No. 24-1329

In the Supreme Court of the United States

CHRISTOPHER PARIS, COMISSIONER, PENNSYLVANIA STATE POLICE,

Petitioner,

v.

SECOND AMENDMENT FOUNDATION, INC.; FIREARMS POLICY COALITION,

Respondents.

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

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Whether the Second Amendment permits Pennsylvania to ban 18-to-20-year-old adults from carrying firearms during declared emergencies on account of their age.

CORPORATE DISCLOSURE STATEMENT

No party to this brief has a parent company or a publicly held company with a ten percent or greater ownership interest in it.

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INTRODUCTION

The right to "carry[] handguns publicly for self-defense," *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 32 (2022), is a "fundamental right[] necessary to our system of ordered liberty," *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010), and it "belongs to all Americans," *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). The Third Circuit below correctly held unconstitutional a Pennsylvania law that makes it illegal for 18-to-20-year-old adults to carry firearms in public for self-defense whenever the state is in a declared state of emergency. Any law that bars adult citizens responsible for their own care and protection from exercising the right to armed self-defense because of their age is directly contrary to the principles that underlie the Second Amendment.

Nevertheless, the courts of appeals are divided over whether there might not be some adults who can be disarmed on account of their age. *Compare Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024); *Reese v. ATF*, 127 F.4th 583 (5th Cir. 2025) *with McCoy v. ATF*, 140 F.4th 568 (4th Cir. 2025); *NRA v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024). The upshot of this split is both doctrinal confusion on the proper way to apply this Court's Second Amendment precedents and, more concerning still, that for an entire class of adult Americans, the Second Amendment is a patchwork with one meaning in Minnesota and Pennsylvania and another in Florida and Colorado. It is this Court's responsibility, in a case touching on the fundamental rights of so many, to provide a nationwide answer to the question that is dividing the courts of appeals: do 18-to-20-year-old adults

have Second Amendment rights on a par with all other adult Americans? This case provides an opportunity to do so.

In joining with Petitioners to urge this Court to grant the petition, Respondents do not suggest any infirmity in the opinion below. Indeed, the Third Circuit's opinion in this case provides an excellent model of what the *Bruen* analysis should look like. Eighteen-to-twenty-year-olds are undeniably part of "the people" with Second Amendment rights, and as the Third Circuit emphasized, there is not *one* law from the Founding era that prohibited them from obtaining or carrying firearms. Quite the opposite. Just months after the Second Amendment's ratification, Congress passed a federal statute *requiring* them to acquire and possess arms. The Commissioner's only purported Founding-era support are background rules of contract law that limited the ability of minors (at the time, those under 21) to contract. But that adds nothing to his case because there is no evidence these restrictions actually prevented anyone at the Founding from acquiring arms. And even if the Commissioner's revisionist history were correct, the Commonwealth's prohibition would still be invalid because in that event all the Commissioner would have established is that minors could be prevented from acquiring arms by the incidental operation of the voidability of their contracts. But this case is not about the acquisition of arms, and, more importantly, 18-to-20-year-olds in Pennsylvania today are not minors and therefore *the principle does not apply to them*. Ultimately, therefore, the nature of the Founding-era voidability rule for contracting by minors is much ado about nothing. This case is about legal adults with full contracting

rights, and there is *zero* historical evidence from *any* relevant historical period that adults responsible for their own care and well-being can be denied the ability to acquire and use firearms on account of their age.

This Court should grant certiorari in this case and affirm.

STATEMENT

I. Pennsylvania's restrictions on 18-to-20-year-olds.

Pennsylvania generally requires a license to carry a concealed firearm in public. 18 PA. CONS. STAT. § 6106(a)(1). Though there are exceptions to this requirement, they do not permit ordinary, law-abiding Pennsylvanians to carry a concealed firearm lawfully without a license. *Id.* § 6106(b). And 18-to-20-year-olds are categorically ineligible for licenses. *Id.* Section 6106's licensing requirement does not apply to *open* carriage of firearms, so law-abiding 18-to-20-year-olds who are unable to acquire a concealed carry license are permitted to carry openly in public, in certain circumstances, albeit subject to burdensome limitations. *See, e.g.*, *id.* §§ 6106(a)–(b) (limiting unlicensed carry or transportation of firearms in vehicles to narrowly defined circumstances), 6108 (banning unlicensed carry in Philadelphia (a "city of the first class")).

At issue in this case is the Commonwealth's law barring 18-to-20-year-olds from carrying in any manner "during an emergency proclaimed by a State or municipal government[] executive unless that person is" either "[a]ctively engaged" in self-defense or possesses a license to carry concealed. *Id.* § 6107(a). The upshot of these restrictions is that ordinary law-

abiding 18-to-20-year-olds in Pennsylvania are categorically prohibited from carrying firearms for self-defense during any declared state of emergency, including during the nearly uninterrupted years-long state of emergency that was in effect when this case was filed. App. 6a; *see also* 23 PA. CONS. STAT. § 5101 (setting the age of majority at 18).

II. The impact on Respondents.

Respondents are two organizations that seek to promote and defend the fundamental right to keep and bear arms. *See* App. 4a. When they filed this suit in October 2020, "Pennsylvania had been in an uninterrupted state of emergency for nearly three years," and they were joined by three individuals, all 18-to-20-year-olds, who resided in Pennsylvania and would have carried a handgun in self-defense, were it not for Pennsylvania's ban on them doing so. App. 6a (citation omitted). By the time that the Third Circuit issued its first opinion, all three of the original member plaintiffs had turned 21. However, the Third Circuit twice permitted Respondents to supplement the record with declarations of new members, and Respondents currently have identified another 18-to-20-year-old member with standing. *See* App. 33a n.28.

III. The proceedings below.

A. Respondents filed this lawsuit in October 2020. App. 6a. Jurisdiction in the district court was based on 28 U.S.C. § 1331 in light of the federal question presented by this case. In December 2020, they sought a preliminary injunction and to expedite the trial on the merits. App. 7a. The Commissioner responded by moving to dismiss and opposing the request for preliminary injunctive relief. *Id.* Applying the then-

applicable interest balancing test, the district court dismissed the case. *Id.*

B. Respondents appealed and while the appeal was pending, this Court decided *Bruen*. *Id.* Applying *Bruen*, a panel of the Third Circuit reversed the dismissal of the complaint with Judge Restrepo dissenting. *Id.* The Commissioner sought rehearing en banc, which was denied, with Judge Krause dissenting. *See Lara v. Comm'r Pa. State Police*, 97 F.4th 156 (3d Cir. 2024).

C. Following the Third Circuit's decision, this Court issued its decision in *United States v. Rahimi*, 602 U.S. 680 (2024). The Commissioner petitioned for certiorari and this court granted, vacated and remanded for further consideration in light of *Rahimi*. *Paris v. Lara*, 145 S. Ct. 369 (2024) (Mem.).

D. On reconsideration, a panel of the Third Circuit again held that Pennsylvania's ban on carrying firearms during a declared state of emergency violates the Second Amendment, finding that rather than undermining it, "*Rahimi* sustains our prior analysis." App. 4a.

1. Writing for the majority, Judge Jordan first addressed the textual scope of the Second Amendment and rejected the Commissioner's argument that 18-to-20-year-olds were not among "the people" whose rights are protected by the Second Amendment. App. 13a. As the majority explained, "[t]aking our cue from the Supreme Court, we have construed the term 'the people' to cast a wide net." App. 14a (citation omitted). The guidance from this Court included *Heller*'s explanation that the text of the Second Amendment covers "all Americans," just as the use of the phrase "the

people" in other parts of the Constitution "unambiguously refers to all members of the political community, not an unspecified subset." App. 13a (quoting *Heller*, 554 U.S. at 580, 581). They also included *Bruen*'s reaffirmation that "the 'Amendment guaranteed to all Americans the right to bear commonly used arms in public subject to reasonable, well-defined restrictions,' " App. 13a (quoting *Bruen*, 597 U.S. at 70), and *Rahimi*'s clear statement that the use of "the term 'responsible' in *Heller* and *Bruen* 'to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right,' " did not signify a limit on the scope of "the people" protected by the Second Amendment, App. 14a (quoting *Rahimi*, 602 U.S. at 701–02).

Applying this understanding of the text, the Third Circuit held that 18-to-20-year-olds are part of "the people" for purposes of the Second Amendment and hence Plaintiffs' claim falls within its textual scope. It offered three reasons for rejecting the Commissioner's counterargument that "the people" should exclude those under 21 today because, at the time of the Founding, they were legal minors for most purposes. App. 16a–17a. First, as this Court has explained, the Second Amendment does not impose a "law trapped in amber," *Rahimi*, 602 U.S. at 691, and the Third Circuit correctly noted that a law trapped in amber is precisely what we would have if "we were rigidly limited by eighteenth century conceptual boundaries" when interpreting the scope of the Constitution's text, App. 16a. Second, the Third Circuit noted that *even if* individuals under 21 lacked the ability to exercise certain rights at the Founding, that would not take them outside the scope of "the people"—it would instead shift the question to one for history, of " 'whether the

government has the power to disable the exercise of *a right they otherwise possess*.' " App. 17a (quoting *Kanter v. Barr*, 919 F.3d 437, 453 (7th Cir. 2019) (Barrett, J., dissenting)) (emphasis in opinion below). Third, the Court held that because "the people" as used in other constitutional rights included 18-to-20-year-olds, it must follow *Heller*'s example and give the term a consistent reading in the Second Amendment context. App. 17a.

The panel therefore turned to the crux of the issue: whether the carry ban was historically justified. But before answering that question, the majority addressed "which time period—the Second Amendment's ratification in 1791 or the Fourteenth Amendment's ratification in 1868—is the proper historical reference point for evaluating the contours of the Second Amendment as incorporated against the Commonwealth." App. 19a–20a. Noting that this Court had declined to address this issue in *Bruen* and *Rahimi*, the Third Circuit concluded that it was appropriate to answer the question because the Commissioner had "maintain[ed] that there is ample evidence from 1868 to support the Appellants' disarmament, but offer[ed] none from the founding era," effectively "claiming that there is a difference between how each generation understood the right." App. 20a n.17.

The Third Circuit correctly concluded that it was the historical understanding of the right in 1791 that controls, a conclusion that flows from the fact that this Court has repeatedly (including in *Bruen*) cautioned that the Bill of Rights has one meaning, whether applied against the states or against the federal government, App. 21a, and furthermore has repeatedly looked to the Founding as the primary touchstone for

understanding the scope of other provisions of the Bill of Rights, App. 22a. Indeed, the panel noted *Bruen* itself "gave … strong hint[s] when it observed that there has been a general assumption 'that the scope of protection … is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791,' " App. 21a–22a (quoting *Bruen*, 597 U.S. at 37), and stated that "laws enacted in the late-19th century 'do not provide as much insight into' the original meaning of the right to keep and bear arms as do earlier sources," App. 25a (quoting *Bruen*, 597 U.S. at 36). Indeed, on this point the panel explained that this Court "drew a firm line where later evidence 'contradicts earlier evidence.' In that circumstance, 'later history contradicts what the text says, so the text controls.' " App. 24a (quoting *Bruen*, 597 U.S. at 36, 66) (cleaned up).

After concluding that 1791 is the controlling date for determining the Second Amendment's original meaning, the Third Circuit held that "Founding-era laws reflect the principle that 18-to-20-year-olds are 'able-bodied men' entitled to exercise the right to bear arms, while the Commissioner relies on laws enacted at least 50 years after the ratification of the Second Amendment to argue the exact opposite." App. 25a (citation omitted). Against a record barren of restrictions on the rights of 18-to-20-year-olds to acquire and carry firearms at the Founding, the Third Circuit found it particularly illuminating that "a mere five months after the Second Amendment was ratified," the Second Militia Act of 1792 "required all able-bodied men to enroll in the militia and to arm themselves upon turning 18," a requirement evincing a Founding-era view

that 18-to-20-year-olds "could, and indeed should, keep and bear arms." App. 29a–30a.

The panel rejected the Commissioner's counterarguments. In response to the claim that the militia laws only demonstrated a *duty* to serve in the militia, not a right to keep and bear arms privately, the Court emphasized that the militia laws provide "good circumstantial evidence of the public understanding at the Second Amendment's ratification as to whether 18-to-20-year-olds could be armed, especially considering that the Commissioner cannot point to a single founding-era statute imposing restrictions on the freedom of 18-to-20-year-olds to carry guns." App. 31a. Nor was the panel persuaded that, because militia ages sometimes varied and dipped as low as 16-years-old during the colonial and revolutionary periods in some states, relying on them would require holding the law invalid as to 16-year-olds as well. That was because, during the relevant time period, a national consensus quickly emerged setting the age for militia enrollment at 18. App. 32a. And finally, the majority concluded that it was irrelevant that some Founding-era militia laws required parents to supply their sons with arms, because those laws did not remotely suggest "that 18-to-20-year-olds could not purchase or otherwise acquire their own guns." *Id.*

2. Judge Restrepo dissented and would have held the law constitutional because, "[a]t the Founding, people under 21 lacked full legal personhood." App. 39a. Suggesting that this excluded them from the "plain text" of the Second Amendment, Judge Restrepo's opinion was nevertheless based on a variety of alleged historical restrictions. For example, noting that "infants" at the Founding could not marry

without consent, had abridged contract rights, and limited capacity to sue or be sued, he would have held "that this legal incapacity controls in the context of the Second Amendment." App. 43a. He similarly found it persuasive that some colleges acting *in loco parentis* had regulations prohibiting possession of firearms by students, App. 44a, and discounted the fact that 18-to-20-year-olds served in the militia with firearms because some statutes charged parents with ensuring their children were equipped with weapons, arguing that under *Heller*, "the militia and 'the people' are distinct." App. 46a–47a, 48a (quoting *Heller*, 554 U.S. at 650–51).

Though Judge Restrepo would have resolved this case as a matter of the Amendment's plain text, App. 49a–50a, he also opined that history supports Pennsylvania's restrictions on 18-to-20-year-olds. Assuming that "the 1791 meaning of the Second Amendment controls," App. 51a, Judge Restrepo dismissed as irrelevant the concern that there was no Founding-era statutory support for his position because, in his view, there was no need for such laws at the Founding when 18-to-20-year-olds "bore arms only at the pleasure of their guardians, and they had no independent right to petition courts for redress." *Id.* This opinion was buttressed by state laws from the latter half of the 19th century that restricted 18-to-20-year-olds from purchasing or carrying certain arms. These laws, he said, showed that legislatures "at least as early as the mid-nineteenth century … believed they could qualify and, in some cases, abrogate the arms privileges of infants." *Id.*

E. The Commissioner again petitioned for rehearing en banc, which the Third Circuit again denied.

App. 87a. Judge Krause again dissented, arguing that the Commonwealth's carry ban during declared states of emergency was consistent with a Founding-era tradition of disarming those who were considered especially dangerous with firearms, a group into which she slotted 18-to-20-year-old adults based in part on evidence indicating that the prefrontal cortex of the brain "continues to develop until a person is in their mid-20s." App. 94a.

ARGUMENT

I. The Court should grant certiorari to resolve the split between the circuits over the Second Amendment rights of 18-to-20-year-olds.

Respondents have always agreed with the Commissioner that the issue presented by this case is undoubtedly important. *See* Respondents' Brief in Opposition at 1, 12, *Paris v. Lara*, No. 24-93 (U.S. Aug. 29, 2024). Since this case was last before the Court, however, the status quo has changed. Where before there were several cases pending at various stages of litigation and the courts of appeals had, so far, unanimously held that laws restricting the rights of 18-to-20-year-olds to keep or carry arms were unconstitutional, *see id.* at 12–13, today many of those cases have been resolved and the courts of appeals are in direct conflict. This Court should therefore grant the petition and provide much needed clarity about the scope of the Second Amendment's protections. If this Court is inclined to grant multiple petitions on this issue, it should grant this one, which raises the question in the context of a carry restriction, alongside one of the

other petitions raising the constitutionality of a purchase restriction.

A. Whether the Second Amendment protects the rights of 18-to-20-year-olds is the subject of a well-defined circuit split.

As the Commissioner explains in his petition, the courts of appeals are in direct conflict over the question of whether 18-to-20-year-olds have a right to keep and bear arms. Indeed, the split is deeper than the Commissioner indicates, as shortly before the Commissioner sought certiorari, the Fourth Circuit became the second court of appeals (joining the Eleventh) to hold that 18-to-20-year-olds can be categorically excluded from the Second Amendment's protections and the third (joining also the Tenth) to generally uphold a restriction on their rights. This placed it in opposition not just to the Third Circuit below, but also to the Fifth and the Eighth, which have similarly held unconstitutional laws restricting the rights of people in this age group (in the case of the Fifth Circuit, precisely the same law that the Fourth Circuit upheld).

1. In addition to the Third Circuit in this case, both the Fifth and the Eighth Circuits have held that laws restricting the rights of 18-to-20-year-olds were invalid under the Second Amendment. In *Reese v. ATF*, 127 F.4th 583 (5th Cir. 2025) the Fifth Circuit considered the constitutionality of the federal ban on 18-to-20-year-olds purchasing handguns and handgun ammunition from licensed firearm dealers. *See* 18 U.S.C. §§ 922(b)(1), (c)(1). In line with the decision below, the Fifth Circuit concluded that federal age ban

is unconstitutional in a unanimous opinion by Judge Jones, reasoning that "the text of the Second Amendment includes eighteen-to-twenty-year-old individuals among 'the people' whose right to keep and bear arms is protected" and "[t]he federal government has presented scant evidence that eighteen-to-twenty-year-olds' firearm rights during the founding-era were restricted in a similar manner to the contemporary federal handgun purchase ban." *Reese*, 127 F.4th at 600.

Applying the historical framework this Court laid out in *Bruen*, *Reese* considered and rejected the asserted common law restrictions on which the Commissioner now relies to find fault with the opinion below. The Fifth Circuit noted "the common law's recognition of 21 years as the date of legal maturity at the time of the founding," and that under this rule "eighteen-to-twenty-year-olds did not enjoy the full range of civil and political rights in the founding-era," including the rights to vote or serve on juries. *Id.* at 590–91 (quotation marks omitted). But this general legal principle, the court held, did not demonstrate that restrictions on this age cohort's *Second Amendment* rights are constitutional, since "[t]he terms 'majority' and 'minority' lack content without reference to the right at issue." *Id.* at 592 (quoting *NRA v. ATF*, 700 F.3d 185, 204 n.17 (5th Cir. 2012)). "The fact that eighteen-to-twenty-year-olds were minors unable to vote (or exercise other civic rights)" accordingly "does not mean they were deprived of the individual right to self-defense." *Reese*, 127 F.4th at 592.

Reese was similarly unmoved by the argument—also rejected by the Third Circuit here—that the fact that some militia laws "required parents to furnish

firearms for young men's militia duty" implied that an 18-year-old had no protected arms rights. *Id.* at 597. As the court explained, such laws "just as readily imply that eighteen-to-twenty-year-olds were *expected* to keep and bear arms, even if provided by parents." *Id.* And just as the Third Circuit declined to consider mid-19th century laws that were allegedly inconsistent with the Founding-era practice, *Reese* similarly held that "the public understanding of the right when the Bill of Rights was adopted in 1791" controlled its analysis so that belated age limits enacted in a minority of states in the late nineteenth century "were passed too late in time to outweigh the tradition of pervasively acceptable firearm ownership by eighteen-to-twenty-year-olds at the crucial period of our nation's history." *Id.* at 599–600 (quotation marks omitted).

The Eighth Circuit has similarly held that 18-to-20-year-olds enjoy full rights protected by the Second Amendment. In *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024), the court held invalid a Minnesota law preventing 18-to-20-year-olds from carrying firearms in public. As in this case and in *Reese*, the Eighth Circuit concluded that at the Founding there were insufficient analogues "to demonstrate that the Nation's historical tradition of firearm regulation supports the Carry Ban." *Id.* at 696. Also like *Reese*, *Worth* specifically rejected the government's reliance on the Founding-era "common law" rule that "individuals did not have rights until they turned 21 years old," reasoning that arguments "focusing on the original contents of a right instead of the original definition … 'border[] on the frivolous.' " *Id.* at 689–90 (quoting *Heller*, 554 U.S. at 582). "The Second Amendment extends, prima facie, to all members of the political community, even

those that were not included at the time of the founding," and "[e]ven if the 18 to 20-year-olds were not members of the political community at common law, they are today." *Worth*, 108 F.4th at 690–91 (cleaned up). Finally, the Eighth Circuit did examine the same Reconstruction-era laws that the Commissioner faults the Third Circuit for ignoring, but it held that they both "carry less weight than Founding-era evidence" and "have 'serious flaws even beyond their temporal distance from the founding.' " *Id.* at 697 (quoting *Bruen*, 597 U.S. at 66).

In addition to these cases, prior to *Bruen*, both the Ninth Circuit and the Fourth Circuit reached similar conclusions, albeit in decisions that were subsequently vacated. In *Jones v. Bonta*, the Ninth Circuit ordered preliminarily enjoined a California law banning 18-to-20-year-olds from purchasing semiautomatic centerfire rifles. 34 F.4th 704, 733 (9th Cir. 2022), *vacated in light of Bruen*, 47 F.4th 1124 (9th Cir. 2022) (Mem.). Similarly, a previous panel of the Fourth Circuit held invalid Section 922(b)(1) and (c)(1) as unconstitutional in *Hirschfeld v. ATF*, 5 F.4th 407, 452 (4th Cir. 2021). But that opinion was ultimately vacated as moot, after all of the plaintiffs turned 21, *Hirschfeld v. ATF*, 14 F.4th 322 (4th Cir. 2021). In both cases, the courts applied analyses that prefigured the post-*Bruen* decisions of the Third, Fifth, and Eighth Circuits.

2. Three of the six federal Courts of Appeals that have published opinions considering the constitutionality of age-based restrictions on the right to keep and bear arms have thus concluded that they are unconstitutional. But the other three have upheld them on directly contrary reasoning.

In *McCoy v. ATF*, a divided panel of the Fourth Circuit upheld the same federal ban that *Reese* determined was unconstitutional. 140 F.4th 568 (4th Cir. 2025). The panel majority "assum[ed] without deciding" that 18-to-20-year-olds "are part of 'the people' and are therefore covered by the Amendment's text. *Id.* at 575. And like the circuit courts on the other side of the split, it too focused on 1791 as the critical date for understanding the contours of the Second Amendment. *Id.* at 574. But that is where the similarities ended as it concluded that Founding era history suggested that restrictions on 18-to-20-year-olds are valid today. Specifically, the Court was persuaded that the fact that 18-to-20-year-olds were considered "infants" at the Founding "imposed a severe burden on a minor's ability to purchase goods, including firearms." *Id.* at 576. That burden flowed from the fact that an infant could void any contract he made in his infancy upon attaining the age of majority, except for contracts for "necessaries"—and the Fourth Circuit concluded firearms would not have been considered "necessaries." *Id.*

In *NRA v. Bondi*, the en banc Eleventh Circuit, in a closely divided opinion, upheld a Florida law that flatly bans 18-to-20-year-olds from purchasing any firearms. 133 F.4th 1108 (11th Cir. 2025) (en banc). Like *McCoy*, the Eleventh Circuit did not rely on any tradition of firearm regulation—in fact, it acknowledged that "the Founding era lacked express prohibitions on the purchase of firearms" by any age group—and it instead placed nearly all the weight of its decision on the Founding-era contract voidability rule. *Id.* at 1124. Also like the Fourth Circuit, and directly contrary to the reasoning of the court below, the Eleventh

Circuit thought this conclusion was bolstered by state militia laws that "required parents of minors to acquire firearms for their militia service" and by the late-nineteenth-century laws in several states "restrict[ing] the purchase or use of certain firearms by minors." *Id.* at 1119, 1122.

A panel of the Tenth Circuit likewise recently upheld a Colorado age ban on purchasing firearms based on reasoning that contradicts the decisions of the Third, Fifth, and Eighth Circuits. *Rocky Mountain Gun Owners v. Polis* concluded that Colorado's ban fell within the category of "laws imposing conditions and qualifications on the commercial sale of arms," which it read this Court's precedent to deem "presumptively lawful." 121 F.4th at 118 (quoting *Heller*, 554 U.S. at 626–27 & n.26). It thus concluded that Colorado's blanket age ban on the purchase of firearms did not even "implicate the plain text of the Second Amendment." *Rocky Mountain Gun Owners*, 121 F.4th at 120. And the court also credited—and discussed at length over the course of three pages—the "scientific consensus" that the challenged age ban "will likely reduce the numbers of firearm homicides, nonhomicide violent crimes, suicides, and accidental firearm injuries in Colorado." *Id.* at 127.

B. Resolving the split is important both practically and doctrinally.

1. Respondents agree with the Commissioner on another point: the question presented is important. This Court has acknowledged that the right to keep and bear arms is a "fundamental right[] necessary to our system of ordered liberty," *McDonald*, 561 U.S. at 778, which "belongs to all Americans," *Heller*, 554 U.S.

at 581. Yet in many states the right is systematically denied to a subset of adults on account of their age. By taking this case, this Court could settle not only the constitutionality of the Pennsylvania law at issue, but also the laws of other states that similarly infringe the rights of their residents.

2. The Commissioner is furthermore correct to claim that the division among the circuits in this case transcends the specific (and important) subject matter of this case. Rather, the disagreements here involve fundamental questions about how to apply this Court's precedents in *Bruen* and *Rahimi* (even if Respondents disagree with the Commissioner about precisely which questions those are).

The Commissioner identifies three alleged doctrinal differences between the Courts that have struck down these restrictions and those that have upheld them.

a. First, he claims that the circuit courts have "diverged over the relevance of the Founding-era common law," with, in his telling the Third, Fifth, and Eighth circuits "reject[ing] *any* reliance on common law principles when analyzing age restrictions" and refusing to consider anything other than statutes as relevant evidence. Pet. 20. But that is not true—none of those courts refused to look at the common law. Rather, they all found the common law did not support the restrictions as the Commissioner claims. In *Reese*, the Fifth Circuit considered the claim that, by common law at the Founding, 18-year-olds were minors who lacked full rights and therefore could not use firearms. The Fifth Circuit found this claim entirely lacking in support, *Reese*, 127 F.4th at 591 ("[F]irearm

restrictions are notably absent from the government's list of founding-era age-limited civil and political rights."), and "contradicted by the history of firearm use at the founding" which demonstrated that 18-to-20-year-olds were *required* to be armed, *id.* at 592. So too in *Worth*, the Eighth Circuit affirmatively stated that the common law was part of the historical tradition of regulation that the Court must consult, but it faulted Minnesota for failing to "put forward common law analogues restricting the right to bear arms." 108 F.4th at 695. And in the decision below, the Third Circuit did not ignore the common law but faulted the State for failing to prove that it actually formed a barrier to anyone 18-years-old or older who wished to possess and use firearms at the Founding. *See* App. 16a (discussing the scope of "the people").

The real division between the courts of appeals on this issue is the proper application of common law rules extant at the Founding to Second Amendment rights today. Both the Fourth and the Eleventh Circuits looked at the same history as the Third, Fifth, and Eighth Circuits did, and came to the opposite conclusion because those courts were willing to construct a supposed tradition of effectively barring firearms purchases by individuals in that age range from the common law rule that contracts made by legal minors were voidable by the minor, except for in the case of "necessaries." *See, e.g.*, *McCoy*, 140 F.4th at 576–77. But in both cases, the Courts did so out of, effectively, nothing. Both cited *one* case rejecting the argument that a minor's purchase of "liquor, pistols, powder, saddles, bridles, whips, fiddles, [and] fiddle strings" could be enforceable as a contract for "necessaries," as proof that firearms were *per se* not necessaries at the

Founding. *Saunders Glover & Co. v. Ott'rs Adm'r*, 12 S.C.L. 572, 572 (1822); *see also McCoy*, 140 F.4th at 576; *Bondi*, 133 F.4th at 1118. They otherwise had no authority directly supporting that central proposition of their analysis, only supposition from indirectly relevant sources. For instance, *McCoy* also relied on the fact that one Founding-era treatise stated that necessaries included "victuals, clothing, medical aid, and good teaching or instruction," and concluded from the *absence* of firearms on that list that there was "no evidence that the exception was ever extended to firearms." 140 F.4th at 576 (quoting 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW 196 (1827)).

That analysis flips *Bruen* on its head. *Bruen* was very clear that, to support a modern day restriction, the government must prove historical laws *actually limited* the scope of the Second Amendment's protections in some way. In this case, that means it is not enough for there to be "no evidence" that the necessaries rule was ever applied to firearms. The Commissioner instead must prove that the voidability rule was actually used to prevent their acquisition. The Fourth and Eleventh Circuit's contrary reasoning is akin to the pre-*Bruen* court of appeals that "remarked that … surety laws were 'a severe constraint on anyone thinking of carrying a weapon in public,' " even though that conclusion "ha[d] little support in the historical record," and there was "little evidence that authorities ever enforced surety laws." *Bruen*, 597 U.S. at 57–58 (citation omitted). *Bruen* appropriately corrected the lower courts for crediting a "hypothetical possibility" that surety statutes were read in such a broad manner in the absence of evidence, and the standard should be the same for cases where the

government's defense is built upon a supposed common law prohibition. *Id.* at 57; *see also id.* at 58 n.25.

In fact, there is strong contrary evidence demonstrating that the Fourth and Eleventh Circuits were not just too willing to read ambiguity in favor of the government, but that they were wrong to conclude that the voidability rule would have applied to firearms at all. Their only real support for that proposition, as noted above, was a single case dealing not with the sorts of long guns that were both used by the militia and were the "quintessential self-defense weapon" of the day, *Heller*, 554 U.S. at 629, but with "pistols," *Saunders Glover*, 12 S.C.L. at 572. And given the limited context provided by *Saunders Glover* (including that the minor had also bought liquor and fiddle strings and claimed them as "necessaries"), that is not exactly a result that seems generalizable to all firearms in all circumstances. *See id.* As both *McCoy* and *Bondi* seem not to understand, the commercial world of the Founding was not rigidly divided into items that were "necessaries" and those that were not. Rather, "[t]he question of necessaries [was] governed by the real circumstances of the infant," 2 KENT, *supra*, at 196, so that while certain things like food, lodging, and educational expenses (those items included on *McCoy*'s list) were, effectively, *per se* necessaries because they were needed by everyone, *see* 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 454 (St. George Tucker ed., 1803), outside of those items *anything* could be necessary; it was a question of circumstance, dependent upon the "station, degree, and condition" of the minor, *Peters v. Fleming*, 6 M. & W. 42, 46 (Ex. 1840). It is hard to see how firearms would not have been considered

"necessaries" at the Founding, given the critical place that firearms occupied in daily life. Probate records show that they were more common in estates than *chairs* and were owned almost twice as often as Bibles, *see* James Lindgren & Justin L. Heather, *Counting Guns in Early America*, 43 WM. & MARY L. REV. 1777, 1785 (2002), and members of the militia were *required* to possess them by law, *cf. Coates v. Wilson*, 170 E.R. 769 (1804) (regimental uniform for an infant who was a member of the volunteer corps, was a necessary). Indeed, the federal Militia Act of 1792 (as well as several state enactments) makes clear that such arms were necessary by protecting them from otherwise legal forms of seizure. *See* Militia Act of 1792, ch. 33 § 1, 1 Stat. 271 ("[E]very citizen so enrolled, and providing himself with the arms … required as aforesaid, shall hold the same exempted from all suits, distresses, executions or sales, for debt or for the payment of taxes."); *see also, e.g.*, AN ACT FOR SETTLING THE MILITIA, ch. 24, 3 THE STATUTES AT LARGE OF VIRGINIA 339 (William Walker Hening ed., 1823) (enacted 1705); 1 THE LAWS OF THE STATE OF VERMONT, DIGESTED AND COMPILED, ch. 31 § 1, 321 (Sereno Wright ed., 1808) (enacted 1797).

In light of these sources and without firm contrary evidence that 18-year-olds were actually barred from purchasing firearms as a result of the voidability rule, as with the surety laws in *Bruen*, there is "little reason to think that the hypothetical possibility of" a contract being voided "would have prevented anyone from carrying a firearm for self-defense in the 19th century." 597 U.S. at 57. This Court should grant certiorari and clarify that the *Bruen* analysis is no less exacting when it comes to the common law.

b. The Commissioner also claims that this case reveals a division among the circuits as to the importance and meaning of Founding-era militia statutes. Pet. 21. Again, this is true, but not in the way the Commissioner frames it. The Commissioner claims, without explaining, that the issue is an example of a "generality problem" in drawing principles from historical limitations on the right. Pet. 22 (quoting *Rahimi*, 602 U.S. at 739 (Barrett, J., concurring)). But the issue is, as with the understanding of common law, rather about what the lower courts are willing to read into or find implicitly supportive of regulation in historical evidence when applying the *Bruen* and *Rahimi* framework. The Third, Fifth, and Eighth Circuits took consistent lessons from the militia statutes, which at the Founding or shortly after, all set the age for militia participation at 18. First, 18-year-olds were understood to be part of the "militia," and since *Heller* said the "militia" was a subset of "the people," they must also have been part of "the people," *see Reese*, 127 F.4th at 593; *see also Hirschfeld*, 5 F.4th at 427. Second, as a factual matter, because militiamen had to own their own firearms, 18-year-olds must have at the Founding *actually possessed* firearms, so the lack of historical evidence of restrictions on their use is "not just a vacuum," it is affirmative evidence that the Americans expected 18-to-20-year-olds to be free to use their firearms for lawful purposes, *Jones*, 34 F.4th at 722; *see also* App. 31a & n.26.

On the other side of the ledger, the Fourth and Eleventh Circuits both treated the militia laws, as with the common law voidability rule, as an opportunity to infer limitations on the right where the record did not support them, as both treated the fact that

some laws required parents to ensure their sons were adequately equipped with weapons as evidence of an implied legal prohibition on the sons acquiring arms themselves. *Bondi*, 133 F.4th at 1119; *see also McCoy*, 140 F.4th at 578. But that is an entirely unwarranted leap, and it warps *Bruen* by effectively shifting the burden to the parties asserting their rights to fight off a historical strawman and disprove the existence of an entirely fictional restriction.

c. Finally, the Commissioner claims that the split in authority on this issue raises the question of "whether, and how, to consider post-enactment history." Pet. 22. That is not true. While the Third Circuit below took the firmest stance in refusing to even look at later history, because accepting the Commissioner's argument, it would have to adopt a view of that history as at odds with the Founding era for it to help the Commissioner at all, all of the courts of appeals that have confronted this issue in this context, even those that came out the other way, have agreed that a proper Second Amendment analysis should place primary emphasis on evidence from the period surrounding the Second Amendment's ratification, with later history merely serving to provide additional evidence of what earlier history must have established. *See Bondi*, 133 F.4th at 1115 ("[T]he Founding era is the primary period against which we compare the Florida law."); *accord McCoy*, 140 F.4th at 575.

Even if this Court takes a different view of the Founding-era law (as it should) than *Bondi* and *McCoy* did, Reconstruction-era history and Founding-era history tell the same story. In other words, although the panel below was correct to ignore later history, it would not have made a difference to the

outcome of this case if it had considered it. Of the laws the Commissioner relied upon to show that there were 19th century restrictions, just *three*, from Alabama, Kentucky, and Tennessee were enacted prior to 1870. App. 25a–26a n.20. Three statutes are not enough to "establish an early American tradition," *Espinoza v. Mont. Dep't of Rev.*, 591 U.S. 464, 482 (2020) (rejecting suggestion that laws of "more than 30 states" enacted "in the second half of the 19th century" evidenced a tradition informing the scope of the First Amendment). And even if each of the Commissioner's 19th century laws were considered and analyzed closely, they *still* would not suggest that Pennsylvania's carry ban is constitutional, not least because they all applied only to minors, whereas Pennsylvania restricts the rights of legal adults. *See Worth*, 108 F.4th at 697–98 (collecting state laws); *but see Reese*, 127 F.4th at 599.

II. The decision below is a faithful application of *Bruen* and *Rahimi* and should be affirmed.

The Petitioners have not shown any error on the part of the Third Circuit in its application of *Bruen* and *Rahimi* and this Court should, if it grants certiorari, affirm the decision below. The Commissioner argues otherwise, but his arguments are not well taken.

A. The Commissioner first suggests that the decision below was in error because the Third Circuit effectively "reissued its prior opinion in *Lara I* with few substantive changes" despite this court's GVR order. Pet. 26. But there is nothing to this—as this Court well knows, a GVR order does "not amount to a final determination on the merits." *Henry v. City of Rock*

Hill, 376 U.S. 776, 777 (1964). It reflects nothing more than that "intervening developments," in the form of this Court's decision in *Rahimi*, were relevant enough that "there was a 'reasonable probability' that the Court of Appeals would reject a legal premise on which it relied and which may affect the outcome of the litigation." *Tyler v. Cain*, 533 U.S. 656, 666 n.6 (2001) (quoting *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam)). Indeed, to the best of Respondents' knowledge, this Court issued a GVR order in *every* Second Amendment case pending before it after *Rahimi* was decided where the decision below was issued prior to *Rahimi*. The Third Circuit was right not to overread this Court's order here, and as the Commissioner must admit, the Third Circuit *did* account for *Rahimi* in its revised opinion—it just found it supported its prior conclusions. App. 4a.

The Commissioner argues otherwise, suggesting that the Third Circuit, in contravention of *Rahimi*, erred by requiring "an identical match of its contemporary law from the 1790s to prevail." Pet. 26. But this is a caricature of the opinion below. This was not a case where the Commissioner offered evidence of similar, but not similar enough, Founding era restrictions. The Commissioner failed to identify a *single* law from the Founding that singled out 18-to-20-year-olds for any form of restriction on the right to keep and bear arms on account of their age. And the Court's conclusion that "Founding era laws reflect the principle that 18-to-20-year-olds are 'able-bodied men' entitled to exercise the right to bear arms," App. 25a (citation omitted), was the product of exactly the sort of inquiry into "whether the challenged regulation is consistent with the principles that underpin our

regulatory tradition," that *Rahimi* demands. 602 U.S. at 681.

B. The Commissioner next charges the majority with misunderstanding the militia laws, claiming that "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," so that the fact that 18-to-20-year-olds were in the militia at the Founding "provides an exceedingly weak basis for concluding that they had independent Second Amendment rights." Pet. 28–29 (citation omitted). But this gets things backwards. As noted above, the militia laws prove two things: that 18-year-olds were part of the unorganized militia that constitutes part of "the people" under *Heller*, *see Reese*, 127 F.4th at 593, and that 18-to-20-year-olds *were in fact armed* at the Founding, without any evidence of restrictions on their ability to use firearms outside of militia service, *see* App. 31a. They do not need to prove, therefore, that 18-year-olds were *required* to serve in the militia by the Second Amendment. The Third Circuit expressly rejected that argument because "a duty to possess guns in a militia or National Guard setting is distinguishable from a right to bear arms unconnected to such service." *Id.* Instead, *the Commissioner* must prove that, notwithstanding the fact that they are part of the people and were armed at the Founding, 18-year-olds were, in fact, limited in their use of firearms. The militia laws do not help him at all with that task.

The Commissioner attempts to show that they do, claiming that "adult supervision was a critical component of under-21-year-olds' ability to bear muskets in the militia" and noting that some of the militia laws

required parents to acquire firearms for their children or made them liable for their children's failure to do so. Pet. 28–29. But far from demonstrating a "relevantly similar" limitation on the right to keep and bear arms, neither of these facts show a restriction at all. Take first the fact that 18-to-20-year-olds were subject to discipline in the militia. That is irrelevant. All members of the militia were supervised while they were serving, *see* Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 FORDHAM L. REV. 487, 510 (2004), but musters were only occasional events and when they were not serving and that disciplinary structure did not apply, 18-to-20-year-olds still personally owned firearms and there was not a *single* law at the time that would have restricted in any way their lawful use of those arms on account of their age. *See Jones*, 34 F.4th at 721.

The laws requiring parents to provide firearms have been discussed at length and the Third Circuit correctly rejected this argument for the reasons laid out above. "[E]ven though there were founding-era militia laws that required parents or guardians to supply arms to their minor sons, nothing in those statutes says that 18-to-20-year-olds could not purchase or otherwise acquire their own guns." App. 32a. The Commissioner's attempt to supply that limitation by reference to the common law voidability rule is insufficient. As explained above, there is no evidence that the voidability rule applied to prevent the sale of firearms to minors, and it would be surprising if it did.

And even if the voidability rule *had* functioned as the Commissioner hypothesizes, it would violate *Rahimi* to treat that rule as justifying limitations on

18-to-20-year-olds today. By focusing on the specific (assumed) application of the common law at the Founding, the Commissioner entirely misses the *principle* behind it. Eighteen-year-olds were subject to certain limits at the Founding precisely because they were minors. It violates *Rahimi* to extend historical restrictions on minors to those who are legal adults today.

An example demonstrates the perversity of the Commissioner's argument. At the Founding, married women were subject to very similar restrictions to minors and also could not enter into contracts. 1 BLACKSTONE, *supra*, at 441–43. Indeed, "[m]arried women [were], by the law of England, subject, in matters of contract, to a greater disability even than infants; for the contracts of an infant [were], as hath been shewn, for the most part only voidable, while those of married women [were], with few exceptions, absolutely void." PEREGRINE BINGHAM, THE LAW OF INFANCY AND COVERTURE 161 (1816). It is difficult to see how the Commissioner's argument, if accepted, does not necessarily lead to the conclusion that married women today may be barred from exercising Second Amendment rights for the same reason that 18-year-old adults can be. Of course, that is absurd. Marriage today is different and married women are subject to very different expectations and rules than they were at the Founding. But that is precisely the point. Just as it makes no sense to treat a married woman today as a *feme covert*, it makes no sense to treat an 18-year-old adult as though they were a Founding-era minor unable to form contracts. For this same reason, the Commissioner's argument that the panel was wrong to "invoke[] contemporary legal precepts" by treating

18-year-olds as adults today and not minors, gets things backwards. Pet. 32. To *ignore* fundamental modern realities like the fact that 18-year-olds are legal adults today would be to invite precisely the sort of "law trapped in amber" that *Rahimi* rejected. 602 U.S. at 691.

The Commissioner's final objection to the militia laws is that, because 16 and 17-year-olds were sometimes included in militias, that must mean that 16-year-olds also have full Second Amendment rights, but that does not follow. Pet. 28. As the Third Circuit explained, while there were times at which the age was lower, "[a]t the time of the Second Amendment's passage, or shortly thereafter, the minimum age for militia service in every state became eighteen." App. 32a (citation omitted). As the Fifth Circuit noted in *Reese*, there is limited evidence that might support a younger age limit, but "[i]n contrast, the evidence supporting the rights and duties of 18-year-olds and older individuals is wide-reaching and compelling." 127 F.4th at 598 n.16.

C. Finally, the Commissioner charges the Third Circuit with failing to consider later history as potentially more probative than the history of 1791, because, in his view, in 1791 "it was exceedingly difficult for minors to acquire firearms without parental consent" and handguns were rare at the time, both of which changed, he claims, by the 1850s with the mass production of handguns. Pet. 30–31. It is hard to understand this objection. The Commissioner does not explain why such firearms would have been more accessible to minors in the 1850s than in the 1790s, when his entire argument that they were inaccessible in the first place was based on assumed limitation on

the rights of minors that were still in place in the 19th century. And the fact that the types of weapon that are in common use changes over time does not alter the scope of the Second Amendment right, as this Court has made clear. *See Bruen*, 597 U.S. at 28–29.

CONCLUSION

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

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Respectfully submitted,

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