No. 23-CF-387

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIAN CARRUTH,
APPELLANT,

V.

UNITED STATES OF AMERICA,
APPELLEE,

AND

DISTRICT OF COLUMBIA,
INTERVENOR-APPELLEE.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR INTERVENOR-APPELLEE THE DISTRICT OF COLUMBIA

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STATEMENT OF THE ISSUES

Brian Carruth brought an unregistered rifle and 38 rounds of live ammunition into the District of Columbia in his truck. A jury subsequently convicted him of violating D.C. Code § 22-4504(a-1), which prohibits the carrying of "a rifle" in the District "except as otherwise permitted by law." While District law permits nonresidents like Carruth to transport an unregistered rifle through the District under certain conditions, the evidence indicates that Carruth did not satisfy those conditions. Carruth now asserts that D.C. Code § 22-4504(a-1) violates the Second Amendment as applied to his conduct. The questions addressed in this brief are:

(1) Whether Carruth failed to preserve his Second Amendment claim.

(2) Whether Carruth's conviction for violating D.C. Code § 22-4504(a-1) is consistent with the Second Amendment.

STATEMENT OF THE CASE

On June 2, 2022, a grand jury charged Carruth with carrying a rifle in violation of D.C. Code § 22-4504(a-1); possession of an unregistered firearm in violation of D.C. Code § 7-2502.01(a); and possession of ammunition without a valid firearm registration in violation of D.C. Code § 7-2506.01(a)(3). R. 65-66. Carruth's jury trial began on February 22, 2023. R. 19. On February 28, a jury found Carruth guilty of all charges. R. 240. On April 27, the trial court sentenced Carruth to 18

months in prison and three years of supervised release, all suspended, and 18 months of supervised probation. R. 247. On May 4, Carruth timely appealed. R. 25.

STATEMENT OF FACTS

1. Legal Background.

A. The District's firearm regulations.[1]

D.C. Code § 22-4504(a-1) provides that "no person shall carry within the District of Columbia a rifle" "except as otherwise permitted by law." The "except as otherwise permitted by law" caveat covers several situations. For example, someone whose rifle is validly registered in the District may lawfully carry it within their "home" or "place of business" in the District, or while using it "for lawful recreational purposes" in the District, or while transporting it through the District "for a lawful purpose as expressly authorized by District or federal statute and in accordance with the requirements of that statute." D.C. Code § 22-4504.01. Also, individuals may carry an *un*registered rifle through the District while on their "way to or from" a "lawful recreational firearm-related activity" in "another jurisdiction" if (1) they "exhibit proof" to law enforcement upon demand that they are on their "way to or from such activity" and that their "possession or control of such firearm

[1] This brief cites the versions of District law that were in effect at the time of Carruth's offense in December 2021.

is lawful in the jurisdiction in which" they reside, and (2) the rifle is "transported in accordance with § 22-4504.02." *Id.* § 7-2502.01(b)(3).

Section 22-4504.02 provides individuals a number of ways "to transport a firearm" through the District when doing so "for any lawful purpose from any place where [they] may lawfully possess and carry the firearm to any other place where [they] may lawfully possess and carry the firearm." *Id.* § 22-4504.02(a). When transporting a firearm for a lawful purpose by vehicle, any individual, regardless of where they reside, who possesses a District concealed-carry license may carry a holstered pistol on their person while driving. *See* 24 DCMR § 2344. Otherwise, "the firearm shall be unloaded, and neither the firearm nor any ammunition being transported shall be readily accessible or directly accessible from the passenger compartment of the transporting vehicle." D.C. Code § 22-4504.02(b)(1). "If the transporting vehicle does not have a compartment separate from the driver's compartment," however, "the firearm or ammunition shall be contained in a locked container other than the glove compartment or console, and the firearm shall be unloaded." *Id.* § 22-4504.02(b)(2). And when transporting a firearm for a lawful purpose "in a manner other than in a vehicle, the firearm shall be" (1) "Unloaded," (2) "Inside a locked container," and (3) "Separate from any ammunition." *Id.* § 22-4504.02(c). The latter provisions mirror 18 U.S.C. § 926A, which also requires

firearms transported across state lines to be "unloaded" and not "accessible" from the passenger compartment of the vehicle.

B. The Second Amendment under *Bruen* and *Rahimi*.

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. This provision generally codified the right of "ordinary, law-abiding" citizens to carry common, bearable arms for self-defense and other lawful purposes. *NYSRPA, Inc. v. Bruen*, 597 U.S. 1, 8-11, 26-27, 31-32, 70 (2022). But "'the right secured by the Second Amendment is not unlimited,'" and "was never thought to sweep indiscriminately." *United States v. Rahimi*, 602 U.S. 680, 690-91 (2024) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). To the contrary, the Second Amendment has "from time immemorial been subject to certain well-recognized exceptions," "which continued to be recognized as if they had been formally expressed." *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897). The Amendment thus does not permit the "keep[ing] and carry[ing]" of "any weapon whatsoever in any manner whatsoever and for whatever purpose." *Bruen*, 597 U.S. at 21 (quoting *Heller*, 554 U.S. at 626); *see Rahimi*, 602 U.S. at 691.

Before the Supreme Court's *Bruen* decision, courts analyzed Second Amendment claims under a "two-step" framework. *Bruen*, 597 U.S. at 18. The first step asked whether a challenged law regulated conduct outside the scope of the

Amendment, as defined by its text and "historical meaning." *Id.* Many challenges failed at this threshold step because the challengers were not "'law-abiding and responsible' citizens," *Medina v. Whitaker*, 913 F.3d 152, 157-60 (D.C. Cir. 2019) (convicted felons), or because the regulations were "self-evidently de minimis," *Heller v. District of Columbia*, 670 F.3d 1244, 1254-55 (D.C. Cir. 2011) (registration requirements for handguns); *see Heller v. District of Columbia*, 801 F.3d 264, 274 (D.C. Cir. 2015) (same for long guns). For claims that survived step one, courts typically applied some form of means-end scrutiny at step two, the strictness of which depended on how onerously the challenged law burdened a "core" Second Amendment right. *Bruen*, 597 U.S. at 18.

Bruen altered this framework in part. It rejected the means-end scrutiny at step two, but it preserved the first step of the framework—now *Bruen* step one—as "broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history." *Id.* at 19. Thus, under *Bruen* step one, Second Amendment claims fail unless challengers show that "the Second Amendment's plain text covers [their] conduct." *Id.* at 24. If challengers make that initial showing, *Bruen* step two requires the government to show that the challenged law "is consistent with the Nation's historical tradition of firearm regulation"—i.e., it is "relevantly similar" to historical analogues. *Id.* Under this standard, modern gun laws need not be a "'dead ringer' or a 'historical twin'" for "historical

precursors." *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 30). They must simply "comport with the principles underlying the Second Amendment" in terms of "how" and "why" they regulate arms-bearing conduct. *Id.*[2]

2. Factual Background.

On December 5, 2021, Secret Service Officer Tyler Young saw a Chevy Silverado truck parked a block from the White House with what appeared to be a rifle case mounted to the truck bed. 2/23/23 Tr. 44-45; R. 28-29. When Officer Young pulled up behind the truck, it drove away and ran a steady yellow light. 2/23/23 Tr. 45-48. Officer Young stopped the truck and asked the driver "if there were any weapons in the vehicle" or "in the box on the back of the truck." 2/23/23 Tr. 47-48, 51. The driver, who identified himself as Brian Carruth, denied having any weapons and said that the case on the back of the truck contained camping equipment. 2/23/23 Tr. 51; 2/27/23 Tr. 74. Carruth claimed that he had driven to the District from Ohio "'on a matter of National Security'" with the Department of

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[2] As amicus curiae the Public Defender Service (PDS) notes (Br. 9 n.7), this Court need not address the "scholarly debate" left open in *Bruen* and *Rahimi* about the proper historical timeframe for analyzing Second Amendment claims, because the scope of the right to keep and bear arms in this case is the same whether it is analyzed based on the historical record of 1791, when the Second Amendment was ratified, or the historical record of 1868, when the Fourteenth Amendment was ratified. *See Bruen*, 597 U.S. at 37-38 (declining to revolve this "scholarly debate"); *Rahimi*, 602 U.S. at 692 n.1 (same). *But cf. Ward v. United States*, 318 A.3d 520, 526 n.6 (D.C. 2024) (noting in dicta that the "scholarly debate" is not relevant to the District, which is treated as part of the sovereign United States).

the Interior and to visit the White House, though he admittedly had no appointment scheduled. R. 28; 2/23/23 Tr. 53; *see* 2/27/23 Tr. 99-100.

Later, Carruth admitted that he had a rifle in his truck. 2/23/23 Tr. 101; 2/27/23 Tr. 74. The officers subsequently found an unloaded Remington 783 rifle in a locked case behind the driver's seat, 38 rounds of live ammunition near the rifle container, and two spent cartridge casings in the backseat of Carruth's truck. 2/23/23 Tr. 135-37; 2/27/23 Tr. 90-91, 97; *see* R. 28. The key to Carruth's rifle case was on the same keychain as his car keys, 2/27/23 Tr. 91, and the rifle could be reached while the truck was parked, *see* 2/27/23 Tr. 97-98. The officers also found a series of writings by Carruth which, among other things, advocated a new structure for the federal government and strategized ways to survive threats against the United States. R. 190-209; *see* 2/27/23 Tr. 83, 118-24; 2/23/23 Tr. 155-59.

3. Procedural Background.

As relevant here, Carruth was indicted in June 2022 for carrying a rifle in violation of D.C. Code § 22-4504(a-1). R. 65.[3] In December 2022, the trial court set a pretrial motions deadline for January 27, 2023, almost a month before the scheduled trial dates in February 2023. R. 15. Carruth timely moved to dismiss the

[3] As noted, Carruth was also indicted for, and convicted of, possessing an unregistered firearm and unlawful ammunition, R. 65-66, but his as-applied Second Amendment challenge focuses exclusively on his Section 22-4504(a-1) conviction. *See* Opening Br. vi, 23-25; Reply Br. 7.

Section 22-4504(a-1) charge on statutory grounds, arguing that he was "fully compliant with" the District's "transportation" rules and their federal analogue, 18 U.S.C. § 926A, since he was carrying his rifle while driving through the District "*en route* from Ohio to Virginia for a planned hunting vacation." R. 151-52. The United States responded in part that Carruth's story about a "hunting vacation" in Virginia "directly contradict[ed]" his statement "to the Secret Service that he was 'here with the Department of Interior on a matter of national security' and to visit the White House." R. 164-65. The trial court ultimately concluded that Carruth's statutory defenses would "be resolved at trial." 2/22/23 Tr. 11.

Carruth never moved to dismiss under the Second Amendment in any pretrial written filing. *See* R. 218-19 (moving to dismiss based on alleged discovery violation). In the last paragraph of a supplementary motion to reconsider his pretrial bond conditions, filed seven months before trial, Carruth asserted without elaboration that the Supreme Court's decision in *Bruen* "throws significant doubt upon the validity of local registration requirements," and that his rifle was "the type of weapon contemplated in [the] Second Amendment." R. 110. Carruth did not otherwise mention the Second Amendment or *Bruen* in his pretrial filings.

At trial, the United States put on five witnesses, including Officer Young. The government's evidence showed that Carruth admitted to having a rifle in his truck, and that the Secret Service also found 38 live rounds of ammunition and two spent

cartridge casings in Carruth's truck. 2/23/23 Tr. 101, 135-41. In addition, while the parties stipulated that Carruth had legally purchased and carried his rifle in Ohio, 2/27/23 Tr. 4-6, Carruth had not registered his rifle in the District and he had no license to carry a firearm in the District, 2/23/23 Tr. 204-06, 209-11.

On the last day of trial, Carruth's counsel for the first time noted that "[w]e would raise at this point, for the record, [a] Second Amendment" claim. 2/27/23 Tr. 7. The trial judge asked: "What do you mean? What do you mean, you're making a -- in what respect?" 2/27/23 Tr. 8. Without challenging any particular charge or District statute, Carruth's counsel asserted that "my client has a constitutional right after" the Supreme Court's decision in *Bruen* "to own, transport, carry a long rifle, irrespective of any particular license requirements in any given state." 2/27/23 Tr. 8. The trial court rejected Carruth's oral motion, noting that such claims are "typically something that would be briefed and put in writing." 2/27/23 Tr. 8. The court concluded that the "Second Amendment right" is "not limitless," and that when Carruth "comes to D.C., [he has] got to stay in compliance with D.C. laws," just "like any other jurisdiction." 2/27/23 Tr. 8-9.

Carruth testified at trial. He admitted that he had an unregistered rifle and 38 live rounds of ammunition in his truck. 2/27/23 Tr. 54-59, 89-90, 111. Carruth claimed that he was planning to "visit Washington for a few hours" that day "to see what the area was like," because he had found "a career opportunity" "on the Internet

with the Department of Interior." 2/27/23 Tr. 48-50, 132. Carruth admitted that he had no job interviews arranged, 2/27/23 Tr. 50; that he had no contacts in the area, 2/27/23 Tr. 137; and that his "plan was to go back to Ohio" after "visiting Washington, D.C.," 2/27/23 Tr. 74; *see* 2/27/23 Tr. 135-36.

The jury found Carruth guilty on all counts. R. 240; 2/28/23 Tr. 18-22. He was sentenced to 18 months in prison and three years of supervised release, all suspended, and 18 months of supervised probation. R. 247; 4/27/23 Tr. 11-19.

Carruth appealed, the parties filed their briefs, and the case was calendared for oral argument on December 10, 2024. But on October 28, the Court issued a notice pursuant to D.C. App. R. 44(b), informing the District of a challenge to one of its statutes and inviting the Public Defender Service (PDS) to file an amicus curiae brief. 10/28/24 Order. The District subsequently intervened in this appeal, the Court postponed oral argument, and PDS filed an amicus curiae brief in March 2025.

STANDARD OF REVIEW

This Court reviews challenges to the constitutionality of a statute de novo when such challenges are adequately preserved, *Gamble v. United States*, 30 A.3d 161, 164 n.6 (D.C. 2011), but only for plain error, if at all, when they are not preserved, *Riddick v. United States*, 995 A.2d 212, 221-22 (D.C. 2010).

SUMMARY OF ARGUMENT

This Court should reject Carruth's cursory as-applied Second Amendment challenge to D.C. Code § 22-4504(a-1).

1. As a threshold matter, Carruth's Second Amendment claim is procedurally barred. Under Rule 12, Carruth waived his challenge by failing to raise it in a pretrial motion to dismiss and by never showing good cause for his failure. This Court thus should not review Carruth's Second Amendment claim at all. Even putting aside his Rule 12 waiver, Carruth forfeited his Second Amendment argument by not sufficiently raising it at trial or in his skeletal briefing on appeal. His claim is thus reviewable at most only for plain error, and because he has not even attempted to satisfy that rigorous standard, Carruth cannot prevail on appeal.

2. Even if reviewed de novo, Carruth's as-applied challenge to D.C. Code § 22-4504(a-1) fails. To begin, his sole argument on appeal rests on a mistaken premise. Contrary to Carruth's assumptions, District law did *not* require him (or any other nonresident) to register his rifle in the District before transporting it through the District. Rather, it simply required him to follow the District's firearm-transportation rules while carrying the rifle in his truck. Carruth's misunderstanding of District law is reason enough to reject his claim. But either way, Carruth's Section 22-4504(a-1) conviction is constitutionally sound because the Second Amendment does not entitle him to carry a rifle in the District in any manner he

chooses, and because D.C. Code § 22-4504(a-1) and related regulations were validly applied to him as manner-of-carry regulations consistent with historical tradition. Lastly, to the extent amicus PDS seeks to expand the scope of this appeal by raising a facial challenge that Carruth himself has never asserted, the Court should reject such efforts, especially given that the relevant regulations are facially constitutional in light of their valid application to Carruth in this very case.

ARGUMENT

I. The Court Need Not Address Carruth's Second Amendment Claim At All Because It Is Procedurally Barred Twice Over.

A. Carruth waived his challenge under Rule 12 by failing to raise it in a pretrial motion to dismiss.

Carruth waived his Second Amendment challenge because he raised no such claim in a pretrial motion. Under Rule 12, any "defect in the indictment," including "failure to state an offense," "*must* be raised by pretrial motion" if it is "reasonably available" and "can be determined without a trial on the merits." Super. Ct. Crim. R. 12(b)(3)(B)(v) (emphasis added). Failure to do so renders "the motion untimely," and a court cannot consider the defense unless the party shows "good cause." Super. Ct. Crim. R. 12(c)(3); *see Conley v. United States*, 79 A.3d 270, 276 (D.C. 2013) (construing the phrase "fails . . . to charge an offense" in prior Rule 12 to include "the claim that the statute apparently creating the offense is unconstitutional" (emphasis, internal quotation marks omitted)).

Constitutional challenges to offense-creating statutes that were available before trial, and not excused for good cause, are thus "procedurally barred" on appeal unless raised in a pretrial motion. *See Fadero v. United States*, 180 A.3d 1068, 1072-73 (D.C. 2018). An earlier version of Rule 12 allowed defendants to argue that an indictment fails "to charge an offense" at "any time during the pendency of the proceedings." Super. Ct. Crim. R. 12(b)(2) (2013); *see Conley*, 79 A.3d at 275-76. But Rule 12 was amended in 2017 to mirror Federal Rule 12, *see* D.C. Super. Ct. Crim. R. P. 12 cmt. (2017), under which untimely and unexcused challenges to the constitutionality of an offense-creating statute are unreviewable on appeal, *see United States v. Cardona*, 88 F.4th 69, 75-78 (1st Cir. 2023); *United States v. Herrera*, 51 F.4th 1226, 1281-85 (10th Cir. 2022). *But see Chew v. United States*, 314 A.3d 80, 89-100 (D.C. 2024) (Easterly, J., concurring). Under the current Rule 12, therefore, this Court "can easily dispose of" constitutional claims that were not raised in a pretrial motion because, "where a defendant does not show 'good cause' for" his untimeliness, "there is no unfairness in holding him to his waiver." *Cardona*, 88 F.4th at 78 (cleaned up) (emphasizing "the judicial economy reasons for requiring a Rule 12(b)(3) motion to be heard prior to trial").

This rule has particular salience in the Second Amendment context. Because Second Amendment claims focus so heavily on the written historical record, trial judges (and the government for that matter) cannot fairly be asked to address such

claims for the first time at trial based only on defense counsel's oral assertions without pretrial notice and briefing. *See, e.g.*, *People v. Cabrera*, 230 N.E.3d 1082, 1093 (N.Y. 2023) (emphasizing that *Bruen*'s historical focus "underscores the importance of preservation" of "Second Amendment challenges in the court of first instance"). "Mandating compliance with Rule 12" in the Second Amendment context thus "spares district courts from having to resolve claims on inadequate records and argument caused by belated and haphazard party presentation." *United States v. Turner*, 124 F.4th 69, 78 (1st Cir. 2024) (deeming an untimely as-applied Second Amendment challenge waived and unreviewable).

Just so here. As the trial court indicated, claims like Carruth's must typically be briefed and put in writing before trial. *See* 2/27/23 Tr. 8. And Carruth certainly could have done that here. He never denied having a rifle in his truck, *see, e.g.*, R. 71, 83, 107, 115, 156-57, and *Bruen* had been on the books for seven full months by the time Carruth's Rule 12 motions were due in January 2023, *see* R. 15. Yet Carruth's pretrial motions to dismiss said nothing about the Second Amendment. *See* R. 151-55, 218-19. Instead, he waited until the last day of trial to make an oral motion to dismiss based on vague assertions about the Second Amendment, and he never once tried to show good cause for his delay. *See* 2/27/23 Tr. 7-10. That renders Carruth's claim waived and unreviewable under Rule 12. *See Fadero*, 180

A.3d at 1072-73 (deeming constitutional claim waived as defendant "did not raise" it "before trial" and did not "excuse his delay by showing 'good cause'").

Carruth's claim is waived, moreover, regardless of his fleeting mention of the Second Amendment in a supplemental motion to reconsider bond conditions. For one thing, that motion sought release pending trial—it did not seek to dismiss any charges or identify defects in the indictment. *See* R. 106-10. Plus, it simply asserted that *Bruen* casts "doubt upon the validity of local registration requirements," and that Carruth's rifle was a "weapon contemplated in [the] Second Amendment." R. 110. Such barebones assertions cannot possibly serve as a Rule 12 motion to dismiss, which is confirmed by the trial court's evident surprise on the final day of trial when Carruth's counsel invoked the Second Amendment in a last-minute gambit. *See* 2/27/23 Tr. 8 ("What do you mean? What do you mean, you're making a [Second Amendment claim] -- in what respect?"). This Court accordingly should not review Carruth's Second Amendment claim at all. *See Turner*, 124 F.4th at 77 (holding that district court had not "implicitly excused" defendant's "noncompliance with Rule 12(b)(3)" by rejecting his "Second Amendment claim on the merits").

B. Carruth at least forfeited his Second Amendment claim, and he has not attempted to show plain error.

Even if not waived, Carruth's claim is still procedurally barred because it is forfeited and he has not shown (or even attempted to show) plain error. *See Walker v. United States*, 201 A.3d 586, 593-95 (D.C. 2019) (reviewing "forfeited" argument

for "plain error," and requiring appellants to show error, that was plain, that affected substantial rights, and that caused miscarriage of justice). Defendants must raise claims "with sufficient precision" at trial in order "to fairly apprise" the court of their theory. *Baxter v. United States*, 640 A.2d 714, 717 (D.C. 1994) (internal quotation marks omitted). And the same basic rule applies on appeal: "It is not enough merely to mention a possible argument in the most skeletal way." *Comford v. United States*, 947 A.2d 1181, 1188 (D.C. 2008) (internal quotation marks omitted).

Carruth flunks both tests. In baldly asserting a "right" on the last day of trial to "carry a long rifle, irrespective of any particular license requirements," 2/27/23 Tr. 8, Carruth merely speculated that his position would be "vindicated" in some future "super important decision" after *Bruen*, 2/27/23 Tr. 145. He never identified which provision of District law he was challenging, and he articulated no theory under *Bruen*'s text-and-history framework as to how any of his charges violated the Second Amendment. *See* 2/27/23 Tr. 7-10, 145. Offering nothing better on appeal, Carruth just "assume[s]" that the Second Amendment covers his conduct and then asserts in cursory fashion that it is "an unfair and undue burden to have him register his weapon in the District of Columbia if his ultimate goal was to travel to another jurisdiction where such similar carry was legal." Opening Br. 25; *see* Reply Br. 7. Such oblique, passing assertions do not preserve a constitutional claim for appeal, *see Comford*, 947 A.2d at 1188; *Baxter*, 640 A.2d at 717—and they are certainly

insufficient to meet the stringent plain-error standard, *see Walker*, 201 A.3d at 593-94. This is yet another reason to reject Carruth's claim as procedurally barred.

II. Carruth's As-Applied Challenge To D.C. Code § 22-4504(a-1) Fails.

As explained, the Court should not address Carruth's unpreserved Second Amendment claim at all, let alone review it de novo. But even if the Court does, it should reject Carruth's as-applied challenge for the myriad reasons detailed below, and it should decline amicus PDS's apparent invitation to address a facial claim that Carruth has never asserted at trial or in his terse appellate briefing.[4]

A. Carruth's only argument on appeal misunderstands District law.

Carruth's sole Second Amendment argument rests on a mistaken premise. He appears to assert that D.C. Code § 22-4504(a-1) violates the Second Amendment "as applied" to him because it purportedly required him to "register his weapon in the District" before carrying it in his truck while driving through the District from Ohio "to another jurisdiction where" carrying the rifle "was legal." Br. 25. But Carruth

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[4] As amicus PDS notes (Br. 5 n.6), the constitutionality of the District's licensing and registration laws is "not at issue in this case," and "Carruth does not challenge the constitutionality of his conviction for possessing an unregistered firearm" under D.C. Code § 7-2502.01(a). Regardless, the District's licensing and registration laws pass constitutional muster, *see Bruen*, 597 U.S. at 38 n.9; *Abed v. United States*, 278 A.3d 114, 129 n.27 (D.C. 2022); *Plummer v. United States*, 983 A.2d 323, 337-40 (D.C. 2009), and that issue is currently before this Court in *Benson v. United States*, No. 23-CF-514 (argument heard on Dec. 12, 2024).

is simply wrong about District law: nonresidents like Carruth need not register a rifle in order to lawfully transport it through the District, *see supra* pp. 2-4.

As noted, D.C. Code § 22-4504(a-1) allows gunowners to "carry" a "rifle" in the District when "otherwise permitted by law." And nonresidents are permitted by law to carry an unregistered rifle through the District when, among other requirements, the rifle is "transported in accordance with § 22-4504.02." D.C. Code § 7-2502.01(b)(3). As relevant here, a rifle is transported in accordance with Section 22-4504.02 when it is "unloaded" and "neither the firearm nor any ammunition being transported" is "readily accessible or directly accessible from the passenger compartment of the transporting vehicle," *id.* § 22-4504.02(b)(1); or when it is "unloaded" and "the firearm or ammunition" are "contained in a locked container other than the glove compartment or console" if the transporting vehicle has no "compartment separate from the driver's compartment," *id.* § 22-4504.02(b)(2); *see* 18 U.S.C. § 926A (similar).

Carruth's as-applied challenge to D.C. Code § 22-4504(a-1) thus fails at the outset because it fundamentally misapprehends District law. Indeed, because District law did not require Carruth to do the only thing that he says is "an unfair and undue burden"—namely, "register his weapon in the District," Br. 25—Carruth offers no viable basis to challenge his conviction under D.C. Code § 22-4504(a-1). The Court can thus reject his claim on the merits for this reason alone.

B. In any event, D.C. Code § 22-4504(a-1) comports with the Second Amendment as applied to Carruth.

1. Carruth has not shown that his conduct fits within the Second Amendment's plain text.

It is Carruth's burden at *Bruen* step one to show that "the normal and ordinary meaning of the Second Amendment," as informed by its "historical background," "presumptively protects" his conduct. *Bruen*, 597 U.S. at 17, 24; *see United States v. Jackson*, 138 F.4th 1244, 1251 (10th Cir. 2025) ("At the first step, the party asserting the right must establish the plain text of the Second Amendment covers their conduct. Failure to so establish amounts to a failure to present a claim of a Second Amendment violation." (citations omitted)). As construed, the Second Amendment's text generally covers the keeping and bearing of common arms for self-defense and other lawful purposes. *Bruen*, 597 U.S. at 17-22, 31-33. Yet the Second Amendment has never been read to create "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 554 U.S. at 626; *see Rahimi*, 602 U.S. at 690-91; *Bruen*, 597 U.S. at 21.

Here, Carruth has not even tried to show that his conduct implicates the text of the Second Amendment. And he cannot. Carruth essentially demands a right to transport firearms in the District in any manner he pleases without qualification. *See* Br. 23-25. Yet that is not a right protected by the Second Amendment. *See Heller*, 554 U.S. at 626-27; *Gamble*, 30 A.3d at 165 (noting the Second Amendment does

not mandate "a free for all out there when it comes to firearms" (internal quotation marks omitted)). Rather, the Second Amendment must be read to incorporate "certain well-recognized exceptions" "as if they had been formally expressed," *Robertson*, 165 U.S. at 281-82—including limits on the *manner* in which arms may be carried, *see Bruen*, 597 U.S. at 38. The unfettered entitlement Carruth asserts thus cannot be gleaned from the Second Amendment's text, properly understood in light of its historical limitations. *See United States v. Price*, 111 F.4th 392, 401 (4th Cir. 2024) (en banc) ("[Courts] can *only* properly apply step one of the *Bruen* framework by looking to the historical scope of the Second Amendment right."), *cert. denied*, No. 24-5937, 2025 WL 951173 (U.S. Mar. 31, 2025).

Carruth's failure on this point dooms his entire claim. Because he cannot show that the Second Amendment's text entitles him to carry a firearm through the District however he pleases, Carruth's challenge collapses at the threshold and he cannot shift the burden to the District to justify the application of D.C. Code § 22-4504(a-1) in this case. *See Bruen*, 597 U.S. at 17, 24; *see also Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 218-24 (4th Cir. 2024) (en banc) (rejecting claim at *Bruen* step one), *cert. denied*, 145 S. Ct. 1049 (2025). This Court accordingly need not decide any other issue. *See Price*, 111 F.4th at 398 ("Because we conclude below that Price's challenge falters at step one, we need only address what is required at that phase of the analysis."); *Oakland Tactical Supply, LLC v. Howell Twp.*, 103

F.4th 1186, 1194-99 (6th Cir.) (similar), *cert. denied*, 145 S. Ct. 603 (2024); *Bevis v. City of Naperville*, 85 F.4th 1175, 1181-82, 1192, 1194-97 (7th Cir. 2023) (similar), *cert. denied sub nom. Harrel v. Raoul*, 144 S. Ct. 2491 (2024).

2. Carruth's conviction under D.C. Code § 22-4505(a-1) is consistent with the historical tradition of gun regulation.

At any rate, Carruth's as-applied claim fails even if this Court proceeds to the second step of *Bruen* because his conviction is eminently supported by the Second Amendment's historical tradition and underlying principles. As an initial matter, Carruth has challenged only D.C. Code § 22-4504(a-1)'s application in this case, Opening Br. vi, 23-25; Reply Br. 7—he has not disputed the constitutionality of the District's rules for transporting firearms under D.C. Code §§ 7-2501.02(b)(3) or 22-4504.02, *see supra* pp. 2-4, 17-18. Carruth has thus forfeited any claim that those transportation laws violate the Second Amendment, and this Court should not address such issues. *See, e.g.*, *Tuckson v. United States*, 77 A.3d 357, 366 (D.C. 2013) ("It is a basic principle of appellate jurisprudence that points not urged on appeal are deemed to be waived." (internal quotation marks omitted)).

But even ignoring Carruth's forfeiture, the Second Amendment does not bar his conviction because ample historical evidence shows that D.C. Code § 22-4504(a-1) and related provisions were validly applied to Carruth as manner-of-carry regulations. The Second Amendment is not "a law trapped in amber," *Rahimi*, 602 U.S. at 691, or a "regulatory straightjacket," *Bruen*, 597 U.S.

at 30. To pass constitutional muster, even "regulations that were unimaginable at the founding" must simply be "relevantly similar" to historical analogues "from before, during, and even after the founding" in terms of "how" and "why" they regulate arms-bearing conduct. *Bruen*, 597 U.S. at 27-29. They need not be "a dead ringer for historical precursors," however, especially in cases involving "dramatic technological changes," which demand an even "more nuanced approach." *Id.* at 27-28, 30. Rather, the critical question is whether relevant historical analogues, "[t]aken together," show that a law's application is "consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692, 698.

The answer to that question here is *yes*. As Carruth himself admits (Br. 25), "the historical evidence of legislation in the United States does demonstrate that the manner of public carry is subject to reasonable regulation." That concession is wise. The Supreme Court has repeatedly made clear that "manner of carry" laws are among those "well-defined restrictions" that have "traditionally" limited "the right to keep and bear arms in public." *Bruen*, 597 U.S. at 38; *Heller*, 554 U.S. at 626-27 & n.26. This includes, among other things, laws that prohibited "riding or going armed" in public "to the Terror of the People," which punished violators with forfeiture of arms and imprisonment in order to preserve "public order" and prevent "violence." *Rahimi*, 602 U.S. at 697-98 (internal quotation marks omitted).

Another pervasive manner-of-carry regulation at the founding were laws that "forbade carrying concealed firearms." *Rahimi*, 602 U.S. at 691. As early as 1686, for example, the province of East New Jersey banned the concealed carry of "pocket pistol[s]" and other "unusual or unlawful weapons." *Bruen*, 597 U.S. at 47-48 (quoting An Act Against Wearing Swords, &c., ch. 9, *in Grants, Concessions, and Original Constitutions of the Province of New Jersey* 290 (2d ed. 1881)). And in 1813, Kentucky and Louisiana became the first states to enact statutes banning the concealed carry of pistols and other weapons. *E.g.*, 1813 Ky. Acts 100-01, https://tinyurl.com/547d6cd7; 1813 La. Acts 172-75, https://tinyurl.com/56tzpa6f. Many other states soon followed, and courts upheld these regulations as "lawful under the Second Amendment or state analogues." *Heller*, 554 U.S. at 626; *see Bruen*, 597 U.S. at 53 n.17 (citing cases). As one court put it, concealed-carry laws do not "infringe" the right to bear arms at all because they ban "only a *particular mode* of bearing arms which is found dangerous to the peace of society." *State v. Jumel*, 13 La. Ann. 399, 399-400 (La. 1858); *see State v. Reid*, 1 Ala. 612, 616 (1840) (holding that concealed-carry ban was not a "destruction of the right").

Laws governing the transportation of firearms and ammunition were also traditional manner-of-carry regulations. Some of these laws required "persons traveling" through the jurisdiction to carry "arms with their baggage," while otherwise prohibiting "any person" from "carrying any pistol" or other weapon "on

or about his person, saddle, or in his saddle bags." *E.g.*, 1871 Tex. Gen. Laws 25, § 1, https://tinyurl.com/4vwx93z4; *see Barton v. State*, 66 Tenn. 105, 105-06 (1874) (convicting defendant of "riding along the public road from Troy with a navy six [firearm] in a scabbard hung to the horn of his saddle"). Others stated that no one may "navigate or paddle any open skiff, canoe or open boat" in certain areas while a "gun, musket, fowling piece or pistol" is "on board." *E.g.*, 1837 Md. Acts 108 § 1, https://tinyurl.com/mtd5j8v9. And still other laws restricted the transportation of ammunition by allowing "no person" to "carry or convey in any dray, cart, wagon or other carriage, any greater quantity of gun-powder than thirty pounds weight, at any one time, in or through the city," unless the "gun-powder" is "secur[ed]" in "a good bag or bags, or within a canvas or other safe covering completely around the said powder." *An Ordinance Containing Regulations as to Gun-powder*, ch. II, § 3 (Jul. 27, 1816), reprinted in *By-Laws & Ordinances of the City of Pittsburgh* 78 (1828), https://tinyurl.com/enff5twp; *see Charter of the City of Brooklyn Passed June 28, 1873*, at 192, §§ 14, 16 (1877), https://tinyurl.com/ye9tdn4y (similar).

Similar regulations developed as modern forms of transportation (e.g., trains and automobiles) ushered in novel threats to public safety. *See, e.g.*, *Frey v. Nigrelli*, 661 F. Supp. 3d 176, 205 (S.D.N.Y. 2023) (noting public and private gun regulation on railroads). As to railroads, some statutes required guns to be carried separately in the baggage car, *see Int'l & G.N. Ry. Co. v. Folliard*, 1 S.W. 624, 625 (Tex. 1886),

while others forbade "any person" to "present or discharge any gun, pistol, or other fire arm at any railroad train, car, or locomotive engine," 1876 Iowa Acts 142, https://tinyurl.com/4d4dsu79; *see Diffey v. State*, 5 So. 576, 576 (Ala. 1889) (affirming conviction of defendant carrying pistol on train in handbasket). Private rail companies imposed similar restrictions, including rules banning "[g]uns" in the passenger car unless stored "in cases and not loaded." *C. Pac. R.R. & Leased Lines, Rules, Regulations, & Instructions for the Use of Agents, Conductors, Etc.* 196, 204-05 (1882), https://tinyurl.com/4dzbdr4y (Rules 17, 86, 87); *see* Urlich Bonnell Phillips, *Passenger & Freight Regulations of the Charleston & Hamburg Railroad, 1835*, in *A History of Transportation in the Eastern Cotton Belt to 1860*, at 165 (1908), https://tinyurl.com/yzjucykr ("No Gun or Fowling Piece shall be permitted to enter the car unless examined by the Conductor."); *N. Pa. R.R.*, *Rules and Regulations for Running the Trains on the North Pennsylvania Railroad* 13, § 41 (1875), https://tinyurl.com/rfy9s96b (prohibiting guns in passenger cars).

So, too, with private automobiles. *See United States v. Adams*, 914 F.3d 602, 606 (8th Cir. 2019) ("The history of prohibitions on concealed carry extends to the carrying of concealed weapons during travel."). Many states generally banned the concealed carry of certain guns in cars. *See, e.g.*, 1925 Or. Laws 469-70, §§ 5-6, https://tinyurl.com/2p9696fn. Others required a license to take a firearm into a vehicle. *See, e.g.*, 1935 Wash. Sess. Laws 599-601, §§ 5-7

https://tinyurl.com/5n6b4rmh; 1927 R.I. Pub. Laws 256, 257-58, §§ 4-5, https://tinyurl.com/4hddcf5b. And still others required that guns be unloaded and/or locked away when transported in vehicles. *See, e.g.*, 1929 Iowa Acts 90, § 30, https://tinyurl.com/n5zxef53 ("No person shall carry a gun or any firearms, except a pistol or revolver, in or on a motor vehicle unless the same be unloaded in both barrels and magazine, and taken down or contained in a case."); 1919 Me. Laws 193, ch. 180, § 64, https://tinyurl.com/mr4wy4em ("No person shall have a rifle or shotgun, either loaded or with a cartridge in the magazine thereof, in or on any motor vehicle while the same is upon any highway or in the fields or forests.").

Taken together, these analogues confirm that Carruth's conviction under D.C. Code § 22-4504(a-1) comports with the Second Amendment. The historical laws noted above permitted transporting weapons by horse, cart, train, or car as long as proper precautions were taken to minimize the risks of accidents and to prevent the combination of deadly firepower with high mobility (e.g., unloading the firearm, stowing it in a separate compartment, locking it in a case). *See supra* pp. 22-26. And as applied in this case, the District's laws allowed Carruth to transport his rifle through the District as long as he followed certain precautions to ensure his own safety as well as the safety of fellow drivers and pedestrians (e.g., unloading the firearm, storing it and any ammunition in a locked container, ensuring that those items are not directly accessible in the passenger compartment). *See, e.g.*, D.C. Code

§§ 7-2501.02(b)(3), 22-4504.02. In this way, the District's laws track both state and local historical regulations as well as the longstanding federal requirements of lawful firearm transportation between states. *See* 18 U.S.C. § 926A.

To be sure, the District's laws and their application here may not be identical to any discrete historical statute—but they need not be. *See Rahimi*, 602 U.S. at 698-99. In the Second Amendment context, "a court's task is to seek harmony, not to manufacture conflict," between "legislation and the Constitution." *Id.* at 701 (cleaned up). Here, because the "how" and "why" are sufficiently analogous when viewed collectively, the District's regulations can be validly applied to Carruth "consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692 (citing *Bruen*, 597 U.S. at 26-31). The Second Amendment requires nothing more. *See id.* at 691-92 ("[T]he Second Amendment permits more than just those regulations identical to ones that could be found in 1791.").

If nothing else, the development of modern transportation certainly represents a "dramatic technological change[]" warranting an even "more nuanced" historical inquiry. *Bruen*, 597 U.S. at 27, 30. It goes without saying that regulations on carrying guns in private cars could not have existed until such vehicles first became commercially available in the 20th century. *See* Peter J. Hugill, *Good Roads and the Automobile in the United States 1880-1929*, 72 Geographic Rev. 327, 331 (1982), https://tinyurl.com/rc2xxtvz. And the automobile represented a new form of

private travel that permitted "predatory criminal[s]" to pass "rapidly from State to State," "leaving the scene of their crime in a high-powered car or by other means of quick transportation." *National Firearms Act: Hearings on H.R. 9066 Before the H. Comm. on Ways and Means*, 73d Cong. 4 (1934) (statement of Homer S. Cummings, Att'y Gen. of the United States), https://tinyurl.com/5eb22vcp. Regulations on securing firearms while traveling by car are thus a response to profound shifts in American travel, which in turn generated new public safety concerns. These regulations nonetheless have the same justification as laws restricting arms-bearing on horseback: to ensure public safety and prevent violence, especially as it pertains to non-arms-bearers and bystanders. *See Rahimi*, 602 U.S. at 697-98.

Carruth's as-applied challenge therefore fails as a matter of history and law, not to mention common sense. *See id.* at 698 (noting that "tradition" often "confirm[s] what common sense suggests"). Under the theory Carruth appears to advance, the millions of tourists who visit the District every year would be able to carry any firearm they wish in any manner they wish so long as they could do so in their home state. *See Visitor Statistics*, Washington, D.C. (last visited June 23, 2025), https://tinyurl.com/2ypv2ycp (27.2 million visitors in 2024). But the founding generation could not possibly have understood the Second Amendment to compel that unthinkable result—and the Supreme Court has expressly rejected it. *See, e.g.*, *Heller*, 554 U.S. at 626 (emphasizing that the Second Amendment confers

no right to carry weapons "in any manner whatsoever"); *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010) (plurality op.) (noting the Second Amendment "by no means eliminates" government's ability to address "local needs and values"). Carruth's claim is thus as legally flawed as it is practically untenable.

C. Amicus PDS cannot expand Carruth's narrow as-applied claim into a broad facial challenge.

The Court should not allow amicus PDS to repackage this case as a facial challenge to the District's firearm laws. *See* PDS Br. 11-14. Amici generally cannot raise issues that were not preserved by the parties. *See Apartment & Off. Bldg. Ass'n of Metro. Wash. v. Pub. Serv. Comm'n*, 203 A.3d 772, 784 (D.C. 2019) ("An amicus curiae must take the case as he finds it, with the issues made by the principal parties." (quoting *Givens v. Goldstein*, 52 A.2d 725, 726 (D.C. 1947) (cleaned up))). And parties cannot attempt to adopt new arguments raised by amici that were not preserved in their principal briefs. *See DC Pres. League v. Mayor's Agent for Historic Pres.*, 236 A.3d 373, 385 (D.C. 2020) (declining to address new issues raised by amicus that a party "did not raise in its opening brief").

Those principles apply here with particular force given that "facial challenges are disfavored" even when asserted by a party. *Moody v. NetChoice, LLC*, 603 U.S. 707, 744 (2024). As-applied claims are "the basic building blocks of constitutional adjudication" and "remain the preferred route to challenge the constitutionality of a statute," precisely because they focus on the concrete facts of the challenger's case.

Plummer, 983 A.2d at 339 (internal quotation marks omitted). But facial challenges require claimants to prove that a "law is unconstitutional in *all* of its applications," and therefore such claims "often rest on speculation" and "run contrary to the fundamental principle of judicial restraint." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449-51 (2008) (emphasis added).

Here, Carruth has never once raised a facial Second Amendment challenge to any District law in this case. Far from it. His opening and reply briefs challenge Section 22-4504(a-1) only "*as applied* to Mr. Carruth *under the present fact pattern*." Opening Br. 25 (emphases added); *see* Reply Br. 7 (challenging Section 22-4504(a-1) "*under the circumstances presented at trial*" (emphasis added)). And so to the extent PDS is seeking to reinvent this case as a facial challenge, the Court should decline that invitation and instead reject the narrow as-applied claim that Carruth himself has actually tried to assert.

That is particularly so considering that PDS's facial arguments must fail given the valid application of D.C. Code § 22-4504(a-1) to Carruth himself. Challenging a statute "on its face" under the Second Amendment is "the most difficult challenge to mount successfully, because it requires a defendant to establish that no set of circumstances exists under which the Act would be valid," and so "the Government need only demonstrate that [the law] is constitutional in some of its applications" to prevail. *Rahimi*, 602 U.S. at 693 (internal quotation marks omitted); *see Dubose v.*

United States, 213 A.3d 599, 603-04 (D.C. 2019) (same). The District's regulations clearly pass this test for facial constitutionality because (as shown) they were validly applied to Carruth in this very case. *See supra* pp. 19-29. That being so, PDS necessarily cannot show that D.C. Code § 22-4504(a-1) is invalid in every application and thus the statute remains facially constitutional. *See Rahimi*, 602 U.S. at 699-701; *United States v. Perez-Gallan*, 125 F.4th 204, 216 (5th Cir. 2024) ("[A] statute needs just one permissible application to survive a facial challenge[.]").[5]

CONCLUSION

This Court should reject Carruth's as-applied challenge to D.C. Code § 22-4504(a-1) as procedurally barred and/or meritless.

[5] To the extent this Court wishes to address PDS's newly raised facial challenge, the District respectfully submits that the appropriate course is to order supplemental briefing so that the issue may be fully addressed by the parties.

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CERTIFICATE OF SERVICE

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