No. 25-238

In the Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,

v.

COOK COUNTY, ILLINOIS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY TO PETITIONERS' RESPONSE TO SUGGESTION OF MOOTNESS

Eileen O'Neill Burke
Cook County State's Attorney
Counsel of Record

Yvette Loizon
Anastasia Nowacki Harper
Jessica Megan Scheller
Prathima Yeddanapudi
Assistant State's Attorneys

COOK COUNTY
STATE'S ATTORNEY
500 Richard J. Daley Center
Chicago, IL 60602
(312) 603-6934
eileen.burke@cookcountysao.org

Petitioners' response to the suggestion of mootness confirms that the Court should dismiss the petition for certiorari because petitioners cannot establish standing without Cutberto Viramontes. Petitioners still do not explain why their lead plaintiff—the only individual who sought to purchase an AR-15—desires to remove himself from the case. Instead, they urge that the Court can decide the question presented because a different petitioner wants a different weapon that is hardly discussed in the record below. And recognizing the weakness of that argument, petitioners improperly seek to shore up their standing five years into this litigation by introducing new record evidence in this Court. The Court should not permit that maneuver—instead, it should dismiss the petition as moot or as improvidently granted if it removes Viramontes from this case.[1]

1. Petitioners do not dispute that at least one party must have standing to appeal the judgment below. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997); Sugg. 1. That requirement means that at least one petitioner must have a concrete stake in "the questions presented" by the petition. *Arizonans for Official English*, 520 U.S. at 64. A claim of standing must be supported by "the

[1] The parties agree that nothing in this briefing would affect the grant of certiorari in *Grant v. Higgins*, No. 25-566. *See* Sugg. 1 n.1; Opp'n 9 n.1.

evidence in the record." *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 104 (2025).

2. Petitioner Christopher Khaya lacks standing because there is no record evidence that he intends to use the IMI Galil for self defense, nor is there evidence that his desired weapon—the IMI Galil—is "similar to" an AR-15. In fact, petitioners have asserted otherwise, clarifying in their statements below that the IMI Galil is not an AR-15-style weapon. Opp'n 7; *see* Pet. App. 8a n.3. They now reverse course and insist that the IMI Galil "shares common features" with AR-15-style weapons. Opp'n 4.

The problem for petitioners is that no "evidence in the record" supports that contention. *Diamond Alternative Energy*, 606 U.S. at 104. Other than petitioners' own representation below that the IMI Galil "is not an AR-15 style rifle," D. Ct. Doc. 101 ¶ 6 n.1, the record is devoid of any material explaining the similarities and differences between the IMI Galil and the AR-15.

Petitioners effectively concede this point. To seek to establish similarity, petitioners' opposition reproduces images from two websites, preceded by a critical sentence—"[t]hese firearms share common features, including pistol grips, the ability to support adjustable or folding stocks, and the ability to accept detachable magazines"—that contains no citation at all. Opp'n 4-5. Meanwhile, the public domain contains numerous articles explaining that AR-15-

style rifles are "very different" from AK-47-style rifles like the IMI Galil.[2]

Petitioners also effectively concede that Khaya's desire to own an IMI Galil weapon greatly complicates the question presented. As the suggestion of mootness explained, the IMI Galil is a rare collector's weapon that is not in "common use." Sugg. 3-4. Petitioners do not dispute the point; instead, they seek to broaden their argument by asserting that the "class" of AR-15-style and AK-47-style rifles is in "common use." Opp'n 3. Petitioners do not explain how to define a weapon "class." And their briefing in this Court almost exclusively addresses how many Americans own "AR-15s"—not IMI Galils or weapons in any "class." *See, e.g.*, Petrs. Br. 11-12.

It makes no difference to this analysis that Khaya's IMI Galil weapon is also prohibited by Cook County's ordinance. *See* Opp'n 5. This Court did not grant review of the ordinance's facial validity.

3. In recognition that the existing record does not support standing, petitioners seek to introduce two new declarations in this Court. *See* Opp'n 1a-2a. The first, by Khaya, explains for the first time in this five-

---

[2] *AK-47 VS AR-15: Head-To-Head*, Widener's Guns, Ammo & Shooting Blog (May 15, 2026), https://www.wideners.com/blog/ak-47-vs-ar-15-head-to-head; *see AK-47 vs AR-15: Which Rifle Platform Is Right for You?*, The Magshack (Aug. 22, 2026), http://themagshack.com/ak-47-vs-ar-15-which-rifle-platform-is-right-for-you ("[T]hey take very different approaches to the same basic job.").

year-old litigation that Khaya "would acquire and possess" an AR-15 if he prevails in this case. *Id.* at 1a ¶ 4. The second declaration is by Ed Smolen, who has never participated in this case and who "would possess [his] AR-15" in Cook County if the ordinance is struck down. *Id.* at 2a ¶ 5.

This Court has "consistently condemned" such efforts to introduce facts outside the record. *Ross v. Blake*, 578 U.S. 632, 649 (2016) (Thomas, J., concurring in part and concurring in the judgment) (quoting Steven M. Shapiro et al., *Supreme Court Practice* § 13-11(k) (10th ed. 2013)). To start, petitioners' submissions do not comply with this Court's Rule 32.3, which provides that "[a]ny party or amicus curiae desiring to lodge non-record material with the Clerk must set out in a letter, served on all parties, a description of the material proposed for lodging and the reasons why the non-record material may properly be considered by the Court." But more fundamentally, "[t]his Court must affirm or reverse upon the case as it appears in the record," and so "[a]ffidavits of newly-discovered testimony cannot be received." *Russell v. Southard*, 53 U.S. (12 How.) 139, 159 (1851); *see Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 n.16 (1970) ("Apart from the fact that the statement is unsworn, the statement itself is not in the record of the proceedings below and therefore could not have been considered by the trial court.

Manifestly, it cannot be properly considered by us in the disposition of the case." (citation omitted)).[3]

It would be particularly inappropriate to rely on these affidavits given that Khaya and Smolen "had a chance to submit" their "documents to the lower courts and failed to do so." *Ross*, 578 U.S. at 649 (Thomas, J., concurring in part and concurring in the judgment). Below, the parties "engage[d] in discovery" prior to seeking summary judgment. Petrs. Br. 21. If petitioners had introduced these declarations in district court, therefore, Cook County would have been able to propound discovery—including by asking Khaya why he first disclosed his desire to own an AR-15 five years into this suit. Petitioners' decision to submit these documents for the first time in this Court thus smacks of "gamesmanship," as does their decision to seek Viramontes' dismissal after Cook County filed its responsive brief in this case. *Ross*, 578 U.S. at 649

---

[3] Petitioners suggest that the Court permitted the lodging of non-record material in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 70 (2007). *See* Opp'n 8. But in *Parents Involved*, petitioners argued that the Court could find standing based on the record as it existed, Petrs. Reply Br. 17, No. 05-908 (U.S.)—and the Court cited that record material in its discussion of standing. *See* 551 U.S. at 718 (first citing "App. in No. 05-908, at 299a-301a"). And there, the issue was whether members' children would age out of certain school districts, *id*—a classic application of the mootness exception for a controversy that is "capable of repetition, but evading review." *FCC v. Consumers' Rsch.*, 606 U.S. 656, 671 n.1 (2025). That doctrine "applies because of the nature of some controversies, not because of the parties' litigating decisions," and so offers petitioners no aid here. *Id.*

(Thomas, J., concurring in part and concurring in the judgment). This Court should accordingly ignore the declarations for purposes of deciding whether petitioners satisfy Article III.

* * *

For the foregoing reasons and the reasons stated in the suggestion of mootness, if Viramontes is removed from this case, this Court should dismiss this petition as moot or improvidently granted.

Respectfully submitted,

Eileen O'Neill Burke
Cook County State's Attorney
Counsel of Record

Yvette Loizon
Anastasia Nowacki Harper
Jessica Megan Scheller
Prathima Yeddanapudi
Assistant State's Attorneys

COOK COUNTY
STATE'S ATTORNEY
500 Richard J. Daley Center
Chicago, IL 60602
(312) 603-6934
eileen.burke@cookcountysao.org