No. 25-198

# In the Supreme Court of the United States

VIRGINIA DUNCAN, *et al.*,

*Petitioners*,

v.

ROB BONTA, ATTORNEY GENERAL OF CALIFORNIA,

*Respondent.*

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

## BRIEF IN OPPOSITION


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## QUESTION PRESENTED

Whether California's restrictions on firearm magazines capable of holding more than 10 rounds of ammunition violate the Second Amendment or the Takings Clause of the Fifth Amendment.

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## STATEMENT

1. The Second Amendment provides that "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*, 554 U.S. 570 (2008), the Court held that the Framers "codified a *pre-existing* right," *id.* at 592, and that the need for "self-defense [was] central to" that right, *id.* at 628. The historical record also showed that, "[f]rom Blackstone through the 19th century[,] . . . commentators and courts [had] routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626.

In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the Court provided further guidance. It explained that courts should begin with "the Second Amendment's plain text" and ask whether it "covers an individual's conduct." *Id.* at 17. If the answer under that threshold inquiry is yes, the government can "justify [a] regulation" under the second part of *Bruen*'s framework by showing that it "is consistent with this Nation's historical tradition of firearm regulation." *Id.* The Court stressed that the government need only "identify a well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 30. To determine whether a law is "relevantly similar" to historical analogues, courts must ask whether it "impose[s] a comparable burden on the right of armed self-defense" that "is comparably justified." *Id.* at 29.

Last year, the Court clarified *Bruen*'s framework in *United States v. Rahimi*, 602 U.S. 680 (2024). "[S]ome courts [had] misunderstood [*Bruen*'s] methodology." *Id.* at 691. The Court made clear that *Bruen* was "not meant to suggest a law trapped in amber." *Id.* "[T]he

Second Amendment permits more than just those regulations identical to ones that could be found in 1791." *Id.* at 691-692. Even when "a challenged regulation does not precisely match its historical precursors, 'it still may be analogous enough to pass constitutional muster'" if it "comport[s] with the principles underlying the Second Amendment." *Id.* at 692; *see also id.* at 737 (Barrett, J., concurring) ("Despite its unqualified text, the Second Amendment is not absolute. It codified a pre-existing right, and pre-existing limits on that right are part and parcel of it.").

2. Under California law, residents who pass a background check may acquire as many approved firearms as they want, and as much ammunition as they want. *See* Pet. App. 4. Magazines holding up to 10 rounds of ammunition are legal and "widely available," and such magazines are "compatible with most, if not all, semiautomatic firearms." C.A. E.R. 2172. Law-abiding residents may also purchase and possess as many such magazines as they desire. *See* Pet. App. 4. But California Penal Code Section 32310 generally prohibits the possession of "large-capacity magazines," defined to include most ammunition-feeding devices that can accept more than 10 rounds. *See* Cal. Penal Code § 16740.

California modeled that restriction on a now-expired federal law that prohibited the possession and transfer of all "large capacity ammunition feeding devices" capable of holding more than 10 rounds. *See* Pub. L. No. 103-322, § 110103, 108 Stat. 1796, 1998-2000 (1994). Congress enacted that restriction in 1994 in response to a "confluence of events," C.A. E.R. 3665, including technological improvements in the 1970s and 1980s that "greatly reduced the risk of a misfeed"

and allowed for "relatively larger capacity magazines." C.A. E.R. 3808-3809.

Large-capacity magazines significantly increase the dangers posed by semiautomatic firearms by enabling shooters to rapidly fire consecutive rounds without pausing to reload. C.A. E.R. 2274. As a result, victims lose critical opportunities to flee, take cover, or intervene and confront the shooter. *Id.* Mass shooters who use large-capacity magazines inflict nearly three times as many deaths and injuries on average compared to those who do not. C.A. E.R. 1534-1545. Indeed, large-capacity magazines were used in nearly 80 percent of the mass shootings resulting in 10 or more fatalities since 1968—and 100 percent of the mass shootings resulting in 20 or more fatalities. C.A. E.R. 1694. In 2007, for example, the individual responsible for the Virginia Tech mass shooting carried 15-round magazines, which "enabled him to get off nearly 200 rounds" in a short period of time. C.A. E.R. 3539; *see also* C.A. E.R. 2977-2978, 2980 (describing the role of large-capacity magazines in mass shootings committed in Las Vegas, Newtown, and Sutherland Springs).

California initially prohibited the manufacture, importation, and sale of large-capacity magazines. Cal. Penal Code § 12020(a)(2) (2000). After the federal ban expired in 2004, *see* 108 Stat. 2000, California barred the purchase and receipt of large-capacity magazines. Pet. App. 8. "[E]nforcement of th[ose] laws was 'very difficult,'" however, because law enforcement officers could not easily distinguish between grandfathered large-capacity magazines that could be lawfully possessed and large-capacity magazines that had been unlawfully acquired. *Id.*; *see* C.A. E.R. 2173.

In 2016, California voters enacted Proposition 63 to address that problem. Prop. 63 § 2(12); *see also*

2016 Cal. Stat. ch. 58 § 1. Among other reforms, Proposition 63 made it unlawful to possess large-capacity magazines. Cal. Penal Code § 32310(c). The law offers several options to individuals who possess large-capacity magazines after June 2017 to come into compliance. They may permanently modify the magazines to hold fewer rounds, a relatively simple process that requires no specialized tools or skills. *See, e.g.*, C.A. E.R. 4032 (discussing "countless articles and videos online on how to modify [large-capacity magazines] to hold 10 rounds"). Individuals may also turn prohibited magazines over to law enforcement officials or transfer them out of the State—for instance, by selling the magazines to individuals residing in other States. Cal. Penal Code § 32310(d); *see also id.* § 16740.

3. Petitioners are a firearms advocacy organization and California residents who possess or wish to possess large-capacity magazines. Pet. 8. They filed this lawsuit in 2017, shortly before the possession restrictions established by Proposition 63 took effect. Pet. App. 10. Petitioners alleged that California's prohibition on large-capacity magazines—Section 32310 of the California Penal Code—violates the Second Amendment and the Takings Clause of the Fifth Amendment. *Id.* Petitioners sought a declaration that Section 32310 is unconstitutional on its face, as well as a permanent injunction barring the State from enforcing the law "in its entirety." C.A. E.R. 4059.

There were several rounds of proceedings in the lower courts before this Court's decision in *Bruen*; those proceedings culminated in an en banc panel of the court of appeals rejecting petitioners' Second and Fifth Amendment claims and remanding for entry of judgment in the State's favor. Pet. App. 398-437. The court "assum[ed] . . . without deciding" that Section

32310 "implicates the Second Amendment," *id.* at 415, and upheld the law under the standard of scrutiny applied by many lower courts before *Bruen*, *see id.* at 426-433. The court also held that Section 32310 does not effect a taking. "[N]othing in the case law suggests that any time a state adds to its list of contraband—for example, by adding a drug to its schedule of controlled substances—it must pay all owners for the newly proscribed item." *Id.* at 435. Following the en banc panel's decision, this Court granted certiorari, vacated, and remanded for further proceedings in light of *Bruen*. *See Duncan v. Bonta*, 142 S. Ct. 2895 (2022). The court of appeals thereafter remanded the case to the district court. Pet. App. 305.

After considering supplemental briefing and evidence on remand, the district court entered summary judgment in petitioners' favor and enjoined the State from enforcing Section 32310. Pet. App. 304-396. In addressing *Bruen*'s historical inquiry, the district court expressed the view that "[a] historical twin [to Section 32310] is not unimaginable." *Id.* at 379. "It could have been the case," the court suggested, "that the early states prohibited having large capacity gunpowder sacks or . . . carrying more than 10 lead bullets." *Id.* The court emphasized that "[t]here were no such restrictions." *Id.* The court also reviewed the State's historical evidence and concluded that no historical analogues were "relevantly similar" to Section 32310. *Id.*; *see id.* at 379-396.

On appeal, the prior en banc panel elected to keep the case, *see* Pet. App. 255 (citing Ninth Cir. Gen. Order 3.6(b)), and later reversed, *id.* at 1-54. The court "affirm[ed] [its] earlier rejection" of petitioners' takings claim. *Id.* at 13. "*Bruen* had no effect" on the

court's prior analysis, and no "other intervening decisions aided [petitioners'] position." *Id.* at 12. Turning to the Second Amendment, the court started by "examin[ing] . . . the plain text of the Second Amendment." *Id.* at 15 (quoting *Bruen*, 597 U.S. at 32). The court held that large-capacity magazines are "accoutrements," not "arms" within the Amendment's original meaning. *Id.* at 17-19. That conclusion did "not end [the court's] analysis," however, because the Second Amendment protects "accessories that are necessary for the ordinary operation of a protected weapon." *Id.* at 19-20. For example, a "ban on ammunition" or "firearm triggers" would implicate the Second Amendment, even though they are not weapons in and of themselves. *Id.* at 18. But the court did not view California's restrictions on large-capacity magazines as comparable because "firearms that accept magazines operate as intended when equipped with magazines containing ten or fewer rounds." *Id.* at 20.

The court also held that petitioners' "argument fares no better" under the second part of *Bruen*'s framework. Pet. App. 23. The State provided evidence demonstrating that Section 32310 "falls within the Nation's tradition of regulating weapons." *Id.* Specifically, it pointed to historical restrictions on especially dangerous weapons and components of weapons. *See id.* at 34-39. Reviewing that evidence, the court concluded that, "since the Founding era, legislatures have enacted laws to protect innocent persons from especially dangerous uses of weapons once those perils have become clear." *Id.* at 39.

In the court's view, Section 32310 is "'relevantly similar'" to those historical laws "in both 'why and how it burdens the Second Amendment right.'" Pet. App. 40 (quoting *Rahimi*, 602 U.S. at 698). As to "why," the

court explained that "historical laws and California's law share the same justification": "to protect innocent persons from harm caused by especially dangerous uses of weapons," Pet. App. 44, and "from infrequent but devastating harm caused or exacerbated by a component necessary to the firing of a firearm," *id.* at 41. "[L]arge-capacity magazines exacerbate the harm" from mass shootings by allowing a shooter to continue firing without "paus[ing] to reload." *Id.* at 41, 43.

As to "how," the court emphasized that Section 32310 imposes a minimal burden on the ability of individuals to engage in armed self-defense—a burden that is comparable to that imposed by historical limits on highly dangerous weapons and accessories. *See, e.g.*, Pet. App. 43, 45, 50. "The only effect of California's ban on large-capacity magazines is that a person may fire a semi-automatic weapon no more than ten times without a short pause to change magazines (or reload the original magazine or fire a different weapon)." *Id.* at 45. Section 32310 "imposes no limit whatsoever on the number of magazines a person may own, the number of bullets a person may own, or the number of firearms a person may own." *Id.* at 46. "The law also imposes no limit on the number of rounds a person may fire or the number of firearms a person may fire." *Id.*

Four judges dissented. Pet. App. 70-150. In their view, "neither the text of the Second Amendment nor our country's historical tradition of firearm regulation supports California's magazine ban." *Id.* at 76 (lead

dissent of Bumatay, J.); *see also id.* at 124-150 (separate dissent of VanDyke, J.); *id.* at 70-71 (separate dissent of Nelson, J.).[1]

## ARGUMENT

Petitioners ask the Court to consider whether restrictions on large-capacity magazines violate the Second Amendment. But just a few months ago, this Court denied two similar petitions challenging restrictions on large-capacity-magazines. It denied a third last year. Nothing material has changed in the interim. Petitioners identify no genuine conflict in the lower courts. And the court of appeals here correctly applied this Court's recent guidance in *Bruen* and *Rahimi*, including its instruction to carefully examine both the constitutional text and "this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. Consistent with a longstanding tradition of regulating especially dangerous weapons—from crossbows to machineguns—the State restricted large-capacity magazines. As the record showed, those magazines facilitate mass shootings by allowing shooters to fire "20, 30, or even 100 rounds" without "paus[ing] between shots." Pet. App. 2. Petitioners' takings claim is also meritless and unworthy of review.

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[1] Petitioners moved for stay of the court of appeals' mandate as applied to magazines already in the possession of California residents. C.A. Dkt. 103. The State did not oppose, and the request was granted. C.A. Dkt. 104. Due to similar relief granted at prior stages of the case, Section 32310 has not yet taken effect as to those magazines. Throughout the pendency of this litigation, however, Section 32310's restrictions on purchasing or otherwise acquiring new magazines have remained in effect.

## I. PETITIONERS' SECOND AMENDMENT CLAIM DOES NOT WARRANT REVIEW

1. The principal question presented by petitioners is whether California's restrictions on large-capacity magazines violate the Second Amendment. But the Court recently denied three petitions raising materially indistinguishable questions concerning large-capacity magazine laws. *Ocean State Tactical v. Rhode Island*, 145 S. Ct. 2771 (2025) (No. 24-131); *Hanson v. District of Columbia*, 145 S. Ct. 2778 (2025) (No. 24-936); *Harrel v. Raoul*, 144 S. Ct. 2491 (2024) (No. 23-877). Petitioners provide no sensible reason to depart from that course and grant review here.[2]

Petitioners emphasize that the petitions denied in *Ocean State*, *Hanson*, and *Harrel* "ar[ose] in a preliminary posture," whereas this case arises from a final judgment. Pet. 35. But this Court does not ordinarily grant review of an issue merely because a court issues a final judgment addressing it, especially when the same issue remains pending in other cases in the lower courts. Both the en banc Third Circuit and a panel of the Seventh Circuit recently heard oral argument in appeals from final judgments considering Second Amendment challenges to laws restricting large-capacity magazines. *See Ass'n of N.J. Rifle and Pistol Clubs, Inc. v. Attorney General*, No. 24-2415 (3rd Cir.) (argued Oct. 15, 2025); *Barnett v. Raoul*, No. 24-3060 (7th Cir.) (consolidated appeals argued Sept. 22, 2025). And cases presenting similar challenges are

[2] Two of those cases—*Ocean State* and *Hanson*—were denied months after the court of appeals issued its en banc decision in this case. *See, e.g.*, Reply Br. 2, *Hanson*, No. 24-936 (May 19, 2025) (bringing the decision in this case to the Court's attention).

proceeding apace in the district courts.[3] The legal reasoning and record development from those cases—including the historical record critical under *Bruen*'s inquiry—will "assist this Court's ultimate decisionmaking" if it later concludes that the Second Amendment question presented in this petition warrants review. *Snope v. Brown*, 145 S. Ct. 1534 (2025) (Kavanaugh, J., respecting the denial of certiorari).

According to petitioners, "countless Californians will become criminals overnight" if the Court denies certiorari and Section 32310 takes full effect. Pet. 15; *see supra* p. 8 n.1. But petitioners do not substantiate that claim. California law provides multiple options for owners of large-capacity magazines to come into compliance, including by selling or modifying the magazines. *See, e.g.*, Pet. App. 434. And there are only two general ways that California residents could have "lawfully acquired" (Pet. 15) large-capacity magazines in the first place: by purchasing them before Congress enacted the federal ban over 30 years ago, *supra* p. 2, or by acquiring them during a brief period in 2019 when the district court in this case enjoined Section 32310 and six days elapsed before the court issued a stay, *see* Pet. App. 856-857. Petitioners provide no estimate of the number of magazines in the first category. And anyone who obtained large-capacity magazines during the six-day period in 2019 should

[3] *See, e.g.*, *Ocean State Tactical v. Rhode Island*, No. 22-246 (D.R.I. Aug. 8, 2025) (order setting schedule for expert disclosures and dispositive motion briefing); *Hanson v. District of Columbia*, No. 22-2256 (D.D.C. July 1, 2025) (order setting briefing schedule for partial motion to dismiss); *Capen v. Campbell*, No. 22-cv-11431 Dkt. 82 (D. Mass. Aug. 8, 2025) (order setting schedule for expert disclosures and summary judgment briefing).

have appreciated the risk that they would not be able to keep them in an unmodified, noncompliant form.

The Court would also benefit from awaiting further development in the lower courts of Second Amendment doctrine more generally. In the past few years, the Court has issued two landmark decisions clarifying the framework for Second Amendment claims. *Supra* pp. 1-2. Courts across the country are currently weighing how to apply that guidance across a wide range of contexts. And the Court just recently granted certiorari in a separate case presenting a Second Amendment question. *See Wolford v. Lopez*, No. 24-1046 (Oct. 3, 2025). The Court does not usually "rush to answer" questions concerning the effect of recent precedent "in the absence of a pronounced conflict among the circuits," *Spears v. United States*, 555 U.S. 261, 270 (2009) (Roberts, C.J., dissenting), or evidence that lower courts are "struggl[ing] with" the Court's decisions, *e.g.*, *Rahimi*, 602 U.S. at 739 (Barrett, J., concurring). Neither factor is present here. As detailed below, petitioners have not identified any genuine circuit conflict or any other reason to think courts are struggling to apply the Second Amendment to restrictions on large-capacity magazines.

2. Petitioners assert that the lower courts have divided on three questions related to *Bruen*'s framework. They are wrong on each count.

Petitioners first contend that the decision below "deepens a circuit split over whether—and if so, which—magazines are 'Arms.'" Pet. 16-18. But beyond the decision below, *see* Pet. App. 15-22, petitioners identify only one appellate ruling that has reached a definitive conclusion on that issue. *See Washington v. Gator's Custom Guns, Inc.*, 568 P.3d 278, 282 (Wash.

2025), *pet. pending* No. 25-153. Like the court of appeals here, *supra* p. 6, the Washington high court held that large-capacity magazines are "accessories," not "'Arms.'" 568 P.3d at 283-284. The court then evaluated—again, much like the court of appeals here—whether large-capacity magazines are nonetheless "necessary to give the right to possess a firearm for self-defense meaning." *Id.* at 285. It concluded that they are not: "without the right to purchase [large-capacity magazines], an individual may still own, possess, operate, repair, and maintain proficiency with firearms, as [large-capacity magazines] are not an 'integral component' of firearms." *Id.*

In two of the four remaining decisions cited by petitioners, one of which pre-dated *Bruen*, the courts of appeals merely "assume[d] without deciding" that large-capacity magazines are "entitled to Second Amendment protection." *Ass'n of N.J. Rifle and Pistol Clubs, Inc. v. Attorney General*, 910 F.3d 106, 117 (3d Cir. 2018); *see Ocean State Tactical v. Rhode Island*, 95 F.4th 38, 43 (1st Cir. 2024) (same).[4] And in the other cases invoked by petitioners, courts took a "preliminary look at the subject" in a preliminary-injunction posture. *Bevis v. City of Naperville*, 85 F.4th 1175, 1197 (7th Cir. 2023); *see Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024). Given that "Second Amendment challenges to gun regulations often require more evidence than is presented in the early phases of litigation," *Bevis*, 85 F.4th at 1197,

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[4] *See also Nat'l Ass'n of Gun Rights v. Lamont*, ___ F.4th ___, 2025 WL 2423599, at *13 (2d Cir. Aug. 22, 2025) ("assum[ing] without deciding" that large-capacity magazines are "bearable arms"), *pet. pending* No. 25-421.

those courts stressed that they remain open to revisiting their provisional determinations on a more developed record, *see id.*; *Hanson*, 120 F.4th at 230.

Petitioners next allege two conflicts related to this Court's references in *Bruen* and *Heller* to "weapons 'in common use' today for self-defense." *E.g.*, *Bruen*, 597 U.S. at 32. According to petitioners, the lower courts are divided as to whether "common use" should be evaluated at *Bruen*'s threshold step, or as part of its historical inquiry. Pet. 18-19; *see supra* p. 1. Petitioners believe that the inquiry "belongs in the historical analysis." Pet. App. 16 n.2. But in the only case that petitioners cite in support of that view, *see United States v. Bridges*, 150 F.4th 517, 525-526 (6th Cir. 2025), the issue was undisputed by the parties.[5] And the resolution of that question would make no difference to the outcome here because the court of appeals gave petitioners "the benefit of the doubt and . . . resolve[d] [the 'common use' inquiry] in the historical analysis." Pet. App. 16 n.2.

Finally, petitioners contend that the lower courts disagree about the substance of the "common use" inquiry. Pet. 19. But the cases invoked by petitioners do not bear that out. In *Hanson*, 120 F.4th at 232-233, the D.C. Circuit merely "presume[d] for present purposes" in light of "disputed facts in the record" that large-capacity magazines are "in common use for self-defense." In *Bridges*, the Sixth Circuit uncontroversially held that machineguns are not in "common use," *see id.* at 526-528, even though there are at least 175,977 machineguns in lawful possession, *id.* at 526.

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[5] *See, e.g.*, Br. of United States at 23-36 (6th Cir. No. 24-5874), 2024 WL 5379131; Br. of Jacquan Bridges at 17-24, (6th Cir. No. 24-5874), 2024 WL 4626918.

Consistent with *Bridges*, the decision below rejected petitioners' sweeping contention that "the Second Amendment never permits a legislature to ban [a firearm or accessory], provided that enough people purchased [it] . . . before a legislature could act." Pet. App. 52. Other courts have reached the same conclusion. *See, e.g.*, *Bianchi*, 111 F.4th at 459-461; *Bevis*, 85 F.4th at 1198-1199; *Ocean State*, 95 F.4th at 51.

3. The decision below also comports with *Heller*, *Bruen*, and *Rahimi*. Consistent with *Bruen*'s instructions, the court of appeals began with "the plain text of the Second Amendment." Pet. App. 15 (quoting *Bruen*, 597 U.S. at 32). As the court recognized, "'[t]he 18th century meaning of "Arms" is no different from the meaning today.'" Pet. App. 17 (quoting *Heller*, 554 U.S. at 581) (brackets omitted). And in the 18th century, "a clear distinction was recognized between weapons themselves, referred to as 'arms,' and accessories of weaponry, referred to as 'accoutrements.'" Pet. App. 18. Applying that distinction here, the court of appeals correctly held that large-capacity magazines are not materially dissimilar from cartridge cases or boxes historically "included in the category *accoutrements*." C.A. E.R. 1563; *see* Pet. App. 18-19.

Petitioners do not contest that 18th century authorities distinguished between "arms" and "accoutrements." *See* Pet. 20-22. Instead, they argue that the court of appeals placed large-capacity magazines on the wrong side of the line. *Id.* But petitioners' disagreement with the resolution of that narrow question does not warrant certiorari. As petitioners acknowledge, *see* Pet. 22-23, the arms/accoutrements distinction "d[id] not end" the court of appeals' analysis. Pet. App. 19. The court went on to "consider whether the possession of large-capacity magazines

falls within [a] corollary right to possess accessories that are necessary for the ordinary operation of a protected weapon." *Id.* at 19-20. And it convincingly explained that "a *large-capacity* magazine . . . is not necessary to operate any firearm." *Id.* at 20. "[T]he record contains no example of a firearm that *requires* a large-capacity magazine to function normally." *Id.*

The court of appeals also "assum[ed] that [petitioners'] proposed conduct falls within the plain text of the Second Amendment" and conducted a historical inquiry at the second part of *Bruen*'s framework. Pet. App. 23. On that front, too, the court's reasoning was persuasive and consistent with *Heller*, *Bruen*, and *Rahimi*. In each of those cases, the Court referred to a tradition of restricting "dangerous and unusual" weapons, *e.g.*, *Heller*, 554 U.S. at 627, meaning weapons that are "'unusually dangerous,'" *Nat'l Ass'n for Gun Rts.*, ___ F.4th ___, 2025 WL 2423599, at *11; *see also Bridges*, 150 F.4th at 529 (Nalbandian, J., concurring in part and concurring in the judgment). Similarly here, the court of appeals explained that, "before the Founding and continuing throughout the Nation's history, legislatures have enacted laws to protect innocent persons from especially dangerous uses of weapons," Pet. App. 34, and "component[s] . . . of a firearm" that threaten "infrequent but devastating harm," *id.* at 41; *see id.* at 34-51.

The historical examples described by the court of appeals include pre-Founding English laws prohibiting the carrying of lances, as well as 18th and 19th-century restrictions on clubs, daggers, dirks, "trap guns," gunpowder, Bowie knives, slungshots, and other unusually dangerous weapons or components. Pet. App. 35-38. Many early restrictions focused on weapons other than guns because the limits of firearm

technology during that era made firearms far less dangerous and attractive to criminals. *See, e.g.*, C.A. E.R. 1603-1604. But as technology shifted and especially dangerous firearms became available, "legislatures throughout the Nation acted to restrict . . . a range of weapons," including "sawed-off shotguns," ""Tommy guns,"" and "automatic weapons." Pet. App. 38 n.6.

Section 32310 is "'relevantly similar'" to those historical restrictions. Pet. App. 40 (quoting *Rahimi*, 602 U.S. at 698). It prevents the use of an especially dangerous device—here, a device that "cause[s] or exacerbate[s] the harm from mass shootings." Pet. App. 44; *Hanson*, 120 F.4th at 239; *Ocean State*, 95 F.4th at 49-50. And it accomplishes that objective without materially burdening the right of self-defense. It "prohibit[s] a specific, particularly dangerous use of a weapon," but "imposes no limit whatsoever on the number of magazines a person may own, the number of bullets a person may own, or the number of firearms a person may own." Pet. App. 46. "With respect to armed self-defense, the only effect of California's ban . . . is that a person may fire . . . no more than ten times without a short pause to change magazines (or reload the original magazine or fire a different weapon)." *Id.* at 45. And as the record demonstrates, individuals typically fire far fewer than 10 shots when using firearms in self defense. C.A. E.R. 1519, 1526.[6]

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[6] The court of appeals considered the historical tradition of prohibiting especially dangerous weapons at the second part of the *Bruen* framework. *See, e.g.*, Pet. App. 23-46. But because "'dangerous and unusual weapons'" are excluded from the "definition" of "Arms," *id.* at 278 (Bumatay, J., dissenting), the court could have rejected petitioners' challenge on "dangerous and unusual" grounds under *Bruen*'s threshold inquiry.

In petitioners' view, all of the historical evidence considered by the court of appeals is irrelevant because many people own large-capacity magazines today in States where they are lawful. *See* Pet. 23-24. If a weapon or device is in "common use," petitioners argue, "'that should be the end of the analysis.'" Pet. App. 51. But that numbers-only approach would substitute statistical data for the careful examination of "historical tradition" commanded by *Bruen* and *Rahimi*. *E.g.*, *Bruen*, 597 U.S. at 17. It would also empower one State or a group of States to dictate firearms policy for the rest of the country. For example, "if Congress chose to let the ban on machine guns expire," and a group of States legalized those weapons, Pet. App. 53, they could flood onto the market and become "common," Pet. 24. In that scenario, "a state-law ban on machine guns [would] suddenly change from constitutional to unconstitutional[.]" Pet. App. 53. That result would be "startling," *Heller*, 554 U.S. at 624, "absurd," *Friedman v. City of Highland Park*, 784 F.3d 406, 409 (7th Cir. 2015) (Easterbrook, J.), and contrary to our system of federalism, *see McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010) (plurality).

As a backup argument, petitioners criticize (Pet. 24-30) the analogies drawn by the court of appeals between Section 32310 and historical limits on especially dangerous weapons. *Supra* pp. 6, 15-16. But "neither *Bruen* nor *Rahimi* demands 'a historical twin,'" Pet. 29, especially in cases "implicating unprecedented societal concerns or dramatic technological changes," *Bruen*, 597 U.S. at 27.[7] As Justice Barrett explained

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[7] In addressing Section 32310's justification and burden, *see, e.g.*, Pet. App. 40-51, the court of appeals did not conduct impermissible "'interest balancing,'" Pet. 14. It followed *Bruen*'s instruction (continued…)

in *Rahimi*, "imposing a test that demands overly specific analogues has serious problems." 602 U.S. at 739 (Barrett, J., concurring). "It forces 21st-century regulations to follow late-18th-century policy choices." *Id.* "And it assumes that founding-era legislatures maximally exercised their power to regulate, thereby adopting a 'use it or lose it' view of legislative authority." *Id.* at 739-740. "Such assumptions are flawed, and originalism does not require them." *Id.* at 740.

## II. PETITIONERS' TAKINGS CLAUSE CLAIM DOES NOT WARRANT REVIEW

Petitioners' Takings Clause claim also provides no basis to grant certiorari. Petitioners' theory appears to be that the government effects a taking for purposes of the Fifth and Fourteenth Amendments *any* time that it requires owners of personal property to dispose of, transfer, or modify their property. *See* Pet. 30-33. In petitioners' view, the regulatory justification for the challenged law is completely irrelevant. *See id.*

A few concrete illustrations suffice to show why that theory is untenable. For example, when a State "add[s] a drug to its schedule of controlled substances" and bans sale or possession of the substance because of newly discovered health risks, it need not "pay all owners for the newly proscribed item." Pet. App. 435. Indeed, this Court considered and "consistently rejected" similar takings claims arising from "Prohibition-era regulations of previously acquired stock." *Holliday Amusement Co. of Charleston Inc. v. South Carolina*, 493 F.3d 404, 410 (4th Cir. 2007) (citing,

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to compare the challenged law to historical analogues and "consider whether [they] 'impose a comparable *burden* . . . and whether that burden is comparably *justified*.'" *E.g.*, Pet. App. 23 (quoting *Bruen*, 597 U.S. at 24) (emphasis added).

*e.g.*, *James Everard's Breweries v. Day*, 265 U.S. 545, 563 (1924)). The Court also rejected a takings claim brought by the owners of trees infected with a pest when the government ordered the trees destroyed to prevent the spread of disease. *See Miller v. Schoene*, 276 U.S. 272, 279-280 (1928). "'To require compensation in all such circumstances would effectively compel the government to regulate by *purchase*.'" *Holliday*, 493 F.3d at 410 (Wilkinson, J.); *see id.* at 409-411 (rejecting takings claim by owner of video-poker machines after South Carolina banned them).

Petitioners' theory of takings liability is not materially stronger than the challenges rejected in those cases. If anything, it is materially *weaker*. California's law is not "confiscatory." Pet. 15. The State has not ordered owners of large-capacity magazines to destroy the magazines or give them to the government. *Cf. Horne v. Dep't of Agric.*, 576 U.S. 350 (2015). Owners may instead "sell the magazine to a firearms dealer," "remove the magazine to another state (where, depending on that state's laws, the owner may lawfully possess it or sell it to a third party)," or "modify the magazine so that it accommodates ten rounds or fewer." Pet. App. 434. It is not difficult to modify a magazine to bring it into compliance. *See, e.g.*, C.A. E.R. 4032. And as this Court has long recognized, owners of personal property should "expect[] [its] uses . . . [to] be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1027 (1992).

Unsurprisingly, then, every court to have considered a like challenge to a similar regulation has rejected it. *See, e.g.*, *Ass'n of N.J. Rifle and Pistol Clubs*, 910 F.3d at 124-125 (large-capacity magazine ban);

*Ocean State Tactical*, 95 F.4th at 52-53 (same); *see also Md. Shall Issue, Inc. v. Hogan*, 963 F.3d 356, 364-367 (4th Cir. 2020) (rejecting takings challenge to bump stock possession ban), *cert. denied*, 141 S. Ct. 2595 (2021) (No. 20-855). And the handful of cases invoked by petitioners (Pet. 30-32) do not support their far-reaching theory. In *Loretto v. Teleprompter CATV Corp.*, 458 U.S. 419, 426 (1982), the Court addressed a "permanent physical occupation" of real property. In *Horne*, 576 U.S. at 361, the Court considered a "clear physical taking" requiring the transfer of "[t]itle to . . . raisins" "from growers to the Government." And in *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013), the Court blocked an "[e]xtortionate demand[] for property in the land-use permitting context." None of those cases comes remotely close to suggesting that the government effects a taking "whenever it concludes that certain items are too dangerous to society for persons to possess without a modest modification that leaves intact the basic functionality of the item." Pet. App. 437.

At a minimum, petitioners have failed to show that they are entitled to facial relief and a permanent injunction blocking Section 32310 in all applications. Much like the standard for facial relief under the Second Amendment, *see Rahimi*, 602 U.S. at 693 (citing *United States v. Salerno*, 481 U.S. 739 (1987)), the standard for facial relief under the Takings Clause is demanding. *See, e.g.*, *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 320 (2002). And there is "no basis to enjoin the government's action effecting a taking" where "an adequate provision for obtaining just compensation exists." *Knick v. Twp. of Scott*, 588 U.S. 180, 201 (2019). California law provides a just compensation remedy through an inverse condemnation suit in state court. *See, e.g.*, *Sutfin v.*

*State*, 261 Cal. App. 2d 50, 53 (1968). Petitioners have never challenged that remedy as unavailable or inadequate. It would be far too late to do so for the first time before this Court.

## CONCLUSION

The petition for a writ of certiorari should be denied.

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