No. 23-CF-0344

(Superior Court No. 2021-CF3-004336)

IN THE
DISTRICT OF COLUMBIA
COURT OF APPEALS

EMANUEL LEYTON PICON,

APPELLANT

v.

UNITED STATES,

APPELLEE

Appeal from the Superior Court of the District of Columbia
Criminal Division
(Hon. Robert Okun, Trial Judge)

SUPPLEMENTAL REPLY BRIEF FOR APPELLANT

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In his prior briefing Appellant Emanuel Leyton Picon explained that the Second Amendment's guarantee of the right to "keep and bear Arms," like all rights set out in the Bill of Rights, applies fully to all adults, including 18, 19, and 20-year-olds. Consequently, he argued, his convictions for violating, as a 20-year-old, statutes that strip under-21-year-olds of their Second Amendment rights must be reversed. In this Supplemental Reply Brief Leyton explains how decisions from several federal Circuit Courts of Appeals issued after his September 10, 2024 Reply Brief provide further support for his position. He also responds to additional briefing submitted by the government and by Intervenor District of Columbia after he filed his Reply Brief.[1]

ARGUMENT

I. RECENT DECISIONS

In his Reply Brief Leyton reviewed the then-existent federal appellate decisions that addressed the Second Amendment rights of under-21-year-olds that had been decided after the Supreme Court's decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), established the modern framework for interpreting the Second Amendment. There have now been additional appellate decisions.

[1] Leyton adopts the arguments made by the Public Defender Service for the District of Columbia in its amicus brief.

A. *Worth v. Jacobson*

One of the cases Leyton relied on in his Reply Brief was *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024), which supports his view that the District's prohibition on firearms for people aged 18-20 is unconstitutional. *Worth* held that a Minnesota law that "bans those under 21 years old from carrying handguns in public" violated the Second Amendment, as interpreted by *Bruen*. *Id.* at 683. The Supreme Court has now denied certiorari. *Jacobson v. Worth*, 221 L. Ed. 2d 664 (2025).

B. *Lara v. Commissioner Pennsylvania State Police ("Lara II")*

Leyton also discussed *Lara v. Commissioner Pennsylvania State Police (Lara I)*, 91 F.4th 122, 126-27 (3d Cir. 2024), which held that a Pennsylvania statute that "effectively bans 18-to-20-year-olds from carrying firearms outside their homes during a state of emergency" violated the Second Amendment. After Leyton's Reply Brief was filed, the Supreme Court summarily reversed and remanded the case "for further consideration in light of *United States v. Rahimi*, [602 U.S. 680 (2024)]." *Paris v. Lara*, 145 S. Ct. 369 (2024). However, on remand, the Third Circuit "determined that *Rahimi* sustains our prior analysis" and, consequently, reaffirmed its prior ruling in an opinion that largely repeats the original decision's analysis and conclusion. *Lara v. Comm'r Pa. State Police*

(Lara II), 125 F.4th 428, 431 (3d Cir. 2025); *see also id.* ("Much of what follows is repetitive of our earlier decision.").

C. *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*

In January of this year, in *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 586 (5th Cir. 2025), *mot. to extend until May 30, 2025 time to seek cert. granted* (U.S. Apr. 21, 2025) (No. 24A997), the Fifth Circuit struck down two provisions of federal law "which together prohibit Federal Firearms Licensees from selling handguns to eighteen-to-twenty-year-old adults."[2] Like other courts, the Fifth Circuit began its analysis by setting out the test *Bruen* established for determining Second Amendment constitutionality: "First, courts must determine whether 'the Second Amendment's plain text covers an individual's conduct.' If so, 'the Constitution presumptively protects that conduct,' and '[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.'" *Id.* at 588 (citations omitted) (quoting *Bruen*, 597 U.S. at 24).

Addressing the "plain text" prong of this test, the Fifth Circuit rejected the government's contention that 18–21-year-olds were not included among "the

[2] *Reese* explicitly overruled *National Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185 (5th Cir. 2012), a case relied upon by the government and the District, because that case is "incompatible with the *Bruen* and *Rahimi* decisions of the Supreme Court." 127 F.4th at 586.

people" whose right to bear arms was protected, describing one of the government's principal arguments as "nonsensical." *Id.* at 590-96. And, at the test's second prong, it found that the government had not met its burden because it "presented scant evidence that eighteen-to-twenty-year-olds' firearm rights during the founding-era were restricted in a similar manner to the contemporary federal handgun purchase ban." *Id.* at 600. The court made it clear that, when it came to finding analogues to challenged modern firearms regulations, the relevant period was the 1791 enactment of the Second Amendment, not the 1868 ratification of the Fourteenth Amendment. *Id.* ("'[T]he 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.'") (quoting *Bruen*, 597 U.S. at 37); *see also id.* at 599 ("Proceeding past the bounds of founding-era analogues … is risky").

D. *Rocky Mountain Gun Owners v. Polis*

In November 2024 the Tenth Circuit upheld a Colorado statute that increased the minimum age to purchase a firearm from 18 to 21. *Rocky Mt. Gun Owners v. Polis*, 121 F.4th 96, 104 (10th Cir. 2024). The court applied *Bruen*, though it thought it unnecessary to go beyond the first, textual step of the *Bruen* test. *Id.* at 120. It rejected Colorado governor Polis's contention that 18-20-year-olds were not protected by the Amendment "because 18 -to 20-year-olds were not

part of the political community at the Founding," explaining that "[w]hatever the definite contours of who 'the people' encompasses, we reject the notion that it is limited to only the class of persons with full legal rights, including the right to vote, at the time of the Founding or otherwise." *Id.* at 115 (citation omitted). However, according to the Tenth Circuit, the challenged statute was not inconsistent with the Second Amendment's text because it did not infringe on the "right to bear arms." *Id.* at 120. This was so because it only prohibited 18–20-year-olds from purchasing firearms—they could still possess and own them. *Id.* ("We … hold that laws imposing conditions and qualifications on the sale and purchase of arms do not implicate the plain text of the Second Amendment.").[3] In reaching its conclusion, the court observed that the interpretation of the Second Amendment "is anchored to the Second Amendment's original meaning at the time of the Founding." *Id.* at 114.

E. *NRA v. Bondi*

In March of this year, in *National Rifle Ass'n v. Bondi*, 133 F.4th 1108 (11th Cir. 2025), *petit. for cert filed* (U.S. May 16, 2025) (No. _____), a divided en banc Eleventh Circuit upheld Florida's prohibition of the purchase of firearms by

[3] The court also pointed to dicta in *District of Columbia v. Heller*, 554 U.S. 570 (2008), suggesting that there is a "presumption of legality for 'laws imposing conditions and qualifications on the commercial sale of arms.'" *Polis*, 121 F.4th at 119 (quoting *Heller*, 554 U.S. at 626-27).

minors. The parties in the case agreed that persons aged 18-20 should be deemed members of "the people" for Second Amendment purposes. With that not in dispute, the court focused on the ability of minors to purchase firearms during the period it thought relevant—"the Founding era." *Id.* at *13; *see also id.* at *15 ("The Second Amendment was ratified, and its meaning fixed, in 1791."). According to *Bondi*'s majority, during that era common law restrictions on the ability of minors to contract meant that, as a practical matter, "minors could not purchase weapons for themselves." *Id.* at *25. The majority then reasoned that, because persons aged 18-20 "could not purchase weapons for themselves" in colonial times, it was constitutional for the modern-day Florida legislature to prohibit such purchases by persons of the same age. *Id.* at *25, 33. The opinion did not suggest that there was any Founding Era prohibition on minors possessing firearms. Indeed, it noted that 18–20-year-olds were expected to have a firearm so that they could perform their militia obligations, though it suggested that these weapons were often parent-provided. *Id.* at *23-25.[4]

[4] As a dissenting judge pointed out, *Bondi*'s conclusion that 1790s minors could not purchase firearms was based on an unconvincing chain of attenuated inferences and ignored direct evidence that minors could make such purchases. *Id.* at *131-36 (Branch, J., dissenting).

F. These Recent Decisions Provide Further Support for Leyton's Position

A few aspects of these recent cases are particularly relevant to Leyton's appeal. Notably, *Worth* and *Lara II*, the two cases involving restrictions comparable to those challenged in this case—a ban on carrying handguns in public and on the possession of any firearm (and ammunition) anywhere—declared those restrictions to be unconstitutional. Moreover, while *Polis* and *Bondi* upheld purchase restrictions, it is clear from the reasoning of those cases that the results would have been different if a prohibition on carrying or possessing, as opposed to purchasing, had been at issue. And, in the wake of *Reese*, which vacated a purchase ban, there can be no doubt that the Fifth Circuit would strike down bans on carrying or possession by young adults comparable to those now in place in the District.

II. RESPONSE TO ARGUMENTS

A. Minors in the 1790s Were Not Rightless Individuals at the Mercy of Legislatures

The government's and District's view that, at its enactment, the Second Amendment did not apply to anyone under 21 relies on a misunderstanding of the legal status of persons under 21 at that time. Then, as now, the legal autonomy of minors was restricted. But minors were not a class of persons, like slaves or (in the eyes of many) free Blacks, who were understood to have no meaningful rights.

See, e.g., *Scott v. Sandford*, 60 U.S. 393, 407 (1857) (Black persons "had no rights which the white man was bound to respect"). The legal disabilities imposed on them were meant to protect their rights—and especially their property rights—from their own excesses and from abuse by others until they came of age. *See* Gov't Suppl. Br. at 14 ("their very disabilities are privileges" for their protection) (quoting 1 William Blackstone, *Commentaries on the Laws of England* 452-53 (1765)). To this end, minors (even with the consent of their parents) were not permitted to "do any act to the injury of their property, which they may not avoid or rescind when they arrive at full age." II James Kent, *Commentaries on American Law* 191 (1827).

Moreover, as is still the case, the law assumed that parents would act to support and protect their children. *See* Blackstone, *supra*, at 434 ("THE duty of parents to provide for the maintenance of their children is a principle of natural law"). Consequently, it is true that "[f]ounding-era parents retained substantial authority to supervise [their children] under the age of 21." Dist. Br. at 18. But the right to bear arms codified in the Second Amendment is a limitation on governments, not parents. It does not follow that, if parents in the early republic could prevent their 18-20-year-old children from owning or carrying a firearm, that governments could do the same.

Furthermore, there is reason to doubt the government's and the District's portrait of Founding Era 18-20-year-olds as incapable of exercising substantial independence from a parent or guardian. George Washington, having previously been the official surveyor of a Virginia county, became a major in the Virginia militia before he turned 21.[5] Benjamin Franklin travelled with a single friend to London on a business venture, at the urging of Pennsylvania's governor, when he was 18.[6] And John Quincy Adams, born in 1767, was secretary to the U.S. Minister to Russia when he was 14.[7] Surely Washington, Franklin, and Adams would have deemed themselves part of "the people," even though under 21.

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[5] Nat'l Archives, *Commission as Adjutant for Southern District*, 13 December 1752, Founders Online, https://founders.archives.gov/documents/Washington/02-01-02-0024 (last visited May 11, 2025); Libr. of Cong., *Washington as Public Land Surveyor*, George Washington Papers, https://www.loc.gov/collections/george-washington-papers/articles-and-essays/george-washington-survey-and-mapmaker/washington-as-public-land-surveyor/ (last visited May 11, 2025); Nat'l Archives, *George Washington's Birthday*, The Ctr. for Legis. Archives, https://www.archives.gov/legislative/features/washington (last visited May 11, 2025).

[6] Hazel Wilkinson, *Benjamin Franklin's London Printing 1725–26*, 110 Papers of the Bibliographical Soc'y of Am. 139, 142 (2016); Libr. of Cong., *Timeline*, Benjamin Franklin Papers, https://www.loc.gov/collections/benjamin-franklin-papers/articles-and-essays/timeline/ (last visited May 11, 2025).

[7] U.S. Dep't of State, Office of the Historian, *Biographies of the Secretaries of State: John Quincy Adams*, https://history.state.gov/departmenthistory/people/adams-john-quincy (last visited May 11, 2025).

B. The Age of Legal Adulthood Was Not Frozen in the 1790s

The government is wrong when it says, Gov't Suppl. Br. at 22, that, if Leyton's view is adopted, 18-20-year-olds would lose their Second Amendment rights if a jurisdiction's legislature returned the age of majority to 21. The contemporary age for full enjoyment of constitutional rights is not the result of a specific statutory change, but of a general societal consensus, reflected in the Twenty-Sixth Amendment, that 18 is now the age of adulthood. As the Supreme Court has explained, today "18 is the point where society draws the line for many purposes between childhood and adulthood." *Roper v. Simmons*, 543 U.S. 551, 574 (2005). The age of adulthood is not frozen at 21 simply because that was the prevalent Founding Era common law rule. As the Founders knew, the common law evolves. *Hurtado v. California*, 110 U.S. 516, 530 (1884) ("flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law"); *Day v. United States*, 682 A.2d 1125, 1129 (D.C. 1996) ("the common law itself is not frozen in the past but continues to develop").

While the scope of what was protected by the Second Amendment was set upon ratification, the same is not true as to who was protected. Even if it did not

originally do so, the Amendment now protects Native Americans, women, non-Whites, and 18-20-year-olds.[8]

C. Legislatures Do Not Have Broad Discretion to Exclude Classes of Law-Abiding Persons from the Second Amendment

According to the District, legislatures have historically had "discretion to categorically disarm classes of people," and the D.C. Council's decision to do so with respect to 18-to-21-year-olds is a proper exercise of that discretion. Dist. Br. at 34.[9] Furthermore, the Council's action is, in the District's view, consistent with both prongs of *Bruen*'s test: people 18-20-years-old are not "people" protected by the Amendment's plain text because the Council says they are not, and, in any event, the past disarmament of disfavored groups provides the necessary historical analogue to permit the disarming of this disfavored group.

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[8] *Lara II* rejected the contention that "a *Bruen* analysis requires excluding individuals from 'the people' if they were so excluded at the founding." It explained that

> [t]hat argument conflates *Bruen*'s two distinct analytical steps. Although the government is tasked with identifying a historical analogue at the second step of the analysis we are not limited to looking through that same retrospective lens at the first step. If, at step one, we were rigidly limited by eighteenth-century conceptual boundaries, "the people" would consist solely of white, landed men, and that is obviously not the state of the law.

Lara II, 125 F.4th at 437 (citation omitted).

[9] For its part, the government seems to say that legislatures have plenary authority to disarm members of groups not comprised of "responsible citizens." Gov't Principal Br. at 42.

The District explains that among those deprived of their right to bear arms before 1791 were "Catholics who refused to disavow their faith," "Puritans," "Native Americans, enslaved persons, religious minorities," and individuals who refused to "swear loyalty to their state." Dist. Br. at 35-36. Consequently, it reasons, laws disarming young adults are proper because they are "in this tradition." *Id.* at 38.

But these examples of legislative abuses highlighted by the District compellingly illustrate the absurdity of its position. A right is meaningless if a legislature can simply exclude from that right any group it thinks might abuse it. Accepting such legislative authority would be inconsistent with the Second Amendment's purpose of preventing the government from disarming the people.

More specifically, the District's position is inconsistent with *Rahimi*. *Rahimi*'s constitutional challenge to his conviction was rejected only because Rahimi himself had been "found by a court to pose a credible threat to the physical safety of another." 602 U.S. at 702. As Leyton has explained, *Rahimi* rejected the government's argument in that case (made also in the government's Principal Brief in this case) that a legislature can disarm anyone it deems not "responsible." Reply Br. at 18 (citing *Rahimi*, 602 U.S. at 701). Justice Thomas dissented in *Rahimi*, but agreed with the majority's rejection of the contention that anyone deemed

"irresponsible" was not Second Amendment-protected. He explained that, in support of this argument "[b]efore the Court of Appeals,"

> the Government pointed to colonial statutes disarming classes of people deemed to be threats, including slaves, and native Americans. It argued that since early legislatures disarmed groups considered to be "threats," a modern Congress has the same authority. The problem with such a view should be obvious. Far from an exemplar of Congress's authority, the discriminatory regimes the Government relied upon are cautionary tales. They warn that when majoritarian interests alone dictate who is "dangerous," and thus can be disarmed, disfavored groups become easy prey. One of many such examples was the treatment of freed blacks following the Civil War. "[M]any of the over 180,000 African-Americans who served in the Union Army returned to the States of the old Confederacy, where systematic efforts were made to disarm them and other blacks." *McDonald v. Chicago*, 561 U. S. 742, 771 (2010).
>
> The Government peddles a modern version of the governmental authority that led to those historical evils. Its theory would allow federal majoritarian interests to determine who can and cannot exercise their constitutional rights. While Congress cannot revive disarmament laws based on race, one can easily imagine a world where political minorities or those with disfavored cultural views are deemed the next "dangers" to society.

Rahimi, 602 U.S. 680, 775-76 (2024) (cleaned up) (Thomas, J., dissenting).

The poor are a disfavored group that could be disarmed under the reasoning of the government and the District. In the Colonial Era many states barred men who could not meet a property qualification from voting, and such restrictions

were not completely eliminated until 1856. *Reese*, 127 F.4th 592 & n.4. To support its contention that the Second Amendment does not protect young adults, the government observes that, at the Constitutional Convention, Gouverneur Morris "warned that under-21-year-olds 'want prudence' and 'have no will of their own.'" Gov't Principal Br. at 34 (quoting James Madison, *Notes on the Debates in the Federal Convention*, Tuesday, August 7, 1787, Yale L. Sch. Avalon Project, https://perma.cc/QJ7B-D4J4 (reporting Morris's views)); *see also* Dist. Br. at 17 (quoting the same). But it neglects to mention that the point that Morris was making was that persons "who have no property" should be denied the right to vote because they were just as "ignorant [and] Dependent" as persons under 21. Madison, *supra*.

It is true, as the District points out, that *Rahimi* said that "[w]e do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse…." Dist. Br. at 21 (quoting *Rahimi*, 602 U.S. at 698). But this dictum about what *Rahimi* did not decide must be read in conjunction with that case's rejection of the contention that Congress has unfettered authority to designate a group as being excluded from the Second Amendment's protection because of its supposed dangerousness. The "categories of persons" the Court was likely thinking of are groups such as persons convicted of violent crimes and

individuals found to have a significant mental illness. *See Heller*, 554 U.S. at 626 (nothing in opinion meant to "cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill").

D. The Supposed Propensity of Young Adults to Violence Is Irrelevant

The District asserts that there are good reasons for the D.C. Council to keep guns out of the hands of all who were deemed minors in 1791. It says that the scientific evidence shows that it is dangerous to permit 18-20-year-olds to be armed because "[i]ndividuals in their late teens and early 20s are … more likely to engage in sensation seeking and less able . . . to control their impulses and consider the future consequence of their actions and decisions." Dist. Br. at 23 (quotation marks omitted).

This factual issue—the asserted dangerousness of persons in this age cohort—was not raised in the trial court, where it would have been subject to rigorous scrutiny, and should not be considered for the first time on appeal. But, even setting this concern aside, the supposed evidence is limited. For example, the District proffers no research that even attempts to quantify how much more likely 18-20-year-olds are to commit a gun crime than other age groups.

Perhaps more importantly, allowing firearms bans based on evidence of dangerousness would open the door to unconscionable regulations. For example, studies might find that young men and residents of urban low-income areas are far

more likely to commit gun crimes than their peers who are women or economically comfortable suburbanites. If so, the District's reasoning would permit legislatures to authorize only those 18-21-year-olds who are female or non-city dwellers to bear arms. And it is hard to see why, under this logic, evidence that some groups of over-21-year-olds are especially dangerous should be ignored. Indeed, one of the District's studies says that "brain development is not complete until near the age of 25." Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease & Treatment 449, 453 (2013); *see also* Gov't Suppl. Br. at 14 "(scientific evidence" shows that relevant brain development continues "until the mid-twenties."). If this is correct, and the scientific evidence is what matters, all those under 25 could be excluded from the Second Amendment.

At bottom, the District's point is that allowing adults under 21 to have guns makes the District less safe. In other words, there would be a significant cost to striking down this aspect of D.C.'s firearms regime. But modern Supreme Court jurisprudence is emphatic that, in determining Second Amendment constitutionality, "judges" may not "assess the costs and benefits of firearms restrictions." *Bruen*, 597 U.S. at 23; *see also id.* ("'[t]he very enumeration of the right takes out of the hands of government … the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." (quoting *Heller*, 554 U.S. at 634)).

E. There Are No Historical Analogs From the Relevant Period for the Challenged D.C. Statutes

To survive the second prong of the *Bruen* test, the government must identify a "relevantly similar" firearms regulation from the relevant historical period. *Bruen*, 597 U.S. at 29. "The government need not show that the current law is a 'dead ringer' for some historical analogue. But the government must establish that, in at least some of its applications, the challenged law imposes a comparable burden on the right of armed self-defense to that imposed by a historically recognized regulation." *Rahimi*, 602 U.S. at 708-09.

In determining this nation's relevant "historical tradition of firearm regulation," *id.* at 691, the Founding Era is the era that must be looked to. As the parties have noted, some scholars have argued that courts should instead look to the 1868 ratification of the Fourteenth Amendment and the Supreme Court has not officially settled this issue. But "*Bruen* gave a strong hint when it observed that there has been a general assumption 'that the scope of the protection applicable to the Federal Government and States [under the Bill of Rights] is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.'" *Lara II*, 125 F.4th at 440 (quoting *Bruen*, 597 U.S. at 37) (alteration in original). Post-Civil War analogues with no Founding Era counterpart could only be meaningfully relevant to the federal government and the District if the meaning of the Second Amendment was somehow changed by the 1868 amendment. But the

Second Amendment's "meaning is fixed according to the understandings of those who ratified it." *Bruen*, 597 U.S. at 28. Moreover, as Leyton pointed out in his Reply Brief, this court held that 1791 is the relevant date in *Ward v. United States*, 318 A.3d 520, 526 n.6 (D.C. 2024), when it comes to the District of Columbia. The government's argument that *Ward* should be ignored because it described *Bruen*, which did not decide this issue, as complex is unconvincing. Gov't Suppl. Br. at 12 n.4.

Nevertheless, the government and the District insist that they can rely on regulations enacted during (and even after) Reconstruction because the public understanding of the right of under-21-year-olds to bear arms in the Founding Era and during Reconstruction was "the same." Gov't Suppl. Br. at 12; Dist. Br. at 42 n.13. It is true, as *Bruen* noted, that the public understanding of the right of adults to bear arms in public was essentially identical in "both 1791 and 1868," making it appropriate to look to the later period to confirm the Founding Era evidence. 597 U.S. 1, 38. But here, even if the government and the District's portrayal of the relevant history were correct, it would be clear from that history that the public understanding of the firearms rights of 18-21-year-olds during these two periods was *not* the same. The applicable public understanding is derived from looking to firearms regulations in place during the relevant time period, *Rahimi*, 602 U.S. at 708-09, and the government and the District, which have the burden of doing so,

have not identified ***any*** instance of ***any*** Founding Era government restricting the access to guns of persons under 21. Indeed, the government has not even proffered any indication that, during this period, there was any serious advocacy (or any advocacy at all) of such a regulatory regime. On the other hand, in the government's telling, such statutes appeared and subsequently became pervasive. If the relevant period is the Founding Era—and it is—the government loses.[10]

Moreover, as Amicus Public Defender Service explains, even if it is 1868 and subsequent decades that must be looked at, the statutes the government and the District point to, all enacted at a time when the Second Amendment was thought not to apply to the states, *McDonald*, 561 U.S. at 757-58, 791, are simply not analogous to the District's modern regime, which effectively prevents 18, 19 and

[10] Unable to cite any statute, the District would have this Court look to cherry-picked examples of colleges imposing firearms restrictions, all apparently between 1800 and 1838. Dist. Br. at 18-19 (citing Saul Cornell, *"Infants" and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record*, Yale L. & Pol'y Rev. Inter Alia at 15-16, https://yalelawandpolicy.org/sites/default/files/IA/infants_and_arms_-_cornell_0.pdf (Oct. 26, 2021) (online only publication)). But many or all of these rules "applied to all enrolled students regardless of age. Moreover, universities had heightened authority over student conduct in loco parentis. Actions taken in loco parentis say little about the general scope of Constitutional rights and protections." *Reese* 127 F.4th at 596. Furthermore, few went to college. "Higher education enrollment in the colonies was largely limited to the well-to-do…. When the federal Office of Education began collecting education data in 1869–70, only … about 1 percent of the 18- to 24-year-old population" "were attending higher educational institutions," despite a substantial increase in the number of colleges in the early 1800s. U.S. Dep't of Educ., Nat. Ctr. for Educ. Stat., *120 Years of American Education: A Statistical Portrait* 63-64 (1993).

20-year-olds from possessing any type of firearm. Consequently, if Reconstruction is the relevant period, the government still loses.[11]

CONCLUSION

For the foregoing reasons, and those advanced in his opening Brief and his Reply Brief, Emanuel Leyton Picon's convictions should be reversed.

[11] Only two pre-1868 state-wide statutes limited the transfer of handguns to "minors." These were an 1856 Alabama statute which did not apply to females or long guns, Alabama Act of Feb. 2, 1856, No. 26, § 1, 1856 Ala. Laws 17, and an exception-riddled 1858 Tennessee law. The Code of Tennessee pt. IV, tit. 1 ch. 9, art. II, § 4864 (Return J. Meigs & William F. Cooper eds.) (1858). In his Reply Brief Leyton pointed out that a supposedly analogous 1860 Kentucky law applied not to the entire state, as the government contended, but to a single tiny municipality. Act of Jan. 12, 1860, ch. 33, § 23, 1859 Ky. Acts 241 ("AN ACT to amend an act, entitled 'An act to reduce into one the several acts in relation to the town of Harrodsburg.[']"). In answer to the government's contention that Leyton "fails to substantiate" this, Gov. Suppl. Br. at 18 n.6, Leyton sets out in the Addendum the full text of the statute, along with the pages in the official statutory compilation showing that it was classified as a Local and Private Act. Moreover, the statute appears to apply only to weapons "caried concealed." This is probably because Kentucky's then-in-force Constitution's Second Amendment analogue had an exception allowing the legislature "to prevent persons from carrying concealed arms." Ky. Const. of 1850, art. XIII, § 1, Cl. 25. The legislature's apparent decision to conform its 1860 directed-to-minors statute to what was permitted by the state's constitutional right to bear arms guarantee suggests that the legislature thought minors were protected by that guarantee.

Date: May 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing (including any appendix or other accompanying documents) was served by this court's electronic filing system, on the date indicated below, on all counsel who have registered for electronic filing, including Chrisellen R. Kolb, counsel for Appellee, Tessa Gellerson, counsel for Intervenor District of Columbia, and Alice Wang, counsel for Amicus Public Defender Service

/s/Matthew B. Kaplan
Matthew B. Kaplan
Date: May 21, 2025

ADDENDUM – Kentucky Local Statute

AN ACT to amend an act, entitled ‘An act to reduce into one the several acts in relation to the town of Harrodsburg[’]
(and related excerpts from official compilation of statutes)
(with text of particular relevance highlighted)

ACTS

OF THE

GENERAL ASSEMBLY

OF THE

COMMONWEALTH OF KENTUCKY,

PASSED

AT THE SESSION WHICH WAS BEGUN AND HELD IN THE CITY OF FRANKFORT, ON MONDAY, THE FIFTH DAY OF DECEMBER, 1859, AND ENDED ON MONDAY, THE FIFTH DAY OF MARCH, 1860.

VOLUME ONE.

PUBLISHED BY AUTHORITY.

FRANKFORT, KY.:
PRINTED AT THE YEOMAN OFFICE.
J. B. MAJOR, STATE PRINTER.
1860.

PUBLIC ACTS

OF

THE STATE OF KENTUCKY,

PASSED AT THE SESSION WHICH WAS BEGUN AND HELD IN THE CITY OF FRANKFORT, ON MONDAY, THE 5TH DAY OF DECEMBER, 1859, AND ENDED MONDAY, MARCH 5TH, 1860.

BERIAH MAGOFFIN, *Governor.*
THOS. P. PORTER, *Speaker of the Senate.*
DAVID MERIWETHER, *Speaker of the House of Reps.*
THOS. B. MONROE, JR., *Secretary of State.*

CHAPTER 1.

AN ACT to change the time of holding the Lawrence Quarterly Court.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

That the quarterly courts of the county of Lawrence, after the first day of March next, shall be held on the Tuesdays succeeding the Mondays on which the county courts of said county are held, in the months of March, June, September, and December. 1859.

DAVID MERIWETHER,
Speaker of the House of Representatives.
THOMAS P. PORTER,
Speaker of the Senate.

Approved December 16, 1859.
B. MAGOFFIN.
By the Governor:
THOS. B. MONROE, JR., *Secretary of State.*

LOCAL AND PRIVATE ACTS

OF

THE STATE OF KENTUCKY,

PASSED AT THE SESSION WHICH WAS BEGUN AND HELD IN THE CITY OF FRANKFORT, ON MONDAY, THE 5TH DAY OF DECEMBER, 1859, AND ENDED MONDAY, MARCH 5TH, 1860.

BERIAH MAGOFFIN, *Governor.*
THOS. P. PORTER, *Speaker of the Senate.*
DAVID MERIWETHER, *Speaker of the House of Reps.*
THOS. B. MONROE, JR., *Secretary of State.*

CHAPTER 3.

AN ACT for the benefit of John W. Haws, Stephen J. England, and Robert Eastham.

1859.

THAT WHEREAS, It is satisfactorily shown that J. W. Haws, sheriff of Lawrence county, has paid the sum of $59 25, and S. J. England has paid the sum of $28 20, to jurors summoned from Carter county to attend the circuit court in Lawrence county at its October term in 1859, in the case of the Commonwealth against Gabriel Endicott, charged with murder; and that instead of the same being paid by the trustee of the jury fund of Lawrence county, the claims were certified to the Auditor of Public Accounts for payment; he not being authorized by law to pay the same; for remedy whereof—

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. That John W. Haws, sheriff of Lawrence county, be allowed fifty-nine and dollars twenty-five cents, and S. J.

John W. Haws and Stephen J. England.

CHAPTER 33. 1860.

AN ACT to amend an act, entitled "An act to reduce into one the several acts in relation to the town of Harrodsburg.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. That the judicial power of said town shall be vested in and exercised by a court, to be styled the Police Court of Harrodsburg, which shall be held by a single judge, to be elected and qualified and hold office as prescribed in the constitution of this Commonwealth. The police court of Harrodsburg shall be a court of record, and shall have the power of a quarterly judge over slaves and free negroes, and to require security of all persons for good behavior and to keep the peace; and in all matters of penalties for a violation of the laws of this Commonwealth shall have concurrent jurisdiction, with the circuit courts and justices of the peace, of prosecutions for misdemeanors committed in the town where the punishment of a free person is a fine not exceeding one hundred dollars and imprisonment for fifty days, or of a slave in any number of stripes not exceeding thirty-nine; and exclusive jurisdiction of all prosecutions and actions for an infraction of the by-laws or ordinances of the town. Said court shall exercise the power and jurisdiction of an examining court, shall have concurrent jurisdiction with the circuit court to try vagrants; and shall have power to take recognizances and bail bonds from persons charged with offenses cognizable before said court to appear and answer, and a like power to enforce a compliance with the same that circuit courts have; and all recognizances and bail bonds entered into to appear before said court, where the amount of the penalty does not exceed one hundred dollars, may be forfeited, and other proceedings had thereon in said court to forfeit and collect the same, as are directed by-law in similar cases in the circuit court. The jurisdiction of said court, and the judge thereof, in civil cases, shall be the same as that of a quarterly court and the judge thereof.

Judicial powers vest'd in police court.

Judge to be elected.

Jurisdiction of police court.

§ 2. The police judge shall issue his process in criminal, penal, and civil cases in the name of the Commonwealth, and make the same returnable before him as police judge of Harrodsburg; and the same shall be directed to the sheriff, marshal, jailer, coroner, constable, or policeman of any town, city, or county of Kentucky, and shall be executed and returned by any of said officers, under the same penalties as other similar process from circuit and quarterly courts; and all proceedings in criminal, penal, and civil cases in said court shall be the same as directed by law in similar cases in the circuit and quarterly courts: *Provided, however*, That it shall not be necessary that an indictment be found by a grand jury for the trial of any

Police judge to issue process in the name of the Commonw'h, & to whom directed.

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offense of which said police court or judge shall have jurisdiction: *And provided further*, That all prosecutions for a violation of town ordinances shall be in the name of the board of trustees; and said town shall be entitled to all fines and forfeitures recovered in such cases.

Jury may be summoned.

§ 3. The judge of said court may authorize any of the officers aforesaid to summon a jury in any case cognizable before him, where a jury would be required before the circuit court, quarterly court, or a justice of the peace.

Judge to be cl'k of his court, and his fees.

§ 4. The judge of said court shall be the clerk of his own court, and shall receive for services therein rendered the same fees as the clerks of circuit courts are by law entitled to, where the amount in controversy in a civil case before him is fifty dollars or more; in cases of less than fifty dollars, he shall receive the same fees as by law are allowed to justices of the peace. In penal and criminal cases, he shall be entitled to charge the following fees, to-wit: For a warrant for a violation of the penal and criminal laws, or the by-laws and ordinances of the town, one dollar; for swearing a jury and presiding over the trial in any such case, fifty cents; for a recognizance or other bond, forty cents; for a recognizance to keep the peace, to be paid for by the applicant therefor, fifty cents; for an order of commitment in any case, fifty cents; swearing witnesses, five cents each. All other fees of said judge shall be the same as are by law allowed to the quarterly judge.

Trustees to elect attorney—his duties and fees.

§ 5. The board of trustees of said town shall elect an attorney for said board, whose duty it shall be to give legal advice to the board when called upon, to prosecute all persons in said court charged with a violation of the criminal and penal laws, and of the by-laws and ordinances of said town, and institute proceedings for the enforcement and forfeiture of recognizances and bail bonds, and the enforcement and collection of all judgments against offenders; and for his services in every case he shall be entitled to, as his fee, the same amount allowed by law to Commonwealth attorneys for similar services: *Provided, however*, That in all jury trials where the said attorney does not receive a part of the fine, there shall be taxed a fee of five dollars against the defendant, if convicted.

Proceedings in cases of $50 and over.

§ 6. In all civil cases where the amount in controversy is fifty dollars or more, there shall be the same pleadings and proceedings by the parties, plaintiff and defendant, that are required by law in the circuit court; and upon the filing of every petition there shall be a tax of fifty cents paid, which the judge of said court shall pay over to the trustee of the jury fund, and it shall be the duty of said judge to report to the circuit court at each term the number of petitions filed before him since his last report.

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§ 7. The fees of the judge of said court in civil cases shall be collectable at the same time and in the same manner as fees of the clerk of the circuit court are collected. How fees of judge collected.

§ 8. On all judgments in criminal, penal, and civil cases, in said court, and for a breach of the by-laws and ordinances of said town, the same writs of *fieri facias* and *capias profine* shall issue as are by law allowed for the collection and enforcement of similar judgments in circuit and quarterly courts. Writs of *fi. fa.* & *capias prof.* may issue.

§ 9. The fines and forfeitures recovered in the name of the Commonwealth in said court, except the part allowed to the town attorney, are hereby granted to the board of trustees of Harrodsburg, to be by them held and appropriated for the purpose of sustaining common schools in said town, and for no other purpose; and any fund arising therefrom, which may not be needed in sustaining said common schools, shall be, by said board, invested in some safe and sure manner for such uses. Fines and forfeitures grant'd to trustees of Harrodsburg.

§ 10. Any officer who may execute process, writs of *fieri facias*, or *capias profine*, issued by said court, shall be entitled to the same fees as are by law allowed to sheriffs for similar services. Fees for issuing writs of *fi. fa.*, &c.

§ 11. The regular terms of said court shall be as follows: For the trial of civil cases, on the first Tuesday in February, May, August, and November, and continue five days, if the business of said court require it; and for the trial of criminal and penal cases, and for violations of the town ordinances, at any time three days after the service of the warrant, process, or summons, on the defendant: *Provided*, That in any such case the defendant may demand and have a speedy trial, the parties thereto having reasonable time allowed to procure the attendance of witnesses. Regular terms of police court; when held.

§ 12. Any of the officers aforesaid who shall fail, neglect, or refuse, to execute any warrant, summons, or process, and make due return of the same, shall be fined not less than twenty dollars, upon the motion, in said court, of the town attorney, or of any party aggrieved—ten days' notice in writing having been given to the said officer. Penalty if officers fail to perform duties.

§ 13. Any officer who shall fail to collect any writ of *fieri facias*, or execute any *capias profine*, issued from said court, and make due return thereof according to law, shall, with his securities, be subject to all the damages and penalties now imposed by law upon sheriffs for failing to collect, return, and pay over money when collected on writs of *fieri facias* and *capias profine*.

§ 14. A return of "not found" on a *capias profine*, or of "no property found" in whole or in part on a *fieri facias*, issued on any judgment in said police court, shall authorize an attachment out of chancery in favor of the Commonwealth or the board of trustees of Harrodsburg, or other When attachments may issue.

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plaintiff, against the choses in action and other effects of the defendant or defendants, in the same manner that the return of "no property" authorizes an attachment in chancery on judgments rendered in the circuit courts.

Penalty for drunkenness.

§ 15. If any person shall be drunk in the limits of said town, and disorderly on the streets or alleys thereof, he shall be fined five dollars.

Penalty for disturbing public assemblies, &c.

§ 16. If any person shall willfully interrupt or disturb a congregation assembled on or at any place of and for religious worship, or misuse or maltreat any person being there, or shall disturb or interrupt any lawful assembly or school or school exhibition, he shall be fined in a sum not less than ten nor more than fifty dollars, or imprisoned not less than five nor more than twenty days, or both so fined and imprisoned, at the discretion of the jury.

Penalty for permitting free negro or slave to remain upon premises.

§ 17. If any person shall knowingly permit any slave or free negro, of which he is not the owner or has not the control, to remain in or upon his premises, or premises over which he has control, for more than two hours, without the written consent of the owner or controller of said slave, he shall be fined five dollars: *Provided*, This section shall not be construed to prevent husbands and wives of said free negroes and slaves visiting or remaining with each other during the night or on holidays.

Penalty for selling or giving slave liq'or.

§ 18. If any person, not the owner of the slave, shall sell, loan, or give ardent spirits to said slave, or shall suffer or permit the slave of another to have or drink ardent spirits upon his premises, or premises under his control, he shall be fined sixty dollars; and proof of any of the offenses enumerated in this section shall be a presumption of the guilt of the defendant, until the contrary is clearly proven.

Penalty for giving or sell'g playing cards to a slave or free negro.

§ 19. Any person who shall give, sell, or loan any deck, or part of a deck, of playing cards, or any arrangement or devise for gambling, to a slave or free negro, shall be fined twenty dollars.

Penalty for permitti'g slave to go at large or hire time.

§ 20. If the owner, hirer, or controller of any slave shall suffer or permit said slave to go at large, or to hire his or her own time, or to work for himself or herself, or any other, without the consent of said owner, hirer, or controller to do the specific act or work for which said slave is engaged, the said owner, hirer, or controller shall be fined five dollars; and any person who shall hire or employ any such slave shall be fined five dollars.

No place for the assemblage of colored persons to be erected without consent of trustees, &c.

§ 21. No place or house for the assembly of colored persons shall hereafter be located or erected within the limits of said town, for any use or purpose whatever, without the license and consent of the board of trustees of said town; and all such houses or places now existing in said town, and the assemblies of colored persons attending the same, and all such houses or places hereafter established and the

persons attending the same, shall be regulated by ordinance, and also the conduct of persons going to and returning from such places, both free colored persons and slaves; and for any violation of any such ordinance, a free colored person shall be fined not less than ten dollars nor more than fifty dollars, and a slave shall receive not less than ten, nor more than thirty lashes, to be enforced before the police court of said town. And for good cause, the board of trustees may provide for the closing up any house or place of assembling of colored persons within said town, and may provide for silencing any preacher or teacher of colored persons for misconduct. And all assemblies of colored persons within said town shall be under the visitation of the police, and especially under that of the night police and watchmen.

Penalty for giving or selling liquor to minors.

§ 22. If any person shall sell, loan, or give, any spirituous liquors, or mixture of the same, to any minors, without the previous written consent of the father, mother, or guardian, attested by two witnesses, or shall suffer or permit any minor to have or drink any spirituous liquors, or mixture of the same, on his premises, or premises under his control, he shall be fined the sum of thirty dollars; and if he be a vender of ardent spirits by license, he shall be fined sixty dollars.

Penalty for giving weapons to minors and slaves.

§ 23. If any person, other than the parent or guardian, shall sell, give, or loan, any pistol, dirk, bowie-knife, brass-knucks, slung-shot, colt, cane-gun, or other deadly weapon, which is carried concealed, to any minor, or slave, or free negro, he shall be fined fifty dollars.

Penalty for giv'g or selling minor cards.

§ 24. If any person, other than the parent or guardian, shall sell, give, or loan, to any minor a deck, or part of a deck, of playing cards, or shall knowingly permit any minor to play cards on his premises, or premises under his control, he shall be fined ten dollars; and any minor having in his possession a deck, or part of a deck, of cards, shall be fined five dollars.

Trustees may appoint police.

§ 25. The board of trustees shall have power to appoint not more than three policemen, who shall have the same power to execute process, arrest and apprehend violators of the penal and criminal law, and laws relating to the town of Harrodsburg, and town ordinances, that marshals have.

Persons convicted in police court may be committed to jail until fine is paid.

§ 26. Upon the trial and conviction of any person in the police court of any crime or offense, he shall be committed to jail until the fine and costs are paid or replevied: *Provided*, That the imprisonment shall not be longer than at the rate of twenty-four hours for each two dollars of said fine and costs: *And provided further*, That a writ of *fieri facias* may be issued, at any time thereafter, against the estate of the defendant or defendants, for the amount of the fine and costs until the same are satisfied.

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Officers to arrest disorderly persons.

§ 27. It shall be the duty of all peace officers and policemen to arrest all disorderly or drunken persons and take them before the police court, to be dealt with according to law: *Provided*, That when any drunken or disorderly person is arrested in the night time, the officer making the arrest may commit him to the county jail, or work-house, or watch-house, until the next morning, when he shall be carried before the police judge or court, to be dealt with according to law; and the jailer of Mercer county is hereby directed to receive such persons, when arrested and in custody of such officer, in the night time, without an order of commitment.

Officers may take bail.

§ 28. The officer executing any process requiring bail, shall have authority to take the bail.

Chairman of trustees to act in absence of police judge.

§ 29. In the absence of the police judge from town, the chairman of the board of trustees of said town shall have the same authority and power that said judge has.

Appeals.

§ 30. In all cases, civil and penal, where the judgment, exclusive of costs, is twenty dollars or more, either party may appeal to the circuit court: *Provided*, Said appeal is taken and a copy of the record filed in said court within sixty days from the rendition of the judgment: *And provided further*, That the party, except where the Commonwealth is appellant, files a bond, as now required by law.

Sec. 8 of act to which this is an amendment amended.

§ 31. Section 8 of the act to which this is an amendment, is hereby so amended as to insert after the words, "some newspaper of the town for two months, by successive weekly publications," the words, "or by the service of a written copy of the order, signed by the chairman of the board of trustees and attested by the clerk, upon the parties to be affected thereby."

Trustees may assess tax to pay debts of town.

§ 32. The board of trustees shall have power to assess a tax, not exceeding twenty cents, on every one hundred dollars of the taxable property of said town. They shall have power to allow the marshal, in addition to his regular fees, such compensation as to them may be proper.

Trustees may sell, convey, & close up streets in said town.

§ 33. Said board shall have power to sell and convey, or lease or close up, any of the alleys or parts of alleys in said town, with the consent of a majority of the qualified voters thereof.

§ 34. The present officers of said town shall continue in office and perform all the duties required under this act until their successors are elected and qualified, as provided by law.

§ 35. This act shall not be construed to repeal any portion of the act to which this is an amendment, except those portions which conflict with this amendment.

§ 36. This act shall be in force from its passage.

Approved January 12, 1860.