No. 24-1234

In The
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

-v-

ALI DANIAL HEMANI,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF ASSOCIATION OF NEW JERSEY RIFLE & PISTOL CLUBS, INC. AND GUN OWNERS' ACTION LEAGUE, INC. AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

Association of New Jersey Rifle & Pistol Clubs, Inc. ("ANJRPC") is a not-for-profit membership corporation, incorporated in New Jersey in 1936 and represents its members, including tens of thousands of members who reside in New Jersey. ANJRPC represents the interests of target shooters, hunters, competitors, outdoors people, and other law abiding firearms owners. Among ANJRPC's purposes is aiding such persons in every way within its power and supporting and defending the people's right to keep and bear arms, including the right of its members and the public to purchase, possess, and carry firearms. In violation of this Court's ruling in *New York State Rifle & Pistol Association v. Bruen*, New Jersey imposes severe restrictions on that right. Such unconstitutional restrictions are a direct affront to ANJRPC's central mission.

Gun Owners' Action League, Inc. ("GOAL") is a membership organization focused on promoting and defending the fundamental right of ordinary citizens to keep and bear arms for lawful purposes, including, but not limited to, competition, recreation, hunting, and self-defense. GOAL was established in November of 1974 and has a principal place of business in Westboro, Massachusetts.

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[1] No counsel for a party authored this brief in whole or in part. No person or entity, other than amici or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

This Court should clarify the proper degree of abstraction governing historical analogies under the Second Amendment. In the wake of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), lower courts have adopted inconsistent approaches to historical analysis, with some framing historical "principles" at such a high level of generality that it effectively predetermines the validity of the challenged law. Guidance from this Court is needed to ensure that courts make the "nuanced judgments" that historical analysis requires, *id.* at 25, rather than "engage in independent means end scrutiny under the guise of an analogical inquiry," *id.* at 29 n.7.

This Court has imposed firm limits on analogical reasoning. *Bruen* requires that a historical analogue be representative, well-established, and enduring, and that it share both the "how" and "why" with the challenged regulation. *United States v. Rahimi*, 602 U.S. 680 (2024), reaffirmed these limitations while establishing that two distinct legal regimes that were each well-established by the Founding Era, so long as they arise from the same legal tradition, may be considered together to identify a unifying regulatory principle. Lower courts, however, are struggling to determine the proper degree of abstraction when identifying and applying historical analogies.

Numerous lower courts are already improperly upholding laws by abstracting historical analogs at an exceedingly high level of generality. *See, e.g., Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2024), *cert. granted in part*, 222 L. Ed. 2d 1241 (Oct. 3, 2025); *Koons v. Attorney General New Jersey*, 156 F.4th 210 (3d Cir. 2025); *Schoenthal v. Raoul* 150 F.4th 889 (7th Cir. 2025); *McCoy v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 140 F.4th 568 (4th Cir. 2025); *National Rifle Association v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc); and *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024).

Unfortunately, Petitioners urge this Court to make the same error in this case by focusing on vagrancy laws and civil-commitment laws, neither of which have anything to do with firearm regulation but which would nevertheless allow the Court to abstract at an extreme level of generality, thereby unmooring firearm regulations from the constraints of the Constitution.

Amici respectfully suggest that the Court adopt a clear framework for analogical reasoning to resolve these recurring errors: Courts should (1) begin with close, firearm-specific analogues; (2) abstract up only if no such analogues exist, ensuring that any generalization preserves *Bruen*'s focus on "how and why" rather than relying on incidental or unrelated doctrines; and (3) rely only on historical laws that are themselves well-established and representative, as *Rahimi* requires, so that generalized principles

reflect a genuine historical tradition. Applying these rules would meaningfully constrain lower courts and restore the doctrinal consistency *Bruen* intended.

ARGUMENT

The Court Should Affirm the Judgment Below and Provide Guidance to the Lower Courts on Applying a Proper Level of Generality in Analogical Analysis under *New York State Rifle & Pistol Association v. Bruen*.

Lower courts are struggling to determine the proper degree of abstraction when identifying and applying historical analogies under this Court's Second Amendment framework. *See, e.g.*, *Baird v. Bonta*, No. 24-565, 2026 WL 17404, at *12 (9th Cir. Jan. 2, 2026) ("The district court may have been understandably led astray by cues from this court's recent Second Amendment cases employing a mode of analysis that abstracts a very generalized principle and applies it."). Under some courts' approach, abstraction is conducted at such a high level that the resulting "principle is so generalized that it seems to always cover the 'analogous' conduct." *Id.* (citing *Wolford v. Lopez*, 116 F.4th 959, 983 (9th Cir. 2024), *cert. granted in part*, 222 L. Ed. 2d 1241 (Oct. 3, 2025)).

This uncertainty over the proper level of abstraction is not an academic concern. When historical principles are framed at an unduly high level of generality, the analogical inquiry required by *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), risks collapsing into a foregone conclusion, permitting virtually any modern

regulation to be upheld by reference to broadly stated historical themes rather than genuinely comparable historical regulations, *see id.* at 30 ("courts should not uphold every modern law that remotely resembles a historical analogue") (quotation marks omitted).

That approach undermines *Bruen*'s instruction that courts make "'nuanced judgments'" in conducting the "'historical analysis,'" *id.* at 25 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 803 (2010) (Scalia, J., concurring) (brackets omitted)), and it has produced divergent outcomes among federal circuits, *compare Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc), *petition for cert. filed sub nom.*, *Nat'l Rifle Ass'n v. Glass*, No. 24-1185 (U.S. May 16, 2025) (upholding firearms purchase ban for adults under twenty-one based on questionable reading of contract law's infancy doctrine), *with Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 127 F.4th 583 (5th Cir. 2025) (invalidating similar law based on analysis of historical firearms regulations).

Absent additional guidance from this Court, lower courts will continue to apply inappropriately high levels of abstraction, creating inconsistency in the interpretation of a constitutional right and threatening to produce the same type of results oriented test that *Bruen* sought to preclude.

A. *Bruen* Carefully Limits and Structures Analogical Reasoning

In *Bruen*, the Court explained the correct methodology as follows:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 24 (citation omitted).

Because the meaning of the Second Amendment was "fixed" at the time of ratification, the historical inquiry turns on whether the challenged law accords with "the understandings of those who ratified it." *Id.* at 28.

That inquiry is "fairly straightforward" when the challenged regulation addresses "a general societal problem that has persisted since the 18th century." *Id* at 26. In such cases, "the lack of a distinctly similar historical regulation addressing that problem," evidence that "earlier generations addressed the societal problem … through

materially different means," and the rejection of analogous regulations on constitutional grounds each provides probative evidence that the challenged law violates the Second Amendment. *Id.* at 26–27.

When the challenged regulation addresses "unprecedented societal concerns or dramatic technological changes," however, the historical analysis "may require a more nuanced approach." *Id.* at 27. This "will often involve reasoning by analogy" to determine whether the challenged and historical regulations are "relevantly similar." *Id.* at 28–29 (quotation marks omitted). Two central considerations when reasoning by analogy are "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." *Id.* at 29. Put differently, "Why and how the regulation burdens the right are central to this inquiry." *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (citing *Bruen*, 597 U.S. at 29).

The method is ultimately comparative—but comparative to what? One thing that both courts and litigants have learned since *Bruen* is that the selection of comparator(s) does an enormous amount (perhaps all) of the work.

The Court provided several instructions in this regard. Perhaps most importantly, the Court explained that "[a]lthough its meaning is fixed

according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id*. at 28.

Because of this, the "historical inquiry that courts must conduct will often involve reasoning by analogy—a commonplace task for any lawyer or judge. Like all analogical reasoning, determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are 'relevantly similar.'" *Id*. at 28-29.

Importantly, to understand the essence of "relevantly similar," the Court explained that:

> . . . *Heller* and *McDonald* point toward at least two metrics: *how and why* [emphasis added] the regulations burden a law-abiding citizen's right to armed self-defense. As we stated in *Heller* and repeated in *McDonald*, "individual self-defense is 'the *central component*' of the Second Amendment right." Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are "'*central*'" considerations when engaging in an analogical inquiry.

Id. at 29 (cleaned up).

The Court went on to highlight that selection of the correct comparator(s) necessarily falls between two extremes:

> To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not "uphold every modern law that remotely resembles a historical analogue," because doing so "risk[s] endorsing outliers that our ancestors would never have accepted." On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.

Id. at 30 (emphasis in original).

Bruen articulated two additional principles that further constrain the selection of permissible historical analogues.

First, regulations forming a historical tradition must be numerically widespread. *See id.* at 46 (three colonial regulations do not suffice to show a tradition). Reliance on outliers—particularly those that were short-lived or covered a relatively small

percentage of the nation's population—cannot demonstrate the "well-established and representative" practice the Second Amendment demands. *Id.* at 30, 65–66.

Second, laws must be historically longstanding to form a tradition. *Id.* at 49 ("[a]t most eight years of history in half a Colony roughly a century before the founding sheds little light on how to properly interpret the Second Amendment"). *See also id.* at 69 (territorial laws are too transitory to form a tradition).

Together, these principles ensure that analogical reasoning remains tethered to genuinely representative historical practice. Only laws that are both widespread and enduring can supply the proper comparators under *Bruen*—and only faithful adherence to those limits can prevent historical analogy from becoming either a regulatory blank check or an empty formalism. Reaffirming these constraints is essential to restoring uniformity among the lower courts.

B. *Rahimi* Confirms and Applies the Limits of Analogy.

This Court had its first post-*Bruen* opportunity to apply this methodology in *United States v. Rahimi*, 602 U.S. 680 (2024). In *Rahimi*, the Court considered a facial challenge under the Second Amendment to 18 U.S.C. §922(g)(8) which prohibits

firearm possession by a person subject to a domestic violence restraining order. The Court rejected the facial challenge. In a narrow ruling, the Court held that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." 602 U.S. at 702.

The majority concluded that "two distinct legal regimes," each developed by "the 1700s and early 1800s" and arising from the same legal tradition, may be considered together to inform "the principles that underpin our regulatory tradition." *Id.* at 692, 694–95. Specifically, the Court reasoned that both surety and going armed laws shared a common "why" with Section 922(g)(8) and, taken together, also satisfied the "how." *Id.* at 698–99.

Rahimi thus established that two distinct historical lines of law can, in some circumstances, be combined to illustrate a "principle" drawn from historical tradition. This clarification, however, poses a challenge since courts inclined to uphold a modern regulation may choose to stitch together historical laws at an improperly high level of abstraction, thereby nullifying the Second Amendment's constraints.

Justice Barrett squarely identified this risk in her concurring opinion:

To be sure, a court must be careful not to read

> a principle at such a high level of generality that it waters down the right. Pulling principle from precedent, whether case law or history, is a standard feature of legal reasoning, and reasonable minds sometimes disagree about how broad or narrow the controlling principle should be.

Id. at 740 (Barrett, J., concurring). Yet since "the [*Rahimi*] Court settles on just the right level of generality," she concluded, "[h]arder level-of generality problems can await another day." *Id.* That day has arrived: lower courts are already struggling to apply this constraint faithfully.

C. Numerous Lower Courts Have Applied Improper Level of Generality in Historical Analogy.

In *Schoenthal v. Raoul* 150 F.4th 889 (7th Cir. 2025), the Seventh Circuit upheld Illinois's public transit carry ban as a "sensitive place" restriction, despite acknowledging that public transportation bears little resemblance to the historically recognized sensitive places—courthouses, polling places, legislative buildings, and schools. *Id.* at 910. Rather than analogizing to those categories of places, the court created a new "sensitive place," concluding that "crowded spaces restrictions fall under the sensitive places doctrine." *Id*. at 914.

That holding contradicts this Court's clear

instruction that a place may not be deemed sensitive "simply because it is crowded." *Bruen*, 597 U.S. at 31. It also ignores the fact that the founding generation never enacted restrictions based on crowdedness and regularly carried in crowded spaces, including at public assemblies, weddings, and funerals, and in churches, ballrooms, taverns, and shops. *See* Brief for *Amici Curiae* National Rifle Association of America, et al. in Support of Petitioners at 6–18, Nov. 24, 2025, *Wolford v. Lopez*, No. 24-1046.

More importantly for present purposes, the decision illustrates the perils of analogizing at an inappropriately high level of generality. By selectively stitching together a handful of historical outliers enacted over the course of a century—laws from four Southern states during Reconstruction, four Western territories in the latter half of the nineteenth century, and a single municipality banning firearms in ballrooms or similar venues, 150 F.4th at 911-914—the court transformed isolated regulations into a sweeping prohibition that eliminates the right to bear arms in "crowded spaces."

Indeed, having first determined that "the appropriate balance" favors banning firearms over "the risk of allowing armed self-defense" in crowded spaces, *Id.* at 910, the court then generalized at whatever level of abstraction was necessary to justify the ban—even while conceding that its effort

to "mak[e] [the] analogy to historical sensitive place rules … sounds like the means-end scrutiny rejected in *Bruen*," *Id*.

This is a refined form of ordinary question-begging, in which an argument assumes, rather than proves, the point in dispute. Question-begging through abstraction smuggles in the assumption by choosing a description of the relevant interest, right, or activity that already resolves the controversy. Choosing a high level of abstraction begs the question *sub silentio*. The fallacy operates in two steps: First, the court describes the activity in question at a high level of generality—public safety in "crowded spaces." Second, once abstracted, the outcome follows trivially: public safety outweighs generalized risk.

The Seventh Circuit drew from *Wolford*, in which the Ninth Circuit committed its own level-of generality errors in upholding Hawaii's private property default carry ban. The court elevated two outlier laws enacted nearly a century apart over the broader historical record, abstracting away from the many regulations reflecting a tradition of anti-poaching laws in order to manufacture a tradition that supports Hawaii's law. 116 F.4th at 994–95.

The Third Circuit made similar errors in upholding numerous "sensitive places" restrictions in *Koons v. Attorney General New Jersey*, 156 F.4th 210 (3d Cir. 2025), a decision the court has since

agreed to rehear en banc. In searching for a principle from historical tradition to serve as a comparator, the court stitched together a collection of disparate outliers and treated them as a single, coherent tradition of restricting public carry nearly everywhere in public life. *Id.* at 228–42.

Other areas of Second Amendment jurisprudence are no less vulnerable to level of generality errors. In the context of purchase bans for adults under twenty-one, for example, the Fourth and Eleventh Circuits did not ask whether there is a historical tradition of restricting the arms rights of young adults. Instead, both courts relied on broad infancy doctrines drawn from contract law—which, at most, only incidentally affected firearms. *McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 F.4th 568 (4th Cir. 2025); *Nat'l Rifle Ass'n*, 133 F.4th 1108. The Tenth Circuit, for its part, upheld a similar law by labeling it a "commercial" restriction. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 119–20 (10th Cir. 2024); *see also* George A. Mocsary, *The Wrong Level of Generality: Misapplying* Bruen *to Young-Adult Firearm Rights*, 103 WASH. U. L. REV. ONLINE 100. 104–06 (2025) (detailing the level-of-generality errors in each decision).I

These examples demonstrate that "level of generality" is the becoming the new "interest balancing." No longer able to engage in explicit interest balancing through the application of intermediate scrutiny, lower courts can now

embrace high levels of analogical generality to uphold nearly any law. In light of this, clear guidance from this Court now on level of generality would serve to avoid years of potential lower court error such as prevailed in the years prior to *Bruen*.

D. The Court Should Establish Firmer Guidelines on Analogical Reasoning

The Court should use this case to cabin the proper level of generality in Second Amendment analysis.

First, courts should start with "close firearm specific analogues." Mocsary, at 106. Many of the decisions discussed above fail this rule. In *Wolford*, for example, the Ninth Circuit disregarded that the established regulatory tradition addressing poaching and, instead, reached upward to embrace outliers to manufacture a tradition.

Second, courts should abstract "[o]nly if close analogues are lacking and more nuance is warranted." Mocsary, at 106. But they should not "abstract up" to global legal doctrines in an entirely different area of law. In cases involving adults under twenty-one, for example, courts began outside the field of firearms regulation, relying on contract law's infancy doctrine (and arguably mischaracterizing those principles as burdening, rather than protecting, minors). *See id.* at 104–05. Abstraction must preserve *Bruen*'s focus on "how and why"—*i.e.*,

whether modern and historical regulations impose comparable burdens for comparable reasons. *See id.* at 106–07.

The remaining question is how high courts may abstract even within the historical arms regulation context when no precise analogue exists. *Rahimi* provides the answer. *Rahimi* turned in significant part on the proper level of generality. In identifying a principle drawn from two distinct legal regimes—surety and going armed laws—the Court relied exclusively on historical lines of law that were each themselves well established, representative, and rooted in the same legal tradition. As the Court explained, both lines of law were longstanding in the common law and in state statutes and sufficiently numerous to be widespread. 602 U.S. at 693–98.

Finally, since *Bruen* provides that a law regulating conduct covered by the Second Amendment's plain text is presumptively unconstitutional, the absence of a historical analogue is "dispositive against the government." J. Joel Alicea, Bruen *Was Right*, 174 U. PA. L. REV. 13, 46 (2025). "Historical silence [in the historical analysis] is dispositive not because it *proves* that our predecessors *did not* believe they had the power to enact such a regulation; it is dispositive because it does *not prove* that they *did* believe they had such power." *Id.*

This case provides an ideal vehicle to rein in

improperly high levels of generality in analogical reasoning because Petitioner is urging this Court to do precisely that.

Petitioner asks this Court to rely on vagrancy laws and civil-commitment laws to uphold Section 922(g)(3). Pet.Br. at 18-24. But, both of those legal doctrines constitute global legal doctrines in areas of law entirely different from firearms laws. This is the same level of generality error committed by the courts in the cases challenging purchase bans for adults under twenty-one. *See* Mocsary at 104-06. Doing so would fail to preserve *Bruen's* focus on "how and why"—i.e. whether modern and historical regulations impose comparable burdens for comparable reasons. *Id*.

Requiring courts to adhere to the basic rules of abstraction discussed herein would meaningfully constrain lower courts and maintain the doctrinal consistency among them that *Bruen* was intended to achieve. *Amici* respectfully urge the Court to adopt this approach and affirm the judgment below.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below and provide the requested guidance to the lower courts.

Respectfully submitted,

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