Appendix to Petition

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Appendix A

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 23-CF-0344

EMANUEL LEYTON PICON, APPELLANT,

V.

UNITED STATES, APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(2021-CF3-004336)

(Hon. Robert D. Okun, Trial Judge)

(Argued June 5, 2025 Decided September 4, 2025)

Matthew B. Kaplan for appellant.

Eric Hansford, Assistant United States Attorney, with whom *Matthew M. Graves*, United States Attorney at the time the brief was filed, and *Chrisellen R. Kolb*, *John P. Mannarino*, *Alec Levy*, and *Randle Wilson*, Assistant United States Attorneys, for appellee.

Alice Wang, with whom *Jaclyn S. Frankfurt* was on the brief, for Public Defender Service as *amicus curiae*.

Caroline S. Van Zile, Solicitor General, with whom *Brian L. Schwalb*, Attorney General for the District of Columbia, *Ashwin P. Phatak*, Principal Deputy Solicitor General, *Thais-Lyn Trayer*, Deputy Solicitor General, and *Tessa Gellerson*, Assistant Attorney General, were on the brief, for intervenor-appellee the District of Columbia.

Before BLACKBURNE-RIGSBY, *Chief Judge*, SHANKER, *Associate Judge*, and EPSTEIN,* *Senior Judge*, *Superior Court of the District of Columbia*.

SHANKER, *Associate Judge*: A jury convicted appellant Emanuel Leyton Picon of multiple offenses in connection with a shooting outside of a District of Columbia nightclub in July 2021: one count each of aggravated assault while armed, assault with a dangerous weapon, assault with significant bodily injury while armed, carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition, and three counts of possession of a firearm during a crime of violence. Mr. Leyton appeals those convictions on two grounds.[1]

First, Mr. Leyton contends that we must vacate his convictions for carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition on the ground that the District's statutes requiring that an applicant be at least twenty-one years old to obtain a firearm registration or license violate the Second Amendment to the United States Constitution. We hold that the District's age-based firearm registration and licensing statutes are constitutional

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* Sitting by designation pursuant to D.C. Code § 11-707(a).

[1] Mr. Leyton also asserts that his convictions for assault with a dangerous weapon and assault with significant bodily injury while armed merge with his conviction for aggravated assault while armed, and his three convictions for possession of a firearm during a crime of violence merge. The government agrees, as do we.

because they are consistent with our Nation's historical tradition of firearm regulation.

Second, Mr. Leyton argues that the government made improper arguments regarding the inconsistency between his out-of-court statement to police that he did not shoot the complainant and his in-court testimony—delivered after the government had presented its evidence—that he shot the complainant in self-defense. We conclude that the government's arguments were not improper.

Accordingly, we affirm Mr. Leyton's convictions and remand for the limited purpose of merging Mr. Leyton's convictions and resentencing as necessary.

I. Factual and Procedural Background

Following the shooting, Mr. Leyton was charged with multiple offenses. Before trial, he moved to dismiss the charges of carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition, arguing that the District's age-based licensing and registration scheme is unconstitutional under the Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).

The District's firearm licensing statute states that "no person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol,

without a license issued pursuant to District of Columbia law." D.C. Code § 22-4504(a). District law further requires that "a person who submits an application" for a license to carry a pistol "shall certify and demonstrate . . . that he or she . . . is at least [twenty-one] years of age." *Id.* § 7-2509.02(a)(1) (citation modified).

The firearm registration statute provides that "no person or organization in the District shall possess or control any firearm, unless the person or organization holds a valid registration certificate for the firearm." *Id.* § 7-2502.01(a). A related provision states that "no registration certificate shall be issued to any person . . . unless . . . such person . . . is [twenty-one] years of age or older." *Id.* § 7-2502.03(a)(1) (citation modified). That provision allows for an "applicant between the ages of [eighteen] and [twenty-one] years old . . . who is otherwise qualified" to be issued a registration certificate if the application is "accompanied by a notarized statement of the applicant's parent or guardian." *Id.* § 7-2502.03(a)(1).

The ammunition registration statute states that "no person shall possess ammunition in the District of Columbia unless . . . he is the holder of a valid registration certificate for a firearm." *Id.* § 7-2506.01(a)(3) (citation modified). As stated above, one must be at least twenty-one years old, or have parental approval,

to be issued a firearm registration certificate and, thus, be able to possess ammunition. *Id.* § 7-2502.03(a)(1).

In his motion to dismiss, Mr. Leyton contended that these age-based restrictions preventing people between eighteen and twenty-one years old from possessing and carrying firearms amount to "a total ban on an entire population of individuals from exercising a core constitutional right."

The government countered that the challenged regulations are constitutional under *Bruen* because the laws are "consistent with this Nation's historical tradition of firearm regulation" where, among other things, eighteen-to-twenty-one-year-olds were not considered legal adults for much of American history. The trial court agreed with the government and denied Mr. Leyton's motion, ruling that the age-based gun restrictions are consistent with the text of the Second Amendment and the Nation's history and tradition of firearm regulation.

The case proceeded to trial, where the evidence established the following. In the early morning hours of July 30, 2021, someone shot Edwin Hernandez in the chest outside a nightclub located on 14th Street NW in the District of Columbia. Police officers stopped and detained Mr. Leyton, then twenty years old, because he matched the description given by a member of the club's security team. The police then took Selvin Amaya, Mr. Hernandez's cousin who had accompanied him to the

club, to the location where they had detained Mr. Leyton. There, Mr. Amaya positively identified Mr. Leyton as the shooter. Officers also discovered a shell casing near the crime scene. After his arrest, Mr. Leyton told police that he did not shoot Mr. Hernandez and that the gunshot came from two cars parked in the nearby vicinity.

The next day, police recovered a black handgun hidden in a flowerpot near the nightclub. A firearm examiner concluded that the shell casing found at the crime scene was consistent with having been fired from that handgun. DNA recovered from the handgun was consistent with Mr. Leyton's DNA. Mr. Leyton had neither a firearm registration nor a license to carry. He had no prior criminal history.

At trial, Mr. Leyton testified in his own defense. He admitted that he "lied" to police officers on the night of the shooting when he said he did not shoot Mr. Hernandez and that the shots came from two cars parked on a nearby street. Mr. Leyton testified to shooting Mr. Hernandez but claimed that he did so in self-defense.

Seizing on Mr. Leyton's inconsistencies, the government sought to impeach his credibility during cross-examination. Through its questioning, the government suggested that on the night of the incident, Mr. Leyton believed that the gun used in the shooting would not be traced to him (given that he had dumped it in a flowerpot).

The government intimated that it was because of this belief that Mr. Leyton told the police that he was not the shooter. The government contended that Mr. Leyton adopted a self-defense strategy only after he learned of the DNA evidence connecting him to the recovered gun and ballistics evidence connecting the gun to the shooting.

Defense counsel objected to this line of questioning, arguing that the only way Mr. Leyton would be able to rebut the assertion that he changed his defense theory after seeing the evidence offered in court would be by divulging privileged attorney-client communications. The trial court ruled that the government could ask Mr. Leyton whether he heard the DNA and ballistics testimony at trial and make further arguments during closing but could not ask additional questions given the objection raised by defense counsel.

During its closing argument, the government recapped its DNA and ballistics evidence and argued to the jury that "only after you heard all that evidence did [Mr. Leyton] tell you, okay, yeah, I'm the shooter." The government characterized the change in Mr. Leyton's defense theory as the following:

> On the scene, when he stashed the gun, when he thinks he's gotten away with it and he fooled police, he says, yeah, I was there, but I just wasn't the shooter. Once the gun is found, once you hear the DNA evidence linking the defendant to the gun, once you hear the ballistics evidence

> linking the gun to the shooting, now it seems that—he can't really say he's not the shooter anymore, so how else is he going to get out of trouble? His only choice left is self-defense, and so that's what he says. Ladies and gentlemen, that is—that is too convenient. That is not credible.

The jury convicted Mr. Leyton of the firearm offenses. Mr. Leyton timely appealed.

II. Analysis

Mr. Leyton contends that (1) the District's age-based firearm registration and licensing statutes are unconstitutional under the Second Amendment as applied to people between the ages of eighteen and twenty-one and (2) the government's argument regarding the inconsistency between his out-of-court statement and in-court testimony requires reversal. We consider each argument in turn. Unpersuaded, we affirm Mr. Leyton's convictions.

A. Age-Based Firearm Registration and Licensing Regulations

1. Legal Standards and Standard of Review

"We review a challenge to the constitutionality of a statute de novo." *District of Columbia v. Towers*, 260 A.3d 690, 693 (D.C. 2021). The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const.

amend. II. "Like most rights, the right secured by the Second Amendment is not unlimited." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). "From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.*

In *Heller*, the Supreme Court held that the Second Amendment confers an individual right of law-abiding citizens to possess a handgun in the home for self-defense. *Id.* at 635-36. In *McDonald v. Chicago*, 561 U.S. 742 (2010), the Court held that the Fourteenth Amendment applies this right to the States. Then, in *Bruen*, the Court held that such a right applies outside the home as well. 597 U.S. at 17. The Court also articulated a new test for evaluating the constitutionality of firearm restrictions:

> We hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that

> the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. (citation modified). The Court set forth a two-part test. First, courts must determine whether a defendant is "part of 'the people' whom the Second Amendment protects" and whether "the plain text of the Second Amendment protects" the defendant's "course of conduct." *Id*. at 31-32. Courts have indicated that the party challenging the regulation bears the burden of proof on this point. *See Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024). Second, if the challenger is entitled to protection under the Second Amendment, the government bears the burden to show that the challenged regulation "is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 34. Courts must evaluate whether a "historical tradition of firearm regulation" exists by determining whether a modern firearm regulation has a historical regulation that is a "historical analogue" "relevantly similar" to it. *Id.* at 29-30. "[A]nalogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check" and "requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*" or "dead

ringer." *Id.* at 30 (emphasis in original). The modern regulation need only be "analogous enough to pass constitutional muster." *Id.*

Two years after *Bruen*, the Supreme Court applied the history-and-tradition test in *United States v. Rahimi*, 602 U.S. 680, 691-92 (2024). The Court sought to clarify "misunderst[andings]" that had plagued lower courts, saying that it did not intend to "suggest a law trapped in amber" with its Second Amendment jurisprudence and methodology. *Id.* at 691. The Court stated that a regulation is lawful if it "fits within" and "is consistent with the principles that underpin our regulatory tradition." *Id.* at 691-92.

The inquiry turns on "why and how" the regulation burdens the right to keep and bear arms. *Rahimi*, 602 U.S. at 692 (citation modified). If the challenged regulation addresses the same or similar problems as historical restrictions, then it shares a "why" with those restrictions. *Id.* This shared "why" is a "strong indicator" that modern regulations "fall within a permissible category of regulations." *Id.* If a regulation shares a "why" with historical restrictions, it is lawful if it is similar to those restrictions in "how" it burdens the right. *Id.* (noting that "even when a law regulates arms-bearing for a permissible reason it may not be compatible with the

right if it does so to an extent beyond what was done at the founding" (citation modified)).

2. Discussion

We hold that the District's age-based firearm registration and licensing statutes are constitutional. Mr. Leyton argues that the District's firearm regulations are unconstitutional only as applied to people between the ages of eighteen and twenty-one. Neither he nor amicus Public Defender Service contend that the Second Amendment prohibits all age-based restrictions on the right to keep and bear arms. Put differently, there is no dispute that some age-based restrictions are consistent with this Nation's historical tradition of firearm regulation. We are deciding only the age at which the Second Amendment renders a restriction unconstitutional.

We assume without deciding that eighteen-to-twenty-one-year-olds with no criminal history are part of "the people" that the Second Amendment protects. We nonetheless conclude that the challenged regulations are consistent with our Nation's historical tradition of firearm regulation. We find persuasive recent decisions by two federal circuit courts of appeals—*National Rifle Association v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc), *pet. for cert. filed*, 2025 WL 1458530 (U.S. May 16, 2025) (No. 24-1185) (holding that a Florida law prohibiting the purchase of firearms by those under twenty-one is constitutional as applied to people between

the ages of eighteen and twenty-one because the law is consistent with our historical tradition of firearm regulation), and *McCoy v. ATF*, 140 F.4th 568 (4th Cir. 2025), *pet. for cert. filed*, 2025 WL 1908029 (U.S. July 3, 2025) (No. 25-24) (holding that a federal regulation prohibiting the commercial sale of handguns to individuals under the age of twenty-one is constitutional because from "English common law to America's founding and beyond, our regulatory tradition has permitted restrictions on the sale of firearms to individuals under the age of twenty-one"). *See also Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 119-24 (10th Cir. 2024) (concluding that the trial court erred in preliminarily enjoining a Colorado law establishing twenty-one as the minimum age for the sale and purchase of guns because an age-based restriction on the commercial sale of firearms is presumptively lawful under *Heller* and the Colorado law does not employ "abusive ends" in ensuring that guns "are held by law-abiding, responsible persons"); *id.* at 124 ("[A] considerable portion of our country has made the normative judgment that setting a minimum purchase age at [twenty-one] is appropriate to ensure that firearms are held by responsible, law-abiding persons, in accordance with the Second Amendment."). *But see Reese v. ATF*, 127 F.4th 583, 600 (5th Cir. 2025) (reaching the opposite conclusion).

The en banc Eleventh Circuit set forth a comprehensive historical analysis in *Bondi*. We adopt that analysis in relevant part as follows. At the Founding, "a

person was an infant or a minor in the eyes of the law until age [twenty-one]." *Bondi*, 133 F.4th at 1117 (citation modified). "The Founders' generation shared the view that minors," i.e., anyone under the age of twenty-one, "lacked the reason and judgment necessary to be trusted with legal rights." *Id.* Concerns included their want for maturity, prudence, and discretion. *Id.* Due to their "lack of reason, infants were subject to the power of their parents until they reached age [twenty-one]." *Id.* (citation modified). Accordingly, "dependent minors lacked the formal capacity to participate in public life and were subject to the authority of household heads." *Id.* at 1118 (citation modified).

"Among the many legal disabilities that secured minors from hurting themselves by their own improvident acts, minors generally lacked the capacity to contract and to purchase goods on account." *Id.* at 1118 (citation modified). Aside from a few exceptions for necessities such as food and clothing, all "contracts with infants were either void or voidable" because "infants were supposed to want judgment and discretion in their contracts and transactions with others." *Id.* (citation modified). "By the early nineteenth century, voidability was applied so broadly that

it became *almost impossible* for children to form *any* contracts." *Id.* (citation modified).

This "inability to contract impeded minors from acquiring firearms during the Founding era." *Id.* "Minors also lacked disposable income to otherwise purchase firearms because they either worked for their parents for no wages . . . or any wages earned belonged to their parents." *Id.*

The court drew "two lessons from the legal treatment of minors at the Founding." *Id.* First, "minors generally could not purchase firearms because they lacked the judgment and discretion to enter contracts and to receive the wages of their labor." *Id.* Second, "minors were subject to the power of their parents and depended on their parents' consent to exercise rights and deal with others in society." *Id.*

The court observed that state militia laws from the Founding era "confirm[ed] this understanding." *Id.* at 1119. "Because of the legal incapacity of individuals under the age of [twenty-one], states enacted laws at the Founding to address minors' inability to purchase firearms required for their militia service." *Id.* Some states exempted those under twenty-one from having to comply with the firearm requirement for militia service. *Id.* Other states explicitly required parents of individuals under twenty-one to acquire firearms for their children's militia service.

Id. And other states "implicitly required parents to supply minors with firearms because those states held parents liable for minors' fines related to militia service, including the failure to obtain a firearm." *Id.* Moreover, during the Founding era, "minors generally lacked unrestricted access to firearms." *Id.* at 1120. By 1826, at least twenty-one of the twenty-four states admitted to the Union "had enacted laws that placed the onus on parents to provide minors with firearms for militia service." *Id.* These laws, the court observed, reflected that, "at common law, minors could not purchase weapons for themselves." *Id.*[2]

"Mid-to-late-nineteenth-century laws consistent with these principles," the court explained, "further establish that our law historically precluded the purchase of firearms by individuals under the age of [twenty-one]." *Id.* at 1121. "In the second half of the nineteenth century, [twenty] jurisdictions enacted laws that restricted access to arms for minors." *Id.* "Most of those laws prohibited all methods

[2] The court also noted that Founding era university regulations "confirm[ed] that minors needed parental consent to access firearms." *Id*. Exercising parental authority through the doctrine of in loco parentis, universities "commonly restricted firearm access both on and off campus." *Id.*

of providing arms to individuals under the age of [twenty-one]. And only a few of these laws allowed parents to provide arms to their children." *Id.*

"When the common-law regime became less effective at restricting minors' access to firearms, statutes increasingly did the work." *Id.* at 1122. Accordingly. "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." *Id.* "By the end of the nineteenth century, at least [nineteen] states and the District of Columbia—representing roughly [fifty-five] percent of the population of states admitted to the Union—restricted the purchase or use of certain firearms by minors." *Id.* (citation modified). These mid-to-late-nineteenth-century laws carried criminal penalties, from fines to imprisonment. *Id.*

"The age of the majority remained unchanged in the United States from the country's founding well into the twentieth century." *Id.* (citation modified); *see Rocky Mountain Gun Owners*, 121 F.4th at 124 ("The age of majority, as set by most states, remained at [twenty-one] well into the [twentieth] century."). States eventually lowered the age of majority to eighteen years in keeping with lowering the age of conscription during World War II. *Bondi*, 133 F.4th at 1122. Then the 1971 ratification of the Twenty-Sixth Amendment guaranteed the right to vote to individuals at the age of eighteen. *Id.* "But for much of the first two centuries of

our nation, our law limited the rights of individuals under the age of [twenty-one], including their purchase of firearms." *Id.* Moreover, a state lowering "the age of majority for some rights does not mean that it has less power to restrict the rights of minors than it did at the Founding." *Id.* at 1125; *see Rocky Mountain Gun Owners*, 121 F.4th at 126 ("[T]he minimum age for firearm purchases need not rise or fall entirely with the age at which most states currently set as the age of majority."). The Second Amendment does not turn "on an evolving standard of adulthood that is divorced from the text of the Amendment and from our regulatory tradition." *Bondi*, 133 F.4th at 1125. Ultimately, the court concluded that "[f]rom this history emerges a straightforward conclusion: the Florida law is consistent with our regulatory tradition in why and how it burdens the right of minors to keep and bear arms." *Id.* at 1122.

The Fourth Circuit in *McCoy* and the Tenth Circuit in *Rocky Mountain Gun Owners* reached similar conclusions based on similarly persuasive reasoning. *See McCoy*, 140 F.4th at 572 ("From English common law to America's founding and beyond, our regulatory tradition has permitted restrictions on the sale of firearms to individuals under the age of [twenty-one]."); *Rocky Mountain Gun Owners*, 121 F.4th at 123-27 (noting that it "seems evident that the necessity of *some* minimum age requirement is widely accepted—after all, no one is reasonably arguing that [eight]-year-olds should be allowed to purchase guns," and explaining why setting a

minimum purchase age at twenty-one is appropriate to ensure that firearms are held by responsible, law-abiding persons, in accordance with the Second Amendment).

For the same reasons, we see no constitutional infirmities with the District's age-based firearm registration and licensing statutes. History reveals a regulatory tradition of restricting access to firearms based on age for those considered to lack the judgment and discretion to use them safely. *Bondi* involved restrictions on the ability of eighteen-to-twenty-one-year-olds to purchase firearms and therefore relied in part on common-law limitations on the right of those under twenty-one to contract. 113 F.4th at 1118-20. "But the right to keep and bear arms surely implies the right to purchase them." *Reese*, 127 F.4th at 590 (citation modified). Accordingly, a restriction on the ability of those under twenty-one to purchase firearms necessarily implicates their ability to possess and carry them. The historical tradition of restricting the purchase of firearms by individuals under twenty-one is therefore a historical analogue relevantly similar to laws regulating the ability of those under twenty-one to possess or carry firearms. Because regulations preventing those under twenty-one from purchasing firearms are constitutional, so too are restrictions preventing those under twenty-one from possessing and carrying them.

While age-based firearm statutes became more common during the nineteenth century, the absence of Founding-era firearm-specific statutes is not dispositive.

Invocation of the absence of specific legislation as support for the existence of a right "assumes that founding-era legislatures maximally exercised their power to regulate." *Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring). The Second Amendment does not demand such a "'use it or lose it' view of legislative authority." *Id.* at 740. Indeed, "the common law's general, far-reaching restrictions on minors' purchasing power made it unnecessary for Founding-era legislatures to more pointedly prohibit minors from buying firearms, in particular." *Bondi*, 133 F.4th at 1159 (Newsom, J., concurring). But "when those common-law restrictions waned in the nineteenth century, the states filled the void by enacting a flurry of outright bans, thereby . . . making explicit what was implicit at the Founding: laws may regulate the purchase of firearms by minors." *Id.* (citation modified). We need not and do not decide in this appeal how to address a conflict between the Founding-era and Reconstruction-era understandings of the right to keep and bear arms because the law of both eras restricted firearm possession by individuals under twenty-one.

The District's firearm laws are consistent with our regulatory tradition in why and how they burden the right of those under twenty-one to keep and bear arms. With respect to the "why," the District's regulations address the same problems as historical age-based restrictions on firearm access: preventing those deemed to lack reason, maturity, and judgment from obtaining firearms. *See Bondi*, 133 F.4th at 1122-23 (noting that the rationale of Florida's law, like Founding era law, is

motivated in part by concerns that "individuals under the age of [twenty-one] have not reached the age of reason and lack the judgment and discretion to purchase firearms responsibly"); *see also McCoy*, 140 F.4th at 577 (observing that federal firearm regulation and historical infancy doctrine "share[d] a common rationale" in that they were both "motivated by a recognition that individuals under the age of [twenty-one] lack good judgment and reason"); *Rocky Mountain Gun Owners*, 121 F.4th at 126 ("[P]sychological studies provide that individuals in their late teens and early [twenties] are less mature than adults in several significant and relevant ways.").

The District's age-based regulations are thus consistent with the Founding-era common-law tradition of disarming "particular groups for public safety reasons." *National Rifle Ass'n of America, Inc. v. ATF*, 700 F.3d 185, 200 (5th Cir. 2012);[3] *see also Kanter v. Barr,* 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting) (explaining that the Second Amendment permits the categorical disarmament of

[3] Certain groups, such as African and Indigenous Americans, were historically disarmed for odious reasons, and discrimination on this basis would no longer pass constitutional muster under the Equal Protection Clause. *See Rahimi*, 602 U.S. at 775-76 (Thomas, J., dissenting). The fact remains, however, that the historical record of prohibitions establishes a tradition of safety-related restrictions, and restricting gun ownership and other activities (such as alcohol consumption) by eighteen-to-twenty-one year olds does not violate the Equal Protection Clause.

individuals whose possession "would otherwise threaten public safety").[4] This shared "why" is a "strong indicator" that the District's firearm restrictions "fall within a permissible category of regulations." *Rahimi*, 602 U.S. at 692.

The District's age-based regulations are also similar to historical restrictions in "how" they burden the right of those under twenty-one to keep and bear arms. The laws prevent those under the age of twenty-one from possessing and carrying firearms. In this regard, the District's laws regulate arms-bearing conduct in no more restrictive a manner as Founding era laws that limited access to firearms by those under twenty-one. *See Bondi*, 133 F.4th at 1118 (noting that at the Founding, "it became *almost impossible* for children to form *any* contracts," including those for the purchase of firearms by people under the age of twenty-one); *see also McCoy*, 140 F.4th at 572 (noting that both the infancy doctrine and the federal firearm regulation "ma[d]e it exceedingly difficult for a minor to purchase a handgun from a commercial seller, and they d[id] so in similar ways").

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[4] With respect to public safety, we note that in a different context the D.C. Council has made a reasonable judgment that the "hallmark features" of people under twenty-five years old include "immaturity, impetuosity, and failure to appreciate risks and consequences" (Incarceration Reduction Amendment Act, D.C. Code § 24-403.03(c)(10)), and the District cites statistics that in 2019, eighteen-to-twenty-year-olds accounted for over fifteen percent of arrests for homicide and manslaughter even though they comprise less than four percent of the nation's population.

District law is therefore "consistent with the principles that underpin our regulatory tradition," *Rahimi*, 602 U.S. at 691-92, and is "analogous enough" to historical restrictions "to pass constitutional muster," *Bruen*, 597 U.S. at 30; *see also id.* at 73 (Alito, J., concurring) (noting that the *Bruen* decision "d[id] not expand the categories of people who may lawfully possess a gun, and federal law generally forbids the possession of a handgun by a person who is under the age of [eighteen] . . . and bars the sale of a handgun to anyone under the age of [twenty-one]"). We are therefore satisfied that the government has carried its burden of showing that there is a historical tradition that permits limiting firearm registration and licenses to people who are at least twenty-one years old and that District law "fits comfortably within this tradition." *Rahimi*, 602 U.S. at 690. Accordingly, we hold that the District's age-based firearm registration and licensing statutes are constitutional because they are consistent with our Nation's historical tradition of firearm regulation.

B. Prosecutor's Statements

1. Standard of Review

We review a claim of prosecutorial misconduct for abuse of discretion. *Teoume-Lessane v. United States*, 931 A.2d 478, 494-95 (D.C. 2007). "When evaluating claims of prosecutorial error, we must first determine whether the

challenged statements from the prosecutor, viewed in context, were, in fact, improper." *Bost v. United States*, 178 A.3d 1156, 1190 (D.C. 2018).[5]

2. Discussion

In *Griffin v. California*, 380 U.S. 609, 615 (1965), the Supreme Court held that the right against self-incrimination found in the Fifth Amendment to the U.S. Constitution forbids the government from arguing or making adverse inferences that a defendant's decision *not* to testify was evidence of guilt. This court took this principle a step further in *Jenkins v. United States*, 374 A.2d 581 (D.C. 1977). Relying on *Griffin*, we held that the government could not argue that a defendant's ability to be present during the trial allowed him to listen to the evidence and tailor his testimony accordingly. *Jenkins*, 374 A.2d at 584. We reasoned that such an argument interfered with the defendant's Sixth Amendment constitutional right to confront the witnesses against him. *Id.* The *Jenkins* panel, therefore, took *Griffin*, a Fifth Amendment case, and extended its reasoning to the Sixth Amendment context. When confronted with the question of whether *Griffin* extends to cases in which the defendant does testify, however, the Supreme Court disagreed. In those

[5] While it is unclear whether Mr. Leyton preserved his claim of prosecutorial error, the government "waived the waiver" by not arguing forfeiture on appeal. *Walker v. United States*, 201 A.3d 586, 594 (D.C. 2019). We thus assume without deciding that Mr. Leyton's claim is preserved.

circumstances, the Court held that the government is permitted to make arguments about a defendant "tailoring" his testimony after seeing the government's evidence. *Portuondo v. Agard*, 529 U.S. 61, 70 (2000).

This court subsequently had to decide whether to uphold *Jenkins* or change course in light of the Supreme Court's decision in *Portuondo*. In *Teoume-Lessane*, 931 A.2d at 494, we adopted the reasoning of the Supreme Court in *Portuondo* and overruled *Jenkins*. We held that "the prosecutor did not impermissibly comment upon the effect of the defendant's presence at trial on his credibility as a witness, and that the trial court did not abuse its discretion in permitting the jury to consider the remarks." *Id.* at 495.

In so doing, a division of this court overruled a prior division's decision in *Jenkins* in light of *Portuondo*. *Id.* at 494-95 (concluding that "*Jenkins*, in its reliance on *Griffin*, was a constitutional decision that has now been overruled by the United States Supreme Court in *Portuondo* and therefore is no longer binding on this court"). The *Teoume-Lessane* panel noted the significant nature of its action, explaining that "a division of this court may not overrule the prior decision of another" but a panel also "cannot blindly follow a prior ruling in the face of clearly controlling doctrine later enunciated by the Supreme Court; a panel decision interpreting the Constitution would undoubtedly yield to a later Supreme Court

decision on point." *Id.* at 494 (citation modified). *Teoume-Lessane* therefore controls the issue whether the government acts improperly by commenting on a defendant's presence at trial and how his presence affects the credibility of his testimony.

Mr. Leyton asserts that *Jenkins* was not in fact a constitutional decision overruled by *Portuondo* and therefore we should apply *Jenkins*, not *Teoume-Lessane*, to his claim. We expressly held in *Teoume-Lessane*, however, that *Jenkins* was a constitutional decision, *id.* at 494, and, even assuming (without suggesting) that that conclusion is subject to debate, as a division of this court we are bound by *Teoume-Lessane*. *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971).

Applying *Teoume-Lessane*, we conclude that the government's argument that Mr. Leyton changed his defense theory only after hearing the government's evidence was not improper. While Mr. Leyton characterizes the government as having commented on his pretrial "silence," the government in fact highlighted the conflict between Mr. Leyton's statements to police on the night of the shooting (that he was not the shooter) and his in-court testimony (that he shot Mr. Hernandez in self-defense). This argument was consistent with the government's right to impeach a defendant's credibility as a witness when the defendant testifies at trial. *See Portuondo*, 529 U.S. at 69 ("The prosecutor's comments in this case concerned

respondent's credibility as a witness, and were therefore in accord with our longstanding rule that when a defendant takes the stand, his credibility may be impeached and his testimony assailed like that of any other witness." (citation modified)). The trial court therefore did not err in allowing the jury to hear the prosecutor's arguments.

III. Conclusion

For the foregoing reasons, we affirm Mr. Leyton's convictions and remand for the limited purpose of merging Mr. Leyton's convictions and resentencing as necessary.

So ordered.

APPENDIX B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Criminal Division

UNITED STATES OF AMERICA	:	
	:	**Case No. 2021 CF3 004336**
v.	:	
	:	**Hon. Robert Okun**
EMMANUEL LEYTON-PICON	:	
	:	

ORDER

Pending before the Court is Defendant's Motion to Dismiss Weapons Charges Based Upon Unconstitutionality of Statutes ("Defendant's Motion"), filed November 2, 2022, and the Government's Opposition thereto, filed December 9, 2022. For the reasons explained below, Defendant's Motion will be denied.

RELEVANT PROCEDURAL HISTORY

Defendant argues that the charges against him for Carrying a Pistol Without a License ("CPWL"), Possession of an Unregistered Firearm ("UF"), and Unlawful Possession of Ammunition ("UA") should be dismissed as unconstitutional pursuant to the Second Amendment. U.S. Const. amend. II. More specifically, Defendant argues that provisions of the D.C. Code that prohibit a person under the age of twenty-one from obtaining a license to carry a firearm or that limit such a person's ability to obtain a registration for a firearm are inconsistent with this country's historical tradition of firearm regulation at the time the Second Amendment was adopted, and therefore these charges must be dismissed pursuant to the Supreme Court's recent decision in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

Under D.C.'s licensing scheme, an individual must be at least twenty-one years old to obtain a license to carry a pistol. *See* D.C. Code § 7-2509.02(a)(1); D.C. Mun. Reg. § 24-2332.1(a). At the time of this offense, Defendant was only twenty years old and was therefore unable to obtain a license due to his age. Under D.C.'s registration scheme, an individual must be at least twenty-

one years or older to register a firearm, except that an otherwise-qualified applicant who is between eighteen and twenty-one years old may receive a registration certificate by submitting a notarized statement from a parent or guardian granting permission and assuming civil liability for any damages. *See* D.C. Code § 7-2502.03(a)(1). Defendant does not represent that he attempted to obtain a registration certificate by utilizing this parental consent provision. Nevertheless, Defendant asserts that his ability to exercise his fundamental constitutional right to carry a handgun for self-defense should not depend on the consent of a parent or guardian.

In its Opposition, the Government argues that the *Bruen* decision has no direct bearing on the District of Columbia's age-based restriction on firearm licenses and registration certificates because the *Bruen* opinion did not deal with age-based licensing and registration restrictions, but rather with a state statute requiring applicants to show "proper cause" before being granted a license to carry a firearm.[1] Additionally, applying *Bruen*'s text and history-focused analysis to the D.C. gun licensing and registration provisions at issue, the Government contends that regulating firearm possession by persons under twenty-one is consistent with this nation's historical tradition.

ANALYSIS

In *Bruen*, the Supreme Court held that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home. 142 S. Ct. at 2122. In striking down New York's "proper cause" licensing statute, the Court explained that it was applying the test set forth in *Heller*, which "requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Id.* at

[1] In order to obtain a license to possess a firearm under the New York law struck down in *Bruen*, an applicant needed to show "proper cause" by demonstrating "a special need for self-protection distinguishable from that of the general community." *Bruen* (quoting *In re Kelnosky*, N.Y.S. 2d 256, 257 (N.Y. App. Div. 1980)). The analogous District of Columbia "proper cause" provision had been permanently enjoined since the D.C. Circuit Court's decision in *Wrenn v. District of Columbia*, 864 F.3d 650, 688 (D.C. Cir. 2017).

2131. In clarifying and applying the *Heller* test, the Court expressly rejected the two-step approach adopted by many Courts of Appeals, explaining that courts should focus solely on text and history without applying any additional interest balancing or means-end scrutiny. *Id.* at 2127-31.

Notably, the *Bruen* case involved two "law-abiding, *adult* citizens" who were denied an unrestricted license to carry a handgun in public for self-defense because they had not claimed to face any special or unique dangers. *Id.* at 2125, 2134 (emphasis added). In his concurring opinion, Justice Alito indicated that the *Bruen* decision "does not expand the categories of people who may lawfully possess a gun," and he noted specifically that "federal law generally forbids the possession of a handgun by a person who is under the age of 18 and bars the sale of a handgun to anyone under the age of 21." *Id.* at 2157-58 (J. Alito, concurring) (citations omitted). Justice Kavanaugh, in his concurrence joined by Justice Roberts, emphasized that the *Bruen* opinion "is neither a regulatory straightjacket nor a regulatory blank check," and he indicated that states requiring licenses to carry handguns based on objective licensing requirements—rather than based on a subjective showing of special need—can continue to operate. *Id.* at 2162 (J. Kavanaugh, concurring). Therefore, while the *Bruen* decision clarifies the Court's approach to determining the constitutionality of firearm regulations under the Second Amendment, it does not directly address the constitutionality of age-based regulations like the statutory provisions and regulations challenged in this case.

The D.C. Court of Appeals has not directly ruled on the constitutionality of D.C.'s age-based firearm licensing and registration requirements. *See Brown v. United States*, 979 A.2d 630, 642 (D.C. 2009) (leaving "the question of whether the Second Amendment generally affords a seventeen-year-old a right to bear arms . . . for another day"). However, courts that have addressed this issue have consistently rejected Second Amendment challenges to age-based licensing

provisions. *See, e.g.*, *Nat'l Rifle Ass'n of Am., Inc. v. McGraw,* 719 F.3d 338, 347 (5th Cir. 2013); *Nat'l Rifle Ass'n of Am. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 199-204 (5th Cir. 2012) [*"BATF"*]; *United States v. Rene E.*, 583 F.3d 8, 15-16 (1st Cir. 2009); *In re Jordan G.*, 33 N.E.3d 162, 168 (Ill. 2015); *United States v. Mickle*, No. 2018-CF2-1671 (D.C. Super. Ct. Oct. 29, 2018).

The Supreme Court's recent decision abrogates these pre-*Bruen* cases to the extent that lower courts applied "one step too many" in their analyses. *Bruen*, 142 S. Ct. at 2127. But this Court agrees with the Government that these cases discuss the text and history of the Second Amendment in a way that remains persuasive post-*Bruen*. As the Supreme Court recognized in *Heller* and reaffirmed in *Bruen*, the Second Amendment right to keep and bear arms has never been unlimited. *Id.* at 2128 (citing *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). In the *Rene E.* case, for example, the First Circuit sifted through the history of federal and state laws regulating juvenile access to handguns and "rest[ed its] conclusion on the existence of a longstanding tradition of prohibiting juveniles from both receiving and possessing handguns." *Rene E.*, 583 F.3d at 12. In the *BATF* case, the Fifth Circuit upheld a federal law prohibiting minors under twenty-one from purchasing handguns as "firmly historically rooted" and found that "the term 'minor' or 'infant'—as those terms were historically understood—applied to persons under the age of 21, not only to persons under the age of 18." *BATF*, 700 F.3d at 201, 204; *accord Mickle*, No. 2018-CF2 1671 at 4-5 & n.2 (upholding the same D.C. licensing and registration statutes at issue in this case under a pre-*Bruen* analysis).

Here, Defendant argues that the right to bear arms vests at the age of eighteen because that is the age at which a young man was expected to enroll in the militia and "provide himself with a good musket or firelock" in relation to militia service. Def. Mot. at 4 (citing Militia Act, 1 Stat.

271). The Government counters that the militia clause of the Second Amendment is irrelevant because that clause "does not limit or expand the scope of the operative clause." *Heller,* 554 U.S. at 578. Gov't Opp. at 14.[2] The Government also argues that Defendant's militia-based argument "proves too much" because some states required militia enrollment, or compulsory firearms training, for boys as young as ten years old. Gov't Opp. at 15 (quoting *ATF*, 700 F.3d at 204, n.17).

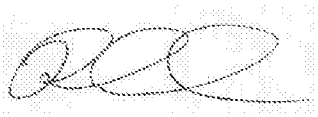
The Court rejects Defendant's argument based on the militia clause because, as *Heller* explicitly recognized, that is not the source of the Second Amendment's right to bear arms and because, as the Fifth Circuit recognized in *ATF*, this argument "proves too much." Rather, the Court agrees with the Government's historical analysis and with the conclusion reached by the other courts discussed above who have sifted through the history of laws regulating access to firearms by minors and upheld various age-based licensing regimes. Indeed, as these courts have recognized, there is a "longstanding tradition of age- and safety-based restrictions on the ability to access arms." *BATF*, 700 F.3d at 203; *Rene E.*, 583 F.3d at 16. Therefore, the Court finds that D.C.'s age-based restrictions on the right to keep and bear arms are consistent with the text and history of the Second Amendment and it rejects Defendant's argument that D.C. Code §§ 7-2502.03(a)(1) and 7-2509.02(a)(1) are unconstitutional on their face or as applied to Defendant.

Accordingly, it is this 14th day of December 2022 hereby

ORDERED that Defendant's Motion to Dismiss Weapons Charges Based Upon Unconstitutionality of Statutes is **DENIED**.

[signature on next page]

[2] According to *Heller*, the Second Amendment has two clauses, one which is prefatory ("A well-regulated Militia, being necessary to the security of a free State . . .") and one which is operative ("the right of the people to keep and bear Arms, shall not be infringed."). 554 U.S. at 577. The "former does not limit the latter grammatically, but rather announces a purpose." *Id.* at 578.



Judge Robert Okun
(Signed in Chambers)

Copies to:

Rachel McCoy, Thomas Healy
Defendant's Counsel

Alec Levy, Randle Wilson
Assistant United States Attorneys

APPENDIX C—RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const.. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

D.C. Code § 7-2502.01. Registration requirements. [version in effect on July 30, 2021]

(a) Except as otherwise provided in this unit, no person or organization in the District of Columbia ("District") shall receive, possess, control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization in the District shall possess or control any firearm, unless the person or organization holds a valid registration certificate for the firearm. A registration certificate may be issued:

(1) To an organization if:

(A) The organization employs at least 1 commissioned special police officer or employee licensed to carry a firearm whom the organization arms during the employee's duty hours; and

(B) The registration is issued in the name of the organization and in the name of the president or chief executive officer of the organization;

(2) In the discretion of the Chief of Police, to a police officer who has retired from the Metropolitan Police Department;

(3) In the discretion of the Chief of Police, to the Fire Marshal and any member of the Fire and Arson Investigation Unit of the Fire Prevention Bureau of the Fire Department of the District of Columbia, who is designated in writing by the Fire Chief, for the purpose of enforcing the arson and fire safety laws of the District of Columbia;

(4) To a firearms instructor, or to an organization that employs a firearms instructor, for the purpose of conducting firearms training; or

(5) To a person who complies with, and meets the requirements of, this unit.

(b) Subsection (a) of this section shall not apply to:

(1) Any law enforcement officer or agent of the District or the United States, or any law enforcement officer or agent of the government of any state or subdivision thereof, or any member of the armed forces of the United States, the National Guard or organized reserves, when such officer, agent, or member is authorized to possess such a firearm or device while on duty in the performance of official authorized functions;

(2) Any person holding a dealer's license; provided, that the firearm or destructive device is:

(A) Acquired by such person in the normal conduct of business;

(B) Kept at the place described in the dealer's license; and

(C) Not kept for such person's private use or protection, or for the protection of his business;

(3) With respect to firearms, any nonresident of the District participating in any lawful recreational firearm-related activity in the District, or on his way to or from such activity in another jurisdiction; provided, that such person, whenever in possession of a firearm, shall upon demand of any member of the Metropolitan Police Department, or other bona fide law enforcement officer, exhibit proof that he is on his way to or from such activity, and that his possession or control of such firearm is lawful in the jurisdiction in which he resides; provided further, that such weapon shall be transported in accordance with *§ 22-4504.02*;

(4) Any person who temporarily possesses a firearm registered to another person while in the home or place of business of the registrant; provided, that the person is not otherwise prohibited from possessing firearms and the person reasonably believes that possession of the firearm is necessary to prevent imminent death or great bodily harm to himself or herself; or

(5) Any person who temporarily possesses a firearm while participating in a firearms training and safety class conducted by a firearms instructor.

(c) For the purposes of subsection (b)(3) of this section, the term "recreational firearm-related activity" includes a firearms training and safety class.

§ 7-2502.03. Qualifications for registration; information required for registration. [version in effect on July 30, 2021]

(a) No registration certificate shall be issued to any person (and in the case of a person between the ages of 18 and 21, to the person and the person's signatory parent or guardian) or organization unless the Chief determines that such person (or the president or chief executive in the case of an organization):

(1) Is 21 years of age or older; provided, that the Chief may issue to an applicant between the ages of 18 and 21 years old, and who is otherwise qualified, a registration certificate if the application is accompanied by a notarized statement of the applicant's parent or guardian:

(A) That the applicant has the permission of the applicant's parent or guardian to own and use the firearm to be registered; and

(B) The parent or guardian assumes civil liability for all damages resulting from the actions of such applicant in the use of the firearm to be registered; provided further, that such registration certificate shall expire on such person's 21st birthday;

(2) Has not been convicted of a weapons offense (but not an infraction or misdemeanor violation under *§ 7-2502.08*, *§ 7-2507.02*, *§ 7-2507.06*, or *§ 7-2508.07*) or a felony in this or any other jurisdiction (including a crime punishable by imprisonment for a term exceeding one year);

(3) Is not under indictment for a crime of violence or a weapons offense;

(4) Has not been convicted within 5 years prior to the application of any:

(A) Violation in any jurisdiction of any law restricting the use, possession, or sale of any narcotic or dangerous drug;

(B) A violation of *§ 22-404*, regarding assaults and threats, or *§ 22-407*, regarding threats to do bodily harm, or a violation of any similar provision of the law of another jurisdiction;

(C) Two or more violations of *§ 50-2201.05(b)*, or, in this or any other jurisdiction, any law restricting driving under the influence of alcohol or drugs;

(D) Intrafamily offense punishable as a misdemeanor, including any similar provision in the law of another jurisdiction;

(E) Misdemeanor violation pursuant to *§ 7-2507.02* or *§ 7-2507.06*;

(F) Violation of *§ 22-3133*; or

(G) Violation of an extreme risk protection order pursuant to *§ 7-2510.11*;

(5) Within the 5-year period immediately preceding the application, has not been acquitted of any criminal charge by reason of insanity or has not been adjudicated a chronic alcoholic by any court; provided, that this paragraph shall not apply if such person shall present to the Chief, with the application, a medical certification indicating that the applicant has recovered from such insanity or alcoholic condition and is capable of safe and responsible possession of a firearm;

(6)

(A) Within the 5-year period immediately preceding the application, has not been:

(i) Voluntarily admitted to a mental health facility;

(ii) Involuntarily committed to a mental health facility by the Superior Court of the District of Columbia, another court of competent jurisdiction, the Commission on Mental Health, or a similar commission in another jurisdiction;

(iii) Determined by the Superior Court of the District of Columbia or another court of competent jurisdiction to be an incapacitated individual, as that term is defined in *§ 21-2011*(11);

(iv) Adjudicated as a mental defective, as that term is defined in *27 C.F.R. § 478.11*; or

(v) Committed to a mental institution, as that term is defined in *27 C.F.R. § 478.11*;

(B) Subparagraph (A) of this paragraph shall not apply if the court has granted the applicant relief pursuant to subsection (f) of this section, unless the applicant, since the court granted the applicant relief pursuant to subsection (f) of this section, is again disqualified under subparagraph (A) of this paragraph.

(6A) Within the 5 years immediately preceding the application, has not had a history of violent behavior;

(7) Does not appear to suffer from a physical defect which would tend to indicate that the applicant would not be able to possess and use a firearm safely and responsibly;

(8) Has not been adjudicated negligent in a firearm mishap causing death or serious injury to another human being;

(9) Is not otherwise ineligible to possess a firearm under *§ 22-4503*;

(10) Has not failed to demonstrate satisfactorily, in accordance with a test prescribed by the Chief, a knowledge of the laws of the District of Columbia pertaining to firearms and, in particular, the requirements of this unit, the responsibilities regarding storage, and the requirements for transport; provided, that once this determination is made with respect to a given applicant for a particular firearm, it need not be made again for the same applicant with respect to a subsequent application for a firearm or for the renewal of a registration certificate pursuant to *§ 7-2502.07a*;

(11) Is not blind, as defined in *§ 7-1009(1)*;

(12)

(A) Has not been the respondent in an intrafamily proceeding in which a civil protection order was issued against the applicant pursuant to *§ 16-1005*; provided, that an applicant who has been the subject of such an order shall be eligible for registration if the applicant has submitted to the Chief a certified court record establishing that the order has expired or has been rescinded for a period of 5 years or more; or

(B) Has not been the respondent in a proceeding in which a foreign protection order, as that term is defined in *§ 16-1041*, was issued against the applicant; provided, that an applicant who has been the subject of such an order shall be eligible for registration if the applicant has submitted to the Chief a certified court record establishing that the order has expired or has been rescinded for a period of 5 years;

(13)

(A) Has completed a firearms training and safety class provided free of charge by the Chief; or

(B) Has submitted evidence of any of the following:

(i) That the applicant has received firearms training in the United States military;

(ii) A license from another state for which firearms training is required, where the training, as determined by the Chief, is equal to or greater than that provided under subparagraph (A) of this paragraph; or

(iii) That the applicant has otherwise completed a firearms training or safety course conducted by a firearms instructor that, as determined by the Chief, is equal to or greater than that conducted under subparagraph (A) of this paragraph;

(14) Has not been prohibited from possessing or registering a firearm pursuant to *§ 7-2502.08*; and

(15) Is not the subject of an ex parte extreme risk protection order issued pursuant to § 7-2510.04 or a final extreme risk protection order issued pursuant to § 7-2510.03 or renewed pursuant to § 7-2510.06.

(b) Every person applying for a registration certificate shall provide on a form prescribed by the Chief:

(1) The full name or any other name by which the applicant is known;

(2) The present address and each home address where the applicant has resided during the 5-year period immediately preceding the application;

(3) The present business or occupation of the applicant and the address and phone number of the employer;

(4) The date and place of birth of the applicant;

(5) The sex of the applicant;

(6) Whether (and if so, the reasons) the District, the United States or the government of any state or subdivision of any state has denied or revoked the applicant's license, registration certificate, or permit pertaining to any firearm;

(7) A description of the applicant's role in any mishap involving a firearm, including the date, place, time, circumstances, and the names of the persons injured or killed;

(8) Repealed.

(9) The caliber, make, model, manufacturer's identification number, serial number, and any other identifying marks on the firearm;

(10) The name and address of the person or organization from whom the firearm was obtained, and in the case of a dealer, his dealer's license number;

(11) Where the firearm will generally be kept;

(12) Whether the applicant has applied for other registration certificates issued and outstanding;

(13) Such other information as the Chief determines is necessary to carry out the provisions of this unit.

(c) Every organization applying for a registration certificate shall:

(1) With respect to the president or chief executive of such organization, comply with the requirements of subsection (b) of this section; and

(2) Provide such other information as the Chief determines is necessary to carry out the provisions of this unit.

(d) Repealed.

(e) The Chief shall register no more than one pistol per registrant during any 30-day period; provided, that the Chief may permit a person first becoming a District resident to register more than one pistol if those pistols were lawfully owned in another jurisdiction for a period of 6 months prior to the date of the application.

***

§ 7-2506.01. Persons permitted to possess ammunition. [version in effect on July 30, 2021]

(a) No person shall possess ammunition in the District of Columbia unless:

(1) He is a licensed dealer pursuant to subchapter IV of this unit;

(2) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition;

(3) He is the holder of a valid registration certificate for a firearm pursuant to subchapter II of this chapter; except, that no such person shall possess one or more restricted pistol bullets;

(4) He holds an ammunition collector's certificate on September 24, 1976; or

(5) He temporarily possesses ammunition while participating in a firearms training and safety class conducted by a firearms instructor.

(b) No person in the District shall possess, sell, or transfer any large capacity ammunition feeding device regardless of whether the device is

attached to a firearm. For the purposes of this subsection, the term "large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term "large capacity ammunition feeding device" shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

D.C. Code § 7-2509.02. Application requirements. [version in effect on July 30, 2021]

(a) A person who submits an application pursuant to *§ 22-4506* shall certify and demonstrate to the satisfaction of the Chief that he or she:

(1) Is at least 21 years of age;

(2) Meets all of the requirements for a person registering a firearm pursuant to this unit, and has obtained a registration certificate for the pistol that the person is applying to carry concealed;

(3)

(A) Does not currently suffer from a mental illness or condition that creates a substantial risk that he or she is a danger to himself or herself or others; or

(B) If he or she has suffered in the previous 5 years from a mental illness or condition that created a substantial risk that he or she was a danger to himself or herself or others, no longer suffers from a mental illness or condition that creates a substantial risk that he or she is a danger to himself or herself or others;

(4) Has completed a firearms training course or combination of courses, conducted by an instructor (or instructors) certified by the Chief, which includes at least 16 hours of training, and covers the following:

(A) Firearm safety;

(B) Firearm nomenclature;

(C) Basic principles of marksmanship;

(D) Care, cleaning, maintenance, loading, unloading, and storage of pistols;

(E) Situational awareness, conflict management, and use of deadly force;

(F) Selection of pistols and ammunition for defensive purposes; and

(G) All applicable District and federal firearms laws, including the requirements of this unit, Chapter 45 of Title 22 [*§ 22-4501* et seq.], and District law pertaining to self-defense;

(5) Has completed at least 2 hours of range training, conducted by an instructor certified by the Chief, including shooting a qualification course of 50 rounds of ammunition from a maximum distance of 15 yards (45 feet); and

(6) Has complied with any procedures the Chief may establish by rule.

(b) An applicant shall satisfy the requirements of subsection (a)(4) and (a)(5) of this section with a certification from a firearms instructor that the applicant:

(1) Demonstrated satisfactory completion of the requirements of subsection (a)(4) and (a)(5) of this section; and

(2) Possesses the proper knowledge, skills, and attitude to carry a concealed pistol.

(c) An applicant may be exempt from some or all of the requirements of subsection (a)(4) and (a)(5) of this section if the applicant has submitted evidence that he or she has received firearms training in the United States military or has otherwise completed firearms training conducted by a firearms instructor that, as determined by the Chief, is equal to or greater than that required under subsection (a)(4) and (a)(5) of this section.

(d) An applicant for a license may satisfy any component of the requirements of subsection (a)(4) and (a)(5) of this section by demonstrating to the satisfaction of the Chief that the applicant has met that particular component as part of a successful application to carry a concealed pistol issued by the lawful authorities of any state or subdivision of the United States.

(e)

(1) An applicant shall sign an oath or affirmation attesting to the truth of all the information required by *§ 22-4506* and this section.

(2) Any declaration, certificate, verification, or statement made for purposes of an application for a license to carry a concealed pistol

pursuant to this unit shall be made under penalty of perjury pursuant to § 22-2402.

(f) An applicant is required to appear for an in-person interview at the MPD headquarters for purposes including verification of the applicant's identity and verification of the information submitted as part of the application process for a license.

(g) Any person whose application has been denied may, within 15 days after the date of the notice of denial, appeal to the Concealed Pistol Licensing Review Board established pursuant to § 7-2509.08.

D.C. Code § 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be

sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in *§ 22-3571.01*.