No. 25-5150

IN THE
Supreme Court of the United States

DAVID ROBINSON JR., *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent.*

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

Brief *Amicus Curiae* of Gun Owners of America, Gun Owners Fdn., Gun Owners of Cal., Heller Foundation, Coalition of N.J. Firearm Owners, Tenn. Firearms Association, Tenn. Firearms Fdn., Va. Citizens Defense League, Va. Citizens Defense Fdn., America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund in Support of Petitioner

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September 19, 2025

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INTEREST OF THE *AMICI CURIAE*[1]

Amici Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Inc., Heller Foundation, Coalition of New Jersey Firearm Owners, Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

STATEMENT OF THE CASE

In 2022, police discovered Petitioner David Robinson, Jr. asleep in a vehicle with a rifle by his side. That rifle, a .223-caliber Smith & Wesson

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[1] It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

M&P15,[2] is a quintessential example of the semiautomatic AR-15, which this Court described as "the most popular rifle in the country." *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). Although Mr. Robinson's AR-15 was configured with a 12.5-inch barrel at the time, police also located a separate, readily interchangeable AR-15 upper receiver group featuring a 16-inch barrel in the same vehicle. Petition Appendix ("Pet.App.") at 3a.

Mr. Robinson did not know that his choice of installed upper receiver group carried criminal consequences. *See id.* But since 1934, the National Firearms Act ("NFA") has criminalized the simple possession of unregistered "short-barreled rifles" ("SBRs"), currently defined as any "rifle having a barrel or barrels of less than 16 inches in length." 26 U.S.C. § 5845(a)(3); *see also id.* § 5845(c) (defining "rifle"). Federal law generally deems SBRs to be NFA-compliant upon payment of a $200 excise tax for making or transfer, as the case may be, and attendant registration in the National Firearms Registration and Transfer Record. *See id.* §§ 5811-5812, 5821-5822, 5841.[3] Mr. Robinson had not complied with these NFA

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[2] *See* Indictment at 2, *United States v. Robinson*, No. 5:22-cr-00072-GAP-PRL (M.D. Fla. Oct. 11, 2022), ECF No. 1; *see also* "M&P 15 Series," *Smith & Wesson* (last visited Sept. 15, 2025).

[3] Beginning in 2026, the NFA excise tax for SBRs will be $0. *See* One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, § 70436, 139 STAT. 72, 247.

provisions prior to installing his 12.5-inch upper receiver group on his rifle. Pet.App.3a.

Because Mr. Robinson's AR-15 featured a barrel that was a mere 3.5 inches too short, he was charged with a felony violation of the NFA for having failed to register his firearm with the federal government. Pet.App.2a. He moved to dismiss his indictment, challenging its constitutionality under the Second and Tenth Amendments to the U.S. Constitution, as well as Article I, Section 8 of the same. Pet.App.23a-28a. The district court denied Mr. Robinson's motion to dismiss, upholding the NFA's criminalization of his AR-15 under the Second Amendment. Pet.App.23a-25a. In so holding, the district court described the NFA as a "'shall-issue' licensing regime[]" whose constitutionality this Court did not "call[] into question" in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 38 n.9 (2022). Pet.App.23a. Next, the district court believed that it was "bound" (Pet.App.24a) by this Court's decision in *United States v. Miller*, 307 U.S. 174 (1939), which upheld the NFA's criminalization of unregistered "short-barreled *shotguns*" — a decision rendered by this Court without the benefit of hearing argument from Miller's counsel, and without applying the textual and historical methodology that *Bruen* now requires. *Compare Miller* at 178, *with Bruen* at 17. Citing *Miller* itself as "a 'historical *analogue*,'" the district court found "no meaningful distinction" between short-barreled shotguns and SBRs, concluding that "the Second Amendment does not cover" SBRs as a matter of plain text. Pet.App.24a. Finally, having declared SBRs wholly unprotected by the Second Amendment, the

district court held that their targeted taxation "cannot be an infringement" and that, in any case, First Amendment decisions repudiating the taxation of constitutional rights are "inapplicable" in the Second Amendment context. Pet.App.26a.

A panel of the Eleventh Circuit affirmed, largely reiterating the district court's Second Amendment reasoning. First, the panel "conclude[d] that *Miller* remains binding as the Supreme Court has not overturned it." Pet.App.11a. The panel then echoed the district court's finding that there is "no meaningful distinction" between short-barreled shotguns and SBRs, citing courts that had "discussed the dangerousness of firearms covered by the NFA" as a general matter. Pet.App.12a. Thus, in the panel's view, *Miller* controlled because a number of federal judges previously had opined that all NFA firearms are "dangerous" and "'likely to be used for criminal purposes....'" *Id.* Next, the panel adopted the district court's view that the NFA is a "shall-issue licensing regime[]," citing the NFA's directive that "'[a]pplications shall be denied" if approval would violate state or federal law. Pet.App.13a (quoting 26 U.S.C. § 5812). Finally, the panel declined to hold the Second Amendment "subject to the same body of rules as the other rights in the Bill of Rights," finding *Bruen* "now leaves no room" for application of the principles articulated in First Amendment cases rejecting the targeted taxation of the exercise of constitutional rights. Pet.App.14a-15a.

SUMMARY OF ARGUMENT

The National Football League is often described as "a game of inches," but the Second Amendment must not be interpreted in that way. The Framers never would have permitted an otherwise law-abiding American to become a felon simply because, unbeknownst to him, the barrel of his rifle measured a few inches shorter than some arbitrary government standard. Yet that is the procedural posture of this case — a felony conviction for possession of an unregistered short-barreled rifle under the National Firearms Act ("NFA") of 1934. To be sure, the NFA does not completely ban short-barreled rifles — it restricts their ownership through taxation and registration. But this tax applies *only* to Americans' exercise of an enumerated right — something this Court has repeatedly disallowed in other contexts. This Court's intervention is necessary to right this wrong, and to correct numerous methodological errors that are running rampant in the lower courts.

First, the lower courts are in disarray as to what items constitute "Arms" that are presumptively protected by the Second Amendment. This Court's decisions have defined that term expansively, to include "all firearms." But a number of lower courts — including the court below — have rebuffed that premise, asserting that certain firearms are simply *too "dangerous"* or *too "militaristic"* to be entrusted to a free people. Thus, the court below found that an AR-15 — which this Court recently described as "the most popular rifle in the country" — does not obtain

even *presumptive* Second Amendment protection, simply due to its barrel length.

The lower court's approach smacks of prohibited "interest balancing," the judicial practice of elevating predilection over principle. Rather than consulting text and history, the court below made subjective value judgments about whether certain firearms are "likely to be used for criminal purposes," or whether ordinary Americans should be permitted to possess so-called "specialized" or "dangerous" weapons. Of course, the text — which guarantees a "well regulated Militia" — first and foremost protects the sorts of weapons that give the citizen-soldier parity with the government infantryman, and which thereby preserve a "free State."

Second, the lower courts continue to devise clever workarounds in order to avoid faithful application of the historical framework that *Bruen* requires be applied in every Second Amendment case. Here, keying in on this Court's 1939 decision in *United States v. Miller*, the court below found "no meaningful distinction" between short-barreled rifles and short-barreled shotguns, and thereby declared the case closed. But Miller was decided without the benefit of the normal adversarial process. And today, short-barreled shotguns and rifles are ubiquitous across military, law enforcement, and civilian users.

Finally, had the lower court conducted the analysis that *Bruen* requires, it would have found that there is absolutely no historical tradition of taxing or regulating firearms based on arbitrary features like

barrel length. To the contrary, short-barreled firearms were widely available at and around the Founding.

This case presents an important opportunity for this Court to course correct, to provide critical guidance to the lower courts about the proper application of Second Amendment precedents, and to protect the quintessential American rifle against government infringement.

ARGUMENT

I. THIS COURT'S REVIEW IS NECESSARY TO CORRECT THE GROWING NUMBER OF COURTS THAT HAVE MISAPPLIED THIS COURT'S SECOND AMENDMENT DECISIONS.

A. The Lower Courts Need Critical Guidance on the "Arms" Question.

The Second Amendment guarantees "the right of the people to keep and bear Arms." In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court instructed that the term "Arms" means "'[w]eapons of offence, or armour of defence,'" "'any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another,'" and includes "all firearms," as originally understood. *Id.* at 581. And because the Constitution must protect enumerated rights in modern contexts, this Court explained that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding."

Id. at 582. Thus, so long as an instrument is "bearable" — meaning one can "'wear, bear, or carry [it] … upon the person or in the clothing or in a pocket, for the purpose … of being armed and ready for offensive or defensive action'" — then it is presumptively protected under the Second Amendment. *Id.* at 584 (internal quotations omitted); *accord Snope v. Brown*, 145 S. Ct. 1534, 1535 (2025) (Thomas, J., dissenting from denial of certiorari) ("AR-15s are clearly 'Arms' under the Second Amendment's plain text.").

This Court reiterated that understanding in *Bruen* in 2022, further explaining that the "general definition" of "Arms" presumptively "covers modern instruments that facilitate armed self-defense," and that "*we use history* to determine which modern 'arms' are protected by the Second Amendment...." *Id.* at 28 (emphasis added). And with respect to historical questions, this Court instructed that the burden of "demonstrat[ing]" historical tradition lies with the government. *Id.* at 17. Indeed, "[o]nly if" the government "demonstrate[s] that [its] regulation is consistent with this Nation's historical tradition of firearm regulation … may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.*

Despite these clear teachings, the lower courts have struggled to consistently apply *Heller* and *Bruen*'s methodology in cases concerning the protection of "Arms." For instance, in a now-vacated opinion, a panel of the Ninth Circuit correctly held that "bladed weapons facially constitute 'arms' within the meaning

of the Second Amendment," and so the State of Hawaii was required to "prove" that its ban on butterfly knives was "consistent with this Nation's historical tradition of regulating weapons." *Teter v. Lopez*, 76 F.4th 938, 949, 950 (9th Cir. 2023), *vacated, reh'g en banc granted*, 93 F.4th 1150 (9th Cir. 2024), *vacated as moot*, 125 F.4th 1301 (9th Cir. 2025).

In contrast to the Ninth Circuit panel, the Seventh Circuit upheld an Illinois ban on AR-15s, reasoning that this ubiquitous American rifle falls outside the Second Amendment's *plain text* by virtue of being too "militaristic" for the panel's taste. *Bevis v. City of Naperville*, 85 F.4th 1175, 1199 (7th Cir. 2023), *petition for certiorari denied, Harrel v. Raoul*, 144 S. Ct. 2491 (2024). More recently, the Fourth Circuit upheld a similar ban on so-called "assault weapons" based on a similar value judgment — that "'weapons that are most useful in military service'" fall "'outside the ambit of the Second Amendment'" as a textual matter. *Bianchi v. Brown*, 111 F.4th 438, 448 (4th Cir. 2024), *petition for certiorari denied sub nom. Snope v. Brown*, 145 S. Ct. 1534 (2025). Of course, these holdings are impossible to square with a historical analysis. After all, the Founders had just fought and won a war against the most powerful military on Earth, and so it seems unlikely they only meant for the Second Amendment to protect only grandma's break-barrel shotgun.

Taking a different approach altogether, the Fifth Circuit recently "assume[d] without deciding that suppressors constitute 'arms' under the Second Amendment," only to uphold the NFA's criminalization

of their unregistered possession not according to historical tradition, but rather based on dicta from *Bruen* — theorizing that the NFA is a "presumptively constitutional … shall-issue licensing regime" and so no historical analysis is required. *United States v. Peterson*, 2025 U.S. App. LEXIS 22106, at *15 (5th Cir. Aug. 27, 2025) (citing *Bruen* at 38 n.9). At no point did the Fifth Circuit analyze the Second Amendment's text or the government's proffered historical analogues. Instead, the court faulted *the challenger* of the firearm regulation for failing to "address the applicability of the shall-issue presumption...." *Id.* at *16.

Thus, it would appear that, as this Court's Second Amendment pronouncements age, the lower courts will only adopt increasingly divergent approaches to the question of what objects constitute presumptively protected "Arms" and therefore entitled to be analyzed under *Bruen*'s historical framework.

B. The Court Below Failed to Engage with the Second Amendment's Text and Historical Context.

The Eleventh Circuit's opinion below marks a novel approach to the "Arms" question, allowing the court to avoid application of *Heller* and *Bruen*. Rather than concluding that SBRs like Mr. Robinson's AR-15 plainly "constitute bearable arms" (*Heller* at 582) and therefore are "presumptively protect[ed]" by the Second Amendment (*Bruen* at 17), the panel sidestepped the question altogether — this time by purporting to be bound by "precedent" that analyzed a *separate provision* of the NFA. Pet.App.11a. Claiming

that there is "no meaningful distinction" between this Court's decades-old *Miller* decision on short-barreled shotguns and the instant case, the panel shifted the burden *to Mr. Robinson* to "cite[] … cases treating these two types of short-barreled firearms … differently." Pet.App.13a. And because Mr. Robinson "fail[ed] to present a distinction" under the panel's contrived burden-shifting standard, the panel summarily concluded that the NFA's criminalization of a subset of the most popular rifles in the United States comports with the Second Amendment without further analysis. *Id.*

That approach has no basis in this Court's precedents. At no point did the panel independently analyze whether Mr. Robinson's SBR was an "Arm" under the Second Amendment's plain text. Nor did the panel engage with Mr. Robinson's argument that SBRs are "in common use," and therefore protected by default. Pet.App.5a; *see Heller* at 628 (Second Amendment protects "'arms' that [are] overwhelmingly chosen by American society"). Nor did the panel hold the government to its historical burden — even though *Bruen* made abundantly clear that, "[o]nly if" the government meets this burden, "may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Bruen* at 17. In fact, the panel conducted no historical analysis at all, entirely relying on *Miller*'s discussion of a different type of NFA firearm. Pet.App.13a; *see also* Pet.App.24a (district court claiming *Miller* is "a 'historical *analogue*'"). This "important question of federal law" plainly "conflicts with relevant decisions of this Court," and "should be[] settled" now. Sup. Ct.

R. 10(c); *see also Snope* at 1535 (Kavanaugh, J., respecting denial of certiorari) ("[T]his Court should and presumably will address the AR-15 issue soon, in the next Term or two.").

C. The Panel Engaged in Prohibited Interest Balancing to Uphold the NFA's Atextual and Ahistorical Restrictions.

In order to claim that it was "[b]ound by the logic of *Miller*" and thereby wash its hands of *Bruen*, the panel first had to square the circle of applying *Miller* to SBRs rather than to short-barreled *shotguns*. Pet.App.13a. To do so, the panel cited a number of pre-*Bruen* cases that had "discussed the dangerousness of firearms covered by the NFA together," contrasting them with non-NFA "generic 'firearm[s]'" that purportedly are neither "'specialized'" nor "'primarily weapons of war....'" Pet.App.12a. Thus, asserting that *all* NFA-regulated firearms are "dangerous[]" and "'likely to be used for criminal purposes,'" with "'no appropriate sporting use or use for personal protection,'" *id.*, the panel claimed *Miller*'s pronouncement as to *one* NFA category necessarily governed *another*. But according to this logic, *Miller* has already decided the constitutionality of the NFA's criminalization of silencers, machineguns, and even a *handgun* equipped with a vertical foregrip. *See* 26 U.S.C. § 5845(e) (defining "any other weapon"). That cannot be. Indeed, it seems rather unlikely that this Court meant to conclusively and permanently determine the constitutionality of all provisions of a federal gun control statute in a single case, where counsel for the defendants did not even make an

appearance. *See Heller* at 623-24 (discussing *Miller*'s unusual history).

Not only does the panel's "dangerousness" approach stretch *Miller* well beyond its holding, but also it smacks of the very same "judge-empowering interest-balancing" that this Court repudiated in *Heller* and *Bruen*. *Bruen* at 22 (cleaned up). As this Court explained, judges are ill-equipped "to 'make difficult empirical judgments' about 'the costs and benefits of firearms restrictions,' especially given their 'lack [of] expertise' in the field." *Id.* at 25. Of course, the lower court's declaring a subset of firearms to be "dangerous" (whatever that may mean), and rubberstamping the legislature's judgment that they are "likely to be used for criminal purposes" (Pet.App.12a), is precisely the sort of "judicial deference to legislative interest balancing" that this Court has rejected. *Bruen* at 26. To endorse the panel's reasoning would mean the scope of the Second Amendment varies according to the practices of criminals. *But see Heller* at 636 ("enshrinement of constitutional rights necessarily takes certain policy choices off the table," irrespective of "the problem of handgun violence in this country").

One final point bears emphasis. Although it is irrelevant to the textual and historical analysis that the panel *should have* conducted, SBRs overwhelmingly are put to lawful use. The FBI has reported that handguns comprise the vast majority of homicide weapons in the United States, and that rifles of all types are an order of magnitude *less* commonly used in crime. Indeed, from 2015 to 2019, there were

between 6,000-7,000 annual uses of handguns in homicides, contrasted with some 200-400 annual uses of rifles in that timeframe.[4] Not only did the panel err by interest-balancing the Second Amendment away, but also the very premise of the panel's holding was *wrong*. SBRs are not at all "likely to be used for criminal purposes."

D. On Its Face, the NFA Is Not a "Shall-Issue" Licensing Regime, and There Is a Circuit Split on This Question.

The district court and the panel also purported to absolve the NFA of textual and historical scrutiny via reference to *Bruen*'s footnote nine. *See* Pet.App.24a-25a; Pet.App.13a. In that footnote, this Court declined to "suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes" for public carry, as those regimes were not at issue in that case. *Bruen* at 38 n.9. Likening the NFA's ban on unregistered *possession* to a "shall-issue licensing regime[]" for *carry* (Pet.App.13a), the panel was willing to invent a theory of conclusive constitutionality based on this Court's refusal to "suggest … unconstitutionality" in an inapposite case.

Not only does that approach contravene *Bruen*'s methodological holding,[5] but also it misreads the NFA

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[4] "Expanded Homicide Data Table 8," *FBI UCR* (2019).

[5] *See Bruen* at 17 ("hold[ing] that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct").

which, by its plain terms, is not a "shall-issue licensing regime."[6] Rather, the statutory provision the panel cited, 26 U.S.C. § 5812(a), provides that "'[a]pplications *shall be denied* if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.'" Pet.App.13a (emphasis added). The related statutory provision on "making" NFA firearms is similarly worded. *See* 26 U.S.C. § 5822. Of course, these provisions contain no directive that applications "*shall be approved*" if an applicant meets the statutory criteria. Rather, they simply direct what must happen if an applicant is ineligible. As the D.C. Circuit once explained, "[b]oth sections provide that applications 'shall be denied[,]' … but neither restricts the Secretary's *broad power to grant or deny applications in any other respect*." *Lomont v. O'Neill*, 285 F.3d 9, 17 (D.C. Cir. 2002) (emphasis added). "Broad power to grant or deny" is irreconcilable with the "'narrow, objective, and definite standards' guiding licensing officials" in quintessentially "shall-issue" licensing regimes. *Bruen* at 38 n.9.

Despite these provisions' plain import, there is disagreement among the circuits about whether the NFA establishes a "may-issue" or "shall-issue" regime. Splitting with the D.C. Circuit and joining the Eleventh Circuit on this question, the Fifth Circuit recently concluded that "the NFA suppressor-licensing

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[6] Furthermore, if the NFA's onerous requirements are a supposedly permissible "shall-issue licensing regime," that would justify *universal firearms registration*, on pain of felony prosecution. Not even the Founders had to deal with such a regime under British rule.

scheme is … a shall-issue licensing regime," based on a "conce[ssion] at oral argument." *Peterson* at *15. The Fifth Circuit acknowledged the NFA's directive that certain applications "shall be denied," but failed to explain how this language supported the court's inverse conclusion. To the contrary, despite recent improvements in processing times, NFA application determinations historically have taken months to more than a year to issue,[7] and applicants with merely "delayed" (but not "denied") background checks faced disapproval despite satisfaction of the statutory criteria.[8] These are not the hallmarks of a "shall-issue" regime. This circuit split makes review of the decision below all the more pressing. This Court should grant the Petition and reject the proposition that *Bruen* blessed purportedly "shall-issue" regimes like the NFA.

II. THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THE LIMITED SCOPE OF ITS *MILLER* DECISION.

Both courts below relied on *United States v. Miller*, 307 U.S. 174 (1939), to conclude that the NFA's regulation of SBRs is constitutional without further analysis. *See* Pet.App.24a; Pet.App.12a. But to begin with, *Miller* never held that SBRs are unprotected.

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[7] *See* "NSSF Successfully Leads Effort to Dramatically Reduce ATF NFA Form Wait Times, New Data Shows," *NSSF* (Apr. 9, 2024).

[8] *See* A. Johnston, "88 Day NICS Denials and the Biden Pistol Ban," *GOA* (Feb. 1, 2023).

And, as explained *infra*, the panel's reliance on *Miller* fails for at least two more reasons.

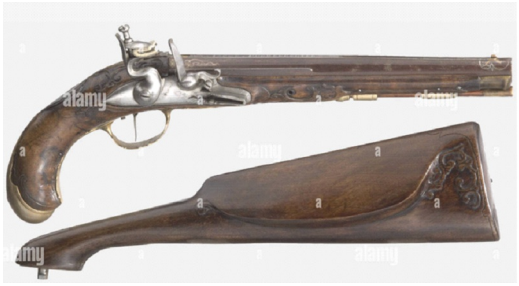
A. The *Miller* Court Lacked "Judicial Notice" that Short-Barreled Firearms Are, in Fact, "Ordinary Military Equipment."

First, the highly unusual circumstances under which this Court decided *Miller* bear recounting. As this Court explained in *Heller*, "[t]he defendants made no appearance in [*Miller*], neither filing a brief nor appearing at oral argument; the Court heard from no one but the Government...." *Heller* at 623. Moreover, the government's "brief … provided scant discussion of the history of the Second Amendment — and the Court was presented with no counterdiscussion." *Id.* at 623-24. Given *Miller*'s *ex parte* nature and paltry historical analysis, it makes for a slender reed on which to ground future decisions. Indeed, this Court already cautioned as to *Miller*'s limited scope: "[i]t is particularly wrongheaded to read *Miller* for more than what it said." *Id.* Yet the panel did precisely that.

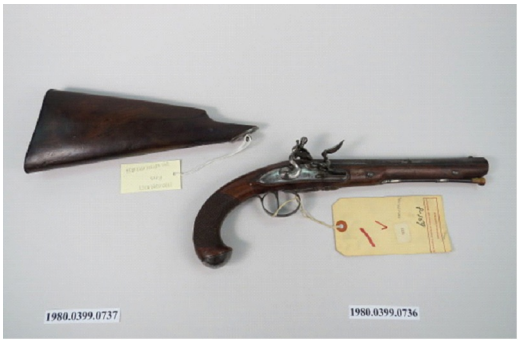
There is no better reason not to rely on *Miller*'s holding than because *Miller was based on a historical error*. As the *Miller* Court explained, "it is not within judicial notice" that the short-barreled shotgun at issue "is any part of the ordinary military equipment or that its use could contribute to the common defense." *Miller* at 178. But had the *Miller* Court been briefed on the numerous short-barreled shotguns and SBRs that *had been employed* as "ordinary military equipment" at the Founding and beyond, this Court

might have arrived at a very different conclusion. Indeed, short-barreled firearms historically "were popular for self-defense and occasionally used by militaries, notably by navies as deck-sweepers."[9]

Consider the following examples of short-barreled rifles and short-barreled shotguns with which the Founders were familiar:



Flintlock pistol with shoulder stock, Germany, circa 1780.[10]



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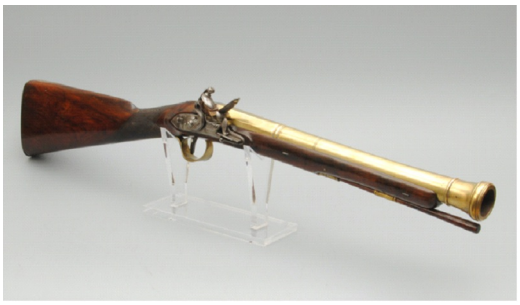
[9] J. D'Cruz, "Note, Half-Cocked: The Regulatory Framework of Short-Barrel Firearms," 40 HARV. J.L. & PUB. POL'Y 493, 503 (2017).

[10] *See* Complaint for Declaratory and Injunctive Relief ("Complaint") at 71, *Texas v. BATFE*, No. 6:23-cv-00013, ECF No. 1 (S.D. Tex. Feb. 9, 2023).

Flintlock pistol with shoulder stock, France, circa 1760 to 1820.[11]



Flintlock blunderbuss, 15-inch barrel, Great Britain, circa 1795.[12]

This case presents an ideal vehicle to reconsider the precedential value of *Miller*'s historical analysis — or absence thereof. The panel relied on *Miller*'s admittedly incomplete historical record to uphold the NFA's criminalization of SBRs without engaging in the actual historical analysis that *Bruen* required. Granting the Petition would allow this Court to conduct the full historical analysis that *Miller* lacks, and thereby set the record straight.

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[11] *See* Complaint, *supra*, at 72.

[12] *See* Complaint, *supra*, at 72.

B. Because Short-Barreled Rifles Are in Modern Military Use, and the Second Amendment Guarantees Armament Parity, They Are Protected "Arms."

Although *Miller*'s holding with respect to short-barreled shotguns cannot withstand historical scrutiny, the *Miller* Court rightly focused its analysis on what constitutes the "ordinary military equipment." *Miller*, 307 U.S. at 178. As contemporaneous authorities emphasized, the Founders' animating concern in codifying the Second Amendment was to guarantee that ordinary Americans could "resist tyranny." *Heller*, 554 U.S. at 598. To that end, the Framers understood the Second Amendment to protect, first and foremost, citizen access to *military* arms.

This principle of armament parity — equal footing between the citizen-soldier and government infantryman — permeates Founding-era commentaries. For example, James Madison famously "doubted whether a militia thus circumstanced could ever be conquered by … regular troops."[13] Alexander Hamilton contemplated "a large body of citizens, little if at all inferior … in discipline and the use of arms" to a standing army.[14] And Tench Coxe likewise believed that the people's "private arms" would provide a sufficient check against "military forces" who "may

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[13] The Federalist No. 46, at 299 (James Madison) (Clinton Rossiter ed., 1961).

[14] The Federalist No. 29, *supra*, at 185 (Alexander Hamilton).

attempt to tyrannize...."[15] Indeed, Coxe explained that "Congress have no power to disarm the militia. Their swords, and *every other terrible implement of the soldier, are the birth-right of an American.*"[16]

This understanding persisted well into the 19th century. *See Bruen* at 37 ("19th-century evidence [i]s 'treated as … confirmation of what the Court thought had already been established.'"). Henry Campbell Black, author of the eponymous Black's Law Dictionary, recognized in 1897 that "[t]he 'arms' here meant are those of a soldier. … *The citizen has at all times the right to keep arms of modern warfare.*"[17] Likewise, state courts reiterated this understanding throughout the century. For example, the Supreme Court of Tennessee explained that "arms … are such as are usually employed in civilized warfare, and that constitute the ordinary military equipment." *Aymette v. State*, 21 Tenn. 154, 158 (1840) (emphasis removed).

This widespread understanding is confirmed by the Second Amendment's text and structure. As this Court already explained, the Second Amendment's prefatory militia clause "does not limit the latter [operative clause] grammatically, but rather

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[15] T. Coxe, *Remarks on the First Part of the Amendments to the Federal Constitution*, Phila. Fed. Gazette, June 18, 1789, at 2.

[16] T. Coxe, *A Pennsylvanian*, No. 3, Pa. Gazette, Feb. 20, 1788, at 2 (first emphasis added).

[17] H.C. Black, Handbook of American Constitutional Law § 203 (2d ed. 1897) (emphasis added).

announces a purpose." *Heller* at 577. The militia clause therefore serves a "clarifying function," because "[l]ogic demands that there be a link between the stated purpose and the command." *Id.* at 578, 577. The Founders understood the militia — "a subset of 'the people'" described in the operative clause — to be "useful in repelling invasions and suppressing insurrections," to "render[] large standing armies unnecessary," and to "train[] in arms and organize[] … to resist tyranny." *Id.* at 580, 597-98. All of these functions, they explained, were "'necessary to the security of a free State.'" *Id.* at 597. Thus, the Second Amendment must protect, *at minimum*, that conduct which effectuates the militia clause — the citizen ownership, "proper discipline," "training," and use, if necessary, of "ordinary military equipment" as a "safeguard against tyranny." *Id.* at 597, 624, 600.

Contrary to the NFA's modern restrictions, the unimpeded, widespread citizen ownership of SBRs "is consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. 680, 692 (2024). One need look no further than the SBR's widespread adoption as a modern military weapon to conclude that the Second Amendment must protect the same for ordinary Americans. Indeed, along with their widespread civilian use, sub-16-inch-barreled rifles are *the most common* rifles in the American military today. At present, the standard-issue rifle issued to members of the U.S. Armed Forces is the M4 carbine[18] — an AR-15 variant

[18] "M4 Carbine," *Military.com* (last visited Sept. 15, 2025).

featuring a 14.5-inch barrel.[19] Even shorter is the 10.3-inch-barreled Mk 18,[20] another AR-15 variant in common military use. According to the Second Amendment's original understanding, and indeed under *Miller* itself, SBRs are protected "ordinary military equipment." This Court should grant the Petition to correct the panel's misapplication of *Miller*, which "is a virus that may spread if not promptly eliminated." *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 218 L. Ed. 2d 71, 75 (2024) (Alito, J., dissenting from denial of certiorari).

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[19] Consider the absurdity of Mr. Robinson's prosecution in light of a common workaround to the NFA's 16-inch barrel minimum. The Bureau of Alcohol, Tobacco, Firearms and Explosives has long considered the pinning and welding of a muzzle device to a barrel, such as a flash hider, to be a "permanent" means of legally extending a sub-16-inch barrel beyond the statutory minimum. *See* "National Firearms Act Handbook," *ATF* (Apr. 2009) at 6. With plenty of pinned-and-welded 14.5-inch rifles available on the non-NFA marketplace, Mr. Robinson's 12.5-inch rifle functionally was *just two inches too short for the government's liking*. It is difficult to imagine the Founders endorsing felony criminal penalties over such minutiae, or contemplating that the scope of Second Amendment protection would come down to a game of inches.

[20] *See, e.g.*, "SOCOM-MK18 Complete Rifle," *Daniel Defense* (last visited Sept. 15, 2025).

III. THE QUESTIONS PRESENTED ARE OF EXCEPTIONAL IMPORTANCE BECAUSE SHORT-BARRELED RIFLES ARE IN "COMMON USE" AND THE NFA THREATENS THE RIGHTS OF MILLIONS OF AMERICAN GUN OWNERS.

In *Caetano v. Massachusetts*, 577 U.S. 411 (2016), this Court recognized the Second Amendment's protection of stun guns with evidence of only "'approximately 200,000'" examples in circulation at the time. *Id.* at 420 (Alito, J., concurring in the judgment). As of May 2024, SBRs are over *four times as numerous*, with over 870,286 lawfully registered SBRs throughout the United States.[21] But although SBRs are "unquestionably in common use today" by any metric (*Bruen* at 47), the NFA's regulation of SBRs implicates many *millions* of American gun owners. The wide-ranging consequences of NFA regulation therefore warrant this Court's review.

In 2023, and at then-President Biden's behest, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") promulgated a rule seeking to reclassify (and thereby criminalize) innumerable large-format handguns equipped with pistol "stabilizing braces" as SBRs subject to the NFA's taxation and registration requirements. *See* Factoring Criteria for Firearms with Attached "Stabilizing Braces," 88 *Fed. Reg.* 6478 (Jan. 31, 2023). As the Congressional Research

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[21] "Firearms Commerce in the United States: Statistical Update 2024," *BATFE* (2024), at 12.

Service reported, "unofficial estimates suggest[ed] that there [we]re between 10 and 40 million stabilizing braces" in circulation two years prior.[22] With potentially tens of millions of these "braced pistols" at risk of improper regulatory criminalization under the NFA, millions of gun owners collectively breathed a sigh of relief when a district court vacated the ATF rule under the Administrative Procedure Act in 2024. *See Mock v. Garland*, 2024 U.S. Dist. LEXIS 105230 (N.D. Tex. June 13, 2024), *appeal dismissed sub nom. Mock v. Bondi*, No. 24-10743 (5th Cir. July 25, 2025). But this close call with widespread criminalization of widely popular firearms only underscores the exceptional importance of this case. In recent years, the NFA has been wielded as a cudgel against gun owners, with the threat of expanded regulatory definitions implicating potentially tens of millions of lawfully owned firearms. This Court should review the opinion below to address whether the Second Amendment protects of hundreds of thousands of SBRs, which would allow the opportunity to permanently remove the threat of future criminalization of individuals possessing the also ubiquitous braced pistol.

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[22] W.J. Krouse, "Handguns, Stabilizing Braces, and Related Components," *Congressional Research Service* (Apr. 19, 2021), at 2.

IV. THIS COURT SHOULD CLARIFY THAT SECOND AMENDMENT QUESTIONS MUST BE DECIDED UNDER *HELLER* AND *BRUEN*'S FRAMEWORK RATHER THAN THE SORT OF ANALYTICAL SHORTCUTS EMPLOYED BELOW.

Finally, this case presents a critical opportunity to deprive the lower courts of several means of circumventing the textual and historical analysis that *Heller* and *Bruen* demand be employed in every Second Amendment case. In *Bruen*, this Court was clear: "[o]nly if" the government bears its historical burden "may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Bruen*, 597 U.S. at 17; *see also id.* at 24 ("Only then may a court conclude...."). And this Court's subsequent pronouncement on the Second Amendment only reinforced *Bruen*'s methodological holding: "when the Government regulates arms-bearing conduct, … *it bears the burden* to 'justify its regulation.'" *Rahimi*, 602 U.S. at 691 (emphasis added). Neither decision left any room for the sort of free-spirited decision-making utilized below.

Yet contrary to this Court's "unqualified command," the panel below absolved the government of its historical burden, principally relying on *Bruen*'s dicta and the non-controlling *Miller* decision to do the heavy lifting. But reliance on shortcuts like these gives the Second Amendment short shrift. This Court should grant the Petition and reiterate the Second Amendment's unyielding historical goalposts. The lower courts need to hear it (again).

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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