No. 24-782

In the
Supreme Court of the United States

BOB JACOBSON, Individually and in His Official Capacity as Commissioner of the Minnesota Department of Public Safety,
Petitioner,

v.

KRISTIN WORTH, *et al.*,
Respondents.

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

BRIEF IN RESPONSE

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QUESTION PRESENTED

Does Minnesota's law banning 18-to-20-year-olds from carrying firearms in public violate the Second Amendment?

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INTRODUCTION

As this Court articulated in *Heller*, made clear in *Bruen*, and reaffirmed in *Rahimi*, a Second Amendment challenge to firearm restrictions must be decided based on "constitutional text and history." *United States v. Rahimi*, 602 U.S. 680, 691 (2024) (quoting *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 22 (2022)). "When the Second Amendment's plain text covers an individual's conduct," the government bears the burden of "justify[ing] 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." *Bruen*, 597 US. at 24 (internal quotation marks omitted). The unanimous panel of the Eighth Circuit Court of Appeals faithfully applied these principles in the decision below. It correctly concluded that Minnesota's challenged law banning 18-to-20-year-old adult Americans from carrying firearms in public burdens conduct protected by the Second Amendment's plain text. The panel also correctly held that Petitioner failed to come forward with evidence of any historical tradition of firearms regulation that is even remotely similar to the challenged law, either in terms of its burden or its justification. Indeed, Petitioner has identified *no age-based firearm restriction of any kind*—and Respondents are unaware of any—until *over sixty years* after the Second Amendment was ratified.

Petitioner asks the Court to grant, vacate, and remand the case based on the notion that the decision below did not faithfully apply the Court's teachings in *Rahimi*, but that is not so. The court below was plainly

aware of *Rahimi* and took it into account: it cited the decision no fewer than ten times and relied upon it for important parts of its analysis, including in articulating the governing Second Amendment framework. *See* Pet.App.25a. Indeed, when Petitioner ultimately attempts to make good on his claim that the decision below conflicts with *Rahimi*, the best he can come up with is that "the Eighth Circuit demanded Minnesota identify 'an adequate historical analogue' " and then conducted an "exacting review" of each proffered analogue's " 'how' and 'why.' " Pet.14 (quoting Pet.App.23a–24a, 25a–37a). Those quotations are all taken from the decision below and, in turn, from *Bruen*, but they might just as well come from *Rahimi*, because they describe *precisely* the approach that *Rahimi*, reaffirming *Bruen*, requires. *See Rahimi*, 602 U.S. at 692.

This is not a case where a lower court decided an issue without the benefit of an intervening precedent from this Court, nor is it a case where a lower court was unaware of one of this Court's precedents or attempted to bury any consideration of the precedent in a footnote. The Eighth Circuit was plainly aware of *Rahimi* and thoughtfully and faithfully applied it. Summarily vacating and remanding the decision below in these circumstances would be a remarkable departure from this Court's practice—and a remarkable and unjustifiable rebuke of the court of appeals.

Petitioner is on much firmer ground in asking the Court to grant the case for plenary consideration. The federal courts of appeals have indeed split over the constitutionality of restrictions on 18-to-20-year-olds' right to carry firearms or to acquire them in the first place. The decision below is on the heavy side of that

lopsided split: a total of three Circuits, including the Eighth, have fully protected the Second Amendment rights of this age cohort, while only one goes the other way. And the decision below is also on the correct side: text and history clearly dictate that 18-to-20-year-olds enjoy full Second Amendment rights. But Petitioner is right that the question is a fundamentally important one, and split between the circuits over that issue is intolerable. Respondents therefore join Petitioner's request that the Court grant review and set the case for argument. But the Court should do so to affirm the court below, not to reverse it.

STATEMENT

I. Minnesota's Age-Based Ban on Carrying Firearms.

Minnesota generally bars ordinary citizens from carrying handguns in public for self-defense unless they first acquire a permit to carry. MINN. STAT. ANN. § 624.714 subd. 1a. Minnesota is a so-called "shall issue" state: if an individual applies to the county sheriff for a permit to carry and meets all of the statutory criteria, the sheriff *must* issue the permit. *Id.* § 624.714 subd. 2(b). The statutory criteria include a gun-safety training requirement and a number of objective requirements, including that the applicant must not have certain criminal history, a past mental health commitment, or evidence of affiliation with gang activity. *Id.* § 624.714 subd. 2(b)(1)–(5). Importantly for this case, the applicant must also be "at least 21 years old." *Id.* § 624.714 subd. 2(b)(2).

II. The Impact on Respondents.

Respondents represent 18-to-20-year-old Minnesota residents who desire to carry handguns in public

for self-defense. The organizational Respondents, Minnesota Gun Owners Caucus, Second Amendment Foundation, and Firearms Policy Coalition, Inc., are all non-profit organizations founded for and dedicated to the purpose of defending the fundamental, Second Amendment right to keep and bear arms through advocacy, litigation, education, and other programs. All three groups have members in Minnesota who are aged 18 to 21 and who wish to carry firearms in public for lawful purposes including self-defense but are unable to do so because of Minnesota's ban.

The organizational Respondents are joined by three individuals: Kristin Worth, Austin Dye, and Axel Anderson. Those three individuals were all between 18 and 20 years old at the outset of the case, but they have all turned 21 during the course of the litigation. As part of its decision in this case, the Eighth Circuit granted Respondents' motion to supplement the record with evidence that the organizational plaintiffs have at least one other identified member, Joe Knudsen, who resides in Minnesota, is under 21, and wishes to carry firearms in public and would imminently do so but for the challenged age ban. Pet.App.8a–11a.

III. The Proceedings Below.

Respondents brought suit in the District of Minnesota challenging Minnesota's age-based limits on carrying firearms on June 7, 2021. The parties cross-moved for summary judgment, and on March 31, 2023, the district court granted summary judgment for Respondents. Applying the text and history framework adopted by this Court in *Bruen*, the district court held that "the text of the Second Amendment includes

within the right to keep and bear arms 18-to-20-year-olds," and that the government had not met its "burden to show the age requirement in MINN. STAT. § 624.714, subd. 2(b)(2), is consistent with the nation's history and tradition of firearm regulations." Pet.App.72a, 93a.

Petitioner appealed, and on July 16, 2024, a unanimous panel of the Eighth Circuit Court of Appeals affirmed. Like the district court, the panel first concluded that "[o]rdinary law-abiding, adult citizens that are 18 to 20-year-olds are members of the people" within the meaning of the Second Amendment, reasoning that those adult Americans "are members of the political community under *Heller*'s 'political community' definition," and that "consistency" with the rest of the Bill of Rights supports that result, since "[t]hose 18 to 20-years-old are among 'the people' for other constitutional rights such as the right to vote, freedom of speech, peaceable assembly, government petitions, and the right against unreasonable government searches and seizures." *Id.* at 16a, 21a (cleaned up). Second, applying this Court's guidance in *Bruen* and *Rahimi*—the latter of which the panel extensively relied upon and cited throughout its analysis no fewer than ten times—the Eighth Circuit held that "Minnesota did not proffer an analogue that meets the 'how' and 'why' of the Carry Ban for 18 to 20-year-old Minnesotans." *Id.* at 37a. It read this Court's precedent as "strongly suggest[ing] that we should prioritize Founding-era history," and at the Founding, the court of appeals explained, there were insufficient analogues "to demonstrate that the Nation's historical tradition of firearm regulation supports the Carry Ban." *Id.* at 24a, 32a. And the later, Reconstruction-

era laws identified by Petitioner both "carry less weight than Founding-era evidence" and "have serious flaws even beyond their temporal distance from the founding." *Id.* at 34a (internal quotation marks omitted).

Petitioner sought review of the panel's unanimous decision by the *en banc* Eighth Circuit, but the petition was denied without noted dissent. *Id.* at 110a.

ARGUMENT

I. The Court Should Grant Certiorari To Resolve the Split Between the Circuits Over the Important Question Presented.

While the court below correctly held that Minnesota's age restriction on carrying firearms is unconstitutional, Petitioner is correct that the federal courts of appeal have divided over the constitutionality of such laws. Whether the government may prevent peaceable 18-to-20-year-old Americans from acquiring or carrying firearms is a question of fundamental importance, and Respondents agree that it merits this Court's review.

a. The clear majority of federal courts have fully protected the Second Amendment rights of 18-to-20-year-olds. Of the seven federal Courts of Appeals that have considered the constitutionality of a restriction on this age group's right to keep and bear arms, five have issued opinions invalidating those restrictions: three that remain the law of the circuit, including the decision below, and two that were subsequently vacated but retain persuasive value.

The Eighth Circuit's decision below, of course, vindicated the Second Amendment rights of 18-to-20-year-olds, holding that "18 to 20-year-olds seeking to carry handguns in public for self-defense are protected by the right to keep and bear arms." Pet.App.37a. The Third Circuit recently reached the same conclusion. In *Lara v. Commissioner Pennsylvania State Police*, that court struck down a collection of state laws that barred 18-to-20-year-olds from carrying firearms whenever the State is under a declared state of emergency. 125 F.4th 428, 432 (3d Cir. 2025). It held "that 18-to-20-year-olds are, like other subsets of the American public, presumptively among 'the people' to whom Second Amendment rights extend," and that the state failed to show that its "restriction on 18-to-20-year-olds' Second Amendment rights is consistent with the principles that underpin founding-era firearm regulations." *Id.* at 438, 445.

Courts have also invalidated restrictions on the ability of 18-to-20-year-olds to acquire firearms, based on parallel reasoning. In *Reese v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, the Fifth Circuit recently struck down 18 U.S.C. § 922(b)(1) & (c)(1), the federal statutory provisions barring that age group from purchasing handguns from a licensed firearm dealer. 127 F.4th 583 (5th Cir. 2025). Like the Eighth and Third Circuits, the *Reese* court concluded that "the text of the Amendment's prefatory clause considered along with the overwhelming evidence of their militia service at the founding indicates that eighteen-to-twenty-year-olds were indeed part of 'the people' for Second Amendment purposes." *Id.* at 595 (citations omitted). And also like *Lara* and the decision below, the court held that the challenged restriction was

unsupported by historical tradition, reasoning that "[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, and its 19th-century evidence 'cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence.' " *Id.* at 600 (quoting *Bruen*, 597 U.S. at 66).

The Fourth and Ninth Circuits previously reached similar conclusions, albeit in decisions that were subsequently vacated. In *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, the Fourth Circuit likewise held that 18 U.S.C. § 922's age ban is unconstitutional. 5 F.4th 407, 452 (4th Cir. 2021). That opinion was ultimately vacated as moot, however, after all of the plaintiffs turned 21. *Hirschfeld v. BATFE*, 14 F.4th 322 (4th Cir. 2021). And the Ninth Circuit struck down a California law banning 18-to-20-year-olds from purchasing semiautomatic centerfire rifles, though it reached that decision before this Court's decision in *Bruen*, and its opinion has accordingly been vacated for further analysis under the *Bruen* framework. *Jones v. Bonta*, 47 F.4th 1124 (9th Cir. 2022) (Mem.).

These decisions all reached parallel results grounded in parallel reasoning. All concluded that 18-to-20-year-olds are part of "the people" protected by the Second Amendment at the text stage of the *Bruen* inquiry, based on similar or identical textual and structural considerations, including this Court's plain-text definition of "the People" in *Heller* and the settled understanding of that same phrase in the context of other constitutional rights. *Compare*

Pet.App.16a–23a, *with Lara*, 125 F.4th at 435–38, *and Reese*, 127 F.4th at 591–95; *see also Hirschfeld*, 5 F.4th at 421–24; *Jones v. Bonta*, 34 F.4th 704, 714 (9th Cir. 2022). And the courts' historical analyses were likewise all consonant. They all concluded that the Founding Era, rather than Reconstruction, is either the exclusive or preeminent focal point of analysis. *Compare* Pet.App.24a, *with Lara*, 125 F.4th at 438–41, *and Reese*, 127 F.4th at 599–600; *see also Hirschfeld*, 5 F.4th at 419. They all concluded that there is no historical restriction from that era that is even remotely analogous to modern restrictions on 18-to-20-year-olds' Second Amendment rights. *Compare* Pet.App.29a–32a, *with Lara*, 125 F.4th at 441–45, *and Reese*, 127 F.4th at 596–99; *see also Hirschfeld*, 5 F.4th at 424–37; *Jones*, 34 F.4th at 720–21. And they all concluded that the meager evidence from the Reconstruction Era and later, to the extent it has any legal significance at all, is unable to overcome the evidence that 18-to-21-year-olds enjoyed robust Second Amendment rights at the Founding. *Compare* Pet.App.32a–37a, *with Lara*, 125 F.4th at 441–42 & n.20, *and Reese*, 127 F.4th at 599–600; *see also Hirschfeld*, 5 F.4th at 439–40; *Jones*, 34 F.4th at 722–23.

b. Most federal courts of appeals to have considered the question presented, or closely related ones, have thus reached conclusions that accord with the decision below, correctly apply this Court's precedent, and are faithful to the Second Amendment's text and history. However, two federal appellate courts have reached a directly contrary conclusion and upheld restrictions barring 18-to-20-year-olds from acquiring firearms: the Tenth Circuit, in a recent decision upholding a Colorado age ban, and the Eleventh Circuit,

in a decision that has since been vacated for rehearing *en banc*.

As Petitioner notes, the Tenth Circuit in *Rocky Mountain Gun Owners v. Polis* upheld a Colorado law flatly banning 18-to-20-year-olds from purchasing firearms. 121 F.4th 96 (10th Cir. 2024). That ban, the court thought, 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." *Id.* at 118 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008)). 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.

The Eleventh Circuit, in a now-vacated opinion, reached the same result, though based on different reasoning. In *National Rifle Association v. Bondi*, that court upheld a Florida statute prohibiting 18-to-20-year-olds from purchasing firearms. 61 F.4th 1317 (11th Cir. 2023). Directly contrary to the decision below and the Third, Fourth, Fifth, and Ninth Circuit decisions discussed above, the *NRA* court concluded that "historical sources from the Reconstruction Era are more probative of the Second Amendment's scope than those from the Founding Era." *Id.* at 1322. And it also read the historical record from that period in a way that is irreconcilable with those decisions: as

establishing "that regulations from the Reconstruction Era burdened law-abiding citizens' rights to armed self-defense to an even greater extent and for the same reason" as modern age bans on the purchase of firearms. *Id.* at 1325. The panel's opinion in *NRA* was vacated for rehearing *en banc*, and a decision by the full Eleventh Circuit remains pending. *National Rifle Ass'n v. Bondi*, 72 F.4th 1346 (11th Cir 2023) (Mem.).

c. Accordingly, the decision below forms part of a lopsided circuit split, with the courts of appeals currently divided three to one (or five to two, counting subsequently-vacated opinions) over the extent to which the Second Amendment protects the right of 18-to-20-year-olds to keep and bear arms. And Respondents agree with Petitioner that this issue "is important." Pet.22. Indeed, the issue is foundational: whether an age cohort comprising tens of millions of Americans may be categorically excluded from one of our fundamental, enumerated constitutional protections. 18-to-20-year-olds are considered legal adults today for virtually all purposes: they may vote, serve on juries, petition the government, freely express their views, and serve in (or be conscripted into) the armed services. Yet in the Tenth Circuit, the states are free to effectively foreclose their right to defend themselves and their families with common firearms.

The split between the courts of appeals also raises critical methodological questions about this Court's burgeoning Second Amendment jurisprudence more generally. For example, the dispute between the lower courts turns in part on which period of historical firearms regulations should be the focus of the historical analysis required by *Bruen*: the Founding Era or

Reconstruction. This Court did not squarely address that issue in either *Bruen* or *Rahimi*, but it has vexed many lower federal courts, and Respondents respectfully submit that it is incumbent upon this Court to resolve that important issue sooner rather than later.

Similarly, the Tenth Circuit's decision in *Rocky Mountain Gun Owners* was based on an expansive, and highly debatable, interpretation of this Court's repeated reference to certain categories of gun regulations (including conditions and qualifications on commercial firearm sales) that the Court has presumed to be lawful. The Tenth Circuit read the Court's repeated recitation of those categories as conclusively placing them outside of the Second Amendment's protective sweep, rather than as simply enumerating a series of open questions that the Court's Second Amendment decisions have not yet decided one way or another. *Cf. Reese*, 127 F.4th at 590 n.2 (concluding that the Tenth Circuit "committed a category error in its analysis that a complete ban of the most common way for a young adult to secure a firearm is not an abridgement of the Second Amendment right and therefore subject to *Bruen*'s test"). On this issue, too, Respondents respectfully submit that this Court's further guidance is urgently needed.

Accordingly, Petitioner is correct to identify this case as raising an important issue over which the federal courts of appeals have divided. Respondents join his request that the Court grant plenary review of the question presented.

II. The Court Should Not Summarily Vacate the Eighth Circuit's Thoughtful, and Correct, Decision.

Petitioner requests in the alternative that the Court grant certiorari, summarily vacate the Eighth Circuit's decision, and remand the case for further consideration in light of a decision that the court below was plainly aware of and in fact repeatedly cited and relied upon. That request should be denied.

a. Petitioner asserts that the Eighth Circuit "fail[ed] to meaningfully apply *Rahimi*'s methodology" and that Minnesota thus "did not benefit from this Court's corrective guidance" in *Rahimi*, Pet.2, but that is not so. The court below was plainly aware of, and considered, the impact of *Rahimi*—indeed, it extensively relied on the decision, citing it no fewer than 10 times. In such a circumstance, to summarily vacate the decision below and remand for the Eighth Circuit to simply *try again*, without any explanation of where its previous, thorough consideration of *Rahimi* supposedly went wrong, would be an extraordinary and unjustified rebuke.

Nor can the panel's references to *Rahimi* be characterized as a mere sprinkling of citations for irrelevant or marginal propositions—"*Rahimi* ornamentation," in Petitioner's colorful phrasing. *Id.* The court below relied upon *Rahimi* for core parts of its analysis. For instance, it cited *Rahimi* multiple times, alongside *Bruen*, in describing the nature of the historical inquiry and analogical reasoning required under the Second Amendment. Pet.App.25a (quoting *Rahimi*, 602 U.S. at 692). It invoked *Rahimi* in rejecting Petitioner's argument that 18-to-20-year-olds may be

disarmed, as a group, based on the government's say-so that they are "not 'responsible.' " Pet.App.23a (quoting *Rahimi*, 602 U.S. at 701). And it relied upon *Rahimi* in determining the sort of showing the government would actually have to make to disarm a group of Americans based on purported dangerousness. Pet.App.27a (quoting *Rahimi*, 602 U.S. at 698–99); Pet.App.28a (quoting *Rahimi*, 602 U.S. at 700); Pet.App.29a (quoting *Rahimi*, 602 U.S. at 702).

More fundamentally, the central conceit of Petitioner's argument—that there is some sort of significant cleavage between *Rahimi* and *Bruen*, such that any opinion that is "*Bruen*-based" must, perforce, not "meaningfully apply *Rahimi*'s methodology," Pet.2—*is itself* flatly inconsistent with *Rahimi*. The decision in *Rahimi* is a faithful application of *Bruen*'s framework, not a fundamental departure from it. *See* J. Joel Alicea, Bruen *Was Right*, 174 U. PA. L. REV. (forthcoming 2025) (manuscript at 34, 38–42). *Rahimi* quotes verbatim, and emphatically reaffirms, *Bruen*'s framework for Second Amendment analysis, *including Bruen*'s description of the process of reasoning by historical analogy. *Rahimi*, 602 U.S. at 691–92. Petitioner repeatedly intimates that *Rahimi* contradicts *Bruen* by establishing that the government need not produce "a historical twin," Pet.11, *see also* Pet.i, 12, 13, but this is plainly false. *Bruen itself* made it crystal clear that "analogical reasoning" does not require "that the government identify . . . a historical *twin*," 597 US. at 30, and *Rahimi*'s three references to that proposition *were all quotations of this language from Bruen*, *see Rahimi*, 602 U.S. at 692, 701 (all quoting *Bruen*, 597 U.S. at 29–30).

The disagreement between the majority in *Rahimi* and the dissent (and the Fifth Circuit's decision below) was not over whether to apply *Bruen*'s framework, or even over what exactly that framework entailed. Rather, the dispute in *Rahimi* exclusively concerned *the application* of that framework to the specific modern restriction and historical tradition at issue—and in particular, whether certain incidental features of the government's two historical analogues, affray and surety laws, rendered them too disanalogous to the challenged restriction to justify it under *Bruen*'s historical inquiry. *See* Alicea, *supra*, at 38–42. *Rahimi* in this way represents a different transition in this Court's Second Amendment jurisprudence than Petitioner suggests: one from the fundamental—*Heller* and *Bruen*'s determination of the basic scope of the Second Amendment and the nature of the doctrinal framework that most faithfully implements it—to the mundane—the workaday application of that framework to specific laws that burden the right to keep and bear arms.

Given that *Rahimi* reaffirms the *Bruen* framework in its entirety and applies it in a context far removed from the age ban at issue in this case, the *Rahimi* opinion does not represent some sort of asteroid strike from space requiring the panel to completely transform its analysis of the challenged Minnesota law and rebuild it from the ground up. The panel's extensive citation of *Rahimi* thus more than adequately demonstrates that it thoroughly and faithfully took that opinion into account in conducting its analysis. And this point also suffices to dispose of Petitioner's repeated complaint that the court below did not invite "supplemental briefing regarding the impact of

Rahimi." Pet.2. Figuring out how *Rahimi* affects the analysis in this case was not a complex analytical task requiring additional briefing.

b. Once what *Rahimi* actually said and did is understood, it becomes clear that the decision below is fully consistent with it.

There can be no doubt that Respondents' proposed course of conduct falls within the Second Amendment's text. That provision's "plain text . . . presumptively guarantees . . . a right to 'bear' arms in public for self-defense." *Bruen*, 597 U.S. at 33. And 18-to-20-year-olds like respondents are presumptively among "the people" who enjoy that right, U.S. CONST. amend. II, because they are "Americans" and "part of [our] national community," *Heller*, 554 U.S. at 580–81 (quoting *United States v. Verdugo–Urquidez,* 494 U.S. 259, 265 (1990)).

The burden thus shifts to the State to justify its age ban based on history. At that stage of the analysis, *Rahimi* holds (in accordance with *Bruen*) that a modern regulation must "be analogous enough" to "laws at the founding," and thus "comport with the principles underlying the Second Amendment," not that it must "be a 'dead ringer' or 'historical twin.' " 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 30). The Eighth Circuit faithfully hewed to that approach.

1. The clearest Founding-Era evidence of our historical traditions surrounding the right of 18-to-20-year-olds to keep and bear arms comes from the Founders' understanding of militia service. Although the Second Amendment's prefatory clause cannot be read to "limit or expand the scope of the operative clause," it nonetheless "announces the purpose for

which the right was codified: to prevent elimination of the militia." *Heller*, 554 U.S. at 578, 599. And there is no doubt that 18-to-20-year-olds were understood to be part of the militia at the time the Second Amendment was adopted: the Militia Act of 1792 set the minimum age of militia service at 18, Act of May 8, 1792, 1 Stat. 271, and all states likewise adopted "the minimum age of eighteen . . . at or immediately after ratification of the Second Amendment," *Reese*, 127 F.4th at 594. These "Founding-era militia laws requiring service in the militia by 18–20-year-olds who are responsible for supplying their own weapons is consistent with a contemporary understanding that this age group was not excluded from the class of persons who had the right to keep and bear arms." Pet.App.69a. After all, if the Second Amendment was codified to prevent the disarmament of the militia, and 18-to-20-year-olds were universally understood to be part of the militia, then the Second Amendment necessarily must protect that age cohort's right to keep and bear arms.

By contrast to this strong historical evidence that law-abiding 18-to-20-year-old citizens were understood at the Founding to enjoy the Second Amendment's protections, the State and its experts have not identified, and we are not aware of, *any evidence whatsoever* of colonial or Founding-era laws restricting the keeping or carrying of firearms by individuals aged 18 or over because of their age.

Instead of coming forward with actual age-based firearms regulations at the Founding, Petitioner principally relies upon a series of restrictions that limited 18-to-20-year-olds' exercise of *other completely unrelated* rights. He asserts that "during the Founding

era, people under 21 were minors who existed under total legal authority of their parents" and "could not participate in the Nation's hallmark civic duties," including voting and jury service. Pet.5. The defect with this evidence under *Rahimi* (and *Bruen*) is obvious: none of these restrictions are remotely similar to Minnesota's age-based carry ban in terms of "how [they] burden[ ] the Second Amendment right," *Rahimi*, 602 U.S. at 698, because, in fact, *they did not burden the Second Amendment right at all*. "The age of majority or minority is a status that lacks content without reference to the right at issue," Pet.App.22a (cleaned up), and "[t]he fact that eighteen-to-twenty-year-olds were minors unable to vote (or exercise other civic rights) does not mean they were deprived of the individual right to self-defense," *Reese*, 127 F.4th at 592. *Rahimi* emphasizes that historical inquiry must look to "the principles that underpin," "the Nation's historical tradition of firearm regulation," 602 U.S. at 689, 692 (internal quotation marks omitted), but nothing in that opinion or any other from this Court licenses the government to rely upon principles tweezed out from regulatory traditions (not to mention "[e]arly legal scholarship" or the personal correspondence of the Framers, Pet.5) that had *nothing to do with firearms*.

The other purported Founding-Era analogues offered by Petitioner below, the panel below correctly concluded, are not even remotely similar in terms of the "[w]hy and how" of regulation. *Rahimi*, 602 U.S. at 681; *see* Pet.App.29a–32a. College rules premised on a university's "in loco parentis" authority, or municipal fines on discharging a firearm within city limits, are not siblings, great-uncles, or even second-

cousins-thrice-removed of Minnesota's age ban, much less historical twins.

2. The Eighth Circuit's conclusion that Petitioner's Reconstruction-Era evidence does not suffice to justify the challenged law is also fully consistent with this Court's precedent, including *Rahimi*.

First, the court below correctly held based on this Court's case law that it "should prioritize Founding-era history." Pet.App.24a. "[F]or decades," this Court "has generally assumed that the public understanding of the right when the Bill of Rights was adopted in 1791 governs" in cases involving federal law. *Id.* (cleaned up); *see also Gamble v. United States*, 587 U.S. 678, 702 (2019) (noting that the relevant inquiry is "the public understanding in 1791 of the right codified by the Second Amendment"). And the Court has made emphatically clear that once "a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires." *Timbs v. Indiana*, 586 U.S. 146, 150 (2019). It follows that 1791 is the focal point for inquiry into the Second Amendment's historically understood limits. *See* Mark W. Smith, *Attention Originalists: The Second Amendment was adopted in 1791, not 1868*, HARV. J.L. & PUB. POL'Y PER CURIAM (Dec. 7, 2022), https://perma.cc/8CSW-QB2L. Petitioner faults the court below for reaching this conclusion, Pet.14, but the most he can offer is the observation that "this Court has yet to resolve that issue," including in *Rahimi*. *Id.* That makes his suggestion that this is a basis for summary vacatur puzzling, to say the least.

In any event, the Reconstruction-Era and later laws identified by Petitioner "have serious flaws even

beyond their temporal distance from the founding." Pet.App.34a (internal quotation marks omitted). By the turn of the 20th century, less than half of the States had adopted age-based firearm restrictions of any sort. Those laws typically applied only to certain types of weapons, or to carrying firearms concealed rather than openly, and several contained "exceptions for self-defense, hunting, or home possession." David B. Kopel & Joseph G.S. Greenlee, *History and Tradition in Modern Circuit Cases on the Second Amendment Rights of Young People*, 43 S. ILL. U. L.J. 119, 142 (2018). This smattering of late-breaking age restrictions does not suffice to show a "[w]ell entrenched," *Rahimi*, 602 U.S. at 695, or "well-established and representative," *Bruen*, 597 U.S. at 30, historical tradition of firearm regulation.

Moreover, even if this Court examines these laws, *all* of Petitioner's nineteenth-century laws applied only to limit the Second Amendment rights of *actual minors*—individuals who, at the time, remained under the legal custody and protection of their parents. Because they were "based on one's status as a minor," Pet.App.37a, the "[w]hy and how" of these laws, *Rahimi*, 602 U.S. at 692, were thus both fundamentally different from Minnesota's law, which bans *legal, independent adults* from carrying firearms. The Eighth Circuit was thus correct to conclude that the Reconstruction-Era laws identified by Petitioner—which at most carry diminished weight in the historical inquiry—are sharply disanalogous to the age ban challenged here. Pet.App.34a–35a.

At the end of the day, while Petitioner insists that the court below did not "identify the principle or principles that underpin our Nation's long tradition of

regulating public gun use by young people," Pet.14, the short of the matter is that the government *simply failed to come forward with* a "tradition of regulating" the Second Amendment rights of 18-to-20-year-olds based on any "principle or principles" that are even in the same galaxy as Minnesota's age ban. *Id.*

3. Unable to justify the challenged law based on the Nation's tradition of firearm regulation, Petitioner turns to "[m]odern social science research," which, says the State, "establishes that neurobiological and behavioral factors cause 18-to-20-year-olds to be the most dangerous and homicidal age group." Pet.8–9. Even if that modern social science research was legally relevant, it could not justify Minnesota's ban for multiple reasons. For one, the State's ban strips *all* 18-to-20-year-olds of their right to bear arms even though "only 0.25% of young adults are arrested for violent crimes." *Jones*, 34 F.4th at 730. For another, the implications of the argument that all members of a group may be stripped of their constitutional rights because the group as a whole is marginally more violent than other groups are wholly unacceptable. "Men commit disproportionally more violent crime than women. Does that mean that the Second Amendment rights of men can be categorically restricted?" *Hirschfeld*, 5 F.4th at 446 (footnote omitted). And the social-science evidence "would support restricting 21- to 25-year-olds' rights, if not older adults, as much as it supports drawing the line at age 21." *Id.*

But the real problem with Petitioner's reliance on modern social science about brain development and crime rates is of course more fundamental: *Bruen* emphatically repudiated it. *Bruen* could not have been clearer that "asking judges to make difficult empirical

judgments about the costs and benefits of firearms restrictions" is wholly antithetical to the Second Amendment. 597 U.S. at 25 (cleaned up). "The Second Amendment is the very *product* of an interest balancing by the people and it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms for self-defense. It is this balance—struck by the traditions of the American people—that demands our unqualified deference." *Id.* at 26 (internal quotation marks omitted). Given the clarity with which this Court has repudiated any interest-balancing approach under the Second Amendment, this Court would have been justified in disposing of this case summarily if the court below had *credited* the State's social-science argument. The Eighth Circuit's refusal to adopt that line of analysis, in obedience to this Court's precedent, is obviously no basis for summary disposition.

c. For these reasons, this case is fundamentally different from *Paris v. Lara*, 145 S. Ct. 369 (2024) (Mem.), and the other Second Amendment cases that the Court granted, vacated, and remanded in the aftermath of *Rahimi*. *Lara* and all of those other cases *were decided before Rahimi* was handed down, and they thus *actually* did not consider the *Rahimi* opinion in analyzing the respective laws at issue. Petitioner's repeated insistence that it would somehow be unfair for *Lara*—which was decided months before *Rahimi*—to receive different treatment than the decision below—which was decided after *Rahimi* and extensively relied upon that case throughout its analysis—is a non starter.

Petitioner asserts that the Court may grant, vacate, and remand in light of precedent that predates

the decision at issue where it "has reason to believe the court below did not fully consider" that precedent. Pet.16 (quoting *Lawrence v. Charter*, 516 U.S. 163, 167 (1996) (per curiam)). But there is no reason here to believe any such thing: the court below considered and repeatedly cited *Rahimi*. The great bulk of the GVRs Petitioner cites in this vein involved lower-court decisions that did not take account of one of this Court's decisions at all, as Petitioner tacitly acknowledges. Pet.16–17 & n.6. He does cite three cases where the Court granted, vacated, and remanded even though the court of appeals cited the precedent at issue, Pet.17, but in all three, the lower court's discussion was comprised of a solitary, unreasoned citation, *see United States v. Valensia*, 222 F.3d 1173, 1182 n.4 (9th Cir. 2000), *cert. granted, judgment vacated*, 532 U.S. 901 (2001); *In re Schweninger*, 1997 WL 613670, at *3 (Minn. Ct. App. Oct. 7, 1997), *cert. granted, judgment vacated sub nom. Schweninger v. Minnesota*, 525 U.S. 802 (1998); *In re Coleman*, 1997 WL 585902, at *5 (Minn. Ct. App. Sept. 23, 1997), *cert. granted, judgment vacated sub nom. Coleman v. Minnesota*, 524 U.S. 924 (1998).

The decision below repeatedly cited and faithfully applied this Court's decision in *Rahimi*. Giving it the same, summary treatment as decisions decided before one of this Court's precedents, or decisions that ignore a precedent altogether or relegate it to an unreasoned footnote, would represent a remarkable and wholly unjustified reproof of the Court of Appeals for the Eighth Circuit.

Additional evidence that a GVR is not warranted is provided by *Lara*. As indicated above, before *Rahimi* the Third Circuit in that case held that

Pennsylvania's age-based carry ban violates the Second Amendment, and this Court then GVR'd for further consideration in light of *Rahimi*. After that further consideration, the Third Circuit concluded that "*Rahimi* sustains our prior analysis" and once again invalidated Pennsylvania's law. *Lara*, 125 F.4th at 431. There is no reason to believe that a GVR here would lead to a different result, where the Eighth Circuit had the benefit of and faithfully applied *Rahimi*.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's request that it grant certiorari and summarily vacate and remand the decision of the Eighth Circuit, but it should grant plenary review and set the case for argument.

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Respectfully submitted,

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