No. _____

In the Supreme Court of the United States

CHRISTOPHER PARIS, COMMISSIONER, PENNSYLVANIA STATE POLICE,

Petitioner

v.

SECOND AMENDMENT FOUNDATION, INC.; FIREARMS POLICY COALITION,

Respondents

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The federal government and 32 states establish 21 as the minimum age for certain gun rights. Since *United States v. Rahimi*, five courts of appeals have considered whether these widespread laws violate the purported Second Amendment rights of 18-to-20-year-olds. Those Courts are sharply divided in both method and result.

The Tenth and Eleventh Circuits held that restrictions on 18-to-20-year-olds are constitutional, relying on Founding-era common law principles that prevented anyone under the age of 21 from purchasing weapons. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024); *Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc), *cert. pending sub nom.*, *Nat'l Rifle Ass'n v. Glass*, 24-1185 (U.S.). Those courts also looked to post-enactment history to confirm their understanding of the Founding-era evidence. *Ibid.* But the Third, Fifth, and Eighth Circuits reached the opposite conclusion when examining the same history. App.1a-52a; *Reese v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 127 F.4th 583 (5th Cir. 2025); *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024), *cert. denied*, 24-782 (U.S.). This Court's review is necessary to resolve this acknowledged split on an important, recurring issue. Law enforcement officials need clarity before the confusion deepens. The question presented is:

Do firearms laws imposing a minimum age of 21 violate the purported Second Amendment rights of 18-to-20-year-olds?

PARTIES TO THE PROCEEDING

Petitioner (defendant-appellee below) is the Commissioner of the Pennsylvania State Police, Christopher Paris, in his official capacity.*

Respondents (plaintiffs-appellants below) are the Firearms Policy Coalition and the Second Amendment Foundation.†

RELATED PROCEEDINGS

United States District Court for the Western District of Pennsylvania:

> *Lara, et al., v. Evanchick*, No. 2:20-cv-01582 (judgment entered on April 16, 2021).

United States Court of Appeals for the Third Circuit:

> *Lara, et al., v. Commissioner Pennsylvania State Police*, No. 21-1832 (judgment entered on January 13, 2025).

Supreme Court of the United States:

> *Paris v. Lara, et al.*, No. 24-93 (judgment entered on November 18, 2024).

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* Christopher Paris succeeded Robert Evanchick as Commissioner of the State Police.

† At the outset of this suit, there were also three individual plaintiffs who were between the ages of 18 and 21, Madison Lara, Sophia Knepley, and Logan Miller. Because all three individual plaintiffs are now at least 21 years' old, Respondents conceded below that their claims are now moot. 3d Cir. Dkt. ECF No. 71. But the Court of Appeals determined that the case itself is not moot because the organizational plaintiffs have independent standing to continue litigating the claims. App.33a n.28.

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INTRODUCTION

All 50 states and the federal government establish minimum-age requirements for acquiring, possessing, and carrying firearms. Recognizing that there must be *some* age threshold for the right to bear arms, this Court stated that the Second Amendment applies to all "law-abiding, *adult* citizens[.]" *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 31-32 (2022) (emphasis added). The question in this case "is where does that age threshold lie?" App.37a (Restrepo, J., dissenting).

Historically, the answer was age 21. From the time of the Founding, through Reconstruction and most of the 20th century, there was a widely-held consensus that anyone under the age of 21 was a minor. *Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108, 1116-18 (11th Cir. 2025) (en banc), *cert. pending sub nom.*, *Nat'l Rifle Ass'n v. Glass*, 24-1185 (U.S.); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 124-25 (10th Cir. 2024). The Founding generation believed that under-21-year-olds "lacked the reason and judgment necessary to be trusted with legal rights," including the ability to contract. *Bondi*, 133 F.4th at 1117-20. As a consequence, Founding-era minors "could not purchase weapons for themselves" under the common law. *Bondi*, 133 F.4th at 1120. Founding-era militia laws—which either exempted minors from firearm requirements entirely, or expected minors' parents to acquire firearms for them—reflected this limitation. *Bondi*, 133 F.4th at 1119 (collecting statutes).

Post-ratification history confirms the Founding-era understanding. *Bondi*, 133 F.4th at 1122. Although the pervasive common law limitations prevented unsupervised minors from acquiring dangerous weapons at the Founding, by the mid-19th century this proved inade-

quate. *Bondi*, 133 F.4th at 1122-23. During the antebellum period, dramatic economic and technological transformations—especially the mass production of deadlier and more accurate handguns—made it easier for minors to independently acquire firearms. *Id.* at 1135-40 (Rosenbaum, J., concurring). This, in turn, led to a "tide of firearm-related injuries at the hands of minors"—a discrete problem the Founding generation did not confront. Patrick Charles, *Armed in America: The History of Gun Rights from Colonial Militias to Concealed Carry*, 141, 156 (2018).

States "filled the void" by enacting "a flurry of outright bans" on under-21-year-olds acquiring firearms. *Bondi*, 133 F.4th at 1159 (Newsom, J., concurring). Between 1856 and 1897, 20 jurisdictions enacted laws specifically curtailing the gun rights of under-21-year-olds. *Bondi*, 133 F.4th at 1121-22; Megan Walsh & Saul Cornell, *Age Restrictions and the Right to Keep and Bear Arms, 1791-1868*, 108 MINN. L. REV. 3049, 3092 (2024) (collecting statutes). Those 19th-century statutes made "explicit what was implicit at the Founding: laws may regulate the purchase of firearms by minors." *Bondi*, 133 F.4th at 1124. At the time, courts, scholars, and the public at large universally approved of those measures. *State v. Callicutt*, 69 Tenn. 714 (1878); Thomas M. Cooley, *Treatise on Constitutional Limitations*, 740 n.4 (5th ed. 1883); Charles, *Armed in America*, 404-05 n.212.

Laws imposing a minimum age of 21 for gun rights thus comport with the "principles that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. 680, 692 (2024). And, in contrast to the extreme outlier laws this Court invalidated in *Bruen* and *Heller*, restrictions on under-21-year-olds remain widespread today, with the federal government and 32 states using that threshold. *District of Columbia v. Heller*, 554 U.S.

570, 629 (2008); *Bruen*, 597 U.S. at 79 (Kavanaugh, J., concurring); *id.* at 73 (Alito, J., concurring).

Despite the "mountain of historical evidence" demonstrating that restrictions on 18-to-20-year-olds comport with our regulatory tradition, *see* App.100a (Krause, J., dissenting from the denial of en banc review), the Third, Fifth, and Eight Circuits failed to perceive that mountain through the fog of modernity. App.1a-52a; *Reese v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 127 F.4th 583 (5th Cir. 2025); *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024), *cert. denied*, 24-782 (U.S.). Those courts managed to "avoid the weight of legal history by labeling individuals between the ages of 18 and 21 as 'adults.'" *Bondi*, 133 F.4th at 1125. Or, as the Third and Fifth Circuits labeled them, "young adults." App.32a; *Reese*, 127 F.4th at 590. But "there was no legal category of young adult" at the Founding. Walsh & Cornell, 108 MINN. L. REV. at 3063. It is a purely modern construct. App.40a (Restrepo, J., dissenting).

The Third, Fifth, and Eighth Circuits thus reason backwards from *contemporary* legal principles recognizing 18-to-20-year-olds as "young adults" for some purposes and impose this late-20th-century paradigm on the people who adopted the Second and Fourteenth Amendments. That approach is the opposite of originalism, as it places the Second Amendment on "a sliding scale defined by contemporary state law that varies from jurisdiction to jurisdiction." *Bondi*, 133 F.4th at 1125.

The disparate methodologies used by the Circuits have sown chaos and confusion for law enforcement officials. This Court should grant certiorari, resolve this entrenched Circuit split, and clarify that the Second Amendment rights of 18-to-20-year-olds today are the same as they were in 1791 and 1868.

OPINIONS BELOW

The opinion of the Court of Appeals and dissent are reported at 125 F.4th 428 and reproduced in the appendix at 1a-52a. The dissenting opinion from the denial of rehearing en banc is reported at 130 F.4th 65 and is reproduced in the appendix at 88a-104a. The decision of the District Court is reported at 534 F.Supp.3d 478 and is reproduced in the appendix at 53a-83a.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on January 13, 2025. The Court of Appeals denied rehearing en banc on February 26, 2025. On April 21, 2025, Justice Alito extended the time to file a petition for a writ of certiorari to and including June 26, 2025. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Second and Fourteenth Amendments to the United States Constitution and the relevant provisions of Pennsylvania's Uniform Firearms Act are reproduced in the appendix at 105a-133a.

STATEMENT OF THE CASE

1. Pennsylvania's Uniform Firearms Act establishes 18 as the minimum age to possess a handgun or other firearm in one's home or place of business. 18 Pa. Cons. Stat. §§6106(a) and 6110.1. With respect to carrying firearms outside the home, the Act generally allows unlicensed open carry by lawful gun owners, but requires a license to concealed carry. 18 Pa. Cons. Stat. §6106(a)(1). The Act establishes 21 as the minimum

age for concealed-carry licenses. 18 Pa. Cons. Stat. §6109(b).[3]

The Act also provides that "[n]o person shall carry a firearm upon the public streets or upon any public property during an emergency proclaimed by a State or municipal governmental executive" unless the person (1) has a concealed-carry license, or (2) is "[a]ctively engaged in a defense of that person's life or property from peril or threat." 18 Pa. Cons. Stat. §6107(a).

Because 18-to-20-year-olds cannot obtain concealed-carry licenses, these provisions mean that 18-to-20-year-olds may generally carry firearms openly in public, but not when the Commonwealth is in a declared emergency.

2. In 2021, Respondents brought suit in the Western District of Pennsylvania, claiming that Pennsylvania's law violates the Second Amendment rights of 18-to-20-year-olds. App.56a-58a. Respondents also moved for a preliminary injunction. App.57a. Respondents challenged, *inter alia*, the restriction on 18-to-20-year-olds' ability to openly carry during emergencies. App.53a-55a[4] The District Court dismissed the complaint and denied the requested preliminary injunction. App.83a.

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[3] Pennsylvania's statute enumerates 15 exemptions to the licensing requirement, which have no age limits. 18 Pa. Cons. Stat. §1606(b). Among other things, those exemptions permit unlicensed concealed carry if an individual is in law enforcement, the National Guard, or the military.

[4] In the District Court, Respondents also sought concealed-carry licenses for 18-to-20-year-olds. App.29a. But in the Court of Appeals, they narrowed their request for relief, and currently seek only an injunction on arresting 18-to-20-year-olds for openly carrying during declared emergencies. 3d Cir. Dkt. ECF Nos. 57, 63. Since the Third Circuit's ruling here, Respondents have filed other

Although the District Court's ruling predated *Bruen*, that court did not perform the means-ends balancing that *Bruen* later abrogated. App.82a-83a n.8. Instead, the District Court ended its analysis after concluding that Pennsylvania's law is consistent with analogous historical regulations. App.70a-82a. The District Court also noted the broad consensus among federal courts at the time that laws establishing 21 as the minimum age for gun rights are constitutional. App.71a-76a, 80a-81a. Respondents appealed.

3. A divided three-judge panel of the Third Circuit reversed. *Lara v. Comm'r Pa. State Police*, 91 F.4th 122, 127 (3d Cir. 2024), *reh'g denied*, 97 F.4th 156 (3d Cir. 2024) ("*Lara I*"). *Lara I* was decided after *Bruen*, but before *Rahimi*.

The panel majority concluded that Pennsylvania's law violates the Second Amendment because the Commissioner did not identify a Founding-era regulatory twin. *Lara I*, 91 F.4th at 137 (requiring "a single founding-era statute imposing restrictions on the freedom of 18-to-20-year-olds to carry guns"). The Court of Appeals narrowly denied en banc review. *Lara I*, 97 F.4th 156 (3d Cir. 2024).

4. After *Lara I*, this Court decided *Rahimi*, clarifying that Courts must identify historical *principles* in Second Amendment cases, not historical replicas. Then, this Court granted certiorari in *Lara I*, vacated the Third Circuit's judgment, and remanded for reconsideration in light of *Rahimi*. *Paris v. Lara*, 145 S. Ct. 369 (2024).

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suits seeking concealed-carry licenses for 18-to-20-year-olds. *Second Amendment Foundation, et al. v. Paris*, 24-cv-01015 (M.D. Pa.); *Firearms Policy Coalition, et al., v. Ott, et al.*, 24-cv-00274 (W.D. Pa.).

5. On January 13, 2025, the same divided panel issued its post-remand opinion in *Lara II*, holding, once again, that Pennsylvania's law violates the Second Amendment. App.1a-52a. The Court of Appeals instructed the District Court to enter an injunction forbidding the Commissioner from arresting 18-to-20-year-olds who openly carry firearms during a declared emergency. App.35a.

a. The majority opinion was authored by Judge Jordan and joined by Senior Judge Smith.[5] As Respondents' requested, the panel essentially reissued its prior opinion in *Lara I* with few substantive changes. App.5a (the post-remand opinion is "repetitive of our earlier decision"); 3d Cir. Dkt. ECF No. 106, Respondents' Post-Rem. Br. at 7 (urging the court to reissue its prior opinion "unchanged").

The majority began by considering whether 18-to-20-year-olds are among "the people" covered by the text of the Second Amendment. App.12a-18a. The majority presumed that the Second Amendment applies to all "adult" Americans—including 18-to-20-year-olds—and required the Commissioner to defeat that presumption. App.13a-14a.

The majority dismissed the Commissioner's historical argument that when the Second Amendment was adopted, anyone under 21 was considered a minor at common law. App.15a. In the majority's view, it could not consider this historical evidence—or, seemingly, any historical evidence—when construing the text because it supposedly "conflates *Bruen*'s two distinct analytical steps[.]" App.16a. So instead of looking to his-

[5] On January 15, 2025—two days after the Third Circuit's post-remand opinion—Judge Jordan retired. App.86a.

tory, the majority relied on modern standards recognizing 18-to-20-year-olds as "young adults" for other rights. App.17a, 32a.

Next, the majority considered whether Pennsylvania's law is consistent with historical regulations. Despite *Rahimi*, the majority reiterated its holding from *Lara I* that the Commissioner was required to identify "an eighteenth-century regulation barring 18-to-20-year-olds from carrying firearms[.]" App.20a.

The majority also believed it was "obligated" to resolve the question of whether courts should primarily rely on the prevailing understanding of the right to keep and bear arms from 1791 when the Second Amendment was adopted, or 1868 when the Fourteenth Amendment was adopted. App.19a-24a. Holding that it could consider historical evidence from the Founding era only, the majority disregarded all historical evidence from the mid-to-late-1800s, which demonstrated that 20 jurisdictions enacted analogous age statutes during that time period. *Ibid.*

Having confined its analysis to Founding-era statutes, the majority reiterated its holding that Pennsylvania law violates the Second Amendment because the Commissioner did not identify a statutory twin from the 1790s. App.31a ("the Commissioner cannot point us to a single founding-era statute imposing restrictions on the freedom of 18-to-20-year-olds to carry guns"). And, to bolster its conclusion that the Second Amendment extends to 18-to-20-year-olds, the majority pointed to minors' occasional militia service in the decades surrounding the adoption of the Second Amendment. App.29a-32a.

b. Judge Restrepo dissented. App.36a-52a. Beginning with the Constitution's text, Judge Restrepo emphasized that the Second Amendment must be given

the "normal and ordinary" meaning known to the citizens who ratified the right to keep and bear arms. App.37a. He consulted various "historical sources evidencing how the public would have understood its text near the time of its ratification." *Ibid.* (citing *Bruen*, 597 U.S. at 19-21 and *Heller*, 554 U.S. at 576).

At the Founding, anyone under 21 was considered a minor at common law. App.39a-41a (citing, *inter alia*, 1 William Blackstone, *Commentaries on the Laws of England* 451 (Oxford, Clarendon Press 1765)). The consequences of this categorization were "profound," as minors had "few independent legal rights" and "very little independent ability to exercise fundamental rights, including those of contract and property." App.41a, 45a. Judge Restrepo concluded that this "legal incapacity" indicated that under-21-year-olds were "disabled in keeping and bearing arms," given the "important connection between property law and the right to keep arms." App.43a.

Judge Restrepo also addressed the majority's reliance on Founding-era militia laws, noting that those laws actually undercut the argument that 18-to-20-year-olds had an unfettered right to keep and bear arms. App.46a-49a. When militia laws required minors to enroll, minors' parents were often required to furnish weapons for them. App.46a. And, once in the militia, minors carried arms in that highly-regulated setting "under the supervision of peace officers who * * * stood *in loco parentis*." App.46a-47a. Thus, that minors occasionally bore arms in the militia "at the pleasure of their superiors" did not mean they had "an independent *right* under the Second Amendment" that they could assert against the government. App.46a, 49a. (emphasis in original). Moreover, "*Heller* made clear that the Second Amendment codifies an individual

right to keep and bear arms that is unconnected to militia service[.]" App.48a.

Next, Judge Restrepo surveyed post-enactment history to confirm his initial analysis. App.51a ("Under *Bruen* and *Rahimi*, it is appropriate to consider the evidence from the Founding and determine if later evidence offers greater proof and context."). Judge Restrepo highlighted a series of statutes enacted in the mid-to-late-1800s that restricted the ability of under-21-year-olds to acquire firearms. *Ibid.* Based on the totality of this historical evidence, Judge Restrepo concluded that Pennsylvania's law is consistent with the Nation's historical tradition of firearm regulation. *Ibid.*

c. The Commissioner filed a sur-petition for rehearing en banc, which the Court of Appeals narrowly denied. App.86a-87a. Judge Krause authored a dissenting opinion. App.88a-104a.

Judge Krause criticized the panel majority for "repeating the same error" it made in *Lara I*. App.90a. In her view, "Pennsylvania's statutory scheme enjoys ample support in Founding-era history to which we look for a match in principle, not with precision." App.91a (cleaned up).

Judge Krause highlighted the well-established principle that "founding-era legislatures categorically disarmed groups whom they judged to be a threat to the public safety." App.91a (quoting *Kanter v. Barr*, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J., dissenting)). Judge Krause emphasized that "it was the *legislatures* of the Founding generation that determined—consistent with the Second Amendment—which groups posed sufficient risk to justify categorical disarmament." *Ibid.* (emphasis added). "Pennsylvania exercised such legislative judgment when it decided that those under 21 categorically pose a danger to public safety during times of emergency[.]" App.92a.

In light of this Founding-era evidence, Judge Krause believed it was appropriate to also consider evidence "through the end of the 19th century" to "confirm" the Founding-era understanding of the right. App.96a (cleaned up). Like Judge Restrepo, Judge Krause concluded that post-enactment statutes from the mid-to-late 19th century that restricted firearm possession by under-21-year-olds reflected Founding-era principles. App.96a-97a.

Judge Krause also explained how the timing of the 19th-century minimum-age laws coincided with the first mass production of handguns and a corresponding rise in interpersonal gun violence by minors—a specific danger that the Founding generation did not confront. App.98a-100a, 101a-103a. She noted that this Court "anticipated this situation in *Bruen*" when it stated that the "regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868" and that laws "implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." App.101a-103a (quoting *Bruen*, 597 U.S. at 27).

Judge Krause closed by urging this Court to take up this case "if presented the opportunity." App.104a.

REASONS FOR GRANTING THE PETITION

I. THERE IS AN ACKNOWLEDGED CIRCUIT SPLIT OVER THE CONSTITUTIONALITY OF FIREARMS RESTRICTIONS ON 18-TO-20-YEAR-OLDS.

A. Since *Rahimi*, the Circuits Have Split 3-2 on the Question Presented.

Since *Rahimi*, the Circuits have split 3-2 over the constitutionality of firearms laws imposing a minimum age of 21. The Tenth and Eleventh Circuits held that

these laws are consistent with the principles that underpin our regulatory tradition. But the Third, Fifth, and Eighth Circuits held that these laws violate the purported Second Amendment rights of 18-to-20-year-olds.

These courts have acknowledged the divergence among themselves and engaged with each other's reasoning. *Bondi*, 133 F.4th at 1128 ("The recent contrary decision of our sister circuit [in *Reese*] * * * fails to persuade us."); *id.* at 1171 (Brasher, J., dissenting) (the majority's holding "splits with at least three sister circuits") (citing *Reese*, *Lara II*, and *Worth*); App.18a (citing *Rocky Mountain Gun Owners* and *Worth*); *Reese*, 127 F.4th at 595 (citing *Worth* and *Lara II*); *Worth*, 108 F.4th at 688-689, 691 (citing *Lara I*). The distinct approach taken by each Circuit reflects deep disagreement over how to analyze the constitutionality of age restrictions under *Bruen* and *Rahimi*. This Court's review is necessary to resolve this acknowledged and ever-widening split on an important, recurring issue.

1. Beginning with the most recent decision, the Eleventh Circuit, sitting en banc, held that Florida's law banning firearms purchases by under-21-year-olds does not violate the Second Amendment. *Bondi*, 133 F.4th at 1120. Writing for the majority, Chief Judge William Pryor explained that during the Founding, anyone under the age of 21 was considered a minor at common law. *Id.* at 1116-18. This threshold reflected the Founding generation's view that "minors lacked the reason and judgment necessary to be trusted with legal rights." *Id.* at 1117. As a result, under-21-year-olds could not enter into contracts, or even retain the profits of their labor, which were received by their parents. *Id.* at 1117-18.

"The inability to contract impeded minors from acquiring firearms during the Founding era." *Ibid.* At

that time, most goods—including firearms—were purchased on credit, so the capacity to contract was essential. *Ibid.* Indeed, any seller who contracted with an under-21-year-old risked "voidability," and with it, the "high risk that they could not recover the goods sold[.]" *Ibid.* (cleaned up).

The Eleventh Circuit extrapolated two broad historical principles from the common law's treatment of minors at the Founding. "First, minors generally could not purchase firearms because they lacked the judgment and discretion to enter contracts and to receive the wages of their labor." *Bondi*, 133 F.4th at 1118. "Second, minors were subject to the power of their parents and depended on their parents' consent to exercise rights and deal with others in society." *Ibid.*

"State militia laws from the Founding era confirm this understanding." *Id.* at 1119. Precisely because of the legal incapacity of under-21-year-olds, "states enacted laws at the Founding to address minors' inability to purchase firearms required for their militia service." *Ibid.* States addressed this problem by either exempting minors from the firearm requirement altogether, or by requiring their parents to acquire the firearms for them. *Ibid.* (collecting statutes). These ubiquitous laws "reflected that, at common law, minors could not purchase weapons for themselves." *Id.* at 1120. Founding-era university regulations further reinforced the principle that under-21-year-olds had limited access to firearms. *Ibid.* Standing *in loco parentis*, "universities commonly restricted firearm access both on and off campus." *Ibid.* (citing Walsh & Cornell, 108 MINN. L. REV. at 3069-75).

The Eleventh Circuit acknowledged that "the common-law regime of the Founding era differs from our modern regime of statutory regulation." *Id.* at 1123.

But under *Rahimi*, a modern law does not need to "precisely match its historical precursors." *Ibid.* (quoting *Rahimi*, 602 U.S. at 692). The Eleventh Circuit majority also rejected "as contrary to Supreme Court precedent" the dissent's view that courts "must rely only on firearm-specific *regulations* from the Founding era and cannot consider the common law[.]" *Id.* at 1127 (emphasis added). As the majority explained, *Rahimi* specifically "relied on principles 'well entrenched in the common law' that were not limited to firearms." *Ibid.* (quoting *Rahimi*, 602 U.S. at 695) (cleaned up).

Next, the Eleventh Circuit looked to mid-to-late 19th-century history to "confirm the Founding-era understanding of the Second Amendment," highlighting that "20 jurisdictions enacted laws that restricted access to arms" for under-21-year-olds. *Bondi*, 133 F.4th at 1116, 1121-22 (collecting statutes). At the Founding, the common law limitations on the legal rights of minors were "so pervasive that states had no need to enact restrictions that prohibited their purchase of firearms." *Id.* at 1123. But when "the common-law regime became less effective at restricting minors' access to firearms, statutes increasingly did the work." *Id.* at 1122; *see also id.* at 1135-40 (Rosenbaum, J., concurring). Thus, "[t]he law of the Founding era, which restricted the purchase of firearms by minors, continued into the nineteenth century in the form of statutory prohibitions." *Id.* at 1122.

Judge Kevin Newsom agreed with the majority's reliance on mid-to-late 19th-century statutes—despite his general skepticism of relying on post-ratification history—and wrote separately to explain why analyzing the question presented here "presents one of the exceedingly rare circumstances in which post[-]ratification evidence is fair game." *Bondi*, 133 F.4th at 1157 (Newsom, J., concurring); *see also* Kevin C. Newsom,

The Road to Tradition or Perdition? An Originalist Critique of Traditionalism in Constitutional Interpretation, 47 HARV. J.L. & PUB. POL'Y 745, 746-55 (2024). Consulting post-ratification history "helps us avoid mistaking the *absence* of a precisely analogous Founding-era regulation for the *existence* of a substantive constitutional right." *Bondi*, 133 F.4th at 1159 (Newsom, J., concurring) (emphasis in original) (citing *Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring)).

Returning to the majority opinion, Chief Judge Pryor found it unnecessary to resolve "how to address a conflict between the Founding-era and Reconstruction-era understandings of the right because the law of both eras restricted the purchase of firearms by minors." *Id.* at 1116-17.

The majority criticized the dissent's "attempt to avoid the weight of legal history by labeling individuals between 18 and 21 as 'adults[.]'" *Bondi*, 133 F.4th at 1125. That view "discounts the key fact that, at the Founding and until the late twentieth century, the age of majority was 21." *Ibid.* Thus, the dissent "erroneously reviews the Florida law under an equal protection standard masquerading as an analysis under the Second Amendment." *Id.* at 1126.

"Instead of reviewing the legal analogues for regulating the rights of individuals under the age of 21 as minors, the dissent treats contemporary 'adults' as the so-called 'analogues' of the adults of the Founding era." *Id.* at 1125. The logical extension of the dissent's approach "would mean that the federal right to keep and bear arms turns on a sliding scale defined by contemporary state law that varies from jurisdiction to jurisdiction." *Id.* at 1125. And it would mean that "the Second Amendment turns on an evolving standard of

adulthood that is divorced from the text of the Amendment and from our regulatory tradition." *Ibid.*[6]

2. Like the Eleventh Circuit, the Tenth Circuit addressed the question presented in the context of a law prohibiting gun sales to under-21-year-olds. *Rocky Mountain Gun Owners*, 121 F.4th at 104-05. There, the district court had preliminarily enjoined enforcement of Colorado's statute. *Id.* 104. But the Tenth Circuit reversed, holding that Colorado's law is constitutional.

After concluding that 18-to-20-year-olds are among "the people" covered by the Second Amendment's text, the Tenth Circuit turned to *Heller*'s list of "presumptively lawful" firearms regulations, which included "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 114-16; *id.* at 118-19 (quoting, *Heller*, 554, U.S. at 626-27, 627 n.26); *see also Rahimi*, 602 U.S. at 735 (Kavanaugh, J., concurring). The Tenth Circuit concluded that Colorado's age provision is covered by *Heller*'s "safe harbor" as an "age-based-qualification on the sale of arms[.]" *Rocky Mountain Gun Owners*, 121 F.4th at 119-20. "[A]s such, it falls outside the scope of the Second Amendment's right to 'keep and bear' arms." *Ibid.* The Tenth Circuit also highlighted Justice Alito's concurrence in *Bruen* in which he stated that the decision did not "expand the categories of people who may lawfully possess a gun" and noted that federal law bans handgun sales to anyone under the age of 21. *Id.* at 124 (quoting *Bruen*, 597 U.S. at 73 (Alito J., concurring)).

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[6] Because the parties did not focus on *Bruen's* textual prong, the Eleventh Circuit assumed, without deciding, that 18-to-20-year-olds are among "the people" protected by the Second Amendment. *Bondi*, 133 F.4th at 1130. But Judge Restrepo's dissent here demonstrates how the result is the same under the textual prong. App.37a-46a (Restrepo, J., dissenting).

The Tenth Circuit rejected the plaintiffs' argument that the minimum age for firearm purchases must reflect contemporary age thresholds for other rights. *Rocky Mountain Gun Owners*, 121 F.4th at 124. The Tenth Circuit emphasized that the age of majority at the Founding was 21, and that, at common law, under-21-year-olds "were entirely subsumed under the authority of" their parents or guardians and could not independently enter into contracts. *Id.* at 124-25. Despite the voting age for federal elections being lowered to 18 in 1971 with the passage of the Twenty-Sixth Amendment, state legislatures still retained "the authority and prerogative, rooted in the Tenth Amendment, to set and adjust the age of majority" for other rights. *Id.* at 125-126.

3. Two Circuits (in addition to the Third Circuit) have reached the opposite result. The Eighth Circuit, like the Third Circuit here, resolved the question presented when reviewing a public-carry prohibition on 18-to-20-year-olds. *Worth*, 108 F.4th at 683. And, like the Third Circuit, the Eighth Circuit held that the law was unconstitutional because it lacked a historical twin. *Id.* at 693-98.

There, Minnesota proffered three broad pieces of historical evidence to justify its law: (1) status-based restrictions from the Founding that disarmed dangerous groups; (2) common law principles from the Founding; and (3) statutes enacted in the mid-to-late 19th century. *Id.* at 693. Instead of taking this evidence together and extrapolating relevant principles, the Eighth Circuit considered each piece of historical evidence in isolation, explaining how each source differed from Minnesota's modern statute.

Initially, Minnesota argued that Founding-era status-based restrictions establish the broad principle that legislatures can disarm groups that pose a danger

if armed, enabling modern legislatures to categorize other groups—including 18-to-20-year-olds—as dangerous. *Worth*, 108 F.4th at 693-94. While accepting Minnesota's premise that Founding-era status-based restrictions reveal a relevant principle under *Rahimi*, the Eighth Circuit concluded that Minnesota failed to demonstrate "with enough evidence" that "18-to-20-year-olds present a danger to the public." *Id.* at 694. And, lapsing into the very means-ends scrutiny this Court adamantly disclaimed in *Bruen*, the Eighth Circuit opined that Minnesota might have other means to address the danger posed by armed 18-to-20-year-olds. *Ibid.*

The Eighth Circuit also rejected Minnesota's reliance on Founding-era common law principles, concluding that "[i]nverse evidence of the common law is not a sufficient analogue to meet the state's burden." *Id.* at 695.

Next, the Eighth Circuit addressed whether minimum-age statutes enacted during the mid-to-late 19th century justified Minnesota's law. In contrast to the Third Circuit here, the Eighth Circuit accepted that this post-enactment evidence could be considered. *Id.* at 696-97. But it focused on how those laws were less burdensome than Minnesota's contemporary statute. *Id.* at 697-98.

4. Finally, the Fifth Circuit considered the question presented in a challenge to 18 U. S. C. §922(b)(1), a federal statute prohibiting handgun sales to under-21-year-olds. *Reese*, 127 F.4th at 586. In 2012, the Fifth Circuit upheld the provision as consistent with historical principles, citing, *inter alia*, common law standards during the Founding and mid-to-late 19th-century statutes "expressly restricting the ability of persons under 21" to purchase or use firearms. *Nat'l Rifle Ass'n v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*,

700 F.3d 185, 201-203 (5th Cir. 2012). But in *Reese*, the Fifth Circuit reversed its own precedent, holding that the federal statute violates the Second Amendment.

Beginning with the text, the Fifth Circuit concluded that so-called "young adults" are among "the people" covered by the Second Amendment. *Reese*, 127 F.4th at 590-95. Like the Third Circuit here, the Fifth Circuit reasoned that because 18-to-20-year-olds are among "the people" covered by other constitutional rights, they must also be among "the people" covered by the Second Amendment. *Id.* at 591. And, like the Third Circuit here, the Fifth Circuit emphasized under-21-year-olds' sporadic militia service during the Founding. *Id.* at 592-95.

The Fifth Circuit also rejected the argument—expressly adopted by the Eleventh Circuit in *Bondi*—that militia statutes reflected the Founding-era common law view that under-21-year-olds could not independently purchase firearms because parents were expected to "furnish firearms for their sons' militia service." Reese, 127 F.4th at 597; *see also Bondi*, 133 F.4th at 1129. Instead, the Fifth Circuit—like the Eighth and Third Circuits—generally discounted the relevance of the common law during the Founding. *Reese*, 127 F.4th at 597. Under the Fifth Circuit's interpretation of *Bruen* and *Rahimi*, the federal government was required to put forth specific "evidence that eighteen-to-twenty-year-olds' firearm rights during the founding-era were restricted in a similar manner to the contemporary handgun purchase ban." *Id.* at 600.

As to post-enactment history, the Fifth Circuit acknowledged that statutes enacted in the mid-to-late 19th century banning firearm access by under-21-year-olds were "relevantly similar" to the federal handgun purchase ban. *Id.* at 599. But it determined that those

laws were "passed too late in time to outweigh" evidence that 18-to-20-year-olds sometimes served in Founding-era militias. *Ibid.*

B. The Split Among the Circuits Reflects Deep Methodological Disagreements About the Proper Analysis Under *Bruen* and *Rahimi*.

The split among these five Circuits is not merely a disagreement over the correct result, but a deep methodological disagreement over the proper way to analyze historical principles under *Bruen* and *Rahimi*. Even though these five courts were all presented with the same historical evidence, they diverged wildly in interpreting that history. The varied approaches taken by each Circuit reflect widespread confusion over how to analyze the question presented.

1. Initially, these courts diverged over the relevance of the Founding-era common law. In *Rahimi*, this Court specifically relied on principles "[w]ell entrenched in the common law" to interpret the Second Amendment. 602 U.S. at 695. But the Third, Fifth, and Eighth Circuits rejected *any* reliance on common law principles when analyzing age restrictions, holding that courts within those Circuits may consider only Founding-era *statutes*. App.15a-16a, 20a, 31a; *Reese*, 127 F.4th at 590, 597-600; *Worth*, 108 F.4th at 695.

For the Tenth and Eleventh Circuits, however, the common law was essential to their conclusion that under-21-year-olds could not independently acquire firearms at the Founding. *Rocky Mountain Gun Owners*, 121 F.4th at 124-25; *Bondi*, 133 F.4th at 1117-18. The Eleventh Circuit specifically rejected the view that courts can consider only "firearm-specific *regulations* from the Founding era and cannot consider the common law" as "contrary to Supreme Court precedent[.]"

Bondi, 133 F.4th at 1127 (emphasis added). This doctrinal dispute about whether common law principles may be considered in Second Amendment cases was outcome-determinative for the courts that resolved the question presented.

2. The threshold disagreement over the relevance of the common law, in turn, led the Circuits to diametrically opposed interpretations of Founding-era militia statutes. *See Bondi*, 133 F.4th at 1129 ("Because the Fifth Circuit failed to consider the background common-law regime, it misapprehended the import of these written laws."). As noted, Founding-era militia statutes either exempted minors from the firearm requirement, or required minors' parents to furnish firearms for them. *Id.* at 1119 (collecting statutes); *see also* App.46a-49a (Restrepo, J., dissenting).

To the Eleventh Circuit, Founding-era militia statutes served to reinforce its understanding of the "legal incapacity of under-21-year-olds" at common law. *Bondi*, 133 F.4th at 1119. As the Eleventh Circuit explained, those laws were necessary only because of the "legal incapacity of under-21-year-olds" during the Founding, which rendered them unable to "purchase firearms required for their militia service." *Bondi*, 133 F.4th at 1119.

But the Third and Fifth Circuits disagreed. In the Third Circuit's view, because Founding-era militia statutes did not specifically spell out that "18-to-20-year-olds could not purchase or otherwise acquire their own guns," they lent no support to Pennsylvania's law. App.32a. Instead, the Third Circuit concluded that because "young adults had to serve in the militia[,] * * * founding-era lawmakers believed those youth could, and indeed should, keep and bear arms." App.30a. The Fifth Circuit also discounted the view that statutes re-

quiring parents to "furnish firearms for their sons' militia service" proved that minors "lacked the right to keep and bear (or obtain) such arms themselves." *Reese*, 127 F.4th at 597. According to the Fifth Circuit, those militia statutes "just as readily imply that eighteen-to-twenty-year-olds were *expected* to keep and bear arms, even if provided by their parents." *Ibid.* (emphasis in original).

The dispute over the correct interpretation of militia laws is indicative of the Circuits' differing approaches to the "generality problem[.]" *Rahimi*, 602 U.S. at 739 (Barrett, J., concurring). That is, when engaging in analogical reasoning under *Bruen*, how "broad or narrow" does the controlling principle need to be? *Id.* at 740. The Third, Fifth, and Eighth Circuits failed to strike a coherent balance.

3. The Circuits also disagree over whether, and how, to consider post-enactment history. The Eleventh Circuit looked to post-enactment history to confirm its analysis of the Founding-era evidence, highlighting statutes enacted in the mid-to-late 19th century that restricted firearm access by under-21-year-olds. *Bondi*, 133 F.4th at 1121-22. Judges Restrepo and Krause took a similar approach to post-enactment history here. App.51a (Restrepo, J., dissenting); App.96a-100a (Krause, J., dissenting from the denial of en banc review). As did one concurring judge from the Tenth Circuit. *Rocky Mountain Gun Owners*, 121 F.4th at 141-42 (McHugh, J., concurring). And even the Eighth Circuit—despite declaring Minnesota's law unconstitutional—assumed it could consider post-enactment statutes from the mid-to-late 19th century, but concluded that none of those statutes imposed a comparable burden to Minnesota's contemporary statute. *Worth*, 108 F.4th at 696-98.

But the Third and Fifth Circuits foreclosed any reliance on post-enactment history. Those courts believed that the post-enactment statutes contradicted the Founding-era evidence and were enacted too late to be considered. App.20a, 25a; *Reese*, 127 F.4th at 599.

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As a result of these disparate approaches, the meaning of the Second Amendment, and the tools available to law enforcement officials, vary significantly from one jurisdiction to the next. The conflict will only deepen as courts within these five Circuits apply these incompatible methodologies in other Second Amendment challenges. As Justice Jackson observed, "when courts signal they are having trouble with one of our standards, we should pay attention." *Rahimi*, 602 U.S. at 742 (Jackson, J., concurring). Courts are sending that signal here. This Court should resolve the conflict before the confusion deepens.

II. THE QUESTION PRESENTED IS IMPORTANT.

The confusion among courts over the constitutionality of these minimum-age laws, if allowed to fester, will be profoundly disruptive as laws limiting under-21-year-olds' access to firearms are ubiquitous. Federal law prohibits federally-licensed firearms dealers from selling handguns to anyone under 21 years of age. 18 U. S. C. §922(b)(1). And 32 states—including every state within the Third Circuit—have laws establishing 21 as the minimum age for gun rights.[7] But in the 13

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[7] Alaska Stat. §§11.61.220(a)(6), 18.65.705; Ariz. Rev. Stat. §§3-3102(A)(2), 13-3112(E); Ark. Code §5-73-309; Cal. Penal Code §§26150(a)(2), 26155(a)(2); Colo. Rev. Stat. §18-12-203(1)(b); Conn. Gen. Stat. §§29-28(b), 29-35(a); Del. Code Ann. tit. 11, §1448(a)(5); Fla. Stat. §§790.06(1), (2)(b), 790.053(1); Ga. Code §§16-11-125.1(2.1), 16-11-126(g)(1), 16-11-129(b)(2)(A); Haw. Rev.

states in the Third, Fifth, and Eighth Circuits, officials are enjoined from enforcing minimum-age laws on 18-to-20-year-olds. This disharmony creates real practical problems for law enforcement officials throughout the country.

Consider the position Pennsylvania officials are currently in as a result of the Third Circuit's ruling. Under Pennsylvania's statutory scheme, 18-to-20-year-olds can carry firearms openly in public, but may not obtain concealed-carry licenses. And public carry of *any kind* (open or concealed) during declared emergencies is limited to those with licenses. 18 Pa. Cons. Stat. §6107(a)(2). The rationale for this policy choice is apparent: Pennsylvania's legislature wanted to limit arms-bearing during emergencies to those who have undergone the *investigations and background checks* required before obtaining licenses. 18 Pa. Cons. Stat. §6109(d). The distinction is between *licensees* and *non-licensees*. But the Third Circuit's ruling affords 18-to-20-year-olds—and only them—the unique privilege of *unlicensed* public carry during proclaimed emergencies without *any background check*. That takes the precise age group about whom Pennsylvania's legislature was

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Stat. §134-9(a)(6); 430 Ill. Comp. Stat. 66/25(1); 720 Ill. Comp. Stat. 5/24-1(a)(10); Ky. Rev. Stat. §237.110(4)(c); La. Rev. Stat. §40:1379.3(C)(4); Md. Public Safety Code §5-133(d); Mass. Gen. Laws ch. 140, §131(d)(iv); Mich. Comp. Laws §28.425b(7)(a); Minn. Stat. §624.714; Neb. Rev. Stat. §69-2433(1); Nev. Rev. Stat. §202.3657(3)(a)(1); N.J. Stat. §§2C:58-3(c)(4), 2C:58-4(c); N.M. Stat. §29-19-4(A)(3); N.Y. Penal Law §400.00(1); N.C. Gen. Stat. §14-415.12(a)(2); Ohio Rev. Code §2923.125(D)(1)(b); Okla. Stat. tit. 21 §1272(A)(6); Or. Rev. Stat. §166.291(1)(b); R.I. Gen. Laws §§11-47-11, 11-47-18; Utah Code §§76-10-505, 76-10-523(5); Va. Code §18.2-308.02(A); Wash. Rev. Code §9.41.070(1)(c); Wis. Stat. §175.60(3)(a); Wyo. Stat. §6-8-104(a)(iv), (b)(ii).

most concerned and subjects them to the least amount of oversight.

On top of this, the Pennsylvania State Police force is a "point-of-contact" under the federal Brady Handgun Violence Prevention Act, P.L. 103-159, Nov. 30, 1993, 107 Stat 1536 (codified at 18 U. S. C. §921, *et seq*.), meaning it is responsible for performing all federally-required background checks on gun sales in Pennsylvania. 18 Pa. Cons. Stat. §6111.1. When Pennsylvania officials perform that function, federal law prohibits them from approving a handgun sale to an under-21-year-old. 18 U. S. C. §922(b)(1).[8] But the State Police must reconcile that obligation with the fact that it is also bound by a federal court ruling proclaiming that 18-to-20-year-olds are "adults" under the Second Amendment.

More confusion is coming. Litigants, including the Respondents in this case, are already attempting to expand the Third Circuit's reasoning to invalidate other restrictions in Pennsylvania. *See, e.g.*, *Firearms Policy Coalition, et al., v. Ott, et al.*, 24-cv-00274 (W.D. Pa.) (seeking an injunction prohibiting Pennsylvania from denying concealed-carry licenses to 18-to-20-year-olds); *Suarez v. Paris*, 741 F.Supp.3d 237 (M.D. Pa. 2024) (invalidating Pennsylvania statutes prohibiting unlicensed open carry during emergencies and prohibiting unlicensed individuals from carrying loaded firearms in vehicles). The officials on the front lines of enforcing these minimum-age laws are desperate for clarity on this important issue. And gun-rights advocates likewise recognize the need for this Court to resolve the

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[8] The very same handgun sale that is not permitted in Pennsylvania—or 46 other states—*must* be permitted in Texas, Louisiana, and Mississippi. *See Reese*, 127 F.4th at 586 (holding that 18 U. S. C. §922(b)(1) is "inconsistent with the Second Amendment").

question presented. *See Nat'l Rifle Ass'n v. Glass*, 24-1185 (U.S.) (asking the Court to grant certiorari in *Bondi* and resolve "[w]hether Florida's law banning 18-to-20-year-olds from purchasing firearms violates the Second Amendment"). Review will benefit all parties to these disputes.

III. THE THIRD CIRCUIT FUNDAMENTALLY MISUNDERSTANDS THIS COURT'S SECOND AMENDMENT METHODOLOGY.

A. Despite *Rahimi*, the Third Circuit Continues to Demand Founding-Era Twins.

In *Lara I*, the Third Circuit required the Commissioner to identify a Founding-era twin of its law. 91 F.4th 137 ("the Commissioner cannot point us to a single founding-era statute imposing restrictions on the freedom of 18-to-20-year-olds to carry guns"). One would think that both *Rahimi* and this Court's GVR order in *Lara I* would have led the Third Circuit to meaningfully reconsider its analytical missteps on remand. Unfortunately, it did not.

Instead, the Third Circuit simply reissued its prior opinion in *Lara I* with few substantive changes, *see* App.5a, stubbornly doubling-down on its original misinterpretation of *Bruen*, *see* App.90a (Krause, J., dissenting from the denial of en banc review) (the panel majority repeated "the same error it made the last time around"). The Third Circuit held, yet again, that Pennsylvania was required to find an identical match of its contemporary law from the 1790s to prevail. App.20a ("the Commissioner has not pointed to an eighteenth-century regulation barring 18-to-20-year-olds from carrying firearms"); App.31a ("the Commissioner cannot

point to a single founding-era statute imposing restrictions on the freedom of 18-to-20-year-olds to carry guns").

So while the Third Circuit acknowledged this Court's admonition in *Rahimi* and *Bruen* that twins are not required, *see* App.4a, it nonetheless repeatedly faulted the Commissioner for failing to produce siblings that resemble one another, as if there is somehow a meaningful difference. Simply put, the Third Circuit's analysis is impossible to reconcile with *Rahimi*'s holding that "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791." *Rahimi*, 602 U.S. at 691-92.

B. The Third Circuit Gleaned the Wrong Principle From Founding-Era Militia Statutes.

As Judge Krause noted, the panel majority's reasoning was "based exclusively on a handful of 18th-century militia laws[.]" App.89a (Krause, J., dissenting from the denial of en banc review). Because the majority failed to understand the underlying purpose of Founding-era militia statutes, it gleaned the wrong principle from them.

Militia statutes were "not about protecting handguns for self[-]defense, but securing muskets for national defense." Kevin Sweeney, "Firearms, Militias, and the Second Amendment," *The Second Amendment on Trial: Critical Essays on District of Columbia v. Heller*, 362-63 (2013). Accordingly, "the composition of the militia was always dictated by strategic imperatives, not by any constitutional mandate" that under-21-year-olds had the right to bear arms. 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, 16 (2021).

"In times of war, the age for service in the militia crept down towards sixteen; in times of peace, it crept up towards twenty-one." *Nat'l Rifle Ass'n v. Swearingen*, 545 F.Supp.3d 1247, 1256-59 (N.D. Fla. 2021), *aff'd sub nom*, *Bondi*. When the Second Amendment was ratified in 1791, nine states mandated militia service beginning at age 16. *Id.* at 1257. And when state militia laws allowed under-21-year-olds to serve, parental consent was often a prerequisite. *Bondi*, 133 F.4th at 1120. The panel majority pointed to the Federal Militia Act of 1792, which set a minimum age of 18 for militia service. App.29a-30a. But even that law maintained states' discretion to impose their own age qualifications. 1 Stat. 271, §2 (1792). Pennsylvania, like other states, quickly availed itself of that discretion and raised the minimum age to 21. Act of April 11, 1793 (14 St.L., Ch. 1696).

The Third Circuit did not meaningfully grapple with this fact: the minimum age for militia service fluctuated based on strategic imperatives. Nor did it account for the logical extension of its analysis to firearms restrictions on 16 and 17 year-olds, given that they, too, served in militias.

The Third Circuit also overlooked that adult supervision was a critical component of under-21-year-olds' ability to bear muskets in the militia where they served "under the supervision of peace officers who * * * stood *in loco parentis*." App.46a-47a (Restrepo, J., dissenting). So minors' access to and use of firearms "occurred in supervised situations where minors were under the direction of those who enjoyed legal authority over them[.]" Cornell, *Infants*, 40 YALE L. & POL'Y REV. INTER ALIA at 14.

That 18-to-20-year-olds (like 16 and 17 year-olds) sporadically served in militias provides an exceedingly weak basis for concluding that they had independent

Second Amendment rights at the Founding. App.46a (Restrepo, J., dissenting). Precisely for this reason, this Court made it clear—more than 15 years ago—that the scope of the Second Amendment is "unconnected with militia service." *Heller*, 554 U.S. at 582; *but cf.* App.30a ("That young adults had to serve in the militia indicated that founding-era lawmakers believed those youth could, and indeed should, keep and bear arms.").

The Third Circuit also failed to consider how militia statutes reflected the Founding-era understanding that under-21-year-olds did *not* have inherent Second Amendment rights. As the Eleventh Circuit highlighted, when under-21-year-olds served in militias, state statutes either exempted minors from the firearm requirement, or required minors' parents to furnish them with firearms. *Bondi*, 133 F.4th at 1119 (collecting statutes). The Third Circuit discounted the relevance of those provisions, however, because the militia statutes did not specifically state that "18-to-20-year-olds could not purchase or otherwise acquire their own guns." App.32a. True, the statutes themselves did not spell that out. But, in its continued search for historical twins instead of historical principles, the Third Circuit overlooked that those provisions were only necessary *because of* the "legal incapacity of under-21-year-olds" during the Founding, which rendered them unable to "purchase firearms required for their militia service." *Bondi*, 133 F.4th at 1119. Such provisions were superfluous if minors already had the independent right to acquire and carry firearms, as the Third Circuit suggests.

The Third Circuit's failure to "consider the background common-law regime" in place at the time led it to "misapprehend the import" of Founding-era militia statutes. *Bondi*, 133 F.4th at 1129.

C. The Third Circuit Failed to Take a Nuanced Approach to Post-Enactment History.

In its search for Founding-era replicas, the Third Circuit foreclosed any reliance on the common law, and overlooked an important reason why early legislatures may not have enacted specific statutes curtailing the gun rights of minors: there was simply no societal need for such laws in 1791. And "[l]egislatures tend not to enact laws to address problems that do not exist[.]" App.50a (Restrepo, J., dissenting).

In 1791, handguns "were owned by a tiny fraction of the population," and it was exceedingly difficult for minors to acquire firearms without parental consent. Walsh & Cornell, 108 MINN. L. REV. at 3062-63, 3088, 3118. The commonly-owned muskets of the time "were prone to misfiring, needed to be released after each shot, and required substantial acumen[.]"*Bondi*, 133 F.4th at 1135-36 (Rosenbaum, J., concurring); *see also* Joseph Blocher & Eric Ruben, *Originalism-by-Analogy and Second Amendment Adjudication*, 133 YALE L. J. 99, 153 (2023). Firearms were thus rarely used to commit homicides at the Founding. *Ibid.* Yet even *those firearms* could not be independently accessed by Founding-era 18-to-20-year-olds. *Bondi*, 133 F.4th at 1120-24. The common law regime, coupled with the scarcity and limited lethality of Founding-era weapons, meant there was no particular need to enact minimum-age *statutes* for firearms at that time. *Bondi*, 133 F.4th at 1123 ("the [common law] limitations on the legal rights of minors were so pervasive that states had no need to enact restrictions that prohibited their purchase of firearms"); *see also* App.95a (Krause, J., dissenting from the denial of en banc review).

This changed during the 19th century. By the 1850s, the mass production of deadlier and more accurate handguns made such weapons readily available to minors the first time. *Bondi*, 133 F.4th at 1135-40 (Rosenbaum, J., concurring). Increased access led to a "tide of firearm-related injuries at the hands of minors." Charles, *Armed in America* at 141; *see also Bondi*, 133 F.4th at 1137 (Rosenbaum, J., concurring) (under-21-year-olds "gained the personal and economic freedom to buy the new, widely available, and lethal weapons"). These monumental economic and technological changes created the imperative for legislatures to enact laws restricting the ability of under-21-year-olds to acquire and use handguns. *Bondi*, 133 F.4th at 1135-40 (Rosenbaum, J., concurring); Walsh & Cornell, 108 MINN. L. REV. at 3087-89.

Bruen instructed courts to take a "nuanced approach" to cases "implicating societal concerns or dramatic technological changes" not present at the Founding. 597 U.S. at 27-28. Because regulatory challenges evolve, "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Ibid.*; *Rahimi*, 602 U.S. at 691-92 ("the Second Amendment permits more than just those regulations identical to ones that could be found in 1791"). Instead of analyzing the relevant history with nuance, the Third Circuit wrongly assumed that "founding-era legislatures maximally exercised their powers to regulate, thereby adopting a 'use it or lose it' view of legislative authority." *Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring). The Third Circuit's flattening of the relevant history is incompatible with *Bruen* and *Rahimi*.

The Third Circuit's unrefined approach to analyzing the relevant history led it to incorrectly perceive a conflict between the Founding and Reconstruction eras

and unnecessarily resolve the historical timeframe debate. App.19a-25a.[9] But as the Eleventh Circuit explained, the rights of 18-to-20-year-olds were the same in 1791 as they were in 1868, so it is unnecessary to decide "how to address a conflict between the Founding-era and Reconstruction-era understandings of the right" when answering the question presented. *Bondi*, 133 F.4th at 1116-17; *see also Rahimi*, 602 U.S. at 692 n.1 (quoting *Bruen*, 597 U.S. at 37). The Third Circuit's contrary view mistook "the *absence* of a precisely analogous Founding-era regulation for the *existence* of a substantive constitutional right." *Bondi*, 133 F.4th at 1159 (Newsom, J., concurring) (emphasis in original) (citation omitted).

D. The Third Circuit Invoked Contemporary Legal Precepts to Interpret the Second Amendment.

The Third Circuit's textual analysis conflicts with *Bruen* and *Heller*. The Second Amendment must be given the "normal and ordinary" meaning known to the citizens who ratified the Second and Fourteenth

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[9] The Third Circuit claimed that the Commissioner (i) "forced" the issue by merely *referencing* post-enactment statutes, and (ii) asserted "by implication" a conflict between the Founding-era and Reconstruction-era understandings. App.20a; *id.* at n.17. The Commissioner's actual position below was that it is unnecessary to resolve the historical timeframe debate here because there *is no conflict* between the 1791 and 1868 understandings of the rights of 18-to-20-year-olds. 3d Cir. Dkt. ECF No. 107, Post-Rem.Supp.Br. at 21 ("The Commissioner's position on this issue is—and has always been—that this [c]ourt does not need to resolve that open question in this particular case."); *see also* 3d Cir. Dkt. ECF No. 57, Post-*Bruen* Letter Br. at 5 n.1 ("It is unnecessary to definitely resolve here because * * * both in 1791 and 1868 those younger than 21 were considered [minors] not covered by the right."). That is still the Commissioner's position in this Court.

Amendments. *Heller*, 554 U.S. at 577, 604. The text is thus "informed by history" and "confirmed by the historical background of the Second Amendment." *Bruen*, 597 U.S. at 19-20. Judge Restrepo's dissent explained how the relevant historical background here demonstrates that the citizens who adopted the Second and Fourteenth Amendments did not regard under-21-year-olds to be among "the people" protected by the right to bear arms. App.37a-46a. But the majority refused to consider this historical backdrop.

In the majority's view, a historically-rooted textual analysis "conflates *Bruen*'s two distinct analytical steps." App.16a. That view is belied by both *Bruen* and *Heller*. Under the textual prong, courts examine "a variety of legal and other sources to determine the public understanding of a legal text in the period after its enactment or ratification." *Bruen*, 597 U.S. at 20 (quoting *Heller*, 554 U.S. at 605).

Unmooring its textual analysis from history led the majority to default to contemporary legal principles. According to the Third Circuit, it would be "untenable" to interpret 18-to-20-year-olds to be among "the people" for certain rights, but not others. App.16a-17a. But references to "the people" have always varied between constitutional provisions when it comes to age considerations. The Third Circuit's failure to recognize that variance was the product of a purely modern conception of "young" adulthood.

Consider the examples the Majority cited: (1) Article I, Section 2, which provides that the House is chosen by "the People of the several states"; (2) the Seventeenth Amendment, which was ratified in 1913 and provides that Senators are elected by "the people" of each State; (3) the First Amendment rights of speech, assembly, and petition; and (4) the Fourth Amendment right against unreasonable searches and seizures.

App.17a. Before 1971—when the Twenty-sixth Amendment lowered the voting age to 18—"the people" as it appeared in Article I, Section 2 and the Seventeenth Amendment did not include under-21-year-olds. Yet, well before that same date, "the people" protected by the First Amendment *did* include under-21-year-olds. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506-07 (1969).

The majority's supposed claim to "consistency," *see* App.17a, is further undercut by the fact that there is no age threshold for the First and Fourth Amendments. After all, even five-year-olds have First and Fourth Amendment rights. By contrast, this Court has emphasized that the "the people" under the Second Amendment are "law-abiding, *adult* citizens," recognizing *some* age threshold for the right to bear arms. *Bruen*, 597 U.S. at 15, 31-32 (emphasis added); *id.* at 72-73 (Alito, J., concurring). Whatever First or Fourth Amendment rights under-21-year-olds may possess, that does not necessarily entitle them to Second Amendment coverage. Or, as the Tenth Circuit put it, "the Constitution does not establish a one-age-fits-all standard for all rights." *Rocky Mountain Gun Owners*, 121 F.4th at 124.

The Third Circuit incorrectly relied on a contemporary conception of "young adulthood" when interpreting the Second Amendment. But the rights 18-to-20-year-olds enjoy in modern times have no bearing on whether the citizens who adopted the Second and Fourteenth Amendments believed they had the independent right to bear arms. They did not.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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