IN THE SUPREME COURT OF THE UNITED STATES

No. 25-24

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

RESPONDENTS' RESPONSE TO PROSPECTIVE INTERVENOR'S MOTION TO INTERVENE AS PETITIONER

Pursuant to Rule 21.4 of the Rules of this Court, the Solicitor General respectfully submits this response in opposition to prospective intervenor's motion to intervene as petitioner.

Petitioners are five individuals who contend that 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. See Br. in Opp. 2. Four of those petitioners had already turned 21 years old before the filing of the petition for a writ of certiorari. See id. at 6. The remaining petitioner turned 21 on

April 27, 2026, mooting the case. See ibid. But on April 29, 2026, two days after the case had become moot, prospective intervenor Daniel Gibbs, Jr. -- who is represented by the same counsel as petitioners -- sought leave to intervene in this Court. See Mot. for Leave to Intervene 2-3 (Mot.).

This Court should deny that motion. The Court has permitted non-parties to intervene "for the first time at the Supreme Court level" only in "rare" cases involving "extraordinary factors." Stephen M. Shapiro et al., Supreme Court Practice § 6.16(c), at 6-62 (11th ed. 2019). This case does not satisfy that high standard.

It is far from obvious that prospective intervenor can lawfully intervene in this case after the case has already become moot. Intervention generally presupposes the existence of a case in which to intervene. Where, as here, "there is no longer any action in which [a non-party] can intervene, judicial consideration of the intervention question would be fruitless." West Coast Seafood Processors Ass'n v. Natural Resources Defense Council, Inc., 643 F.3d 701, 704 (9th Cir. 2011) (brackets and citation omitted). To be sure, some courts of appeals have suggested that a court may grant intervention after mootness so long as the "motion to intervene [wa]s made while the case [wa]s still live." CVLR Performance Horses, Inc. v. Wynne, 792 F.3d 469, 474 (4th Cir.), cert. denied, 577 U.S. 1051 (2015). But the motion here was filed only after all the petitioners aged out of the original case.

Post-mootness intervention at the Supreme Court level raises additional procedural concerns. Because the original case has already become moot, granting intervention would at least arguably create a new case. But under Article III, this Court generally possesses only appellate jurisdiction over cases that have previously been heard in the lower courts, not original jurisdiction over cases that have been initiated in this Court. See U.S. Const. Art. III, § 2, Cl. 2; Marbury v. Madison, 1 Cranch 137, 173-176 (1803).

Prospective intervenor contends (Mot. 2) that he may properly intervene because he was a member of the class certified by the district court. But the court of appeals reversed the grant of class certification. See Pet. App. 6a n.1. As the government has explained, that aspect of its decision is correct and does not warrant further review. See Br. in Opp. 8-12. Prospective intervenor cannot properly base his intervention motion on a now-reversed grant of class certification.

At a minimum, the procedural complications discussed above counsel in favor of denying the motion to intervene (and denying the petition for a writ of certiorari). As the government has noted, two other pending certiorari petitions -- West Virginia Citizens Defense League, Inc. v. ATF, No. 25-132 (filed July 31, 2025) (WVCDL), 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 mootness

problems as this case. See Br. in Opp. 7-8. If the Court ultimately determines that those questions warrant plenary review, then WVCDL and NRA would provide better vehicles than this case for resolving those issues.

The motion for intervention should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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