No. 24-1329

In the Supreme Court of the United States

CHRISTOPHER PARIS, COMMISSIONER, PENNSYLVANIA STATE POLICE,

Petitioner

v.

SECOND AMENDMENT FOUNDATION, INC.; FIREARMS POLICY COALITION,

Respondents

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

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Since *Rahimi*, the Circuits have split 3-3 over the question presented, employing drastically different approaches to analyzing the same historical evidence. *Compare* App.1a-52a, *Reese v. BATFE*, 127 F.4th 583 (5th Cir. 2025) *and Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024), *with McCoy v. BATFE*, 140 F.4th 568 (4th Cir. 2025), *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024), *and NRA v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc). This divergence reflects continued confusion over this Court's Second Amendment methodology. This case presents an ideal opportunity to further clarify that methodology and resolve an exceptionally-important question with nationwide implications. Respondents correctly concede all of these points and join the Commissioner in urging this Court to grant certiorari. Resp. Br. at 1-3, 11-18.

Rather than end it at that, Respondents spend many pages quarreling over the Commissioner's description of the doctrinal split between the Circuits and attempting to prop-up the Third Circuit's deeply-flawed analysis. Resp. Br. at 11-31. Most of Respondents' arguments can be reprised at the merits stage if this Court grants review. The Commissioner will respond to only a few of Respondents' arguments before explaining why this case is an excellent vehicle for resolving the question presented.

I. THERE IS NO MEANINGFUL DISAGREEMENT BETWEEN THE PARTIES ON THE CIRCUIT SPLIT

Respondents agree with the Commissioner that the Circuit split involves "fundamental questions about how to apply this Court's precedents in *Bruen* and *Rahimi*[.]" Resp. Br. at 18. Despite this agreement, Respondents make a series of superficial distinctions over

how Commissioner Paris described the methodological split between the Courts of Appeals. Resp. Br. at 17-25.

The Commissioner highlighted that the Circuits disagree "over the relevance of the Founding-era common law," with the Third, Fifth and Eighth Circuits "rejecting *any* reliance on common law principles when analyzing age restrictions[.]" Pet. at 20; *see also Bondi*, 133 F.4th at 1128 (the Fifth Circuit "ignored how the common-law regime restricted minors access to firearms"). Respondents insist that this "is not true" because "[t]he *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." Resp. Br. at 18-19 (emphasis added). The Commissioner also noted that the Circuits "disagree over whether, and how, to consider post-enactment history," with the Third and Fifth Circuits "foreclos[ing] any reliance" on that history. Pet. at 22-23. Respondents insist, again, that this "is not true" and attempt to rebut the Commissioner's characterization with the following prolix sentence:

> [w]hile 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.

Resp. Br. at 24.

Though Respondents managed to use more words, all parties appear to be saying the same thing: the six Circuits that resolved the question presented considered the same Founding-era common-law evidence, the same Founding-era militia statutes, and the same post-enactment statutes, but had radically different interpretations of that historical evidence. Ultimately, which analysis is correct can be sorted out if this Court grants certiorari.

II. RESPONDENTS' ATTEMPT TO BOLSTER THE THIRD CIRCUIT'S ANALYSIS LACKS MERIT

A. Respondents defend the Third Circuit's decision to essentially re-issue its pre-*Rahimi* opinion in *Lara I* unchanged following this Court's GVR order. Resp. Br. at 25-26. Respondents claim that the Third Circuit was right not to "overread" the GVR order. Resp. Br. at 26. But the problem with the Third Circuit's approach is that it *underread* this Court's opinion in *Rahimi*.

Rahimi corrected widespread misconceptions about the historical test established in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). Most importantly, *Rahimi* made clear that the relevant inquiry is whether the challenged law "is consistent with the *principles* that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (emphasis added). When assessing historical evidence, a court's role is not to "isolate each historical precursor and ask if it differs from the challenged regulation in some way." *Nguyen v. Bonta*, 140 F.4th 1237, 1246 (9th Cir. 2025) (citation omitted). Instead, courts consider a

variety of historical sources that, when "taken together," reveal relevant principles. *Rahimi*, 602 U.S. at 698; *id.* at 717 (Kavanaugh, J., concurring); *id.* at 704.

This Court also cautioned against placing undue weight on the absence of a precise Founding-era analogue because "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791." *Rahimi*, 602 U.S. at 691-92; id. at 739-40 (Barrett, J., concurring) (courts should not force "21st-century regulations to follow late-18th-century policy choices" or assume that "founding-era legislatures maximally exercised their power to regulate").

The Third Circuit internalized none of these lessons. By taking its original opinion and peppering in a perfunctory discussion of *Rahimi*, the Third Circuit doubled down on the same analytical errors it committed in *Lara I*: (1) it discounted any Founding-era evidence that did not precisely match Pennsylvania's modern law (including the Founding-era common-law regime); (2) it failed to consider Founding-era militia statutes in their appropriate common-law context; (3) it refused to consider relevant post-enactment historical evidence; and (4) it relied on contemporary ideas about age to interpret the meaning of the Second Amendment at the time of its enactment. Respondents strain to downplay these errors. But none of their defenses of the Third Circuit's opinion have any merit.

B. The Fourth and Eleventh Circuits explained how the common law functionally prohibited anyone under the age of 21 from independently acquiring firearms during the Founding. *McCoy*, 140 F.4th at 575-77; *Bondi*, 133 F.4th at 1117-18. Judge Restrepo's dissent below also explained how the legal incapacity of under-21-year-olds at the Founding meant that they were unable to keep and bear arms. App.42a-43a.

Though Respondents dispute that interpretation of the Founding-era common law, *see* Resp. Br. at 19-21, they do not point to any actual countervailing historical evidence that suggests a different reading. Recent scholarship confirms that the Fourth and Eleventh Circuits and Judge Restrepo got it right. Saul Cornell, *Common-Law Limits on Firearms Purchases by Minors: The Original Understanding*, 135 U. PA. L. REV. ONLINE 133, 134 (2025). "Under the prevailing common-law view of minors at the time of the Founding, those below the legal age of majority (twenty-one) would not have been able to make contracts for anything but a narrow range of necessities—a category also defined by the common law." *Id.* at 134. "Firearms were not included among those necessities." *Ibid.*

Respondents contend that the concept of what items were considered "necessities" was inherently fluid. Resp. Br. at 21. True enough, but it *never* included firearms. Cornell, *Common-Law Limits*, 135 U. PA. L. REV. ONLINE at 137-38. In fact, "[m]ultiple courts across the span of the nineteenth-century expressly excluded guns from the list of items that qualified as necessities" for minors. *Ibid.*

In any event, the issue with the Third Circuit's opinion is that it never meaningfully analyzed the common-law regime in the first place. The only time the panel majority even referenced the Founding-era common-law evidence was at the textual prong. App.15a-16a. And there, all the panel majority said about the common law was that it could not consider that historical evidence—or, indeed, any historical evidence—when construing the text because it purportedly "conflates *Bruen*'s two distinct analytical steps." App.16a. But the majority *never* referenced the common-law regime again, apparently believing it was limited to reviewing only Founding-era *statutes* at *Bruen*'s second

prong and could not consider the common law. App.31a (requiring "a single founding-era statute imposing restrictions on the freedom of 18-to-20-year-olds to carry guns"). That analysis is at war with *Rahimi*'s reliance on principles "[w]ell entrenched in the common law." 602 U.S. at 695.

Perhaps due to the weakness of their attempt to undermine the reality of the Founding-era common law, later Respondents tacitly acknowledge that reality. Resp. Br. at 28-29. But they claim that it would somehow violate *Rahimi* to "*extend* historical restrictions on minors to those who are legal adults today." Resp. Br. at 29. (emphasis added). In so arguing, Respondents commit the same error as the Third Circuit: reasoning backwards from *contemporary* ideas about age. As Chief Judge Pryor explained in *Bondi*, under this approach "the Second Amendment turns on an evolving standard of adulthood that is divorced from the text of the Amendment and from our regulatory tradition." 133 F.4th at 1125.

C. Like the Third Circuit, Respondents rely almost exclusively on Founding-era militia statutes to support their claim that restrictions on 18-to-20-year-olds violate the Second Amendment. Resp. Br. at 23-24, 27-28; *see also* App.89a (Krause, J., dissenting from the denial of en banc). As the Commissioner explained, militia statutes actually demonstrate the opposite principle. Pet. at 29. Precisely *because* minors could not independently acquire firearms during the Founding, militia statutes needed to address that deficiency. *Ibid.* They did so by either exempting minors from the firearm requirement or requiring minors' parents to furnish the arms. *Ibid.*

Respondents' lone response to that aspect of militia statutes is to parrot the Third Circuit's observation that the militia laws themselves did not specifically say

"that 18-to-20-year-olds could not purchase or otherwise acquire guns." Resp. Br. at 28 (quoting App.32a). But this reaction represents a lapse into a pre-*Rahimi* demand for historical twins. It is certainly true that 18th-century statutes requiring parents to furnish their children with arms are by no means identical to Pennsylvania's modern regime. But they do not have to be. *Rahimi*, 602 U.S. at 698. The question is whether those statutes, along with other historical evidence, reveal relevant *principles*. They do. As Chief Judge Pryor explained, those laws "reflected that, at common law, minors could not purchase weapons for themselves." *Bondi*, 133 F.4th at 1119.

Respondents also attempt to refute the Commissioner's observation that adult supervision was a critical component of minors' ability to carry arms in militias. Pet. at 28-29. They note that *everyone* was supervised in the militia, not just minors. Resp. Br. at 27-28. This is true, but it also misses the Commissioner's point entirely.

Unlike adults, minors' ability to possess firearms during the Founding era was *always* subject to the pleasure of their guardians and superiors. Saul Cornell, *"Infants" and Arms Bearing in the Era of the Second Amendment: Makin Sense of the Historical Record*, 40 YALE L. & POL'Y REV. INTER ALIA 1, 14 (2021). That is not consistent with minors having an inherent fundamental right to bear arms.

That the Founding generation felt comfortable allowing minors to bear arms in highly-supervised settings like the militia reveals nothing about how that same generation felt about minors bearing arms in *unsupervised* settings. And there is no tension in the Founding generation's view that supervised access was acceptable, but unsupervised access was not. Indeed,

Pennsylvania's modern law also recognizes this distinction, and exempts 18-to-20-year-olds who are members of the military or National Guard, the modern-day "militia." 18 Pa. Cons. Stat. §6106(b)(2); *see also* Saul Cornell, *A Well Regulated Militia: The Founding Fathers and the Origins of Gun Control in America*, 37, 196 (2006) (modern statutes "essentially nationalized the function and control of the militia" and reorganized it "into the modern National Guard").

Respondents here claim the inherent constitutional right of teenagers to engage in unsupervised and unregulated public carry during states of emergency. That proposition would have stunned the average citizen in both 1791 and 1868.

D. Respondents end their filing by briefly addressing the Commissioner's reliance on post-enactment history. Resp. Br. at 30-31. But they mischaracterize the Commissioner's actual position.

Respondents assert that "the Commissioner charges the Third Circuit with failing to consider later history *as potentially more probative than the history of 1791*[.]" Resp Br. at 30 (citing Pet. at 30-31). But the Commissioner could not have been clearer that the post-enactment history is entirely *consistent* with the Founding-era history and thus serves to *confirm* the Founding generation's understanding of the right. Pet. at 30-32; *see also Bondi*, 133 F.4th at 1122 ("The law of the Founding era, which restricted the purchase of firearms by minors, continued into the nineteenth century in the form of statutory prohibitions.").

What the Commissioner explained was why the post-enactment restrictions took a different *form* than the Founding-era regime. Pet. at 30-32. Respondents express befuddlement at that explanation, claiming it is "hard to understand[.]" Resp. Br. at 30. But it should not be so difficult to grasp, given how much airing it

has received both here and in other cases raising the same issue. 3d Cir. Dkt. ECF No. 102, Commissioner's Post-Rem Br. at 15-16; *Bondi*, 133 F.4th at 1159 (Rosenbaum, J., concurring).

At the Founding, America "was a cash-poor economy in which most economic transactions involved credit of some form." Cornell, *Common-Law Limits*, 135 U. PA. L. REV. ONLINE at 135. Given minors' inability to enter contracts and the "high risk" sellers faced in supplying goods (including firearms) to minors on credit, the common-law regime worked perfectly well to prevent minors from independently acquiring firearms during the Founding. *Bondi*, 133 F.4th at 1122, 1129-30. But by the 1850s, significant societal, economic, and technological changes rendered the common-law regime inadequate for the task at hand.

In particular, the availability of cash and the mass-production of handguns made it much easier for minors to independently acquire dangerous weapons. Megan Walsh & Saul Cornell, *Age Restrictions and the Right to Keep and Bear Arms*, 1791-1868, 108 MINN. L. REV. 3049, 3088 (2024); *Bondi*, 133 F.4th at 1135-40 (Rosenbaum, J., concurring) (minors "gained the personal and economic freedom to by the new, widely available, and lethal weapons"). Those transformations, in turn, led to a "rise in firearm-related injuries at the hands of minors." Patrick Charles, *Armed in America: The History of Gun Rights from Colonial Militias to Concealed Carry*, 141 (2018). "When the common-law regime became less effective at restricting minors' access to firearms, statutes increasingly did the work." *Bondi*, 133 F.4th at 1122; *id.* at 1159 (Rosenbaum, J., concurring) ("when those common-law restrictions waned in the nineteenth century, the states filled the void by enacting a flurry of outright bans").

This "nuanced approach" to post-enactment history is consistent with this Court's precedents. *Bruen*, 597 U.S. at 27-28; *Rahimi*, 602 U.S. at 723-29 (Kavanaugh, J. concurring); *id.* at 737-39 (Barrett, J. concurring).[1]

III. This Case is an Ideal Vehicle for Resolving the Question Presented

This petition is one of four currently pending before this Court implicating the legality of firearms restrictions on 18-to-20-year-olds.[2] This case presents an ideal vehicle for several reasons.

First, although other cases have been rendered moot before they could reach this Court as individual plaintiffs turned 21, *see, e.g.*, *Hirschfeld v. BATFE*, 14 F.4th 322 (4th Cir. 2021), the Third Circuit determined that the organizational plaintiffs here saved the case from becoming moot. App.32a-35a

Second, precisely because Pennsylvania's firearms age restrictions are so mild compared to other states, this case exposes the striking scope of the constitutional claim at the heart of all four cases now before this Court. Although 18-to-20-year-olds cannot obtain *concealed-carry licenses* in Pennsylvania, they are free to carry *openly*, except during declared public emergencies. Such public emergencies are now strictly restrained by the state's constitution. App.33a (citing PA. CONST. art. IV, §20). In addition to allowing 18-to-20-

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[1] It also leaves open the question of "whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope[.]" *Bruen*, 597 U.S. at 37. That question need not be resolved here to uphold Pennsylvania's law.

[2] The three other petitions are *NRA v. Glass*, 24-1184, *McCoy v. BATFE*, 25-24, and *W. Va. Citizens Defense League v. BATFE*, 25-132.

year-olds to openly carry during non-emergencies, Pennsylvania also distinguishes between handguns and long guns by allowing 18-to-20-year-olds to obtain "sportsman's" firearms permits. 18 Pa. Cons. Stat. §§6106(b)(9), (c). These are precisely the uses contemplated by the Framers, for whom handguns were an impractical oddity. Yet under Respondents' sweeping theory, even this narrow legislative scheme is beyond the power of Pennsylvania, and of every other state, to enact.

Third, and perhaps most notably, Pennsylvania officials are prepared to defend Pennsylvania's law. It is unclear whether that is true of any of the three other cases. The Florida Attorney General will not defend Florida's law, and, indeed, has taken the position in this Court that Florida's law is unconstitutional. *See* Respondent's Br., *NRA v. Glass*, 24-1185. And there is reason to doubt that the federal government will continue to defend its law in *McCoy* and *West Virginia Citizens Defense League*. *See* Giffords Law Center Amicus Br. at 16, *McCoy v. BATFE*, 25-24 ("The federal government declined to seek review in *Reese*, and it remains unclear whether it will defend the [c]hallenged [l]aws in this case.").

Regardless of which case this Court considers to be the best vehicle, it should not permit this issue to percolate any longer. The confusion that the Commissioner detailed in the petition, *see* Pet. at 23-26, has only deepened. *See Commonwealth v. Williams*, ___ A.3d ___, 2025 Pa. Super. 137 (Pa. Super. Jul. 1, 2025) (upholding conviction of a 19-year-old for possessing a firearm without a license).[3] The Pennsylvania officials

[3] If this Court grants one of the other petitions, Commissioner Paris respectfully requests that the Court hold this petition pending disposition of that case.

caught between these competing interpretations need clarity on this question.

CONCLUSION

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

Respectfully submitted,

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