No. _____

In The
Supreme Court of the United States

JAMOND M. RUSH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Second Amendment secures the right to possess unregistered short-barreled rifles that are in common use for lawful purposes.

PARTIES TO THE PROCEEDING

The petitioner is Jamond M. Rush, who was the defendant and appellant below. The respondent is the United States, which was the plaintiff and appellee below.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Rush*, No. 23-3256 (7th Cir.) (judgment entered Mar. 10, 2025);
- *United States v. Rush*, No. 4:22-cr-40008-JPG-1 (S.D. Ill.) (judgment entered Jan. 25, 2023).

The following proceeding is also directly related to this case under this Court's Rule 14.1(b)(iii):

- *United States v. Rush*, No. 1:25-CR-00051-SRC-ACL (E.D. Mo.).

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Federal law requires the registration and taxation of any rifle having a barrel shorter than 16 inches, 26 U.S.C. §§ 5841, 5845(a)(3), 5861(d)—a violation of which is punishable by up to ten years' imprisonment and a $250,000 fine, *id.* § 5871; 18 U.S.C. § 3571(b). This case is a Second Amendment challenge to that requirement.

Lower courts are unsure how to adjudicate challenges to restrictions on specific categories of arms and have thus adopted a variety of different—often conflicting—approaches, many of which are inconsistent with this Court's precedents. This confusion is most pronounced in the Seventh Circuit, which has issued opinions inconsistent not only with this Court's precedents and decisions in other Circuits but also with its own precedents.

In this case, for instance, despite having previously rejected this Court's "common use" test as a "circular," not "very helpful," "slippery concept" that "would have anomalous consequences," *Bevis v. City of Naperville*, 85 F.4th 1175, 1190, 1198, 1199 (7th Cir. 2023); *see also Friedman v. City of Highland Park*, 784 F.3d 406, 409 (7th Cir. 2015), the Seventh Circuit required proof that short-barreled rifles are "commonly used" for lawful purposes—but then dismissed evidence showing how many are possessed by law-abiding citizens, App.14a.

The uncertainty throughout the lower courts—and particularly in the Seventh Circuit—undermines this Court's precedents, diminishes the Second Amendment, and deprives citizens of their ability to

vindicate their constitutional rights. Courts and litigants both need more guidance on which arms the Second Amendment protects.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at 130 F.4th 633 and reproduced at App.1a–23a. The district court's order is not reported in the Federal Supplement but is reproduced at App.24a–31a.

JURISDICTION

The Seventh Circuit issued its judgment on March 10, 2025. App.1a–23a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II.

The relevant statutory provisions—18 U.S.C. § 3571(b) and 26 U.S.C. §§ 5841, 5845, 5861(d), 5871—are reproduced at App.48a–61a.

STATEMENT OF THE CASE

A. Regulatory Background

Short-barreled rifles were regulated—and categorized as a distinct class of arms—for the first time in the twentieth century.

The National Firearms Act of 1934 ("NFA") included any "rifle having a barrel of less than eighteen inches in length" among the "firearms" it subjected to registration and taxation requirements. National Firearms Act of 1934, ch. 757, § 1(a), 48 Stat. 1236, 1236. While the NFA was intended to address Prohibition-era violence committed by organized crime "gangsters," *see, e.g.*, *National Firearms Act: Hearings on H.R. 9066 Before the H. Comm. on Ways & Means*, 73d Cong., 2d Sess. 117, 136 (1934), there is no evidence that Congress believed short-barreled rifles were favored by criminals or exceptionally dangerous weapons, *see generally id.* Unlike other arms included in the NFA, neither the Attorney General (whose office "formulate[d]" the NFA, *id.* at 5) nor Congress provided any explanation for including short-barreled rifles. *See, e.g.*, *id.* at 6, 111. Based on the legislative history, the most plausible explanation is that since handguns were included in the initial NFA bill, short-barreled rifles were later added to prevent citizens from circumventing the handgun restriction by carrying shortened rifles instead, but the vestige remained in the bill after handguns were removed. *See* Joseph G.S. Greenlee, *The Tradition of Short-Barreled Rifle Use and Regulation in America*, 25 WYO. L. REV. 111, 130–36 (2025); Stephen P. Halbrook, *The Power to Tax, the Second Amendment, and the Search for Which "'Gangster' Weapons" to Tax*, 25 WYO. L. REV.

149, 168–71 (2025). "The curious result was that the NFA did not regulate large and small rifled arms, such as long-barreled rifles and pistols, but it did restrict medium sized rifled arms, like short-barreled rifles." Halbrook, *supra*, at 171.

The maximum barrel length was shortened to 16 inches for rifles with a caliber of .22 or smaller in 1936, An Act to Exempt Certain Small Firearms from the Provisions of the National Firearms Act, ch. 169, 49 Stat. 1192 (1936), and then for all rifles in 1968, National Firearms Act Amendments of 1968, Pub. L. 90-618, sec. 201, § 5845(a)(3), 82 Stat. 1227, 1230 (1968) (codified at 26 U.S.C. § 5845(a)(3)).

It is unlawful under 26 U.S.C. § 5861(d) for any person "to receive or possess a firearm"—including a short-barreled rifle—"which is not registered to him in the National Firearms Registration and Transfer Record." A transfer of any such firearm is taxed at $200. *Id.* § 5811(a). A violation of Section 5681(d) is punishable by up to 10 years' imprisonment under Section 5871, and although that statute originally set the maximum fine at $10,000, an amendment in 18 U.S.C. § 3571(b) provides for a fine of up to $250,000. Additionally, the unregistered firearm is forfeited. 26 U.S.C. § 5872(a).

B. Procedural History

On August 16, 2022, Rush was charged by superseding indictment with one count of possessing an unregistered firearm—specifically, an Anderson Manufacturing AR-15 rifle with a 7.5-inch barrel—in

violation of 26 U.S.C. §§ 5841, 5861(d), and 5871. App.2a.

Rush moved the district court to dismiss the indictment on the grounds that Section 5861(d) violates the Second Amendment. App.25a. Declining to "reach Rush's argument" that short-barreled rifles are "commonly used for self-defense," App.31 n.2, and with no analysis of their dangerousness or unusualness, the court concluded that they are "dangerous and unusual firearms" and thus "outside the bounds of Second Amendment protection," App.30a. The court based this holding on its errant reading of *United States v. Miller*, 307 U.S. 174 (1939), as holding that short-barreled shotguns are "dangerous and unusual firearms." App.28a.

In light of the district court's denial of his motion to dismiss, Rush entered a conditional guilty plea, preserving his right to appeal the denial of his motion to dismiss. App.3a. He was sentenced to 30 months' imprisonment and appealed to the Seventh Circuit. App.3a.

The Seventh Circuit affirmed, "decid[ing] this case on the simple fact that *Miller* controls." App.23a. The court did apply the test set forth in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022), however, "not in the context of first impression, but rather with an eye for whether the test set forth in *Bruen* is incompatible with *Miller*." App.8a. The court "decline[d]" to find that "short-barreled rifles are 'arms' protected by the Second Amendment's text," App.13a, then found it "likely" that historical tradition supports regulating them, App.14a, before concluding that its application of *Bruen*'s test "answer[ed] the only

question at issue for this appeal," App.22a, because it led to the "conclusion that *Miller* survives *Bruen*," App.23a.

REASONS FOR GRANTING THE PETITION

Jamond Rush has been convicted of a felony and sentenced to 30 months' imprisonment for possessing a firearm that is in common use for lawful purposes. The Seventh Circuit upheld that conviction while continuing to flout this Court's Second Amendment precedents.

This Court has held and repeatedly reaffirmed that the Second Amendment's plain text covers *all* bearable arms. *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008); *Caetano v. Massachusetts*, 577 U.S. 411, 411 (2016); *Bruen*, 597 U.S. at 28; *United States v. Rahimi*, 602 U.S. 680, 691 (2024).

The Seventh Circuit, however, has injected several limitations into the plain text—limitations that have resulted in the exclusion of semiautomatic rifles owned in the tens of millions, *Bevis*, 85 F.4th at 1198, ammunition magazines owned in the hundreds of millions, *id.*, and, here, rifles with shorter-than-average barrels, numbering over half a million, App.21a. According to the Seventh Circuit's holding below, an ordinary rifle with a 16-inch barrel *is* an arm, but the same rifle with a 15 7/8-inch barrel *is not*. Such a distinction at the plain text stage is arbitrary, illogical, and contrary to this Court's precedents.

This Court has also held and repeatedly reaffirmed that the Second Amendment protects arms

"'in common use at the time.'" *Heller*, 554 U.S. at 627 (quoting *Miller*, 307 U.S. at 179); *Bruen*, 597 U.S. at 21, 47; *see also Caetano*, 577 U.S. at 420 (Alito, J., concurring); *Rahimi*, 602 U.S. at 735 (Kavanaugh, J., concurring). But the Seventh Circuit has expressly "rejected" such "commonality reasoning," App.21a, deriding this Court's "common use" test as a "circular," not "very helpful," "slippery concept" that "would have anomalous consequences," *Bevis*, 85 F.4th at 1190, 1198, 1199; *see also Friedman*, 784 F.3d at 409.

The Seventh Circuit has manufactured its own test, which seemingly cannot be satisfied. In this case, the court paradoxically dismissed short-barreled rifles' "popularity" and "prolif[eration]" as having "little jurisprudential value," App.21a n.12, 22a, while simultaneously concluding that Rush failed to prove that they are "commonly used" for lawful purposes, App.14a. Although the court claims that its test is "basically compatible with *Bruen*," App.21a n.12 (quoting *Bevis*, 85 F.4th at 1089–90), *Bruen*'s author, joined by *Heller*'s author, condemned it for "flout[ing] … our Second Amendment precedents," *Friedman v. City of Highland Park*, 577 U.S. 1039, 1043 (2015) (Thomas, J., dissenting from the denial of certiorari).

The Seventh Circuit further erred by relying on historical analogues that share neither a "how" nor a "why" with Section 5861(d), and by misreading *Miller* as foreclosing any challenge to Section 5861(d).

"The Court must not permit 'the Seventh Circuit to relegate the Second Amendment to a second-class right,'" *Harrel v. Raoul*, 144 S. Ct. 2491, 2493 (2024) (Statement of Thomas, J.) (quoting *Friedman*, 577 U.S. at 1043 (Thomas, J., dissenting from the denial of

certiorari)) (brackets omitted), and, as demonstrated by the Seventh Circuit's continued recalcitrance, "must provide more guidance on which weapons the Second Amendment covers," *id.* at 2492.

I. The Courts of Appeals are split on how to adjudicate restrictions on specific categories of arms.

"Since the Supreme Court issued *Bruen*, courts across the country have struggled to answer the many questions resulting from the Court's new analytical framework." *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 229 (4th Cir. 2024) (en banc); *see also United States v. Claybrooks*, 90 F.4th 248, 256 (4th Cir. 2024) ("The contours of *Bruen* continue to solidify in district and appellate courts across the nation, and yet there is no consensus."). In particular, "the debate as to what constitutes a 'bearable arm' covered by the Second Amendment has revitalized relevance." *United States v. Daniels*, 77 F.4th 337, 358 n.8 (5th Cir. 2023) (Higginson, J., concurring), *cert. granted, judgment vacated*, 144 S. Ct. 2707 (2024).

This case presents several issues that are dividing lower courts and is a suitable vehicle for the Court to clarify what "Arms" the Second Amendment protects.

A. The Courts of Appeals are split over whether all firearms are "Arms."

The Eighth Circuit has recognized that, according to this Court, "the defined term 'arms' … applie[s] … 'to all instruments that constitute bearable arms.'"

Worth v. Jacobson, 108 F.4th 677, 690 (8th Cir. 2024) (quoting *Heller*, 554 U.S. at 582). But several other Circuits have excluded various types of firearms from the scope of the Second Amendment's plain text.

In *United States v. Price*, the en banc Fourth Circuit held that firearms with obliterated serial numbers are not "Arms" covered by the Second Amendment's text, because the court could think of "no compelling reason why a law-abiding citizen would use" one. 111 F.4th 392, 406 (4th Cir. 2024) (en banc) (quotation marks omitted).

In another en banc opinion, the Fourth Circuit held that AR-15 rifles—"the most popular rifle in the country," *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, No. 23-1141, 2025 WL 1583281, at *8 (U.S. June 5, 2025)—and similar firearms are not "Arms" either, based on the court's determination that they are "most useful in military service," *Bianchi v. Brown*, 111 F.4th 438, 459 (4th Cir. 2024) (en banc) (quotation marks omitted); *but see Snope v. Brown*, No. 24-203, 2025 WL 1550126, at *2 (U.S. June 2, 2025) (Thomas, J., dissenting from the denial of certiorari) ("AR–15s are clearly 'Arms' under the Second Amendment's plain text.").

Likewise, the Seventh Circuit concluded that AR-15 rifles and similar firearms are not "Arms" because they are "indistinguishable from" the M16. *Bevis*, 85 F.4th at 1197; *but see Snope*, No. 24-203, 2025 WL 1550126, at *1 (Kavanaugh, J., statement respecting the denial of certiorari) ("Semi-automatic … rifles are distinct from automatic firearms such as the M–16 automatic rifle used by the military.").

The Tenth Circuit held that the plain text of "the Second Amendment does not extend to weapons rarely used or possessed by law-abiding citizens, such as short-barreled shotguns, or those adapted for unlawful uses, for instance sawed-off shotguns." *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 116–17 (10th Cir. 2024) (citations omitted).

In this case, the court below "decline[d] to make a step one finding that short-barreled rifles are 'arms' protected by the Second Amendment's text." App.13a.

To be sure, this confusion is not limited to firearms. For instance, Circuit Courts are deeply divided over whether standard-capacity ammunition magazines are "Arms." The D.C. Circuit held that they "very likely are 'Arms,'" *Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024), the First Circuit assumed that they are, *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 43 (1st Cir. 2024), the Seventh Circuit determined that they are "military-grade weaponry" and thus not arms, *Bevis*, 85 F.4th at 1195, and the en banc Ninth Circuit held that they are "accessories, or accoutrements, rather than arms," *Duncan v. Bonta*, 133 F.4th 852, 867 (9th Cir. 2025) (en banc).

Bruen repeatedly stated that the "only" way the government can justify an arms-bearing regulation is with historical tradition. 597 U.S. at 17, 24, 34. But by excluding even some of the most popular firearms in the country from the scope of the plain text, lower courts are fundamentally altering this Court's test for Second Amendment cases.

B. The Courts of Appeals are confused over whether "common use" should be considered in the plain text or historical inquiry.

"There is no consensus on whether the common-use issue belongs at *Bruen* step one [plain text] or *Bruen* step two [history]." *Bevis*, 85 F.4th at 1198; *cf. Bianchi*, 111 F.4th at 477 (Diaz, J., concurring) ("The Supreme Court has not yet defined the purview or instructed on the proper placement of the dangerous and unusual analysis. In that vacuum, courts have struggled to interpret the scope of the constitutional right to bear arms as informed by *Bruen* and other Supreme Court precedent.").

The Second and Tenth Circuits consider "common use" in the plain text inquiry. *Antonyuk v. James*, 120 F.4th 941, 981 (2d Cir. 2024); *Rocky Mountain Gun Owners*, 121 F.4th at 116–17. The Fifth Circuit previously did, too. *United States v. Rahimi*, 61 F.4th 443, 454 (5th Cir. 2023), *rev'd and remanded*, 602 U.S. 680 (2024). And the D.C. Circuit "assume[d], without deciding, this issue falls under *Bruen* step one." *Hanson*, 120 F.4th at 232 n.3.

By contrast, the Seventh Circuit in *Bevis* "assume[d] (without deciding the question) that this is a step two inquiry" belonging in the historical analysis. 85 F.4th at 1198.

Noting that "[t]his question has divided panels of our court," four dissenting judges on the Ninth Circuit agreed that "the 'common use' inquiry best fits at *Bruen*'s second step," although the majority in the case

did not resolve the issue. *Duncan*, 133 F.4th at 900 (Bumatay, J., dissenting) (quotation marks omitted).

The en banc Fourth Circuit wrestled with this split in *Price*. The nine-judge majority considered common use in its plain text inquiry, while Judge Niemeyer in concurrence, Judge Quattlebaum joined by Judge Rushing also in concurrence, and Judge Richardson in dissent all agreed that "common use falls under *Bruen*'s historical tradition step." *Price*, 111 F.4th at 415 (Quattlebaum, J., concurring) (describing the judges' various approaches).

In this case, the Seventh Circuit *claimed* to "address commonality on step two [the historical step]" of *Bruen*'s test, App.20a n.10, but actually applied it as a limitation on the scope of the plain text, App.14a.

C. Some Courts of Appeals are divided over what constitutes "common use," while others have rejected this Court's "common use" test.

"Still," the en banc Fourth Circuit recently noted, "the Supreme Court has not elucidated a precise test for determining whether a regulated arm is in common use for a lawful purpose." *Price*, 111 F.4th at 403; *see also Friedman*, 784 F.3d at 409 ("[W]hat line separates 'common' from 'uncommon' ownership is something the Court did not say.").

Some courts hold that the total number of a particular weapon in circulation is what matters. The Second Circuit found banned semiautomatic firearms and magazines to be "'in common use' as that term was

used in *Heller*," because "Americans own millions of" each. *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 255 (2d Cir. 2015), *abrogated on other grounds by Bruen*, 597 U.S. 1.

Relatedly, the D.C. Circuit found banned magazines likely to be in common use based on their "sufficiently wide circulation" and evidence "about the role of [the magazines] for self-defense." *Hanson*, 120 F.4th at 233.

Like Justice Alito's concurrence in *Caetano*, 577 U.S. at 420 (Alito, J., concurring), the Fifth Circuit considered the number of the restricted arms lawfully possessed and the number of states in which they could be lawfully possessed, *Hollis v. Lynch*, 827 F.3d 436, 449 (5th Cir. 2016), *abrogated on other grounds by United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024).

But other courts have rejected a "common use" test that is based on how commonly the arms are possessed. The en banc Ninth Circuit "reject[ed] that simplistic approach," *Duncan*, 133 F.4th at 882, since it prevents a legislature from banning an arm "no matter how rarely" it is actually *employed* "in armed self-defense," *id.* at 883. The court pays no attention to commonality and instead considers only historical regulations.

The First Circuit rejected the assertion that "the constitutionality of arms regulations is to be determined based on the ownership rate of the weapons at issue." *Ocean State Tactical, LLC*, 95 F.4th at 51. The court focuses instead on how a challenged regulation "might burden the right of armed self-

defense"—regardless of the arm's commonality. *Id.* at 45.

The en banc Fourth Circuit derided the "common use" test as an "ill-conceived popularity test" that "leads to absurd consequences." *Bianchi*, 111 F.4th at 460. Accordingly, the court substitutes its own judgment to determine whether firearms are justified in being commonly possessed. The court sometimes "appl[ies] common sense" to "consider whether there are any reasons a law-abiding citizen would want to use a particular weapon for a lawful purpose." *Price*, 111 F.4th at 405. "And when it comes to AR-15s, the [court] refuses to consider their common usage at all, choosing instead to replace Americans' opinions of their utility with its own." *Bianchi*, 111 F.4th at 524 (Richardson, J., dissenting).

The Seventh Circuit below asserted that "a firearm's popularity in contemporary times has little jurisprudential value, on its own, in a 'commonality' analysis." App.21a n.12 (citing *Friedman*, 784 F.3d at 409). "[T]o base our assessment of the constitutionality of these laws on numbers alone," the court claimed, "would have anomalous consequences." App.21a (quoting *Bevis*, 85 F.4th at 1198–99). Indeed, the Seventh Circuit has long held that "relying on how common a weapon is at the time of litigation would be circular[.]" *Friedman*, 784 F.3d at 409.

D. The Courts of Appeals are divided over whether the Second Amendment excludes arms that are most useful in military service.

The federal Circuit Courts are split over whether arms lose Second Amendment protection because the military may find them useful. *But see Caetano*, 577 U.S. at 419 (Alito, J., concurring) ("[T]he Second Amendment … protects [common] weapons as a class, regardless of any particular weapon's suitability for military use.") (citing *Heller*, 554 U.S. at 627).

The Seventh Circuit excludes from the Second Amendment's plain text any arms "that may be reserved for military use." *Bevis*, 85 F.4th at 1194. Similarly, the First Circuit and the en banc Fourth Circuit have held that the Amendment does not cover arms that are "most useful in military service." *Bianchi*, 111 F.4th at 453 (quoting *Heller*, 554 U.S. at 627); *Ocean State Tactical, LLC*, 95 F.4th at 48 (quoting *Heller*, 554 U.S. at 627). This "most useful in military service" exclusion has resulted in the validation of bans on the most widely possessed semiautomatic rifles in the country as well as magazines that are possessed in the hundreds of millions. *See, e.g.*, *Bevis*, 85 F.4th at 1198.

The D.C. Circuit, however, rejected the conclusion reached by the First, Fourth, and Seventh Circuits. These Circuits, the D.C. Circuit correctly explained, misread *Heller*:

> The Supreme Court in *Heller* did not hold, however, that Second Amendment protection does not extend to weapons that are "most

> useful" in the military context. Rather, the Court acknowledged that the Second Amendment protects those weapons that are "in common use at the time," but not "dangerous and unusual weapons." That means that some "weapons that are most useful in military service" do not receive Second Amendment protection.… In other words, the Court was not saying "there is no Second Amendment protection for weapons that are 'most useful in military service.'" It was explaining that some "sophisticated" and "highly unusual" military weapons may not receive protection notwithstanding the Second Amendment predicate regarding the necessity of a "well-regulated Militia."

Hanson, 120 F.4th at 233 (quoting *Heller*, 554 U.S. at 627 and U.S. CONST. amend. II).

E. The Courts of Appeals are confused about what makes an arm "dangerous and unusual."

Circuit Courts are conflicted over whether weapons must be "dangerous *or* unusual" or "dangerous *and* unusual" to fall outside the Second Amendment's scope.

This Court has demonstrated that an arm loses Second Amendment protection only if it is dangerous *and* unusual. First, the Court "carefully uses the phrase 'dangerous and unusual arms.'" *Miller v. Bonta*, 699 F. Supp. 3d 956, 969 (S.D. Cal. 2023), *appeal held in abeyance*, No. 23-2979, 2024 WL

1929016 (9th Cir. Jan. 26, 2024). Second, in *Caetano*, after determining that the Massachusetts Supreme Judicial Court's analysis of whether stun guns were "unusual" was flawed, the Court declined to consider whether stun guns qualified as "dangerous." 577 U.S. at 412. If dangerousness alone sufficed to justify a prohibition, the Court would have proceeded to consider the dangerousness of stun guns. Justice Alito made this point explicitly in the concurrence:

> As the *per curiam* opinion recognizes, this is a conjunctive test: A weapon may not be banned unless it is *both* dangerous *and* unusual. Because the Court rejects the lower court's conclusion that stun guns are "unusual," it does not need to consider the lower court's conclusion that they are also "dangerous."

Id. at 417 (Alito, J., concurring) (citing *Heller*, 554 U.S. at 636).

Nevertheless, some courts read "dangerous and unusual" as "dangerous *or* unusual."

The en banc Fourth Circuit held that "excessively dangerous arms … fall outside the reach of the right," regardless of how usual they are. *Bianchi*, 111 F.4th at 450. Similarly, the D.C. Circuit determined that "dangerous and unusual" weapons include "uncommonly dangerous" arms, no matter how common they are. *Hanson*, 120 F.4th at 238 n.7.

The First Circuit, on the other hand, adopted an expansive reading of "unusual," determining that "the degree of harm [an arm] causes," as opposed to its "prevalence in society," may make an arm unusual. *Ocean State Tactical, LLC*, 95 F.4th at 50–51.

Several dissenting judges, however, have argued for the conjunctive test that this Court recognized in *Caetano*. *See Bianchi*, 111 F.4th at 506 n.31 (Richardson, J., dissenting) ("[H]istory and tradition require a weapon to be both dangerous and unusual—not merely dangerous or unusual."); *Hanson*, 120 F.4th at 263 (Walker, J., dissenting) ("A weapon may not be banned unless it is *both* dangerous *and* unusual.") (quotation marks omitted); *Bevis*, 85 F.4th at 1215 (Brennan, J., dissenting) ("Recall the test is 'dangerous *and* unusual'").

In sum, "*Bruen* has proven to be a labyrinth for lower courts" and they "are asking for help." *Bianchi*, 111 F.4th at 473–74 (Diaz, J., concurring). This case presents an opportunity to provide clarity and resolve several splits among the federal Circuit Courts.

II. *Miller* did not hold that short-barreled shotguns were *not* protected arms and, in any event, says nothing about whether short-barreled rifles are in common use today.

The Seventh Circuit below held that *Miller*, which upheld the NFA's restrictions on short-barreled shotguns, "is dispositive and brings Rush's challenge to a halt." App.7a–8a. But the court's reliance on *Miller* was misplaced for several reasons.[1]

[1] *Miller* was a seemingly collusive case in which "the Court heard from no one but the Government." *Heller*, 554 U.S. at 623; *see also* Brian L. Frye, *The Peculiar Story of* United States v. Miller, 3 NYU J.L. & LIBERTY 48, 50, 65 (2008) ("*Miller* was a

1. *Miller* did not hold that short-barreled shotguns were *not* protected arms. Rather, because the defendants "made no appearance in the case, neither filing a brief nor appearing at oral argument," *Heller*, 554 U.S. at 623, the *Miller* Court was not presented "any evidence tending to show" that short-barreled shotguns were protected and declined to take judicial notice that they were, *Miller*, 307 U.S. at 178. Consequently, the *Miller* Court explained, "we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." *Id.* Declining to hold, "[i]n the absence of any evidence," *id.*, that short-barreled shotguns were protected is different from conclusively "determin[ing] that the Second Amendment does not guarantee a right to possess" them, which is how the Seventh Circuit interpreted *Miller*, App.5a.

2. Because the *Miller* Court declined to conclude that short-barreled shotguns were protected arms, *Miller* stands only for the proposition that the NFA's restrictions are valid as applied to arms that *are not* protected by the Second Amendment. But this says nothing about arms that *are* protected—such as short-barreled rifles today. Moreover, *Miller*'s holding and focus on whether short-barreled shotguns were protected suggests that the NFA's restrictions would be unconstitutional as applied to protected arms. *See Miller*, 307 U.S. at 178 (focusing analysis on whether "the Second Amendment guarantees the right to keep and bear such an instrument"). If the NFA's

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Second Amendment test case arranged by the government and designed to support the constitutionality of federal gun control.").

restrictions were constitutional regardless of whether short-barreled shotguns were protected, it would have been senseless for the Court to spend so much of its opinion determining whether they were. *Cf. Heller*, 554 U.S. at 622 ("Had the Court believed that the Second Amendment protects only those serving in the militia, it would have been odd to examine the character of the weapon rather than simply note that the two crooks were not militiamen.").

3. Even if *Miller* is read as holding that short-barreled shotguns were unprotected arms in 1939, it cannot foreclose a challenge to restrictions on such arms nearly 90 years later because, as *Heller* explained, "*Miller* said … that the sorts of weapons protected were those 'in common use *at the time*.'" *Heller*, 554 U.S. at 627 (quoting *Miller*, 307 U.S. at 179) (emphasis added). And *Bruen* makes clear that over time, unprotected arms can become common—and thus protected—arms:

> Whatever the likelihood that handguns were considered "dangerous and unusual" during the colonial period, they are indisputably in "common use" for self-defense today.… Thus, even if these colonial laws prohibited the carrying of handguns because they were considered "dangerous and unusual weapons" in the 1690s, they provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today.

597 U.S. at 47.

The 1939 *Miller* case says nothing about whether short-barreled shotguns are in common use today. It

certainly says nothing about whether short-barreled rifles are in common use today.

4. Even though *Miller* did not involve short-barreled rifles, the court below determined that *Miller* precludes Rush's challenge because short-barreled shotguns and short-barreled rifles both "are long guns with shortened barrels, which are dangerous because they are more powerful than traditional handguns yet are easier to conceal," and because "both involve a characteristic that makes the firearm especially attractive to criminals while adding little—if any—functionality to the firearm for lawful use." App.6a. But none of these reasons provides sufficient justification for holding that *Miller* precludes a challenge to the NFA's restrictions on short-barreled rifles.

First, as for concealability, it is false that short-barreled rifles are easier to conceal than handguns. But in any event, *Heller* held that the Second Amendment protects handgun possession and *Bruen* held that the Amendment protects handgun carry, regardless of their concealability. So concealability does not remove an arm from Second Amendment protection.

Second, dangerousness alone does not remove an arm from Second Amendment protection, either. "If *Heller* tells us anything, it is that firearms cannot be categorically prohibited just because they are dangerous." *Caetano*, 577 U.S. at 418 (Alito, J., concurring). Rather, this Court has made clear that a weapon loses Second Amendment protection only if it is *both* dangerous *and* unusual, *see* Part I.E., *supra*, and short-barreled rifles are not "unusual," *see* Part

III.A, *infra*. In any event, short-barreled rifles are not "dangerous," either, because they do not differ in function or lethality from other common rifles or handguns. Short-barreled rifles offer greater stability and accuracy than handguns, making them safer to operate. And they offer greater maneuverability and portability than standard rifles, which are desirable traits for lawful defense. *See Heller*, 554 U.S. at 629.

Third, it is not for the government to decide whether a "characteristic" of a firearm adds sufficient "functionality to the firearm for lawful use." App.6a. "Our Constitution allows the American people—not the government—to decide which weapons are useful for self-defense." *Snope*, No. 24-203, 2025 WL 1550126, at *4 (Thomas, J., dissenting from the denial of certiorari). "To limit self-defense to only those methods acceptable to the government is to effect an enormous transfer of authority from the citizens of this country to the government—a result directly contrary to our constitution and to our political tradition." *Friedman*, 784 F.3d at 413 (Manion, J., dissenting); *see also Caetano*, 577 U.S. at 422 (Alito, J., concurring) (Disapproving "the safety of all Americans [being] left to the mercy of state authorities who may be more concerned about disarming the people than about keeping them safe."). Rather, *Heller* affirmed that the People have the right to choose their preferred arms: "*Whatever the reason*, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid." 554 U.S. at 629 (emphasis added).

Bruen repeatedly stated that the "only" way the government can justify a modern regulation is with

historical tradition. 597 U.S. at 17, 24, 34. But leaning on *Miller*, the court applied only a watered-down version of *Bruen*'s test, merely finding it "likely" that historical tradition supports Section 5861(d). This Court's precedents require more.

III. The NFA's registration and taxation requirements for short-barreled rifles violate the Second Amendment.

To justify a regulation of conduct that "the Second Amendment's plain text covers," "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. Because the plain text covers the possession of short-barreled rifles and no historical tradition supports registration and taxation requirements for arms in common use—such as short-barreled rifles—Section 5861(d) violates the Second Amendment.[2]

A. This Court has held that the Second Amendment's plain text covers all bearable arms.

1. This Court conducted the plain text analysis of the Second Amendment in *Heller*, 554 U.S. at 576–600. Interpreting "Arms," *Heller* held that "the Second Amendment extends, prima facie, to *all* instruments that constitute bearable arms[.]" *Id.* at 582 (emphasis

[2] "The parties do not dispute that Rush—an ordinary, law-abiding, adult citizen—is part of the 'people' under the Second Amendment." App.9a (citing *Bruen*, 597 at 31–32).

added). The Court has thrice reaffirmed *Heller*'s holding. *Caetano*, 577 U.S. at 411 (quoting *Heller*, 554 U.S. at 582, and describing *Heller*'s definition of "Arms" as a holding); *Bruen*, 597 U.S. at 28 (quoting *Heller*, 554 U.S. at 582); *Rahimi*, 602 U.S. at 691 (quoting *Heller*, 554 U.S. at 582).

Heller's "general definition" of "Arms," *Bruen*, 597 U.S. at 28, "includes any 'weapon of offence' or 'thing that a man wears for his defence, or takes into his hands,' that is 'carried … for the purpose of offensive or defensive action,'" *Caetano*, 577 U.S. at 416 n.3 (Alito, J., concurring) (quoting *Heller*, 554 U.S. at 581, 584) (brackets and citations omitted). It also "covers modern instruments that facilitate armed self-defense." *Bruen*, 597 U.S. at 28; *cf. Caetano*, 577 U.S. at 416 n.3 (Alito, J., concurring).

Thus, "[u]nder the plain text of the Second Amendment, [Rush's] only burden is to show that [short-barreled rifles] are bearable 'Arms'—*i.e.*, 'weapons of offence.' By any measure, they are." *Snope*, No. 24-203, 2025 WL 1550126, at *4 (Thomas, J., dissenting from the denial of certiorari) (cleaned up).

2. The Seventh Circuit below "decline[d] to make a step one finding that short-barreled rifles are 'arms' protected by the Second Amendment's text." App.13a. Despite this Court's precedents, the Seventh Circuit rejected Rush's argument "that the text of the Second Amendment extends to all 'bearable' arms" because it "is contrary to *our own* precedent." App.10a (emphasis added).

"By contorting" this Court's "precedents," *Harrel*, 144 S. Ct. at 2492 (Statement of Thomas, J.), the

Seventh Circuit limits the plain text's coverage only to "Arms that ordinary people would keep at home for purposes of self-defense, not weapons that are exclusively or predominantly useful in military service, or weapons that are not possessed for lawful purposes," *Bevis*, 85 F.4th at 1194; *see also* App.12a n.4.

Applying this plain text limitation in *Bevis*, the Seventh Circuit "concluded that the most widely owned semiautomatic rifles are not 'Arms' protected by the Second Amendment." *Harrel*, 144 S. Ct. at 2492–93 (Statement of Thomas, J.). Here, the court's failure to recognize that short-barreled rifles are covered by the plain text is equally "nonsensical." *Id.* at 2492.

The Seventh Circuit rejected the proposition that short-barreled rifles are "Arms" within the meaning of the plain text because the court was not convinced that they "are commonly used by ordinary, law-abiding citizens for a lawful purpose." App.14a. But this was wrong for two reasons.

First, *Heller* and *Bruen* demonstrate that the consideration of whether a firearm is "in common use," and the corresponding consideration of whether a firearm is "dangerous and unusual," must be considered in the historical analysis—where the government bears the burden—rather than in the plain text analysis. *See Snope*, No. 24-203, 2025 WL 1550126, at *1 (Kavanaugh, J., statement respecting the denial of certiorari) (referring to the "*historically based* 'common use' test") (emphasis added).

Heller referred to "the *historical tradition*" of regulating "dangerous and unusual weapons." 554

U.S. at 627 (emphasis added). And *Bruen* explained that the *Heller* Court was "[d]rawing from this *historical tradition*" of restricting "dangerous and unusual weapons" in holding that the Second Amendment protects arms "'in common use at the time,' as opposed to those that 'are highly unusual in society at large.'" 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627) (emphasis added).

Moreover, the *Heller* Court considered that "historical tradition" in its own historical analysis. After completing the plain text analysis of the Second Amendment, 554 U.S. at 576–600, the Court began focusing on historical tradition, including "how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century," *id.* at 605. Only after reviewing "Postratification Commentary," *id.* at 605–10, "Pre–Civil War Case Law," *id.* at 610–14, "Post–Civil War Legislation," *id.* at 614–16, "Post–Civil War Commentators," *id.* at 616–19, and Supreme Court precedents, *id.* at 619–26, did this Court identify the "historical tradition" of regulating "dangerous and unusual weapons" and protecting arms "in common use at the time," *id.* at 627. What is more, the Court identified the tradition of regulating "dangerous and unusual weapons" in the same paragraph as other "longstanding" regulations, *id.* at 626–27, while promising to "expound upon the *historical justifications* for" those regulations at another time, *id.* at 635 (emphasis added).

The Seventh Circuit below *claimed* to "address commonality on step two [the historical inquiry]" of *Bruen*'s test, but in fact, applied it as a limitation on

the scope of the plain text. App.13a–14a, 20a n.10. Had the Seventh Circuit followed this Court's precedents and considered "common use" in the historical analysis, the government would have borne the burden of proving that short-barreled rifles are *not* common—a burden it could not satisfy.

Second, short-barreled rifles *are* commonly used by ordinary, law-abiding citizens for lawful purposes. As the Seventh Circuit acknowledged, "[a] Bureau of Alcohol, Tobacco, Firearms and Explosives statistic cited by Rush states that there were 532,725 registered short-barreled rifles in the United States in 2021"—despite the onerous regulations imposed by the NFA. App.21a. In *Caetano*, Justice Alito determined that "stun guns are widely owned and accepted as a legitimate means of self-defense across the country" because "approximately 200,000 civilians own[] stun guns … who it appears may lawfully possess them in 45 States." 577 U.S. at 420 (Alito, J., concurring) (cleaned up). Applying this standard to short-barreled rifles, they are certainly common. Americans owned 532,725 short-barreled rifles as of 2021, and like the stun guns in *Caetano*, it appears that civilians may lawfully possess them in 45 states.[3] *Cf. Snope*, No. 24-203, 2025 WL 1550126, at *1 (Kavanaugh, J., statement respecting the denial of certiorari) ("Given

[3] As far as Petitioner can determine, only California, Rhode Island, New York, New Jersey, Hawaii, and the District of Columbia prohibit the possession of short-barreled rifles. CAL. PENAL CODE §§ 16590(s), 33215; R.I. GEN. LAWS §§ 11-47-2(15), -8(b); N.Y. PENAL LAW § 265.00(3); N.J. STAT. ANN. §§ 2C:39-1(o), -3(b); HAW. REV. STAT. ANN. § 134-8(a); D.C. CODE § 7-2502.02(a)(3).

that millions of Americans own AR–15s and that a significant majority of the States allow possession of those rifles, petitioners have a strong argument that AR–15s are in 'common use' by law-abiding citizens and therefore are protected by the Second Amendment under *Heller*.").

Moreover, since the NFA requires short-barreled rifle owners to undergo extensive background checks, the half-million registered rifles are unquestionably "typically possessed by law-abiding citizens for lawful purposes." *Heller*, 554 U.S. at 625; *cf. Friedman*, 784 F.3d at 416 (Manion, J., dissenting) ("The fact that a statistically significant number of Americans use [the regulated arms] demonstrates *ipso facto* that they are used for lawful purposes."). In fact, rifles of all kinds are rarely used in crime and used to commit only about 3 percent of homicides committed with firearms per year. *See, e.g.*, FBI Crim. Just. Info. Servs. Div., *Expanded Homicide Data Table 8: Murder Victims by Weapon*, 2015–2019, 2019 CRIME IN THE U.S.[4] Even if every homicide committed with a rifle were committed with a short-barreled rifle, over 99.9 percent of short-barreled rifles would still not be used for that purpose. *See id.*

The Seventh Circuit did not engage with the fact that at least 532,725 short-barreled rifles are lawfully possessed in America. Despite this Court repeatedly stating that the Second Amendment protects "arms in common use at the time," *Heller*, 554 U.S. at 627 (quoting *Miller*, 307 U.S. at 179); *Bruen*, 597 U.S. at

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[4] https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/expanded-homicide-data-table-8.xls.

21, 47; *see also Caetano*, 577 U.S. at 420 (Alito, J., concurring); *Rahimi*, 602 U.S. at 735 (Kavanaugh, J., concurring), the Seventh Circuit asserted "that a firearm's popularity in contemporary times has little jurisprudential value," App.21a n.12. What might demonstrate commonality if not how commonly the firearm is lawfully owned, the court did not reveal. It noted only that the *Bevis* plaintiffs asserted "that there were at least '20 million AR-15s and similar rifles' owned by 'some 16 million citizens,'" App.21a n.11 (quoting *Bevis*, 85 F.4th at 1198), and even that "figure could not save the day in *Bevis*," App.21a n.11. But the *Bevis* precedent only highlights the urgency for this Court's review: the Seventh Circuit is compounding its errors and allowing the possession of an increasing number of constitutionally protected arms to be punished as a felony.

B. No historical tradition supports registering or taxing protected arms.

Although the Seventh Circuit did not find "that short-barreled rifles are 'arms' protected by the Second Amendment's text," App.13a, the court considered historical tradition "in the interest of completeness," App.14a.

To carry its burden in the historical analysis, the government must prove that "the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29). "Why and how the regulation

burdens the right are central to this inquiry." *Id.* (citing *Bruen*, 597 U.S. at 29).

The NFA burdens the right to keep and bear arms by imposing taxation and registration requirements on specified arms, and by prohibiting interstate travel with such arms without advance permission. It was enacted to prevent ownership of the regulated arms. *See, e.g.*, *National Firearms Act: Hearings*, *supra*, at 50 (Representative Samuel Hill referring to the regulation as a "prohibitive tax").

As for short-barreled rifles, no one argued when the NFA was enacted that short-barreled rifles were exceptionally dangerous weapons or preferred by criminals. Rather, since Congress initially intended to include handguns in the NFA, short-barreled rifles were apparently included to prevent citizens from circumventing the handgun restriction by carrying shortened rifles instead. *See* Greenlee, *supra*, at 130–36; Halbrook, *supra*, at 168–71.

The Seventh Circuit below concluded that the NFA's restrictions on short-barreled rifles are "likely" consistent with "the government's historical analogues for barrel-length regulations, registration and taxation requirements, as well as regulations of dangerous and unusual weapons." App.22a. But none of those historical regulations are relevantly similar to the NFA's restrictions.

1. The "historical regulations on barrel length" that the Seventh Circuit cited were merely militia acts specifying the barrel lengths of the militia arms that certain militiamen were required to provide for militia service. *See* App.15a. The first was a 1649

Massachusetts militia act requiring musketeers to bear muskets from 45 to 51 inches in length. The second was a 1785 Virginia militia act requiring non-commissioned officers and privates to bear muskets with 44-inch barrels. Neither the "why" nor the "how" of these laws are consistent with Section 5861(d).

Starting with the "why," the Massachusetts law was passed for "the well Ordering of the Militia," 2 BACKGROUNDS OF SELECTIVE SERVICE: MILITARY OBLIGATION: THE AMERICAN TRADITION, pt. 6, at 54 (Arthur Vollmer ed., 1947), and the Viginia law was passed for "regulating and disciplining the militia," 12 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 9 (William Waller Hening ed., 1823). As for the "how," neither law restricted *anyone's* ability to possess *any* firearm.

2. The "registration and taxation requirements" the Seventh Circuit cited were "certain colonial 'muster' laws," "a 1631 Virginia law [that] required recording 'arms and munitions,'" and "an 1856 North Carolina law." App.16a.

The "colonial muster laws," which allowed militia officers to ensure that militiamen kept the mandated militia arms, do not share either a "why" or "how" with the NFA's registration requirement. The militia laws applied only to militiamen and only to militia arms to help ensure that the militia was sufficiently armed to defend the community. *See, e.g.*, BACKGROUNDS OF SELECTIVE SERVICE, pt. 8, at 67, 70 (1781 New Jersey militia law securing "the Defence and Security of the State" by requiring "once in every four Months … a Sergeant to call at the Place of Abode of each Person

enrolled" in the militia to ensure that "every Person enrolled" is "constantly keep[ing] himself furnished with" the required arms).

Virginia's 1631 census law applied more broadly. It required the "comanders of all the severall plantations" to take a census of the inhabitants and their goods, including "armes and munition" as well as a variety of other items including "corne, cattle, hoggs, goates, barques, boates, gardens, and orchards." 1 THE STATUTES AT LARGE, *supra*, at 174–75. This law intended to ensure that Virginians could fulfill their legal duties under Virginia law for mandatory firearms possession and carrying—for example, Virginians were required to carry firearms while working in their fields or attending church. *See id.* at 174. This "why" fulfills a purpose opposite that of the NFA—to ensure possession and carriage of firearms rather than discourage it. Moreover, the census law was enacted 160 years prior to the Second Amendment's ratification, and this Court has emphasized that historical laws that became obsolete long before the Founding "shed[] little light" on the Second Amendment. *Bruen*, 597 U.S. at 49. This Court has also expressed "doubt that *three* colonial regulations could suffice to show a tradition of … regulation," *id.* at 46, let alone one. *See also Heller*, 554 U.S. at 632 ("we would not stake our interpretation of the Second Amendment upon a single law, in effect in a single city, that contradicts the overwhelming weight of other evidence").

The 1856 North Carolina law included in personal property taxes "every pistol, except such as are used exclusively for mustering," as well as dirks and bowie-

knives, if they had been "used, worn or carried" during that year. 1856–1857 N.C. Sess. Laws 34. A few other southeastern states—Mississippi, Alabama, Georgia, and Virginia—expressly included firearms among taxable personal property in the late nineteenth century. *See, e.g.*, 1871 Miss. Laws 20; 1875–1876 Ala. Laws 46; 1874–1875 Va. Acts 282–83; 1884–1885 Ga. Laws 30. These laws fail as analogues for several reasons.

First, laws from only a few states cannot establish a national tradition: as noted above, *Bruen* doubted that "three colonial regulations could suffice to show a tradition," 597 U.S. at 46 (emphasis omitted), and also declined to "give disproportionate weight to a single state statute and a pair of state-court decisions," *id.* at 65.

Second, the laws were enacted too long after the Founding to "provide insight into the meaning of the Second Amendment when it contradicts earlier evidence." *Id.* at 66 n.28; *see also id.* at 55 n.22 (dismissing an 1860 New Mexico Territory law in part because it was enacted "nearly 70 years after the ratification of the Bill of Rights").

Third, the penalty for violating Section 5861(d)—"another relevant aspect of the burden"—does not "fit within the regulatory tradition." *Rahimi*, 602 U.S. at 699. A violation of Section 5861(d) is a felony, punishable by up to 10 years' imprisonment and a $250,000 fine. 26 U.S.C. § 5871; 18 U.S.C. § 3571(b). Punishments for violating the property tax laws were far less severe. For example, a relatively harsh (and thus short-lived) punishment for violating one property tax law allowed the tax assessor to seize the

firearm, but the owner could recover the firearm by paying the tax plus a fifty percent penalty. 1865–1866 Ala. Laws 7.

Fourth, it is problematic to rely on laws enacted exclusively by southern states in the late nineteenth century, "at a time when state laws were used to disarm disfavored groups," *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 5 F.4th 407, 440 (4th Cir.), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021)—especially laws that had the effect of disarming poor people, *see Bruen*, 597 U.S. at 60–61 ("After the Civil War, of course, the exercise of this fundamental right [to keep and bear arms] by freed slaves was systematically thwarted.).

3. Lastly, the Seventh Circuit was persuaded by the fact that "[a]t common law … a person was prohibited from 'arming himself with dangerous and unusual weapons, in such a manner as would naturally cause a terror to the people.'" App.19a (quoting *State v. Langford*, 10 N.C. 381, 383 (1824)) (brackets omitted). But short-barreled rifles are in common use, *see* Part III.A, *supra*, and historical restrictions on dangerous and *unusual* weapons cannot justify modern restrictions on *common* arms. That is why "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons,'" *Heller*, 554 U.S. at 627, could not justify the handgun possession ban struck down in *Heller* or the handgun carry restriction struck down in *Bruen*. If historical restrictions on "dangerous and unusual weapons" were valid analogues for modern restrictions on protected arms, all firearms could be prohibited, and the

restrictions in *Heller* and *Bruen* would have been upheld.

Finally, it warrants emphasis that rifles with short barrels and pistols with shoulder stocks were considered ordinary arms throughout American history and never singled out for regulation until the twentieth century. App.20a–21a; *see also* Greenlee, *supra*, at 113–30. The fact that they were traditionally unregulated "is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Bruen*, 597 U.S. at 26.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED MARCH 10, 2025

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 23-3256

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMOND M. RUSH,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Illinois.
No. 4:22-cr-40008 — **J. Phil Gilbert**, *Judge.*

Argued May 28, 2024 Decided March 10, 2025

Before JACKSON-AKIWUMI, LEE, and KOLAR, *Circuit Judges.*

KOLAR, *Circuit Judge.* Section 5861(d) of the National Firearms Act (NFA) criminalizes receipt or possession of certain unregistered firearms. 26 U.S.C. §5861(d). Defendant-Appellant Jamond Rush challenges his indictment and conviction under §5861(d), alleging that the

statute unconstitutionally burdens core conduct protected by the Second Amendment. Because binding precedent forecloses Rush's argument, we affirm.

I. Background

In August 2022, Rush was charged by superseding indictment with one count of possessing an unregistered firearm in violation of 26 U.S.C. §§5841, 5861(d), and 5871. The unregistered firearm Rush possessed was an Anderson Manufacturing AR-15 r ifle with a 7.5-inch barrel—a short-barreled rifle regulated by the NFA, 26 U.S.C. §5801, *et seq.*[1]

Rush moved to dismiss the indictment, arguing that §5861(d) is unconstitutional under the Supreme Court's decision in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). The government opposed the motion, arguing that the NFA remains constitutional under *Bruen*, and that earlier Supreme Court precedent, *United States v. Miller*, 307 U.S. 174, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939), already upheld an analogous NFA regulation against a Second Amendment challenge. The district court agreed with the government, concluding that "*Bruen* had no impact on the constitutionality of regulating the receipt or possession [of] an unregistered short-barreled rifle." The district court held that Rush's alleged conduct—possessing the unregistered, short-barreled

1. 26 U.S.C §5845(a) defines "firearm" to include "a rifle having a barrel or barrels of less than 16 inches in length ...."

rifle—was not covered "by the plain text or the historical understanding of the Second Amendment."

Rush then entered a conditional guilty plea, reserving the right to challenge the denial of his motion to dismiss. He was convicted and sentenced to 30 months' imprisonment. Rush now appeals the district court's denial of his motion to dismiss.

II. Discussion

We review questions concerning the constitutionality of a federal statute *de novo*. *United States v. Cote*, 504 F.3d 682, 685 (7th Cir. 2007). The single issue on appeal is whether §5861(d) is facially constitutional— if it is not, Rush's indictment must be dismissed. A facial challenge like the one Rush lodges "is the most difficult challenge to mount successfully because it requires a [party] to establish that no set of circumstances exists under which the [statute] would be valid." *United States v. Rahimi*, 602 U.S. 680, 693, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024) (citing *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)) (cleaned up). Because we conclude that Rush's constitutional challenge to §5861(d) fails, his motion to dismiss was properly denied.

Originally passed by Congress in 1934, the NFA in its early form required that individuals register certain firearms, including some with short barrels. *Miller*, 307 U.S. at 175 n.1. Today, §5861(d) of the NFA provides: "It shall be unlawful for any person ... to receive or possess a firearm which is not registered to him in the National

Firearms Registration and Transfer Record...." 26 U.S.C. §5861(d). The current NFA only applies to specified firearms, including short-barreled rifles. The NFA also establishes taxes on making and transferring certain firearms, again including short-barreled rifles. 26 U.S.C. §§5811, 5821.

Rush argues §5861(d) is unconstitutional because it burdens core conduct protected by the Second Amendment. The Second Amendment instructs: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. Of course, "like most rights, the right secured by the Second Amendment is not unlimited." *Bruen*, 597 U.S. at 21 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)) (cleaned up).

Rush asserts that early Supreme Court precedent, *United States v. Miller*, does not control and that §5861(d) cannot pass constitutional muster under a post-*Bruen* analysis. We first address the question of whether *Miller* applies. Next, we turn to the related question of whether *Miller* is incompatible with *Bruen*.

A. *United States v. Miller*

In *United States v. Miller*, the defendants were charged with unlawfully transporting an unregistered firearm—a shotgun with a barrel less than 18 inches in length—in interstate commerce in violation of the NFA. 307 U.S. at 175. After examining early colonial laws that regulated musket length (e.g., muskets must

"not [be] less than three feet, nine inches"), the Supreme Court determined that the Second Amendment does not guarantee a right to possess an unregistered, short-barreled shotgun. *Id.* at 175-76, 179-80, 183. Thus, *Miller* upheld the challenged NFA provision.

The government argues that *Miller* forecloses the relief Rush seeks because *Miller* upheld the constitutionality of §5861(d)'s predecessor, which also required the registration of certain short-barreled firearms. The government points out that a court of appeals must follow Supreme Court precedent that "has direct application in a case," even if that precedent "appears to rest on reasons rejected in some other line of decisions." *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484, 109 S. Ct. 1917, 104 L. Ed. 2d 526 (1989).

We have recently reiterated this very principle. In *United States v. White*, we explained that "the Supreme Court has instructed us to resist invitations to find its decisions overruled by implication." 97 F.4th 532, 539 (7th Cir. 2024) (citing *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136, 143 S. Ct. 2028, 216 L. Ed. 2d 815 (2023)). "When a Supreme Court decision is directly controlling, our job is to follow it, leaving to the Court the prerogative of overruling its own decisions." *Id.* (cleaned up). This is so even if "intervening decisions have eroded [the precedent's] foundation." *Id.* (citation omitted). Rush's case is no exception.

The rule of law demands we follow binding Supreme Court precedent. And, the Supreme Court's more recent Second Amendment jurisprudence does not reject *Miller*

as Rush suggests, but rather directly engages with it. *Bruen*, 597 U.S. at 21 (citing *Heller*, 554 U.S. at 627, quoting *Miller*, 307 U.S. at 179, for the proposition that "prohibiting the carrying of dangerous and unusual weapons" is "fairly supported by the historical tradition" while the "Second Amendment protects the possession and use of weapons that are in common use at the time." (internal quotations omitted)).

Rush's attempt to factually distinguish *Miller* is unavailing. The fact that *Miller* involved an unregistered, short-barreled *shotgun* and Rush was convicted of possessing an unregistered, short-barreled *rifle* does not control the outcome of this appeal. Both are long guns with shortened barrels, which are dangerous because they are more powerful than traditional handguns yet are easier to conceal. *See Bianchi v. Brown*, 111 F.4th 438, 451 (4th Cir. 2024). And both involve a characteristic that makes the firearm especially attractive to criminals while adding little—if any—functionality to the firearm for lawful use. Perhaps more importantly, both were regulated under the NFA provisions in effect at the time of the defendants' convictions—provisions that simply required the registration of the firearms. *See generally Bruen*, 597 U.S. at 56-57 (contrasting outright bans with fees). We see no reason to cabin *Miller's* holding and read it so narrowly.

In that vein, we understand *Miller*, and its subsequent treatment through *Bruen*, to emphasize two distinct features of Second Amendment jurisprudence. One, the type of weapon at issue is of critical importance. Weapons, like machine guns, that are "not typically

possessed by law-abiding citizens for lawful purposes" remain unprotected. *Heller*, 554 U.S. at 625 (citing *Miller*); *see also Staples v. United States*, 511 U.S. 600, 611-12, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994) (considering "machineguns, sawed-off shotguns, and artillery pieces" as "items the ownership of which would have ... [a] quasi-suspect character."). And two, licensing regimes designed to ensure firearm applicants "are, in fact, law-abiding responsible citizens"—including those that impose some pecuniary cost on the applicants—are categorically different than weapons bans. *Bruen*, 597 U.S. at 38 n.9 (citation omitted). *Rahimi* and *Bruen* clarify the logic of *Miller* that onerous restrictions on weapons are distinct from licensing requirements of firearms. *Rahimi*, 602 U.S. at 699-700 (distinguishing constitutional licensing regulations that presume individuals have a right to carry a firearm from unconstitutional regimes that require applicants make a special showing of need); *Bruen*, 597 U.S. at 38 n.9 ("[N]othing in our analysis should be interpreted to suggest" registration laws "which often require applicants to undergo a background check or pass a firearm safety course" and do not impose "exorbitant fees" are unconstitutional.).

In sum, *Miller* "has direct application in [this] case," and we therefore follow it. *See Rodriguez de Quijas*, 490 U.S. at 484.[2] This alone is dispositive and brings

2. Our reading of *Miller* and its continuing validity is in agreement with our sister Circuits. *See, e.g., Hanson v. District of Columbia*, 120 F.4th 223, 239 (D.C. Cir. 2024) (interpreting *Miller*'s central holding regulating weapons "capable of unprecedented lethality" as good law post-*Bruen*); *United States v. Price*, 111 F.4th 392, 400 (4th Cir. 2024) ("Nothing in *Bruen* abrogated" the

Rush's challenge to a halt. But central to Rush's appeal is his assertion that §5861(d) fails under *Bruen*, and we therefore continue on to consider that framework. Bearing in mind that we leave to the Supreme Court the prerogative of overruling its own decisions, we do this not in the context of first impression, but rather with an eye for whether the test set forth in *Bruen* is incompatible with *Miller*. *See Mallory*, 600 U.S. at 136.

B. *Bruen* Analysis

In *Bruen*, the Court analyzed whether a state could require applicants for a public carry gun permit to demonstrate that they had a "special need" for self-protection distinguishable from that of the general community. *Id.* at 11-13. The Court explained that the Second Amendment's protection of the "right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense" extends to carrying "a handgun for self-defense outside the home." *Id.* at 8-10. Rush argues that *Bruen* compels us to find the licensing and taxing requirements of §5861 violate the Second Amendment. *Bruen*'s holding, however, was not so expansive as to overrule *Miller*, nor does the test laid out in *Bruen* call into question *Miller's* core holding or continued validity.

Bruen set forth a two-step test for evaluating the constitutionality of a statute under the Second Amendment. *Id.* at 24. The *Bruen* framework directs us to first answer whether "the Second Amendment's plain text covers an

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proposition that weapons not commonly used for a lawful purpose "such as short-barreled shotguns" could be regulated.) (citation omitted).

individual's conduct" (such as possessing, receiving, or carrying a certain firearm within a particular place). *Id.* If it does, the Constitution presumptively protects that conduct. *Id.* We must then ask whether the challenged regulation is "consistent with the Nation's historical tradition of firearm regulation." *Id.* The government bears the burden on the second step. *Id.*

So, in relation to Rush's challenge, we ask (1) whether the text of the Second Amendment covers the possession of an unregistered, short-barreled rifle, and if so, (2) whether §5861(d) of the NFA is consistent with the country's historical tradition of firearm regulation. We take each step in turn and stress once again that we take these steps not on a blank slate, but rather to see if recent Supreme Court cases overruled *Miller*.

i. Step One

The Second Amendment generally protects the right of "the people" to "keep and bear arms." U.S. CONST. amend. II. The natural next questions become who are "the people," what is an "arm," and what does it mean to "keep and bear" them? The parties do not dispute that Rush—an ordinary, law-abiding, adult citizen—is part of the "people" under the Second Amendment. *Bruen*, 597 at 31-32. We thus look to whether the firearm at issue—a short-barreled rifle—falls within the scope of "arms" that individuals are entitled to "keep and bear."[3]

3. *Bruen* does not address which party bears the burden on step one, and the parties disagree on this point. Because Rush's challenge fails regardless of burden, we do not decide this issue.

We may look beyond colonial-era firearms, because while the "Second Amendment's definition of 'arms' is fixed according to its historical understanding, that general definition covers modern instruments that facilitate armed self-defense." *Bruen*, 597 U.S. at 28. As we recognized in *Bevis v. City of Naperville*, "[t]his presents a line-drawing problem." 85 F.4th 1175, 1181-82 (7th Cir. 2023). While a personal handgun carried for self-defense is an "arm" that law-abiding citizens are free to "keep and bear," and a nuclear weapon is not, "[m]any weapons ... lie between these extremes." *Id.* at 1182.

Rush argues that the text of the Second Amendment extends to all "bearable" arms and thus his possession of a short-barreled rifle falls neatly within its ambit. Here, Rush's argument is contrary to our own precedent. In *Bevis*, we confronted this very issue, explaining that "bearable" must mean more than "transportable" or "capable of being held." *See Bevis*, 85 F.4th at 1193 (describing how a machine gun is literally a "bearable arm" in that it can be physically "pick[ed] up and carr[ied]" yet is not constitutionally protected (citing *Heller*, 554 U.S. at 624, 627)). *Bruen* reaffirmed that "the right [to bear arms] [i]s not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Bruen*, 597 U.S. at 21 (quoting *Heller*, 554 U.S. at 626). Instead, the Second Amendment protects the right of an ordinary, law-abiding citizen to possess a firearm "in common use" for a lawful purpose like self-defense. *Id.* at 32 (quoting *Heller*, 554 U.S. at 627). As we discuss in greater detail on *Bruen*'s second step, this is supported by "the historical tradition of prohibiting the carrying of

'dangerous and unusual weapons....'" *Id.* at 21 (quoting *Heller*, 554 U.S. at 627).

In *Bevis*, for instance, we concluded that the state had a strong likelihood of success on the merits (as required at the preliminary injunction stage) in showing that its regulation of assault weapons and high-capacity magazines was constitutional because such weapons were not within "the class of Arms protected by the Second Amendment." 85 F.4th at 1182. In surveying the evolution of Second Amendment jurisprudence, we recognized that the Second Amendment does not protect weapons that are not typically "possessed by law-abiding citizens for lawful purposes, *such as short-barreled shotguns*" and that this "accords with the historical understanding of the scope of the right." *Id.* at 1193 (emphasis added) (quoting *Heller*, 554 U.S. at 625). Here, the majority opinion in *Bevis* found agreement with the dissent. *Id.* at 1223 (Brennan, J., dissenting) (restating that *Miller* means the "Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." (quoting *Heller*, 554 U.S. at 625)).

Thus, this court—post-*Bruen*—acknowledged the Supreme Court's recognition that short-barreled shotguns fall on the constitutionally unprotected side of the "bearable arms" line because they are not in common use for a lawful purpose—which, at its core, is self-defense. *Bevis*, 85 F.4th at 1193 (citing *Heller*, 554 U.S. at 624-25). No intervening Supreme Court case has called *Bevis* into

doubt, and this court has not overruled it.[4] We therefore afford *Bevis* "considerable weight" and will not overturn circuit precedent based on the arguments Rush advances. *See Russ v. Watts*, 414 F.3d 783, 788 (7th Cir. 2005).

The government, for its part, contends that a short-barreled rifle is not an "arm" within the meaning of the Second Amendment because it is "dangerous and unusual" and therefore falls outside the scope of constitutional protection. Indeed, as previewed, long guns with shortened barrels are often considered dangerous because they are "more easily concealable than long-barreled rifles" and unusual because they "have more destructive power than traditional handguns, making them particularly desirable to malefactors and crooks." *Bianchi*, 111 F.4th at 451 (citation omitted). Rush argues that short-barreled rifles are in common use today, but he does not specifically connect that alleged common use to a lawful purpose like self-defense. More on that to come.

The government contends that Rush's claim fails on step one for an additional reason—the NFA's registration and taxation requirements are not "infringements" on

4. We note that the *Bevis* plaintiffs' petition for a writ of certiorari was denied by the Supreme Court in July 2024. *Harrel v. Raoul*, 144 S. Ct. 2491, 2492, 219 L. Ed. 2d 1333 (2024). Justice Alito would have granted the petition. *Id.* In addition, Justice Thomas expressed that "[i]t is difficult to see how the Seventh Circuit could have concluded that the most widely owned semiautomatic rifles are not 'Arms' protected by the Second Amendment." *Id.* at 2492-93 (Thomas, J., statement respecting the denial of certiorari). Nevertheless, *Bevis* remains good law and we adhere to circuit precedent.

Second Amendment rights. Recall that §5861(d) does not ban short-barreled rifles—it merely establishes a registration and taxation scheme applicable to them. The Supreme Court has signaled approval of regimes that require applicants to undergo background checks or pass firearm safety courses. *Bruen*, 597 U.S. at 38 n.9 ("[N]othing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes ... which ... are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" (first quoting *Drake v. Filko*, 724 F.3d 426, 442 (3d Cir. 2013) (Hardiman, J., dissenting); and then quoting *Heller*, 554 U.S. at 635). For purposes of a facial challenge—and with Rush advancing no arguments that he applied for a license, or necessarily would have been denied one—we are forced to accept that §5861(d) does not prevent ordinary, law-abiding adult citizens from obtaining the necessary license and lawfully owning a short-barreled rifle. Section 5861(d) merely requires them to register the firearm and pay the accompanying tax. Stated differently, the registration requirement can be read as a condition of lawful possession, and not a Second Amendment infringement in the first instance. And, as *Bruen* recognized, even "arms" within the meaning of the Second Amendment may be regulated, so long as the regulation is "part of an enduring American tradition of state regulation." *Bruen*, 597 U.S. at 69.

In any event, we decline to make a step one finding that short-barreled rifles are "arms" protected by the Second Amendment's text—at least not on this occasion under the theories presented by Rush. The record does

not show such firearms are commonly used by ordinary, law-abiding citizens for a lawful purpose like self-defense. *Bruen*, 597 U.S. at 32. More precisely, we are not convinced that *Bruen* spoke to this issue in a manner that overrules *Miller*, and that is all we must decide for this appeal. We turn to step two in our *Bruen* analysis in the interest of completeness. As discussed below, even if short-barreled rifles were "arms" within the meaning of the Second Amendment, historical tradition likely supports regulating them.

ii. Step Two

Our job in step two is to determine whether §5861(d) is consistent with the country's historical tradition, and the government bears the burden of identifying a relevant historical analogue for the modern-day regulation. *Bruen*, 597 U.S. at 29-30. Specifically, we consider "whether 'historical precedent' from before, during, and even after the founding evinces a comparable tradition of regulation." *Id.* at 27 (citing *Heller*, 554 U.S. at 631).

"[T]he search is for a historical regulation that is *relevantly similar*, not identical." *Bevis*, 85 F.4th at 1191 (emphasis in original). Even if the modern-day regulation is not "a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster"—we need not find a historical "twin." *Bruen*, 597 U.S. at 30. Then, the question becomes whether the modern and historical regulations "impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified"—in other words, why and how a

regulation burdens the Second Amendment right. *Id.* at 29. Comparing the "[w]hy and how" of past regulations to a challenged one is "central" to the *Bruen* inquiry. *Rahimi*, 602 U.S. at 692. When the historical laws "address[ed] particular problems" there is a good chance "contemporary laws imposing similar restrictions for similar reasons" are also permissible. *Id.* The laws do not need to "precisely match"—the contemporary one must only "comport with the principles underlying the Second Amendment...." *Id.*

The government points to numerous historical regulations on barrel length, regulations on firearms trade, registration and taxation requirements, and regulations on dangerous and unusual weapons. For example, a 1649 Massachusetts law, cited in *Miller*, required musketeers to carry a "good fixed musket ... not less than three feet, nine inches, nor more than four feet three inches in length...." *Miller*, 307 U.S. at 180. Also cited in *Miller* is a 1785 Virginia law regulating the length of militia members' firearms, providing that "[e]very non-commissioned officer and private" shall be equipped "with a good, clean musket carrying an ounce ball, and three feet eight inches long in the barrel...." *Id.* at 181. While some early laws appear specific to militia members, they are often relevant because the traditional militia was formed from a pool of men bringing arms "in common use at the time" for lawful purposes. *Bevis*, 85 F.4th at 1193 (quoting *Heller*, 554 U.S. at 624). Thus, many historical analogues concerning regulation of firearms that militia members were directed to keep are instructive (although certainly not dispositive).

There were also colonial and post-colonial laws akin to modern-day registration and taxation requirements. For instance, a 1631 Virginia law required recording "arms and munitions," and certain colonial "muster" laws required registration of arms into the 1800s.[5] Moving well past ratification of the Constitution, an 1856 North Carolina law imposed a tax of "one dollar and twenty five cents" on "every pistol, except such as are used exclusively for mustering...."[6] These are but a few of the analogous historical laws cited by the government.

Rush recognizes that §5861(d) mandates compliance with the NFA's "taxation and registration" requirements—requirements that have been upheld as a valid exercise of legislative taxing authority. *Sonzinsky v. United States*, 300 U.S. 506, 514, 57 S. Ct. 554, 81 L. Ed. 772, 1937-1 C.B. 351 (1937) (NFA's taxing scheme is "within the national taxing power"); *see also United States v. Moses*, 513 F.3d 727, 732 (7th Cir. 2008) (observing that although "a violation of §5861(d) necessarily involves the possession of a firearm, the crime is more aptly characterized as a form of tax evasion."); *United States v. Lim*, 444 F.3d 910, 913 (7th Cir. 2006) ("Having required payment of a transfer

5. Robert J. Spitzer, *Gun Law History in the United States and the Second Amendment Rights* , 80 Law & Contemp. Probs. 55, 74-76 (2017); Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 147-48, 161 (2007); *see also United States v. Holton*, 639 F. Supp. 3d 704, 711-12 (N.D. Tex. 2022).

6. An Act Entitled "Revenue," 1856 N.C. Sess. Laws 34, chap. 34, §2, pt. 4.

tax and registration as an aid in collection of that tax, Congress under the taxing power may reasonably impose a penalty on possession of an unregistered firearm." (quoting *United States v. Gresham*, 118 F.3d 258, 262 (5th Cir. 1997))). But, says Rush, regulations that "taxed or registered" short-barreled arms did not exist during the Founding Era. Not so.

As an initial matter, the government is not constrained to only Founding Era laws. While not every time period is weighed equally, *Bruen* instructs us to consider "historical precedent from before, during, and even after the founding...." *Bruen*, 597 U.S. at 27. Of course, because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*[,]" we give considerable weight to the time periods immediately leading up to and during the adoption of the Second Amendment in 1791. *Id.* at 34 (emphasis in original) (quoting *Heller*, 554 U.S. at 634-35); *see also id.* at 81-83 (Barrett, J., concurring) (cautioning against "freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the" Second Amendment).

As we have said, the government points to numerous historical taxation and registration regulations suggesting §5861(d) fits within the historical tradition of firearms regulation. Setting aside the historic analogues cited by the government to carry its burden, the government could have also cited to laws enacted around the time of founding, which prescribed fines, taxes, or sureties on gun possession or use for violence prevention purposes. For

instance, a 1759 New Hampshire law called for the arrest and fine of those who "go armed offensively" and allowed justices of the peace to "commit the offender to prison, until he or she finds such sureties for the peace and good behavior...."[7] A 1763 New York law condemned carrying or shooting any "Musket, Fowling-Piece, or other Fire-Arm whatsoever" in certain areas of "New York [City] or the Liberties thereof, without [a] License in Writing first ... and ... he, she, or they so offending, shall ... forfeit and pay ... the Sum of Twenty Shillings" per offense.[8] Southwark (present-day Philadelphia) passed laws in 1774 and 1794 that imposed fines (e.g., "the sum of ten shillings") for discharging a firearm within a certain distance of any building, and later, "within the regulated parts of the district, without the permission of the president of the board of commissioners[,]" respectively.[9] These are but a few illustrations. Surety statutes both generally presumed that individuals had a right to public carry, *Bruen*, 597 U.S. at 56, yet also "provided a mechanism for preventing violence before it occurred...." *Rahimi*, 602 U.S. at 697.

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7. An Act for Establishing and Regulating Courts of Public Justice Within this Province (1759), *in* Acts and Laws of His Majesty's Province of New Hampshire, in New England 1-2 (1761).

8. Act of Dec. 20, 1763, *in* Laws of New-York, From The Year 1691, to 1773 Inclusive 441-42 (Hugh Gaine ed., 1774).

9. *See* Act of Dec. 24, 1774, *in* Ordinances of the Corporation of the District of Southwark, and the Acts of the Assembly Relating Thereto 49-50 (1829); *see also* Act of Sept. 22, 1794, *in* Ordinances of the Corporation of the District of Southwark, and the Acts of the Assembly Relating Thereto 51 (1829).

Finally, the government asserts that historical analogues exist for regulating dangerous and unusual weapons, like short-barreled rifles. At common law, for example, a person was prohibited from "arm[ing] himself with dangerous and unusual weapons, in such a manner as w[ould] naturally cause a terror to the people...." *State v. Langford*, 10 N.C. 381, 383 (1824). "[G]oing armed" laws prohibited "riding or going armed" with "dangerous or unusual weapons" because it disrupted public order and led "almost necessarily to actual violence." *Rahimi*, 602 U.S. at 697 (recognizing that prohibitions on going armed existed at English common law and were incorporated into American jurisprudence) (cleaned up). These historic laws mirror the NFA in their purpose. One of the NFA's very objectives is "to regulate certain weapons likely to be used for criminal purposes, just as the regulation of short-barreled rifles, for example, addresse[d] a concealable weapon likely to be so used." *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517, 112 S. Ct. 2102, 119 L. Ed. 2d 308 (1992) (plurality opinion).

We turn, as we must, to the "how" and "why" of historical regulations versus the "how" and "why" of §5861. There are striking similarities between the animating principles behind historical regulations and §5861. We set aside the debate on how to divine *why* a legislature acted for another day. For our present purposes, it is enough to say that since before our founding, continuing through the lives of the founding generation, and even lasting until today there has stood an unbroken line of common sense regulations permitting our duly elected representatives to limit weapons where the likely use for the weapon is

a violent breach of the peace. Such is the unmistakable purpose of surety laws, riding while armed limitations, and the long-recognized need to place dangerous and unusual weapons in a category of their own. Applying this to §5861 yields a clear result. The NFA regulates rifle barrel length because a short-barreled rifle's concealability coupled with its "heightened capability to cause damage" make the weapon more appealing to those who intend to wield the firearm for unlawful use. *United States v. Cox*, 906 F.3d 1170, 1185 (10th Cir. 2018) (quotation omitted); *see also Thompson/ Ctr. Arms Co.*, 504 U.S. at 517 (plurality opinion).

And, §5861 is merely a taxing statute, so just as the "why" regulates firearms with characteristics uniquely suitable for criminal purposes, the "how" of the regulation has little impact on lawful possession for armed self-defense. Section 5861 does nothing to offend the Constitution that has stood as a bulwark between the people and governmental overreach for centuries. It simply makes those who desire a weapon likely to breach the peace register that weapon and pay a tax.

Rush insists that short-barreled rifles are not dangerous and unusual, and that they were not only in common use during the Founding Era but remain common today.[10] In support, he cites various secondary sources describing types of short-barreled weapons in use as early as the 1800s in England and during the American

10. We address commonality on step two without deciding which *Bruen* step it falls within. *See Bevis*, 85 F.4th at 1198 ("There is no consensus on whether the common-use issue belongs at *Bruen* step one or *Bruen* step two.").

Revolution. He also cites statistics that he believes demonstrate the widespread use of short-barreled rifles today. A Bureau of Alcohol, Tobacco, Firearms and Explosives statistic cited by Rush states that there were 532,725 registered short-barreled rifles in the United States in 2021.[11]

But we have previously rejected this type of commonality reasoning. *See Bevis*, 85 F.4th at 1198-99 ("[W]e decline to base our assessment of the constitutionality of these laws on numbers alone. Such an analysis would have anomalous consequences."); *see also Friedman v. City of Highland Park*, 784 F.3d 406, 409 (7th Cir. 2015). In *Friedman*, we acknowledged that the Thompson submachine gun, for example, was notoriously common in Chicago during the Prohibition era but explained that its popularity did not afford it constitutional immunity from the federal prohibition enacted under the NFA. 784 F.3d at 408-09.[12] More critically, Rush says nothing of what short-barreled rifles are commonly used

11. We note that the *Bevis* plaintiffs seeking to strike down an assault weapons ban asserted in their briefing that there were at least "20 million AR-15s and similar rifles" owned by "some 16 million citizens." *Bevis*, 85 F.4th at 1198. That alleged figure could not save the day in *Bevis*, and likewise, Rush's figure (nearly thirty-eight times smaller) cannot save his Second Amendment challenge here.

12. In *Bevis* we explained that our reasoning in *Friedman* was "basically compatible with *Bruen*" because that decision "anticipated the need to rest the [Second Amendment] analysis on history, not on a free-form balancing test." 85 F.4th at 1189-90. Regardless, for our purposes here, we cite *Friedman* simply for its observation that a firearm's popularity in contemporary times has little jurisprudential value, on its own, in a "commonality" analysis. 784 F.3d at 409.

for. Second Amendment protection, of course, extends only to those firearms in common use for a lawful purpose like self-defense, not to any prolific firearm. *See Rahimi*, 602 U.S. at 690 (discussing Second Amendment right as the right to armed "self-defense"); *see also Bianchi*, 111 F.4th at 460 (applying *Bruen*, stating, "[j]ust because a weapon happens to be in common use does not guarantee that it falls within the scope of the right to keep and bear arms.").

In all, the government's historical analogues for barrel-length regulations, registration and taxation requirements, as well as regulations of dangerous and unusual weapons are compelling. With this backdrop, we easily answer the only question at issue for this appeal: does *Bruen*'s two-step test—or any other Supreme Court holding for that matter—overrule *Miller*? We see no basis to recognize *Miller* as overruled. Section 5861(d) is likely "relevantly similar" to these historical regulations in both why and how it burdens any Second Amendment right such that it "pass[es] constitutional muster." *Bruen*, 597 U.S. at 30; *Rahimi*, 600 U.S. at 698. Indeed, §5861(d) imposes a comparable burden to its historic counterparts, and in some cases, a lesser one, requiring mere registration of an otherwise lawful firearm. *See Rahimi*, 600 U.S. at 698 (finding the challenged provision was "by no means identical to these founding era regimes" but that "it does not need to be" (citing *Bruen*, 597 U.S. at 30)). Further, the penalty, potential imprisonment only after failing to register and paying applicable taxes, likely also fits within the regulatory tradition of the going armed laws and those imposing fees, taxes, or fines. *See id.* at 699.

We are left with the conclusion that *Miller* survives *Bruen*. We also recognize that "the constitutional issues at stake are weighty." *Atkinson v. Garland*, 70 F.4th 1018, 1023 (7th Cir. 2023). Therefore, while we meet our duty to address arguments raised directly by the parties, we also deem it appropriate to decide this case on the simple fact that *Miller* controls. *See, e.g., Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 684 (7th Cir. 2017) (deciding case on narrower grounds); *Fessenden v. Reliance Standard Life Ins. Co.*, 927 F.3d 998, 1003 (7th Cir. 2019) (same). The district court correctly held that §5861(d) is constitutional and appropriately denied Rush's motion to dismiss the superseding indictment.

III. Conclusion

For the reasons set forth, we AFFIRM.

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, FILED JANUARY 25, 2023

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Case No. 22-cr-40008-JPG

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMOND M. RUSH,

Defendant.

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Jamond M. Rush's motion to dismiss the First Superseding Indictment in light of the Supreme Court's recent decision in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 211 (2022) (Doc. 28). The Government has responded to the motion (Doc. 38), and Rush has replied to that response (Doc. 43).

I. Background

On April 5, 2022, the grand jury returned an indictment charging Rush with one count of being a felon

in possession of a firearm in violation of 18 U.S.C. § 922 (g)(1) and seeking forfeiture of the firearm (an AR-15 rifle) and ammunition involved in his alleged offense (Doc. 1). On August 16, 2022, the grand jury returned the First Superseding Indictment changing the charge to receiving or possessing an unregistered short-barreled rifle in violation of 26 U.S.C. §§ 5841, 5861(d), and 5871, and seeking forfeiture of the same firearm and ammunition sought in the original indictment (Doc. 18). The relevant part of the National Firearms Act ("NFA") states, "It shall be unlawful for any person . . . to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record." 26 U.S.C. § 5861(d).

On September 26, 2022, Rush asked the Court to dismiss the First Superseding Indictment on the grounds that the statute requiring him to register his short-barreled rifle in the National Firearms Registration and Transfer Records, 26 U.S.C. § 5861(d), unduly burdens his core Second Amendment right to keep and bear arms for self-defense. In support, he points to the Supreme Court's recent decision in *Bruen*.

In response, the Government contends that the possession of short-barreled rifles is not protected by the Second Amendment because such a weapon is a "dangerous and unusual weapon" not commonly possessed for self-defense. Furthermore, it argues there is a historical tradition regulating the concealed carrying of dangerous and unusual weapons, including weapons like short-barreled rifles.

II. Analysis

The Second Amendment provides, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In the past fifteen years, the Supreme Court has made landmark rulings about the Second Amendment's meaning and application.

The first of these cases, *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), was decided after decades without any major Supreme Court decisions considering the Second Amendment. It rejected the understanding that the amendment applied only to arms for militia service.

In *Heller*, the Supreme Court considered a District of Columbia prohibition on, among other things, possessing a handgun in the home. *Id.* at 574-75. It concluded that the Second Amendment right to keep and bear arms is not confined to the context of militia service but instead extends to an individual's right to possess and carry weapons for self-defense in case of confrontation. *Id.* at 595. Nevertheless, it acknowledged that the right is not limitless; the Second Amendment does not "protect the right of citizens to carry arms for *any sort* of confrontation." *Id.* (emphasis in original). Indeed, historically "the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626 (citing prohibitions on carrying concealed weapons, possession by felons and the mentally ill, carrying in sensitive places, or conditions and qualifications for commercial sales); *accord New York*

State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111, 2128, 213 L. Ed. 2d 387 (2022); *McDonald v. City of Chi.*, 561 U.S. 742, 786, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010).

For example, *Heller* cites *United States v. Miller*, 307 U.S. 174, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939), for the proposition that certain *types* of weapons are, because of their nature, not covered by the Second Amendment. *Heller*, 554 U.S. at 622. In *Miller*, the weapon at issue was a short-barreled shotgun, which the *Miller* Court observed was not, at the time the Bill of Rights was adopted, "part of the ordinary military equipment" and could not "contribute the to the common defense." *Miller*, 307 U.S. at 178.

Heller drew from the *Miller* decision that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." *Heller*, 554 U.S. at 624-25. On the contrary, the Second Amendment covers only arms "of the kind in common use at the time" that a citizen would have been expected to bring with him when called for militia service. *Id.* at 627. The Supreme Court concluded that such an understanding "accords with the historical understanding of the scope of the right," *id.* at 625, and "is fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons,'" *id.* at 627. *Heller* concluded that the District of Columbia's ban on handguns—the overwhelming public choice for self-defense—held and used for self-defense in the home violated the Second Amendment. *Id.* at 628-29, 635.

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There is no reason the exclusion from Second Amendment protection of "dangerous and unusual firearms" should not apply as well to short-barreled rifles, the weapon at issue in this case, as well as short-barreled shotguns, the weapon in *Miller*. *Bruen* did not change this.

The Supreme Court in *Bruen* considered a New York regulation requiring an applicant for a license to carry a firearm in public to have a heightened need for self-protection. The *Bruen* Court started by quickly agreeing that the Second Amendment "right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense" extended to carrying handguns for self-defense in public, outside the home. *Bruen*, 142 S. Ct. at 2135. It found no fault with non-discretionary licensing schemes to exercise the public carry right based on objective criteria, but condemned New York's additional requirement that a public carry license applicant demonstrate "proper cause," that is, a "special need for self-protection distinguishable from that of the general community." *Id.* at 2123.[1] New York justified the "proper cause" requirement as "substantially related to the achievement of an important government interest," preventing handgun violence primarily in urban areas. *Id.* at 2125, 2131.

In determining that the "proper cause" requirement infringed on public carry applicants' Second Amendment rights, applied to the states under the Fourteenth Amendment, the Supreme Court held that the constitutionality of a firearm regulation depends solely

1. Restricted licenses were available for non-self-defense uses such as hunting, target-shooting, or employment. *Id.* at 2123.

on whether the restriction is consistent with "the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 2127. There is no "interest balancing" or "means-end scrutiny" inquiry in this determination. *Id.* When a regulation limits conduct covered by the Second Amendment, the Government "must affirmatively prove" that the regulation is part of the historical tradition, or the regulation is unconstitutional. *Id.* at 2127, 2129-30. Thus, the two—and only—relevant inquiries are (1) does the Second Amendment's plain text cover the regulated conduct and (2) is the regulation consistent with the country's historical tradition. *Id.* at 2126. If the regulated conduct is covered, it is presumed that the Constitution protects that conduct, and if there is no historical tradition of regulating that conduct, the regulation is unconstitutional. *Id.* at 2129-30.

As noted above, the *Bruen* Court found the right to carry in public for self-defense fell within the plain text of the Second Amendment, satisfying the first relevant inquiry. *Id.* at 2134-35. Moving on to the second, the *Bruen* Court concluded that the "proper cause" requirement for receiving a public carry license from New York was not within the nation's historical tradition. *Id.* at 2156. Although "the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms," the *Bruen* Court found no "tradition of broadly prohibiting the public carry of commonly used firearms for self-defense," and no "historical tradition limiting public carry only to those law-abiding citizens who demonstrate a special need for

self-defense." *Id.* at 2138, 2156. Therefore, the "proper cause" requirement was unconstitutional. *Id.*

Bruen had no impact on the constitutionality of regulating the receipt or possession an unregistered short-barreled rifle. While it eliminated the "interest balancing" or "means-end" tests that some Courts of Appeals had created after *Heller*, it confirmed that the critical inquiry is solely whether the restriction in issue is consistent with Second Amendment's text and historical understanding. *Id.* at 2131.

Rush's alleged conduct is not covered by the plain text or the historical understanding of the Second Amendment. *See United States v. Holton*, No. 3:21-CR-0482-B, 2022 U.S. Dist. LEXIS 200327, 2022 WL 16701935, at *4 (N.D. Tex. Nov. 3, 2022). *Heller* assures that keeping and bearing "dangerous and unusual firearms"—like short-barreled shotguns or rifles or other weapons not typically possessed by law-abiding citizens for lawful purposes—are outside the bounds of Second Amendment protection because such weapons are not in common use by law-abiding citizens for self-defense. Indeed, by enacting the NFA, the statute under which Rush is charged, Congress took aim at "certain weapons *likely to be used for criminal purposes*, just as the regulation of short-barreled rifles, for example, addresses a concealable weapon likely to be so used," not weapons typically used by law-abiding citizens for self-defense. *See United States v. Thompson/ Center Arms Co.*, 504 U.S. 505, 517, 112 S. Ct. 2102, 119 L. Ed. 2d 308 (1992) (emphasis added). Far from overruling this part of *Heller, Bruen* confirmed that the Second Amendment protects only weapons in common use by

law-abiding citizens for self-defense. Thus, regulating the receipt or possession of "dangerous and unusual firearms" like short-barreled rifles does not fall within the Second Amendment. The Court cannot ignore *Heller*'s clear statement on this point.[2]

Consequently, the offense with which Rush is charged does not infringe on his constitutional right to keep and bear arms as recognized under the Second Amendment, and the Court must deny his motion to dismiss the indictment.

III. Conclusion

For the foregoing reasons, the Court **DENIES** Rush's motion to dismiss the First Superseding Indictment (Doc. 28).

IT IS SO ORDERED.
DATED: January 25, 2023

/s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE

2. The Court need not reach Rush's argument that short-barreled shotguns and rifles *are* commonly used for self-defense. This argument runs smack into *Heller*'s finding that they are not, and Congress's decision to regulate them under the NFA precisely because they are not.

APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, FILED NOVEMBER 21, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

JUDGMENT IN A CRIMINAL CASE

UNITED STATES OF AMERICA

v.

JAMOND M. RUSH

Case Number: **4:22-CR-40008-JPG-1**
USM Number: **99310-509**

TALMAGE E. NEWTON, IV
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Superseding Indictment

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)
after a plea of not guilty.

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The defendant is adjudicated guilty of these offenses:

Title & Section	**Nature of Offense**	**Offense Ended**	**Count**
26 U.S.C. § 5861(d)	Receipt or Possession of Unregistered Firearm	2/7/2022	1s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

☐ No fine ☐ Forfeiture pursuant to order filed , included herein.

☒ Forfeiture pursuant to Order of the Court. See page 7 for specific property details.

It is ordered that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United

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States attorney of any material change in the defendant's economic circumstances.

Restitution and/or fees may be paid to:

Clerk, U.S. District Court*
750 Missouri Ave.
East St. Louis, IL 62201

*Checks payable to: Clerk, U.S. District Court

November 21, 2023
Date of Imposition of Judgment

/s/ J. Phil Gilbert
Signature of Judge
J. Phil Gilbert, U.S. District Judge
Name and Title of Judge

Date Signed: November 21, 2023

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DEFENDANT: Jamond M. Rush
CASE NUMBER: 4:22-cr-40008-JPG-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **30 months as to Count 1 of the Superseding Indictment. This term of imprisonment shall run concurrently with his pending related case, State of Illinois, (Pulaski County) case number 22-CF-08.**

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ ☐ a.m. ☐ p.m. on
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

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RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **2 years as to Count 1 of the Superseding Indictment.**

Other than exceptions noted on the record at sentencing, the Court adopts the presentence report in its current form, including the suggested terms and conditions of supervised release and the explanations and justifications therefor.

MANDATORY CONDITIONS

The following conditions are authorized pursuant to 18 U.S.C. § 3583(d):

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court, not to exceed 52 tests in one year.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

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ADMINISTRATIVE CONDITIONS

The following conditions of supervised release are administrative and applicable whenever supervised release is imposed, regardless of the substantive conditions that may also be imposed. These conditions are basic requirements essential to supervised release.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons.

The defendant shall not knowingly possess a firearm, ammunition, or destructive device. The defendant shall not knowingly possess a dangerous weapon unless approved by the Court.

The defendant shall not knowingly leave the federal judicial district without the permission of the Court or the probation officer.

The defendant shall report to the probation officer in a reasonable manner and frequency directed by the Court or probation officer.

The defendant shall respond to all inquiries of the probation officer and follow all reasonable instructions of the probation officer.

The defendant shall notify the probation officer prior to an expected change, or within seventy-two hours after an unexpected change, in residence or employment.

The defendant shall not knowingly meet, communicate, or otherwise interact with a person whom the defendant knows to be engaged, or planning to be engaged, in criminal activity.

The defendant shall permit a probation officer to visit the defendant at a reasonable time at home or at any other reasonable location and shall permit confiscation of any contraband observed in plain view of the probation officer.

The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

SPECIAL CONDITIONS

Pursuant to the factors in 18 U.S.C. 3553(a) and 18 U.S.C. § 3583(d), the following special conditions are ordered. While the Court imposes special conditions, pursuant to 18 U.S. C. § 3603(10), the probation officer shall perform any other duty that the Court may designate. The Court directs the probation officer to administer, monitor, and use all suitable methods consistent with the conditions specified by the Court and 18 U.S.C. § 3603 to aid persons on probation/supervised release. Although the probation officer administers the special conditions, final authority over all conditions rests with the Court.

The defendant shall participate in treatment for narcotic addiction, drug dependence, or alcohol dependence, which includes urinalysis and/or other drug detection measures and which may require residence and/or participation in a residential treatment facility, or residential reentry

center (halfway house). The number of drug tests shall not exceed 52 tests in a one-year period. Any participation will require complete abstinence from all alcoholic beverages and any other substances for the purpose of intoxication. The defendant shall pay for the costs associated with services rendered, based on a Court approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and the duration of treatment, as well as monitor the defendant's participation, and assist in the collection of the defendant's copayment.

While any financial penalties are outstanding, the defendant shall provide the probation officer and the Financial Litigation Unit of the United States Attorney's Office any requested financial information. The defendant is advised that the probation office may share financial information with the Financial Litigation Unit.

While any financial penalties are outstanding, the defendant shall apply some or all monies received, to be determined by the Court, from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligation. The defendant shall notify the probation officer within 72 hours of the receipt of any indicated monies.

The defendant shall pay any financial penalties imposed which are due and payable immediately. If the defendant

is unable to pay them immediately, any amount remaining unpaid when supervised release commences will become a condition of supervised release and be paid in accordance with the Schedule of Payments sheet of the judgment based on the defendant's ability to pay.

The defendant's person, residence, real property, place of business, vehicle, and any other property under the defendant's control is subject to a search, conducted by any United States Probation Officer and other such law enforcement personnel as the probation officer may deem advisable and at the direction of the United States Probation Officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release, without a warrant. Failure to submit to such a search may be grounds for revocation. The defendant shall inform any other residents that the premises and other property under the defendant's control may be subject to a search pursuant to this condition.

U.S. Probation Office Use Only

A U.S. Probation Officer has read and explained the conditions ordered by the Court and has provided me with a complete copy of this Judgment. Further information regarding the conditions imposed by the Court can be obtained from the probation officer upon request.

Upon a finding of a violation of a condition(s) of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

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Defendant's Signature _____ Date _____

U.S. Probation Officer _____ Date _____

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$-0-	$100.00	$-0-	$-0-

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:
☒ the interest requirement is waived for ☒ fine ☐ restitution.
☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. ☐ Lump sum payment of $ _____ due immediately, balance due
   ☐ not later than _____, or
   ☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
B. ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below; or
C. ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or
D. ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or
E. ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
F. ☒ Special instructions regarding the payment of criminal monetary penalties:

   All criminal monetary penalties are due immediately and payable through the Clerk, U.S. District Court. Having assessed the defendant's ability to pay, payment of the total criminal

monetary penalties shall be paid in equal monthly installments of $10 or ten percent of his net monthly income, whichever is greater. The defendant shall pay any financial penalty that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States: **An Anderson Manufacturing AR-15 rifle, bearing serial number 20318514, and all ammunition seized therewith.**

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Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX D — STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3571

§3571. Sentence of fine

(a) In General.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) Fines for Individuals.—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

(1) the amount specified in the law setting forth the offense;

(2) the applicable amount under subsection (d) of this section;

(3) for a felony, not more than $250,000;

(4) for a misdemeanor resulting in death, not more than $250,000;

(5) for a Class A misdemeanor that does not result in death, not more than $100,000;

(6) for a Class B or C misdemeanor that does not result in death, not more than $5,000; or

(7) for an infraction, not more than $5,000.

(c) FINES FOR ORGANIZATIONS.—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

(1) the amount specified in the law setting forth the offense;

(2) the applicable amount under subsection (d) of this section;

(3) for a felony, not more than $500,000;

(4) for a misdemeanor resulting in death, not more than $500,000;

(5) for a Class A misdemeanor that does not result in death, not more than $200,000;

(6) for a Class B or C misdemeanor that does not result in death, not more than $10,000; and

(7) for an infraction, not more than $10,000.

(d) ALTERNATIVE FINE BASED ON GAIN OR LOSS.—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) SPECIAL RULE FOR LOWER FINE SPECIFIED IN SUBSTANTIVE PROVISION.—If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

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26 U.S.C. § 5841

§5841. Registration of firearms

(a) Central registry

The Secretary shall maintain a central registry of all firearms in the United States which are not in the possession or under the control of the United States. This registry shall be known as the National Firearms Registration and Transfer Record. The registry shall include—

(1) identification of the firearm;

(2) date of registration; and

(3) identification and address of person entitled to possession of the firearm.

(b) By whom registered

Each manufacturer, importer, and maker shall register each firearm he manufactures, imports, or makes. Each firearm transferred shall be registered to the transferee by the transferor.

(c) How registered

Each manufacturer shall notify the Secretary of the manufacture of a firearm in such manner as may by regulations be prescribed and such notification shall effect

the registration of the firearm required by this section. Each importer, maker, and transferor of a firearm shall, prior to importing, making, or transferring a firearm, obtain authorization in such manner as required by this chapter or regulations issued thereunder to import, make, or transfer the firearm, and such authorization shall effect the registration of the firearm required by this section.

(d) Firearms registered on effective date of this Act

A person shown as possessing a firearm by the records maintained by the Secretary pursuant to the National Firearms Act in force on the day immediately prior to the effective date of the National Firearms Act of 1968 shall be considered to have registered under this section the firearms in his possession which are disclosed by that record as being in his possession.

(e) Proof of registration

A person possessing a firearm registered as required by this section shall retain proof of registration which shall be made available to the Secretary upon request.

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26 U.S.C. § 5845

§5845. Definitions

For the purpose of this chapter—

(a) Firearm

The term "firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machine gun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon,the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) Machinegun

The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without

manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combinationof parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(c) Rifle

The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) Shotgun

The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) Any other weapon

The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) Destructive device

The term "destructive device" means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellent charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for

use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 7684(2),7685, or 7686 of title 10, United States Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

(g) Antique firearm

The term "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(h) Unserviceable firearm

The term "unserviceable firearm" means a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(i) Make

The term "make", and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm.

(j) Transfer

The term "transfer" and the various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

(k) Dealer

The term "dealer" means any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.

(l) Importer

The term "importer" means any person who is engaged in the business of importing or bringing firearms into the United States.

(m) Manufacturer

The term "manufacturer" means any person who is engaged in the business of manufacturing firearms.

Appendix D

26 U.S.C. § 5861

§5861. Prohibited acts

It shall be unlawful for any person—

(a) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 for his business or having registered as required by section 5802; or

(b) to receive or possess a firearm transferred to him in violation of the provisions of this chapter; or

(c) to receive or possess a firearm made in violation of the provisions of this chapter; or

(d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or

(e) to transfer a firearm in violation of the provisions of this chapter; or

(f) to make a firearm in violation of the provisions of this chapter; or

(g) to obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter; or

(h) to receive or possess a firearm having the serial number or other identification required by this chapter obliterated, removed, changed, or altered; or

(i) to receive or possess a firearm which is not identified by a serial number as required by this chapter; or

(j) to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter; or

(k) to receive or possess a firearm which has been imported or brought into the United States in violation of section 5844; or

(l) to make, or cause the making of, a false entry on any application, return, or record required by this chapter, knowing such entry to be false.

Appendix D

26 U.S.C. § 5871

§5871. Penalties

Any person who violates or fails to comply with any provision of this chapter shall, upon conviction, be fined not more than $10,000, or be imprisoned not more than ten years, or both.