FROM *MILLER* TO "ASSAULT WEAPON BANS"

WHAT THE SUPREME COURT HAS SAID ABOUT THE RIGHT TO ARMS, AND WHAT IT MEANS FOR BANS ON COMMON SEMIAUTOMATIC RIFLES

A plain-English guide to the Supreme Court's Second Amendment cases, each read with one question in mind: what does its reasoning mean for a ban on a type of firearm? On Wednesday, December 2, 2026, the Court hears two challenges to so-called "assault weapon" bans, from Cook County, Illinois, and Connecticut. **Both are SAF cases:** the Second Amendment Foundation is a petitioner in each.[1,2]



Supreme Court of the United States. Photo: Architect of the Capitol (public domain).

THE QUESTION BEFORE THE COURT

"Whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles."

Khaya v. Cook County (No. 25-238, from Illinois) and ***Grant v. Higgins*** (No. 25-566, from Connecticut). Review granted June 30, 2026; consolidated for one hour of argument on Dec. 2.[3,4,5] SAF is a petitioner in both.

KEY IDEAS FOUR THREADS THAT RUN THROUGH THE CASES

COMMON USE

Since *Miller* (1939), and especially since *Heller*, the Court has asked whether an arm is the kind ordinary people possess. *Heller* (2008) protects arms "typically possessed by law-abiding citizens for lawful purposes."[6]

DANGEROUS AND UNUSUAL

Heller tied common use to an old tradition of prohibiting the carrying of "dangerous and unusual weapons."

TEXT, HISTORY, TRADITION

Since *Bruen* (2022): if the Amendment's words cover the conduct, the government must show its law fits "this Nation's historical tradition of firearm regulation."[7]

NO BALANCING TEST

Courts may not uphold a gun law just because judges think its benefits outweigh its burdens. *Bruen* ended the "interest balancing" approach many courts had used.

TIMELINE 150 YEARS OF SUPREME COURT ARMS CASES

1876 — ***Cruikshank*** Right not "granted by the Constitution": it predates it

1886–94 — ***Presser***; ***Miller v. Texas*** Second Amendment limits only the federal government

1939 — ***U.S. v. Miller*** Starts the "common use" idea

2008–10 — ***Heller***; ***McDonald*** Individual right, applied to states

2016 — ***Caetano*** Reaffirms ***Heller***: common use isn't measured by 1791

2022–25 — ***Bruen***; ***Rahimi*** Text, history, and tradition test; plus three statutory cases

2026 — ***Hemani***; ***Wolford*** Then **Dec. 2: *Khaya v. Cook County*** and ***Grant*** argued

How to read the case cards: **2A** decided under the Second Amendment **STATUTE** decided under a federal statute, not the Constitution



THE NINE JUSTICES WHO WILL HEAR THE ASSAULT WEAPON BAN CASES

Seated, from left: Justice Sonia Sotomayor, Justice Clarence Thomas, Chief Justice John Roberts, Justice Samuel Alito, Justice Elena Kagan. Standing: Justice Amy Coney Barrett, Justice Neil Gorsuch, Justice Brett Kavanaugh, Justice Ketanji Brown Jackson. All nine took part in this year's *Hemani* and *Wolford* decisions.

Official 2022 group photograph by Fred Schilling, Collection of the Supreme Court (public domain).

For most of the 1800s, the Court said little about the Second Amendment, and nothing about which arms it protects. But its passing remarks treated the right as an individual one, even while holding that the Amendment restrained only the federal government. That changed in 2010 (see *McDonald*, page 3). Nineteenth-century scholarly commentary was clear that the Second Amendment protected an individual right, as we covered in a prior factsheet.[8]

Dred Scott v. Sandford

60 U.S. 393 (1857) · Taney, C.J. · 7–2



Roger B. Taney, c. 1849. Mathew Brady (public domain).

HELD: Black Americans could not be citizens. The ruling is infamous, and the Fourteenth Amendment overturned it.

THE ARMS REMARK: Explaining why he refused to recognize Black citizens, Chief Justice Taney listed rights that citizenship would bring, including the right

> "to keep and carry arms wherever they went."[9]

It is a passing remark, not a holding. But it shows that in 1857, the right to arms was assumed to be an individual right of citizens.

United States v. Cruikshank

92 U.S. 542 (1876) · Waite, C.J.



Aftermath of the Colfax Massacre, *Harper's Weekly*, 1873 (public domain).

BACKGROUND: Federal charges against men involved in the 1873 Colfax Massacre in Louisiana, including for interfering with Black citizens' right to bear arms.

> "This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence."[10]

In other words, the Court treated the right as pre-existing, a natural right the Constitution protects rather than creates. **BUT IT HELD** that the Amendment restrained only Congress, so the arms counts failed and the convictions could not stand, leaving freedmen to depend on states that would not protect them.

Presser v. Illinois

116 U.S. 252 (1886) · Woods, J.

HELD: Illinois could ban armed parades by private military companies not authorized by law. The Second Amendment "is a limitation only upon the power of Congress and the National government, and not upon that of the States."[11]

BUT NOTE: Apart from the Second Amendment, states "cannot … prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security." The people's own arms were the nation's reserve. The Court also rejected his claim that the Fourteenth Amendment's Privileges or Immunities Clause protected a right to drill and parade with arms as an unauthorized military company.

Miller v. Texas

153 U.S. 535 (1894) · Brown, J.

HELD: Writ of error dismissed. The Court noted that the Second and Fourth Amendments "operate only upon the Federal power," and that his Fourteenth Amendment claim failed because "it was not set up in the trial court." In one sentence it added that the Texas law did not abridge the privileges or immunities of U.S. citizens as the *Slaughter-House Cases* defined them.[12]

So the Court never asked whether the Due Process Clause applies the right to the states. *McDonald* answered yes in 2010.

The takeaway: The early Court spoke of an individual right that existed before the Constitution, but it would not enforce that right against states. None of these cases asked which *arms* are protected. That question arrived in 1939.

1939 THE FIRST "TYPE OF ARM" CASE

United States v. Miller

307 U.S. 174 (1939) · McReynolds, J. · unanimous (Douglas, J., not participating) 2A



Justice James C. McReynolds, author, c. 1913. Harris & Ewing (public domain).



A Stevens shotgun, shown for illustration. Miller's was a double-barrel 12-gauge Stevens cut below 18 inches. Photo: Surv1v4l1st (public domain).

THE FACTS: Two men were charged under the 1934 National Firearms Act with transporting an unregistered "double barrel 12-gauge Stevens shotgun having a barrel less than 18 inches in length." The trial court threw out the charge on Second Amendment grounds. Only the government argued in the Supreme Court.

HELD: Reversed and remanded for further proceedings. With no evidence before it, the Court would not presume such a shotgun had

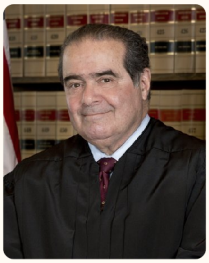
> "some reasonable relationship to the preservation or efficiency of a well regulated militia." Militiamen "were expected to appear bearing arms supplied by themselves and of the kind in common use at the time."[13]

***Miller* is where "common use" comes from.** It examined the *weapon*, not whether the defendants were militiamen. *Heller* later read *Miller* "to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes," and called it a "startling reading" to protect only weapons useful in warfare.[6]

From SAF's amicus brief in *Robinson v. United States* (2025): upholding limits on short-barreled rifles and shotguns because they are "weapons of war" "clashes with Miller, which said exactly those sorts of civilian-owned arms useful for militia service are what is primarily protected."[14]

District of Columbia v. Heller

554 U.S. 570 (2008) · Scalia, J. · 5-4 **2A**



Justice Antonin Scalia, author. Collection of the Supreme Court (public domain).

HELD: The Second Amendment protects an individual right to keep and bear arms, unconnected with militia service. D.C.'s handgun ban, and its rule that home guns be kept disassembled or locked, were struck down. Handguns are "the quintessential self-defense weapon," and "a complete prohibition of their use is invalid."[6]

THE ARMS TEST: The right "extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." Quoting *Miller*, the protected arms are those "in common use at the time," a limit "fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'"

THE M-16 PASSAGE: "It may be objected that if weapons that are most useful in military service—M-16 rifles and the like—may be banned, then the Second Amendment right is completely detached from the prefatory clause." The Court answered the objection but never decided whether machine guns may be banned. Expect this sentence at argument: Cook County reads it as approving bans on military-style rifles.

DISSENT: Justice Breyer proposed weighing burdens against benefits. The majority refused: "A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all."

WHY IT MATTERS: D.C. argued its handgun ban was fine because rifles and shotguns were still allowed. The Court said it didn't matter: Americans had chosen handguns. SAF makes the same argument for the AR-15, the country's most popular rifle. The Solicitor General argues the M-16 is different because it can fire automatically, which semiautomatic rifles cannot.[15]

From SAF's amicus brief in *Adamiak v. United States* (2026): "The role of 'common use,' properly understood, arises only within that historical tradition analysis, as Heller made clear."[16] In other words, common use answers the history question; it is not a hurdle plaintiffs must clear before history is considered.

McDonald v. City of Chicago

561 U.S. 742 (2010) · Alito, J. (plurality in part) · 5-4 **2A**

HELD (5-4): The Second Amendment binds states and cities. Four Justices (a plurality) relied on the Due Process Clause: it "incorporates the Second Amendment right recognized in Heller." Justice Thomas, concurring, relied on the Privileges or Immunities Clause. The Court reversed the ruling against the challengers to Chicago's handgun ban. **An SAF case:** SAF was a petitioner alongside the Illinois State Rifle Association and four Chicago residents. Alan Gura argued for the petitioners; Paul Clement also argued, for the NRA in support.[17,18]

The plurality: the right is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." The Court also recounted how Southern states disarmed freed slaves after the Civil War.

Caetano v. Massachusetts

577 U.S. 411 (2016) · unanimous, unsigned **2A**



A handheld stun gun. Photo: Zaereth, CC BY-SA 4.0.

THE FACTS: Jaime Caetano carried a stun gun to protect herself from an abusive ex-boyfriend and was convicted under a state ban.

HELD: Massachusetts's reasoning contradicted *Heller*, which covers arms "not in existence at the time of the founding" and rejected the idea "that only those weapons useful in warfare are protected." Judgment vacated.[19]

CONCURRENCE (Alito, J., joined by Thomas, J.): "[T]his is a conjunctive test: A weapon may not be banned unless it is both dangerous and unusual." And "the relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes." And "[h]undreds of thousands of Tasers and stun guns have been sold to private citizens." That was enough.

The concurrence treated a few hundred thousand sold as common. The petitioners' merits brief (SAF is a petitioner) cites a trade group's (NSSF's) estimate that more than 32 million "AR-15, AK-47, and comparable rifles" were produced for the American market from 1990 to 2023.[20]



"Roughly five million Americans own AR-style semiautomatic rifles. … The overwhelming majority of citizens who own and use such rifles do so for lawful purposes, including self-defense and target shooting. … Under our precedents, that is all that is needed for citizens to have a right under the Second Amendment to keep such weapons."

Justice Clarence Thomas, joined by Justice Antonin Scalia, dissenting from the denial of review in *Friedman v. City of Highland Park* (2015).[21]

GLOSSARY TERMS YOU'LL HEAR

Bearable arms: Weapons a person can carry. *Heller*: all are covered at first glance, modern ones included.

Common use: Arms "typically possessed by law-abiding citizens for lawful purposes." From *Miller* via *Heller*.

Dangerous and unusual: The historical category of arms that may be restricted. Every gun is dangerous; the question is what makes one unusual.

Text, history, and tradition: *Bruen*'s test. If the text covers the conduct, the government must prove a historical tradition supports its law.

Historical analogue: An older law "relevantly similar" to the modern one in "how and why" it burdens the right. A "twin" is not required.

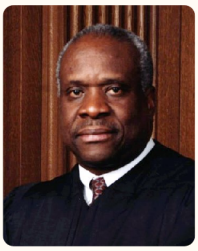
Level of generality: How broadly a court describes a historical rule. Too broad, and almost any modern law fits (see *Rahimi*, page 4).

Levels of scrutiny / interest balancing: Weighing a law's benefits against its burdens. Rejected in *Heller* and *Bruen* (page 4).

Semiautomatic vs. automatic: Semiautomatic: one shot per trigger pull. Automatic (a "machinegun"): continuous fire from one pull.

N.Y. State Rifle & Pistol Ass'n v. Bruen

597 U.S. 1 (2022) · Thomas, J. · 6–3 **2A**



Justice Clarence Thomas, author. Collection of the Supreme Court (public domain).

HELD: New York could not require a special "proper cause" before issuing a permit to carry a handgun in public. The right extends outside the home.[7]

THE TEST:

> "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation."

The lower courts' two-step approach, which ended in a balancing test, was "one step too many." Modern laws need a "historical analogue," not a "historical twin," judged by "how and why" each law burdens armed self-defense. Cases involving "dramatic technological changes may require a more nuanced approach." And on handguns: "Whatever the likelihood that handguns were considered 'dangerous and unusual' during the colonial period, they are indisputably in 'common use' for self-defense today."

DISSENT: Justice Breyer, joined by Justices Sotomayor and Kagan, argued courts should "consider the serious dangers and consequences of gun violence."

WHY IT MATTERS: *Bruen* sets the rules for Dec. 2. The burden is on Cook County and Connecticut. Arguments that a rifle ban promotes public safety are not enough by themselves. The handgun passage shows an arm's status can change: what was once called "dangerous and unusual" is protected once it is in common use. The big fight is over which historical laws are close enough. Bans on carrying concealed Bowie knives or setting trap guns are a long way from banning a rifle in the home.

From SAF's amicus brief in *Duncan v. Bonta* (2025): "[T]he proper analogue to modern firearm magazines are the commonly owned repeating arms of the 19th century, not bowie knives or poorly stored gunpowder."[22]

United States v. Rahimi

602 U.S. 680 (2024) · Roberts, C.J. · 8–1 **2A**



Chief Justice John Roberts, author (public domain).

HELD: "An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment."[23] Justice Thomas dissented.

The Court said its precedents "were not meant to suggest a law trapped in amber." The question is whether a law is "consistent with the principles that underpin our regulatory tradition." Concurring, Justice Barrett warned courts not to "read a principle at such a high level of generality that it waters down the right."

"Not trapped in amber" cuts both ways: arms evolve, too, as *Heller* said. Expect Cook County to cite *Rahimi*'s "principles" and SAF to cite Justice Barrett's warning about high levels of generality.

STATUTE THREE STATUTORY CASES WORTH KNOWING

These cases interpret federal laws, not the Second Amendment. They decide nothing about what the Constitution protects, but each touches on hardware.

Garland v. Cargill

602 U.S. 406 (2024) · Thomas, J. · 6–3

A bump stock does not make a semiautomatic rifle a "machinegun," because it does not fire more than one shot "by a single function of the trigger," and not "automatically." ATF exceeded its authority.[24] Its explanation of how semiautomatic fire works underscores the line federal law draws between semiautomatic rifles and machine guns.

Bondi v. VanDerStok

604 U.S. 458 (2025) · Gorsuch, J. · 7–2

ATF's rule treating some parts kits and unfinished frames or receivers as "firearms" is not, on its face, inconsistent with the Gun Control Act. Justices Thomas and Alito dissented.[25] No constitutional ruling: the Court read the statute's text closely, as in *Cargill*, though here ATF won.

Smith & Wesson v. Mexico

605 U.S. 280 (2025) · Kagan, J. · 9–0

A federal law protecting the firearms industry from such suits (PLCAA) barred Mexico's lawsuit against U.S. gun makers. In an opinion by Justice Kagan for all nine Justices, the Court said the rifles Mexico called "military style" are "both widely legal and bought by many ordinary consumers. (The AR–15 is the most popular rifle in the country. …)"[26] It is a factual remark, not a holding.



THE RIFLE AT THE CENTER OF THE CASE

Cook County and Connecticut ban the AR-15 (top) and many similar semiautomatic rifles. In 2025, a unanimous Court called the AR-15 "the most popular rifle in the country," in a case about a different law.[26] The question on Dec. 2 is whether the Constitution protects it.

From top: an AR-15 (DPMS), an SKS, and a Ruger 10/22. Photo: BigBattles, Wikimedia Commons (public domain).

United States v. Hemani

608 U.S. 772 (June 18, 2026) · Gorsuch, J. · 9-0 in the judgment **2A**



Justice Neil Gorsuch, author (public domain).

HELD: The government could not constitutionally prosecute a man for having a gun at home just because he regularly used marijuana. Old laws on "habitual drunkards" targeted people so impaired they could not manage their affairs, usually after some legal process. They were not close enough analogues.[27] The ruling is narrow: it does not address addicts, people who are presently intoxicated, or felons.

Giving the government "broad power to designate any group as dangerous and thereby disqualify its members from having a gun" would risk allowing it to "quickly swallow" the Second Amendment (quoting Justice Barrett, then a circuit judge).

From SAF's amicus brief in *Hemani* (2026): Old laws barred carrying arms while drunk, but the right "was never denied to people who occasionally partook in such drugs—unless they were carrying arms while actively intoxicated." And on hardware: "when it comes to which types of arms may not be banned, the American people themselves confer constitutional protection through their choices."[28]

Wolford v. Lopez

609 U.S. 185 (June 25, 2026) · Alito, J. · 6-3 **2A**



Justice Samuel Alito, author (public domain).

HELD: Hawaii could not ban permit holders from carrying on private property open to the public, like stores, unless the owner expressly consents.[29] Justices Kagan, Jackson, and Sotomayor dissented.

The first step asks whether a law concerns "any form of 'Arms,' *i. e.*, any weapon customarily used for offensive or defensive purposes." The Amendment "cannot give way to 'the spirit of Aloha' … any more than it can yield to the spirit of the Big Apple (Bruen) or the Windy City (McDonald)." A lone 1893 law "sheds little if any light," and a Black Codes law was a "tainted artifact."

From SAF's amicus brief in *Wolford* (2025): "a mere two laws, particularly when they are separated by almost a century, cannot form the backbone of any historical tradition."[30]

DEC. 2 WHAT TO WATCH AT THE DEC. 2 ARGUMENT

1. **Is common use "a numbers game"?** SAF says the AR-15's popularity for lawful purposes settles the case, as handguns' popularity did in *Heller*. Cook County says relying on popularity is "circular": an arm becomes protected just because it wasn't banned first.[31] Listen for whether any Justice thinks the Court needs to resolve that here.
2. **Where does common use fit?** Is it part of what counts as an "Arm" (the text), or part of the history? *Wolford* described the text as covering "any form of 'Arms.'"
3. **"Dangerous and unusual."** Is it one test (as Justices Alito and Thomas read it in *Caetano*) or two? Expect debate over whether the old sources said "and" or "or."
4. **The M-16 sentence.** Will the Justices read *Heller*'s aside as approving bans on military-style rifles, or, as the Solicitor General argues, as setting apart the M-16 because it can fire automatically?[15]
5. **How close must history be?** Watch for Bowie knives and trap guns, and whether *Rahimi*'s "principles" or *Hemani*'s close-analogue reasoning wins out.

Support our work. The Second Amendment Foundation is a 501(c)(3) dedicated to education, research, and legal action on the right to keep and bear arms, including as a petitioner in both assault weapon ban cases the Court hears on Dec. 2.

Donate at saf.org/donate

Prepared by Kostas Moros, Director of Legal Research & Education, Second Amendment Foundation.

1. Petition for certiorari, *Khaya v. Cook County*, No. 25-238, at ii (parties: SAF a petitioner)
2. Petition for certiorari, *Grant*, No. 25-566, at ii (parties: SAF a petitioner)
3. Docket, *Khaya v. Cook County*, No. 25-238 (caption: Christopher Khaya, et al., Petitioners v. Cook County, Illinois, et al.)
4. Questions presented, *Khaya v. Cook County*, No. 25-238; also No. 25-566
5. December 2026 argument calendar
6. *District of Columbia v. Heller*, 554 U.S. 570, 582, 622, 624–25, 627, 629, 634 (2008)
7. *NYSRPA v. Bruen*, 597 U.S. 1, 10, 17, 19, 27–30, 33, 47, 70–71 (2022); *id.* at 83–84 (Breyer, J., dissenting)
8. SAF Factsheet, *The Second Amendment Was Always Understood to be an Individual Right* (Oct. 2026)
9. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 417 (1857)
10. *United States v. Cruikshank*, 92 U.S. 542, 553, 559 (1876)
11. *Presser v. Illinois*, 116 U.S. 252, 265–68 (1886)
12. *Miller v. Texas*, 153 U.S. 535, 538–39 (1894)
13. *United States v. Miller*, 307 U.S. 174, 175, 178–79, 183 (1939)
14. SAF et al. amicus brief, *Robinson v. United States*, No. 25-5150, at 17 n.10
15. Brief for the United States as Amicus Curiae, Nos. 25-238 & 25-566, at 28
16. SAF et al. amicus brief, *Adamiak v. United States*, No. 25-1190, at 15
17. *McDonald v. City of Chicago*, 561 U.S. 742, 747 (2010) (Alan Gura argued the cause for petitioners; Paul D. Clement argued for the NRA, respondents in support of petitioners); *id.* at 752 & n.4 (SAF and ISRA); *id.* at 771–76, 780, 791 (plurality opinion)
18. Petition for certiorari, *McDonald*, No. 08-1521 (petitioners incl. SAF and ISRA; Alan Gura, counsel of record)
19. *Caetano v. Massachusetts*, 577 U.S. 411, 411–12 (2016) (per curiam); *id.* at 412–13, 417–18, 420 (Alito, J., concurring in the judgment)
20. Brief of the Petitioners, Nos. 25-238 & 25-566, at 13 (citing NSSF, *NSSF Releases Most Recent Firearm Production Figures* (Jan. 15, 2026))
21. *Friedman v. City of Highland Park*, No. 15-133, 577 U.S. 1039 (2015) (Thomas, J., dissenting from denial of certiorari) (slip op., at 5)
22. SAF et al. amicus brief, *Duncan v. Bonta*, No. 25-198, at 13
23. *United States v. Rahimi*, 602 U.S. 680, 691–92, 702 (2024); *id.* at 740 (Barrett, J., concurring)
24. *Garland v. Cargill*, 602 U.S. 406, 415 (2024)
25. *Bondi v. VanDerStok*, 604 U.S. 458, 467–84 (2025)
26. *Smith & Wesson Brands v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025)
27. *United States v. Hemani*, 608 U.S. 772, 779, 783–87, 790–91, 793–94 (2026) (preliminary print)
28. SAF et al. amicus brief, *United States v. Hemani*, No. 24-1234, at 3
29. *Wolford v. Lopez*, 609 U.S. 185, 195, 206, 211–12 (2026) (preliminary print)
30. SAF et al. amicus brief, *Wolford v. Lopez*, No. 24-1046, at 11
31. Brief for Respondents Cook County et al. (corrected), Nos. 25-238 & 25-566, at 49 (quoting *Friedman v. City of Highland Park*, 784 F.3d 406, 409 (7th Cir. 2015))

Images: Wikimedia Commons. Supreme Court building (Architect of the Capitol), Taney (Mathew Brady), Colfax engraving (*Harper's Weekly*, 1873), Justice McReynolds (Harris & Ewing, in *The World's Work*, 1913), and Justices' official portraits (Collection of the Supreme Court): public domain. Stun gun: Zaereth, CC BY-SA 4.0. Shotgun (Surv1v4l1st) and rifles (BigBattles): public domain.