

No. 25-5713

IN THE SUPREME COURT OF THE UNITED STATES

EMANUEL LEYTON PICON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether D.C. Code §§ 7-2509.02 and 22-4504, which prohibit carrying a pistol without a license and allow a person to obtain a license only if he is at least 21 years old, violate the Second Amendment as applied to 18-to-20-year-olds.

2. Whether D.C. Code §§ 7-2502.01, 7-2502.03, and 7-2506.01, which prohibit possessing or controlling a firearm or ammunition without a registration certificate and allow 18-to-20-year-olds to obtain such certificates only with the permission of their parents or guardians, violate the Second Amendment as applied to 18-to-20-year-olds.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-27a) is reported at 343 A.3d 57.

JURISDICTION

The judgment of the court of appeals was entered on September 4, 2025. The petition for a writ of certiorari was filed on September 23, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

STATEMENT

Following a jury trial in the Superior Court of the District of Columbia, petitioner was convicted on one count of assault with

a dangerous weapon, in violation of D.C. Code § 22-402; one count of assault with significant bodily injury while armed, in violation of D.C. Code §§ 22-404(a) (2), 4502; one count of aggravated assault while armed, in violation of D.C. Code §§ 22-404.01(b), 4502; three counts of possessing a firearm during a crime of violence or dangerous offense, in violation of D.C. Code § 22-4504(b); one count of carrying a pistol without a license, in violation of D.C. Code § 22-4504(a) (1); one count of possessing an unregistered firearm, in violation of D.C. Code § 7-2502.01(a); and one count of unlawful possession of ammunition, in violation of D.C. Code § 7-2506.01(3). See Presentence Investigation Report (PSR) 2-3. Petitioner was sentenced to 120 months of imprisonment, to be followed by five years of supervised release. Sentencing Tr. 20. The District of Columbia Court of Appeals affirmed. Pet. App. 1a-27a.

1. Late one night in July 2021, petitioner visited a club in Washington, D.C. Gov't C.A. Br. 2. After a fight broke out among patrons, the staff ejected everyone from the club. Id. at 2-3. Immediately after leaving, petitioner fired a handgun at two people, Edwin Hernandez and Selvin Amaya, who had been walking behind him. Id. at 3. Petitioner's shot hit Hernandez in the chest, causing life-threatening injuries. Id. at 4.

A grand jury indicted petitioner for multiple assault and firearms offenses. Gov't C.A. Br. 1-2. The petition for a writ of certiorari concerns the charges for carrying a pistol without

a license, in violation of D.C. Code § 22-4504(a)(1); possessing an unregistered firearm, in violation of D.C. Code § 7-2502.01(a); and unlawfully possessing ammunition, in violation of D.C. Code § 7-2506.01. Under the District of Columbia's firearms laws, a person may carry a pistol only if he holds a license, D.C. Code § 22-4504, and may obtain a license only if he is at least 21 years old, see D.C. Code § 7-2509.02. Similarly, a person may possess or control a firearm or ammunition only with a registration certificate, see D.C. Code §§ 7-2502.01, 2506.01, which an 18-to-20-year-old may obtain only with a parent's or guardian's permission, see D.C. Code § 7-2502.03. Petitioner, who was 20 years old when he committed the offenses at issue, had neither a license nor a registration certificate. Pet. App. 5a; PSR 2-3.

Petitioner moved to dismiss those firearms charges, arguing that the District of Columbia's age-based restrictions on firearm possession and carrying violate the Second Amendment rights of 18-to-20-year-olds. Pet. App. 5a. The trial court denied the motion, holding that the restrictions are consistent with the Nation's tradition of firearm regulation. Id. at 28a-33a. After trial, a jury acquitted petitioner on two counts not at issue here and found him guilty on the remaining counts. Gov't C.A. Br. 2.

2. The D.C. Court of Appeals affirmed. Pet. App. 1a-27a. The court "assume[d] without deciding that eighteen-to-twenty-year-olds with no criminal history are part of 'the people' that the Second Amendment protects." Id. at 12a. It concluded,

however, that the District of Columbia's laws restricting such individuals' ability to possess and carry firearms comport with the Second Amendment because they are consistent with the Nation's tradition of firearm regulation. Id. at 12a-23a. In the court's view, "[h]istory reveals a regulatory tradition of restricting access to firearms based on age for those considered to lack the judgment and discretion to use them safely." Id. at 19a.

ARGUMENT

Petitioner renews his contention (Pet. 7-18) that age-based restrictions on the carrying of pistols and the possession of firearms and ammunition violate the Second Amendment as applied to 18-to-20-year-olds. Although that issue is the subject of disagreement among lower courts, this case would be a poor vehicle to resolve that disagreement because petitioner used his firearm for a constitutionally unprotected purpose (to commit an assault). Regardless, the Court should hold the petition pending the resolution of Wolford v. Lopez, cert. granted, No. 24-1046 (oral argument scheduled for Jan. 20, 2026), and United States v. Hemani, cert. granted, No. 24-1234 (Oct. 20, 2025) -- pending Second Amendment cases that could affect the disposition of this case lead to the resolution of the disagreement among the lower courts.

1. Petitioner correctly observes (Pet. 7-12) that lower courts disagree about whether the Second Amendment allows the government to prohibit the carrying of handguns by 18-to-20-year-olds. On the one hand, the Third and Eighth Circuits have

invalidated state laws prohibiting 18-to-20-year-olds from carrying handguns outside the home. See Lara v. Commissioner Pa. State Police, 125 F.4th 428 (3d Cir. 2025), petition for cert. pending, No. 24-1329 (filed June 26, 2025); Worth v. Jacobson, 108 F.4th 677 (8th Cir. 2024), cert. denied, 145 S. Ct. 1924 (2025). On the other hand, in the decision below, the D.C. Court of Appeals upheld a D.C. law denying carry licenses to 18-to-20-year-olds.

Relatedly, courts of appeals also disagree about whether the Second Amendment allows the government to restrict the sale of firearms to 18-to-20-year-olds. The Fourth and Eleventh Circuits have upheld such restrictions, see McCoy v. ATF, 140 F.4th 568 (4th Cir. 2025), petition for cert. pending, No. 25-24 (filed July 3, 2025); NRA v. Bondi, 133 F.4th 1108 (11th Cir. 2025) (en banc), petition for cert. pending, No. 24-1185 (filed May 16, 2025); and the Tenth Circuit has upheld such a restriction in a preliminary-injunction posture, see Rocky Mountain Gun Owners v. Polis, 121 F.4th 96 (2024). The Fifth Circuit, by contrast, has invalidated such restrictions. See Reese v. ATF, 127 F.4th 583 (2025). This case, however, does not directly implicate that circuit conflict because this case involves restrictions on the carrying and possession, rather than the sale, of firearms.

This case, however, would be a poor vehicle for addressing the disagreement among the lower courts about the rights of 18-to-20-year-olds. The Second Amendment protects the right to possess firearms for “traditionally lawful purposes, such as self-

defense,” District of Columbia v. Heller, 554 U.S. 570, 577 (2008), but petitioner did not possess a firearm for such purposes. Instead, the jury verdict conclusively establishes that he possessed a firearm to commit an almost-fatal assault. See pp. 2-3, supra. Petitioner argued at trial that he acted in self-defense, but the jury rejected that theory. See Pet. App. 6a-7a.

2. This Court should hold the petition for a writ of certiorari pending the resolution of Wolford and Hemani. The government recently argued that the Court should hold the petition for a writ of certiorari in WVCDL v. ATF, No. 25-132 (Oct. 20, 2025), another case concerning the Second Amendment rights of 18-to-20-year-olds, because Wolford and Hemani could affect the proper resolution of that case. See Gov’t Br. at 4-6, WVCDL, supra (No. 25-132). For similar reasons, Wolford and Hemani could likewise affect the proper resolution of this case.

CONCLUSION

This Court should hold the petition pending the resolution of Wolford v. Lopez, cert. granted, No. 24-1046 (oral argument scheduled for Jan. 20, 2026), and United States v. Hemani, cert. granted, No. 24-1234 (Oct. 20, 2025), and then dispose of the petition as appropriate.

Respectfully submitted.

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