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COMMENT

REWRITING *BRUEN*: WAITING PERIODS AND THE QUIET CONSTITUTIONALIZATION OF IMMEDIATE FIREARM POSSESSION

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I. Introduction

Like most core, yet broadly framed constitutional protections, the outer limits of the Second Amendment remain undefined. Since *District of Columbia v. Heller* recognized “an individual right to keep and bear arms” but failed to clarify the exact scope of that right, courts began developing frameworks that work to ensure constitutional fidelity while considering Second Amendment interpretation in an ever-changing society full of technological advancements and fluctuating concerns for public safety among American citizens.¹

In *New York State Rifle & Pistol Ass’n v. Bruen*, the Supreme Court

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1. See 554 U.S. 570, 595 (2008).

rejected the established interest-balancing test created after *Heller* and reconstructed a framework that reviewed the precise text of the Second Amendment and historical analogues, like the firearm regulation at issue, when interpreting Second Amendment claims.² While repeatedly referencing *Bruen* as the controlling framework, *Ortega v. Grisham* illustrates how certain applications of the framework can lead to an unwarranted result.³ The analysis the court uses subtly reshapes both steps of the framework by reading words into the Second Amendment and dismissing concrete evidence of similar historical instances. Such a conclusion expands the Second Amendment in a way that threatens the country's ability to prioritize citizen safety and the evolution of society.

This Comment addresses how *Ortega* applies the *Bruen* framework by simply rewriting it. The court alters the textual inquiry into a "burden" inquiry and thinly narrows the historical inquiry into traditions dating hundreds of years ago;⁴ this conclusion obviously lands the current firearm regulation and almost any future regulation within an unconstitutional box that is impossible to escape. In construing the framework and the Second Amendment in such a way, the court threatens established firearm safety practices and prevents future remedies that might warrant waiting period laws. This analysis raises crucial questions regarding whether the *Bruen* framework can remain workable in a modern setting.

Part II of this Comment will explore the historical background of Second Amendment interpretation leading up to the *Ortega* decision. Part III will describe the facts of *Ortega* before detailing the court's analysis and conclusion based on these facts and the relevant law. Part IV addresses specific concerns raised by *Ortega*'s treatment of precedent, primarily the *Bruen* decision and its text and history test. The main points raised in Part IV will discuss the effects of *Ortega*'s alteration of the *Bruen* framework along with the consequences such an analysis will have on the future of the courts and individuals. Part V will combine information from all sections to summarize the broader significance of the underlying implications of *Ortega*.

II. Historical Background

2. N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 17-19 (2022); *Heller*, 554 U.S. at 635.

3. See generally *Ortega v. Grisham*, 148 F.4th 1134 (10th Cir. 2025) (holding that the Waiting Period Act of New Mexico was likely unconstitutional).

4. *Id.* at 1145, 1150.

A. The Second Amendment and *Heller*

“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.”⁵ In *Heller*, the Supreme Court recognized the “individual right to keep and bear arms” under the Second Amendment for purposes of self-defense.⁶ But the Court further emphasized that the Second Amendment right is not infinite; historical legal sources consistently recognized how the amendment fails to rigidly guarantee a right to possess or carry a weapon unrestrictedly.⁷

Because *Heller* failed to define the outer limits of the Second Amendment, the federal circuit courts developed a two-step framework that applied to Second Amendment claims.⁸ Starting in *United States v. Marzzarella*, the court asked, “whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee.”⁹ If the challenged law does, the court must participate in an evaluation of the law using a “form of means-end scrutiny.”¹⁰

B. The *Bruen* Framework

However, in today’s *Bruen* framework, the Court expressly rejected the former two-step framework as “one step too many” and refused to apply an interest balancing test to the interpretation of core constitutional rights.¹¹ The new framework reads: “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”¹² Only regulations that fit within that tradition that may be deemed constitutional.¹³ The *Bruen* approach focuses on text and history and highlights the reasoning used in *Heller* that rejected such a

5. U.S. CONST. amend. II.

6. *Heller*, 554 U.S. at 595.

7. *Id.* at 626.

8. *See* N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1, 17-18 (2022).

9. 614 F.3d 85, 89 (3d Cir. 2010).

10. *Id.*

11. *Bruen*, 597 U.S. at 19.

12. *Id.* at 24.

13. *Id.* at 17.

judge-empowering framework.¹⁴

New Mexico had zero history of a statutory waiting period regarding firearm purchases prior to the 2024 statute at issue.¹⁵ Also, the Tenth Circuit has never ruled on the issue of waiting periods before this case.¹⁶ To understand how courts usually approach waiting periods, it is therefore crucial to turn to other circuits. In *Silvester v. Harris*, California imposed a ten-day waiting period that provided time for both a background check and a “cooling-off” period (a period of time provided to prevent impulsive decisions involving the use of firearms).¹⁷ The Ninth Circuit upheld the waiting period, finding that the ten-day period was not overly burdensome on those wishing to obtain firearms; however, the decision predates *Bruen*.¹⁸ Similar cooling-off periods have faced little to no judicial consideration since *Bruen*.¹⁹

III. *Ortega v. Grisham*

A. Facts

Due to rising numbers of state-wide gun violence incidents, “the New Mexico Legislature adopted a seven-day waiting period for most consumer firearm purchases,” titled the “Waiting Period Act.”²⁰ The statute illustrates that the “waiting period shall include the period required to conduct a federal instant background check” and “if the seven-calendar day waiting period has expired without the completion of a required federal instant background check, the seller shall not transfer the firearm to the buyer until the federal instant background check is completed.”²¹ This law serves two legitimate purposes: (1) to reduce the rise in gun violence and suicides, and (2) to ensure citizens receive a background check, since federal law often permits skipping this step if the process

14. *Id.* at 22.

15. *Ortega v. Grisham*, 148 F.4th 1134, 1139, 1150 (10th Cir. 2025).

16. *See id.*; *cf.* *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 119-20 (10th Cir. 2024) (holding that imposing minimum age limits restricting the right to buy and sell firearms does not burden Second Amendment rights).

17. 843 F.3d 816, 819 (9th Cir. 2016), *abrogated by*, *Baird v. Bonta*, 81 F.4th 1036, 1043 (9th Cir. 2023).

18. *Id.*

19. *Baird*, 81 F.4th at 1036, 1043.

20. N.M. STAT. ANN. § 30-7-7.3 (2024), *invalidated by*, *Ortega*, 148 F.4th at 1139.

21. *Ortega*, 148 F.4th at 1139 (quoting N.M. STAT. ANN. § 30-7-7.3).

exceeds three days.²²

On May 15, 2024, the day the Act went into effect, Plaintiff Paul Ortega attempted to purchase a handgun from a firearms dealer in New Mexico.²³ Despite clearing the background check immediately, with the new law, he was subjected to the seven-day waiting period before obtaining possession of the firearm.²⁴

B. Procedural History

Ortega and his co-plaintiff filed suit in the United States District Court for the District of New Mexico, seeking “preliminary and permanent injunctive relief to enjoin the New Mexico law.”²⁵ The court denied the plaintiffs’ preliminary relief for three main reasons: (1) the Second Amendment protects the right to possess and carry firearms, but the same is not true for obtaining them; (2) it used the exception from *Heller* regarding commercial conditions or qualifications on the sale of firearms to find the regulation presumptively constitutional; and (3) even looking at history, the examples illustrating regulation of the possession of firearms prove that the waiting period fits within historical tradition.²⁶ Ortega and his co-plaintiff appealed, seeking reversal and again to enjoin the Waiting Period Act.²⁷

C. Majority Opinion

The Tenth Circuit Court of Appeals ruled that the Waiting Period Act impedes the lawful procurement of firearms, thereby violating the right secured by the Second Amendment.²⁸ Mr. Ortega’s reversal was granted, and the case was remanded to the lower court with instructions that injunctive relief could be given consistent with the opinion.²⁹

The appellate court applied the abuse of discretion standard to the

22. *Id.* at 1140.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 1139, 1156.

29. *Id.* at 1156; Ortega v. Grisham, No. CIV 24-0471 JB/SCY (D.N.M. Feb. 9, 2026) (order granting preliminary injunction) (enjoining the defendants from implementing and/or enforcing the Act against the named plaintiffs only).

denial of the preliminary injunction, not disturbing the ruling absent a legal error or clearly erroneous findings of fact.³⁰ The court further explained that a plaintiff requesting injunctive relief must establish the four-factor framework discussed in *Winter v. Natural Resources Defense Council*.³¹ Additionally, the court highlighted the fact that it will presume that the harm will be “irreparable” if the plaintiff asserts a harm from a violation of a constitutional right that actually exists.³²

The court turned to the Second Amendment in beginning its analysis of the text itself and emphasized the right to keep and bear arms as a fundamental individual right.³³ Relying on *Heller*, the court recognized that the right pre-dated the Second Amendment, as the Amendment simply codified a preexisting individual right.³⁴ In conducting its analysis, the court used and explained the two-step framework from *Bruen* for Second Amendment interpretation, following the framework by first looking at the plain text and then conducting a historical inquiry to see if the statute aligned with the nation’s tradition of firearm regulation.³⁵ This method of clarifying the scope from *Bruen* followed the *Heller* decision’s failure to establish a defined scope for Second Amendment interpretation.³⁶

Applying this framework, the court discussed three main reasons why the New Mexico law fails.³⁷

i. “Burdening” the Second Amendment

First, it argued that the regulation interferes with the meaningful exercise of the right granted by the Second Amendment.³⁸ Looking to the text of the Amendment, the court noted that the right to bear arms, central to the text, necessarily requires the right to “acquire” those arms.³⁹ It reached this conclusion by comparing the right with other constitutional rights, including how the First Amendment’s protection of free press necessarily includes access to the means needed to exercise it, such as

30. *Id.* at 1141 (citing *Little v. Jones*, 607 F.3d 1245, 1250 (10th Cir. 2010)).

31. *Id.* at 1141-42 (citing *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)).

32. *Id.* at 1142.

33. *Id.*

34. *Id.*

35. *Id.* at 1142-43.

36. *Id.* at 1142.

37. *Id.* at 1143.

38. *Id.*

39. *Id.*

obtaining a printing press.⁴⁰ The court struck down New Mexico’s argument that the law does not burden the right or ability to “keep and bear arms” and that the actual acquisition of firearms is different from the “sales and transfers” of those firearms.⁴¹ The State argued this to show that “the Second Amendment’s plain text does not” mention sales or transfers, and therefore looking at the text in this case proves futile.⁴² In the court’s view, this methodology invited just the type of judicial interest-balancing rejected by both the Supreme Court and the Constitution.⁴³ The district court viewed the law as a minimal burden on the plaintiffs in this case, instead of applying the framework in *Bruen* that focuses on text and history.⁴⁴

The court furthered this argument by considering cooling-off waiting periods within other constitutional rights; like, for example, a waiting period to publish news stories is unconstitutional under the First Amendment.⁴⁵ Targeting the heart of the state’s argument, the court emphasized that the government cannot place a delay on a constitutional right due to a general fear that citizens might misuse that right without adequate time to consider.⁴⁶ It concluded the waiting period indeed infringes the right to keep and bear arms, regardless of the intent of the regulation.⁴⁷

ii. *Heller* Exception

Second, the court addressed whether the Act falls under the “presumptively lawful” condition or qualification of the commercial firearm sales exception carved out by *Heller*.⁴⁸ Despite the lack of concrete guidance, the court concluded that the Act lacks the qualifications for a presumptively constitutional regulation for two main reasons.⁴⁹ First, the law applies to more than just commercial sales; it applies to “non-

40. *Id.*

41. *Id.* at 1144.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 1145 (citing *United States v. Quattrone*, 402 F.3d 304, 309-10 (2d Cir. 2005)).

46. *Id.* (citing *Silvester v. Becerra*, 583 U.S. 1139 (2018) (Thomas, J., dissenting from denial of certiorari)).

47. *Id.*

48. *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 627 n.26 (2008)).

49. *Id.* at 1146.

commercial transfers” like the one Ortega attempted to make himself.⁵⁰ This shows that the regulation cannot be a qualification on commercial sales required by the carveout if applied equally to non-commercial sales.⁵¹ Second, the court found that the waiting period is neither a “qualification” nor a “condition” envisioned by *Heller*, and it does not compare to the types of regulations traditionally regarded as presumptively constitutional.⁵² The waiting period is not a “condition” because, although a delay is imposed, the sale still takes place.⁵³ The waiting period is not a “qualification” because a person failing to wait the seven days would immediately become “presumptively unqualified,” which would be an unconstitutional classification.⁵⁴

The court rejected New Mexico’s comparison with a Ninth Circuit case involving an upheld cooling-off period, arguing that that majority used an intermediate scrutiny approach, which was later rejected in *Bruen*.⁵⁵ New Mexico also used this court’s decision in *Rocky Mountain Gun Owners v. Polis* (“*RMGO*”) to further its argument of the constitutionality of waiting periods.⁵⁶ The court responded with the idea that these cases confirm the opposite of waiting periods and the burdens they impose.⁵⁷ It also argued that *RMGO* failed to reach the issues most relevant in the case at hand in failing to define the scope of the terms “qualifications” and “conditions”.⁵⁸ The court finished this argument by emphasizing the view that even if a presumption of constitutionality applied, this would not guarantee the law’s constitutionality, as the law does not align with historical tradition or longstanding practice.⁵⁹

iii. Comparing With Traditional Restrictions

50. *Id.*

51. *Id.*

52. *Id.* at 1147.

53. *Id.*

54. *Id.*

55. *Id.* at 1148 (rejecting New Mexico’s reliance on *Silvester v. Harris*, 843 F.3d 816, 830 (9th Cir. 2016) (Thomas, C.J., concurring)).

56. *Id.* (citing *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 118 (10th Cir. 2024)).

57. *Id.*

58. *Id.*

59. *Id.* at 1148-49.

Finally, the court analyzed whether the regulation fits within the historical tradition of firearm restrictions.⁶⁰ It cites *United States v. Rahimi* and *Bruen* in explaining that the current restriction must be significantly similar to the “how” and “why” of the compared restriction from the past.⁶¹ The court rejects New Mexico’s historical examples, reasoning that characterizing waiting periods stretching back to 1923 is an “oversimplification,” and that waiting periods adopted by other states are not relevant since they can be distinguished from the present case, having been incorporated primarily to provide time to conduct a background check.⁶² The court, however, explicitly acknowledged the fact that around a dozen states imposed waiting periods and that waiting periods not revolving around background checks appeared in the 1990s; yet it concluded these do not count as longstanding traditions.⁶³ Despite this fact, the court found that the waiting period examples provided do not suffice.⁶⁴

New Mexico also proposes historical analogues such as “intoxication laws,” “license and permitting regimes,” and “targeted group bans on firearm carry or possession,” arguing that historical governments could regulate access to firearms to address dangerousness and ensure citizens were not abusing this right.⁶⁵ The court, in striking down this argument, explained that the past regulations were individualized and applied only to citizens deemed dangerous under certain conditions; while here, the waiting period places a “blanket burden” on the entire population and presumes that everyone is dangerous before they even try to purchase a firearm.⁶⁶ It is this distinction that the court found sets the New Mexico regulation apart from the examples rooted in history regarding the restriction of access to firearms.⁶⁷

The court concluded that the historical interpretation of the Second Amendment and the right to “keep and bear arms” did not support haphazard restrictions on the purchase or acquisition of firearms.⁶⁸ Having

60. *Id.* at 1149.

61. *Id.* (first citing *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 30 (2022), then citing *United States v. Rahimi*, 602 U.S. 680, 692 (2024)).

62. *Ortega*, 148 F.4th at 1150.

63. *Id.* (citing *Silvester v. Harris*, 41 F. Supp. 3d 927, 946-47 (E.D. Cal. 2014)).

64. *Id.*

65. *Id.*

66. *Id.* at 1151-52.

67. *Id.* at 1152.

68. *Id.* at 1155.

determined that the waiting period was unconstitutional, the court declined to define the scope of injunctive relief and remanded to the district court to determine the appropriate remedy.⁶⁹ The court reversed the denial of preliminary relief and remanded for entry of injunctive relief in accordance with the reasoning set forth in its opinion.⁷⁰

Judge Matheson's dissent argued that the panel shall uphold the waiting period due to the court's decision in *RMGO*.⁷¹ Matheson reasoned that the Act constitutes a presumptively lawful "'condition[]' and 'qualification[]' on the commercial sale of arms" and thus fits within the carveout created by *Heller*; the court found in the *RMGO* case, when applying the two-step framework, that "laws imposing conditions and qualifications on the sale and purchase of arms do not implicate the plain text of the Second Amendment."⁷² *RMGO* involved a prohibition on firearm purchases by individuals under the age of twenty-one, which the court found to be an "aged-based condition or qualification" rather than a restriction on possession.⁷³ Matheson argued the same reasoning applied here, as both the age requirement and the waiting period operated as a condition of waiting a period of time.⁷⁴ *RMGO* held that the challenged law will only be struck down if it is implemented to achieve abusive purposes and concluded that mandating a minimum age advances the valid objective of guaranteeing that the citizens purchasing guns are responsible.⁷⁵ Following the *RMGO* decision, Matheson believed the waiting period here satisfied that requirement as a valid objective, as it seeks to reduce impulsive violence and suicides.⁷⁶

IV. Argument

69. *Id.* at 1155-56.

70. *Id.* at 1156.

71. *Id.* (Matheson, Circuit J., dissenting).

72. *Id.* at 1156-57 (internal quotation marks omitted) (quoting *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 120 (10th Cir. 2024)).

73. *Rocky Mountain Gun Owners*, 121 F.4th at 119-20.

74. *Ortega*, 148 F.4th at 1157.

75. *Id.*

76. *Id.* at 1158.

A. Introduction

In *Ortega*, the court not only invalidated New Mexico’s Waiting Period Act as to the plaintiffs; it also quietly reshaped the way courts interpret Second Amendment claims. The court treats any temporal delay in acquiring a firearm as a direct violation of the Second Amendment. It does so by implicitly stretching the right to “keep and bear arms” into an unquestioned right to immediate possession based on the idea that any regulation that “burdens” the ability to acquire a firearm violates the *Bruen* framework and is therefore unconstitutional.⁷⁷ The court never explicitly stated that the right to possession is immediate, likely to avoid the consequences such a statement would entail, but the underlying logic of the opinion leaves no alternative conclusion. The court’s interpretation of the *Bruen* framework also raises issues of comparing modern firearm regulations with historically similar regulations, questioning the judicial system’s ability to apply the framework in an effective and fair manner.⁷⁸ Besides threatening the modern idea of cooling-off periods, the decision puts necessary waiting periods for background checks and other preventative measures at risk that are crucial to safeguard American citizens while simultaneously protecting their constitutional rights.

B. The “Burden” Extension

Although the court’s conclusion that common sense proves that the right to “keep and bear arms” includes the right to acquire them, its analysis ultimately focused on whether the Act was likely unconstitutional because it “burdened” those wanting to exercise that constitutional right.⁷⁹ The court argued that waiting periods in general hinder the right, regardless of the reason for the waiting period.⁸⁰ However, this logic is difficult to understand when looking at other areas of constitutional law applied in the real world. The court used several examples to show that such a delay on the ability to exercise these rights immediately renders the delay unconstitutional, while the Constitution routinely tolerates procedural delays for other rights, such as voting registration and marriage

77. *See id.* at 1145.

78. *See id.* at 1150.

79. *Id.* at 1145, 1145 n.4, 1154.

80. *Id.*

licensure.⁸¹ *Ortega* ignores these routinely accepted delays and transforms the right to “keep and bear arms” protected under the Second Amendment to the right to the immediate possession of those arms.

C. Reframing *Bruen*’s First Step

The first step of the *Bruen* Framework asks whether the text of the Second Amendment “covers” the regulated conduct.⁸² Although the court logically infers that in order to “keep and bear arms” an individual must be able to acquire those arms, it goes further by reading into step one that this acquisition must be immediate.⁸³ In other words, the court interprets the text to guarantee access as soon as an individual wishes to exercise their Second Amendment right, reframing step one, which originally required simply reading the plain text. Treating the first step as a “burden” test rather than a simple reading of text and looking to see if the regulation delays or complicates the protected right of acquisition results in the precise “interest balancing” the majority emphasized the court must avoid.⁸⁴ Rather than asking whether the conduct is covered, the court assesses the specific burden imposed by a delay, determining how burdensome the delay is on the alleged right to immediate possession.⁸⁵ This is true even though the court makes a point to strike down New Mexico’s argument that even if there is a burden, then it is minimal, since this involves interest balancing.⁸⁶

The *Bruen* framework contains an analysis of both the text of the Second Amendment and the history of similar regulations with similar purposes.⁸⁷ Step two requires the government to show “that the regulation is consistent with this Nation’s tradition of firearm regulation.”⁸⁸ Instead of treating the historical record of waiting period laws as a historical record, the court dismisses the regulations as too late in the 1990s to be

81. *Id.*

82. *Bruen*, 597 U.S. at 17.

83. *Ortega*, 148 F.4th at 1142-43.

84. *See id.* at 1144.

85. *See id.* at 1144-45.

86. *Id.* at 1144.

87. *Id.* at 1142-43.

88. *Bruen*, 597 U.S. at 17.

considered longstanding, despite the fact that the 1990s were three decades ago.⁸⁹ “Waiting periods lack a strong historical pedigree.”⁹⁰

D. Implication of *Ortega*: Limiting the Definition of Historical Traditions

If interpretation requires looking back hundreds of years to find a regulation with a similar purpose, then this implicitly rules out any and all modern regulations involving restrictions addressing modern-day issues that lack prevalence hundreds of years prior. This raises an issue beyond *Ortega*, as it goes to the heart of the established *Bruen* framework itself. Can the *Bruen* framework work in an everchanging society? The Constitution itself has been forced to evolve along with the people.⁹¹ Therefore, trying to compare a modern regulation with a longstanding tradition, however long that tradition may extend, may be nearly impossible.

Here, “[a]lthough reports of suicide have existed since the Greek and Roman times,” suicide has drastically increased within the past century.⁹² The Waiting Period Act seeks to remedy the increasing number of firearm suicides, which were largely irrelevant over thirty years ago.⁹³ At that time, methods of gun ownership, firearm lethality, and mental health were dramatically different.⁹⁴ Attempting to identify a similar regulation from the early 1900s or earlier will naturally result in a dead end.⁹⁵ The court recognized this itself when it rejected New Mexico’s comparison of this regulation with group bans that refused to grant firearm ownership to Black slaves.⁹⁶ “Comparing the Second Amendment rights of a citizen today with the Second Amendment rights of a slave before emancipation and reconstruction tells us nothing.”⁹⁷ Furthering this argument, it would be possible to find restrictions on types of firearms dating way back, but it

89. *Ortega*, 148 F.4th at 1150.

90. *Id.*

91. See, e.g., U.S. CONST. amend. XIV.

92. Lisa B. E. Shields, Donna M. Hunsaker & John C. Hunsaker III, *Trends of Suicide in the United States During the 20th Century*, in 3 FORENSIC PATHOLOGY REVIEWS 305-35 (Michael Tsokos ed., 2005).

93. See *Ortega*, 148 F.4th at 1160-61.

94. See *id.* at 1150.

95. See *id.*

96. *Id.* at 1153.

97. *Id.* at 1154.

would be ludicrous to do so in a case involving restrictions on modern-day semi-automatic weapons that failed to exist several years ago. The court refused to consider thirty-year-old regulatory practice as a longstanding tradition while implicitly acknowledging that looking into regulations established centuries ago is unworkable.

E. Implication of *Ortega*: Threats to Firearm Safety

Background checks were created for the purpose of ensuring citizen safety and reducing instances of abuse of an enumerated constitutional right.⁹⁸ The government has placed several agreed-upon restrictions to guarantee this goal, such as allowing minimum age requirements for purchasing firearms.⁹⁹ However, background check systems are not foolproof. These checks naturally require a more detailed investigation when it involves incomplete records, similar names, etcetera. Not to mention, advanced technology is not flawless and will occasionally result in issues of delay. Despite this fact, *Ortega* would continue to require the immediate acquisition even in such a case of incomplete records and unavoidable delays in the check system. In 2015, a man killed nine people in a church in South Carolina.¹⁰⁰ The background check was taking longer than usual, exceeding the three-day maximum, and the man was automatically allowed to acquire the firearm.¹⁰¹ Requiring immediate possession of firearms puts the crucial period for background checks at risk and destroys any system the country has in place for firearm safety.¹⁰²

Besides ignoring background check periods, requiring immediate possession also ignores the rising concerns over “impulsive gun violence” and firearm “suicides” that the regulation in *Ortega* was strictly implemented to address.¹⁰³ The court refuses to accept a waiting period simply out of fear that an individual might misuse that right; but this also ignores restrictions already in place that operate the same way.¹⁰⁴ Why are minimum age requirements for the purchase of firearms in place? Out of

98. *See id.* at 1150-51.

99. *Id.* at 1146.

100. *See* Rose Kagawa et al., *Challenges and Promising Practices in Background Check Systems for Firearm Purchases*, 105 Soc. Sci. Q. 862, 863 (2024).

101. *Id.*

102. *Id.* at 873-74.

103. *Ortega*, 148 F.4th at 1140.

104. *See Ortega*, 148 F.4th at 1145.

fear that individuals under the minimum age will misuse the right.¹⁰⁵ The court is correct that the waiting period is not conditioned on individualized suspicion of wrongdoing, but the government is perfectly fine with treating anyone under the age of twenty-one as having a suspicion of wrongdoing without completing any individualized investigation.¹⁰⁶

V. Conclusion

In conclusion, this unprecedented Tenth Circuit decision incorporates a reading of the Second Amendment that results in extensive consequences for individuals in regards to their safety and how future courts interpret Second Amendment claims. The underlying notion of the court that the right to “keep and bear arms” includes the right to obtain such an arm at the snap of the fingers expands the outer limits of the Second Amendment in a way that leads to grave effects on the entire purpose of all restrictions on the amendment. If *Ortega*’s logic continues within the judicial system, it will raise serious concerns of whether the current Second Amendment interpretation can accommodate both fidelity to the Constitution and rising issues involving public safety.

105. *Id.* at 1146, 1155.

106. *Id.* at 1145, 1148.

