

No. 25-1324

IN THE
Supreme Court of the United States

KATHERINE NOVOTNY, et al.,
Petitioners,

v.

WES MOORE, Governor of Maryland, et al.,
Respondents.

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

**Brief *Amicus Curiae* of Gun Owners of
America, Gun Owners Foundation, Tenn.
Firearms Association, Tenn. Firearms
Foundation, Va. Citizens Defense League, Va.
Citizens Defense Foundation, Coalition of N.J.
Firearm Owners, Ariz. Citizens Defense
League, Conn. Citizens Defense League, Heller
Foundation, National African American Gun
Association, America's Future, and
Conservative Legal Defense and Educ. Fund in
Support of Petitioners**

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INTEREST OF THE *AMICI CURIAE*¹

Amici Gun Owners of America, Gun Owners Foundation, Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, Coalition of New Jersey Firearm Owners, Arizona Citizens Defense League, Connecticut Citizens Defense League, Heller Foundation, National African American Gun Association, America’s Future, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Some of these *amici* are currently supporting a Second Amendment challenge to a “*Bruen*-response bill” enacted in New York, which bans firearms in a similarly broad swath of public places as the statutory scheme at issue here. *See Antonyuk v. James*, No. 1:22-cv-00986-GTS-PJE (N.D.N.Y.). The plaintiffs in that case previously petitioned this Court for writs of

¹ It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than this *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

certiorari, both before and after this Court’s decision in *United States v. Rahimi*, 602 U.S. 680 (2024). See *Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023), *cert. granted, vacated, remanded sub nom. Antonyuk v. James*, 144 S. Ct. 2709 (2024); see also *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024), *cert. denied*, 145 S. Ct. 1900 (2025). Some of these *amici* also filed an *amicus* brief² in this Court in *Wolford v. Lopez*, 2026 U.S. LEXIS 2720 (June 25, 2026), another case challenging locational restrictions on the right to keep and bear arms.

STATEMENT OF THE CASE

In *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 31 (2022), this Court recognized the historic, “general right to publicly carry arms for self-defense” under the Second and Fourteenth Amendments to the U.S. Constitution. Prior to *Bruen*, a minority of states “made it almost impossible to obtain a license to carry a firearm” under their discretionary licensing regimes, *Wolford v. Lopez*, 2026 U.S. LEXIS 2720, at *7 (June 25, 2026), but otherwise imposed relatively few restrictions on the locations where those fortunate enough to be licensed *could* publicly carry. But then, when faced with an influx of new licensees following *Bruen*, these formerly “may-issue” states decided they could not — would not — allow this Court’s precedents to meaningfully alter their anti-gun regimes. Thus, these states returned to the drawing board and

² See Brief Amicus Curiae of Gun Owners of America, et al. (Nov. 24, 2025).

enacted “new laws that achieved a similar result” (*Wolford v. Lopez*, 2026 U.S. LEXIS 2720 at *7) — the mass criminalization of firearms in public. Indeed, if these states *had* to issue ordinary Americans licenses to carry firearms, then they would render those licenses almost worthless by “flatly prohibit[ing]” the possession of firearms on “large portion[s] of the land within the State[s]’ boundaries....” *Id.* As New York Governor Hochul famously quipped of her *Bruen*-response bill, concealed carry had been relegated to “[p]robably some streets.”³

Maryland was one of the jurisdictions to respond to *Bruen* not with compliance, but with legislative defiance. In a joint statement with Maryland Senate President Bill Ferguson, then-Maryland House of Delegates Speaker Adrienne Jones rejected this Court’s *Bruen* decision, calling it the “wrong answer” and insisting that “[t]he Second Amendment permits reasonable restrictions on the right to carry a firearm.”⁴ Maryland Senator Jeff Waldstreicher similarly bemoaned that, under the Second Amendment, “anyone can get a gun and bring it

³ Marcia Kramer & Dick Brennan, “Fresh Off Primary Win, Gov. Kathy Hochul Drives Right into Guns — Who Can Get Them and Where They Can Take Them,” *CBS NY* (June 28, 2022).

⁴ Ariana Figueroa & Josh Kurtz, “U.S. Supreme Court Gun Rights Decision Has Major Implications for Md. Concealed Carry Law,” *Maryland Matters* (June 23, 2022).

anywhere. *That is unacceptable.... It has forced our hand here in the legislature, and we need to act.*”⁵

And act, Maryland did. In response to *Bruen*, the legislature enacted the “Gun Safety Act of 2023,” banning the carry of firearms in “(1) an ‘area for children and vulnerable individuals,’ (2) a ‘government or public infrastructure area,’ and (3) a ‘special purpose area.’” *Kipke v. Moore*, 2024 U.S. Dist. LEXIS 137003, at *6 (D. Md. Aug. 2, 2024). In practice, these locations include: “schools and school grounds; healthcare facilities; government buildings; stadiums; museums; amusement parks; racetracks; casinos; and locations selling alcohol for onsite consumption (bars and restaurants).” *Id.* Coupled with the Act’s firearm ban in private buildings absent the express consent of the owner (*id.* at *7), the Act operated to broadly prohibit firearms in all manner of public places frequented by ordinary Americans “as they go about their daily lives.” *Wolford*, 2026 U.S. LEXIS 2720, at *8 (striking Hawaii’s private-property rule).

In 2023, Petitioners challenged several of the Act’s provisions as well as other, prior-existing provisions of Maryland law. Petitioners challenged Maryland’s ban on firearms in “healthcare facilities; locations selling alcohol; museums; ... private property without the owner’s consent[;] mass transit facilities[;] and State parks, State forests, and State Chesapeake forest lands....” *Kipke*, 2024 U.S. Dist. LEXIS 137003, at *9.

⁵ “Maryland Lawmakers Fast Track New Gun Control Bills After Supreme Court Ruling,” *Mike McKay for Senate* (Jan. 31, 2023) (emphasis added).

The district court hearing Petitioners' case consolidated it with a similar challenge later that year and, on September 29, 2023, granted Petitioners' motion for preliminary injunction only as to "locations selling alcohol" and "private buildings or property without the owner's consent...." *Kipke v. Moore*, 695 F. Supp. 3d 638, 663 (D. Md. 2023). Thereafter, on summary judgment, the district court permanently enjoined enforcement as to these locations with little additional analysis, as "there ha[d] been no discovery in this case, and the facts [we]re unchanged and undisputed." *Kipke*, 2024 U.S. Dist. LEXIS 137003, at *15.

But the district court rejected Petitioners' challenges as to other prohibited places. Central to the district court's adverse rulings was its temporal focal point for historical analysis. Rejecting Petitioners' arguments that Maryland's firearm regulations should be analyzed against Founding-era tradition, the district court posited that "historical sources from the time period of the ratification of the Fourteenth Amendment are *equally if not more probative* of the scope of the Second Amendment's right to bear arms as applied to the states...." *Kipke*, 695 F. Supp. 3d at 650 (emphasis added). Thus, the district court upheld Maryland's ban as to healthcare facilities based exclusively on post-Reconstruction firearm regulations enacted between 1870 and 1903, which purportedly evince a historical principle of banning firearms in places serving "educational, literary, or scientific purposes...." *Id.* at 653. The same reasoning applied to Maryland's ban as to museums. *See id.* at 652.

Next, the district court upheld Maryland’s firearm ban in state parks, claiming that “modern, expansive” parks are disanalogous to Founding-era parks, and so the latter’s *lack* of historical regulation would not be dispositive. *Id.* at 654. Thus, the district court looked to the Reconstruction era as the supposed advent of so-called “modern” public parks, and relied on firearm regulations spanning 1858 to 1886 to uphold Maryland’s ban. *Id.* at 654-55. Notably, the district court took no issue with banning firearms even in “rural, more isolated state parks,” claiming these locations likewise “were not established in significant numbers until after the ratification of the Fourteenth Amendment....” *Id.* at 655.

Finally, with respect to mass transit facilities, the district court likened these locations to “schools and government buildings,” on the theory that they are not only “crowded spaces that serve vulnerable populations like children and disabled people,” but also “could ... be categorized as government buildings, which are established sensitive places.” *Id.* at 655. Thus, the district court conducted no independent historical analysis of mass transit facilities, relying instead on this Court’s dicta in *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

On January 20, 2026, a divided panel of the Fourth Circuit largely affirmed the district court. *See Kipke v. Moore*, 165 F.4th 194 (4th Cir. 2026). As relevant to Petitioners’ challenge, the panel affirmed the district court’s holding that Maryland could ban firearms in healthcare facilities, museums, parks, and mass transit facilities. *See id.* at 204. The panel

likewise affirmed that Maryland’s firearm ban on private properties held open to the public is unconstitutional. *See id.* at 205. But, with respect to locations that sell alcohol, the panel reversed the district court and vacated its injunction, holding that Maryland’s prohibition was constitutional. *See id.*

First, the panel observed that the vast majority of Petitioners’ “claims [we]re facial challenges.” *Id.* at 206. Thus, the panel claimed that, in order to succeed on their Second Amendment claims, Petitioners must “establish that no set of circumstances exists under which the Act would be valid.” *Id.* This rigid articulation of the facial-challenge standard purportedly was drawn from *United States v. Salerno*, 481 U.S. 739 (1987).

Second, the panel described *Bruen*’s governing framework as involving three questions: “(1) whether the petitioner is ‘part of the people whom the Second Amendment protects’; (2) whether the weapons at issue are ‘in common use for a lawful purpose’; and (3) whether the Second Amendment protects the ‘proposed course of conduct.’” *Kipke*, 165 F.4th at 206. Critically, the panel claimed that *this* stage of the inquiry was where analysis of Founding-era “original public meaning” was appropriate.⁶ *Id.*

⁶ *Contra Wolford*, 2026 U.S. LEXIS 2720, at *14 (explaining that, at the plain text, a court merely “must determine whether the law before it ... concern[s] any form of ‘Arms,’ *i.e.*, any weapon customarily used for offensive or defensive purposes”); *see also id.* at *27 (“the question is simply whether a challenged law falls within the Second Amendment’s ‘plain text,’” and other inquiries

Third, and in contrast, the panel endorsed “look[ing] beyond the Founding Era to determine whether our national tradition of firearm regulation supports a government’s restriction today.” *Kipke*, 165 F.4th at 207. *Bruen*’s historical step, the panel opined, involves “tak[ing] a ‘long view’ of history,” one that considers “historical sources from throughout American history, *including well beyond the Reconstruction Era*.” *Kipke*, 165 F.4th at 207 (emphasis added).

Fourth, the panel then engaged in a “location-by-location analysis.” *Id.* at 208. With respect to healthcare facilities, the panel asserted a “historical tradition of proscribing guns in places that serve vulnerable populations,” but offered no historical firearm regulations in support. *Id.* at 216. Rather, the panel merely adopted the Second Circuit’s conclusion in *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024), which had announced the “vulnerable populations” principle drawn from: (1) militia eligibility laws spanning 1837 to 1843; and (2) laws “preventing the carriage of firearms in places of education or school rooms” spanning 1870 to 1890. *Id.* at 1011.

Next, as to museums, the panel again relied on another circuit’s analysis, focusing on firearm regulations from “[b]oth before and shortly following the ratification of the Fourteenth Amendment’...”

“are out of place at *Bruen*’s first step”); *id.* at *37 n.1 (Barrett, J., concurring) (Courts cannot “smuggle additional limits, drawn from our regulatory tradition, into the plain-text stage of the inquiry. The answer is and always has been no.”).

Kipke, 165 F.4th at 217. Thus, looking to the Ninth Circuit’s decision in *Wolford v. Lopez*, 116 F.4th 959, 987-88 (9th Cir. 2024), *rev’d on other grounds*, 2026 U.S. LEXIS 2720 (June 25, 2026), firearm bans in purported “places for social gathering and amusement” spanning 1817 to 1875 provided sufficient justification for Maryland’s ban as to museums. *Kipke*, 165 F.4th at 217.

As for parks, the panel denied that these places were known to the Founders. Claiming that Founding-era “green spaces” were “distinct” from “modern” parks, the panel posited that, “as soon as modern parks arose, municipalities and states enacted laws prohibiting the carrying of firearms into parks’....” *Id.* at 214. Thus, the panel relied on firearm regulations ranging from 1858 to 1886 to uphold the Maryland ban and likewise claimed that the “same logic applies to Maryland’s limitations on guns in forests.” *Id.* at 215. Indeed, because “Maryland’s state forests and lands” apparently “promote a balanced emphasis on economic, social, and environmental goals,” the panel thought these remote areas to be analogous to parks. *Id.*; *cf. Bruen*, 597 U.S. at 22 (rejecting “judge-empowering ‘interest-balancing’”). Accordingly, the panel broadly endorsed banning firearms in both “urban public parks” *and* “state forests....” *Kipke*, 165 F.4th at 216.

With respect to mass transit facilities, the panel upheld Maryland’s ban “under the proprietary property doctrine.” *Id.* at 208. Under this theory, the panel posited that, “when the government is acting in its proprietary capacity or as a market participant,

rather than as a steward of public land, it may prohibit guns without offending the Second Amendment.” *Id.* at 209.⁷ Alternatively, the panel asserted that Maryland’s ban “comports with our history and tradition.” *Id.* at 210. Claiming a lack of Founding-era analogues for public transit, the panel “turn[ed] to the policies of privately-owned historic railroad companies” from 1835 to 1900 as apparently informing the permissible scope of *governmental* regulations. *Id.*

Finally, the panel reversed the district court’s injunction as to locations that sell alcohol, this time beginning with *Founding-era* firearm regulations prohibiting: (1) “the sale of liquor to members of the militia”; (2) “gun use by drunken New Year’s Eve revelers”; and (3) “intoxicated individuals from using firearms.” *Id.* at 217-18. The panel’s 19th-century regulations consisted of two city laws “prohibit[ing] retailers of liquor from keeping gunpowder” and regulations of carry while intoxicated. *Id.* at 218. Aside from these alcohol regulations, the panel claimed a broad “tradition of prohibiting firearms at crowded places,” citing firearm prohibitions in “ballrooms and public assemblies” spanning 1817 to 1875. *Id.*

⁷ *But see Wolford*, 2026 U.S. LEXIS 2720, at *38-39 (Barrett, J., concurring) (noting that, “when a State enacts a property law that regulates arms-bearing conduct, that law implicates the Second Amendment”).

SUMMARY OF ARGUMENT

In a stunningly result-oriented decision, the Fourth Circuit has upheld firearm bans both in “crowded” areas (like restaurants) *and* in sparsely populated areas (like forests). In other words, under the opinion below, the Second Amendment applies *hardly anywhere*. But if that were true, then there would be no “general right” to public carry at all, making the Fourth Circuit’s decision self-evidently incorrect. In addition to rectifying this blatant subversion of this Court’s precedents, the Petition presents a strong case for this Court’s review. In addition to those reasons, these *amici* offer two more.

First, this Court should grant the Petition to resolve the circuit splits the panel below both created and deepened. The Fourth Circuit now splits with the Second on the question of whether governments may ban firearms in so-called “rural” parks — places located nowhere near crowded population centers, where anti-gun judges’ ahistorical “crowded places” rationales for banning firearms do not even apply. Moreover, the opinion below has deepened a circuit split on the applicable standard for assessing a facial challenge under the Second Amendment. The Fourth Circuit insists on an unyielding reading of *Salerno*’s “no set of circumstances” language — one that this Court has never endorsed. In contrast, other circuits like the Second Circuit do not read *Salerno* so rigidly, having adopted this Court’s “plainly legitimate sweep” test. Granting the Petition and resolving these splits would issue critical guidance to the increasingly divergent lower courts.

Second, this case presents an ideal opportunity to resolve the temporal question that this Court’s Second Amendment decisions have left lingering. To be sure, this Court has repeatedly emphasized the importance of interpreting Bill of Rights provisions according to *Founding-era* understandings. But without an express answer to the 1791 versus 1868 question, the lower courts have continued to justify firearm regulations using increasingly late-19th-century and even 20th century historical evidence. This Court should grant the Petition to resolve that issue here, before courts begin to justify 21st century laws with 21st century analogues.

ARGUMENT

I. THIS COURT’S REVIEW IS NECESSARY TO RESOLVE IMPORTANT CIRCUIT SPLITS ON THE SECOND AMENDMENT’S SCOPE AND METHODOLOGY.

A. The Opinion Below Splits with the Second Circuit, which Found No Historical Tradition of Banning Firearms in “Rural Parks.”

The Second Amendment guarantees “the right of the people to keep and bear Arms.” In *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), this Court explained that the Second and Fourteenth Amendments guarantee Americans a “general right to publicly carry arms for self-defense....” *Id.* at 31. And, because “the Second Amendment has the same meaning in all parts of the United States,” *Wolford v.*

Lopez, 2026 U.S. LEXIS 2720, at *29 (June 25, 2026), this “general right” applies with equal force from sea to shining sea, and the Second Amendment “cannot give way to ‘the spirit of Aloha’ in Hawaii ... any more than it can yield to the spirit of the Big Apple ... or the Windy City....” *Id.* The same is true for Maryland.

But if the opinion below were correct, then the sea-to-sea implications would be startling. Consider Maryland’s broad firearm ban in *all* state parks and forests. If Maryland’s ban is constitutional under the Second Amendment’s *national* standard, then so too must it be constitutional in a place like Alaska — home to “some three-million acres” of state parkland,⁸ plus another two million-plus acres of state forestland,⁹ that generally look like this:



⁸ “Division of Parks & Outdoor Recreation,” *Alaska Department of Natural Resources* (last visited June 25, 2026).

⁹ “Alaska State Forests,” *Alaska Department of Natural Resources* (last visited June 25, 2026).

See “Denali State Park,” *Wikipedia* (May 20, 2026).

And, because the Fourteenth Amendment does not “appl[y] to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights,” *McDonald v. City of Chicago*, 561 U.S. 742, 765 (2010), that means the panel’s holding below would *also* apply on the 222 *million* acres of federal lands in Alaska,¹⁰ like this:



See “Glacier Bay National Park and Preserve,” *Wikipedia* (June 8, 2026).

It seems unlikely that the Founders would have countenanced banning the public carry of firearms for self-defense in vast, untouched, and unpopulated wilderness areas such as these, where dangerous animals such as moose, wolves, and grizzly, black, and

¹⁰ “Land Ownership in Alaska,” *Alaska Department of Natural Resources* (Mar. 2000).

polar bears roam freely. Unsurprisingly, then, at least one circuit has “doubt[ed] ... a well-established tradition of prohibiting firearm carriage in rural parks....” *Antonyuk v. James*, 120 F.4th at 1025. Indeed, in contrast to “urban parks,” the Second Circuit explained that “rural parks” are often “wilderness” and “contain[] ‘vast forests, rolling farmlands, ... mountains and valleys, lakes, ponds and free-flowing rivers, private lands and public forest.’” *Id.* As the Second Circuit concluded, New York’s Adirondack Park fit that bill, and it “encompasses ‘one-third of the total land area of New York State’” (*id.*), dwarfing “the island of Manhattan” (*Bruen*, 597 U.S. at 31) by a factor of 407 to one. American *wilderness* is as “nonsensitive” a place as it gets.

Yet under the rule adopted by the opinion below, a complete gun ban on one-third of New York’s landmass would “not run afoul of, or impede upon, one’s Second Amendment rights.” *Kipke*, 165 F.4th at 216. Nor would a gun ban violate the Second Amendment on a whopping 53 percent of Alaska’s total area — 90 percent in the case of all publicly owned land.¹¹ In fact, the panel’s tortured logic could justify banning firearms in about 40 percent of the United States which is publicly owned — just for starters.¹² Such a result is self-evidently incorrect, as “[t]o state the analogy is to expose its deficiency.” *United States*

¹¹ “State of Alaska Hazard Mitigation Plan,” *Alaska Division of Homeland Security and Emergency Management* (2023).

¹² <https://headwaterseconomics.org/public-lands/protected-lands/public-land-ownership-in-the-us/>.

v. Hemani, 2026 U.S. LEXIS 2559, at *21-22 (June 18, 2026). This Court should grant the Petition to resolve this circuit split and reaffirm that the Second Amendment’s “general right” to public carry applies in virtually all public spaces — not just “some streets.”

B. The Opinion Below Deepens an Existing Circuit Split on the Applicable Standard for Facial Challenges, and this Court’s Intervention Is Necessary to Resolve this Important Question.

Again splitting with the Second Circuit (and others), the panel below posited that, “to succeed on a facial challenge, plaintiffs must demonstrate that ‘no set of circumstances exists under which the Act would be valid’....” *Kipke*, 165 F.4th at 211. But this overly stringent formulation, butchered from this Court’s decision in *United States v. Salerno*, 481 U.S. 739 (1987), would mean that even *Heller* and *Bruen* would have been decided differently. Indeed, if it were the case that literally any fringe hypothetical about *just one* constitutional application of a law dooms a facial challenge, then this Court got it wrong in both cases — facially invalidating handgun restrictions with arguably constitutional applications, such as against dangerous, violent felons.

Few courts, including this Court, hold litigants to such an exacting standard. As this Court explained in *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015), “[l]egislation is measured for consistency with the Constitution by its impact on those whose conduct it affects.... The proper focus of the constitutional inquiry

is the group for whom the law is a restriction....” Thus, a litigant’s facial challenge to a statute may succeed when “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008) (quotations omitted).

Fringe hypotheticals cannot save an overbroad enactment. Were it otherwise, such an absurd rule would “preclude facial relief in every [Second] Amendment challenge to a statute authorizing [infringements].” *Patel* at 417-18. And the result would result in Second Amendment litigation where legislatures “give the Judiciary uncut marble with instructions to chip away all that does not resemble David.” *Percoco v. United States*, 598 U.S. 319, 337 (2023) (Gorsuch & Thomas, JJ., concurring in the judgment). That is not the law.

For this reason, this Court has clarified that, “[t]o the extent we have consistently articulated a clear standard for facial challenges, it is not the *Salerno* formulation, which has never been the decisive factor in any decision of this Court, including *Salerno* itself....” *City of Chicago v. Morales*, 527 U.S. 41, 55 n.22 (1999). Accordingly, this Court has declined to apply the *Salerno* formulation in all manner of First and Fourth Amendment cases. *See, e.g., Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (analyzing whether “the law lacks a ‘plainly legitimate sweep’”); *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021) (same); *Patel*, 576 U.S. at 417 (rejecting the argument that “facial challenges to

statutes authorizing warrantless searches must fail because such searches will never be unconstitutional in all applications”).¹³ Of course, neither will a sweeping gun ban.

Following this Court’s lead, rigid application of the *Salerno* formulation has become a minority view among the circuits. In fact, only “[f]our circuits ... apply *Salerno* alone; [three] have, with some exceptions, quietly followed the Supreme Court’s lead in articulating the *Salerno* and *Washington State Grange* standards as alternatives; and six circuits ... have explicitly weakened or abandoned *Salerno*” altogether. *Mont. Med. Ass’n v. Knudsen*, 119 F.4th 618, 633 (9th Cir. 2024) (McKeown, J., concurring).

And in the Second Amendment context, the opinion below splits with the Second Circuit, which has taken the alternative approach: “To mount a successful facial [Second Amendment] challenge, the plaintiff must establish that no set of circumstances exists under which the law would be valid, *or show that the law lacks a plainly legitimate sweep.*” *Antonyuk*, 120 F.4th at 983 (cleaned up, emphasis added). A law which, expanded to the national level, would ban the carrying of firearms in 40 percent of the United States — just to start — certainly seems to lack a plainly legitimate sweep.

¹³ See also *Bruen*, 597 U.S. at 70 (“The constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’”).

Resolution of this issue is especially important in the Second Amendment context. As these *amici* know all too well, anti-gun litigants have sought to weaponize a rigid *Salerno* formulation to uphold all manner of overbroad and ahistorical firearm regulations. *See, e.g.,* Brief of Appellants at 13, *Hughes v. Lee*, No. W2025-01327-COA-R3-CV (Tenn. Ct. App. Jan. 6, 2026) (resisting a facial challenge to Tennessee’s broad *prohibition on all public carry* by theorizing about “the carry of grenades and bombs in the middle of a city”); Defendant Katz’s Opposition to Motion for Preliminary Injunction at 6, *Crump v. Katz*, No. CL26000201-00 (Va. Cir. Ct. Lancaster Cnty. June 8, 2026) (resisting a facial challenge to Virginia’s sweeping ban on ubiquitous “assault firearms” by theorizing about the attachment of “grenade launchers, devices designed for wide-area destruction at long range”).

This Court should grant the Petition to resolve this important circuit split and preserve *Bruen*’s stringent test against further encroachment in the courts below.

II. THIS CASE PRESENTS AN IDEAL OPPORTUNITY TO CLARIFY THE OPERATIVE TIME PERIOD FOR HISTORICAL ANALYSIS.

A. *Heller*, *Bruen*, *Rahimi*, *Hemani*, and *Wolford* Left Unresolved the Appropriate Temporal Focal Point for Second Amendment Analysis.

Although acknowledging “an ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding” when the Fourteenth Amendment was ratified in 1868, or when the Second Amendment was ratified in 1791, *Bruen* ultimately left the question unresolved “because ... the public understanding ... in both 1791 and 1868 was ... the same....” *Bruen*, 597 U.S. at 37-38. But Justice Barrett anticipated that this question “might make a difference in another case,” explaining that “1791 is the benchmark” and “Reconstruction-era history” alone is “simply too late” and “too little.” *Id.* at 82 (Barrett, J., concurring). Thus cautioning the lower courts, Justice Barrett rejected any “freewheeling reliance on historical practice from the mid-to-late 19th century....” *Id.* at 83.

But following *Bruen*, the lower courts have failed to coalesce on this temporal question and, like *Bruen*, this Court’s subsequent Second Amendment decisions have not “resolv[ed] the dispute.” *Rahimi*, 602 U.S. at 692 n.1; *see also Hemani*, 2026 U.S. LEXIS 2559, at *17 n.3; *Wolford*, 2026 U.S. LEXIS 2720, at *44 n.7 (Barrett, Thomas & Gorsuch, JJ., concurring). And

like Justice Barrett did in *Bruen*, Justice Jackson has called the temporal question an “[e]xtremely pertinent inquir[y]” which “await[s] resolution....” *Rahimi*, 602 U.S. at 746 n.4 (Jackson, J., concurring). Indeed, there is a multi-way circuit split on the question, and the district courts are in disarray, with divergent approaches continuing to multiply as to which historical sources to use.

This case presents an excellent vehicle for this Court to resolve the debate between 1791 and 1868. Indeed, the panel below relied almost exclusively on Reconstruction-era history to uphold much of Maryland’s public carry ban. Strikingly, the Fourth Circuit has endorsed analysis of “historical sources from throughout American history, *including well beyond the Reconstruction Era*.” *Kipke*, 165 F.4th at 207 (emphasis added); *cf. Bruen*, 597 U.S. at 66 n.28 (“As with the[] late-19th-century evidence, the 20th-century evidence ... does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.”). Resolution of the temporal question not only will correct the panel’s errors below, but also will provide critical guidance to innumerable lower courts analyzing similar challenges.

B. This Court’s Second Amendment Decisions Indicate that 1791 Is the Proper Focal Point.

Although *Bruen* found it unnecessary to resolve definitively the temporal “scholarly debate,” that does not mean the lower courts lack guidance. Indeed,

Heller, *McDonald*, *Bruen*, *Rahimi*, *Hemani*, and *Wolford* each demonstrate that the Second Amendment should be construed as originally understood in 1791. To the extent that earlier or later sources have been utilized, it is only to confirm a tradition that existed at the Founding. As *Bruen* stated, this is the Court’s “general[] assum[ption].” *Id.* at 37.

Heller explained that “[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them....” 554 U.S. at 634-35; *see also id.* at 614 (post-Civil War “discussions took place 75 years after the ratification of the Second Amendment,” and thus “do not provide as much insight into its original meaning as earlier sources”). Therefore, after primarily examining Founding-era sources (*id.* at 582-603), the Court considered sources “through the end of the 19th century” only to confirm what already had been established (*id.* at 605-19). Thus, in *Heller*, as in *Bruen*, the tradition of both time periods was “the same....” *Bruen*, 597 U.S. at 38.

McDonald provides further confirmation, rejecting “the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights....” 561 U.S. at 765.¹⁴ Like *Heller*, *McDonald* examined “[e]vidence from the period immediately following the

¹⁴ *Accord Ramos v. Louisiana*, 590 U.S. 83, 93 (2020) (“This Court has long explained, too, that incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government.”).

ratification of the Fourteenth Amendment,” but only because it “confirms that the right to keep and bear arms was considered fundamental.” *Id.* at 776; *see also id.* at 780.

Bruen further confirmed that 1791 is the proper focal point for Second Amendment interpretation. First, the Court described the Second Amendment as being “intended to endure for ages to come,” noting that “its meaning is fixed according to the understandings of those who ratified it....” 597 U.S. at 28. Second, the Court reaffirmed that constitutional rights have the same meaning “against the States ... as against the Federal Government.” *Id.* at 37. Third, the Court noted that “we have generally assumed that the scope of the protection applicable to the ... States is pegged to ... 1791.” *Id.* Fourth, the Court again made clear that 19th-century history “do[es] not provide as much insight into [] original meaning as earlier sources.” *Id.* at 36. And fifth, the Court explained that, to the extent 19th-century evidence is to be consulted at all, it only provides “mere confirmation of what the Court thought had already been established.” *Id.* at 37.

Rahimi, too, focused entirely on 1791. *Cf. Rahimi*, 602 U.S. at 714 (Gorsuch, J., concurring) (“following exactly the path we described in *Bruen*”). As *Rahimi* explained, “[s]ince the founding, our Nation’s firearm laws have” supported temporary disarmament based on individualized dangerousness. *Id.* at 690. Indeed, *Rahimi*’s Founding-era focus was pervasive, extending to both concurrences and dissent. *See, e.g., id.* at 710 (Gorsuch, J., concurring) (“admitting only those

exceptions established at the time of the founding”); *id.* at 705 (Sotomayor, J., concurring) (discussing issues “persist[ing] since the 18th century”); *id.* at 737 (Barrett, J., concurring) (Second Amendment’s “meaning ... is fixed at the time of its ratification”); *id.* at 750 (Thomas, J., dissenting) (noting “a general societal problem that has persisted since the 18th century”).

Hemani and *Wolford* similarly focused on the Founding. *See Hemani*, 2026 U.S. LEXIS 2559, at *17 (“Around the time of the founding and for decades following it....”); *Wolford*, 2026 U.S. LEXIS 2720, at *35-36 (rejecting reliance on a racist Reconstruction-era firearm regulation). This Court’s precedents thus provide unwavering confirmation that the Second Amendment is to be understood based on the original public understanding of the right when it was adopted in 1791.

C. The Lower Courts Are Growing Increasingly Divergent on the Temporal Issue.

In stark contrast to this Court’s consistent Founding-era emphasis, the panel below primarily relied not on the *Founding*, and not even on *Reconstruction*, but rather on *any late-coming time period* that supported the Maryland gun control at issue. Thus, ahistorical firearm regulations enacted *as recently as 1900* saw relevance in the panel’s analysis. *See Kipke*, 165 F.4th at 210. Other courts have strayed similarly far afield from the Founding era. *See Wolford v. Lopez*, 116 F.4th 959, 982 (9th Cir.

2024) (citing 23 analogues from 1872 to 1899); *Antonyuk v. James*, 120 F.4th 941, 987 (2d Cir. 2024) (1883 to 1892); *Bevis v. City of Naperville*, 85 F.4th 1175, 1201 (7th Cir. 2023) (1884 to 1986).

Absent this Court’s intervention, result-oriented lower courts have made clear that they will continue to drift farther and farther afield from the Founding — perhaps until they circularly begin justifying 21st-century firearm regulations *with 21st-century analogues*. The panel opinion below is just the latest outbreak of this “virus that [is] spread[ing]” and must be “promptly eliminated.” *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 146 S. Ct. 541, 545 (2024) (Alito & Thomas, JJ., dissenting from denial of certiorari). This Court should grant certiorari to clarify that 1791, not 1868, is the singular focal point for Second Amendment analysis.

CONCLUSION

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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