

No. 25-132

In the Supreme Court of the United States

WEST VIRGINIA CITIZENS DEFENSE LEAGUE, INC.,
PETITIONER

v.

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

BRIEF FOR THE FEDERAL RESPONDENTS

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QUESTION PRESENTED

Whether 18 U.S.C. 922(b)(1) and (c)(1)—which restrict federal firearms licensees' sale of handguns to persons who are less than 21 years old—violate the Second Amendment rights of 18-to-20-year-olds.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-2a) is available at 2025 WL 1704429. The memorandum opinion and order of the district court (Pet. App. 63a-101a) is reported at 704 F. Supp. 3d 687.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 2025. The petition for a writ of certiorari was filed on July 31, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case involves a Second Amendment challenge to two federal statutes, 18 U.S.C. 922(b)(1) and (c)(1). Under Section 922(b)(1), a federal firearms licensee may not sell a firearm (other than a shotgun or a

rifle) to “any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.” 18 U.S.C. 922(b)(1). Under Section 922(c)(1), a licensee may sell a firearm (other than a shotgun or rifle) to a person who does not appear at the licensee’s business premises only if the person submits a sworn declaration that he is at least 21 years old. See 18 U.S.C. 922(c)(1).

Those statutes regulate only federal firearms licensees’ direct sales to individuals. They do not regulate the possession of firearms by persons under 21 years of age or other types of transfers to such persons (such as private sales or inheritances). They also do not prevent a parent or guardian from buying a firearm on behalf of a person under the age of 21.

Congress has enacted additional age-based firearms regulations that are not at issue here. For example, Congress has limited the circumstances under which persons under the age of 18 may possess handguns. See 18 U.S.C. 922(x). Congress also has required enhanced background checks for firearms purchasers under the age of 21. See 18 U.S.C. 922(t)(1)(C). Those provisions have not been challenged in this litigation.

2. In 2022, petitioner West Virginia Citizens Defense League—joined by three other plaintiffs who are not petitioners here—filed this suit in the U.S. District Court for the Northern District of West Virginia. See Pet. App. 64a-65a. The plaintiffs claimed that Sections 922(b)(1) and (c)(1) violate the Second Amendment rights of 18-to-20-year-olds. See *id.* at 75a.

The district court granted summary judgment to the plaintiffs. Pet. App. 63a-101a. It determined that 18-to-20-year-olds are among the people protected by the Second Amendment, see *id.* at 88a-93a, and that the

government had failed to provide an adequate historical justification for restricting the sale of firearms to those individuals, see *id.* at 94a-100a.

3. The Fourth Circuit reversed and remanded the case with instructions to dismiss. Pet. App. 1a-2a. The court relied on its decision in *McCoy v. ATF*, 140 F.4th 568 (4th Cir. 2025), petition for cert. pending, No. 25-24 (filed July 3, 2025), upholding Section 922(b)(1) against a Second Amendment challenge. See Pet. App. 2a. Judge Quattlebaum dissented for the reasons stated in his dissenting opinion in *McCoy*. See *ibid.*

DISCUSSION

Petitioner renews (Pet. 11-34) its contention that Sections 922(b)(1) and (c)(1) violate the Second Amendment rights of 18-to-20-year-olds. Petitioner argues (*ibid.*) that the question presented is the subject of a circuit conflict. But this Court’s review is not warranted at this time. The Court recently granted petitions for writs of certiorari in *Wolford v. Lopez*, No. 24-1046 (Oct. 3, 2025), and *United States v. Hemani*, No. 24-1234 (Oct. 20, 2025)—Second Amendment cases that could shed light on the proper resolution of this case and lead to the resolution of the circuit conflict. This Court should accordingly hold the petition pending the resolution of those cases.

1. Petitioner correctly observes (Pet. 11-18) that courts of appeals disagree about whether the Second Amendment allows the government to restrict the sale of firearms to 18-to-20-year-olds. On the one hand, three courts of appeals have upheld such restrictions. Here, the Fourth Circuit upheld Sections 922(b)(1) and (c)(1). In *NRA v. Bondi*, 133 F.4th 1108 (2025), petition for cert. pending, No. 24-1185 (filed May 16, 2025), the en banc Eleventh Circuit upheld a Florida statute ban-

ning the sale of firearms to 18-to-20-year-olds. And in *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (2024), the Tenth Circuit concluded, in a preliminary-injunction posture, that Colorado was likely to succeed against a Second Amendment challenge to a state law setting a minimum purchase age of 21 for firearms.

On the other hand, the Fifth Circuit concluded in *Reese v. ATF*, 127 F.4th 583 (2025), that Sections 922(b)(1) and (c)(1) violate the Second Amendment rights of 18-to-20-year-olds because they lack an adequate historical analogue. The government declined to file a petition for a writ of certiorari in *Reese*, explaining to Congress in a report under 28 U.S.C. 530D that *Reese* raised “potential mootness” issues because “[t]wo of the individual plaintiffs ha[d] turned 21, and a third [could] do so by the time [this] Court rules.” Letter from D. John Sauer, Solicitor General, to Mike Johnson, Speaker, U.S. House of Representatives (July 25, 2025).*

Petitioner correctly observes (Pet. 17-18) that this case does not present the same mootness concern as *Reese*. Petitioner has identified a member who was 19 years old as of May 21, 2025; that member will not turn 21 years old until after this Term. See C.A. Doc. 86-1, at 2 (May 21, 2025) (motion to supplement record); Pet. App. 2a (granting motion). Petitioner also represents (Pet. 18) that it has “thousands of members” and that “there is no risk that this case will be mooted out by individual plaintiffs aging out of the federal ban.”

2. Nevertheless, certiorari is not warranted at this juncture. Earlier this Term, this Court granted review in *Wolford*, which presents the question whether a State may make it unlawful for concealed-carry license-holders to carry firearms on private property open to

* <https://www.justice.gov/oip/media/1410951/dl?inline>

the public without the property owner’s express authorization. See Pet. at i-ii, *Wolford, supra* (No. 24-1046). As the government noted in its certiorari-stage amicus brief in that case, the Court’s decision could “provide much-needed guidance” about the proper methodology for applying the Second Amendment. U.S. Amicus Br. at 19, *Wolford, supra* (No. 24-1046). That guidance could shed light on the proper resolution of this case.

In particular, *Wolford* could illuminate both how many historical laws the government must cite to support a modern firearms restriction and how analogous those laws must be. In *Wolford*, the Ninth Circuit cited six laws from the 18th and 19th centuries setting default rules for carrying firearms on certain private property. See U.S. Amicus Br. at 15, *Wolford, supra* (No. 24-1046). The United States has argued that such a “small set” of historical laws does not satisfy the State’s burden, especially given that the “most of the cited laws do not go nearly as far as” the challenged modern statute. *Id.* at 15-16. Those issues are relevant in this case because respondents contend that the Fourth Circuit improperly relied on a “handful” of 19th-century laws, Pet. 23, and on Founding-era laws that “are not sufficiently similar” to the provisions challenged here, Pet. 32 (citation omitted).

This Court also recently granted review in *Hemani*, which presents the question whether 18 U.S.C. 922(g)(3), the federal statute that prohibits the possession of firearms by unlawful users of controlled substances, violates the Second Amendment. See Pet. at I, *Hemani, supra* (No. 24-1234). *Hemani*, too, could provide valuable guidance about the proper resolution of this case. Among other things, *Hemani* provides an op-

portunity to clarify the role of post-ratification history in applying the Second Amendment. See *id.* at 14-16.

That issue is pertinent here because petitioner argues (Pet. 24) that the Fourth Circuit improperly subordinated historical evidence from “the Founding” to evidence from “the late nineteenth century.” More broadly, the courts involved in the circuit conflict here have disagreed about how much weight to give 19th-century state laws restricting the sale of firearms to individuals under the age of 21. Compare Pet. App. 19a (“nineteenth-century history * * * is helpful”), and *NRA*, 133 F.4th at 1116 (“we may look to historical practice from the mid-to-late nineteenth century”), with *Reese*, 127 F.4th at 600 (“19th century evidence ‘cannot provide much insight into the meaning of the Second Amendment’”) (citation omitted).

This Court’s resolution of *Wolford* and *Hemani* could affect the proper resolution of this case and could lead to the resolution of the circuit conflict without the need for this Court’s intervention. The Court should therefore hold the petition for a writ of certiorari in this case pending the resolution of *Wolford* and *Hemani*. It should then dispose of the petition as appropriate.

CONCLUSION

This Court should hold the petition for a writ of certiorari pending the disposition of *Wolford v. Lopez*, cert. granted, No. 24-1046 (Oct. 6, 2025), and *United States v. Hemani*, cert. granted, No. 24-1234 (Oct. 20, 2025). The Court should then dispose of the petition as appropriate.

Respectfully submitted.

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