No. 25-5713

IN THE
SUPREME COURT OF THE UNITED STATES

Emanuel Leyton Picon

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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PETITIONER'S REPLY BRIEF

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ARGUMENT

I. Petitioner's Assault Convictions Do Not Weigh Against Granting Certiorari

The United States acknowledges the significant disagreement among the lower courts with respect to the issue raised by Petitioner, the Second Amendment "rights of 18-to-20-year-olds," but asserts that this case "would be a poor vehicle" for addressing that disagreement. U.S. Br. in Opp'n at 5. This is supposedly so, in large part, because the Second Amendment only protects the right to possess firearms for "lawful purposes." *Id.* at 5-6. Here, the United States says, there was no lawful purpose because "the jury verdict conclusively establishes that [petitioner] possessed a firearm to commit an almost-fatal assault." *Id.* at 6. Intervenor District of Columbia agrees. District of Columbia Br. in Opp'n at 10-12.

1. The United States and the District are factually wrong. The jury did not determine, when it reached the guilty verdicts Petitioner now challenges, that Petitioner had possessed a firearm "to commit" an assault. With respect to these firearms counts, it found only that Petitioner unlawfully possessed a firearm (and ammunition), not that he did so for any particular purpose. These charges were independent offenses—Petitioner could have been convicted for committing them even if acquitted of the assault-related charges on which he was also convicted, convictions that are not before the Court.

2. Aside from being falsely premised, this argument is manifestly wrong. Petitioner contends that the convictions he now challenges must be vacated because they are based on a statute that unconstitutionally prevented him from possessing firearms because of his age. It is long settled that "[a]n unconstitutional law is void, and is as no law." *Montgomery v. Louisiana*, 577 U.S. 190, 204 (2016) (quoting *Ex Parte Siebold*, 100 U.S. 371, 376 (1879)). Nevertheless, the United States and the District seemingly think that a criminal conviction inconsistent with the Constitution survives if accompanied by valid convictions for other offenses. They offer no reasoning or precedent to support this strange view. And such a view would permit absurd results. Imagine that Congress again criminalizes as sedition statements tending "to bring" the president into "contempt or disrepute." Sedition Act, ch. 74, 1 Stat. 596, 596 (1798). And imagine that a protester who blocks an entrance to the White House while holding up a sign harshly criticizing the President is then convicted of both obstructing the entryway and of possessing and displaying the harshly worded sign. Under the United States' reasoning, the protester could not challenge his sedition conviction on First Amendment grounds because it was accompanied by a constitutionally permissible obstruction conviction.

3. In any event, the argument now raised has been forfeited because it was not made in the courts below. The position of the United States and the District in

those courts was that the Second Amendment permitted a ban on firearms possession by 18–20-year-olds, not that, under the facts of this case, the constitutionality of such restrictions was irrelevant. "Absent unusual circumstances," which the United States and the District do not suggest exist here, this Court will not entertain arguments not made below. *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 38 (2015).

II. The Fact that this Case Addresses Possession and Not Sale of Firearms Does Not Weigh Against Granting Certiorari

The United States and the District note that this case addresses the possession, not the purchase of firearms, and suggest that this counsels against granting certiorari because several of the recent appellate decisions addressing the Second Amendment rights of 18–20-year-olds involved statutes that prohibit firearms sales to, as opposed to possession by, persons in this age group. *See McCoy v. ATF*, 140 F.4th 568 (4th Cir. 2025), petition for cert. pending, No. 25-24 (filed July 3, 2025) (upholding restrictions); *NRA v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc), petition for cert. pending, No. 24-1185 (filed May 16, 2025) (upholding restrictions); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (2024) (upholding restrictions); *Reese v. BATFE*, 127 F.4th 583 (2025) (rejecting restrictions). But this is a distinction without constitutional significance—it is difficult to see how the Second Amendment could allow 18-20-year-olds to

possess firearms, but not to purchase them. For this reason, the arguments made by both sides in the age-restriction sale cases have been similar or identical to those advanced in the possession cases.

The decision below illustrates the overlap. The District of Columbia Court of Appeals' opinion upholding the possession ban challenged by Petitioner is almost entirely dependent on that court's wholesale adoption of the deeply flawed historical analysis in *McCoy* and *Bondi*, both of which upheld sale bans. *See* App. 12a-13a. Moreover, the decision below upholding age restrictions creates a split on the sub-issue of restrictions on possession. *See Lara v. Comm'r Pa. State Police*, 125 F.4th 428 (3d Cir. 2025), petition for cert. pending, No. 24-1329 (filed June 26, 2025) (rejecting restrictions); *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024), cert. denied, 145 S. Ct. 1924 (2025) (rejecting restrictions).

CONCLUSION

The Petition should be granted. If it is not granted, this case should be held until the Court addresses the other Second Amendment cases now before it and then, if appropriate, be remanded.

Respectfully submitted,

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December 16, 2025