No. 25-24

In the Supreme Court of the United States

JOSHUA CLAY MCCOY, ET AL.,
Petitioners,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, ET AL.,
Respondents.

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

BRIEF OF *AMICI CURIAE* STATE OF WEST VIRGINIA AND 18 OTHER STATES IN SUPPORT OF PETITIONERS

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*[1]

Watching the Second Amendment get applied in lower courts might induce a profound sense of whiplash.

It started about two decades ago. *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), restored the Second Amendment to first-class status. The Second Amendment was once more one of the "fundamental rights necessary to our system of ordered liberty." *McDonald* v. *Chicago*, 561 U.S. 742, 778 (2010). But lower courts then spent the next few years undoing that work; they adopted a policy-driven, interest-balancing approach to the right, effectively coalescing around the *Heller* dissent. So this Court stepped in again "to halt [this] judicial underenforcement." Leo Bernabei, Bruen *As* Heller*: Text, History, and Tradition in the Lower Courts*, 92 FORDHAM L. REV. ONLINE 1, 3 (2024) (cleaned up). Yet *New York State Rifle & Pistol Ass'n* v. *Bruen*, 597 U.S. 1 (2022), didn't necessarily bring text, history, and tradition back to the fore, either. Some courts continued to dodge history in favor of preferred interests. On the other hand, others overread *Bruen* to require a perfect historical analogue to any modern law. So the Court charged once more into the breach about a year ago, clarifying that judicial policymaking in the Second Amendment space is dead—but Second Amendment law also isn't "trapped in amber." *United States* v. *Rahimi*, 602 U.S. 680, 691 (2024).

Still, judging from the decision at issue here, it might require another dose or two of clarity from this Court

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[1] Under Supreme Court Rule 37.2(a), *amici* timely notified counsel of record of their intent to file this brief.

before the treatment takes hold. A divided Fourth Circuit panel upheld a federal statute banning the sale of handguns to 18- to 20-year-olds. 18 U.S.C. § 922(b)(1). In doing so, the court veered into some of that old forbidden territory. Its historical analysis was suspect. Its opinion carries a flavor of policy. And a de facto categorical ban was said to be just fine. Very little of that sounds like the Second Amendment post-*Bruen*, even with a *Rahimi* gloss. So this Court needs to remind lower courts once more of how to do this.

The Court should grant the petition. The States here have a strong interest in seeing the Second Amendment applied as it was originally intended. And there's still plenty to say about the scope of the Second Amendment right, especially when it comes to the rights of young Americans. With another gentle reminder from this Court, the sense of whiplash below might finally begin to subside.

SUMMARY OF ARGUMENT

I. Lower courts have improperly sought to separate the right to possess firearms from the right to purchase them. Here, the Fourth Circuit rejected compelling evidence that sub-21-year-old militiamen were legally compelled to possess firearms by suggesting—rather implausibly—that this responsibility shed no light on their right to purchase. But the two rights must be read together. Divorcing them invites mischief; governments could implement de facto bans without ever purporting to limit "possession."

II. Lower courts have also stretched too far in their hunt for historical analogues. Here, the Fourth Circuit looked to non-firearms-related legal principles to justify firearms regulation. The Court has demanded a closer fit

than that. Non-firearms-related regulations are not likely to have an underlying "how" or "why" that would track a modern-day gun-control statute, so courts shouldn't use them as historical justification.

III. Lower courts have also continued engaging in the sort of policy-oriented interest-balancing that this Court has said can't be done. Slippery slope arguments and gut feelings about "minors" (really, young adults) permeated the decision below. Interest-balancing is sneaking into other decisions, too. Though it's unfortunate a reminder is necessary, the Court should grant the petition (or summarily reverse) lest this interest-balancing continue indefinitely.

IV. Lower courts have split over whether statutes controlling young adults' ability to buy or bear firearms violate the Second Amendment. Three federal circuits say they do; three say they don't. The split has left the States confused—a problematic situation given that about 20 or so States have minimum age laws of their own. The Court should grant the petition and hold that young adults have the constitutional right to purchase firearms, handguns included. Historical evidence supports that right. And nothing supports holding off on saying so.

REASONS FOR GRANTING THE PETITION

I. Some Lower Courts Are Improperly Decoupling The Right To Bear Arms From The Right To Purchase Them.

Lower courts have inappropriately affirmed firearms restrictions by separating the right to *possess* arms from the right to *purchase* them. This case is one example. The Court should grant the petition to rectify that mistake.

A. The decision below shows how a misguided separation can play out. The majority acknowledged that an early American law—the Militia Act of 1792—expressly required a militiaman (who might often be under 21) to "provide himself" with a firearm if called to serve. Pet.App.17a. That law should have made the outcome clear: "The militia has the right to keep and bear arms; 18-to-20-year-olds are part of the militia; [t]herefore, 18-to-20-year-olds have the right to keep and bear arms." David B. Kopel & Joseph G.S. Greenlee, *The Second Amendment Rights of Young Adults*, 43 S. ILL. U. L.J. 495, 499 (2019).

But although the Militia Act contemplated that a 19-year-old might lawfully wield a gun, it did not show that he could "*purchase* [one] for himself." Pet.App.17a. Instead, the majority thought, the young militiaman might just borrow a gun from his parents. Pet.App.17a; accord Saul Cornell, *"Infants" and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record*, 40 YALE L. & POL'Y REV. INTER ALIA 1, 8 (2021) (arguing that individuals under 21 had no Second Amendment rights at the Founding because they "were entirely subsumed under the authority of their parents"); but see, *e.g.*, 2 ANNALS OF CONG. 1851 (1790) (statement of Rep. Josiah Parker) (documenting a founding-era lawmaker's concerns that the provision requiring "every man" to "'provide himself' with military accoutrements would be found impracticable … [as] there are many persons who are so poor" as to be unable to purchase weapons commercially").

Given that this historical evidence was purportedly silent on purchase specifically, the Fourth Circuit dismissed it out of hand. No matter that a young adult

could concededly wield a gun; he evidently had no historical right to exchange cash for one.

B. Some other courts have gone even further than the Fourth Circuit's faux historical line-drawing between purchase and possession, declaring instead that the Second Amendment is not meant to protect the purchase of firearms at all. See, *e.g.*, *Rocky Mountain Gun Owners* v. *Polis*, 121 F.4th 96, 127 (10th Cir. 2024) (holding that a Colorado state age-restriction law governing purchases did not implicate the right to keep and bear arms); *McRorey* v. *Garland*, 99 F.4th 831, 838 (5th Cir. 2024) (saying that the Second Amendment "does not include purchase" "on its face"); *Ortega* v. *Lujan Grisham*, 741 F. Supp. 3d 1027, 1073 (D.N.M. 2024) ("[T]he Second Amendment was not drafted to protect the right to purchase arms."); *Vt. Fed'n of Sportsmen's Clubs* v. *Birmingham*, 741 F. Supp. 3d 172, 209 (D. Vt. 2024) ("[A]cquiring a firearm through a commercial transaction on-demand … is not covered by the plain text of the Second Amendment.").

For a policy-oriented jurist looking to uphold a firearms regulation, this method has obvious appeal. Divorcing the right to purchase from the right to possess in this way provides more opportunity for encumbrances on the right. Even if a government can't justify an outright ban on possession, it might sneak through the back door by way of onerous purchase restrictions.

But another set of courts has seen things differently, holding that the right to purchase walks together with the right to possess. See, *e.g.*, *Reese* v. *ATF*, 127 F.4th 583, 590 (5th Cir. 2025) ("[T]he right to 'keep and bear arms' surely implies the right to purchase them."); *Gazzola* v. *Hochul*, 88 F.4th 186, 195 (2d Cir. 2023) (per curiam) ("A State cannot circumvent [Second Amendment doctrine]

by banning outright the sale or transfer of common-use weapons and necessary ammunition."); *Teixeira* v. *County of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc) (quoting *Ezell* v. *City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)) ("The core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms."), *abrogated on other grounds by United States* v. *Vlha*, 142 F.4th 1194, 1197 (9th Cir. 2025); *State* v. *Rumpff*, 308 A.3d 169, 175 (Del. Super. Ct. 2023) ("[T]his amendment confers an individual right to purchase and possess firearms." (cleaned up)). Even the Ninth Circuit—a court not recently seen as one racing to recognize the breadth of the Second Amendment right—has recently reaffirmed that "the Second Amendment does protect against meaningful constraints on the acquisition of firearms through purchase." *Nguyen* v. *Bonta*, 140 F.4th 1237, 1243 (9th Cir. 2025). And even long before the *Heller* reset, courts had recognized that purchase and possession are intertwined. See, *e.g.*, *Andrews* v. *State*, 50 Tenn. 165, 178 (1871) ("The right to keep arms[] necessarily involves the right to purchase them."). All these courts see that "the Second Amendment protects 'necessary corollaries' to keeping and bearing arms," purchase included. *United States* v. *Knipp*, 138 F.4th 429, 434 (6th Cir. 2025).

C. The approach favored in the Fourth Circuit and courts like it inappropriately divorces the right to bear arms from the means to obtain it.

Buying a gun is the principal way through which someone might be expected to possess one. As the Fourth Circuit once recognized itself, "other options are not always readily available to many individuals." *Hirschfeld* v. *ATF*, 5 F.4th 407, 417 (4th Cir. 2021), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021). And "[t]he law has long

recognized that the authorization of an act also authorizes a necessary predicate act." *Luis* v. *United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment) (cleaned up) (quoting A. SCALIA & B. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 192 (2012)). "Without [] peripheral rights the specific rights would be less secure." *Griswold* v. *Connecticut*, 381 U.S. 479, 482-83 (1965). "[T]he same rationale underpins other cases striking down restrictions on [buying and] selling, but not possessing, certain goods necessary to exercise constitutional rights." *Radich* v. *Guerrero*, No. 1:14-CV-00020, 2016 WL 1212437, at *7 (D. N. Mar. I. Mar. 28, 2016) (collecting authorities). That's because "[t]here comes a point … at which the regulation of action intimately and unavoidably connected with [a right] is a regulation of [the right] itself." *Hill* v. *Colorado*, 530 U.S. 703, 745 (2000) (Scalia, J., dissenting).

And the right to buy firearms may have independent status beyond its role as an ancillary or predicate right. Strong historical evidence suggests that the Founders thought the core Second Amendment right "necessarily extended to commerce in firearms." *Teixeira* v. *County of Alameda*, 822 F.3d 1047 (9th Cir. 2016), *rev'd on other grounds*, 873 F.3d 670, 673 (9th Cir. 2017) (en banc).

When a court instead treats purchase as some separate right (either at the first or second step of *Bruen*'s analysis), a 20-year-old's ability to lawfully exercise the right to possess turns on the happenstance of having lawful access to someone else's firearm—or the ability to convince someone older to step in, buy a firearm, and gift it over. See Pet.App.36a (Quattlebaum, J., dissenting). The Second Amendment right becomes too conditional to be meaningful. *Reese*, 127 F.4th at 590. Governments are empowered to undermine "the *most fundamental*

prerequisite of legal gun ownership—that of simple acquisition." *Ill. Ass'n of Firearms Retailers* v. *City of Chicago*, 961 F. Supp. 2d 928, 938 (N.D. Ill. 2014).

* * *

The Court should grant certiorari to reaffirm the tie between purchase and possession. When the historical evidence confirms that people—here, young adults—have the right to possess arms, they should also enjoy the concomitant right to purchase those arms.

II. Some Lower Courts Are Improperly Using Non-Firearms Regulations As Historical Support For Modern Firearms Restrictions.

The Fourth Circuit majority also looked to the wrong body of law in upholding the purchase restriction here. "[W]hen a firearm regulation is challenged under the Second Amendment, the Government must show that the restriction 'is consistent with the Nation's historical tradition of *firearm regulation*.'" *Rahimi*, 602 U.S. at 689 (quoting *Bruen*, 597 U.S. at 24) (emphasis added). A court must "determin[e] whether a historical regulation is a proper analogue for a distinctly modern firearm regulation" because the two are "relevantly similar." *Bruen*, 597 U.S. at 28-29. But here, the Fourth Circuit tried to draw an analogy to a legal concept that's not a firearm regulation at all, let alone an analogous one.

The Fourth Circuit relied on the infancy doctrine, which allowed individuals under 21 to void most contracts. Pet.App.10a. It speculated that most firearms purchases at the Founding were made on credit rather than with physical currency or bartering, so it was unlikely sellers sold to minors who could later void the credit contract. Pet.App.12a. Without confirmed evidence, the majority

found that this risk of refusal may have effectively precluded infants from buying firearms. Pet.App.12a; cf. *United States* v. *Diaz*, 116 F.4th 458, 467-70 (5th Cir. 2024) (analogizing general asset forfeiture and capital punishment laws to modern restrictions of felon possession of firearms).

Examining common-law contract doctrine in this (suspect) way shouldn't suffice, even if that doctrine tangentially affected individuals' purchasing power when it comes to firearms. A general contract law recognizing founding-era societal norms—like men under 21 being "infants"—isn't "relevantly similar" to a federal ban on the purchase of firearms. *Rahimi*, 602 U.S. at 692. Any restriction on firearms is merely an incidental byproduct, not a deliberate expression of the scope of the natural right to bear arms. And this Court "has not instructed [lower courts] to consider an untethered 'historical tradition'—the tradition must be of firearm regulation." *Nat'l Rifle Ass'n* v. *Bondi*, 133 F.4th 1108, 1165 (11th Cir. 2025) (en banc) (Branch, J., dissenting). At bottom, the infancy doctrine "is not a firearm regulation at all; it is a contract-law doctrine" that is "a far cry from the historical regulations that th[is] Court has considered as proper analogues." *Id.*

To this point, this Court hasn't found that a generalized law like the infancy doctrine provides a historical analogue to modern firearms regulation. See *Hunter* v. *Cortland Hous. Auth.*, 714 F. Supp. 3d 46, 59 (N.D.N.Y. 2024) (noting the absence of cases analogizing "firearm regulations at issue … to a *non-firearm* regulation"). Quite the opposite.

In *Rahimi*, for instance, the Court found a historical analogue in surety laws that "targeted the misuse of firearms." *Rahimi*, 602 U.S. at 696. And it found another

in "going armed" laws, which prohibited "arming oneself to the Terror of the People." *Id.* at 697 (cleaned up). Those laws punished offenders by disarming them, *id.*, so the Court found that a present-day statute disarming an individual subject to a domestic violence restraining order consistent with a tradition of "disarm[ing] individuals who present a credible threat to the physical safety of others." *Id.* at 700.

Likewise, in *Bruen*, no law existed broadly prohibiting the carrying of handguns publicly for self-defense during the founding era. So this Court deemed unconstitutional a New York law banning the public carry of a common firearm absent special "proper cause." *Bruen*, 597 U.S. at 38-39. Note the common thread: the Court was hunting for a law aimed specifically at firearms. See also, *e.g.*, *Miller* v. *Bonta*, 699 F. Supp. 3d 956, 992 (S.D. Cal. 2023) (rejecting an effort to analogize a firearm regulation to "historic gunpowder storage laws" that were "*fire* safety regulations—nothing more").

This distinction between historical firearms and non-firearms regulations makes sense. Lower courts must examine the "how" and "why" behind the historical laws before drawing analogies. *Bruen*, 597 U.S. at 29. A non-firearm-related doctrine will most often *not* carry the same "how" and "why" as a firearm-regulation, save perhaps in the most generalized sense. Generalities aren't enough, though. Framing history and tradition around generalized notions would "allow a [purportedly] specific tradition to swallow the general scope of the Second Amendment right." *United States* v. *Garcia*, 115 F.4th 1002, 1020 (9th Cir. 2024) (VanDyke, J., dissental); see, *e.g.*, *Rahimi*, 602 U.S. at 701-702 (rejecting an argument that "[ir]responsible" persons could be disarmed).

So "judges should "first do their best to find the narrowest level of generality that history and tradition support," and then, if needed, "widen their search incrementally until they discover an acceptable level of generality," without "wholly abandon[ing] any principles or supporting factors." Marquan Robertson, *Levels of Generality & Originalism: Proposing a New Way Forward as Originalism Continues to Expand*, 49 MITCHELL HAMLINE L. REV. 27, 52 (2023). If that's done earnestly, then historical non-firearms regulations will perhaps never provide a good-fit analogue for present-day firearms regulations. That prevents mushy norms or ill-defined principles from erasing the right entirely. *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

And indeed, that's how all this plays out when it comes to the infancy doctrine. As to "how," the infancy doctrine "incidentally reached contracts for firearms because it reached contracts by minors for *any* non-necessity." *NRA*, 133 F.4th at 1165 (Branch, J., dissenting). As to "why," the doctrine served paternalistic purposes. It was primarily intended to prevent young adults from digging themselves into financial holes. See 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 451 (Oxford, Clarendon Press 1765) (contract voidability for infants is a privilege meant "to secure them from hurting themselves by their own improvident acts"). In contrast, the Gun Control Act was enacted to "reduce gun crimes," based on the belief that stricter gun laws lead to less gun crime. S. Rep. No. 90-1097, 1968 U.S.C.C.A.N. 2112, 2114, 2197, 2247, 2253-54 (statement of Sen. Tydings). It eschewed an incidental approach, instead adopting a direct ban. But by calling all this close enough, the Fourth Circuit allowed a de facto categorical ban.

The material distinctions between infancy laws and purchasing limits can only be forgiven if a court embraces an extreme generality—something like, "young people are different from older people"—and applies it to any law drawing a line based on age. That approach would in turn "eviscerate[] the text of the Second Amendment." Joel Alicea, Bruen *Was Right*, 174 U. PA. L. REV. (forthcoming 2025) (manuscript at 37).

The Court should grant the petition to remind lower courts that they must search the historical record for firearms regulations aimed at addressing similar problems in similar manners as their modern analogues.

III. Some Lower Courts Are Still Improperly Engaging In Interest-Balancing.

Bruen also conclusively rejected the sort of "means-end scrutiny" or interest-balancing that so many courts had favored for a long time. *Bruen*, 597 U.S. at 19. It reaffirmed that Second Amendment analysis must be "rooted in the Second Amendment's text, as informed by history." *Id.* But far too often, courts are still taking loose readings of history or reinterpreted bits of this Court's past opinions and using them to patch over a lack of history for a given restriction. See, *e.g.*, *United States* v. *Gould*, No. 24-4192, 2025 WL 2110902, at *5 (4th Cir. July 29, 2025) (reciting how "*Bruen* jettisoned an interest-balancing test" but then emphasizing in the next sentence that courts must leave room for "modern problems"). It's policy-oriented interest-balancing in disguise.

Make no mistake: the Fourth Circuit majority embraced interest-balancing. In a slippery slope argument (further developed in a separate concurrence), the court declared any argument for young-adult rights "sweeping," "unlimited," and not based on "any

reasonable interpretation of the Constitution." Pet.App.20a. Without engaging with the historical evidence as to younger ages, the majority fretted that 14-year-olds would be permitted to buy if it ruled for the challengers. Pet.App.20a. And it emphasized that many places had adopted such laws in the modern era, so the court would not be striking down an "outlier." Pet.App.20a. Instead, the majority declared itself unwilling to upset a "legislative compromise." Pet.App.21a; contrast with *Bruen*, 597 U.S. at 26 ("[W]hile … judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here.")

Notice how none of these considerations really engage with history or text. Instead, they bespeak a skepticism that the Framers really meant what they meant. But the lower court seemed comfortable offering these extra-textual-and-historical rationales anyway, so long as it sprinkled in a few references to history while offering its perspective. See Pet.App.20a (discussing modern gun-control measures because they purportedly were a "testament to the continuity of the historical transition"). That linguistic cladding should hardly be enough—or the Court will end up right back where it started before *Bruen*. See Michael P. O'Shea, *The Concrete Second Amendment: Traditionalist Interpretation and the Right to Keep and Bear Arms*, 26 TEX. REV. L. & POL. 103, 156 (2021) (warning of the risk that lower courts could use "traditionalist concepts" to "unduly stifle the reach of the right[]" in the same way they used "abstract legal principles … such as the deferential balancing tests").

The decision below doesn't stand alone, either. For instance, some courts have tried to add a dangerousness element to the "common use" test that's used to evaluate

the scope of the Second Amendment right. But injecting that concept into the test again invites "the very sort of means-end scrutiny that *Bruen* explicitly forbids courts from applying in the Second Amendment context." *Bianchi* v. *Brown*, 111 F.4th 438, 479 (4th Cir. 2024) (en banc) (Gregory, J., concurring). Other courts have looked to broad "traditions" in lieu of searching for specific analogues. Yet when that happens, nothing has changed except that courts now "cloak[] interest balancing under the guise of 'tradition.'" *Duncan* v. *Bonta*, 133 F.4th 852, 910 (9th Cir. 2025) (en banc) (Bumatay, J., dissenting) (comparing Ninth Circuit's analysis pre- and post-*Bruen*). Indeed, a "highly generalized approach to historical analogizing is the best game in town" "[f]or judges looking for a way to fill the void in judicial discretion left by *Bruen*'s elimination of interest-balancing." *United States* v. *Garcia*, 115 F.4th 1002, 1010 (9th Cir. 2024) (VanDyke, J., dissental). And that's just what one might call the majority's treatment of the infancy doctrine below.

The continuing use of interest-balancing in disguise might be due in part to a misunderstanding of *Rahimi*. Some "cast[] the decision as a radical departure or 'an important first step away' from *Bruen*"—or even a "mad dash away" from traditionalist understandings of the Second Amendment. Mark W. Smith, *Much Ado About Nothing:* Rahimi *Reinforces* Bruen *and* Heller, 2024 HARV. J.L. & PUB. POL'Y PER CURIAM 26, 5 (2024); see also, *e.g.*, Adam J. Ondo, *Preserving and Restoring Firearms Rights, or: How I Learned to Stop Worrying and Love the Government*, 68 ADVOCATE 20, 23 (2025) (suggesting the Court "may have rendered *Bruen* toothless with its 'clarification' in *Rahimi*"). Others describe it as a more subtle effort to "walk back (or rewrite) *Bruen* stealthily." Daniel S. Harawa, *Between A Rock and A Gun*, 134 YALE L.J. FORUM 100, 112 (2024).

But truth is, nothing in *Rahimi* (or any of the Court's other recent Second Amendment cases) grants a lower court license to fudge the history by viewing it through fuzzy, policy-tinted glasses. Even if there's some play in the joints of how *Bruen*'s standard applies in a given case, its central mandates still stand. And under those mandates, "categorical prohibitors" like the ones here are hard to justify. Ian Ayres & Fredrick E. Vars, *The Coming Assault on Categorical Gun Prohibitions*, 77 STAN. L. REV. ONLINE 31, 41 (2025).

The Court should thus grant the petition here to emphasize once more that policy norms—like judicial heartburn from overturning anything other than an "outlier" gun regulation—don't have a role to play.

IV. Lower Courts Are Split Over Whether Age Restrictions Are Constitutional.

Lastly, we reach the specific law at issue here. Lower courts have often been asked to consider state and federal laws imposing age restrictions on the purchase of firearms. They've provided inconsistent answers. The Court should grant this petition to resolve the inconsistency. And it should find in favor of Second Amendment rights for young adults.

A. The Split Is Deep.

The split on these laws is intractable. Several courts have found age restrictions constitutional while others have found that materially indistinguishable restrictions aren't lawful.

The Fourth Circuit falls into the first camp, and it's not alone. The Eleventh Circuit, like the lower court here, relied on the infancy doctrine to uphold Section 922(b)(1)'s constitutionality. *NRA*, 133 F.4th at 1116. There, the

court said that the "Founders' generation shared the view that minors lacked the reason and judgment necessary to be trusted with legal rights." *Id.* at 1117. So, like the Fourth Circuit, the Eleventh Circuit determined that "[t]he inability to contract impeded minors from acquiring firearms during the Founding era." *Id.* at 1118. The Tenth Circuit declared that a state-law age-based ban to be "commercial," such that it "did not even implicate the Second Amendment's plain text" (or *Bruen*'s step-two historical analysis). *Rocky Mountain Gun Owners*, 121 F.4th at 127. The Tenth Circuit noted how *Heller* approved certain regulations on the *sale* of arms; it reasoned backwards that it must be equally lawful to impose regulations on the *purchase* of arms because each action is "dependent upon the other." *Id.* at 120.

Three other circuits saw things differently. The Fifth Circuit court determined that the founding-era legal tradition had no laws sufficiently analogous in "how" and "why" to justify Section 922(b)(1)'s burden on the right of young adults to keep and bear arms. *Reese*, 127 F.4th at 583. The court found evidence—most prominently in the Militia Act of 1792—that young adults likely purchased and kept firearms. *Id.* at 596. The Eighth Circuit held a Minnesota age-based carry ban was unenforceable for similar reasons. *Worth* v. *Jacobson*, 108 F.4th 677, 698 (8th Cir. 2024). The court distinguished state laws criminalizing the sale of weapons to minors, finding the earliest such law to have been enacted in 1856. *Id.* at 697 (collecting statutes). And it disregarded the government's argument that the carry ban was a "presumptively lawful" "longstanding prohibition." *Id.* at 698 (quoting *Heller*, 554 U.S. at 626-27 & n.26). On parallel grounds, the Third Circuit invalidated a Pennsylvania statute banning young adults from carrying firearms during states of emergency. *Lara* v. *Comm'r Pa. State Police*, 125 F.4th 428, 446 (3d

Cir. 2025). The Third Circuit eschewed "late-19th century" law in favor of the Militia Act of 1792, which "required all able-bodied men to enroll in the militia and to arm themselves upon turning 18." *Id.* at 441, 443. In the court's view, "[t]hat young adults had to serve in the militia indicates that founding-era lawmakers believed those youth could, and indeed should, keep and bear arms." *Id.* at 444.

So six circuits have considered age-based firearm regulations. And they've split evenly on whether, after applying the current framework, these laws violate the Second Amendment.

B. The Answer Is Clear.

The Court should resolve this split by confirming that young adults between the ages of 18 to 21 can purchase firearms.

1. Especially considering the militia's front-and-center role in the Second Amendment, the analysis could probably begin and end with militia laws. The militia "comprised all males physically capable of acting in concert for the common defense." *United States* v. *Miller*, 307 U.S. 174, 179 (1939). Conscription was mandatory for able-bodied males "who [are] or shall be of the age of eighteen years, and under the age of forty-five years." Militia Act of 1792, § 1, 1 Stat. 271, 271 (1792). Now remember the decisive part: "every citizen" enrolled in the militia was required to "provide himself with a good musket or firelock" within six months of notification of enrollment. *Id.*; *Perpich* v. *Dep't of Def.*, 496 U.S. 334, 341 (1990) (describing Congress's "detailed command that every able-bodied male citizen between the ages of 18 and 45 be enrolled therein and equip himself with appropriate weaponry"). "In the decade following the ratification of

the Second Amendment … Congress and *every* state then in the Union passed a militia law requiring almost all able-bodied white men between the ages of 18 and 45 to serve in the militia." Pet.App.160a. So founding-era law didn't restrict firearm ownership for 18- to 20-year-olds. It compelled it—reflecting the understanding of the right at the time.

It's true that some States enacted militia laws raising the minimum age to 21 before the Second Amendment was ratified. But all those States later reversed themselves. Pet.App.157a-160a (collecting statutes). And nineteenth-century decisions confirm that this reality continued: "[T]he age of eighteen … is the military age recognized by the whole legislation of Congress, and of the State of Virginia, and of all the States of the Union, perhaps without exception." *United States* v. *Blakeney*, 44 Va. 405, 418 (1847) (opinion of Baldwin, J.); see also *In re Dewey*, 28 Mass. 265, 271-72 (1831) (same); *Commonwealth* v. *Barker*, 5 Binn. 423, 425-26 (Pa. 1813) (same).

Beyond militia laws, no statute can be found directly restricting the sale of firearms around the time of the Founding. Back then, "[t]here were no restrictions on sales to free citizens." David B. Kopel & Joseph G.S. Greenlee, *History and Tradition in Modern Circuit Cases on the Second Amendment Rights of Young People*, 43 S. ILL. U. L.J. 119, 133 (2018); see also Mark W. Smith, *The Third Rails of Second Amendment Jurisprudence: Guidance on Deriving Historical Principles Post-*Bruen, 2025 HARV. J.L. & PUB. POL'Y PER CURIAM 2, 12-13 (2025) ("For 18 to 20-year-olds, there were no laws on the books disarming them."). "The tradition of young adults keeping and bearing arms" is a "deep-rooted" tradition in English law and custom that "was brought across the Atlantic by the American colonists." *Jones* v. *Bonta*, 34 F.4th 704,

717-18 (9th Cir. 2022), *vacated*, 47 F.4th 1124. Laws restricting firearms access for minors didn't arise until the mid- to-late 1800s, *id.*, far too late to provide relevant historical evidence. See, *e.g.,* Ryder S. Gaenz, *You'll Grow Into It: How Federal and State Courts Have Erred In Excluding Persons Under Twenty-One From 'The People' Protected by the Second Amendment*, 17 FIU L. REV. 197, 232 (2023) (surveying "[c]olonial history" showing that even "sixteen-year-olds often were required to bear arms in general and without relation to militia membership").

2. In contrast to this firm evidence, the infancy doctrine does *not* provide an analogous restriction on firearms purchasing by young adults—even if a court could appropriately consider a non-firearms-related law.

First, firearms may have been considered "necessaries" even aside from militia service, in which case contracts for the purchase of firearms would bind even infants. *United States* v. *Bainbridge*, 24 F. Cas. 946, 950 (C.C.D. Mass. 1816) (holding that necessaries "shall bind" an infant). The Fourth Circuit cites only one case to the (potential) contrary—hardly sufficient to constitute an "enduring American tradition" of firearm purchasing restrictions. *Bruen*, 597 U.S. at 61; see Pet.App.13a (citing *Saunders Glover & Co.* v. *Ott's Adm'r*, 12 S.C.L. (1 McCord) 572, 572 (Const. Ct. App. 1822)). At least one colony explicitly declared otherwise. See THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, PRIOR TO THE UNION WITH NEW HAVEN COLONY, MAY 1665 537 (J. Hammond Trumbull, ed. 1850) (exempting "necessarye … armes" from execution of levies as "necessary [for] [u]pholding … life").

Moreover, "[i]f the law required 18- to 20-year-olds to obtain arms for militia service, then those arms may have

been 'necessaries.'" Pet.App.45a n.7 (Quattlebaum, J., dissenting) (citing *Coates* v. *Wilson*, 170 Eng. Rep. 769, 769; 5 Esp. 152, 152 (1807)). And as a contract for the public service, it was likely "strictly obligatory." *Bainbridge*, 24 F. Cas. at 951. For example, a Massachusetts court found that "[t]he enlistment of an infant over eighteen … is binding." *In re Dewey*, 28 Mass. at 269; see *Blakeney*, 44 Va. at 409-10, 416 (opinion of Baldwin, J.) (same). Minors performing actions required by law, like acquiring weapons for militia service, could create binding contracts. See *Bavington* v. *Clarke*, 2 Pen. & W. 115, 124 (Pa. 1830) (finding that, when "an infant, does that which by law he is compelled to do … he is bound"); Pet.App.161a, 165a.

Second, in interpreting statutory provisions such as militia-provisioning requirements, courts generally interpret them to achieve their intended results—which would favor the provisioning of guns to young adults. They would be especially likely to do so when the public interest is involved. "It would be strange, indeed, if courts of law could judicially hold contracts to be void, or voidable, which the legislature should deem salutary or essential to the public interests; or pronounce them invalid, because entered into by the very parties, who were within the contemplation of the law." *Bainbridge*, 24 F. Cas. at 951. And this canon of statutory interpretation remains valid today. See, *e.g.*, *Quarles* v. *United States*, 587 U.S. 645, 654 (2019) ("We should not lightly conclude that Congress enacted a self-defeating statute.").

So the majority below was wrong to assume that Congress passed the Militia Act while assuming that 18- to 20-year-olds would have no direct power to comply with its weapon requirement.

C. The Time To Act Is Now.

With the outcome clear, the Court's need to act becomes clear, too. "The right of the whole people, old and young, men, women[,] and boys, and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia, shall not be infringed, curtailed, or broken in upon, in the smallest degree." *Nunn* v. *Georgia*, 1 Ga. 243, 251 (1846). After all, unlike other portions of the Constitution, the Second Amendment's text says nothing about age.

Yet Section 922(b)(1) and laws like it strip Second Amendment rights from more than thirteen million younger Americans. See *United States Population by Age and Sex*, U.S. CENSUS BUREAU, https://tinyurl.com/2yu6av23 (last visited July 17, 2025). The lower court's ruling prohibits the nationwide class of law-abiding 18- to 20-year-olds from purchasing "the most popular weapon chosen by Americans for self-defense in the home." *Heller*, 554 U.S. at 629. Young service members will be unable to buy the very same weapons they're trained to use. Young people who can vote, get married, be tried criminally as adults, and more will be relegated to second-class status on this lone right. See *Roper* v. *Simmons*, 543 U.S. 551, 574 (2005) ("The age of 18 is the point where society draws the line for many purposes between childhood and adulthood."). And remember that a big part of this population lives alone—unlike the parental dependency that the majority imagined. *See* Paul Hemez & Chanell Washington, *Living Arrangements Varied Across Age Groups*, CENSUS.GOV (May 30, 2024), https://tinyurl.com/mr5pk4f6.

So while the right to keep and bear arms has been considered "the palladium of the liberties of a republic," young adults are being unjustly deprived of central

aspects of this core liberty through Congressional and state overreach. 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1890 (Boston, Hilliard, Gray, & Co. 1833).

There's no good reason to wait any longer. The issue has percolated, producing several thoughtful opinions (including three separate opinions in this very case). It's unlikely that further development of these questions will offer anything helpful. And this vehicle is a clean one to tackle the question; the arguments are preserved, the plaintiffs have standing, and no procedural obstacles are apparent from the record. Even the Government concedes that Plaintiffs "are all otherwise qualified to purchase handguns" were it not for their ages. Pet.App.62a-63a. They should not be forced to wait until some later day to vindicate their rights.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted.

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