

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.,

Respondents.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit**

REPLY BRIEF FOR PETITIONER

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CORPORATE DISCLOSURE STATEMENT

West Virginia Citizens Defense Defense League, Inc., has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

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REPLY BRIEF

In its brief response to the petition for certiorari, the Government concedes that the courts of appeals are squarely divided over the question of whether 18-to-20-year-old Americans have rights protected by the Second Amendment, Respondents’ Br. at 3–4, acknowledges that this case is an appropriate vehicle through which to address this important issue, as it poses no risk of mootness given that Petitioner is an association with thousands of members which has successfully identified members with standing throughout the course of this litigation and will continue to do so as long as necessary to maintain a live controversy, *id.* at 4, and declines to defend the decision below on the merits.

Indeed, the Government does not expressly oppose this Court’s review or seek denial of the writ, but rather asks this Court instead to hold the case over, pending the resolution of two other Second Amendment cases in which this Court has granted certiorari. *Id.* at 4–5; *see also* *Wolford v. Lopez*, No. 24-1046, 2025 WL 2808808 (Oct. 3, 2025) (Mem.); *United States v. Hemani*, No. 24-1234, 2025 WL 2949569 (Oct. 20, 2025) (Mem.). The Government could hardly do otherwise, given that this case presents a square conflict over the constitutionality of a federal statute and, as the Government rightly explained in its petition for review in *Hemani*, “when a lower court has invalidated a federal statute,” the Court’s “usual” approach is to grant certiorari. *Iancu v. Brunetti*, 588 U.S. 388, 392 (2019) (citation omitted).

Since the filing of the petition in this case, the need for review has become more stark as the Govern-

ment has made clear that “consistent with the executive branch’s ordinary practice of intra-circuit acquiescence, [it] do[es] not plan to enforce the [same laws] challenged [here] within the geographical boundary of the Fifth Circuit (*i.e.*, the states of Texas, Louisiana, and Mississippi).” *See* Br. in Supp. of Defs.’ Proposed J., *Reese v. ATF*, No. 6:20-cv-01438 (W.D. La. Sept. 2, 2025), Doc. 79-2 at 4. The validity of a federal law, uniformity in the decisions of the courts of appeals on important constitutional issues, and uniformity in the enforcement of federal statutes are among the most important reasons this Court exercises its jurisdiction, and *all three* are present here.

Again, the Government does not dispute the features that make this case eminently certworthy. Rather, the Government argues against an immediate grant due to the presence of other Second Amendment cases on this Court’s merits docket. The Government’s arguments for delay lack merit.

1. The Government asserts that “[t]his 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.” Respondents’ Br. at 6. But given that the Government declined to file a petition for certiorari in *Reese v. ATF*, 127 F.4th 583 (5th Cir. 2025), *see* Letter from D. John Sauer, Solicitor Gen., to Mike Johnson, Speaker, U.S. House of Representatives (July 25, 2025), <https://perma.cc/8KAC-PLEH>, the only way that a GVR could resolve the circuit split over the validity of the federal ban on licensed sales of handguns and handgun ammunition to 18-to-20-year-olds would be if the Fourth Circuit agreed with the Fifth and *also* declared the law unconstitutional. Even

assuming that the Tenth and Eleventh Circuits reversed themselves as well, leading to unanimity across the circuits as to the Second Amendment rights of 18-to-20-year-olds, that would not substantially impair the certworthiness of this issue, as this case would *still* present the question of the validity of a federal statute that has been declared invalid and is being enforced only in part of the country.

2. Delay is also inappropriate because it is questionable whether *Hemani* or *Wolford* will, in fact, resolve this entrenched circuit split. Nothing short of this Court's direct intervention is likely to accomplish that. The Government claims otherwise, suggesting that *Wolford*, which deals with the validity of a carry ban, absent explicit authorization, on private property owned by another, could shed light on the *Bruen* analysis by making clear "how many historical laws the government must cite to support a modern firearms restriction and how analogous those laws must be." Respondents' Br. at 5. And *Hemani*, the Government argues, might "clarify the role of post-ratification history in applying the Second Amendment." *Id.* at 6. But neither *Wolford* nor *Hemani* present an issue that is remotely similar to this one, and experience teaches that application of the *Bruen* analysis to those cases is unlikely to shed meaningful light on this one.

This Court held eight cases pending a decision in *Rahimi* and GVR'd all of them at the end of the term after that decision was released. Those cases included decisions out of the Third, Eighth, and Tenth Circuits that were on opposing sides of a clearly defined circuit split over whether Section 922(g)(1)'s restrictions on convicted felons are susceptible to as-applied challenges or not. In seven of those cases, including all of

those that dealt with Section 922(g)(1), nothing changed at all on remand. *Compare United States v. Jackson*, 110 F.4th 1120, 1122 (8th Cir. 2024) (“*Rahimi* does not change our conclusion in this appeal and we again affirm the judgment of the district court.”) (holding Section 922(g)(1)’s prohibition on felon possession of firearms is categorically constitutional), *pet. for rehearing denied*, 121 F.4th 656 (8th Cir. 2024) and *Vincent v. Bondi*, 127 F.4th 1263, 1264 (10th Cir. 2025), *cert pet. pending*, No. 24-1155 (U.S. May 8, 2025) (“[W]e’ve freshly considered the Second Amendment claim and conclude that *Rahimi* doesn’t undermine the panel’s earlier reasoning or result.”); *with Range v. Att’y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc) (holding Section 922(g)(1) unconstitutional as-applied to Range); *see also United States v. Cunningham*, 114 F.4th 671, 673 (8th Cir. 2024), *pet. for rehearing denied*, 121 F.4th 1155 (8th Cir. 2024) (Mem.) (“We again conclude that none of Cunningham’s contentions has merit, and therefore affirm the judgment of the district court.”); *United States v. Doss*, No. 22-3662, 2024 WL 3964616 (8th Cir. Aug. 28, 2024) (per curiam) (applying *Jackson* and *Cunningham*); *Antonyuk v. James*, 120 F.4th 941, 955 (2d Cir. 2024) (“[T]he Court’s analysis in *Rahimi*...supports our prior conclusions.”); *United States v. Daniels*, 124 F.4th 967, 978–79 (5th Cir. 2025).

The *one* case in which the result changed, *United States v. Perez-Gallan*, 125 F.4th 204 (5th Cir. 2024), is the exception that proves the rule. *Perez-Gallan* was directly related to *Rahimi* and involved the same statute, 18 U.S.C. § 922(g)(8) (though a different subsection), and the Fifth Circuit’s prior decision had been controlled by the circuit precedent that this Court reversed in *Rahimi*, *Perez-Gallan*, 125 F.4th at

208–09, 217. The other seven cases, however, sometimes barely mentioned *Rahimi* in their “new” analysis. See *Cunningham*, 114 F.4th at 675 (citing *Rahimi* once in its analysis, in a string cite). And that is not terribly surprising. While *Bruen* required the lower courts to revamp their approach to the Second Amendment entirely by rejecting a tiers-of-scrutiny analysis, reaffirming *Heller*’s clear edict, and distilling its text-and-history approach to a more explicit, easy to follow formula, *Rahimi* did not upend *Bruen*’s analysis but merely demonstrated another application of it. Just as the Court would not expect an application of existing First Amendment doctrine in a libel case to have a significant effect on all of the various First Amendment litigation pending in the federal system, there is no reason to think that *Wolford* and *Hemani* together will have any significant impact on the analysis of age-based restrictions on the right to keep and bear arms. As *Antonyuk* explained, “*Rahimi* involved a regulation of firearms that is quite different from any of those at issue in the present case, and thus has little direct bearing on our conclusions.” *Antonyuk*, 120 F.4th at 955.

Indeed, one of the cases on this same issue currently pending this Court’s review, *Paris v. Second Amendment Foundation, Inc.*, No. 24-1329 (U.S. Apr. 17, 2025), demonstrates how unlikely *Wolford* and *Hemani* are to have an effect on decisions regarding the scope of 18-to-20-year-olds’ Second Amendment rights. Several months after the initial eight GVRs resulting from *Rahimi* were issued, this Court also GVR’d that case in light of *Rahimi*. See *Paris v. Lara*, 145 S. Ct. 369 (2024) (Mem.). Despite the fact that, like the government suggests *Wolford* and *Hemani* might do now, *Rahimi* provided another instructive

application of *Bruen*'s framework, nothing changed on remand. Although the panel paid careful attention to *Rahimi*, it ultimately "conclude[d] that [its] prior analysis reflects the approach taken in *Bruen* and clarified in *Rahimi*." *Lara v. Comm'r Pa. State Police*, 125 F.4th 428, 431 (3d Cir. 2025). The Government's brief offers no reason to think that this time would be any different.

3. The Government has ably demonstrated, in its briefing to this Court in other cases, the current degree of confusion among the circuit courts on a variety of critical elements of the *Bruen* analysis. See Brief for the United States as Amicus Curiae Supporting Petitioners, *Wolford v. Lopez*, No. 24-1046 (May 1, 2025), 2025 WL 1297123, at *19–21 & nn.6–8 (collecting examples from Justices of this Court, and judges of the circuit and district courts, calling out for further guidance on fundamental Second Amendment questions). The Government's conception of what sort of "questions" this Court might be able to answer to assist the Fourth Circuit with resolving this case is notably different here than it was in *Wolford*. In *Wolford*, the Government noted that *Rahimi* had "beg[un] the process of clarifying *who* may possess arms," and it urged the Court to grant *Wolford*, "to begin addressing *where* arms may be carried," as well as a future case, to "provide a framework for evaluating *what types* of arms people may possess." *Id.* at *20–21. These concrete questions are a far cry from its supposition, here, that the lower courts may be able to glean from this Court's forthcoming analyses "how many historical laws the government must cite to support a modern firearms restriction and how analogous those laws must be." Respondents' Br. at 5. While it is possible

that *Wolford* and *Hemani* may provide further understanding on these abstract questions, it is not at all clear that such further guidance would materially impact the reasoning of the courts that have split on the question of whether 18-to-20-year-old adults may be deprived of the right to keep and bear arms. It would be better for this Court to take this case and answer that question directly rather than delaying on the off chance that something the Court says in *Wolford* or *Hemani* will affect how lower courts approach the issue presented here. *Cf.* J. Joel Alicea, *Bruen Was Right*, 174 U. PA. L. REV. 1, 37 (forthcoming 2025) (“[I]n any legal analysis, deciding which facts are relevant depends on what question is being asked.”).

Indeed, given the evident and continued confusion in the lower courts over myriad Second Amendment issues, it would by no means be unwarranted for this Court to take several Second Amendment cases this Term to resolve or at least clarify many of these central questions. The Court frequently considers multiple cases in the same general vein each term. It hears more than one First Amendment case almost every year, for example. *See, e.g. Town of Greece v. Galloway*, 572 U.S. 565 (2014); *McCutcheon v. FEC*, 572 U.S. 185 (2014); *Harris v. Quinn*, 573 U.S. 616 (2014); *McCullen v. Coakley*, 573 U.S. 464 (2014) (all raising First Amendment issues, all heard in the 2013 term). Similar examples from the recent past could be shown concerning other Amendments. *See, e.g. Fernandez v. California*, 571 U.S. 292 (2014); *Navarette v. California*, 572 U.S. 393 (2014) (Fourteenth Amendment cases, also from the 2013 term). Doing the same in the context of the Second Amendment, with its comparative dearth of caselaw, is the most sensible way for

this Court to alleviate much of the confusion and difficulty being experienced in the lower courts.

4. Finally, it is particularly inappropriate to hold (and presumptively send back for reconsideration) cases raising the validity of restricting 18-to-20-year-olds' exercise of Second Amendment rights. For Petitioner's current 18-to-20-year-old members, delay in resolving this case means that they will *never* get meaningful relief, as they likely will age out of the restrictions as all of the original individual plaintiffs to this action already have done. Of course, those members will be replaced by other members who "age in" to the restriction being challenged, and thus this case will remain live. But the fact that effective relief may be provided to different members does not alleviate the irreparable harm being visited on Petitioner's current 18-to-20-year-old members. The right to keep and bear arms is one of the "fundamental rights necessary to our system of ordered liberty." *McDonald v. Chicago*, 561 U.S. 742, 778 (2010). The question of whether the right extends fully to 18-to-20-year-old adults has been percolating in the courts of appeals for years and is fully ventilated. The parameters of the debate are well established, and it is now time for this Court to end the dispute once and for all.

CONCLUSION

The Court should grant the petition for certiorari.

October 28, 2025

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