No. 25-24

In the Supreme Court of the United States

JOSHUA CLAY MCCOY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED AS A CLASS, ET AL., PETITIONERS

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 RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. 922(b)(1), a federal statute that restricts federal firearms licensees' sale of handguns to persons who are less than 21 years old, violates the Second Amendment rights of 18-to-20-year-olds.

2. Whether petitioners' motion for class certification, which was filed after the district court granted them summary judgment, was untimely.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-60a) is reported at 140 F.4th 568. A memorandum opinion of the district court (Pet. App. 61a-90a) is available at 2023 WL 5616011. Prior memorandum opinions of the district court (Pet. App. 91a-116a, 117a-182a) are reported at 689 F. Supp. 3d 203 and 672 F. Supp. 3d 118.

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 3, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. A federal statute, 18 U.S.C. 922(b)(1), provides that a federal firearms licensee may not sell a firearm (other than a shotgun or rifle) to "any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age." Section 922(b)(1) regulates only federal firearms licensees' direct sales to individuals. It does not regulate the possession of firearms or other types of transfers (such as private sales or inheritances). It also does 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, four 18-to-20-year-old individuals (three of whom are petitioners here) filed this suit in the U.S. District Court for the Eastern District of Virginia, claiming that Section 922(b)(1) violates the Second Amendment as applied to 18-to-20-year-old people. See Pet. App. 118a-119a. In 2023, the court added a fifth person (who is also a petitioner here) as a plaintiff. See D. Ct. Doc. 72 (Aug. 24, 2023).

The district court granted summary judgment to petitioners. Pet. App. 117a-182a. It determined that 18-to-20-year-olds are among the people protected by the Second Amendment, see *id.* at 138a-168a, and that the government had failed to provide an adequate historical

justification for restricting the sale of firearms to those individuals, see *id.* at 168a-173a.

After the district court granted summary judgment, petitioners moved for class certification. Pet. App. 63a-64a. The court granted the motion and certified a nationwide class of 18-to-20-year-old citizens. *Id.* at 89a.

3. The Fourth Circuit reversed. Pet. App. 1a-60a.

The Fourth Circuit held that Section 922(b)(1) complies with the Second Amendment. See Pet. App. 7a-20a. The court assumed without deciding that 18-to-20-year-olds are among the people protected by the Second Amendment. See *id.* at 10a. It then determined that Section 922(b)(1) is consistent with the United States' tradition of firearm regulation. See *ibid.* The court stated that Section 922(b)(1) is analogous to Founding-era common-law rules that prevented individuals under the age of 21 from forming contracts. See *id.* at 11a-15a. The court added that, during the 19th century, "at least twenty jurisdictions enacted laws criminalizing the sale of firearms, often handguns specifically, to individuals under the age of 21." *Id.* at 18a.

The court of appeals also reversed the grant of class certification. See Pet. App. 6a n.1. It concluded that, because petitioners had waited until after the district court had ruled on the merits before seeking class certification, "the district court did not certify the class at 'an early practicable time,'" as required by Federal Rule of Civil Procedure 23(c)(1)(A). Pet. App. 7a n.1 (citation omitted).

Judge Heytens issued a concurring opinion. Pet. App. 23a-26a. He argued that petitioners' arguments prove too much, because they would show that even those younger than the age of 18 would have a constitutional right to possess firearms. *Id.* at 23a. Judge Hey-

tens described that outcome as a "startling result that [petitioners] seek to obscure and for which they offer no defense." *Ibid.*

Judge Quattlebaum dissented. Pet. App. 27a-60a. He concluded that Section 922(b)(1) violates the Second Amendment because "the government has not shown a relevant principle of restricting 18-to-20-year-olds' access to self-defense weapons at the time of the founding." *Id.* at 58a. He stated that the district court's decision to certify a class after granting summary judgment to petitioners gave him "pause," but concluded that the court had not abused its discretion in the circumstances of this case. *Id.* at 59a.

DISCUSSION

Petitioners renew (Pet. 10-32) their contention that Section 922(b)(1) violates the Second Amendment as applied to 18-to-20-year-olds. But because petitioners have either already turned 21 years old or will do so soon, this case is likely to become moot before the Court has an opportunity to decide it. In any event, this Court recently granted a petition for a writ of certiorari in *Wolford* v. *Lopez*, No. 24-1046 (Oct. 3, 2025), and is considering the government's petition in *United States* v. *Hemani*, No. 24-1234 (filed June 2, 2025)—both Second Amendment cases that could shed light on the proper resolution of this case. Moreover, two other pending petitions for writs of certiorari—*West Virginia Citizens Defense League, Inc.* v. *ATF* (*WVCDL*), No. 25-132 (filed July 31, 2025), and *NRA, Inc.* v. *Glass*, No. 24-1185 (filed May 16, 2025)—raise questions concerning the Second Amendment rights of 18-to-20-year-olds but do not suffer from the same vehicle problems as this case. This Court should accordingly hold the petition pending the resolution of those cases.

Petitioners also contend (Pet. 32-35) that the district court did not abuse its discretion in certifying a class after granting summary judgment. The court of appeals correctly rejected that contention, and its decision on that issue does not conflict with any decision of this Court or any other court of appeals. Further review is unwarranted.

1. Petitioners first argue (Pet. 10-32) that Section 922(b)(1) violates the Second Amendment as applied to 18-to-20-year-olds. But this case is likely to become moot before the Court has an opportunity to decide it, making it a poor vehicle for addressing petitioners' claim. The Court should therefore hold rather than grant the petition for a writ of certiorari.

a. Article III of the Constitution confines the federal courts to exercising "judicial Power," which extends only to "Cases" and "Controversies." U.S. Const. Art. III, § 2, Cl. 1. There is no case or controversy, and a suit becomes moot, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013) (citation omitted). The Fourth Circuit accordingly held that a previous suit challenging Section 922(b)(1) had become moot because the plaintiffs had all turned 21 years old while the case was on appeal. See *Hirschfeld* v. *ATF*, 14 F.4th 322, 326-327 (2021). When the Solicitor General declined to file a petition for a writ of certiorari in *Reese*, he explained 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).[1]

This suit, too, is likely to become moot before this Court decides it. The suit was brought by four plaintiffs: Corey Fraser (who is not a petitioner here) and petitioners Joshua McCoy, Tyler McGrath, and Ian Shackley. See Am. Compl. 1. An amended complaint filed on November 16, 2022, alleges that Corey Fraser was 20 years old and that McCoy, McGrath, and Shackley were 19 years old. See *id.* ¶¶ 41-44. Corey Fraser thus turned 21 years old no later than November 16, 2023, and the other three plaintiffs turned 21 years old no later than November 16, 2024.

The district court later added a fifth plaintiff, petitioner Justin Fraser. See D. Ct. Doc. 72. Petitioners have represented that Justin Fraser was born on April 27, 2005, see D. Ct. Doc. 65, at 2, meaning that he will turn 21 on April 27, 2026. Because this Court ordinarily issues its judgment 32 days after it issues its opinion, see Sup. Ct. R. 45.2, it likely would need to issue its opinion by March 26, 2026, to avoid mootness. That deadline would needlessly force this Court to receive briefing, hold argument, and issue an opinion on a compressed schedule.

To be sure, the district court certified a class action, and class members' claims do not necessarily become moot when the class representatives' claims do so. See *Sosna* v. *Iowa*, 419 U.S. 393, 399-400 (1975). The court of appeals, however, reversed the grant of class certification. See Pet. App. 6a n.1. This Court accordingly would need, at a minimum, to consider the propriety of class certification before it could rely on the class members' claims as a basis for avoiding mootness. Given

[1] https://www.justice.gov/oip/media/1410951/dl?inline

those threshold procedural obstacles, this case is a poor vehicle for resolving the constitutionality of Section 922(b)(1).

b. This Court recently 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 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.

This Court also is currently considering the government's petition for a writ of certiorari 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 opportunity 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. 31) that the court of appeals "departed" from "Founding-era tradition" and accorded "outsized weight" to "post-Civil War state laws," "blur[ring] the distinction between incorporation (which occurred in 1868) and the substantive meaning of the right (rooted in 1791)."

Finally, this Court is currently considering petitions for writs of certiorari in *WVCDL* (which, like this case,

concerns the constitutionality of Section 922(b)(1)) and *NRA* (which concerns the constitutionality of a Florida law that bans the sale of firearms to 18-to-20-year-olds). See Pet. at i, *WVCDL*, *supra* (No. 25-132); Pet. at i, *NRA*, *supra* (No. 24-1185). Those cases do not raise the same mootness problems as this case because the lead plaintiffs there are associations suing on behalf of their members. The association in *WVCDL* 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, *Brown* v. *ATF*, No. 23-2275 (4th Cir. May 21, 2025) (motion to supplement record); Pet. App. at 2a, *WVCDL*, *supra* (No. 25-132) (granting motion). Meanwhile, the association in *NRA* states that it "has, as members, 18-to-20-year old Florida residents" covered by Florida's law and that it "stands ready to provide evidence that it continues to have members subject to the ban at the Court's request." Pet. at 7, *NRA*, *supra* (No. 24-1185).

This Court should therefore hold the petition for a writ of certiorari in this case pending the resolution of the petitions in *Wolford*, *Hemani*, *WVCDL*, and *NRA*. It should then dispose of the petition as appropriate.

2. Petitioners separately argue (Pet. 32-35) that their motion for class certification was timely. That contention does not warrant this Court's review.

Class actions represent "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano* v. *Yamasaki*, 442 U.S. 682, 700-701 (1979). The "core idea" of a class action is that both sides run the risk of an adverse class-wide judgment. 6 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 18:14, at 39 (6th ed. 2022). If the class representatives prevail, "the class

members may take advantage of that victory," but "if the representatives lose, the defendant—having risked a large class-wide loss—is entitled to take advantage of its victory by foreclosing litigation by any class member against it in the future." *Id.* § 18:14, at 44.

A plaintiff therefore may not wait until after a court has conclusively resolved the merits before deciding whether to seek class certification. Otherwise, by delaying a motion for certification, a plaintiff could enable absent class members "to benefit from a favorable judgment without subjecting themselves to the binding effect of an unfavorable one." *American Pipe & Construction Co.* v. *Utah*, 414 U.S. 538, 547 (1974). That practice, known as one-way intervention, "is 'strikingly unfair' to the defendant." *Costello* v. *BeavEx, Inc.*, 810 F.3d 1045, 1057-1058 (7th Cir. 2016), cert. denied, 582 U.S. 929 (2017).

The Federal Rules of Civil Procedure forbid one-way intervention. In 1966, Rule 23 was amended to require that courts determine whether to certify a class "[a]s soon as practicable after the commencement of an action." Fed. R. Civ. P. 23(c)(1) (1966). That amendment was "designed, in part, specifically" to "assure that members of the class would be identified before trial on the merits and would be bound by all subsequent orders and judgments." *American Pipe*, 414 U.S. at 547. In 2003, the relevant language was modified to require certification "[a]t an early practicable time." Fed. R. Civ. P. 23(c)(1)(A). But that change "d[id] not restore the practice of 'one-way intervention' that was rejected by the 1966 revision of Rule 23." Fed. R. Civ. P. 23 advisory committee's note (2003 Amendment). Rule 23 accordingly continues to forbid one-way intervention.

The district court's certification of a class in this case flouted that basic requirement. Although the complaint indicated that petitioners sought to represent a class, petitioners moved for summary judgment and litigated that motion without requesting class certification. Only after the court decided the merits in petitioners' favor did they move to certify a class. See Pet. App. 7a n.1. Whatever leeway the phrase "[a]t an early practicable time" may provide, Fed. R. Civ. P. 23(c)(1)(A), it does not allow a plaintiff to withhold a motion for certification until after the district court has decided the merits.

That conclusion is reinforced by petitioners' failure to explain their delay. Petitioners have identified no reason it would not have been "practicable," Fed. R. Civ. P. 23(c)(1)(A), for them to move for certification before the district court resolved the merits. To the extent petitioners withheld their motion out a concern that a class-wide loss would have prevented further challenges to Section 922(b)(1) across the country, that concern simply confirms that petitioners sought to reap the benefits of certification without accepting the risks.

The problems with petitioners' approach are especially apparent given the nationwide scope of the class. This Court has recognized that "nationwide class actions may have a detrimental effect by foreclosing adjudication by a number of different courts and judges" and that it "often will be preferable to allow several courts to pass on a given class claim in order to gain the benefit of adjudication by different courts in different factual contexts." *Yamasaki*, 442 U.S. at 702. Those considerations counsel against certification in this case, where certification of a nationwide class would have threatened to prevent most circuits from ever addressing the constitutional issues presented here.

Petitioners' contrary arguments lack merit. Petitioners contend (Pet. 33) that the rule against one-way intervention is "irrelevant in a Rule 23(b)(2) class action such as this" because Rule 23(b)(2) does not provide objecting class members with the opportunity to opt out. But the rule against one-way intervention rests on concerns about fairness to the defendant, not on concerns about opt-out opportunities for class members. See *American Pipe*, 414 U.S. at 547. Such fairness concerns arise in Rule 23(b)(2) class actions no less than in other types of class actions. Moreover, Rule 23's requirement of certification at "an early practicable time," Fed. R. Civ. P. 23(c)(1)(A), applies equally to all types of class actions. That requirement cannot bear one meaning for Rule 23(b)(2) class actions and another for other types of class actions.

Contrary to petitioners' suggestion (Pet. 33), the decision below does not conflict with the Sixth Circuit's decision in *Gooch* v. *Life Investor Insurance Co.*, 672 F.3d 402 (2012). In *Gooch*, the Sixth Circuit held that the rule against one-way intervention does not preclude a court from granting class certification after granting a preliminary injunction. *Id.* at 432. The court also stated that "judicial economy" may sometimes counsel in favor of deferring a ruling on class certification. *Id.* at 433 (citation omitted). This case, by contrast, involves a grant of class certification after summary judgment, rather than after the entry of a preliminary injunction. And petitioners did not defer their motion for class certification to promote judicial economy; rather, they "strategically withheld their class certification motion to avoid being bound by an unfavorable ruling." Pet. App. 7a n.1.

Petitioners, in sum, have not shown that the decision below creates a circuit conflict on the second question presented. Nor have they shown that the issue otherwise warrants this Court's review.

CONCLUSION

This Court should hold the petition for a writ of certiorari pending the disposition of *Wolford* v. *Lopez*, No. 24-1046, cert. granted (Oct. 6, 2025); *United States* v. *Hemani*, No. 24-1234, petition for cert. pending (filed June 2, 2025); *West Virginia Citizens Defense League, Inc.* v. *ATF*, No. 25-132, petition for cert. pending (filed July 31, 2025); and *NRA, Inc.* v. *Glass*, No. 24-1185, petition for cert. pending (filed May 16, 2025). The Court should then dispose of the petition as appropriate.

Respectfully submitted.

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