

Imani Gandy

Hello, fellow law nerds! Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that didn't sign up for Elon Musk and his merry band of incels to take over the government and act as president. I'm Rewire News Group's Editor-at -Large, Imani Gandy.

Jessica Pieklo

And I'm Jess Pieklo, Rewire News Group's Executive Editor. Rewire News Group is the one and only home for expert repo journalism that inspires you to call your representatives, all of them nonstop, and tell them to get Musk out of here. And the Boom! Lawyered podcast is part of that mission. So thanks for our subscribers and a welcome to our new listeners.

Imani Gandy

While Elon Musk and his merry band of 20-year-old incels have been taking over the government, running roughshod over the US Treasury Department, the Department of Labor, the Department of Education, the courts are running wild. Take, for instance, a panel of the Fifth Circuit in a case called Reese vs. ATF. That's the Bureau of Alcohol, Tobacco, and Firearms. The panel, led by notorious racist and all-around wanker Edith Jones—

Jessica Pieklo

No. Jesus.

Imani Gandy

I mean, she is really. They ruled that Congress violated the Second Amendment when it passed the law 60 years ago that banned 18- to 20-year-olds from buying handguns from federally licensed firearm dealers.

Imani Gandy

Oh, you heard me. The Fifth Circuit last week overturned a 60-year-old law that prohibits federal firearm licensors from selling handguns to 18- to 20-year-olds.

Jessica Pieklo

Yeah, sweet. Let me guess. This is another Matty K. case? Seems like something that Matty K. would really sink his teeth into. What?

Imani Gandy

Nope, not Matty K. A very sensible district court judge out of the Western District of Louisiana named, wait for it, Robert R. Summerhays.

Jessica Pieklo

Oh my God, that is a Louisiana name. That is a southern name.

Imani Gandy

It is a very southern sounding name like, hi, my name is Robert R. Summerhays and I do declare that you cannot sell guns to kids. I said you cannot sell guns to kids.

Jessica Pieklo

God, I'm dying, but it is true. So this lawsuit was filed by two kids who wanted to buy guns and a bunch of gun loving jamokes who wanted kids to be able to buy those guns. They filed a lawsuit specifically to re-litigate the constitutionality of federal laws prohibiting federally licensed firearm dealers from selling handguns or handgun ammunition to people between the ages of 18 and 20.

Plaintiffs are making an argument the Fifth Circuit rejected in a case called NRA vs. ATF in 2012. They acknowledge that the Fifth Circuit rejected their arguments, but they claim they are now making a good faith effort to change the law, Imani.

Imani Gandy

And again, the law that they want to change is a law that prevents 18- to 20-year-olds from buying handguns.

Jessica Pieklo

And do you know why it's a good idea to keep 18- to 20-year-olds from buying guns? Because when Congress passed the Omnibus Crime Control and Safe Streets Act of 1968, they found that the ease with which any person can acquire firearms other than a rifle or a shotgun, including juveniles without the knowledge or consent of their parents or guardians, is a significant factor in the prevalence of lawlessness and violent crime in the United States.

The congressional investigation also found that concealable weapons had been widely sold by federally licensed importers and dealers to emotionally immature or thrill bent juveniles and minors prone to criminal behavior.

Imani Gandy

Also, as Austin Sarat pointed out in their piece for Slate, gun crimes are committed at a much greater rate among young people. According to PolitiFact, FBI data shows that people ages 18 to 20 are more likely to commit deadly shootings than other age groups. Sarat in their piece for Slate also pointed out that according to an Everytown for Gun Safety report,

18- to 20-year-olds commit gun homicides at triple the rate of adults 21 or older.

Jessica Pieklo

I mean, basically putting guns in the hands of 18- to 20-year-olds is a recipe for disaster.

Imani Gandy

Yeah, yeah. And for the Second Amendment enthusiasts who don't care if 18- to 20-year-olds really like to get their gun off more than other age groups, all this law does is say that 18- to 20-year-olds can't buy non-long gun firearms from federal firearm dealers.

They can still buy them privately. They can buy them at gun shows. They can buy them off the back of a truck. They can get them as gifts from their family and friends. They just cannot buy them again from federal firearm licensors. Yes.

Jessica Pieklo

Okay, point of order, Imani. What the hell is a long gun?

Imani Gandy

You know, I had the same question because I have no experience with guns whatsoever. So I looked it up. It turns out that a long gun is a shotgun or a rifle, right? Something that's used for hunting. Something basically that you can't shove in your pants.

Jessica Pieklo

Okay.

Wait, why would you shove a gun in your pants?

Imani Gandy

I don't know, man. People in movies and TV shows are always shoving handguns in their pants.

Jessica Pieklo

What's going on?

It's happening. Calgon, take me away. Oh, but this case is one of those that Imani in particular ended up doing a deep dive because it is fascinating. Right. OK, so let's go over the facts a little bit. Congress passed a law saying that to 20-year-olds can't buy guns from federally licensed dealers. Right. Imani's gone over that.

Imani Gandy

Take us away.

Jessica Pieklo

The Fifth Circuit upheld that law in 2012. And when they did, it ruled that preventing this class of people, 18- to 20-year-olds, from buying handguns was not a violation of the Second Amendment. So that's it. End of story. Good game, everyone. I'm taking a nap.

Imani Gandy

Well, it should be the end of the story, but it's not because guess who dissented and posited that the Second Amendment protects the rights of 18- to 20-year-olds to buy handguns from federal dealers in that NRA case that you just mentioned from 2012.

Jessica Pieklo

Well, I'm going to go with Edith Jones since you called her a notorious racist and all-around wanker in the upfront.

Imani Gandy

Well, that's because she is a notorious racist and all-around wanker. And she's the one who wrote the majority opinion in the Reese case that dropped last week saying, you know, we're going to overturn the law that Congress passed saying you can't sell guns to 18- to 20-year-olds. We're just going to go ahead and overrule that because it's a violation of 18- to 20-year-olds' Second Amendment rights.

Jessica Pieklo

Okay, my brain is exploding a little bit because she just pulled a Sam Alito. She just pulled a Sam Alito. And for folks who don't know, that is pulling a fast one where you make your dissent into a majority opinion. Presto change-o, I'm now the boss, right? And that's what she did here, except you know what? I'll give Sam Alito credit. At least he did it appropriately, which was in his dissent say, hey, this is how we want the law to go. So bring me a case. They just like cook this up in the back country or something, right? Like Sam Alito projects that Edith Jones just saw an opportunity and went for it.

Imani Gandy

Right, and let me just go over a little bit why it is I called Edith Jones a notorious racist and all around wanker.

Jessica Pieklo

Ooh, the receipts, I love this.

Imani Gandy

Got receipts. Do you remember in the Whole Woman's Health vs. Hellerstedt era, right? Back when we were fighting over such things as admitting privileges and ultrasound

laws and trap laws. Remember how quaint and cute we were thinking about undue burdens under Planned Parenthood vs. Casey? A decade ago. Back then, she argued or stated in a case that traveling 300 miles to get an abortion in Texas isn't a big deal because the roads in Texas are flat and uncongested. That's actually an argument that she made for saying that shutting down some of these clinics wasn't an undue burden on people seeking abortions because in Texas, the roads are flat and uncongested and the speed limit's 75 miles an hour, so big fucking deal. That's, yeah, yeah. Another thing that happened to one Edith Jones back in also a decade ago, about 2013,

Jessica Pieklo

Yee-haw!

Imani Gandy

is that John Roberts, Chief Justice John Roberts, back when I guess he seemed to care at all that people who were judges were going rogue, opened an investigation into Edith Jones because of some comments that she made about Black people and Hispanic people being more prone to crime or how lawyers were arguing that, quote unquote, mentally retarded people shouldn't be subject to the death penalty.

That was just a red herring that was being wielded by death penalty opponents. She also issued some rulings in several cases on sexual assault where she basically told the women who were making these claims, you know what, suck it up bitches. That's just the way it goes. She's truly, truly a terrible person and was one of the top terrible people in sort of this whole judicial system before we got people like Matty K. on board, right? Before that time. So she's still on the Fifth Circuit.

Jessica Pieklo

Right. Right.

Imani Gandy

And she's still terrible and we shouldn't sleep on how terrible she is.

Jessica Pieklo

Right, like imagine a real life unfunny Lucille Bluth from Arrested Development.

Imani Gandy

Great.

Imani Gandy

Oh my God, why is that such a good reference? That's such a good analogy.

Jessica Pieklo

And that's Edith Jones.

Imani Gandy

Oh, that's perfect. That's perfect.

Jessica Pieklo

But truly, like that's your worst, most racist, probably semi-drunken aunt. Anyway, what would have given Jones the idea that she could just force her dissent into a majority opinion, oh, a mere 12 years later? Well, the Supreme Court's ruling in the Bruen case in 2020 likely did.

Imani Gandy

Mm-hmm.

Imani Gandy

So remind our listeners what Bruen was about. Well, thank you.

Jessica Pieklo

Only because I like you, Imani. In New York State Rifle and Pistol Association versus Bruen, the Supreme Court said states can't implement restrictions on guns unless those restrictions are consistent with this country's, wait for it, quote, historical tradition of firearm regulation, end quote.

Imani Gandy

the double raspberry from the both of us.

Jessica Pieklo

I mean, that's just, we're over it. The court ruled that a 1911 New York law required applicants for a concealed carry license to show proper cause or some sort of special need for a concealed carry license that was above and beyond the general public's need.

Imani Gandy

Bruen is just a terrible ruling. It's a terrible ruling that kind of got overlooked by the fact that Dobbs was overturned that same year, right, 2022. And it has proven in the last couple of years to be pretty unworkable because it's basically absurd to determine whether or not a current gun regulation is valid by looking to whether or not people in the 18th century would have found that regulation valid, particularly when you can, as

Edith Jones did, cherry pick evidence to support either position. It's just originalism on steroids.

Jessica Pieklo

It really is. And it's like the worst snapshot of originalism, right? Because it is this frozen moment in time where conservatives can pretend to be principled while they engineer, paint, you know, opinions to suit a particular outcome. And it is absolutely just like, oh no, according to this, you know, freeze of Washington crossing the Potomac, This is as much as we can regulate guns in the year of our Lord 2025. So it's bonkers.

Imani Gandy

And so because of the Bruen ruling, plaintiffs are trying to re-litigate this issue because they think that the Bruen requirement that regulations, current regulations have an analogous regulation from the 18th century. They think that means that they can now win a case that they didn't win in 2012.

Jessica Pieklo

Exactly. Under Bruen, the court has to determine whether restricting youths from purchasing handguns from federally licensed firearm dealers is consistent with this nation's historical tradition of firearm regulation. And this gives Jones an opportunity to bang on about the 1792 Militia Act, which was a law that required mandatory enrollment of 18- to 45-year-olds into militias.

If the law required 18-year-olds to register and furnish their own weapons, then it is impossible for there to have been a historical tradition of keeping firearms out of the hands of 18-year-olds. Game, set, match, losers.

Imani Gandy

Except no, except no. We're going to have to take a little walk about back to 2008 and talk about DC vs. Heller, right? DC vs. Heller was a landmark guns case. In that case, the Supreme Court ruled that the Second Amendment confers an individual right to own guns independent of service in the state militia, and it gives them a Second Amendment right to use them for self-defense, even in the home. The court also recognized—and this is a critical point to remember—that the right to bear arms is not coextensive with the duty to serve in the militia, right? That's why the Fifth Circuit struck down a challenge to this youth weapons ban in 2012. The Fifth Circuit, Jones dissenting, said in 2012 that the 1792 Militia Act gave states discretion to impose age requirements for service.

Jessica Pieklo

Right.

Imani Gandy

and that a lot of states enrolled only people 21 years and older or required parental consent for these potential militia members who were younger than 21, right? So it's not the smoking gun that Jones thinks it is that there was a law that required 18- to 45-year-olds to be in militias because a lot of states said, know what, actually we're only gonna enroll you if you're 21 and up and if you're younger than that, you need to ask a parent.

Jessica Pieklo

Smoking gun. Smoking gun. No, that was actually good. And you just like went right through it. I appreciate that. So what changed? That's what our listeners are probably wondering. What is Edith Jones' obsession with the 1792 Militia Act all about? The court she sits on already decided that that law does not mean that a person's right to purchase arms absolutely must vest at age 18.

Imani Gandy

Yeah. Yeah. Yeah. I said that. Yeah.

Jessica Pieklo

That's what the plaintiffs argued in that 2012 case, that the right to purchase arms must fully vest precisely at age 18, not earlier or later. The Fifth Circuit rejected that claim. So what's the deal? Well, the deal is we are in the Trump courts era, folks, and law is vibes and precedent. Well, you know, it's convenient when you can use it, but otherwise, let's figure out a way to sort of get that dusty bitch out of here and try something new, right?

Imani Gandy

"Dusty bitch." Jesus.

Jessica Pieklo

I mean, functionally, that is how the conservative legal movement has now taken on the rule of law, which is what, when we are talking about precedent, we are talking about is the rule of law. Everything is lawlessness. And here we are, right? So the Fifth Circuit in particular seems intent on putting guns in the hands of bad actors. Like this is a mission of theirs almost, right? Let's not forget that Jones was on the panel that ruled in US vs. Rahimi that it was a violation of the Second Amendment to keep guns out of the hands of domestic abusers. She wants to arm everyone. She'd arm a fetus.

Imani Gandy

A chicken in every pot and a gun in every hand. Because notably in *Rahimi*, last year, the Supreme Court overturned the Fifth Circuit and upheld the federal law prohibiting individuals subject to domestic violence restraining orders from possessing firearms. John Roberts, writing for the majority, said that when a court determines that an individual poses a credible threat to another person's physical safety,

Jessica Pieklo

But really.

Imani Gandy

Temporarily disarming them is not a Second Amendment violation. This is not that different from Congress deciding after an investigation that 18- to 20-year-olds can't be trusted to not act the fool and preventing them from buying handguns from federally licensed dealers.

All of that aside, why do we even care what the 1792 Militia Act says about how old militia members could be? It simply cannot be that kids today in 2025 can shoot each other on the playground or in the halls of school because sometimes teens back in the 1700s were expected to serve in militias.

Jessica Pieklo

Here's the thing, Imani, we don't. Or at least we shouldn't. But again, this is a way for Edith Jones to essentially force her dissent from 12 years ago into a majority opinion.

Imani Gandy

Oh, good. Right.

Imani Gandy

She's using *Bruen* to re-litigate something that was already decided by cherry picking the historical traditions she likes and then ignoring the ones that she doesn't, right? Meanwhile, the simple truth as District Court Judge Robert Summerhays, Robert Summerhays, he found that the Fifth Circuit analysis in that *NRA* case from 2012 was sufficient to meet the new *Bruen* criteria that there needs to be an analogous regulation in the historical tradition of firearm regulation, right? Now, obviously, the Fifth Circuit's opinion in the *NRA* case was issued before *Bruen*, because that was 2012, *Bruen* was 2022. But the court in the *NRA* case analyzed the historical backdrop of the law restricting 18- to 20-year-olds from buying guns. The claims in the *NRA* case were exactly the same as the claims here.

Jessica Pieklo

Right?

Imani Gandy

And the court found that, quote, the pre-revolution and founding era historical record showed a variety of gun safety regulations were on the books. One type of such regulations were laws disarming certain groups and restricting sales to certain groups for reasons of public safety.

Jessica Pieklo

So there's historical precedent for keeping guns out of the hands of dangerous people. Congress found, for example, in 1968 that young people are emotionally immature and denying them easy access to guns would deter violent crime. And surprise, surprise, Edith Jones just ignores all of that. And critically, she ignores the current context of the gun epidemic. The number of school shootings is unconscionable, to say the least, but that amazingly doesn't even warrant a mention in Jones's ruling. It's as though they don't exist.

Imani Gandy

Here's the thing, Edith Jones is arguing for allowing 18- to 20-year-olds to have handguns. But 18- to 20-year-olds in the 18th century weren't using handguns for militia service, right? They were using rifles and rifles aren't covered by this law. So I don't even know what the fuck she's talking about in the first place, right? It's not like 18- to 20-year-olds are being completely stripped of their right to buy guns. They just can't buy them from these federally licensed dealers. They can still buy rifles.

Jessica Pieklo

Right.

Imani Gandy

They can still buy shotguns and those are the types of guns they would have been using in a militia. Not something that you would just hide in your pants again, know, stuffing guns in your pants.

Jessica Pieklo

Imani, we're going to have to talk about this thing with you and guns in the pants, but not now. Now is not the time for it. I mean, look, I'm just going to say it. The Fifth Circuit is doing the dirty work for Alito and Thomas and making sure we are in all in some sort of colonial cosplay right now. Right. Like that is the world that we're living in. And as much as Chief Justice John Roberts may enjoy batting down an Edith Jones, Fifth Circuit opinion,

Imani Gandy

Guns in the pants. Guns in the pants.

Jessica Pieklo

He no longer has the majority on the Court. So it will be curious to see how he responds or reacts should this find its way up there.

Imani Gandy

And it will be curious to see if we're gonna talk about the gun epidemic and the shootings that have occurred and the massive amount of shootings that occur amongst 18- to-20-year-olds specifically.

Jessica Pieklo

No, we're going to talk about militias and gun in their pants.

Imani Gandy

Yeah, hopefully guns in the pants, guns in the pants. I got guns, guns in my pants. At any rate, if you would like to talk to either Jess or me about whether you have guns in your pants at the moment, you can find me on Blue Sky. I'm angry black lady. You can find Jess. She's hegemony. You should follow Rewire News Group on all of the things on Blue Sky, on Instagram, on TikTok.

Jessica Pieklo

On that note.

Imani Gandy

Our content creator, Christian, is still banging out really great content for y'all, and it would be great for you to take a look at it. And on that note, what are we gonna do, Jess?

Jessica Pieklo

We're going to see you on the tubes, folks.

Imani Gandy

We're gonna put guns in our pants!