

No. 19-1418

---

---

**In the Supreme Court of the United States**

ZOIE H.,

*Petitioner,*

v.

STATE OF NEBRASKA,

*Respondent.*

---

**On Petition for Writ of Certiorari to the  
Supreme Court of Nebraska**

---

**RESPONDENT'S BRIEF IN OPPOSITION**

---

DOUGLAS J. PETERSON  
Attorney General of Nebraska  
DAVID T. BYDALEK  
Chief Deputy Attorney General  
JAMES A. CAMPBELL  
Solicitor General  
*Counsel of Record*  
OFFICE OF THE NEBRASKA  
ATTORNEY GENERAL  
2115 State Capitol  
Lincoln, NE 68509  
(402) 471-2682  
jim.campbell@nebraska.gov

*Counsel for Respondent State of Nebraska*

---

---

## QUESTION PRESENTED

In the past, serious juvenile offenders in Nebraska could obtain and possess firearms as soon as they became adults. In 2018, Nebraska took a measured approach to address the significant risks that this posed to public safety—an approach unlike those adopted in practically every other State. It passed a statute that (1) temporarily suspends serious juvenile offenders from possessing firearms for their first six years of adulthood and (2) permits them to apply for reinstatement even before they become adults.

Because juvenile proceedings in Nebraska are rehabilitative (and not punitive) in nature, the adjudication in this case did not include incarceration as a possible penalty. The only consequences that petitioner faced were various forms of juvenile rehabilitation and the temporary firearm suspension. She insists that the suspension entitles her to a jury trial.

The Supreme Court of Nebraska rejected that argument. Sixth Amendment analysis considers only the punitive consequences of an adjudication. That does not include the temporary firearm suspension at issue here, the court below held, because it is not punishment imposed for this juvenile adjudication.

The question presented, which no other appellate court in the country has decided, is:

Whether a statute that temporarily suspends serious juvenile offenders from possessing firearms for the first six years of adulthood (and permits reinstatement even before adulthood) creates a right to a jury trial in a juvenile proceeding that does not authorize incarceration.

**STATEMENT OF RELATED PROCEEDINGS**

The juvenile case involving petitioner—Case No. JV17-372 in the Separate Juvenile Court in Lancaster County, Nebraska—includes multiple proceedings. In the proceeding on direct appeal here, the juvenile court entered an adjudication order against petitioner for attempted theft of a car worth more than \$5,000. Then in a subsequent related proceeding in that same case, petitioner admitted to a different theft involving more than \$5,000, and the juvenile court entered an adjudication order against her. The petition and order from this subsequent related proceeding are included in this brief at BIO App. 1a–7a.

**TABLE OF CONTENTS**

QUESTION PRESENTED ..... i  
STATEMENT OF RELATED PROCEEDINGS ..... ii  
TABLE OF AUTHORITIES ..... v  
INTRODUCTION ..... 1  
OPINION BELOW ..... 1  
JURISDICTION..... 1  
STATEMENT ..... 2  
REASONS FOR DENYING THE PETITION..... 8  
I. Petitioner’s asserted split is illusory because  
no other appellate court has addressed the  
juvenile-specific question resolved below..... 11  
II. This case is a bad vehicle. .... 17  
A. Serious questions surround the justici-  
ability of this appeal. .... 17  
B. A juvenile case like this one is a poor  
vehicle for deciding offender-in-possession  
issues. .... 21  
III. The decision below is correct..... 26  
CONCLUSION..... 32

APPENDIX

The State’s Sixth Supplemental Petition filed against Petitioner (Redacted) .....	1a
Juvenile Court’s Order Adjudicating the State’s Sixth Supplemental Petition (Redacted) .....	4a
Chart of State Juvenile-Offender-in- Possession Statutes and Juvenile Jury Laws .....	8a

## TABLE OF AUTHORITIES

### Cases

<i>Andersen v. Eighth Judicial District Court</i> , 448 P.3d 1120 (Nev. 2019).....	passim
<i>Arizonans for Official English v. Arizona</i> , 520 U.S. 43 (1997) .....	19
<i>Baldwin v. New York</i> , 399 U.S. 66 (1970) .....	25
<i>Blanton v. City of North Las Vegas</i> , 489 U.S. 538 (1989) .....	passim
<i>Clapper v. Amnesty International USA</i> , 568 U.S. 398 (2013) .....	17
<i>Daimler-Chrysler Corp. v. Cuno</i> , 547 U.S. 332 (2006) .....	17
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	24
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976) .....	15
<i>Frank v. United States</i> , 395 U.S. 147 (1969) .....	31
<i>Hollingsworth v. Perry</i> , 570 U.S. 693 (2013) .....	17
<i>In re Interest of Brandon M.</i> , 727 N.W.2d 230 (Neb. 2007) .....	2
<i>In re Laurance S.</i> , 742 N.W.2d 484 (Neb. 2007) .....	2, 8
<i>Jordan v. De George</i> , 341 U.S. 223 (1951) .....	16

<i>Kennedy v. Mendoza-Martinez</i> , 372 U.S. 144 (1963) .....	26, 27, 28
<i>Lewis v. United States</i> , 445 U.S. 55 (1980) .....	25, 28
<i>Lewis v. United States</i> , 518 U.S. 322 (1996) .....	14
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992) .....	17, 18
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010) .....	24
<i>McKeiver v. Pennsylvania</i> , 403 U.S. 528 (1971) .....	12, 13, 21, 22
<i>National Park Hospital Association v.</i> <i>Department of Interior</i> , 538 U.S. 803 (2003) .....	20
<i>Schall v. Martin</i> , 467 U.S. 253 (1984) .....	12, 13, 24, 27
<i>Spencer v. Kemna</i> , 523 U.S. 1 (1998) .....	19
<i>State ex rel. McDougall v. Strohson (Cantrell)</i> , 945 P.2d 1251 (Ariz. 1997) .....	16
<i>United States v. Chavez</i> , 204 F.3d 1305 (11th Cir. 2000) .....	15, 29
<i>United States v. Combs</i> , No. 8:05CR271, 2005 WL 3262983 (D. Neb. Dec. 1, 2005) .....	15
<i>United States v. Jardee</i> , No. 4:09-MJ-091, 2010 WL 565242 (D.N.D. Feb. 12, 2010).....	15

<i>United States v. Rene. E.</i> , 583 F.3d 8 (1st Cir. 2009).....	22
<i>United States v. Snow</i> , No. 11-0149-SU, 2011 WL 5025535 (D. Or. Oct. 21, 2011).....	15
<b><u>Statutes</u></b>	
28 U.S.C. §1257(a).....	1
Del. Code Ann. tit. 11, §1448(a)(4) .....	23
Fla. Stat. §790.23(1)(b) .....	23
Haw. Rev. Stat. §134-7(d) .....	23
Neb. Rev. Stat. §28-105(1) .....	4, 5
Neb. Rev. Stat. §28-201 .....	6
Neb. Rev. Stat. §28-511 .....	6, 7
Neb. Rev. Stat. §28-518 .....	6, 7
Neb. Rev. Stat. §28-1204 .....	2, 4, 18
Neb. Rev. Stat. §28-1204.01.....	2, 4, 18
Neb. Rev. Stat. §28-1204.05(1) .....	3, 4, 27
Neb. Rev. Stat. §28-1204.05(2) .....	4
Neb. Rev. Stat. §28-1204.05(4)(a).....	3, 18, 27
Neb. Rev. Stat. §28-1204.05(4)(b)(ii) .....	4, 27
Neb. Rev. Stat. §28-1204.05(4)(c) .....	4, 27
Neb. Rev. Stat. §28-1206(1)(a)(i) .....	4
Neb. Rev. Stat. §28-1206(3)(b).....	5
Neb. Rev. Stat. §43-246 .....	2
Neb. Rev. Stat. §43-246(1) .....	2



Neb. Rev. Stat. §43-246(9) .....	2
Neb. Rev. Stat. §43-261.01(1) .....	5
Neb. Rev. Stat. §43-280.....	19
Neb. Rev. Stat. §83-1,130(2) .....	4
Or. Rev. Stat. §166.250(1)(c)(B).....	23
Utah Code Ann. §76-10-503(1)(b)(ii) .....	23
<b><u>Other Authorities</u></b>	
Categories of Prohibited People: State by State, Giffords Law Center (Nov. 8, 2019), <a href="https://bit.ly/39fhK3A">https://bit.ly/39fhK3A</a> .....	23
Emily Ahdieh, <i>The Deportation Trigger: Collateral Consequences and the Constitutional Right to A Trial by Jury</i> , 30 Geo. Mason U. Civ. Rt L.J. 65 (2019) .....	30
Juvenile Right to Jury Trial Chart, National Juvenile Defender Center (July 17, 2014), <a href="https://bit.ly/3jBYzpE">https://bit.ly/3jBYzpE</a> .....	23
Nebraska Unicameral Floor Debate Transcript (Mar. 22, 2018), <a href="https://bit.ly/3h6iZFG">https://bit.ly/3h6iZFG</a> .....	3, 28
Nebraska Unicameral Judiciary Committee Transcript (Feb. 8, 2018), <a href="https://bit.ly/305oDjT">https://bit.ly/305oDjT</a> .....	3, 28
Paul T. Crane, <i>Incorporating Collateral Consequences into Criminal Procedure</i> , 54 Wake Forest L. Rev. 1 (2019).....	30

## INTRODUCTION

No other appellate court anywhere in the nation has decided the question addressed below: whether a statute that temporarily suspends serious *juvenile* offenders from possessing firearms creates a right to a jury trial in a *juvenile* proceeding. This undeveloped issue does not warrant the Court's attention.

This case is also a bad vehicle for addressing that question. Serious justiciability concerns raise doubts about whether the Court can even reach the merits. During this appeal, petitioner committed another felony, admitted to it, and was adjudicated for it. So she is subject to the firearm suspension regardless of the outcome of this case. Because the Court cannot redress the asserted injury, petitioner lacks appellate standing, and her claims are moot. The petition should be denied.

## OPINION BELOW

The opinion of the Supreme Court of Nebraska is reported at 937 N.W.2d 801 and appears at Pet. App. 1–18.

## JURISDICTION

The Supreme Court of Nebraska issued its opinion on January 24, 2020. Petitioner filed her petition on June 22, 2020, consistent with this Court's order allowing petitions for a writ of certiorari 150 days after the lower-court judgment. Petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. §1257(a). But as explained below, it is doubtful that this case is justiciable on appeal.

## STATEMENT

**A. *Relevant Nebraska Law.*** Like most States, Nebraska has a separate juvenile justice system that balances two important interests: (1) the rehabilitation and welfare of juveniles; and (2) the protection and safety of the public. *E.g.*, Neb. Rev. Stat. §§43-246 & 43-246(1) (the juvenile code seeks (1) to support the “development” of juveniles and their “well-being” and (2) “to protect the public interest” including “public peace and security”); *id.* at §43-246(9) (acknowledging the need to balance “the best interests of the juvenile and the safety of the community”). Consistent with these interests, Nebraska’s juvenile courts seek the “education, treatment, and rehabilitation of the child”—they do not administer “retributive punishment.” *In re Laurance S.*, 742 N.W.2d 484, 488 (Neb. 2007) (quoting *In re Interest of Brandon M.*, 727 N.W.2d 230, 234 (Neb. 2007)).

Out of concern for public safety, Nebraska law generally prohibits minors from possessing handguns or purchasing or receiving firearms. Neb. Rev. Stat. §§28-1204 (unlawful possession), 28-1204.01 (unlawful transfer). But before 2018, nothing prevented juveniles adjudicated of serious offenses from purchasing or otherwise possessing guns as soon as they turned 19 (the age of majority in Nebraska). Over time, the legislature became concerned that this posed substantial threats to public safety.

To address this, Nebraska State Senator Justin Wayne introduced LB 990, which the State’s Unicameral passed by a 41-0 margin (with 8 legislators not voting). Senator Wayne made clear that the bill’s purpose was “not punitive” in nature. Neb.

Unicameral Judiciary Comm. Transcript at 76 (Feb. 8, 2018), <https://bit.ly/305oDjT> (“Judiciary Comm. Tr.”). Rather, it was intended to “ensure[ ] the protection of our society,” Neb. Unicameral Floor Debate Transcript at 88 (Mar. 22, 2018), <https://bit.ly/3h6iZFG> (“Floor Debate Tr.”), and achieve “public safety” as the “number one” goal, Judiciary Comm. Tr. at 76.

Because Senator Wayne is an attorney who practices juvenile law and cares about juveniles’ rights, he crafted the bill as a “measured approach.” Judiciary Comm. Tr. at 74; see also *id.* at 92 (acknowledging that “every one of the [bill’s] opponents said[ ] this is one of the most measured approaches in the country”). The new law, referred to herein as the juvenile-offender-in-possession statute, temporarily suspends the right to possess firearms from an individual “previously . . . adjudicated an offender in juvenile court” for an act that would have been a “felony” or “misdemeanor crime of domestic violence.” Neb. Rev. Stat. §28-1204.05(1).

Because other Nebraska law already imposes severe restrictions on minors possessing or acquiring guns, the primary impact of this suspension is delayed until a juvenile offender becomes an adult. And some juvenile offenders will not have their adult gun rights restricted at all because the statute authorizes them to petition for reinstatement before turning 19. Neb. Rev. Stat. §28-1204.05(4)(a). Consistent with the juvenile code’s twin goals of individual rehabilitation and community safety, judges reviewing reinstatement petitions must weigh “the best interests of the [juvenile]” and “the public welfare,” *id.*

at §28-1204.05(4)(c), while considering the “likelihood that the person will engage in further criminal activity,” *id.* at §28-1204.05(4)(b)(ii).

Regardless of whether a reinstatement petition is filed or granted, the statute’s temporary firearm suspension automatically expires at age 25. Neb. Rev. Stat. §28-1204.05(1). Anyone who violates this statute (both initial and subsequent offenses) is guilty of a low-level felony, *id.* at §28-1204.05(2), none of which imposes a mandatory minimum term of imprisonment, *id.* at §28-105(1).

Reflecting the legislature’s measured approach to this issue, Nebraska’s juvenile-offender-in-possession statute is far less stringent than its adult-offender-in-possession law, which prohibits firearm possession by individuals who are convicted of certain serious crimes as adults. Neb. Rev. Stat. §28-1206(1)(a)(i). First, while the juvenile-offender-in-possession statute has little immediate impact on juveniles who already face restrictions on possessing and receiving guns, *id.* at §§28-1204, 28-1204.01, the adult-offender-in-possession statute instantly strips adults of all their gun rights. Second, the restrictions imposed by the adult-offender-in-possession statute do not lift automatically but continue indefinitely. Third, adult offenders may restore their gun rights only if they wait 10 years after completing their sentence, meet the stringent requirements for obtaining a pardon, and convince the pardons board to “expressly authorize” them to “possess . . . a firearm.” *Id.* at §83-1,130(2). Fourth, although violators of the juvenile-offender-in-possession law never face mandatory minimums, a first offense under the

adult-offender-in-possession statute comes with a mandatory minimum of three years' imprisonment, and subsequent offenses start at 20 years. *Id.* at §28-1206(3)(b); *id.* at § 28-105(1).

The juvenile-offender-in-possession statute also requires juvenile courts to notify minors about “the specific legal consequences that an adjudication . . . will have on [their] right to possess a firearm.” Neb. Rev. Stat. §43-261.01(1). This sensibly alerts juveniles that if they are adjudicated, they must apply to reinstate their gun rights or refrain from possessing a firearm until age 25.

**B. *Factual Background.*** In September 2018, Heidi Cuca stopped to fill her Lexis SUV with gas. Pet. App. 2. Once the tank was full, she started to enter the vehicle when she saw petitioner in the driver's seat attempting to steal it (and also noticed petitioner's friend in the backseat). *Ibid.* While petitioner hurried to start the car, Ms. Cuca struggled to grab the key fob from inside. *Ibid.* A physical altercation ensued, during which petitioner punched Ms. Cuca in the face and yelled “I'm going to take it.” *Ibid.* Eventually, Ms. Cuca—with aid from the gas-station manager who responded to her calls for help—stopped petitioner. *Ibid.*

The manager then tried to subdue petitioner while waiting for the police, but petitioner grabbed the manager's throat and attempted to bite her shoulder, forearm, and hand. After petitioner broke loose, she began to run away. When a concerned bystander stopped her, petitioner pulled his beard and tried to bite him too. This string of violence enabled petitioner

to flee the scene before the police arrived. Petitioner was 15 years old at the time.

A few days later, petitioner and her father met with a city police officer, waived her *Miranda* rights, and voluntarily submitted to an interview. Pet. App. 2. During that interview, petitioner told the officer that she “just felt like taking the car,” that she and her friend had developed a plan to do so, and that she had hit Ms. Cuca. *Ibid.*

*C. Juvenile-Court Proceedings.* In October 2018, the State filed a petition in juvenile court alleging that petitioner attempted to steal a car worth \$5,000 or more—conduct that is a felony under Nebraska law. Neb. Rev. Stat. §§28-201, 28-511, 28-518; Pet. App. 3. Petitioner demanded a jury trial because an adverse adjudication would subject her to the juvenile-offender-in-possession statute. Pet. App. 3–4. The court denied the request because its limited jurisdiction did not authorize it to empanel a jury. *Id.* at 4–5.

The court then held an evidentiary hearing. Pet. App. 5–6. The State offered three witnesses—Ms. Cuca, the gas-station manager, and the interviewing police officer. *Id.* at 5. Ms. Cuca and the manager both identified petitioner as the girl who attempted to steal the vehicle. *Ibid.* The defense offered no evidence in response. *Id.* at 6. After the hearing, the court entered an adjudication order against petitioner. *Ibid.* She appealed.

In November 2019, while that appeal was pending, petitioner got into more trouble with the law. This time she did not just attempt to steal, but actually succeeded in taking property valued at \$5,000 or

more. This, like her attempted theft of Ms. Cuca's Lexis, would have been a felony if she were an adult. Neb. Rev. Stat. §§28-511, 28-518. The State filed a petition raising this theft with the juvenile court. BIO App. 1a.

In December 2019, petitioner admitted to these allegations against her and did not request a jury trial. BIO App. 4a. As a result, the juvenile court entered an adjudication order for felony theft. *Ibid.* Petitioner did not appeal.

Petitioner is still a juvenile and will not become an adult until August 2022. Although the original adjudication in this case was entered in 2018, petitioner has not asked the juvenile court to reinstate her firearm rights. Nor has she introduced any evidence indicating that she desires to own or possess a gun—let alone specifics about any plans or intentions to have a gun in the future.

**D. *Decision Below.*** In January 2020, the Supreme Court of Nebraska affirmed the denial of petitioner's jury demand. Petitioner argued that the juvenile-offender-in-possession statute "transforms a juvenile adjudication . . . into a serious criminal offense to which the right to a jury trial attaches." Pet. App. 9. Under this Court's case law, that jury right attaches only if the "statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a serious one." *Ibid.* (cleaned up); accord *Blanton v. City of N. Las Vegas*, 489 U.S. 538, 543 (1989) (establishing that standard).



Petitioner based her jury demand, the court below explained, on “the fundamental assumption” that the juvenile-offender-in-possession statute imposes a “penalty for juvenile adjudication.” Pet. App. 10. But the court rejected that premise for two reasons.

First, the court focused on the non-punitive purpose of juvenile adjudications in Nebraska. The purpose of those adjudications, the court said, “is the education, treatment, and rehabilitation of the child, rather than retributive punishment.” Pet. App. 11 (quoting *Laurance S.*, 742 N.W.2d at 488). It is “difficult to envision” a juvenile disposition that amounts to “punishment.” *Ibid.*

Second, the court discussed the non-punitive purpose of offender-in-possession statutes. Agreeing with the “majority of jurisdictions,” the court concluded that “the statutory prohibition on possessing firearms” is “a collateral consequence” of prior adjudications and “not part of the punishment imposed” for them. Pet. App. 12.

For these reasons, the court held that Nebraska’s temporary firearm suspension “is not punishment imposed for a prior juvenile adjudication.” Pet. App. 13. Accordingly, that consequence did not “transform [petitioner’s] juvenile adjudication into a serious offense” or “entitle[ ] her to a jury trial.” *Ibid.*

## **REASONS FOR DENYING THE PETITION**

**I.** No other appellate court in the country has addressed whether a juvenile-offender-in-possession statute creates a Sixth Amendment jury right in a juvenile proceeding. This novel, undeveloped question does not need this Court’s attention.

The centerpiece of petitioner’s asserted conflict—*Andersen v. Eighth Judicial District Court*, 448 P.3d 1120 (Nev. 2019)—does not establish a split. That case involved a different kind of proceeding (an adult criminal proceeding), harsher penalties (including a six-month term of imprisonment), and a more stringent firearm statute (an adult-offender-in-possession statute with an indefinite firearm ban). Because those differences are directly relevant to the governing legal analysis, there is no conflict.

**II.** This case is also a bad vehicle. Multiple justiciability principles—standing, mootness, and ripeness—threaten to block this Court from reaching the merits of petitioner’s claim.

Petitioner lacks appellate standing because she has not alleged an injury that is fairly traceable to the juvenile-offender-in-possession statute. Assuming that she wants to possess a gun while still a juvenile, her purported injury is most likely attributable to the State’s general prohibition on minors possessing handguns and receiving firearms. Or if she wants a gun once she becomes an adult, her alleged injury might never materialize because she can obtain reinstatement before turning 19. Either way, the case for standing comes up short.

Redressability and mootness are roadblocks too. Petitioner’s subsequent adjudication for another felony means that the juvenile-offender-in-possession statute applies to her regardless of what happens in this case. Because a ruling here will have no effect, this Court is without jurisdiction.

Ripeness presents further concerns. The question presented is not fit for review because petitioner has

provided insufficient facts about her desired possession and use of guns. And she faces no hardship if this Court declines review because her subsequent adjudication subjects her to the juvenile-offender-in-possession statute no matter what happens here.

In addition to these justiciability concerns, this case is a poor vehicle to address the relationship between the Sixth Amendment jury right and offender-in-possession statutes. All existing case law on that issue (aside from the decision below) deals with adult-offender-in-possession statutes. But juvenile cases like this one are ill-suited for addressing those adult-offender laws. Juvenile cases raise issues peculiar to their context, including whether juvenile proceedings fit within the text of the Sixth Amendment and whether juries will undermine the rehabilitative purpose of juvenile proceedings. Because these issues could dictate the outcome here, the ruling might have little relevance to adult-offender-in-possession statutes.

Nor is this case a good mechanism for addressing the Sixth Amendment implications of juvenile-offender-in-possession statutes. Nebraska's measured approach to this issue is unlike the law enacted in other States. Consequently, this case will not provide helpful nationwide guidance.

**III.** There is a final reason why this Court should deny review: because the decision below is correct. Nebraska's temporary firearm suspension does not factor into the Sixth Amendment analysis because the legislature did not intend it as punishment for juvenile offenses. Instead, its purpose, as confirmed by both statutory text and legislative history, is to protect the public. Petitioner's Sixth Amendment

arguments thus fail because, as the Supreme Court of Nebraska held, the temporary firearm suspension “is not punishment imposed for [this] juvenile adjudication.” Pet. App. 13.

Moreover, the consequences of the adjudication in this case do not manifest a legislative determination that the offense is serious enough to require a jury trial. This Court has repeatedly said that the maximum authorized period of incarceration is the primary indicator of seriousness. But the available punishments for this adjudication did not include incarceration. Where a firearm suspension applies but the adjudication does not authorize imprisonment, a jury right does not arise. Even the scholars that petitioner relies on recognize this. Because the decision below is correct, the Court should deny the petition.

**I. Petitioner’s asserted split is illusory because no other appellate court has addressed the juvenile-specific question resolved below.**

The question addressed below is whether a juvenile-offender-in-possession statute that temporarily suspends a serious offender’s right to possess firearms creates a Sixth Amendment jury right in juvenile court. Petitioner does not cite any other appellate decision that has addressed that juvenile-specific question. Nor does it appear that any other appellate court has. The case law on that question thus needs much more development before this Court intervenes.

**A. *Andersen*.** Attempting to obscure the uniqueness of the decision below, petitioner argues that it conflicts with *Andersen v. Eighth Judicial District Court*, 448 P.3d 1120 (Nev. 2019). It does not. The two

cases involve different types of proceedings, different penalties, and different firearm statutes. They do not conflict.

1. *Different proceedings.* While this case is a juvenile proceeding against a minor, *Andersen* was a criminal misdemeanor case against an adult. That difference is crucial for reasons that this Court has already recognized. *Schall v. Martin*, 467 U.S. 253, 263 (1984) (“a juvenile proceeding [is] fundamentally different from an adult criminal trial”).

For starters, the Sixth Amendment applies only to “criminal prosecutions.” U.S. Const. amend. VI. In *Andersen*, it was undisputed that a misdemeanor case against an adult was a criminal prosecution subject to the Sixth Amendment. But here, it is unclear whether this juvenile proceeding qualifies as a criminal prosecution under that Amendment—a point on which this Court has expressed doubts. *McKeiver v. Pennsylvania*, 403 U.S. 528, 541 (1971) (plurality op.) (“[T]he juvenile court proceeding has not yet been held to be a ‘criminal prosecution,’ within the meaning and reach of the Sixth Amendment”); *id.* at 551 (White, J., concurring) (“We have not . . . considered the juvenile case a criminal proceeding within the meaning of the Sixth Amendment”); *id.* at 553 (Brennan, J., concurring and dissenting) (agreeing with “the plurality opinion’s conclusion that the proceedings . . . were not ‘criminal prosecutions’ within the meaning of the Sixth Amendment”). The jury-right claim here thus needs to grapple with this threshold textual issue, but the *Andersen* court did not.

Requiring a jury trial in a juvenile case also implicates a number of complicating policy considerations

that do not arise in a criminal misdemeanor case like *Andersen*. For example, the *McKeiver* plurality was concerned that injecting a jury right into juvenile proceedings might transform “informal protective proceeding[s]” that seek rehabilitation (rather than retribution) into “fully adversary process[es]” with added “delay” and “formality.” *Id.* at 545, 550. This apprehension about upsetting the rehabilitative purpose and flexible nature of juvenile proceedings—and the impact that might have on children—was simply not relevant in *Andersen*.

By arguing that *Andersen* conflicts with the decision below, petitioner effectively equates criminal and juvenile proceedings. But that is something this Court has repeatedly refused to do. *Schall*, 467 U.S. at 263 (“the Constitution does not mandate elimination of all differences” between juvenile and adult criminal proceedings); *McKeiver*, 403 U.S. at 550 (plurality op.) (taking “issue” with the attempt to “equate the juvenile proceeding . . . with the criminal trial”); *id.* at 553 (White, J., concurring) (recognizing and upholding the “differences of substance between criminal and juvenile courts”).

**2. Different penalties.** The potential consequences facing petitioner are also very different from the penalties authorized in *Andersen*. Most importantly, Nevada law subjected Mr. Andersen to “a maximum authorized period of incarceration of six months.” *Andersen*, 448 P.3d at 1123. But petitioner faced no imprisonment in this case.

The absence of any authorized period of incarceration is critical. While Sixth Amendment jury-right analysis considers the totality of available penalties,

it places the “[p]rimary emphasis . . . on the maximum authorized period of incarceration.” *Blanton*, 489 U.S. at 542; accord *Lewis v. United States*, 518 U.S. 322, 326 (1996) (*Lewis II*) (“In evaluating the seriousness of the offense, we place primary emphasis on the maximum prison term authorized.”). Prison is the ultimate loss of liberty and thus “the most powerful indication whether an offense is ‘serious.’” *Blanton*, 489 U.S. at 542. Other penalties—including “significant infringement[s] of person freedom”—“cannot approximate in severity the loss of liberty that a prison term entails.” *Ibid.* Even when the legislature authorizes six months in prison, it is “the rare situation” where other penalties will be “onerous” enough to require a jury right. *Id.* at 543. It is rarer still that a jury right will attach when, as here, incarceration is not available.

*Andersen* viewed itself as one of the unusual cases when a legislatively created consequence combined with six months’ imprisonment to create a jury right. Petitioner seeks much more here: to establish a jury right through a temporarily imposed collateral consequence *without any authorized prison term*. That the legislature has not authorized any incarceration for petitioner’s juvenile adjudication makes this case entirely unlike *Andersen*. That case does not conflict with this one.

**3. Different Firearm Statutes.** The firearm statute at issue in *Andersen* is also materially distinguishable from Nebraska’s juvenile-offender-in-possession statute. Notably, the gun restriction in *Andersen* was indefinite, but the suspension here is temporary (and

includes the opportunity for reinstatement even before the juvenile becomes an adult).

While in many situations it is immaterial how long a constitutional right is suspended or withheld, see *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976) (plurality op.), that is not true for Sixth Amendment jury-right analysis. After all, the risk of losing one’s liberty for more than six months creates a jury right, but the potential for six months or less in prison typically does not. *Blanton*, 489 U.S. at 542–43. Because other “significant infringement[s] of personal freedom” do not “approximate in severity the loss of liberty that a prison term entails,” *id.* at 542, it fits squarely within this Court’s jurisprudence to distinguish between removing the right to possess firearms indefinitely and suspending it for (at most) only the first six years of adulthood.

**B. Other Firearms Cases.** Finding no foothold in *Andersen*, Petitioner points to one additional state appellate decision, one federal circuit-court decision, and three unpublished federal district-court decisions that allegedly implicate a split of authority. Pet. at 19–20. But none of these cases were juvenile proceedings. Rather, the four federal cases involved adult misdemeanor proceedings, just like *Andersen*. *United States v. Chavez*, 204 F.3d 1305, 1313–14 (11th Cir. 2000) (no jury right for “a misdemeanor crime of domestic violence”); *United States v. Snow*, No. 11-0149-SU, 2011 WL 5025535, at \*1–3 (D. Or. Oct. 21, 2011) (same); *United States v. Jardee*, No. 4:09-MJ-091, 2010 WL 565242, at \*1–4 (D.N.D. Feb. 12, 2010) (same); *United States v. Combs*, No. 8:05CR271, 2005 WL 3262983, at \*1–3 (D. Neb. Dec. 1, 2005) (same).



And the state case, which sought a jury right under a state (not federal) constitution, also arose out of adult misdemeanor proceedings. *State ex rel. McDougall v. Strohson (Cantrell)*, 945 P.2d 1251, 1251–52 (Ariz. 1997). Consequently, none of those cases addressed the juvenile-specific question resolved below.

Moreover, all five of those decisions held that the litigant did *not* have a right to a jury trial. So to the extent that their analysis is at all relevant to the question addressed below, those decisions do nothing to create a split. They serve only to confirm that the Supreme Court of Nebraska reached the right result.

**C. Removal Cases.** Casting her search for a conflict even further afield, petitioner discusses cases in which a defendant is accused of “an offense that renders a noncitizen removable under federal immigration law.” Pet. at 20. Those cases are distinguishable for many of the reasons that *Andersen* is: they were not juvenile proceedings; and they brought criminal charges that exposed the defendant to incarceration.

In addition, assuming without conceding that those removal cases were correctly decided, it is obvious that removal—which at times amounts to complete “exile” from the country, *Jordan v. De George*, 341 U.S. 223, 231 (1951)—raises very different considerations than a statute that (at most) temporarily suspends firearm possession for the first six years of adulthood. That petitioner pulls in these removal cases shows just how weak her conflict argument is.

## II. This case is a bad vehicle.

This case is a poor vehicle to address the question presented. To begin with, justiciability concerns permeate this case, raising serious uncertainties about whether this Court can even reach the merits of petitioner’s claim. Additionally, the juvenile-specific question in this case is ill-suited to provide helpful national guidance on the constitutional issues that petitioner seeks to press.

### A. Serious questions surround the justiciability of this appeal.

Standing, mootness, and ripeness, which “all originate in Article III’s ‘case’ or ‘controversy’ language,” are justiciability doctrines that prevent courts from reaching the merits of litigants’ claims. *Daimler-Chrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). Those doctrines all cast doubt on whether this Court can reach the question presented.

1. *Standing*. All three requirements of Article III standing “must be met by persons seeking appellate review.” *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013). First, a litigant must establish “an injury in fact—an invasion of a legally protected interest” that is “actual or imminent, not conjectural or hypothetical.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up). A “threatened injury must be *certainly impending* to constitute injury in fact”; “allegations of possible *future* injury are not sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (cleaned up). Second, any claimed injury must be “fairly traceable” to the challenged law rather than some independent source. *Ibid.* Third, it must be likely that the asserted “injury will be

redressed by a favorable decision.” *Defs. of Wildlife*, 504 U.S. at 561.

Petitioner argues that the juvenile-offender-in-possession statute suspends her right to possess a gun without first giving her a jury trial. But this alleged injury is illusory unless petitioner shows that the judgment below actually affects her personal plans to possess firearms.

It is difficult to assess the claimed injury because petitioner—despite “bear[ing] the burden of establishing” standing, *ibid.*—does not even allege that she wants to possess firearms, let alone indicate what gun she wants, or disclose when, where, or for what purpose she desires to use it. Assuming that she wants a gun now, as a juvenile who turns 17 this month, her alleged injury is not likely attributable to the juvenile-offender-in-possession statute. Rather, the cause is Nebraska’s general prohibition on the possession of handguns and the receipt of firearms by juveniles. Neb. Rev. Stat. §§28-1204, 28-1204.01. Assuming, on the other hand, that petitioner wants to acquire firearms after turning 19, her purported injury is speculative because the State allows her to apply for full reinstatement before she becomes an adult. *Id.* at §28-1204.05(4)(a). Either way, petitioner’s purported injury rests on shaky ground.

Nor does it appear that this Court can redress petitioner’s asserted injury. While this appeal was pending, petitioner engaged in additional conduct—theft of an item worth more than \$5,000—that would have been a felony were she an adult. When the State raised this issue to the juvenile court, petitioner admitted it and did not request a jury trial. The

juvenile court then entered an adjudication order against her. So regardless of the outcome of this case, petitioner will be in precisely the same position she is in now. She will still have been adjudicated of a felony and continue to be subject to the juvenile-offender-in-possession statute.

**2. Mootness.** This redressability problem may alternatively be viewed through the lens of mootness. “[A]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (citation omitted). “This means that, throughout the litigation, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.” *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (cleaned up). But as explained above, petitioner’s subsequent adjudication for another felony means that she will be subject to the juvenile-offender-in-possession statute even if she prevails here. That subsequent adjudication has rendered this appeal moot.

While this Court has sometimes said that the collateral consequences of criminal convictions suffice to avoid mootness, see *id.* at 7–14, such consequences cannot save this case. Petitioner herself recognizes that, aside from the temporary firearm suspension prescribed in the juvenile-offender-in-possession statute, juvenile adjudications in Nebraska do not have collateral consequences or impose civil disabilities. Pet. at 8–9 (citing Neb. Rev. Stat. §43-280). Accordingly, the only potential consequence of peti-

tioner's adjudication is one that she is now guaranteed to experience because of her subsequent adjudication for theft. This case will have no effect on that. As a result, collateral consequences cannot keep this case alive.

**3. Ripeness.** In addition to standing and mootness, ripeness is another potential roadblock to this appeal. "The ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003) (cleaned up). A case should be dismissed for lack of a ripe claim if (1) the issue is not "fit for review" because of insufficient "factual development," *id.* at 812, or (2) the parties will not experience substantial hardship from "withholding court consideration," *id.* at 808.

Both of these factors weigh in favor of dismissal. First, the legal issue is not fit for review because petitioner has not introduced any evidence about her intent to possess firearms or the circumstances of her intended possession. This leaves the Court to guess about facts central to its analysis. Second, petitioner will not endure any hardship if the Court declines review. The outcome of this case will not affect her right to possess a gun because her subsequent theft provides an independent reason why the juvenile-offender-in-possession statute applies to her. Withholding review will not affect petitioner in the least.

**B. A juvenile case like this one is a poor vehicle for deciding offender-in-possession issues.**

This case is a poor vehicle for deciding whether offender-in-possession statutes create a right to a jury trial. It is ill-suited for resolving the constitutional questions raised by *adult*-offender-in-possession statutes because a juvenile case like this one raises many issues not present in the adult criminal context. And this case is a poor vehicle for evaluating *juvenile*-offender-in-possession statutes because Nebraska’s measured approach to this issue is an outlier. Deciding this case will not provide useful national guidance.

1. *Poor Vehicle for Adult-Offender-In-Possession Issues.* Juvenile cases like this one are not suitable for resolving the adult-offender-in-possession issue that courts like *Andersen* have addressed. Juvenile proceedings, as discussed above, raise many issues that are absent from adult criminal cases.

There is, for example, the threshold question whether juvenile cases qualify as “criminal prosecutions” under the Sixth Amendment—a question on which this Court has already expressed doubts. See *supra* at 12. If this case does not get beyond that issue, the ruling would fail to provide guidance on the broader Sixth Amendment questions presented in adult criminal cases.

Even if petitioner can clear this textual hurdle, the constitutional analysis will need to grapple, much like the *McKeiver* Court did, with the difficult policy concerns that arise when litigants ask judges to import the jury right into juvenile proceedings. See

403 U.S. at 545, 550 (plurality op.); *supra* at 12–13. Depending on how the Court addresses these policy considerations, the resulting opinion might have little to no relevance in adult criminal cases.

Furthermore, collateral consequences like firearm restrictions factor into Sixth Amendment jury-trial analysis *only* if they are punishment for an adjudication. See Pet. App. 9–13; *infra* at 26. Nebraska law treats juvenile adjudications as non-punitive, and that consideration will necessarily affect the constitutional analysis. Pet. App. 10–11. A ruling that relies on that factor in any significant way simply will not transfer to adult-offender-in-possession laws.

This case might also raise Second Amendment issues of no concern in the adult criminal context. To the extent that petitioner is claiming a constitutional right to possess a gun as a juvenile, she must establish that Second Amendment rights belong to minors. See *United States v. Rene E.*, 583 F.3d 8, 12–16 (1st Cir. 2009) (reviewing the “tradition of prohibiting juveniles from both receiving and possessing handguns” and finding no constitutional protection). If no such right exists, this too could limit the guidance that this case provides in adult criminal cases.

**2. *Poor Vehicle for Juvenile-Offender-In-Possession Issues.*** Nor is this case a good vehicle to explore the relationship between the Sixth Amendment jury right and juvenile-offender-in-possession statutes. To reiterate, there is no need for this Court to address that issue because no appellate court, other than the court below, has weighed in on it.

But even if the Court wanted to address that issue, this case is a decidedly poor vehicle for doing so. That

is because Nebraska’s moderate approach to the juvenile-offender-in-possession issue is quite peculiar. To begin with, only 26 States (including Nebraska) restrict possession of firearms because of a juvenile offense. BIO App. 8a–9a; Categories of Prohibited People: State by State, Giffords Law Center (Nov. 8, 2019), <https://bit.ly/39fhK3A>. Out of those States, only 16 (including Nebraska) limit juvenile proceedings to bench trials. BIO App. 8a–9a; Juvenile Right to Jury Trial Chart, National Juvenile Defender Center (July 17, 2014), <https://bit.ly/3jBYzpE>. Out of those States, only six (including Nebraska) automatically lift their firearm restriction at age 25 or younger. Del. Code Ann. tit. 11, §1448(a)(4); Fla. Stat. §790.23(1)(b); Haw. Rev. Stat. §134-7(d); Or. Rev. Stat. §166.250(1)(c)(B); Utah Code Ann. §76-10-503(1)(b)(ii). And out of those States, Nebraska appears to be the only one that allows juveniles to apply for reinstatement before reaching the age of majority. Since Nebraska’s approach to this issue is unique, deciding this case will not provide helpful guidance to other States.

Furthermore, petitioner has restricted this Court’s review by raising only the Sixth Amendment right to a jury trial while omitting a general due-process claim under the Fourteenth Amendment. Although serious questions surround whether a juvenile proceeding is a “criminal prosecution” under the Sixth Amendment, this Court has held that the Fourteenth Amendment’s Due Process Clause “is applicable in juvenile proceedings,” and that it requires safeguards like “notice of charges” and the “privilege against self-incrimina-



tion.” *Schall*, 467 U.S. at 263. The lack of an independent due-process claim is another reason why this case is a poor vehicle.

As if all these deficiencies were not enough, the absence of facts concerning petitioner’s purported intent to possess a firearm makes it difficult to evaluate whether the Second Amendment even applies here. Second Amendment analysis considers factors that are wholly missing from the record. Those include (1) the type of firearm that petitioner wants to possess, *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008) (“[T]he Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes”), (2) where she wants to possess it, *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010) (“[T]he Second Amendment protects the right to possess a handgun *in the home* for the purpose of self-defense”) (emphasis added), and (3) “the purpose” for which she wants to use it, *ibid.* Because those facts are unknown here, the Court should pass on this case.

**3. *Petitioner’s Arguments.*** Petitioner tries various tacks when insisting that this case is an “excellent vehicle.” Pet. at 25–30. None is persuasive.

She begins by claiming that the decision below is a threat to the Sixth Amendment in all contexts, arguing that it gives States a blank check to withhold the jury right simply by codifying collateral consequences “in separate criminal provisions.” Pet. at 25–26. This argument seriously misreads the decision below. That decision rejected petitioner’s jury demand because the juvenile-offender-in-possession statute is not punishment for juvenile adjudications. Pet. App.

9–13. The court identified *two reasons* why that was so: first, the purpose of juvenile adjudications is not punitive, *id.* at 10–11; and second, the purpose of offender-in-possession statutes is not punitive, *id.* at 12–13. That decision did not hinge on the juvenile-offender-in-possession statute’s location in the code.

Petitioner next insists that the decision below endangers the jury rights of juveniles in particular, claiming that it authorizes States to attach “*criminal consequences*” to a juvenile offense without affording a jury trial. Pet. at 28. But the temporary firearm suspension here is not a criminal consequence because it is not punitive. Pet. App. 9–13. Even this Court has recognized that an offender-in-possession law imposes an “essentially civil disability” and does not “enhance punishment” for a prior conviction. *Lewis v. United States*, 445 U.S. 55, 67 (1980) (*Lewis I*).

Ironically, it is petitioner’s position (not the decision below) that raises “troubling implications for . . . juvenile proceedings.” Pet. at 27. Petitioner’s view, as argued below, is that all “felony and misdemeanor domestic violence charges in Juvenile Court” include a jury right. Appellant Neb. Sup. Ct. Br. at 38. Accepting that will restrict the flexibility of those proceedings, threaten to undermine their rehabilitative focus, and force States to forfeit the benefits of “speedy and inexpensive nonjury adjudications.” *Blanton*, 489 U.S. at 543 (quoting *Baldwin v. New York*, 399 U.S. 66, 73 (1970)). It will, in short, stifle States’ freedom to experiment in finding the best ways to promote child welfare and secure public

safety through their juvenile justice systems. The Constitution does not require that.

### **III. The decision below is correct.**

The Supreme Court of Nebraska correctly held that the juvenile-offender-in-possession statute does not require a jury trial in juvenile court. That decision is right for two reasons. First, as the court below held, the juvenile-offender-in-possession law is not punishment for a prior juvenile adjudication. Pet. App. 10–13. Second, under this Court’s precedents, a juvenile proceeding that includes no term of incarceration and only a temporary suspension of gun rights does not rise to the level of seriousness that requires a jury trial.

1. *Not Punitive*. In deciding whether an offense is “serious” enough to qualify for a jury right, this Court considers the “legislature’s view of the seriousness of [the] offense” as reflected in the prescribed “penalties” and “punishment.” *Blanton*, 489 U.S. at 541–42. Courts include a collateral consequence in that seriousness analysis only when the legislature intended the consequence to be punishment for the offense. See *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 167 (1963) (explaining that the protections of “the Fifth and Sixth Amendments” apply only when “the sanction . . . impose[d] is punishment”); Pet. App. 10 (considering “the intent-effects test established by [this] Court”).

Here, as the court below held, the legislature did not implement the juvenile-offender-in-possession statute to punish individuals for their juvenile adjudications. Rather, its purpose is to protect the public

from people who have shown themselves to be dangerous. This is a “compelling state interest” that “persists undiluted in the juvenile context.” *Schall*, 467 U.S. at 264. At least four factors prove this legislative purpose.

First, the words of “the statute on its face” show its protective character. *Kennedy*, 372 U.S. at 169. It is triggered only by an “adjudicat[ion] . . . in juvenile court.” Neb. Rev. Stat. §28-1204.05(1). As petitioner admits and the court below observed, those adjudications are designed to “rehabilitat[e] juveniles, not punish[ ] criminals.” Pet. at 8; accord Pet. App. 10–11 (similar). This creates a strong presumption that the firearm restriction is not punitive. See Pet. App. 11 (it is “difficult to envision” a juvenile disposition that amounts to “punishment”).

Continuing in the text, the statute permits juvenile offenders to “file a petition” to remove the firearm suspension before they become adults. Neb. Rev. Stat. §28-1204.05(4)(a). Providing this opportunity would make no sense if the legislature intended the suspension as punishment. And further reflecting the statute’s protective purpose, the standards for granting reinstatement are “the best interests” of the applicant and “the public welfare,” *id.* at §28-1204.05(4)(c), in light of the “likelihood that the person will engage in further criminal activity,” *id.* at §28-1204.05(4)(b)(ii). These are the concerns of public safety—not personal punishment. See *Schall*, 467 U.S. at 264–74 (concluding that the temporary preventive detention of juveniles, implemented “to protect the child and society,” was not “used or intended as a punishment”).

Second, the legislature’s “reasons for enacting” the juvenile-offender-in-possession statute leave no doubt about its non-punitive purpose. *Kennedy*, 372 U.S. at 169. That serious juvenile offenders in early 2018 could acquire and possess firearms when they turned 19 raised substantial public-safety concerns for the legislature. The legislative sponsor emphasized this when he announced that the bill was intended to “ensure[ ] the protection of our society,” Floor Debate Tr. at 88, and achieve “public safety” as the “number one” goal, Judiciary Comm. Tr. at 76. He also said that the statute’s purpose was “not punitive” in nature. Judiciary Comm. Tr. at 76. Indeed, one will search the legislative record in vain to find any hint of a retributive purpose.

Third, the statute is “rationally . . . connected” to its public-safety purpose and not “excessive in relation to” that goal. *Kennedy*, 372 U.S. at 168–69. The law is a measured response to the legislature’s concerns. Its firearm suspension automatically expires at age 25, and covered individuals can apply for reinstatement even before they turn 19. Also, the prescribed penalties for violating it are modest and include no mandatory minimums. This close fit between plan and purpose corroborates the legislature’s stated intent. See *Lewis I*, 445 U.S. at 67 (“Congress’ judgment that a convicted felon . . . is among the class of persons who should be disabled from dealing in or possessing firearms because of potential dangerousness is rational.”).

Fourth, as the court below noted, the “majority of jurisdictions” have concluded that “statutory prohibition[s] on possessing firearms” are “not part of the

punishment imposed” for prior adjudications. Pet. App. 12; *e.g.*, *Chavez*, 204 F.3d at 1314 (Congress did not intend the federal offender-in-possession statute to be “an ‘additional’ penalty” for a prior conviction). This weight of authority confirms that Nebraska’s juvenile-offender-in-possession statute is not punitive.

**2. *Not Serious.*** Alternatively, even assuming that the statute’s temporary firearm suspension is punitive, the Supreme Court of Nebraska reached the right outcome because the consequences of this adjudication are insufficient to invoke the jury right. Petitioner must establish that the “statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a ‘serious’ one.” *Blanton*, 489 U.S. at 543.

But here, the legislature did not authorize incarceration for this juvenile adjudication. The only consequence that petitioner raises is the temporary firearm suspension. Since this Court has recognized that the “[p]rimary emphasis” in Sixth Amendment jury-right analysis is “on the maximum authorized period of incarceration,” *Blanton*, 489 U.S. at 542, and the legislature did not authorize any prison time for this juvenile offense, petitioner cannot establish that the legislature considered her offense sufficiently serious to invoke the constitutional right to a jury.

Notably, two of the scholars that petitioner relies on agree with the State on this. One wrote that when an adjudication poses “no threat of potential imprisonment,” the “possibility of a firearm prohibition

alone should not trigger [the] constitutional right to a jury trial.” Paul T. Crane, *Incorporating Collateral Consequences into Criminal Procedure*, 54 Wake Forest L. Rev. 1, 60 n.285 (2019). And the other said that “the collateral consequence of firearm prohibition should be assigned . . . the functional equivalent of six months of imprisonment,” which, standing alone, does not warrant a jury trial. Emily Ahdieh, *The Deportation Trigger: Collateral Consequences and the Constitutional Right to A Trial by Jury*, 30 Geo. Mason U. Civ. Rts. L.J. 65, 84 (2019).

In addition to the absence of jail time for this juvenile adjudication, two features of the firearm suspension reinforce that it does not create a jury right: first, the suspension lasts (at most) for only the first six years of adulthood; and second, juvenile offenders may have the suspension lifted before becoming adults. See *Blanton*, 489 U.S. at 544 n.9 (minimizing the significance of “a 90-day license suspension” because “a restricted license may be obtained after only 45 days”); Second Amendment Professors Amici Br. at 16 (recognizing that States in the founding era not only withheld firearm rights from dangerous individuals but also prescribed “procedures for restoring [an offender’s] right to arms”). By ameliorating the suspension in these ways, the legislature showed that it does not view the underlying offense as serious enough to invoke the right to a jury trial.

Tellingly, petitioner cites no case from this Court suggesting that the Sixth Amendment requires a jury trial when an adjudication includes the potential for a temporary suspension of one right but does not authorize any jail time. For good reason. This Court’s

case law points in the opposite direction. Indeed, the Court has held that no jury right attaches to the prospect of six months in prison combined with five years of probation (which typically includes conditions that themselves impose “significant infringement[s]” on “personal freedom”). *Frank v. United States*, 395 U.S. 147, 150–52 (1969). It follows that no such right accompanies an adjudication that authorizes no prison time and at most a six-year suspension of the right to possess a firearm.

**3. *Petitioner’s Arguments.*** In attacking the decision below, petitioner’s arguments continue to rely on her mistaken belief that the court rejected her jury demand merely because the firearm restriction is in a separate statute. Pet. at 21–22. Again, this is not true. The decision below rests on its holding that the juvenile-offender-in-possession statute is not punishment for a prior adjudication. Pet. App. 9–13. Correcting this misconception guts the core of petitioner’s gripes.

Only one additional argument merits a direct response. Petitioner contends that the decision not to evaluate the seriousness of the firearms restriction below is “impossible to reconcile with” *Blanton’s* discussion of the 90-day driving suspension in that case. Pet. at 22. Not so. The city in *Blanton* did not deny that the driving suspension was a punitive response to the driving-under-the-influence conviction. So the Court did not consider whether that consequence amounted to punishment. But that issue was raised and squarely addressed here. Regardless, the license suspension in *Blanton* and the firearm suspension here are very different laws with different



histories and purposes. So even if the driving suspension in *Blanton* was punitive, that does not mean the firearm suspension is here.

Another critical distinction separates *Blanton* and this case. The defendant there, just like the defendant in *Andersen*, was subject to “a maximum term of six months’ imprisonment.” *Blanton*, 489 U.S. at 539. But petitioner’s adjudication here did not include any threat of incarceration. For this additional reason, the outcome below is easily reconcilable with *Blanton*.

### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

DOUGLAS J. PETERSON

Attorney General of Nebraska

DAVID T. BYDALEK

Chief Deputy Attorney General

JAMES A. CAMPBELL

Solicitor General

*Counsel of Record*

OFFICE OF THE NEBRASKA

ATTORNEY GENERAL

2115 State Capitol

Lincoln, NE 68509

(402) 471-2682

[jim.campbell@nebraska.gov](mailto:jim.campbell@nebraska.gov)

*Counsel for Respondent State of Nebraska*

August 6, 2020