No. 24-93

In the Supreme Court of the United States

CHRISTOPHER PARIS, COMMISSIONER, PENNSYLVANIA STATE POLICE,

Petitioner

v.

MADISON M. LARA; SOPHIA KNEPLEY; LOGAN D. MILLER; SECOND AMENDMENT FOUNDATION, INC.; FIREARMS POLICY COALITION,

Respondents

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

REPLY BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

REASONS FOR GRANTING THE PETITION 1

I. RESPONDENTS ATTEMPT TO RE-WRITE THE COURT OF APPEALS' DECISION TO MAKE IT CONSISTENT WITH *RAHIMI*. 3

II. FOUNDING-ERA MILITIA STATUTES LEND NO SUPPORT TO RESPONDENTS' HISTORICAL ANALYSIS 7

III. RESPONDENTS' VEHICLE ARGUMENTS DO NOT UNDERMINE EITHER THE CERTWORTHINESS OF THIS CASE OR THE NEED FOR A GVR ORDER. 8

IV. THERE IS A CLEAR SPLIT OVER THE QUESTION PRESENTED. 10

CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Antonyuk v. Chiumento,
89 F.4th 271 (2d Cir. 2023).....10
Antonyuk v. James,
144 S.Ct. 2709 (2024).....6, 9, 10
Antonyuk v. James,
23-910 (U.S. May 9, 2024) 10
Arizona State Legislature v. Arizona Indep. Redistricting Comm'n,
576 U.S. 787 (2015).....10
Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Bruck, 142 S. Ct. 2894 (2022).....6
Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin, __ F.Supp.3d___,2024 WL 3585580 (D.N.J. July 30, 2024) 3
Bianchi v. Frosh,
142 S. Ct. 2898 (2022).....6
District of Columbia v. Heller,
554 U.S. 570 (2008).....1
Garland v. Range,
144 S. Ct. 2706 (2024).....2
Johnson v. United States,
572 U.S. 1012 (2014).....7
Lawrence v. Chater,
516 U.S. 163 (1996).....7
Nat'l Rifle Ass'n v. Bureau of Alcohol, Tobacco, Firearms, & Explosives,
700 F.3d 185 (5th Cir. 2012).....11
New Hampshire v. Maine,
532 U.S. 742 (2001).....9
New York State Rifle & Pistol Assn., Inc. v. Bruen,
597 U.S. 1 (2022).....1, 2, 4, 6, 8, 11

Pegram v. Herdrich,
530 U.S. 211 (2000).....9
People v. Mosley,
33 N.E.3d 137 (Ill. 2015).....11
People v. Thompson,
___ N.E.3d ___, 2024 IL App 221031 (Il. App. 1st Aug. 30, 2024) 11
Range v. Attorney General,
69 F.4th 96 (3d Cir. 2023) (en banc).....1, 2, 5, 7
Second Amendment Foundation, et al. v. Paris,
24-cv-01015 (M.D. Pa.).....3
Suarez v. Paris, 1:21-CV-710, 2024 WL 3521517 (M.D. Pa. July 24, 2024) 3
United States v. Perez-Garcia,
96 F.4th 1166 (9th Cir. 2024) 1
United States v. Rahimi,
144 S. Ct. 1889 (2024).....1, 2, 4, 6, 12
Worth v. Jacobson,
108 F.4th 677 (8th Cir. 2024) 4, 5

Statutes

18 U.S.C. § 922.....6

Treatises

1 William Blackstone, *Commentaries on the Laws of England* 451 (Oxford, Clarendon Press 1765).....8
Megan Walsh & Saul Cornell, *Age Restrictions and the Right to Keep and Bear Arms, 1791-1868*, 108 Minn. L. Rev. 3049, 3081, 3092 (2024).....7
Wright & Miller, 18B Fed. Prac. & Proc. Juris. § 4477 (3d ed.) 9

REASONS FOR GRANTING THE PETITION

The *Rahimi* decision corrected several widespread misconceptions about *Bruen*'s methodology. Most importantly, this Court clarified that courts must seek out historical principles in Second Amendment cases, not historical twins. *United States v. Rahimi*, 144 S. Ct. 1889, 1897-1898 (2024). A court's role is not to examine each historical precursor in isolation to determine whether it differs from the challenged statute in some way. *Ibid*. *See also*, *id*. at 1902-1903.[1] After all, the contemporary statute in *Rahimi* was "by no means identical" to the "founding era regimes, but it d[id] not need to be." *Rahimi,* 144 S. Ct. at 1901.

This Court also cautioned against placing undue weight on the absence of historical firearms regulations on a particular topic at the Founding because "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791." *Id.* at 1898-1899; *see also id.* at 1924-1926 (Barrett, J., concurring). And several Justices reiterated this Court's prior pronouncement that post-ratification historical sources from the 19th-century constitute a "critical tool of constitutional interpretation." *Rahimi*, 144 S. Ct. at 1918 (Kavanaugh, J., concurring) (citation omitted); *see also id.* at 1925 (Barrett, J., concurring) ("To be sure, postenactment history can be an important tool.").

In *Range v. Attorney General*, 69 F.4th 96, 130 (3d Cir. 2023) (en banc), and then later in this case, the Court of Appeals adopted a methodology that is irreconcilable with *Rahimi*'s precepts. The Court of

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[1] Predicting this Court's holding in *Rahimi*, Judge Krause explained in her dissent here, as she did in *Range*, that courts are to look for a "match … in principle, not with precision." App.98a (quoting *Range*, 69 F.4th at 117 (Krause, J., dissenting)).

Appeals' approach in *Range* "track[ed] precisely with the Fifth Circuit's opinion in *Rahimi*" under which "*any* difference between a historical law and contemporary regulation defeats an otherwise-compelling analogy." *Range*, 69 F.4th at 118, 130 (Krause, J., dissenting) (emphasis in original). The Court of Appeals then built upon that flawed approach in this case, faulting the Commissioner for failing to produce Founding-era historical twins, and placing inordinate weight on the absence of a specific Founding-era law regulating the public-carry rights of 18-to-20-year-olds. App.4a, 17a-18a, 26a. And, based on nothing more than a purported "hint" in *New York State Rifle & Pistol Assn., Inc. v. Bruen,* 597 U.S. 1 (2022), the Court of Appeals wrongly foreclosed *any* reliance on post-ratification history from the mid-to-late-1800s. App.18a-20a.

Correctly perceiving the overlap between the Fifth Circuit's incorrect methodology in *Rahimi* and the Third Circuit's methodology in *Range*, this Court granted certiorari, vacated the Third Circuit's decision, and remanded (GVR) for reconsideration. *Garland v. Range*, 144 S. Ct. 2706 (2024). But the Third Circuit's errors are not cabined to *Range*; they infect the decision below (*Lara*). The Third Circuit's assumption here that the Second Amendment applied to 18-to-20-year-olds was bound up in that court's then-binding precedent in *Range*. App.12a, 14a-15a, 36a-37a (citing *Range*). *See also* Petition at 6, 13.

Thus, a refusal to issue a GVR order here would have the practical effect of undoing this Court's vacatur in *Range*. Despite this Court's GVR order in *Range,* two district courts subsequently invalidated firearms laws based on *Range's* incorrect methodology through *Lara*. *See Suarez v. Paris*, 1:21-CV-710, 2024 WL 3521517, at

*6 (M.D. Pa. July 24, 2024);[2] *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin*, __ F.Supp.3d___,2024 WL 3585580, at *25 (D.N.J. July 30, 2024).

The Second Amendment Foundation is also currently arguing that *Lara* prohibits Pennsylvania from denying concealed-carry licenses to 18-to-20-year-olds, *see Second Amendment Foundation, et al. v. Paris*, 24-cv-01015 (M.D. Pa.), undermining their contention that this case "will map less cleanly onto future cases." Br. in Opp. at 28.

Respondents' attempt to hand wave the deficiencies in the Court of Appeals' analysis is entirely unpersuasive. And they present no good reason to deny the petition or the GVR request.

I. RESPONDENTS ATTEMPT TO RE-WRITE THE COURT OF APPEALS' DECISION TO MAKE IT CONSISTENT WITH *RAHIMI*.

In the Court of Appeals, Respondents insisted that Pennsylvania's restriction on 18-to-20-year-olds was valid only if it boasted Founding-era historical twins. *See, e.g.*, 3d Cir. Dkt. No. 56, Respondents' Supp. Br. at 7 ("*Bruen* requires a *specific* analysis of whether widely accepted historical restrictions are directly analogous to the law being challenged[.]") (emphasis in original); 3d Cir. Dkt. No. 63, Respondents' Supp. Reply Br. at 8 (*Bruen* required a Founding-era law imposing "specific consequences" on 18-to-20-year-olds "when it came to the public carrying of firearms"). And they urged the Court of Appeals to disregard the Commissioner's post-ratification evidence, which demonstrated that 20 jurisdictions enacted analogous laws regulating 18-to-20-year-olds between 1856 and 1897. 3d Cir. Dkt. No.

[2] Respondents Firearms Policy Coalition and the Second Amendment Foundation are plaintiffs in this case as well.

56, Respondents' Supp. Br. at 9-10. Respondents argued that these laws came "far too late in time" and were therefore precluded by *Bruen*. *Ibid.*

Unfortunately, the Court of Appeals adopted Respondents' arguments in their entirety. App.4a, 17a-21a, 26a.

Having led the Court of Appeals astray, Respondents now attempt to prop up that court's analysis to make it appear consistent with *Rahimi*. They maintain that "*Rahimi* would not have made the slightest difference in the outcome of this case[.]" Br. in Opp. at 2-3. But not even they actually believe this balderdash.

Take Respondents' discussion of Nineteenth Century history. Br. in Opp. at 17-19. Because they must, Respondents retreat from their position that *Bruen* foreclosed any reliance on post-ratification history and acknowledge that "this question has yet to be explicitly addressed" by this Court. Br. in Opp. at 18 (citing *Bruen*, 597 U.S. at 37). This tacitly concedes that the Court of Appeals misconstrued *Bruen* when it determined that a "strong hint" in this Court's opinion definitively resolved the question. App.18a.

Recognizing this, Respondents attempt to make-up for the Third Circuit's methodological error by analyzing post-ratification laws on that court's behalf. Br. in Opp. at 18-19. In so doing, they lean heavily on the Eighth Circuit's recent post-*Rahimi* decision invalidating a Minnesota carry restriction on 18-to-20-year-olds as proof that *Rahimi* would not change the result here. Br. in Opp. 14, 18-19, 30-31 (citing *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024)). But Respondents' effort to graft the Eighth Circuit's post-*Rahimi* analysis onto the Third Circuit's pre-*Rahimi* decision here is unsound.

Even though the Eighth Circuit also struck down a restriction on 18-to-20-year-olds, its analysis bears little resemblance to the Third Circuit's approach. Unlike the Third Circuit, the Eighth Circuit did not foreclose all reliance on historical evidence from the mid-to-late-1800s. Instead, that court specifically looked to those post-ratification laws, but determined that none of them approached the heavy burden imposed by Minnesota's contemporary statute. *Worth*, 108 F.4th at 697-698. This case does not present that same problem because, as Respondents here readily acknowledge, Pennsylvania's restriction on 18-to-20-year-olds is considerably more modest than other states'. Br. in Opp. at 27-28. A remand would give the Court of Appeals the opportunity to decide, in the first instance, whether the post-ratification laws that court initially refused to even consider are analogous to Pennsylvania's restriction.

The Eighth Circuit's discussion of status-based restrictions from the Founding further reinforces the need for a GVR order here. In *Worth*, Minnesota argued that those Founding-era laws permit modern legislatures to disarm other dangerous groups, such as 18-to-20-year-olds. 108 F.4th at 693-694. The Eighth Circuit accepted Minnesota's premise, but simply disagreed that Minnesota demonstrated "with enough evidence" that "18-to-20-year-olds present a danger to the public[.]" *Id.* at 694.

Here, the Third Circuit panel was precluded from even entertaining similar arguments about Founding-era dangerousness laws because that court had already foreclosed any reliance on those laws in its (now-vacated) *en banc* decision in *Range*. *Range*, 69 F.4th at 105. Now that *Range* has been vacated, a remand would give Pennsylvania, like Minnesota, the opportunity to show that Founding-era dangerousness

laws are analogous under *Rahimi*. Contrary to Respondents' arguments, the Eighth Circuit's analysis of the question presented in *Worth* only strengthens the case for a GVR order here.

Respondents also attempt to distinguish this case from the eight other post-*Rahimi* GVR orders this Court already issued. Respondents highlight that "most" of the other post-*Rahimi* GVR orders involved challenges to 18 U.S.C. § 922 and argue that Pennsylvania's statute does not mirror that law. Br. in Opp. at 30. But this Court does not require a precise match between the two laws to warrant a GVR order. If it did, the Court would not have issued a GVR order *sua sponte* in *Antonyuk v. James*, 144 S.Ct. 2709 (2024). There, this Court vacated the Second Circuit's pre-*Rahimi* decision upholding a state concealed-carry law even though New York's statute bore little resemblance to the particular law addressed in *Rahimi*.

Similarly, after *Bruen* this Court did not limit its GVR orders to those cases that also challenged state concealed-carry laws. Rather, it entered GVR orders in a wide-range of Second Amendment cases where the lower courts did not have the benefit of this Court's guidance and thus employed the wrong methodology. *See, e.g.*, *Bianchi v. Frosh*, 142 S. Ct. 2898 (2022); *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Bruck*, 142 S. Ct. 2894 (2022).

So the question is not whether Pennsylvania's age restriction is identical to the particular law reviewed in *Rahimi*. The question is whether the Third Circuit's *methodology* for analyzing that law aligns with *Rahimi*. It does not.

To warrant a GVR order, the Court need only be convinced that there is a "reasonable probability" that the result would be different. *Lawrence v. Chater*, 516

U.S. 163, 167 (1996). That threshold was met in *Range* and seven other cases. And it is met here.[3]

II. FOUNDING-ERA MILITIA STATUTES LEND NO SUPPORT TO RESPONDENTS' HISTORICAL ANALYSIS.

Respondents continue to rely exclusively on Founding-era militia statutes to support their claim that restrictions on 18-to-20-year-olds violate the Second Amendment. Br. in Opp. at 23-25; *see also* App.86a (noting that the panel's holding was "based exclusively on 18th-century militia laws"). Under Respondents' logic, because 18-to-20-year-olds occasionally had the duty to bear arms in Founding-era militias, they necessarily have a corresponding right to do so in modern times. The Commissioner already outlined the flaws in Respondents' simplistic historical syllogism. Petition at 24-25.

In response, Respondents urge this Court to pay no mind to the fact that when 18-to-20-year-olds served in the militia, parents were required to furnish their minor children with firearms, and were even held liable if they failed to do so. *See* Megan Walsh & Saul Cornell, *Age Restrictions and the Right to Keep and Bear Arms, 1791-1868*, 108 Minn. L. Rev. 3049, 3081, 3092 (2024) (collecting statutes). They parrot the Court of Appeals' conclusion that "nothing in those statutes

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[3] Respondents suggest that a GVR order is appropriate only if there was a pending petition on the same day *Rahimi* was decided. Br. in Opp. at 30. But this Court commonly issues GVR orders in cases where the petition post-dates the decision warranting remand. *See, e.g.*, *Johnson v. United States*, 572 U.S. 1012 (2014) (March 2014 GVR order remanding for reconsideration of a June 2013 decision where the petition for certiorari was filed in August 2013). The only relevant question is whether the Third Circuit had the benefit of *Rahimi* when it decided this case. It did not.

says that 18-to-20-year-olds could not purchase or otherwise acquire their own guns." Br. in Opp. at 25 (quoting App.26a). It is true that the statutes themselves do not spell that out. But in its search for a Founding-era twin, the Court of Appeals overlooked that those statutes existed only because of the legal disability imposed by minors at common law. App.37a-38a (citing, *inter alia*, 1 William Blackstone, *Commentaries on the Laws of England* 451 (Oxford, Clarendon Press 1765)). Laws requiring the parents of minor militiamen to provide their children with arms would not have been necessary if 18-to-20-year-olds were fully protected by the Second Amendment and had the independent right to purchase, possess, and carry firearms, as Respondents suggest.

Respondents also fail to account for the fact that militia laws often required "children as young as 15 to serve." App.43a (footnote and citation omitted). If Respondents are correct that modern Second Amendment rights are defined by Founding-era militia service, then there is no principled basis to uphold a modern law preventing 15-year-olds from arming themselves. The law does not support such an extreme reading of the Second Amendment. *See Bruen*, 597 U.S. at 73 (Alito, J. concurring) (explaining that *Bruen* did not invalidate age restrictions on the sale or possession of handguns).

III. RESPONDENTS' VEHICLE ARGUMENTS DO NOT UNDERMINE EITHER THE CERTWORTHINESS OF THIS CASE OR THE NEED FOR A GVR ORDER.

Respondents' contention that a potential mootness issue could prevent this Court from reaching the question presented is astonishingly disingenuous.

In the Court of Appeals, Respondents forcefully—and successfully—argued that post-appeal

developments (*i.e.*, an amendment to Pennsylvania's Constitution) did not render this case moot. 3d Cir. Dkt. No. 44. Believing it was not even a close call, Respondents asserted that these developments "represented at best, a temporary abatement of a permanent problem[.]" *Id.* at 7. Respondents also insisted that, even if the case was moot, it was "a considerably strong[] case" for the capable of repetition yet evading review exception because it was "a near-certainty" the conduct would recur. *Id.* at 4-6. And the presence of organizational plaintiffs "essentially eliminate[d] whatever guesswork remaine[d]." *Ibid.* Respondents convinced the Court of Appeals. App.28a-29a.

Finding their prior position no longer advantageous, Respondents conveniently abandon it before this Court, positing that the question of mootness "could impede this Court's ability to answer the question presented[.]" Br. in Opp. at 29.

Respondents should be judicially estopped from their about-face on mootness. "[J]udicial estoppel 'generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.'" *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (quoting *Pegram v. Herdrich*, 530 U.S. 211, 277 n.8 (2000)); *see also* Wright & Miller, 18B Fed. Prac. & Proc. Juris. § 4477 (3d ed.) ("Absent any good explanation, a party should not be allowed to gain an advantage by litigating on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory.").

Setting aside Respondents' patent inconsistency, the fact that jurisdictional issues were litigated below presents no barrier to a GVR order. In *Antonyuk*, for example, jurisdictional issues were raised in the

Second Circuit, prompting the respondent to argue in this Court that those issues made the case a poor vehicle for certiorari. *Antonyuk v. James*, 23-910, Respondents' Opp. Br. at 24-25 (U.S. May 9, 2024); *see also Antonyuk v. Chiumento*, 89 F.4th 271, 307 (2d Cir. 2023). But that did not prevent this Court from entering a GVR order following *Rahimi*, even though neither party requested one. *Antonyuk v. James*, 144 S.Ct. 2709 (2024).

Respondents also argue that this case is a poor vehicle for certiorari because of the purportedly "unusual nature" of Pennsylvania's law, noting that Pennsylvania is comparatively less restrictive of 18-to-20-year-olds' public carry rights than other states. Respondents Br. at 28. But the mere fact that Pennsylvania's legislature has not elected to regulate 18-to-20-year-olds as extensively as other states has no bearing on the importance of the broad constitutional question presented. States, after all, are the "laboratories" of democracy and have inherent flexibility to experiment with different policies, within constitutional bounds. *See, e.g.*, *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 817 (2015). There is nothing about the nature of Pennsylvania's law that would hinder this Court's ability to assess the historical record and answer the question presented.

IV. THERE IS A CLEAR SPLIT OVER THE QUESTION PRESENTED.

As the Commissioner's petition explained, this case warrants review because the Court of Appeals resolved an important, reoccurring constitutional question that divides lower courts. Petition at 13-20.

Unable to refute that the question presented is of nationwide importance, Respondents argue that there

is no split because courts have "uniformly held" that restrictions on 18-to-20-year-olds are unconstitutional. Br. in Opp. at 12-17. To manufacture this purported consensus, Respondents conveniently discount any pre-*Bruen* decision addressing the question presented. *Ibid.* Respondents ignore, however, that many of those pre-*Bruen* decisions upheld restrictions on 18-to-20-year-olds under the historical prong that *Bruen* endorsed.

For example, when the Fifth Circuit addressed the issue in 2012—making it the first among Courts of Appeals to do so—it conducted an exhaustive historical survey and concluded that restrictions on 18-to-20-year-olds were "consistent with a longstanding, historical tradition" that conformed "with founding-era thinking[.]" *Nat'l Rifle Ass'n v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 199-204 (5th Cir. 2012) (upholding federal law prohibiting federally licensed firearms dealers from selling handguns to persons under age 21).[4] Other courts later reached the same conclusion without any reference to means-end scrutiny. *People v. Mosley*, 33 N.E.3d 137, 153-155 (Ill. 2015) (upholding public-carry restrictions on 18-to-20-year-olds as "historically rooted").[5]

The question presented has percolated long enough, and the Third Circuit and Eighth Circuits' holdings this year have created a clear split of authority on that important question. If it does not issue a GVR order, this Court should resolve that split and answer the

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[4] The Fifth Circuit proceeded to means-end scrutiny out of "an abundance of caution" even though it concluded that the historical analysis was sufficient. *Id.* at 204-05.

[5] Courts in Illinois have reiterated this holding since *Bruen*. *See*, *e.g.*, *People v. Thompson*, ___ N.E.3d ___, 2024 IL App 221031, ¶ 35 (Il. App. 1st Aug. 30, 2024).

question presented, providing much needed clarity to the federal government and the 31 other states that also have laws regulating firearm use by 18-to-20-year-olds.

CONCLUSION

The Court should enter a GVR order. Alternatively, it should grant the petition and resolve the question presented.

Respectfully submitted,

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