No. 24-782

IN THE

Supreme Court of the United States

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

Petitioner,

v.

KRISTIN WORTH, *et al.*,

Respondents.

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

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION

Respondents argue that the Court should not grant, vacate, and remand (GVR) the Eighth Circuit's decision because it took *Rahimi* into account. But their attempt to rehabilitate the decision is unconvincing: the Eighth Circuit simply did not employ a principles-based approach to the historical inquiry. Nor is a GVR an "extraordinary and unjustified rebuke" of the Eighth Circuit, as Respondents assert. The Court has not hesitated to GVR when a lower-court decision fails to appropriately account for new precedent. Indeed, just last month, the Court issued a GVR order based on *Rahimi* when the lower court had cited *Rahimi*. GVR is proper here too.

But if the Court declines to GVR, Respondents agree that the Court should grant plenary review. The issue presented—whether Minnesota (and many other states) may limit under-21-year-olds from carrying guns in public—is important. And the existing circuit split has only deepened since the petition was filed. The en banc Eleventh Circuit just upheld Florida's under-21 firearms statute; the Fifth Circuit just struck down the federal under-21 firearms statute.[1] The Court should grant certiorari or, at minimum, hold this case until one of the age-regulation cases is resolved by this Court.

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1. *Compare Nat'l Rifle Ass'n v. Bondi*, No. 21-12314, — F.4th —, 2025 WL 815734 (11th Cir. Mar. 14, 2025), *with Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583 (5th Cir. 2025).

ARGUMENT

I. GVR Is Appropriate Because the Eighth Circuit Did Not Fully Consider *Rahimi*.

1. Respondents claim that the Court should not GVR because the Eighth Circuit "was plainly aware of, and considered, the impact of *Rahimi*." Resp.13. But as the petition explained, Respondents' argument cannot be squared with *Rahimi* or the Eighth Circuit's decision. *Rahimi* cautioned that "some courts have misunderstood the methodology of our recent Second Amendment cases." *United States v. Rahimi*, 602 U.S. 680, 691 (2024). And *Rahimi* clarified that "the appropriate analysis involves considering whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Id.* at 692 (emphasis added).

Contrary to Respondents' characterizations, this substantive holding significantly clarified *Bruen*'s methodology. Indeed, the Court has granted, vacated, and remanded twenty Second Amendment cases since *Rahimi* because it was a significant course correction.[2] Pet.18 n.7. Lower federal courts have likewise recognized *Rahimi*'s impact on *Bruen*'s historical analysis. *See, e.g.*, *Pitsilides v. Barr*, 128 F.4th 203, 208 (3d Cir. 2025) (explaining that *Rahimi* "refined and clarified *Bruen*'s methodology"); *United States v. Hunt*, 123 F.4th 697, 705 (4th Cir. 2024) (same); *United States v. Langston*, 110 F.4th 408, 418 (1st Cir. 2024) (same). Although Respondents try to diminish

2. Since the petition was filed, the Court issued another GVR order in *Rambo v. United States*, No. 24-6107, — S. Ct. —, 2025 WL 581574, at *1 (Feb. 24, 2025), which is discussed below.

Rahimi's impact, the decision is significant because it confirmed that Second Amendment cases require courts to search for principles established by the full historical record—not historical twins or dead ringers. 602 U.S. at 691-92. And given *Rahimi*'s directive, the Eighth Circuit should have considered whether Minnesota's age regulation is consistent with the principles underlying the (undisputed) historical tradition of regulating access to firearms by young people.

Yet the Eighth Circuit's decision is effectively silent on principles. Pet. App. 23a-37a. That silence shows Respondents' error in contending, at length, that the Eighth Circuit "faithfully hewed" to *Rahimi*. Resp.16-22. Quite the opposite: the Eighth Circuit's failure to employ a principles-based approach to the history-and-tradition inquiry proves that the Court did not "fully consider" *Rahimi*'s central holding. *Lawrence v. Chater*, 516 U.S. 163, 167 (1996). GVR is appropriate for that reason alone.

2. Respondents are also wrong to assert that GVR would be an "extraordinary and unjustified rebuke." Resp.13. The thrust is that the decision below came out after *Rahimi*, cited *Rahimi*, and therefore the Eighth Circuit must have applied *Rahimi*.

As discussed above, that conclusion misapprehends the Eighth Circuit's decision. Nor is there anything extraordinary about a GVR here. The petition collects a dozen examples where this Court has issued GVR orders when the court below failed to consider recent—and even decades old—precedent. Pet.16-17. Moreover, since the petition was filed, the Court added another *Rahimi*-specific example to the post-precedent GVR ledger. In

Rambo v. United States, the Eleventh Circuit rejected a Second Amendment challenge to the federal felon-in-possession law. No. 23-13772, 2024 WL 3534730, at *2 (11th Cir. July 25, 2024). In doing so, the Eleventh Circuit held it was bound by circuit precedents, which it concluded *Rahimi* did not affect. *Id.* This Court nonetheless granted, vacated, and remanded for further consideration in light of *Rahimi*.[3] No. 24-6107, — S. Ct. —, 2025 WL 581574, at *1 (Feb. 24, 2025).

The GVR in *Rambo* was not an extraordinary or unjustified rebuke of the Eleventh Circuit. Rather, *Rambo* was just another in a series of GVRs that the Court has issued to ensure that *Rahimi*'s impact is fully considered. Minnesota seeks only that same opportunity here.

3. Respondents are also wrong to assume the Eighth Circuit would simply rinse and repeat its earlier analysis if this Court GVRs. Resp.24. When this Court GVRs because the lower court failed to account for preexisting precedent, it is not unusual for the decision to change on remand when the precedent is considered. *See, e.g.*, *White v. Commonwealth*, 600 S.W.3d 176, 178 (Ky. 2020) (remanding for evidentiary hearing on intellectual disability claim after initially affirming conviction). Since the Eighth Circuit issued its decision, four other circuits have issued decisions on whether age-related gun restrictions violate the Second Amendment. Undoubtedly the Eighth Circuit will benefit from the reasoning of

3. The Court also granted, vacated, and remanded one of the two circuit precedents on which the Eleventh Circuit relied. *Dubois v. United States*, No. 24-5744, — S. Ct. —, 2025 WL 74613, at *1 (Jan. 13, 2025).

those sister circuits and the other circuits that are likely to issue opinions in the coming months. A GVR would allow these issues—issues that Respondents concede are "foundational"—to develop even more before reaching this Court. *Id.* 11.

II. Even If the Court Declines to GVR, Respondents Agree That Review Is Warranted.

If the Court declines to GVR, all parties agree that certiorari should be granted to decide whether the Second Amendment allows modest age regulations on the public carry of firearms by 18-to-20-year-olds. *Id.* 6. Respondents acknowledge that this issue is "of fundamental importance," and that "the federal courts of appeal have divided over the constitutionality of such laws." *Id.*

As Respondents point out, the circuit split has only deepened since the petition was filed. *Id.* 7. In *National Rifle Ass'n v. Bondi*, the full Eleventh Circuit upheld Florida's law prohibiting under 21-year-olds from purchasing firearms. No. 21-12314, — F.4th —, 2025 WL 815734 (11th Cir. Mar. 14, 2025) (W. Pryor, C.J.). When surveying Founding-era history, the court discerned the following principle: under-21 year olds lacked judgment and discretion and had limited access to firearms for that reason. *Id.* at *6-8. The nineteenth-century evidence represented a continuation of this principle, confirming that states have broad discretion to limit minors' access to firearms. *Id.* at *8-11. The Eleventh Circuit further concluded that Florida's law had the same "why" as Founding-era limitations. *Id.* at *21. Those under-21 "have not reached the age of reason and lack the judgment and

discretion to purchase firearms responsibly." *Id.* And Florida's law was also similar in "how" it burdened Second Amendment rights: it precluded under-21-year-olds from purchasing firearms but preserved access through parental consent. *Id.* The court thus upheld Florida's law as consistent with the Second Amendment.

Meanwhile, the Fifth Circuit reached the opposite conclusion: it invalidated the federal statutes that prohibit those under 21 from purchasing firearms from licensed dealers. *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 586 (5th Cir. 2025) (holding 18 U.S.C. §§ 922(b)(1) & (c)(1) unconstitutional). Like the Eighth Circuit, the Fifth Circuit concluded that the Founding-era historical analogues were insufficient. *Id.* at 596-99. And like the Eighth Circuit, the Fifth Circuit gave little-to-no weight to nineteenth-century history. *Id.* at 599-600. The court thus held that the federal statutes violated the Second Amendment. *Id.* at 600.

Respondents also correctly point out that the various age-related cases that have divided the federal courts of appeal involve parallel issues. Resp.7. Those issues include:

- Whether 18-to-20-year-olds are part of the "people" protected by the Second Amendment.

- If so, whether the Nation's long history of regulating access to firearms based on age allows states to limit 18-to-20-year-olds' ability to carry or purchase firearms.

- Whether the same longstanding tradition of disarming particularly dangerous groups

> allows the government to limit 18-to-20-year-olds' access to firearms.

Respondents are also correct that the circuits are split, in part, because of "critical methodological questions" lingering in the Court's Second Amendment precedents. Resp.11. The circuits have reached different conclusions about whether 18-to-20-year-olds are part of "the people" protected by the Second Amendment; how much weight to give Reconstruction-era history; and the usefulness of scientific evidence regarding brain development to the historical analysis.

If the Court declines to GVR, the Court should grant plenary review to resolve these important, recurring issues and provide guidance to the lower courts.

III. The Eighth Circuit's Decision Is Wrong.

Although Respondents agree that certiorari should be granted, they devote much of their brief to defending the Eighth Circuit's decision on the merits. Resp.16-22. A full discussion can and should await the merits briefing and argument that the parties agree is warranted—if the Court does not GVR—given the importance of the issue and the existing circuit split. But Respondents offer no persuasive defense of the Eighth Circuit's decision.

1. A modern gun regulation is lawful under the Second Amendment if it is "consistent with the principles that underpin the Nation's regulatory tradition." *Rahimi*, 602 U.S. at 691. A modern law need not be a dead ringer or a historical twin; it must simply be "relevantly similar to laws that our tradition is understood to permit." *Id.*

(cleaned up). Minnesota's law "fits neatly within the tradition" of age-based gun regulation. *Id.* at 698.

a. In the Founding era, the Second Amendment was understood to exclude those under the age of 21. Pet.5-6 (summarizing expert testimony). The reason is that the common law age of majority was 21 years old. *Id.* Those under 21 were mere "infants" in the eyes of the law who lacked judgment and reason. *Id.* 5. And, as infants, those under 21 lacked independent legal rights. *Id.* Infants could not vote, contract, serve on juries, sue or be sued, or even enlist in the military without parental consent. *Id.* 5-6. Instead, infants existed under their parent or guardian's authority. *Id.* 6.

If the common-law backdrop were not enough, Minnesota proffered additional Founding-era evidence confirming the common-law understanding. For example, Founding-era colleges prohibited their students from accessing firearms. AA 66. Founding-era municipal ordinances likewise reflected the American tradition of limiting young people's access to firearms. AA 67.

b. Neither Respondents (nor the Eighth Circuit) dispute any of this history. Respondents instead invoke the Militia Act of 1792, which set the minimum age of militia service at 18, and similar state laws. Resp.17 (citing Act of May 8, 1792. 1 Stat. 271). But as Respondents concede, *id.* 16, the Second Amendment codified a preexisting "individual[] right to use arms for self-defense" that is "*unconnected* to militia service," *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis added); *see also Lara*, 125 F.4th at 452 (the "prefatory" militia language cannot limit or expand the scope of the Second

Amendment right) (Restrepo, J., dissenting). "Nor does the fact that some states required minors to serve in the militia establish that they had a right to unfettered firearm access." *Bondi*, 2025 WL 815734, at *13. All the militia laws establish is "that many state legislatures determined that minors could be required to bear arms provided by their parents and to use those arms under the command and supervision of militia officers." *Id.*

Respondents also castigate the Founding-era historical evidence as too far removed from Minnesota's age-based regulation on the public carry of firearms. Resp.18-19. In doing so, Respondents improperly assume that Founding-era legislatures must have "maximally exercised their power to regulate, thereby adopting a 'use it or lose it' view of legislative authority." *Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring). Counterintuitive as it may be today, Founding-era legislatures would not have viewed such legislation to be necessary because 18-to-20-year-olds were universally understood to have no independent rights. *Bondi*, 2025 WL 815734, at *14 ("The written laws of the Founding era must be understood in light of that predominant common-law regime.").

2. The Reconstruction-era evidence confirms that Minnesota's law "comport[s] with the principles underlying the Second Amendment." *Rahimi*, 602 U.S. at 692. By the 19th century, states had introduced dozens of laws restricting minors' access to firearms. Pet.7-8. These laws codified the common-law understanding that those under 21 lacked reason and judgment, and that their access to firearms should therefore be limited to protect public safety. *Id.* The problem was particularly pressing in the mid-to-late nineteenth century because technological

changes made cheap handguns widely available for the first time. AA 69.

Although Respondents strain to distinguish these laws, they do not seriously dispute their similarity to Minnesota's regulation. Resp.19-21. These nineteenth-century laws "make explicit what was implicit at the Founding," reinforcing the Nation's regulatory tradition of regulating minors' access to firearms. *Bondi*, 2025 WL 815734, at *13. As even the Fifth Circuit recognized, the Reconstruction-era laws are "relevantly similar" to modern age-based gun regulations because they "restrict[ed] firearm access by those under twenty-one-years-old to prevent misuse." *Reese*, 127 F.4th at 599.

Respondents' argument thus hinges on their claim that the Court should "prioritize Founding-era history" because the Second Amendment was adopted in 1791. Resp.19. But as noted above, when courts consider all evidence of the common-law understanding of young people's rights, the Founding-era history supports Minnesota's restrictions. *See Bondi*, 2025 WL 815734, at *6-8. The nineteenth-century evidence simply confirms the Founding-era understanding of the Second Amendment. *Id.* at *8-10. And even if that were not true, the Second Amendment only applies to the states via the Fourteenth Amendment. *Bruen*, 597 U.S. at 37. The Reconstruction era is thus critical to understanding how the states would have understood the scope of the Second Amendment. *See* Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* xiv, 223, 243 (1998) (the adoption of the Fourteenth Amendment incorporated 1868 understandings into the Bill of Rights); Kurt T. Lash, *Respeaking the Bill of Rights: A New*

Doctrine of Incorporation, 97 Ind. L. J. 1439, 1441 (2022) (similar).[4]

3. Respondents last argue that "modern social science research" is legally irrelevant. Resp.21. Respondents, of course, have to argue that the social-science evidence is irrelevant because they introduced no summary-judgment evidence to controvert Minnesota's expert testimony. Minnesota's expert evidence is thus unrebutted and, for all relevant purposes, undisputed: 18-to-20-year-olds are the most dangerous and homicidal age group in America. Pet.8-9.

More to the point, Respondents misunderstand why Minnesota proffered social-science evidence. This evidence is not relevant because it independently justifies Minnesota's law. It is relevant because it shows that Minnesota's law is "consistent with our regulatory tradition in *why* . . . it burdens the right of minors to keep and bear arms." *Bondi*, 2025 WL 815734, at *10 (emphasis added). In short, minors have yet to reach the age of reason, so Minnesota limits their ability to carry firearms in public—while giving minors significant access to guns in other, less-dangerous ways. Pet.3-4 (summarizing Minnesota law). In this way, Minnesota law charts a path for young people to access guns safely, with modest limits that correspond to this group's "special danger of misuse." *Rahimi*, 602 U.S. at 698. This path, and the law that charts it, is constitutional.

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4. Professors Amar and Lash go further and argue that the adoption of the Fourteenth Amendment vested 1868 meanings into the original Bill of Rights, even for the federal government. *E.g.*, Lash, *supra*, at 1441.

CONCLUSION

For these reasons, and the reasons stated in the petition, the Court should GVR, so the Eighth Circuit can fully consider the impact of *Rahimi*. If the Court believes that GVR is inappropriate, then it should grant plenary review.

Respectfully submitted,

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