No. 24-

IN THE

Supreme Court of the United States

BOB JACOBSON, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY,

Petitioner,

v.

KRISTIN WORTH, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Minnesota allows young people significant access to firearms. Young people can use guns under the supervision of an adult at any age, and they can use them without supervision on their property or for hunting beginning at age 14. Yet Respondents insist that Minnesota burdens their Second Amendment rights when it restricts permits for carrying pistols in public to those aged 21 and older. The federal government and a majority of states have enacted similar restrictions.

Applying *Bruen* in a manner that this Court disavowed in *Rahimi*, the lower courts concluded that Minnesota's law was unconstitutional as applied to 18-to-20-year-olds. The district court found the absence of analogous restrictions from the Founding era determinative. Issued just three weeks after *Rahimi*—but without the benefit of any briefing regarding the impact of *Rahimi*—the Eighth Circuit committed the same error. It focused its historical analysis exclusively on a search for an elusive historical twin rather than focusing on historical principles. The question presented is:

Does Minnesota's statute limiting permits for public carry of pistols to those 21 and older comport with the principles underlying the Second Amendment?

PARTIES TO THE PROCEEDING

Petitioner was a defendant-appellant below. He is Bob Jacobson, Commissioner of the Minnesota Department of Public Safety (Commissioner).[1] Three Minnesota sheriffs, Don Lorge, Sheriff of Mille Lacs County, Troy Wolbersen, Sheriff of Douglas County, and Dan Starry, Sheriff of Washington County, were defendants below and elected not to appeal.

Respondents were the plaintiffs-appellees below. They are three organizational plaintiffs—Firearms Policy Coalition, Inc., Second Amendment Foundation, and the Minnesota Gun Owners Caucus—and three named members of those organizations, Kristin Worth, Austin Dye, and Axel Anderson.[2]

There are no publicly held corporations involved in this proceeding.

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1. Commissioner Jacobson was substituted into the case after he replaced the initial Defendant, John Harrington, as Commissioner. Fed. R. Civ. P. 25(d).

2. Worth, Dye, and Anderson were between 18 and 21 when the case was filed, but they turned 21 during the litigation. To avoid mootness, the organizational plaintiffs identified Joe Knudsen as a member during briefing at the Eighth Circuit. But Knudsen has not been made a party.

RELATED PROCEEDINGS

- *Worth v. Jacobson*, United States Court of Appeals for the Eighth Circuit, Case No. 23-2248 (judgment entered July 16, 2024).

- *Worth v. Jacobson*, United States District Court, District of Minnesota, Case No. 21-cv-01348 (judgment entered April 23, 2023).

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PETITION FOR A WRIT OF CERTIORARI

The Commissioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 108 F.4th 677 and is reproduced in the appendix at 1a-37a. The denial of rehearing en banc is not reported but is reproduced in the appendix at 109a-110a. The District Court's decision is reported at 666 F. Supp. 3d 902 and is reproduced in the appendix at 50a-108a.

JURISDICTION

The judgment of the Court of Appeals was entered on July 16, 2024. The Court of Appeals denied rehearing en banc on August 21, 2024. On October 31, 2024, Justice Kavanaugh extended the time to petition for a writ of certiorari to and including January 17, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second and Fourteenth Amendments to the United States Constitution as well as the relevant provisions of Minnesota Citizens' Personal Protection Act are reproduced in the appendix at 111a-138a.

INTRODUCTION

Seven months ago, in *Rahimi*, this Court clarified how lower courts should apply the two-part *Bruen* test for evaluating the constitutionality of firearm regulations.[3] Rather than rest a decision on whether the government could point to identical firearm regulations in the Founding era, lower courts were instructed to identify the principles animating the regulation being challenged to see if they comport with the principles underlying the Second Amendment.

Minnesota's common-sense age regulation—which limits permits to carry pistols to those 21 and older—did not benefit from this Court's corrective guidance. This case was fully briefed at the Eighth Circuit by mid-September 2023, argued in February 2024, and was awaiting decision when *Rahimi* was issued in late June 2024. But instead of inviting supplemental briefing regarding the impact of *Rahimi* or remanding to the district court to conduct that analysis, the Eighth Circuit simply added *Rahimi* ornamentation to the *Bruen*-based opinion it had drafted.

The Eighth Circuit's failure to meaningfully apply *Rahimi*'s methodology means this Court should grant certiorari, vacate, and remand (GVR). This Court recently did the same in a similar age-restriction case from Pennsylvania, *Paris v. Lara*, — S. Ct. —, 2024 WL 4486348 (Mem) (Oct. 15, 2024). And the Court has issued GVR orders in nearly twenty other cases involving Second Amendment challenges since *Rahimi*. This case should be treated the same.

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3. *United States v. Rahimi*, 602 U.S. 680 (2024); *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

Alternatively, this Court should grant plenary review. Whether the Second Amendment requires states to grant permits to 18-to-20-year-olds to carry pistols in public is an important public issue on which the circuits are split.

STATEMENT OF THE CASE

I. Minnesota Authorizes Liberal Use of Guns By Teenagers in Private.

Minnesota allows significant access to guns by those under 21. Minnesota does not restrict the possession or use of firearms by youths of any age when supervised by parents or guardians. Minn. Stat. § 624.713, subd. 1(1); Minn. Stat. § 97B.021. By age 14, teenagers may possess guns without parental supervision on their property or when hunting if they obtain a firearms safety certificate. Minn. Stat. § 97B.021. And by age 18, young people may possess a pistol or semiautomatic assault weapon in those same situations. *Id.*; Minn. Stat. § 624.713, subd. 1(1).

Against that backdrop, Minnesota's legislature enacted the Citizens' Personal Protection Act of 2003. Pet. App. 113a-138a. The Act imposes a modest age regulation on access to firearms: young people may not obtain a permit to carry a pistol in public until age 21. Minn. Stat. § 624.714, subd. 2(b)(2) (the Challenged Statute); Pet. App. 114a. Minnesota's law has been in effect for two decades. More than thirty states and the District of Columbia have similar regulations.[4]

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4. 14 jurisdictions (including Minnesota) limit those under 21 from any public carry. Conn. Gen. Stat. §§ 29-28, 29-36f; Del. Code Ann. tit. 11, § 1448(a)(5); Fla. Stat. §§ 790.06, 790.053; Ga. Code Ann.

II. History and Empirical Data Support Restricting the Firearm Use of People Under 21.

A robust evidentiary record of historical principles and empirical data supports the constitutionality of the Challenged Statute. At the district court, the Commissioner submitted two expert reports. One was by a constitutional historian, Professor Saul Cornell, Ph.D., regarding early American history on guns and people under 21. CA8 Appellant's App'x (AA) 53-102. The other was by an expert in empirical legal studies, Professor John J. Donohue, Ph.D., on the risks of gun violence from 18-to-20-year-olds. AA 102-69. The expert evidence established that hundreds of years of history supports restricting gun use by those under 21. And the expert evidence showed that current data on gun violence affirms the wisdom in that unbroken history.

Appellees submitted no expert reports on any issue or rebuttal facts on these issues.

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§§ 16-11-125.1(2.1), 16-11-126(g)(1), 16-11-129(b)(2)(A); Haw. Rev. Stat. § 134-9(a)(6); 430 Ill. Comp. Stat. 66/25; Md. Code Ann., Pub. Safety §§ 5-306(a)(1), 5-133(d)(1); Mass. Gen. Laws ch. 140, § 131(d)(iv); Minn. Stat. § 624.714, subd. 2(b)(b)(2); N.J. Stat. Ann. § 2C:58-6.1b; N.Y. Penal Law § 400.00(1)(a); Okla. Stat. tit. 21 § 1272(A)(6); R.I. Gen. Laws §§ 11-47-11, 11-47-18; D.C. Code § 7-2509.02(a)(1). 19 more states bar people under 21 from concealed public carry. Alaska Stat. §§ 11.61.220(a)(6), 18.65.705; Ariz. Rev. Stat. Ann. §§ 13-3102(A)(2), 13-3112(E); Ark. Code Ann. § 5-73-309; Colo. Rev. Stat. § 18-12-203(1)(b); Ky. Rev. Stat. Ann. § 237.110; La. Stat. Ann. § 40:1379.3(C)(4); Mich. Comp. Laws § 28.425b(7)(a); Neb. Rev. Stat. § 69-2433; Nev. Rev. Stat. § 202.3657; N.M. Stat. Ann. § 29-19-4(A)(3); N.C. Gen. Stat. § 14-415.12(a)(2); Ohio Rev. Code Ann. § 2923.125(D)(1)(b); Or. Rev. Stat. § 166.291; 18 Pa. Cons. Stat. § 6109; Utah Code Ann. §§ 53-5-704, 76-10-505, 76-10-523(5); Va. Code Ann. § 18.2-308.02; Wash. Rev. Code § 9.41.070; Wis. Stat. § 175.60(3)(a); Wyo. Stat. Ann. § 6-8-104(a)(iv), (b)(ii).

A. Historical Regulation of Gun Use by Those Under 21.

Professor Cornell's report establishes that during the Founding era, people under 21 were minors who existed under total legal authority of their parents. AA 62-64. By the 19th century, states began to codify the common-law understanding. AA 67-70.

The Founding. Early American law saw minors as "infants" who were dependent constitutional actors until the age of 21. AA 56. Early legal scholarship explained "[t]he rule that a man attains his majority at age twenty-one years accomplished, is perhaps universal in the United States. At this period, every man is in the full enjoyment of his civil and political rights." AA 64 (citing John Bouvier, 1 *Institutes of American Law* 148 (1858)).

The common law denied minors rights because they were viewed as lacking judgment. *See* AA 66. The Founding generation saw children as "lack[ing] reason and decisionmaking ability," without any independent "Judgement or Will." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 826-27 (2011) (Thomas, J., dissenting) (quoting Letter from John Adams to James Sullivan (May 26, 1776), in 4 Papers of John Adams 210 (Robert Taylor ed. 1979)). Indeed, the Founding generation thought people under 21 had "utter incapacity." *Id.* (internal quotation marks and citation omitted).

As a result, minors in the Founding era could not participate in the Nation's hallmark civic duties in the way today's 18-to-20-year-olds can. For example, "[c]hildren could not vote," nor could they "serve on juries." *Id.* at 834. The same was true of the military. As of 1813, all minors

under 21 required parental consent to enlist in the Army. *Commonwealth v. Callan*, 6 Binn 255, 256 (Pa. 1814) (per curiam) (citing Act of Jan. 20, 1813, ch. XII § 5, 2 Stat. 667, 791-92). And even before the 1813 federal law, 18-to-20-year-olds who enlisted without parental consent could be discharged from the military against their will upon their parents' request. *See United States v. Anderson*, 24 F. Cas. 813, 814 (C.C.D. Tenn. 1812). The common law thus "imposed age limits on all manner of activities that required judgment and reason." *Brown*, 564 U.S. at 834 (Thomas, J., dissenting).

Not only was their participation in voting, jury service, and the military curtailed, but minors under 21 existed under their parent or guardian's authority. AA 62-64. "The history clearly shows a founding generation that believed parents to have complete authority over their minor children." *Brown*, 564 U.S. at 834 (Thomas, J., dissenting); *id.* at 832-34 (citing Blackstone for the proposition that parents had "power" over their children and were entitled to the "value of th[e] [children's] labor and services," and various Founding-era state laws for the proposition that children could not marry "without parental consent" (alterations in original)).

Thus, at the time of our Nation's founding, "minors were not considered independent adults in the legal or political realm, the economy, or in the social or familial structure." Megan Walsh & Saul Cornell, *Age Restrictions and the Right to Keep and Bear Arms*, 108 Minn. L. Rev. 3049, 3057 (2024). Instead, "the prevailing legal understanding was that those under the age of twenty-one were not able to make mature, reasonable decisions, and thus required an adult to care for them." *Id.* (collecting sources).

Reconstruction. Around the Reconstruction era, states passed a slew of statutes codifying the common-law understanding that minors lacked full individual rights—including the right to keep and bear arms. As the Fifth Circuit summarized: "[B]y the end of the 19th century, nineteen States and the District of Columbia had enacted laws expressly restricting the ability of persons under 21 to purchase or use particular firearms, or restricting the ability of 'minors' to purchase or use particular firearms while the state age of majority was set at age 21." *Nat'l Rifle Ass'n of Am. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 202 (5th Cir. 2012), *abrogated on other grounds by Bruen*, 597 U.S. at 19 n.4, 24 (citing 1856 Ala. Acts 17; 16 Del. Laws 716 (1881); 27 Stat. 116-17 (1892) (D.C.); 1876 Ga. Laws 112; 1881 Ill. Laws 73; 1875 Ind. Acts 86; 1884 Iowa Acts 86; 1883 Kan. Sess. Laws 159; 1873 Ky. Acts 359; 1890 La. Acts 39; 1882 Md. Laws 656; 1878 Miss. Laws 175-76; Mo. Rev. Stat. § 1274 (1879); 1885 Nev. Stat. 51; 1893 N.C. Sess. Laws 468-69; 1856 Tenn. Pub. Acts 92; 1897 Tex. Gen. Laws 221-22; 1882 W. Va. Acts 421-22; 1883 Wis. Sess. Laws 290; 1890 Wyo. Sess. Laws 1253)); *see also* CA8 Appellant's Addendum (Add.) 54-57. For example, the earliest of these laws provided it was unlawful to "sell, or give, or lend, to any male minor, a[n] . . . air gun or pistol." 1856 Ala. Acts 17; Add. 54.

Some laws had exceptions for parents or guardians, which confirms that these laws codified the Founding-era common law. *See*, *e.g.*, 1859 Ky. Acts 245 § 23 (making it unlawful for anyone "other than the parent or guardian" to "sell, give or loan any pistol . . . cane-gun, or other deadly weapon . . . to any minor"); Mo. Rev. Stat. § 1274 (1879) (making it unlawful to "sell or deliver, loan or

barter to any minor" any "deadly or dangerous weapon . . . without the consent of the parent or guardian of such minor"); 1881 Ill. Laws 73 (making it unlawful for anyone other than a minor's father, guardian, or employer to "sell, give, loan, hire or barter," or to "offer to sell, give, loan, hire or barter to any minor within this state, any pistol, revolver, derringer . . . or other deadly weapon of like character"); 1897 Tex. Gen. Laws 221-22 (making it unlawful to "knowingly sell, give or barter, or cause to be sold, given or bartered to any minor, any pistol . . . without the written consent of the parent or guardian of such minor, or of someone standing in lieu thereof "); *see also* Add. 54-57. Indeed, a historian surveying firearm legislation during this period "concluded that in the period between 1868 and 1899 restrictions on minors' access and use of arms were more common than limits on felons." Walsh & Cornell, 108 Minn. L. Rev. at 3090 (citing Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 Law & Contemp. Probs. 55, 76 (2017)).

B. Data on Gun Misuse by 18-to-20-Year-Olds.

Hundreds of years of common and statutory law history supports restricting firearm use by minors. Modern social science research reinforces that history: it provides "a greater understanding than existed in the Founding era of *why* eighteen-to-twenty-year-olds do not have the capacity to make fully mature decisions, due to our greater understanding of the development of brain physiology and chemistry." *Id.* at 3101 (emphasis in original) (collecting sources).

Professor Donahue's report establishes that neurobiological and behavioral factors cause 18-to-20-year-olds to be the most dangerous and homicidal age group in the United States. AA 103-169. And the danger from this group is only increasing. From 2005 to 2018, for example, that age cohort experienced a "massive" 32.2 percent increase in firearms suicide. AA 140.

The heightened risk of gun-related violence among this group is due to three principal factors:

- the still-developing cognitive systems of 18-to-20-year-olds increases their risk of impulsive behavior;

- the onset of mental illness during emerging adulthood is correlated with self-harm and suicide attempts; and

- the frequency of binge drinking during emerging adulthood is a stimulant to violence that is obviously more dangerous when accompanied with gun possession.

AA 108.

III. Procedural History.

Respondents sued the Commissioner challenging the constitutionality of the Challenged Statute, which requires that applicants for a permit to carry a pistol in public be at least 21 years old. Respondents allege that the statute violates the Second Amendment, both facially and as applied to them and to 18-to-20-year-old women. D. Ct. Docket (Dkt.) 1, at 23-29.

After discovery, the parties cross-moved for summary judgment. The district court granted Respondents' motion in relevant part, ruling that the Challenged Statute's requirement that a person be at least 21 years old to receive a permit violates the Second Amendment. Pet. App. 107a-108a. In doing so, the district court did not consider all the evidence cumulatively proffered by Minnesota, nor did it evaluate whether a consistent principle of regulation supported the Challenged Statute. Indeed, the district court expressly concluded that *Bruen* precluded it from considering the common law context of the Founding era. *E.g.*, Pet. App. 62a-63a, 95a.

A panel of the Eighth Circuit affirmed. The panel applied the two-part test from *Bruen*, considering text first, and then history. As for text, the panel held that 18-to-20-year-olds were among the "people" protected by the Second Amendment. Pet. App. 15a-23a. As for history, the panel held that Minnesota's age regulation had no adequate historical analogue, rejecting each piece of historical evidence proffered by Minnesota for being insufficiently similar. Pet. App. 23a-32a.

Just three weeks before the Eighth Circuit released the opinion below, this Court released its decision in *Rahimi*. *Rahimi* offered important guidance to lower courts on how to analyze Second Amendment challenges. In particular, it instructed lower courts to focus on the principles underlying historical restrictions on firearms—not precise historical analogues. 602 U.S. at 691-92. Unlike other courts addressing similar challenges to age restrictions, the Eighth Circuit did not invite supplemental briefing on *Rahimi*'s impact.[5]

5. *Compare Reese v. Bureau of Alcohol Tobacco, Firearms & Explosives*, No. 23-30033 (5th Cir. reargued Sept. 23, 2024)

In a petition for rehearing, the Commissioner raised concerns about the failure of the decision below to abide by *Rahimi*'s guidance. The Eighth Circuit denied that petition without requesting a response from Respondents. Pet. App. 109a-110a.

REASONS FOR GRANTING THE WRIT

This Court recently granted a similar petition from Pennsylvania in *Paris v. Lara*, vacating the underlying ruling from the Third Circuit, and remanding the case for further consideration in light of *Rahimi*. *Paris v. Lara*, — S. Ct. —, 2024 WL 4486348 (Mem) (Oct. 15, 2024). The Court should do the same here. Both cases involve state laws regulating the use of firearms by young people who are 18-to-20 years old. And, in both cases, the briefing at the circuit courts of appeals was done without the benefit of this Court's guidance in *Rahimi*, leading the circuit courts to improperly focus on the absence of a historical twin in the Founding era.

To be sure, the Eighth Circuit decided *Worth* shortly after *Rahimi* came out. But this Court has not hesitated to GVR when the lower court failed to take proper account of existing—as opposed to intervening—Supreme Court precedent. And here, the Eighth Circuit did not engage in the principles-focused analysis that *Rahimi* requires. GVR is thus appropriate.

(requesting letter briefs addressing *Rahimi* on July 8, 2024, following initial argument in November 2023); and *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 127-28 (10th Cir. 2024) (reversing preliminary injunction after *sua sponte* directing supplemental briefing addressing *Rahimi* on June 25, 2024, after oral argument had been held).

Alternatively, plenary review is warranted due to the circuit split that has developed regarding whether states may impose regulations on 18-to-20-year-olds' access to firearms. Given the rates of gun violence among Americans in that age cohort, this is an important issue deserving the Court's attention.

I. This Court Should Vacate the Judgment Below and Remand for Further Proceedings Consistent with *Rahimi*.

By discounting Minnesota's evidence of longstanding principles that support the Challenged Statute and instead nit-picking each regulation that Minnesota offered as an inadequate analogue, the Eighth Circuit decision conflicts with *Rahimi*. Minnesota should receive the same opportunity that this Court gave Pennsylvania in *Lara*—the opportunity to have the Challenged Statute reconsidered in light of *Rahimi*.

A. The Eighth Circuit Decision Is Inconsistent with *Rahimi*.

This Court acknowledged in *Rahimi* that "some courts have misunderstood the methodology of our recent Second Amendment cases." 602 U.S. at 691. In particular, the Fifth Circuit had misunderstood its task when assessing whether a federal statute criminalizing firearm possession by those subject to a domestic violence restraining order violated the Second Amendment. The Fifth Circuit rejected every historical regulation offered by the government and looked for the equivalent of a "'historical twin.'" *Id.* at 701 (quoting *Bruen*, 597 U.S. at 30). For example, the Fifth Circuit had held that "going

armed laws" were not sufficiently analogous because they were "disarming those who had been adjudicated to be a threat to society generally, rather than to identified individuals." *United States v. Rahimi*, 61 F.4th 443, 459 (5th Cir. 2023). And it concluded that surety laws were not sufficiently analogous because they "did not prohibit public carry, much less possession of weapons, so long as the offender posted surety." *Id.* at 460 (citing *Bruen*, 597 U.S. at 58).

Yet the Supreme Court found that "[t]aken together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Rahimi*, 602 U.S. at 698. The current law "does not need" to be "identical to these founding era regimes," *id.*, but only "'consistent with the Nation's historical tradition of firearm regulation,'" *id.* at 689 (quoting *Bruen*, 597 U.S. at 24). The critical question is "whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Id.* at 692 (emphasis added) (citing *Bruen*, 597 U.S. at 26-31). The Court repudiated multiple times the need for historical regulations that were a perfect match for current statutes. *Id.* at 691-92, 700-01.

The district court here committed the same methodological error as the Fifth Circuit in *Rahimi.* It enjoined Minnesota's longstanding and limited regulation of firearm use by those under 21 because Minnesota could not identify a "historical twin." Rather than correct the district court's error, the Eighth Circuit repeated it, despite having additional guidance from the Court in *Rahimi*. It affirmed the district court's decision that the

Challenged Statute could not pass the test established in *Bruen*. And it never once attempted to identify the principle or principles that underpin our Nation's long tradition of regulating public gun use by young people. *See generally* Pet. App. 23a-37a. Instead, the Eighth Circuit demanded Minnesota identify "an adequate historical analogue" that was "well-established and representative." Pet. App. 23a-24a (citing *Bruen*, 597 U.S. at 19, 30). It then examined each analogue proffered by Minnesota in isolation for an exacting review of its "how" and "why." Pet. App. 25a-37a

The Eighth Circuit next rejected all of Minnesota's historical evidence—even though the Commissioner was the only party to present historical experts. For example, the court conceded that "Minnesota cites common law evidence that (as minors) 18 to 20-year-olds did not have full rights." Pet. App. 29a. But it disregarded that evidence because the Commissioner did not supply "analogues restricting the right to bear arms." *Id.*

Similarly, the panel acknowledged that "Minnesota proffer[ed] 20 state laws from the Reconstruction-era and late 19th Century that in some way limit the Second Amendment rights of those under 21 years old." Pet. App. 34a. But the panel refused to draw or consider principles from those laws. *Id.* Indeed, the panel questioned whether "Reconstruction-era sources have much weight." Pet. App. 33a. And it confidently asserted that "postenactment history of the Fourteenth Amendment is *not* given weight." *Id.* (emphasis added).

But this Court has yet to resolve that issue. *Rahimi*, 602 U.S. at 692 n.1 (declining to wade into "ongoing

scholarly debate"). And this Court's major Second Amendment cases have repeatedly considered—and found relevant—statutes, case law, and other legal sources from the 19th century. *See*, *e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 605-26 (2008) (examining a variety of legal sources "through the end of the 19th century"); *accord Rahimi*, 602 U.S. at 695-98 (citing Massachusetts surety statute from 1836 and "going armed" prohibitions from 1843 and 1849); *Bruen*, 597 U.S. at 60-66 (analyzing evidence "from around the adoption of the Fourteenth Amendment"); *McDonald v. Chicago*, 561 U.S. 742, 770-78 (2010) (plurality opinion) (analyzing understanding of right to keep and bear arms in 1868).

To be sure, the Eighth Circuit cited this Court's decision in *Rahimi*. But those few citations are mere window dressing because nowhere did the Eighth Circuit try to identify the principles underlying the historical restrictions on access to firearms by those under 21. Pet. App. 23a-37a.

B. A GVR Is Appropriate Here.

Because the Eighth Circuit's decision is inconsistent with *Rahimi*, this Court should GVR. On remand, the parties will have an opportunity to brief *Rahimi*'s impact. And the lower court will have the opportunity to fully consider those refined arguments—plus the developing case law from around the country on the issue of firearm regulation for 18-to-20-year-olds.

The Court's recent GVR in *Paris v. Lara* is instructive. — S. Ct. —, 2024 WL 4486348 (Mem) (Oct. 15, 2024). Like this case, *Lara* involved a challenge by 18-to-20-year-olds

to a state statute regulating their public use of guns. *See Lara v. Comm'r Penn. State Police*, 91 F.4th 122, 127 (3d Cir. 2024). Like this case, *Lara* was fully briefed in the circuit court of appeals before the *Rahimi* decision was issued. Like this case, the circuit court of appeals in *Lara* held that the state statute violated the Second Amendment rights of the young people. *Id.* at 134-37. And like this case, it did so after interpreting *Bruen* to require that the state point to Founding-era statutes imposing nearly the same restrictions. *Id.* Pennsylvania, the state whose regulation was challenged in *Lara*, petitioned for certiorari, arguing that the Third Circuit's decision could not be reconciled with *Rahimi*. *See* Pet. for Writ of Cert. at 11-13, *Paris v. Lara*, No. 24-93 (U.S. Oct. 15, 2024). This Court found GVR appropriate.

So too here. True, *Lara* predated *Rahimi* while *Worth* was decided (three weeks) afterward. But GVRs are appropriate not only to address "intervening developments," but also "*recent* developments that [the Supreme Court] has reason to believe that the court below did not fully consider." *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (emphasis added). In those circumstances, a GVR is appropriate so the lower court may fully consider a relevant precedent—even if the precedent preceded the lower court's decision. *Id.* at 169 (explaining that, in *Robinson v. Story*, 469 U.S. 1081 (1984), the Court "GVR'd for further consideration in light of a Supreme Court decision rendered almost three months *before* the summary affirmance by the Court of Appeals that was the subject of the petition for certiorari" (emphasis in original)); *accord Youngblood v. West Virginia*, 547 U.S. 867, 869-70 (2006) (issuing GVR so lower court could reconsider decision given *Brady* v.

Maryland, 378 U.S. 83 (1963) (per curiam), which was decided decades earlier); *Stutson v. United States*, 516 U.S. 193, 194-97 (1996) (per curiam) (issuing GVR so lower court reconsider Supreme Court decision that was issued a year-and-a-half earlier).[6]

Indeed, the Court has issued GVR orders when the lower court's decision cites and discusses the relevant Supreme Court precedent. *See*, *e.g.*, *Valensia v. United States*, 532 U.S. 901 (2001) (GVR'ing in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), even though lower court's decision, *United States v. Valensia*, 222 F.3d 1173, 1182 n.4 (9th Cir. 2000), cited *Apprendi*); *Schweninger v. Minnesota*, 525 U.S. 802 (1998) (GVR'ing in light of *Kansas v. Hendricks*, 521 U.S. 346 (1997), even though lower court's decision, *In re Schweninger*, No. C1-96-362, 1997 WL 613670, at *3 (Minn. Ct. App. Oct. 7, 1997), *rev. denied* (Minn. Dec. 15, 1997), discussed *Hendricks*); *Coleman v. Minnesota*, 524 U.S. 924 (1998) (same as to *In re Coleman*, Nos. C0-96-1521 & C1-96-216, 1997 WL 585902, at *5 (Minn. Ct. App. Sept. 23, 1997), *rev. denied* (Minn. Nov. 18, 1997), which also discussed *Hendricks*).

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6. *See also*, *e.g.*, *White v. Kentucky*, 586 U.S. 1113 (2019) (GVR'ing in light of Supreme Court decision issued five months before lower court's original decision and one year before lower court's decision on rehearing); *Kaushal v. Indiana*, 585 U.S. 1028 (2018) (GVR'ing in light of Supreme Court decision issued one month before lower court's decision); *Webster v. Cooper*, 558 U.S. 1039 (2009) (GVR'ing in light of Supreme Court decision issued two months before lower court's decision); *Ravelo v. United States*, 532 U.S. 955 (2001) (GVR'ing in light of Supreme Court decision issued one month before lower court's decision); *Ford v. United States*, 532 U.S. 968 (2001) (same); *Wecht v. Inmates of Allegheny Cnty. Jail*, 493 U.S. 948 (1989) (GVR'ing in light of Supreme Court decision issued eight years before lower court's decision).

The same disposition is justified here. Given the focus in the Eighth Circuit's analysis, there is ample "reason to believe the court below did not fully consider" *Rahimi*. *Lawrence*, 516 U.S. at 167. And given the gaps in the Eighth Circuit's analysis, there is no reason to treat this case differently than *Lara*. Especially given the importance of the issue, *see infra* Section III, it does not make sense for Pennsylvania's statute regulating public gun use by 18-to-20-year-olds to fully benefit from this Court's clarification in *Rahimi*, but for Minnesota's statute to be denied the same benefit.[7]

The Third Circuit's just-issued decision on remand in *Lara* reinforces that GVR is appropriate. *See Lara v. Comm'r Penn. State Police*, No. 21-1832, — F.4th —, 2025 WL 86539 (3d Cir. Jan. 13, 2025). Although the Third Circuit erroneously reached the same bottom-line

7. Nor is *Lara* an outlier. Since *Rahimi*, the Court has issued nearly twenty GVR orders because *Rahimi* clarifies the appropriate methodology for analyzing Second Amendment challenges. *Dubois v. United States*, 24-5744 (U.S. Jan. 13, 2025); *Canada v. United States*, 24-5391 (U.S. Nov. 4, 2024); *Talbot v. United States*, 24-5258 (U.S. Nov. 4, 2024); *Hoeft v. United States*, 24-5406 (U.S. Nov. 4, 2024); *Jones v. United States*, 24-5315 (U.S. Nov. 4, 2024); *Kirby v. United States*, 24-5453 (U.S. Nov. 4, 2024); *Lindsey v. United States*, 24-5328 (U.S. Nov. 4, 2024); *Pierre v. United States*, 24-37 (U.S. Oct. 21, 2024); *Borne v. United States*, 23-7293 (U.S. Oct. 7, 2024); *Farris v. United States*, 23-7501 (U.S. Oct. 7, 2024); *Willis v. United States*, 23-7776 (U.S. Oct. 7, 2024); *Garland v. Range*, 23-374 (U.S. July 2, 2024); *Antonyuk v. James*, 23-910 (U.S. July 2, 2024); *United States v. Daniels*, 23-376 (U.S. July 2, 2024); *United States v. Perez-Gallan*, 23-455 (U.S. July 2, 2024); *Vincent v. Garland*, 23-683 (U.S. July 2, 2024); *Jackson v. United States*, 23-6170 (U.S. July 2, 2024); *Cunningham v. United States*, 23-6602 (U.S. July 2, 2024); *Doss v. United States*, 23-6842 (U.S. July 2, 2024).

result, it at least identified the correct legal standard: whether Pennsylvania's age restriction on public carry of guns was "'consistent with the principles that underpin the Nation's historical tradition of gun regulation.'" *Id.* at *4 (quoting *Rahimi*, 602 U.S. at 690). Minnesota's statute should be subject to the same principles-focused analysis. *See*, *e.g.*, *United States v. Langston*, 110 F.4th 408, 418 (1st Cir. 2024), *cert. denied*, — S. Ct. —, 2024 WL 4805963 (Nov. 18, 2024) (holding that, after *Rahimi*, the "correct constitutional inquiry" focuses on principles); *United States v. Garcia*, 115 F.4th 1002, 1008 (9th Cir. 2024) (Sanchez, J., concurring) (emphasizing that the focus on principles, as opposed to specific historical analogues, is the "important methodological point" from *Rahimi*).

II. Alternatively, There Is a Circuit Split that Merits Plenary Review and the Question Presented Is Important.

Alternatively, this case merits review because there is a split among the circuit courts on whether age regulations like Minnesota's violate the Second Amendment.

A. There Is a Circuit Split Regarding the Constitutionality of Increased Gun Regulation for 18-to-20-Year-Olds.

The Eighth Circuit's decision here and the Third Circuit's just-issued, post-remand decision in *Lara* conflict with the Tenth Circuit's recent decision in *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024). There, the Tenth Circuit upheld a Colorado statute on 18-to-20-year-olds' access to firearms, finding it was consistent with the Second Amendment. *See generally id.*

The Colorado statute criminalizes the purchase and sale of firearms to people under 21, with exceptions for young people in the military or law enforcement. *Id.* at 104-05. Before the law became effective, the plaintiffs challenged it as infringing the Second Amendment rights of those aged 18 to 20. The district court preliminarily enjoined the statute. *Id.* at 106.

The Tenth Circuit reversed. It found that Colorado's law was of the type that this Court has found presumptively legal in *Heller*, *McDonald*, and *Bruen*. *Id.* at 118-28. The opinion emphasized Justice Alito's concurrence in *Bruen*, which "strongly alluded to the constitutionality of a minimum purchase age of 21." *Id.* at 124. It also reviewed the historical and social science evidence proffered by Colorado, concluding that the district court abused its discretion when it ignored that evidence. *Id.* at 124-128.

The Tenth Circuit's decision conflicts with the decisions of the Eighth and Third Circuits. The Eighth Circuit concluded that Minnesota's refusal to issue public-carry permits to 18-to-20-year-olds is unconstitutional. Pet. App. 37a. The Third Circuit reached the same conclusion on remand with respect to Pennsylvania's statutory scheme. *Lara*, 2025 WL 86539, at *14. But the Tenth Circuit found that a similar age-based purchase restriction in Colorado was presumptively constitutional. *Rocky Mountain Gun Owners*, 121 F.4th at 118-28.

The conflicting decisions also reflect significant methodological divides. In *Rocky Mountain*, the Tenth Circuit majority held that Colorado's age regulation was presumptively lawful at *Bruen* "step one," so "the plain text of the Second Amendment" was not implicated. *Id.*

at 120. The majority thus did not proceed to step two's "history and tradition test." *Id.* at 114, 120-21. The Eighth and Third Circuits, by contrast, viewed step two's history-and-tradition test as critical to the constitutional question (as did one concurring member of the Tenth Circuit panel). *See* Pet. App. 23a-37a; *Lara*, 2025 WL 86539, at *8-12; *Rocky Mountain Gun Owners*, 121 F.4th at 128-29 (McHugh, J., concurring). Similarly, the Eighth Circuit disregarded Minnesota's unrebutted expert evidence that 18-to-20-year-olds pose special risks of dangerousness. Pet. App. 27a-28a. The Tenth Circuit, however, found the same unrefuted scientific evidence "compelling." *Rocky Mountain Gun Owners*, 121 F.4th at 126. The Court should grant certiorari to resolve these conflicts.[8]

B. Similar Age Regulation Issues Are Pending in Multiple Other Jurisdictions.

The existing circuit split is likely to deepen, as there are cases pending in federal courts around the country challenging similar age regulations by the federal government and at least four states.

Those suits are pending in three different circuit courts. The Eleventh Circuit recently sat en banc to rehear a challenge to a Florida statute precluding 18-to-20-year-olds from purchasing firearms. *Bondi*, 72 F.4th 1346. Meanwhile, the Fourth and Fifth Circuits are

8. The Tenth Circuit is not alone. In *Nat'l Rifle Ass'n v. Bondi*, a panel of the Eleventh Circuit held that a Florida statute precluding those under 21 from buying firearms was constitutional. 61 F.4th 1317 (11th Cir. 2023). But the Eleventh Circuit has since vacated the panel's opinion and granted rehearing en banc. *Nat'l Rifle Ass'n v. Bondi*, 72 4th 1346 (11th Cir. 2023).

considering challenges to federal statutes that ban federal firearm licensees from selling handguns to people under 21. 18 U.S.C. § 922(b)(1), (c)(1); *see*, *e.g.*, *Brown v. ATF*, No. 23-2275 (4th Cir.) (scheduled for oral argument on Jan. 30, 2025); *McCoy v. ATF*, No. 23-2085 (4th Cir.) (stayed pending Fourth Circuit's disposition in *Brown v. AFT*, No. 23-2275); *Reese v. Bureau of Alcohol*, No. 23-30033 (5th Cir.) (reargued Sept. 23, 2024).

More cases are pending in the federal district courts. For example, district courts are considering statutes passed in California, Georgia, and Illinois regulating gun use by those between 18 and 20. *E.g.*, *Chavez v. Bonta*, No. 3:19-cv-01226 (S.D. Cal.) (on remand from 9th Circuit); *Baughcum v. Jackson*, 3:21-cv-00036 (S.D. Ga.) (on remand from 11th Circuit); *Meyer v. Raoul*, Case No. 3:21-cv-00518 (S.D. Ill.). The volume of cases pending in various federal courts demonstrates that this issue is an important one, and that either the Court should GVR to ensure that Minnesota's statute enjoys the benefit of the percolation among the federal courts, or that it should grant plenary review now to give direction to the lower courts.

C. Age Regulation of Access to Firearms Is an Important Issue.

The issue presented here is important. More than thirty states and the federal government have determined that public safety is enhanced when people under 21 have modest restrictions on their gun access.[9] Any determination that the Fourteenth Amendment prevents

9. *See supra* 3 n.4 (collecting statutes).

these states from exercising their broad police powers in the arena of minors' firearm access and use is a significant issue of federalism. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (noting that "the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons" (internal quotation marks and citation omitted)).

States across the political spectrum have attempted to reduce the gun violence by and against young people. As the number of gun deaths increases rapidly, these state efforts take on additional significance. The U.S. Centers for Disease Control and Prevention reports that in 2021, 48,830 people died from gun-related injuries in the U.S., a 23% increase over 2019.[10] The leading cause of death among children and teens is firearm injuries.[11] The violence impacts some communities more than others; the gun suicide rate among Latinos aged 15 to 19 has doubled over the past decade, while the gun suicide rate among African Americans in that age range has tripled in the same period.[12] Minnesota's expert reported that "in 2019, the single most homicidal age group in the nation was age 19, with both 18- and 20-year-olds having higher murder

10. John Gramlich, *What the data says about gun deaths in the U.S.*, Pew Research Center (Apr. 26, 2023), https://perma.cc/99R9-AGU4.

11. U.S. Centers for Disease Control and Prevention, *Fast Facts: Firearm Injury and Death* (July 5, 2024), https://perma.cc/M99U-9GLW.

12. John Hopkins Center for Gun Violence Solutions, *Continuing Trends: Five Key Takeaways from 2023 CDC Provisional Gun Violence Data* (Sept. 12, 2024), https://perma.cc/P9YB-QNW5.

arrest rates than any other age groups except for age 19." AA 114 (citing U.S. Fed. Bureau of Investigation, *Crime in the United States Table 19, Rate: Number of Crimes per 100,000 Inhabitants* (Sept. 28, 2020)). Given the gravity of these statistics, courts should not lightly set aside legislative attempts to address the increase in gun violence by young people.

CONCLUSION

The Court should GVR this case so the parties and the Eighth Circuit can apply the methodology from *Rahimi* in evaluating Minnesota's common-sense age regulation on the public carry of pistols. Alternatively, the Court should grant the petition and conduct plenary review.

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