (1871); *State v. Lanier*, 71 N.C. 288, 289 (1874)).

Those sources refer to a prohibition on the carrying of dangerous and unusual weapons *in a manner causing terror to the people*. See *id.* And importantly, *Bruen* rejected these laws as non-analogous to a statute criminalizing *possession* because “[f]ar from banning the carrying of any class of firearms, they merely codified the existing common-law offense of bearing arms to terrorize the people[.]” *Bruen*, 597 U.S. at 47. See also *Wilson*, 174 F.4th at 480 (Oldham, J., dissenting from the denial of rehearing en banc) (quoting *Bruen*, 597 U.S. at 47).

So, *Heller* did not recognize a historical tradition prohibiting the *mere possession* of a certain class of weapons based on their so-called “dangerous and unusual” characteristics. Accordingly, “there’s a nonfrivolous question whether the ‘dangerous and unusual weapons’ doctrine is a doctrine about *what* weapons you can own in the first place, or instead a doctrine about *how* you can carry or use certain weapons (that are lawfully owned).” *Bridges*, 150 F.4th at 534–35 (Nalbandian, J., concurring) (emphasis in original).

In any event, it is now the government’s burden to prove a historical tradition prohibiting the possession of “dangerous and unusual” weapons. *Bruen*, 597 U.S. at 24. None of the courts below held the government to this burden—one that it likely cannot satisfy. After an extensive historical survey, Judge Nalbandian determined

that “no American jurisdiction prohibited any kind of weapon in the eighteenth century.” *Bridges*, 150 F. 4th at 534–35 (Nalbandian, J., concurring) (citations omitted). And “[t]he one antebellum statutory ban on firearm possession was held unconstitutional[.]” *Id.* at 541. As noted earlier, *supra* page 9, Judge Oldham agreed that “there is no historical justification for banning machine guns” because “despite the prevalence of repeating arms” at the Founding, “literally no jurisdiction banned them.” *Wilson*, 174 F.4th at 480 (Oldham, J., dissenting from the denial of rehearing en banc) (citation omitted).

Hollis wrongly assumed this historical tradition, leading it to conclude “that certain classes of weapons—including repeating arms—fall entirely outside the Second Amendment’s scope.” *Id.* Such an approach “conflicts with *Bruen*’s requirement that courts focus on history and tradition.” *Id.* By declaring itself bound by *Hollis*, the court below failed to recognize *Bruen*’s intervening effect and reached a “dubious” conclusion regarding the constitutionality of § 922(o). *Wilson*, 174 F.4th at 475 (Willett, J., respecting the denial of rehearing en banc). This Court should grant certiorari to correct this error.

II. In the alternative, this Court should hold the instant petition until it decides *Viramontes v. Cook County* and *Grant v. Higgins*, which bear directly on this case.

This Court recently granted certiorari in *Viramontes v. Cook County*, No. 25-238 (U.S. Jun. 30, 2026), and *Grant v. Higgins*, No. 25-566, (U.S. Jun. 30, 2026). *Viramontes* presented the question: “whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar

semiautomatic rifles.” See Pet. for Cert. i, *Viramontes v. Cook County*, No. 25-238 (U.S. Aug. 27, 2025). As *Grant v. Higgins* raised essentially the same question, the Court granted certiorari in both and consolidated the cases. See *Docket, Grant v. Higgins*, No. 25-566 (U.S. Jun. 30, 2026). This Court should hold this petition until it decides those cases, because the result in *Viramontes* and *Grant* can prove outcome determinative.

In *National Association for Gun Rights v. Lamont*, which became *Grant*, the Second Circuit expressed “confusion” about whether AR-15s are covered by the plain text of the Second Amendment. See 153 F.4th 213, 234–35 (2d Cir. 2025). It noted that “the Supreme Court has not made clear how and at what point in the analysis we are to consider whether weapons are unusually dangerous. Nor has the Court clarified how we are to evaluate a weapon’s ‘common use.’” *Id.* at 234. Preferring “not to venture into an area in which such uncertainty abounds,” the Second Circuit assumed without deciding that AR-15 rifles are bearable arms within the meaning of the Second Amendment. *Id.* at 235. It determined, however, that the AR-15 ban is consistent with the Nation’s historical tradition of firearm regulation, because AR-style rifles are “dangerous and unusual,” a category defined to “encompass[] those arms that legislators determined were *unusually dangerous* because of their characteristics.” *Id.* at 233 (emphasis in original).

In *Viramontes v. Cook County*, 2025 WL 1553896 (7th Cir. June 2, 2025), the Seventh Circuit disagreed that its previous decision *Bevis v. City of Naperville, Illinois*, 85 F.4th 1175 (7th Cir. 2023) should be overruled as “inconsistent with *Heller*

and *Bruen*.” See *id.* at *2. Instead, it applied *Bevis*’s reasoning. *Id.* That case held that: (1) AR-15s are not covered by the Second Amendment’s plain text because the term “Arms” applied only to “weapons that were not specifically designed for military use and were not employed in a military capacity” and (2) there is a historical tradition “supporting a distinction between” weapons “designed for military or law-enforcement use, and weapons designed for personal use.” *Bevis*, 85 F.4th at 1193, 1202 (cleaned up).

Both cases call upon the Court to decide questions bearing directly on this case. Start with the questions concerning “common use.” Petitioners in *Grant* asked this Court to clarify “where ‘common use’ fits into *Bruen*’s framework,” noting that “[t]he lower courts’ confusion on this point is consequential,” because it “determines which party—the plaintiff or the government—shoulders the burden of establishing that a firearm is in common use (or dangerous or unusual).” Pet. for Cert. 21, 22-23, *Grant v. Higgins*, No. 25-566 (U.S. Nov. 7, 2025). Petitioners in *Viramontes* observed: “Wholly apart from the important point of *where* in the analysis ‘common use’ goes, exactly *what* it means is also a subject of significant confusion for courts across the country.” Pet. for Cert. 21, *Viramontes v. Cook County*, No. 25-238 (U.S. Aug. 27, 2025) (emphasis in original). For example, courts disagree as to whether common use is established by counting “the number of a certain weapon in private hands”; whether “a firearm must be ‘in common use’ for *any* lawful purpose or must be in common use *for self-defense* specifically”; and whether “common use is a necessary,” “or a sufficient condition for constitutional protection.” See *id.* (cleaned up) (citing

cases). *Compare Wilson*, 164 F.4th at 385 (“Firearms held by police and military entities are irrelevant to the ‘common use’ inquiry.”) *with Hanson v. District of Columbia*, 120 F.4th 223, 232–233 (D.C. Cir. 2024) (agreeing with the District that “common use” is “not to be found solely by looking at the number of a certain weapon in private hands.”).

How this Court answers these questions may determine the outcome in this case. For example, if this Court makes clear, as Mr. Wilson has argued, that the question of whether a firearm is in common use is the *government’s* burden under *Bruen* Step 2—there is no principled reason for the Fifth Circuit to rely on *Hollis*, which failed to hold the government to that burden. *See supra* pages 10-17. Alternatively, if the Court determines that common use “is not to be found solely by looking to the number of a certain weapon in private hands,” *Hanson*, 120 F.4th at 232–233, such a decision would constitute a *separate* intervening precedent abrogating *Hollis*, which counted only arms registered to civilians. *Compare Hollis*, 827 F.3d at 449 (relying on “an ATF report” indicating that “there are 175,977 pre-1986 civilian-owned machineguns in existence”) *with Wilson*, 174 F.4th at 475 (Willett, J., respecting the denial of rehearing en banc) (“[I]t 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.”) (citations omitted).

But there’s more. *Grant* and *Viramontes* used different tests for the *Bruen* Step 2 inquiry, indicating that the Court will provide guidance on how to conduct the analysis. In *Grant*, the Second Circuit “held that the Second Amendment permits

governments to ban ‘unusually dangerous weapons,’ but it did not say what makes a firearm unusually dangerous.” Pet. for Cert. 18, *Grant v. Higgins*, No. 25-566 (U.S. Nov. 7, 2025) (citation omitted). “It said only that this category ‘encompasses those arms that legislators determined were *unusually dangerous* because of their characteristics.” *Id.* (citation omitted) (emphasis in original). Instead of “dangerous and unusual,” the Seventh Circuit formulated a test that draws the constitutional line between “weapons and accessories designed for military or law-enforcement use, and weapons designed for personal use.” *Bevis*, 85 F.4th at 1202.

However this Court weighs in, there is a good chance that the fate of the AR-15 will be tied to that of the M16, its machinegun counterpart. This is because “the AR-15 is almost the same gun as the M16 machinegun.” *Id.* at 1195. Initially developed for “modern military combat” the AR-15 “has the same basic structure and operation, as well as near-equivalent muzzle velocity as its military counterpart, the M-16.” *Lamont*, 153 F.4th at 240 (cleaned up). While “[t]he primary difference between the M-16 and AR-15 is that the AR-15 does not have fully automatic firing capability,” the Second Circuit lacked “evidence that this distinguishing factor fundamentally transforms the AR-15 into a weapon that is substantially less dangerous than its military counterpart.” *Id.* at 241 (cleaned up). To the contrary, “[a]t ranges over 25 meters, rapid semiautomatic fire is superior to automatic fire in all measures: shots per target, trigger pulls per hit, and time to hit.” *Id.* (cleaned up).

The “similarity” between the two “only increases when we take into account how easy it is to modify the AR-15 by adding a bump stock” “or auto-sear to it, thereby

making it, in essence, a fully automatic weapon.” *Bevis*, 85 F.4th at 1196 (cleaned up). “By attaching a bump stock to a semiautomatic firearm, the shooter can simulate the experience of firing an automatic machinegun.” *Cargill v. Garland*, 57 F.4th 447, 474 (5th Cir. 2023) (en banc) (Ho, J., concurring)(citation omitted). “As a matter of lethality, bump stocks may well be no different from machineguns.” *Id.* at 479. *See also Kolbe*, 849 F.3d at 125 (“The difference between the fully automatic and semiautomatic versions of [the AR-15 and AK-47] is slight. That is, the automatic firing of all the ammunition in a large-capacity thirty-round magazine takes about two seconds, whereas a semiautomatic rifle can empty the same magazine in as little as five seconds.”) (cleaned up).

In fact, *Hollis*’s characterization of machineguns as “primarily weapons of war” with “no appropriate sporting use or use for personal protection,” *Hollis*, 827 F.3d at 448 (cleaned up), has also been made with respect to AR-15s, *see Bianchi*, 111 F.4th at 456 (“[T]he net effect of the AR-15’s military combat features is a capability for lethality. All this is a far cry from any notion of civilian self-defense.”) (cleaned up).

“Because it is indistinguishable from” the M16 “machinegun, the AR-15 may be treated in the same manner without offending the Second Amendment.” *Bevis*, 85 F.4th at 1197. Given this Court’s decision to review the constitutionality of regulations prohibiting the AR-15, it makes good sense to hold this petition pending the resolution of those cases. “Where intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the

lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation,” this Court may grant certiorari, vacate the judgment below, and remand for redetermination in light of the intervening event. *Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167–68 (1996). *See also Stutson v. United States*, 516 U.S. 163, 181 (1996) (Scalia, J., dissenting) (emphasis in original) (“We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted *in order that* (if appropriate) they may be ‘GVR’d’ when the case is decided.”).

CONCLUSION

Petitioner Jamaion Wilson respectfully asks this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit. In the alternative, he asks the Court to hold his petition pending the outcome in *Viramontes v. Cook County*, No. 25-238 (U.S. Jun. 30, 2026), and *Grant v. Higgins*, No. 25-566, (U.S. Jun. 30, 2026).

Respectfully submitted this 29th day of July, 2026.

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