No. 24-1259

In the Supreme Court of the United States

JAMOND M. RUSH, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the National Firearms Act's, 26 U.S.C. 5801 *et seq.*, registration and taxation requirement for short-barreled rifles violates the Second Amendment on its face.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 130 F.4th 633. The memorandum and order of the district court (Pet. App. 24a-31a) is available at 2023 WL 403774.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 2025. The petition for a writ of certiorari was filed on June 6, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Illinois, petitioner was convicted of possessing an unregistered short-barreled rifle, in violation of 26 U.S.C. 5841, 5861(d), and 5871. Pet. App. 1a-2a. He was sentenced to 30 months of imprisonment, to be followed by two years of

supervised release. *Id.* at 35a-37a. The court of appeals affirmed. *Id.* at 1a-23a.

1. The National Firearms Act (NFA), 26 U.S.C. 5801 *et seq.*, enacted in 1934, imposes a federal tax on the manufacture, sale, and transfer of "firearm[s]," a term the statute defines to include machineguns, bombs, grenades, silencers, short-barreled shotguns, and any "rifle having a barrel or barrels of less than 16 inches in length." 26 U.S.C. 5845(a). A "rifle" is defined, in relevant part, as a weapon "designed or redesigned, made or remade, and intended to be fired from the shoulder." 26 U.S.C. 5845(c).

The Act requires manufacturers, importers, and dealers of NFA firearms to register and pay an occupational tax. 26 U.S.C. 5801, 5802. For those not subject to the occupational tax, the Act also requires registration and payment of a $200 excise tax upon the manufacture or transfer an NFA firearm.* 26 U.S.C. 5811, 5812, 5821, 5822, 5841. Violating the Act's requirements, or possessing an NFA firearm that has been transferred in violation of the Act's requirements, is a felony. 26 U.S.C. 5861(d), 5871.

2. In February 2022, a police officer saw petitioner, whose driver's license had been revoked, pull into a driveway in a truck and walk into a courthouse for a court appearance. Presentence Investigation Report (PSR) ¶ 11. After leaving the courthouse, petitioner walked to a nearby apartment complex. *Ibid.* Less than an hour later, petitioner's sister left the apartment complex and began to drive the truck away. PSR ¶¶ 11-12. The officer stopped the truck and asked the sister to call

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* Effective January 1, 2026, Congress has reduced the tax for certain NFA firearms, including short-barreled rifles, to $0. Act of July 4, 2025, Pub. L. No. 119-21, § 70436(a), 139 Stat. 247.

petitioner, who admitted that he drove the truck and agreed to come talk to the officer about driving without a license. PSR ¶ 12.

After seeing what appeared to be marijuana in the center console, the officer began to search the truck. PSR ¶ 13. Petitioner arrived while the search was ongoing, opened one of the truck's doors, and reached for an object on the floorboard. PSR ¶ 14. After a brief struggle, the officer restrained and handcuffed petitioner. PSR ¶ 15. But petitioner broke free, ran to the truck and tried to shift the truck into drive using his chin. *Ibid.* Petitioner relented when the officer threatened to use his taser. *Ibid.*

A search of the truck uncovered a loaded rifle with 7.5-inch barrel, along with three loaded 30-round magazines. PSR ¶¶ 16, 19. Petitioner later admitted he had intended to retrieve the short-barreled rifle and "take off running with it." PSR ¶ 18.

3. A federal grand jury indicted petitioner on one count of possessing an unregistered short-barreled rifle, in violation of 26 U.S.C. 5841, 5861(d), and 5871. Pet. App. 2a. Petitioner moved to dismiss the indictment, arguing that the NFA's registration requirement violates the Second Amendment on its face. *Id.* at 2a-3a. The district court denied the motion, and petitioner pleaded guilty while reserving his right to appeal. *Id.* at 3a. The court sentenced petitioner to 30 months of imprisonment, to be followed by two years of supervised release. See *id.* at 35a-37a.

4. The court of appeals affirmed. Pet. App. 1a-23a. It held that petitioner's challenge was foreclosed by *United States* v. *Miller*, 307 U.S. 174 (1939), which rejected a Second Amendment challenge to the NFA's prohibition on the possession of an unregistered short-

barreled shotgun. Pet. App. 4a-6a. The court also held that, even apart from *Miller*, the statute complies with the Second Amendment because the record did not show that short-barreled rifles are "commonly used by ordinary law-abiding citizens for a lawful purpose like self defense." *Id.* at 14a. Finally, the court noted the NFA "merely establishes a registration and taxation scheme" and "does not ban short-barreled rifles." *Id.* at 13a.

ARGUMENT

Petitioner renews (Pet. 23-25) his contention that the NFA's registration requirement—which prohibits possessing short-barreled rifles without registering them—violates the Second Amendment on its face. The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or of any other court of appeals. No further review is warranted.

1. The NFA makes it unlawful "to receive or possess" an NFA firearm, such as a short-barreled rifle, "which is not registered" in accordance with the Act. 26 U.S.C. 5861(d). For three independent reasons, the court of appeals was correct to reject petitioner's facial challenge to that provision.

First, a facial challenge to a federal statute is the "'most difficult challenge to mount successfully,' because it requires a defendant to 'establish that no set of circumstances exists under which the Act would be valid.'" *United States* v. *Rahimi*, 602 U.S. 680, 693 (2024) (citation omitted). The NFA provision at issue here has at least some valid applications. For example, because the Second Amendment protects the right to possess arms for "traditionally lawful purposes, such as self-defense within the home," *District of Columbia* v.

Heller, 554 U.S. 570, 577 (2008), the government may apply Section 5861(d) to individuals who instead pursue *unlawful* purposes, for instance by sawing off rifle barrels to make their firearms more useful in criminal activity or to engage in unlawful firearms trafficking. Indeed, petitioner himself sought to use a short-barreled rifle for the unlawful purpose of trying to facilitate escape from the police. That ends the facial challenge.

Second, this Court's precedent forecloses petitioner's claim. In *United States* v. *Miller*, 307 U.S. 174 (1939), this Court upheld the application of the NFA to short-barreled shotguns, holding that the Second Amendment does not guarantee the right to possess such weapons. See *id.* at 178. The Court then reaffirmed *Miller* in *Heller*, explaining that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns," and that this limitation is "fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" *Heller*, 554 U.S. at 625, 627. As the court of appeals observed, petitioner does not meaningfully distinguish the short-barreled rifle here from the short-barreled shotguns in *Miller*. See Pet. App. 6a. Petitioner argues (Pet. 18-23) that *Miller*'s analysis is outdated because such weapons are in common use today, but he cites no evidence establishing any material change in the use of short-barreled rifles or short-barreled shotguns since this Court decided *Miller* or since it reaffirmed that decision in *Heller*. See *Johnson* v. *United States*, 576 U.S. 591, 640 (2015) (Alito, J., dissenting) (short-barreled shotguns "are not typically possessed for lawful purposes").

Third, even apart from *Miller*, requiring the registration and taxation of short-barreled rifles is "consistent

with this Nation's historical tradition of firearm regulation." *NYSRPA* v. *Bruen*, 597 U.S. 1, 17 (2022). American legislatures have long imposed special taxes on arms that are especially susceptible to criminal misuse. See David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. Legis. 223, 227 (2024). For instance, many 19th-century legislatures taxed weapons such as dueling pistols, sword canes, Bowie knives, Arkansas toothpicks, and dirks. See *id.* at 293-328 (collecting statutes). Similarly, many States have long regulated the size of firearms. For example, many States banned or taxed pocket pistols. See, *e.g.*, Kopel & Greenlee 288-289, 324. Those regulations applied to "pistols of small size which are not borne as arms but which are easily and ordinarily carried concealed." *State* v. *Kerner*, 107 S.E. 222, 225 (N.C. 1921); accord *Andrews* v. *State*, 50 Tenn. (3 Hesik.) 165, 186-187 (1871); *Fife* v. *State*, 31 Ark. 455, 461 (1876); *Wilson* v. *State*, 33 Ark. 557, 559 (1878).

The NFA resembles those historical laws in both "how and why the regulation burden[s] a law-abiding citizen's right to armed self-defense." *Bruen*, 597 U.S. at 29. Like its historical precursors, the provision at issue here regulates the size of firearms but does not prohibit any class of firearms altogether. See 26 U.S.C. 5845(a)(3) ("rifle having a barrel or barrels of less than 16 inches in length").

And, significantly, because short-barreled rifles combine high destructive power with easy concealability, they are especially susceptible to criminal misuse. See, *e.g.*, *United States* v. *Thompson/Center Arms Co.*, 504 U.S. 505, 517 (1992) (plurality opinion) ("short-barreled rifles" are "likely to be used for criminal purposes"); *Johnson*, 576 U.S. at 640, 642 (Alito, J., dissenting)

(short-barreled shotguns are "notoriously dangerous" and are "uniquely attractive to violent criminals" because they "combine the deadly characteristics of conventional shotguns with the more convenient handling of handguns"). Indeed, "sawed-off shotguns were a weapon of choice for gangsters and bank robbers during the Prohibition Era." *Johnson*, 576 U.S. at 640. "Al Capone's south-side Chicago henchmen used sawed-off shotguns when they executed their rivals from Bugs Moran's north-side gang during the infamous Saint Valentine's Day Massacre of 1929," and when "Bonnie and Clyde were killed by the police in 1934, Clyde was found 'clutching a sawed-off shotgun.'" *Id.* at 640 n.9 (citation omitted).

2. The decision below is consistent with the decisions of other courts of appeals. After *Heller*, several courts of appeals rejected Second Amendment challenges to the NFA's restrictions on short-barreled rifles and shotguns. See *United States* v. *Cox*, 906 F.3d 1170, 1184-1188 (10th Cir. 2018) (short-barreled rifles), cert. denied, 587 U.S. 1051 (2019); *United States* v. *Wilson*, 979 F.3d 889, 903 (11th Cir. 2020) (short-barreled shotguns); *United States* v. *Hatfield*, 376 Fed. Appx. 706, 707 (9th Cir. 2010) (short-barreled shotguns). Courts of appeals have continued to do so since *Bruen*. See *United States* v. *Robinson*, No. 23-12551, 2025 WL 870981, at *3-*6 (11th Cir. 2025) (short-barreled rifles), petition for cert. pending, No. 25-5150 (filed July 16, 2025); *United States* v. *Saleem*, No. 23-4693, 2024 WL 5084523, at *1 (4th Cir. 2024) (short-barreled shotguns).

Petitioner cites no case in which a court of appeals has held the NFA unconstitutional. He instead asks this Court to grant certiorari to resolve a variety of other analytical issues, such as the meaning of the word

"Arms" in the Second Amendment, see Pet. 8-10; whether the Second Amendment protects arms that are in "common use," see Pet. 12-14; how to determine whether an arm is in common use, see *ibid.*; "whether the common-use issue belongs at *Bruen* step one [plain text] or *Bruen* step two [history]," Pet. 11 (citation omitted; brackets in original); and whether "arms lose Second Amendment protection because the military may find them useful," Pet. 15.

Some of the questions that petitioner raises may well warrant review in an appropriate case. See *Snope* v. *Brown*, 145 S. Ct. 1534, 1534 (2025) (statement of Kavanaugh, J.); *id.* at 1538-1539 (Thomas, J., dissenting). But this case would be a poor vehicle for addressing those issues. Regardless of how the Court resolves the questions petitioner seeks to litigate, petitioner's facial challenge to the NFA would fail for the reasons discussed above. See pp. 4-5, *supra*. This Court does not sit to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties. *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882). Other types of cases—for instance, cases involving state laws banning AR-15 rifles, see *Snope*, 145 S. Ct. at 1534 (statement of Kavanaugh, J.)—would provide better vehicles for clarifying the appropriate framework for discerning what types of arms the Second Amendment protects.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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