Received 03/19/2026 02:57 PM Supreme Court Middle District

Filed 03/19/2026 02:57 PM Supreme Court Middle District
1 MAP 2026

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 1 MAP 2026

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

KAREEM MOHAMMED WILLIAMS JR.,

Appellant.

BRIEF OF GUN OWNERS OF AMERICA, GUN OWNERS FOUNDATION, GUN OWNERS OF CALIFORNIA, TENNESSEE FIREARMS ASSOCIATION, TENNESSEE FIREARMS FOUNDATION, VIRGINIA CITIZENS DEFENSE LEAGUE, VIRGINIA CITIZENS DEFENSE FOUNDATION, AMERICA'S FUTURE, U.S. CONSTITUTIONAL RIGHTS LEGAL DEFENSE FUND, HELLER FOUNDATION, AND CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

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INTEREST OF THE *AMICI CURIAE*

Amici Gun Owners of America, Gun Owners Foundation, Gun Owners of California, Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, America's Future, U.S. Constitutional Rights Legal Defense Fund, Heller Foundation, and Conservative Legal Defense and Education Fund are nonprofit organizations exempt from federal income taxation under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code. Each organization participates actively in the public policy process and has filed numerous *amicus curiae* briefs in federal and state courts defending U.S. citizens' rights against government overreach.

Pursuant to Pa.R.A.P. 531(b)(2), no person or entity, other than the identified *amici* and their counsel, has (i) paid in whole or in part for the preparation of this brief, or (ii) authored in whole or in part this brief.

STATEMENT OF THE CASE

In 2023, police conducted a traffic stop of a heavily tinted vehicle[1] in which Appellant Kareem Mohammed Williams Jr. was a passenger. *See Commonwealth v. Williams*, 341 A.3d 144, 147 (Pa. Super. 2025) ("*Williams*"). Police smelled marijuana[2] and observed Williams had a pack on his person, which Williams later disclosed had a firearm inside. *Id.* The firearm in question – a 9mm Springfield XD-S (*id.*) – was a handgun, the "quintessential" and "most popular weapon chosen by Americans for self-defense." *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008).

Even so, Pennsylvania law criminalized Williams' possession of his handgun while in the vehicle. The Pennsylvania Uniform Firearms Act generally prohibits "any person" from "carr[ying] a firearm in any vehicle … without a valid and lawfully issued license." 18 Pa.C.S. § 6106(a)(1). And, in order to be eligible for a Pennsylvania License to Carry Firearms ("LTCF"), an individual must be "21 years of age or older." *Id.* § 6109(b).

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[1] *See also* Anthony Maenza, "Traffic Stop Results in Arrest of York City Men on Gun Charges," *York Daily Record* (Apr. 20, 2023).
[2] Maenza, *supra*.

That presented a problem for Williams. At the time of his traffic stop, he was 19 years old. *Williams* at 147. Despite being an adult capable of contracting, assuming debt, marrying, serving this country under the law – and indeed, even possessing handguns generally – an 18-to-20-year-old adult is statutorily barred from possessing a loaded handgun *while in a car*. Moreover, young adults' statutory ineligibility for an LTCF meant that Williams ultimately was charged with a "felony of the third degree." 18 Pa.C.S. § 6106(a)(1). Had he been at least 21 at the time of his traffic stop, his failure to seek licensure only would have resulted in a "misdemeanor of the first degree." *Id.* § 6106(a)(2).

Before trial, Williams moved to dismiss his charge under the Second and Fourteenth Amendments to the U.S. Constitution and Article I, Section 21 of the Pennsylvania Constitution, citing the textual and historical framework the U.S. Supreme Court adopted in *Heller* and reiterated in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). *Williams* at 147-48. The trial court denied Williams' motion without taking evidence or hearing argument,[3] invoking its discretion to do so

[3] Despite the differences in wording between the Second Amendment and Article I, Section 21, the trial court declined to recognize greater protection under the Pennsylvania Constitution, simply because no *judge* had ever done so. *See Williams* at 149 (""There is not a single case to support the argument...."'). *Compare* U.S. Const.

under Pa.R.Crim.P. 577. *Williams* at 148, 149. Based on stipulated facts, the trial court ultimately found Williams guilty of violating Section 6106(a)(1), sentencing him to two-and-a-half to five years' incarceration. *Williams* at 148.

In July 2025, a panel of the Superior Court affirmed Williams' conviction. As relevant to this *amicus* brief, the panel upheld the challenged statute as "consistent with the nation's historical tradition of firearm regulation." *Id.* at 154. First, the panel had "little trouble in saying that Williams' conduct, carrying a firearm in a vehicle, is protected" under the Second Amendment's plain text. *Id.* Even so, the panel declined to offer young adults a presumption of constitutional protection under *Bruen*. Claiming a "lack [of] proper guidance" as to whether an 18-to-20-year-old "is part of 'the people' protected by the Second Amendment," the panel chose "not [to] rule on this issue," as it was "immaterial to [the] ultimate decision." *Id.* at 154 n.17. Indeed, the panel ultimately concluded that there is "evidence of a historical tradition

Amendment II ("shall not be infringed"), *with* Pa. Const. Art. I, § 21 ("shall not be questioned").

of individuals aged 18-to-21 being prohibited from possessing firearms" altogether. *Id.* at 154.

Beginning its historical survey with Section 6109's age requirement, the panel observed that some colonial jurisdictions disarmed Catholics on the theory that their potential loyalty to the Pope rendered them "too dangerous to be able to safely or responsibly bear arms." *Williams* at 154. And, at the Founding, the panel noted that "slaves and Native Americans were similarly prohibited from possessing firearms," also for their perceived "'threats to public safety and stability.'" *Id.* at 154-55. Then shifting to the 19th century, the panel identified additional categories of people that legislatures had disarmed – "'tramps,'" "'vagrants,'" "persons of unsound mind," and "intoxicated persons" – before noting that, between 1856 and 1893, "29 jurisdictions" placed age restrictions on the purchase or possession of firearms. *Id.* at 155.

The panel also found "the founding-era treatment of 18-to-20-year-olds as minors" or legal "infants" to be "weighty evidence" supporting their modern disarmament. *Williams* at 155. As the panel observed, minors lacked certain legal rights and were subject to the supervision of

their parents and schools. *See id.* at 155-56. Even so, at no point did the panel identify a Founding-era law prohibiting 18-to-20-year-olds from possessing firearms, whether concealed, on a horse or other form of transportation, or otherwise. In fact, the panel acknowledged that, at the Founding, 18-to-20-year-olds often were *required* to bear arms for militia duty and, to the extent they faced difficulty obtaining their own arms for this purpose, jurisdictions often enacted legislation to guarantee their supply. *See Williams* at 156. Ultimately, though, the panel rejected this tradition, distinguishing militia participation as an "obligation or duty," as opposed to a "legal right." *Id.*

Concluding with additional late-19th-century evidence, the panel cited some "twenty jurisdictions" that enacted express restrictions on "individuals younger than 21" from purchasing or possessing firearms. *Williams* at 156, 157. Taken together, the panel found these sources evinced "a national historical tradition … of restricting firearm access to individuals deemed unable to responsibly bear arms, particularly 18-to-20-year-olds." *Id.* at 157.

Turning to Section 6106's operative criminal prohibition, the panel observed that "our historical tradition is rather quiet" regarding the

"carrying [of] firearms in 'the available forms of transportation'" throughout history. *Williams* at 157. And without historical regulations directly analogous to Section 6106's vehicle provision, the panel cast a wider net. Relying on historical regulations of concealed carry generally, the panel upheld Section 6106 on two grounds. First, the panel posited that Section 6106 is "'relevantly similar'" to the various "'public-carry restrictions'" that *Bruen* had acknowledged from "after the ratification of the Second Amendment in 1791." *Id.* at 158. Second, the panel claimed Section 6106 can be "viewed through the same lens as a standard licensing scheme for concealed carry," and so *Bruen*'s footnote discussion of "shall-issue licensing regimes" was "controlling." *Id.*

Finally, the panel rejected Williams' Article I, Section 21 argument, citing prior panel decisions of the Superior Court that had declined to recognize "'any greater restriction on government firearm regulations than the Second Amendment.'" *Williams* at 159.[4]

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[4] Truth be told, Pennsylvania courts often recognize broader protections for *other* constitutional rights. *See, e.g.*, *Norton v. Glenn*, 860 A.2d 48, 57 (Pa. 2004) ("[T]his court has often declared that the Pennsylvania Constitution recognizes broader free expression rights than does the federal constitution."); *Commonwealth v. Jackson*, 698 A.2d 571, 573 (Pa. 1997) ("The protection against unreasonable searches and seizures afforded by the Pennsylvania Constitution is broader than that under the federal Constitution...."); *Commonwealth v. Morley*, 681 A.2d 1254, 1258 (Pa. 1996) (Article I, Section 9 "extends the privilege" against self-incrimination "to the

Following the panel's affirmance of his conviction, Williams timely appealed to this Court, after which this Court granted allocatur on January 6, 2026.

SUMMARY OF ARGUMENT

As the saying goes, bad facts make bad law. At age 14, Kareem Mohammed Williams Jr. stuck a gun to a man's head and stole his iPhone.[5] A year later, he was part of a pack of teens that cornered a young woman near a school and shot her.[6] But apparently neither of those violent crimes – nor any of Williams' subsequent string of arrests – was sufficient reason for the York County, Pennsylvania justice system – spearheaded by then-District Attorney Dave Sunday – to keep Williams locked up. Instead, he was placed back into society to continue terrorizing the community. Thus, in an effort to take Williams off the streets again, the police were left with no option but to charge Williams

protection of a citizen's reputation, whereas the federal constitution does not."). The same is true for the courts of other states. *See, e.g.*, *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 62 A.3d 123, 131 (Md. 2013).

[5] Teresa Boeckel, "York Teen, 14, Charged with Robbing Victim at Gunpoint for an iPhone," *York Daily Record* (Feb. 8, 2018).

[6] Mike Argento, "Teens Ages 15 and 17 Sought in Connection with York Shooting Near School," *York Daily Record* (Oct. 4, 2019).

– who somehow by then had not become a felon in possession – with an unconstitutional charge for the mere possession of a handgun.

But the failure of government to protect its citizens from the worst among us is no justification to infringe the constitutional rights of "all Americans." As President John Adams famously observed in a 1798 letter, "[o]ur Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other."[7] Because this Court's decision will have implications for all Pennsylvanians – not just Williams – this case calls for the strictest adherence to principle. *Amici* highlight the following precepts to aid this Court's analysis, and to ensure that the people for whom the Constitution was intended are not punished for the actions of those on society's fringes.

First, the relevant textual and historical analysis already has been done, and all this Court needs to do is apply it. As the Third Circuit persuasively explains, young adults belong to "the people" protected by the Second Amendment, and there is no relevant historical tradition of restricting this group's right to public carry. In contrast to the panel opinion below, the Third Circuit faithfully applied the Supreme Court's

[7] Letter, From John Adams to Massachusetts Militia, 11 October 1798 (Oct. 11, 1798).

precedents. Accordingly, this Court should do no more than follow that reasoned decision, joining the growing consensus of courts to uphold the constitutional rights of young adults.

Second, the Supreme Court's precedents independently require reversal of the decision below. For starters, the Court has explained that the Second Amendment logically must protect, at *minimum*, the persons, conduct, and arms that give effect to the Amendment's prefatory militia clause – *i.e.*, the purpose for which the Amendment was ratified. Because young adults have always been part of a community's fighting force "necessary to the security of a free State," they obviously constitute part of "the people" who have a right to public carry. That conclusion is bolstered by the utter dearth of Founding-era firearm regulations prohibiting young adults from possessing arms. The public understanding of that time period controls, and the subsequent history the panel cobbled together cannot overcome the intent of the Framers. Finally, the panel's paltry historical record contains no analogue for the statutes challenged here. Courts cannot rely on racist and discriminatory laws to uphold modern gun control, and the challenged

statutes' harsh felony penalties render Pennsylvania's regime disanalogous to anything the Framers adopted or ever intended.

Third, the historical record is clear that Founding-era youths often acquired and possessed firearms separate and apart from militia service. Thus, irrespective of whether young adults' participation in the militia was merely an "obligation" as opposed to evidence of a "right," the panel's ultimate conclusion is belied by the ubiquitous practices of the Founding generation.

ARGUMENT

I. THE PANEL DISREGARDED A PERSUASIVE THIRD CIRCUIT DECISION, INSTEAD CASTING ABOUT FOR A CONTRARY PRECEDENT TO FOLLOW.

The Second Amendment to the U.S. Constitution guarantees "the right of the people to keep and bear Arms." In *Lara v. Commissioner*, the U.S. Court of Appeals for the Third Circuit explicitly recognized the Second Amendment rights of 18-to-20-year-old Pennsylvanians to "carry firearms outside their homes for lawful purposes, including self-defense." *Lara v. Comm'r Pa. State Police*, 125 F.4th 428, 431 (3d Cir.) (*"Lara"*), *reh'g denied*, 130 F.4th 65 (3d Cir. 2025), *petition filed*, No. 24-1329 (U.S.

Supreme Court, June 26, 2025).[8] By now, *Lara*'s reasoning has been well-vetted. Indeed, the Third Circuit has come to the same conclusion twice, denying petitions for rehearing en banc each time. *See Lara v. Comm'r Pa. State Police*, 97 F.4th 156 (3d Cir. 2024). It stands to reason that *Lara* may have been onto something.

As *Lara* explained, the Second Amendment's reference to "the people" "cast[s] a wide net" and contains a "strong presumption that the Second Amendment applies to 'all Americans.'" *Lara* at 436, 435 (quoting *Heller* at 581). Indeed, "[i]t is undisputed that 18-to-20-year-olds are among 'the people' for other constitutional rights," and the "record of state regulations on 18-to-20-year-olds at the time of the Second Amendment's ratification" is "sparse." *Id.* at 437, 443. Accordingly, *Lara* concluded that the Commonwealth's "restriction on 18-to-20-year-olds' Second Amendment rights" was "[in]consistent with the principles that underpin founding-era firearm regulations," and so it was unconstitutional. *Id.* at 445. This was true even if 18-to-20-year-olds

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[8] Separately, and as relevant here, the U.S. District Court for the Middle District of Pennsylvania has found "the vehicle provision of Section 6106 of the UFA" requiring licensure to be "facially unconstitutional" under the Second and Fourteenth Amendments. *Suarez v. Paris*, 741 F. Supp. 3d 237, 265 (M.D. Pa. 2024); *cf. Williams* at 150 (Williams "carrying a firearm in a vehicle"). That decision is pending appeal. *See Suarez v. Comm'r Pa. State Police*, No. 24-2395 (3d Cir.).

were considered legal "'infants'" or "'minors'" at the Founding. *Id.* at 436. Indeed, 18-to-20-year-olds still were free to possess firearms at the time, and were often *required* to do so. *Id.* at 443-44. Moreover, if "eighteenth-century conceptual boundaries" of "the people" still controlled, that would mean only "white, landed men" would be able to possess firearms today. *Id.* at 437.

Following *Lara* would resolve this case. Nevertheless, the panel below dismissed the Third Circuit's reasoned decision out of hand, looking 800 miles away for a decision that supported its contrary conclusion. And, tracking in large part the Eleventh Circuit's decision upholding a Florida age restriction in *NRA v. Bondi*, 133 F.4th 1108 (11th Cir. 2025),[9] the panel cited Founding-era legal infancy as "weighty evidence of a historical tradition" supporting Williams' disarmament. *Williams* at 155. The panel did so even though the Third Circuit rejected reliance on this same evidence as "untenable." *Lara* at 437.[10]

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[9] This decision is pending a petition for a writ of certiorari *sub nom. NRA v. Glass*, No. 24-1185 (U.S. Supreme Court, May 16, 2025).

[10] Likewise, some of these *amici* filed an *amicus* brief in support of the NRA petitioners in the U.S. Supreme Court, explaining why Founding-era legal infancy concepts fail to support the disarmament of young adults today. *See* Brief *Amicus Curiae* of Gun Owners of America et al., *NRA v. Glass*, No. 24-1185 (U.S. Supreme Court, June 20, 2025).

Although this Court is "not obligated to follow the decisions of the Third Circuit on issues of federal law," *Hall v. Pa. Bd. of Prob. & Parole*, 851 A.2d 859, 865 (Pa. 2004), it would be wise to do so here. Indeed, as this Court recognized in *Commonwealth v. Negri*, 213 A.2d 670 (Pa. 1965), the "Third Circuit Court of Appeals is … for all practical purposes, the ultimate forum in Pennsylvania" when the Supreme Court has yet to "clarify" "widespread confusion in [an] area of [federal] law." *Id.* at 672. Of course, that is the case here. The Supreme Court has yet to decide the question of 18-to-20-year-olds' rights to public carry under the Second Amendment, and the lower courts have split on this question. *See Williams* at 147 n.2. Should this Court depart from the Third Circuit and affirm the decision below, the "widespread confusion" only will increase.

Indeed, under the decision below, an 18-to-20-year-old may be entirely "prohibited from possessing firearms" by virtue of his age, and it is an open question whether he even belongs to "the people" covered by the Second Amendment in the first place. *Williams* at 154 & n.17.[11]

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[11] Although the panel "ha[d] little trouble in saying that Williams' conduct, carrying a firearm in a vehicle, is protected by the Second Amendment" as a general matter, the panel did "not rule on th[e] issue" of whether Williams was "part of 'the people' protected by the Second Amendment," because it was "immaterial to [the] ultimate decision." *Williams* at 154 & n.17. In other words, the panel "assumed without deciding" that Williams was covered by the Second Amendment's plain text.

Meanwhile, in Pennsylvania's *federal* courts, those questions have been definitively resolved in young adults' favor – unless and until the Supreme Court decides otherwise. There, an 18-to-20-year-old undoubtedly belongs to "the people," and he has a right to "carry[] firearms in public places." *Lara* at 438, 432. In other words, affirmance would mean that an "individual to whom we deny relief need only to 'walk across the street' to gain a different result." *Negri* at 672.

But even aside from consistency, *Lara* faithfully applied the Supreme Court's precedents. Taking its cue from *Heller*, *Lara* began with "'a strong presumption that the Second Amendment right … belongs to all Americans.'" *Lara* at 435-36 (quoting *Heller* at 581). Then, *Lara* examined the "firearm regulation[s]" (*Bruen* at 17) and "gun laws" (*United States v. Rahimi*, 602 U.S. 680, 693 (2024)) the government proffered. Finding no analogous *firearm* regulation during the operative historical time period,[12] *Lara* concluded that the challenged restriction was not just atextual, but also ahistorical. Unsurprisingly, two other circuits have come to the same conclusion as *Lara* on the rights of 18-to-

[12] This dearth of Founding-era regulation is dispositive. Indeed, "[t]he members of the first Congress were ignorant of thermal heat imaging devices; with late teenage males, they were familiar." *NRA v. BATFE*, 714 F.3d 334, 342 (5th Cir. 2013) (Jones, J., dissenting from denial of rehearing en banc).

20-year-olds. *See Reese v. BATFE*, 127 F.4th 583 (5th Cir. 2025); *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 1924 (2025).

With *Lara* (and the decisions of other circuits that have followed it) as persuasive support, this Court should reverse the decision below.

II. THE PANEL OPINION CONTRAVENES THE U.S. SUPREME COURT'S SECOND AMENDMENT PRECEDENTS, WARRANTING CORRECTION HERE.

A. Because the Second Amendment's Prefatory Militia Clause "Announces a Purpose" for the Right, at a Minimum It Must Protect Those Persons Who Give the Clause Effect.

In *Heller*, the Supreme Court recognized that the Second Amendment protects more than just the right to defend against common criminals. Indeed, having just thrown off the yoke of the then-most powerful empire in the world, the Framers were preoccupied – first and foremost – with guaranteeing themselves a failsafe against future despotism. This Court already acknowledged this "historical background" in *Barris v. Stroud Township*, 310 A.3d 175, 178 (Pa. 2024), and it bears emphasis here.[13]

[13] Recent events have demonstrated that, given this historical context, support for the Second Amendment ought to transcend party lines. *See, e.g.*, Tim Darnell, "Senate Democrats Get Behind Second Amendment After Alex Pretti Fatal Shooting," *MSN* (Jan. 28, 2026). Although often viewed as a "conservative" cause these days,

As *Heller* explained, the Second Amendment's prefatory militia clause "does not limit the [operative clause] grammatically, but rather announces a purpose." *Heller* at 577. The militia clause therefore serves a "clarifying function," because "[l]ogic demands that there be a link between the stated purpose and the command." *Id.* at 578, 577. Specifically, the Framers understood the militia – "a subset of 'the people'" described in the operative clause – to be "useful in repelling invasions and suppressing insurrections," to "render[] large standing armies unnecessary," and to "train[] in arms and organize[] … to resist tyranny." *Id.* at 580, 597-98. All of these functions, they explained, were "'necessary to the security of a free State.'" *Id.* at 597. Accordingly, the militia clause "clarif[ies]" just *whom*, among others, the Second Amendment must protect.[14]

So who belonged to the militia? At the Founding, the answer was clear: "all able-bodied men … upon turning 18." *Lara* at 443; *see* Second Militia Act of 1792 § 1, 1 Stat. 271, 271 (1792).[15] In fact, some states had

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Democrats recently have acknowledged the right to public carry – particularly at protests against government use of force.

[14] *Accord Reese* at 594 ("[T]he prefatory clause, in establishing the Amendment's purpose, describes those who, at a minimum, must have been covered by it.").

[15] In contrast to the Second Amendment's broad protection of "the people," other constitutional provisions contain express age requirements. *See, e.g.*, U.S. Const. Art.

even lower age thresholds than the federal level. Massachusetts and New York, for example, each required 16-year-olds to enroll in their respective militias. *See United States v. Miller*, 307 U.S. 174, 180-81 (1939) (collecting authorities). And in the latter case, New York required that "every Citizen so enrolled … shall … provide himself, at his own Expense, with a good Musket or Firelock." *Id.* at 181.

It seems unlikely that the same Framers who deemed young adults "necessary to the security of a free State" and required them to be armed simultaneously would have tolerated a complete ban on their rights to public carry. Indeed, as the panel below demonstrated, the Framers never explicitly prohibited 18-to-20-year-olds from carrying firearms. *Williams* at 154-55. Young adults clearly belong to "the people" protected by the Second Amendment, and this Court should recognize that basic precept here.

I, § 2, cl. 2 ("No Person shall be a Representative who shall not have attained to the Age of twenty five Years...."). Clearly, the Framers knew how to add "a minimum age requirement" when they wanted to. *Reese* at 591; *see also* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 93 (2012) ("Nothing is to be added to what the text states or reasonably implies.... That is, a matter not covered is to be treated as not covered.").

B. The Founding Era Is the Primary Time Period for Historical Analysis, While Pre- and Post-Enactment History Serves (at Most) a Confirmatory Role.

In upholding the challenged statute, the panel below relied on only two types of *Founding*-era gun laws – laws disarming "slaves and Native Americans." *Williams* at 154. It was not until much later – in the mid-to-late 19th century – that the panel could find examples of jurisdictions imposing firearm restrictions based on age. *See id.* at 155. Of course, these latecomer enactments fall well outside the Supreme Court's temporal focal point and, without a Founding-era tradition to confirm, they are irrelevant standing alone.

As *Bruen* explained, "not all history is created equal." *Bruen* at 34. And despite acknowledging "an ongoing scholarly debate" as to the relevance of Reconstruction-era history, the Court has "generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791." *Id.* at 37. Thus, post-Founding history "[i]s 'treated as mere confirmation of what the Court thought had already been established.'" *Id.* In other words, this Court is to "'apply[] faithfully the balance struck by the founding generation to

modern circumstances.'" *Rahimi* at 692. Post-enactment history may help confirm this Court's understanding if it is consistent with original meaning, but such history alone "'obviously cannot overcome or alter th[e] text.'" *Bruen* at 36.

Although this Court previously found a temporal focus on Reconstruction to be "highly persuasive" (*Barris* at 208 n.41), it did not explicitly choose between the timeframes. And, importantly, the U.S. Supreme Court has never adopted this sort of bifurcated approach for federal challenges to state action. To the contrary, the Court has focused on Founding-era understandings for all manner of constitutional rights – the Second Amendment included. So too has the Third Circuit. *See Lara* at 441 ("We reiterate … that the constitutional right to keep and bear arms should be understood according to its public meaning in 1791....").

Consider one recent First Amendment challenge to state action, where the Supreme Court observed that "a tradition" that "arose in the second half of the 19th century," even in "more than 30 States," "cannot by itself establish an early American tradition." *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 482 (2020). Likewise, in another First

Amendment challenge to state action decided within days of *Bruen*, the Court explained that the "line" courts must draw under the Establishment Clause must "accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535, 536 (2022). And in a Sixth Amendment challenge to state action, the Court also examined the "historical record," "admitting only those exceptions established at the time of the founding." *Crawford v. Washington*, 541 U.S. 36, 54 (2004) (emphasis added).

Consistent with these U.S. Supreme Court precedents (and many others too numerous to list here), this Court should clarify that the Founding era *alone* controls historical analysis under the Second Amendment, with later history providing, at most, further confirmation. And, surveying the history through this focal point, this Court should reverse the decision below.

C. Bigoted Firearm Regulations Are Invalid Historical Analogues and, Without Them, the Challenged Statute Has No Founding-Era Basis.

As noted, the panel grounded its historical analysis of Section 6109 in only two categories of Founding-era enactments – laws disarming "slaves and Native Americans." *Williams* at 154. Not only did these

enactments leave intact the rights of *young adults* to public carry, but also they did not even reach groups of people who were considered "*Americans*" at the time.[16] But far more concerningly, the racial animus with which these laws were enacted cannot justify any sort of gun control law today.

Indeed, as the Supreme Court instructed, a historical analogue must "regulate[] arms-bearing for a permissible reason." *Rahimi* at 692. And as Justices of the Court recently made clear during oral argument in *Wolford v. Lopez*, racist and discriminatory laws are as far from having a "permissible reason" as it gets. Questioning Hawaii's reliance on a notorious Louisiana Black Code in *Wolford*, Justice Alito posed the following questions:

> [W]asn't the purpose of the laws in the … post-Reconstruction South that disarmed black people precisely to prevent them from doing what the Second Amendment is designed to protect...? … So is it not the height of irony to cite a law that was enacted for exactly the purpose of preventing someone from exercising the Second Amendment right to cite this as an example of what the Second Amendment protects?[17]

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[16] *See, e.g.*, *United States v. Carbajal-Flores*, 143 F.4th 877, 886 (7th Cir. 2025) ("disarming slaves and Native Americans … confirm[s] the Founders" considered these groups "outside the polity"); *cf.* *Heller* at 580 (explaining "'the people' … unambiguously refers to all members of the political community").

[17] Transcript of Oral Argument at 99:19-100:9, *Wolford v. Lopez*, No. 24-1046 (U.S. Jan. 20, 2026).

Likewise, Justice Kavanaugh noted that "we flatly reject[] … historical example[s]" that "were rooted in racial prejudice."[18] Indeed, such history is "*inadmissible* to … somehow justify[] an exception to the constitutional right."[19] In other words, "courts must exercise care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind." *Rahimi* at 723 (Kavanaugh, J., concurring).

The position of the United States is in accord. Recently participating as *amicus curiae* in a Second Amendment appeal in the Ninth Circuit, the Department of Justice explained that "a firearms regulation that seeks to frustrate the exercise of the right to keep and bear arms is a per se violation of the Second Amendment."[20]

This Court should not rely on historical enactments that would not pass constitutional muster today, and it should instruct Pennsylvania's lower courts to stop the practice as well.

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[18] *Id.* at 101:12-15.

[19] *Id.* at 101:20-22 (emphasis added).

[20] En Banc Brief for the United States as *Amicus Curiae* in Support of Plaintiffs-Appellees and Supporting Affirmance at 14, *Rhode v. Bonta*, No. 24-542 (9th Cir. Jan. 5, 2026).

D. Historical Analogues Must Have Comparable Penalties, and Section 6106's Felony Provision Is an Outlier.

Finally, Section 6106 imposes felony penalties on any 18-to-20-year-old who carries a loaded handgun inside a vehicle. *See* 18 Pa.C.S. § 6106(a)(1). A felony conviction not only risks potentially many years in jail – but also it promises lifetime disarmament under 18 U.S.C. § 922(g)(1). These harsh modern outcomes are analytically relevant under *Bruen*.

Indeed, "the penalty" of a law is "another relevant aspect" of *Bruen*'s analogical inquiry (*Rahimi* at 699), and a modern penalty that is disproportionate to historical evidence will render that evidence disanalogous. *See Heller* at 633-34 (dispensing with a historical law "imposing a 5-shilling fine and forfeiture of the gun" because "[t]he District law, by contrast, far from imposing a minor fine, threatens citizens with a year in prison"). If historical penalties for similar offenses were comparatively light, then it is unlikely they "would have prevented a person in the founding era from using a gun to protect himself." *Id.* at 634. Accordingly, the "modern and historical regulations" would not

"impose a comparable burden on the right of armed self-defense," thereby failing *Bruen*'s "how." *Bruen* at 29.[21]

With these principles in mind, this Court should discount historical laws that did not impose a similar penalty to the statute challenged here.

III. THE HISTORICAL RECORD EVINCES A TRADITION OF YOUNG PEOPLE OWNING AND USING FIREARMS UNCONNECTED WITH MILITIA SERVICE.

Contrary to the panel's claim that Founding-era 18-to-20-year-olds merely had an "obligation" to bear arms in a militia rather than an independent "right" to possess those arms, the historical record contains many examples to the contrary. Indeed, firearm ownership and possession among young adults (and, indeed, far younger) was the norm.

For instance, Daniel Boone began hunting with his first gun at the age of 13.[22] Likewise, in his autobiography, Davy Crockett discussed

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[21] Moreover, a disparity in the "how" between historical and modern restrictions can indicate that they were intended to accomplish entirely different things, and therefore serve a different "why." In the case of Founding-era slaves and Native Americans, for example, these groups often were categorically barred from possessing firearms, regardless of context. *See Carbajal-Flores* at 885. The same is not true for young adults today. The harsher Founding-era "how" therefore indicates that those historical restrictions likely sought to disarm *foreigners* believed to threaten "the security of a free State." Whatever the reason for restricting the rights of young adults in vehicles today, it is probably not *that*.

[22] John Faragher, Daniel Boone: The Life and Legend of an American Pioneer xi (1992).

purchasing his first rifle before the age of 18.[23] And "[w]hen Thomas [Jefferson] was 10 years old, his father was confident enough to send the boy into the wilderness alone with nothing but his firearm, to learn self-reliance."[24] In fact, Jefferson's nephew Thomas Jefferson Randolph "tells us that Jefferson believed every boy should be given a gun at the age of ten, as Jefferson himself had been."[25] And "[w]hen John Adams had been a nine-or ten-year-old schoolboy, he loved to engage in sports, 'above all, in shooting, to which diversion I was addicted to a degree of ardor which I know not that I ever felt for any other business, study, or amusement.' He would leave his gun by the schoolhouse door, so that he could go hunting as soon as classes ended."[26]

As the Boston Gazette put it in 1774, "[b]esides the regular trained militia in New-England, all the planters['] sons and servants are taught to use the fowling piece from their youth, and generally fire balls with great exactness at fowl or beast."[27] Unsurprisingly, then, Virginian

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[23] Davy Crockett, A Narrative of the Life of David Crockett 22 (1834).
[24] David Kopel & Joseph Greenlee, *The Second Amendment Rights of Young Adults*, 43 S. Ill. U. L.J. 495, 531 (2019).
[25] Don Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204, 229 n.107 (1983).
[26] Kopel & Greenlee, *supra*, at 532.
[27] *Id.* at 532-33.

Richard Henry Lee declared during the debates on ratification of the Constitution that, "to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them."[28]

These are not the historical accounts of a generation that disarmed its young adults. To the contrary, the historical record is clear that young people could and often did keep and bear arms unconnected with militia service. Because there is no historical tradition supporting the statute challenged here, this Court should reverse.

CONCLUSION

For the foregoing reasons, the judgment of the Superior Court should be reversed.

Respectfully submitted,

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[28] 17 <u>Documentary History of the Ratification of the Constitution</u> 363 (John P. Kaminski & Gaspare J. Saladino eds., 1995).

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March 19, 2026

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CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 531(b)(3)

I certify that the foregoing brief complies with Pa.R.A.P. 531 because it is filed during merits briefing and contains 5,589 words.

March 19, 2026

/s/ Oliver M. Krawczyk
Oliver M. Krawczyk

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

March 19, 2026

/s/ Oliver M. Krawczyk
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