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.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONERS' REPLY BRIEF

ELLIOTT M. HARDING
Counsel of Record
HARDING COUNSEL PLLC
2805 Meadow Vista Drive
Charlottesville, VA 22901
(434) 962-8465
elliott@hardingcounsel.com

Counsel for Petitioners

386562

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF CONTENTS. i

TABLE OF CITED AUTHORITIES ii

REASONS FOR GRANTING THE PETITION. 1

I. The Circuit Split Demands A Resolution. 4

II. The Government's Objections Prove The Need for Review 4

III. The "Other Pending Cases" Provide No Solution. 6

IV. The Class Certification Issue Does Not Undermine The Strength of This Case As A Vehicle For Relief. 7

A. The Government Invited The Merits-First Procedure Without Objection 8

B. The Cases Cited By The Government Do Not Support The Fourth Circuit's Decertification of The Class. 9

C. The Fourth Circuit's Decision Creates a Circuit Split on The Timing of Class Certification Worthy of Review Post-*CASA*. 10

CONCLUSION 11

TABLE OF CITED AUTHORITIES

Page

Cases

American Pipe & Construction Co. v. Utah,
414 U.S. 538 (1974) 9

Costello v. BeavEx, Inc.,
810 F.3d 1045 (7th Cir. 2016) 9

Genesis HealthCare Corp. v. Symczyk,
569 U.S. 66 (2013). 5

Gooch v. Life Investor Insurance Co.,
672 F.3d 402 (6th Cir. 2012) 10, 11

King v. Burwell,
576 U.S. 473 (2015) 2

McCoy v. BATFE,
140 F.4th 568 (4th Cir. 2025) 4

NRA, Inc. v. Glass,
No. 24-1185 (U.S. pet. for cert. filed
May 16, 2025) 7

Paxton v. Union Nat'l Bank,
688 F.2d 552 (8th Cir. 1982) 11

Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives,
127 F.4th 583 (5th Cir. 2025). 1, 2, 4

Cited Authorities

Page

Sosna v. Iowa,
419 U.S. 393 (1975) 5

Trump v. CASA, Inc.,
606 U.S. 831 (2025). 4, 6

United States v. Hemani,
No. 24-1234 (cert. granted Oct. 20, 2025) 6

Wal-Mart Stores, Inc. v. Dukes,
564 U.S. 338 (2011) 11

West Virginia Citizens Defense League, Inc. v. ATF,
No. 25-132 (U.S. pet. for cert. filed
July 31, 2025) 7

Wolford v. Lopez,
No. 24-1046 (cert. granted Oct. 3, 2025) 7

Statutes and Rules

18 U.S.C. § 922(g)(3) 6

18 U.S.C. § 922(b)(1) 4, 6

Fed. R. Civ. P. 23 . . . . . 2, 3, 4, 5, 6, 8, 11

Fed. R. Civ. P. 23(b)(2) 9, 10

Fed. R. Civ. P. 23(c)(1)(A) 3

Fed. R. Civ. P. 23(c)(2)(A) 10

Page

Other Authorities

6 William B. Rubenstein, Newberg and Rubenstein on Class Actions § 18:14, at 39 (6th ed. 2022) 10

Application No. 24A997, *Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives* (U.S. Apr. 21, 2025 & May 14, 2025) (granting extensions to file cert petition) 2

Letter from D. John Sauer, Solicitor Gen., U.S. Dep't of Justice, to Hon. Mike Johnson, Speaker, U.S. House of Representatives (July 25, 2025) 2

Oral Arg. Tr. 53:1-2, *Trump v. CASA, Inc.*, Nos. 24A884, 24A885, 24A886 (May 15, 2025) 4, 5

Orders, *McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 25-24 (U.S. July 29, 2025 & Aug. 25, 2025) (granting extensions to file BIO) 2

REASONS FOR GRANTING THE PETITION

This case includes every reason to grant certiorari: fundamental liberties and a federal regulatory scheme affecting millions of law-abiding adult citizens, nationwide impact, and a merits decision[1] that will provide guidance to federal and state courts for the Second Amendment. It is the product of a direct circuit split with a purely legal question. The Government's Brief in Opposition ("BIO") relies on a procedural oddity involving the timing of the district court's class certification that does not impact the Second Amendment challenge but was erroneously reversed by the Fourth Circuit in a passing footnote. That issue should be resolved so this Court clarifies what the *law is* for class certification versus what the Government argues it *should be*. For reasons stated in the initial petition and below, the petition should be granted.

The United States has prohibited millions of young-adult American citizens from purchasing handguns and ammunition from federally licensed firearm dealers ("FFLs") for decades. Among other things, these laws bar adults from the means by which previously-unowned firearms and ammunition are available for purchase and federally-recognized background checks are conducted. These laws are unconstitutional. The Fifth Circuit agreed in *Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 127 F.4th 583 (5th Cir. 2025), but rather than petition for certiorari, the Government relied on the same device it does here to avoid a decision on the merits—the

1. Nineteen states and multiple organizations have filed amici briefs asking for this case to be granted.

passage of time and specter of mootness.[2] *See* Letter from D. John Sauer, Solicitor Gen., U.S. Dep't of Justice, to Hon. Mike Johnson, Speaker, U.S. House of Representatives (July 25, 2025). The Government tragicomically relies on Father Time to do its bidding rather than argue against what our Founding Fathers guaranteed in the Second Amendment. The Court must not accept the invitation to "run out the clock" on an issue in which there is national implication.

The Government concedes that if the class is reinstated, there is no mootness concern. The Government's opposition is predicated on the doctrinal *preference* against "one-way intervention" in class actions. It cannot cite a Rule, Code, or any precedent from this Court creating an absolute prohibition against certification in this case. Federal Rule of Civil Procedure 23 ("Rule 23") speaks for itself. It does not state when a formal motion for

2. Notably, the Government repeatedly moved to extend its briefing schedules for its never-filed petition in *Reese* and did so again in this case for filing a brief in opposition. *See* Application No. 24A997, *Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives* (U.S. Apr. 21, 2025 & May 14, 2025) (granting extensions to file cert petition); Orders, *McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 25-24 (U.S. July 29, 2025 & Aug. 25, 2025) (granting extensions to file BIO). Now it cites the passage of time as the primary reason for not petitioning for certiorari in *Reese* and argues that time is a reason to avoid a decision on the merits in this case. An individual plaintiff suffering from the laws at issue has a 36-month window for relief via a final judgment until their case is moot. The Government knows that any delay in litigation will have a material impact, even going so far to ask the Court to deny or worse, defer, this petition because a petitioner will, eventually, turn 21. Because the class should be reinstated, that issue is "pure applesauce." *King v. Burwell*, 576 U.S. 473, 507 (2015) (Scalia, J., dissenting).

certification may or may not be filed. Certification of a class action after a merits decision is not prohibited. The only qualifier is that certification is to be entered "[a]t an early practicable time after a person sues or is sued as a class representative." Rule 23(c)(1)(A). Contrary to the Fourth Circuit's decision, courts are not law-making bodies. The district court thoroughly considered Rule 23, the issue of "one-way intervention," and the merits of certification. It balanced the equities and certified the class, explaining why certification came at an "early practicable time." The class must be reinstated.

The Government lists other reasons for opposing certiorari and the Petitioners respond to the arguments[3] raised. First, the Government cites Second Amendment cases pending review on the merits and certiorari decisions. None of them support denial or deferral of this case. Second, the Government hopes this case becomes moot without class certification yet that is no guarantee. Third, and most importantly, the heart of the Government's opposition is a tacit plea for this Court to memorialize a general preference against "one-way intervention" as an absolute prohibition. This case is the perfect vehicle to resolve a nationwide injustice and delve into arguably the most substantive application of text, history, and tradition of firearm regulations in our post-*Bruen* era. The petition must be granted.

3. Notably, the Government does not oppose the case being decided on the merits of the Second Amendment. That alone warrants this Court's grant of certiorari.

I. The Circuit Split Demands A Resolution

The split between the Fifth and Fourth Circuits is patent. They reached opposite conclusions as to whether 18 U.S.C. § 922(b)(1) violates the Second Amendment for 18-to-20-year-olds attempting to purchase handguns from federally licensed dealers. *Compare Reese*, 127 F.4th at 600 (5th Cir. 2025) (invalidating the laws at issue) *with McCoy v. BATFE*, 140 F.4th 568, 573 (4th Cir. 2025) (finding the laws at issue are constitutional per a strained application of Founding-era restrictions on contractual capacities for persons under 21). Recertifying the class would favor the Government should it prove successful on the merits as it would resolve the matter across the land. This "split" is a recurring question of national importance and this case will settle the matter once and for all.

II. The Government's Objections Prove The Need for Review

"Why bother with a Rule 23 class action when the quick fix of a universal injunction is on the table?" *Trump v. CASA, Inc.*, 606 U.S. 831, 850 (2025). The Fourth Circuit answered by effectively saying "do not bother at all" by decertifying the class in a footnote, Pet. App. 6a n.1, absent inquiry into the district court's consideration of the merits and argument raised by the Government. The same Government told this Court: "Rule 23 is how these sorts of claims should be channeled." Oral Arg. Tr. 53:1-2, *Trump v. CASA, Inc.*, Nos. 24A884, 24A885, 24A886 (May 15, 2025). When Justice Kavanaugh asked whether class certification was possible for systemic constitutional challenges, like the one presented here, the Solicitor General responded, "It is possible." *Id.* at 53:3-6. The

Government explained "Rule 23 provides the equitable tools subject to rigorous criteria, appropriately rigorous criteria, to obtain that kind of class-wide and emergency relief." *Id.* at 29:15-18. Having secured decertification in the Fourth Circuit, the Government argues this case is a "poor vehicle" and must be deferred in favor of those lacking nationwide relief. BIO at 4-5.

The Government never controverted the facts underlying class certification. Instead, and in spite of having participated in conference and agreeing to the procedure resolving the merits expediently, the Government confects its opposition based on a judicially-preferred, inasbolute doctrine. Even worse, the Government's plea to deny certiorari because an individual petitioner *may* "age out" is a tactic that, if accepted, would render every age-based constitutional challenge perpetually unreviewable—pure gamesmanship. In the opinion below, the Government convinced the Fourth Circuit that post-summary-judgment certification "flouted" Rule 23's requirements, but told this Court that Rule 23 is the proper channel for broad, nationwide relief. It asks the Court to defer to pending cases that are effectively irrelevant, but for the Amendment at issue. Mootness is one of the problems class certification solves. *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 76 (2013); *Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975). The Government asks the Court to vitiate a merits-based decision for millions of Americans and future generations in the name of form over substance, yet the argument is fundamentally flawed because there is no prohibition on the district court's certification of the class. This Court cannot take the bait. Denying certiorari on the grounds cited by the Government would undermine the discretion and balance of equities Congress enshrined

in Rule 23 and what our lower courts have been asked to perform.

Millions of Americans turn 18 each year and face the same three-year window during which Section 922(b)(1) infringes their Second Amendment rights. The Government points to *future*, *individual* mootness as a reason to deny review while also inviting, and then eliminating, the very procedural mechanism that will prevent it. The *CASA* decision made clear that Rule 23 "is the one way" to obtain broad relief in federal court. *CASA*, 606 U.S. at 849. The Government argues that the mechanism will be eliminated even if it also agrees, and the district court decides, to consider the sole legal question before taking the inevitable step of certifying an unchallenged class. The strategy should not be countenanced.

III. The "Other Pending Cases" Provide No Solution

The Government identifies four cases pending review by this Court and argues the Court should wait for their resolution before granting certiorari. BIO at 4-5. None of these cases provide a vehicle for resolving the questions presented and final relief.

The Government cites *United States v. Hemani*, No. 24-1234 (cert. granted Oct. 20, 2025). *Hemani* involves a criminal prosecution of an unlawful user of controlled substances under 18 U.S.C. § 922(g)(3). The issues in *Hemani* and this case are only related insofar as they concern the Second Amendment. Nothing in *Hemani* will have any determinative effect on this case involving different restrictions on an entirely different categorical class and future generations.

In *Wolford v. Lopez*, No. 24-1046 (cert. granted Oct. 3, 2025), the case involves a state law and regulations for the carrying of firearms. But for dicta, it is inscrutable what aspect of *Wolford* will impact this case.

In *NRA, Inc. v. Glass*, No. 24-1185 (U.S. pet. for cert. filed May 16, 2025), the Petitioners challenge a state law. Florida's statute is admittedly similar to the federal laws at issue insofar as it involves age-related restrictions, albeit on the purchase of all firearms rather than handguns and ammunition. A decision in that case will have no effect on the federal laws at issue and will likely involve a different analysis per *Bruen* due to the time of incorporation of the Second Amendment to the states. BIO at 4-5 (citing *NRA* Pet. at 7). If anything, this case would provide more guidance for *NRA v. Glass* than the alternative.

Finally, the Government cites *West Virginia Citizens Defense League, Inc. v. ATF*, No. 25-132 (U.S. pet. for cert. filed July 31, 2025), in which the petitioners are challenging the same laws at issue here. Though the merits of the decision certainly warrant review, relief in *WVCDL* will extend only to a district in West Virginia while this case resolves the matter nationally. Deferral or denial of this case would be impractical for a multitude of reasons.

IV. The Class Certification Issue Does Not Undermine The Strength of This Case As A Vehicle For Relief

Unlike the Fourth Circuit's decision below, the Government devotes a surprising degree of attention to arguing the district court abused its discretion when it certified the class. BIO at 8-11. The Petitioners brought

immediate notice of their intent to certify, their grounds for certification, the scope of the class, and all of the factual predicates for certification were adopted by the Government by waiver of any factual dispute and a mutually-agreed upon decision for the district court to rule on the merits. The Government asks this Court to rewrite Rule 23 to say class certification orders *must* be entered at the *earliest possible time*—eliminating the discretion granted by Congress. The district court was right to reject this invitation. Once the class is reinstated, the specter of mootness will be eliminated. Regardless, the merits of the case must be decided as individual petitioners remain subject to Second Amendment infringements worthy of relief.

A. The Government Invited The Merits-First Procedure Without Objection

The original and Amended Complaint indicated that the Petitioners sued on behalf of themselves and the class, the proposed class was defined, and the reasons why certification should be granted were listed. Am. Compl. ¶¶ 41-44. The parties conferred with the district court and all agreed to advance the case in an expedient manner on the merits because there was no factual dispute and the case presents a purely legal question seeking declaratory and injunctive relief. The parties agreed it was most prudent to resolve the matter on the merits first. The Government filed its motion to dismiss and the Petitioners filed their cross-motion for summary judgment. At no point did the Government take issue with the claims underlying class certification or proceeding on the merits. Only after the district court granted summary judgment and prompted the petitioners to move for certification

did the Government file an objection to the process. The Government cannot solicit and participate in a procedure that resolves the merits and then manufacture a timing objection. There is no prejudice to the Government. If the class remains certified and the Government prevails on the merits, that ends the issue.

B. The Cases Cited By The Government Do Not Support The Fourth Circuit's Decertification of The Class

The Government relies on *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 547 (1974) and *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1057–58 (7th Cir. 2016) for the proposition that plaintiffs cannot use one-way intervention to obtain the benefits of class membership while avoiding the risks. BIO at 9-11. These cases do not support the Fourth Circuit's decision. *American Pipe* addressed the tolling of statutes of limitation during the pendency of a class action. 414 U.S. at 547. *American Pipe* did not address the timing of certification or hold that certification, after a merits-based decision, constitutes an abuse of discretion.

Meanwhile, *Costello* involved an individual plaintiff who deliberately delayed class certification to see whether judgment would be favorable. 810 F.3d at 1057-58. The Seventh Circuit held this practice was improper one-way intervention, but the case is materially distinguishable. Certification was sought pursuant to Rule 23(b)(3), not Rule 23(b)(2), and was denied by the district court. The timing of certification was considered a strategic choice, whereas all parties in this case participated in the merits-first procedure and there was no factual dispute.

The concerns underlying "one-way intervention" do not apply. *See*, *e.g.*, 6 William B. Rubenstein, Newberg and Rubenstein on Class Actions § 18:14, at 39, 44 (6th ed. 2022).

In Rule 23(b)(2) class actions, no opt-out right exists. *See* Fed. R. Civ. P. 23(c)(2)(A). Class members are bound by judgment. Fairness concerns underlying the one-way intervention doctrine are inapposite. Should the Court go so far as to reinstate the class and issue a favorable ruling on the merits of the Second Amendment challenge, the Government wins. The timing of certification was never prejudicial, the Government simply does not want to argue the merits.

C. The Fourth Circuit's Decision Creates a Circuit Split on The Timing of Class Certification Worthy of Review Post-*CASA*

The Government suggests that the Sixth Circuit's decision in *Gooch v. Life Investor Insurance Co.*, 672 F.3d 402, 432–33 (6th Cir. 2012), does not conflict with the Fourth Circuit's decision because *Gooch* involved certification after a preliminary injunction rather than summary judgment. BIO at 11 n.1. In *Gooch*, the Sixth Circuit held that the rule against one-way intervention "does not forbid granting preliminary injunctions prior to ruling on class certification" and concluded that "there is nothing improper about a preliminary injunction preceding a ruling on class certification." *Id*. *Gooch* reasoned that concerns about one-way intervention are diminished by Rule 23(b)(2), recognizing that in Rule 23(b)(2) cases, "holding a 'full trial on the merits' prior to certifying a class may be inappropriate for reasons 'of

judicial economy, and of fairness to both sides.'" 672 F.3d at 433 (quoting *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 559 (8th Cir. 1982)). *Gooch* held that when all parties participate in a procedure and legal issues are identical for class members, the timing of certification does not present fairness concerns.

The Fourth Circuit reached the opposite conclusion and held that certification after summary judgment "flouted" Rule 23's requirements regardless of the parties' participation in the procedure. Pet. App. 7a. It treated the timing of certification as a rule rather than discretion. This absolutist approach conflicts with Rule 23 and *Gooch*'s recognition that district courts retain discretion. The split is real and impacts how class-based constitutional challenges will proceed. The Fourth Circuit failed to conduct an abuse-of-discretion review. It did not identify erroneous factual findings or explain why the district court's legal conclusions were incorrect. Instead, the court reversed on timing grounds without analysis. Pet. App. 6a n.1, 7a n.1. Rule 23 requires more. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011). Instead, it effectively held that "an early practicable time" means prohibition for certification after the merits have been decided altogether.

CONCLUSION

Federal firearms licensees operate under a national regulatory scheme. They obtain licenses from the federal government. They maintain records, conduct background checks, face federal criminal prosecution for violations, and cannot comply with different standards in different circuits. The circuit split demands this Court's

review. Young adults' ability to exercise their Second Amendment rights should not turn upon in which side of a state or circuit they reside. Only this Court can provide a resolution. The constitutional stakes are high and the petition must be granted, no matter how long the Government would prefer to wait.

Respectfully submitted,

ELLIOTT M. HARDING
Counsel of Record
HARDING COUNSEL PLLC
2805 Meadow Vista Drive
Charlottesville, VA 22901
(434) 962-8465
elliott@hardingcounsel.com

Counsel for Petitioners