No. 25-421

In The
Supreme Court of the United States

NATIONAL ASSOCIATION FOR GUN RIGHTS, *et al.*,

Petitioners,

v.

NED LAMONT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF CONNECTICUT, *et al.*,

Respondents.

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

SUPPLEMENTAL BRIEF FOR PETITIONERS

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March 17, 2026

CORPORATE DISCLOSURE STATEMENT

Petitioner National Association for Gun Rights has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

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SUPPLEMENTAL BRIEF FOR PETITIONERS

Petitioners respectfully submit this supplemental brief to bring to the Court's attention *Benson v. United States*, No. 23-CF-0514, 2026 WL 628772 (D.C. Mar. 5, 2026). On March 5, 2026, the D.C. Court of Appeals, the District's court of last resort, held that the District of Columbia's ban on firearm magazines capable of holding more than ten rounds of ammunition ("11+ magazines") violates the Second Amendment. In so holding, the court expressly parted ways with the decision below, the Ninth Circuit's decision in *Duncan v. Bonta*, 133 F.4th 852 (9th Cir. 2025), and the D.C. Circuit's decision in *Hanson v. District of Columbia*, 120 F.4th 223 (D.C. Cir. 2024), which had upheld the same D.C. law. *Benson* creates an irreconcilable split on the ultimate question presented and on every relevant underlying issue. This Court's review is now plainly warranted.

REASON TO GRANT THE PETITION

Respondents' central argument against certiorari was that every appellate court to consider magazine and assault-weapon bans since *New York State Rifle and Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), had upheld them. Opp. 12–15. That unanimity no longer exists. In a detailed opinion, the D.C. Court of Appeals struck down a magazine ban materially identical to Connecticut's, concluding that the District's "magazine capacity ban violates the Second Amendment" because "11+ magazines are unquestionably arms, they are in not only common but ubiquitous use for lawful purposes, and there is no history or tradition of blanket bans on arms in such

common use." *Benson*, 2026 WL 628772, at *2. *Compare* Pet. App. 60a (upholding Connecticut's ban), *with Benson*, 2026 WL 628772, at *14 (striking down D.C.'s ban).

Moreover, the conflict is not limited to ultimate outcomes. *Benson* diverged from the decision below and from the other circuits on each of the subsidiary analytical questions that have divided the lower courts since *Bruen*.

First, the lower courts remain divided on whether magazines are "Arms" within the meaning of the Second Amendment. The court below assumed, without deciding, that they are. Pet. App. 35a. The Ninth Circuit, by contrast, held that they are not, reasoning that a magazine is merely an "accessor[y] or accoutrement[]." *Duncan*, 133 F.4th at 867. *Benson* rejected that view, holding that "[m]agazines of all capacities are … arms covered by the plain text of the Second Amendment" because they plainly "facilitate armed self-defense." 2026 WL 628772, at *7. And the court identified what it called "[t]he fatal flaw" in the Ninth Circuit's reasoning: that, on its logic, nothing would prevent states from "banning magazines with any capacity to hold live rounds" or from "outlaw[ing] the semi-automatic firing mechanism" altogether. *Id.* at *8 & n.7.

Second, *Benson* deepens the acknowledged split over the role of common use under the *Bruen* framework. *See* Pet. 10–15. The court rejected the position—adopted by the Second, Fourth, and Tenth Circuits—that common use is part of a "threshold textual inquiry" into "whether the instrument at issue

is a bearable arm and receives any Second Amendment protection." 2026 WL 628772, at *8–9. Instead, the court situated common use at *Bruen*'s second step, holding that "when an instrument is in such common use that it is no longer 'unusual' and ranks among the most popular arms possessed by law-abiding citizens … then by that virtue alone it cannot be banned outright because there is no historical precedent for a ban on ubiquitous arms." *Id.* at *9. That holding is irreconcilable with the Second Circuit's conclusion that its precedents "do not shield popular weapons from review of their potentially unusually dangerous character." Pet. App. 30a.

Third, *Benson* widens the divide over what the common-use inquiry entails. As Petitioners have already asserted, "the First, Fourth, Seventh, and Ninth Circuits have held that the total number of Americans who have chosen an arm is irrelevant in determining whether the arm is in 'common use.'" Pet. 14 (citing cases). *Benson* expressly rejected that approach, reviewing the hundreds of millions of 11+ magazines in civilian hands and determining that they are in "common and ubiquitous use." 2026 WL 628772, at *9–11. And where some circuits have required proof that an arm is frequently *fired* in self-defense, *see, e.g.*, *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 45 (1st Cir. 2024); *Duncan*, 133 F.4th at 880 n.11, *Benson* held that *District of Columbia v. Heller*, 554 U.S. 570 (2008), "was not concerned with how often arms were actually fired in self-defense; it asked only whether they were 'typically *possessed* by law-abiding citizens for lawful purposes.'"

2026 WL 628772, at *12 (court's emphasis) (quoting *Heller*, 554 U.S. at 625).

Fourth, *Benson* squarely rejected the "unusually dangerous" standard the Second Circuit adopted. The court below held that "dangerous and unusual" is a "hendiadys" meaning "unusually dangerous," permitting bans on popular weapons based on perceived dangerousness alone. Pet. App. 30a–32a. *Benson* disagreed, holding that this Court's consistent use of the conjunctive "dangerous *and unusual*"—juxtaposed against arms "in common use"—means what it says: arms in ubiquitous use "are by definition not unusual" and "cannot be banned outright." 2026 WL 628772, at *9–11 (court's emphasis).

Fifth, *Benson* addressed the same categories of historical analogues on which the lower courts—including the Second Circuit—have relied to uphold similar bans. Like the court below, the D.C. government invoked nineteenth-century Bowie-knife regulations for comparison. *Id.* at *13; Pet. App. 55a. *Benson* found these insufficient because they restricted only the carry of such weapons, not their outright possession. 2026 WL 628772, at *13. Likewise, the court rejected the District's other proffered analogues—trap gun prohibitions and gunpowder storage laws—because the former targeted non-bearable oddities and the latter merely regulated *how* a substance was stored, not *whether it could be possessed at all*. *Id.* More broadly, the court concluded that the generic "historical tradition" invoked by the lower courts was "indistinguishable from the interests-balancing tests that the circuit courts

routinely applied after *Heller*" and that this Court "decisively repudiated in *Bruen*." *Id.* at *14. That characterization confirms what Petitioners have argued since the outset: the Second Circuit's post-*Bruen* "historical" analysis is functionally indistinguishable from the pre-*Bruen* intermediate scrutiny it applied in *New York State Rifle and Pistol Ass'n v. Cuomo*, 804 F.3d 242, 261–64 (2d Cir. 2015). Pet. 16–25.

Finally, although *Benson* involved a magazine ban, its reasoning applies with full force to Petitioners' separate challenge to Connecticut's ban on AR-15 style rifles. If outright bans on arms in common and ubiquitous use lack any historical support—and if the "unusually dangerous" rationale is impermissible interest balancing, *Benson*, 2026 WL 628772, at *14—then that same logic forecloses a ban on the most popular rifle in the country, owned by an estimated 20 to 30 million Americans and legal in 41 states. *See Snope v. Brown*, 145 S. Ct. 1534 (2025) (Kavanaugh, J., statement respecting the denial of certiorari); *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025) (describing the AR-15 as "the most popular rifle in the country").

CONCLUSION

Benson removes the foundation of Respondents' opposition. There is now an acknowledged and irreconcilable split between D.C.'s highest court and the Second, Ninth, Seventh, Fourth, and D.C. Circuits. The Court should grant the petition.

Respectfully submitted,

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