No. 25-5142

IN THE SUPREME COURT OF THE UNITED STATES

JEFFREY SREDL, 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 requirement for covered firearms violates the Second Amendment.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. A1-A2) is available at 2025 WL 2015369. The opinion and order of the district court (Pet. App. A3-A13) is available at 2023 WL 3597715.

JURISDICTION

The judgment of the court of appeals was entered on April 11, 2025. The petition for a writ of certiorari was filed on July 10, 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 Northern District of Indiana, petitioner was convicted of possessing an unregistered firearm, in violation of 26 U.S.C. 5841, 5861(d), 5871. Judgment 1. He was sentenced to 51 months of imprisonment, to be followed by one year of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A2.

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 certain "firearm[s]." 26 U.S.C. 5845(a). The Act defines "'firearm'" to include "any other weapon, as defined in [Section 5845(e)]." Ibid. The Act then defines "'any other weapon'" to include "any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive," other than "a pistol or 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." 26 U.S.C. 5845(e).

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 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. 5871, 5861(d).

2. In June 2022, police officers responding to a shooting in Logansport, Indiana, found a woman suffering from a gunshot wound to her shoulder. Presentence Investigation Report (PSR) ¶ 4. The woman reported that she had accidentally shot herself with a gun belonging to petitioner, who was with her; that the gun looked identical on both ends, making it difficult to know which end was the barrel; and that the gun fired when she was holding it, after either she or petitioner bumped it. Ibid. Officers later learned that the gun was a homemade "slam-fire" device and that petitioner offered such weapons for sale. PSR ¶ 5. Shooting a slam-fire device involves loading a cartridge into the rear of a barrel and slamming it into the device's body section. PSR ¶ 8. In a text message, petitioner described the homemade guns he was selling as "[k]ind of illegal but fun n mean as hell." PSR ¶ 12 (emphasis omitted). The execution of search warrants for petitioner's vehicle and house led to the recovery of additional devices that were not registered under the NFA. PSR ¶¶ 6, 14-16.

In 2023, a grand jury in the Northern District of Indiana indicted petitioner on four counts of possessing unregistered

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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.

firearms, in violation of the NFA. Sup. Indictment 1-5. The petition for a writ of certiorari concerns the first count, which involved a slam-fire device that qualified as "any other weapon" under the NFA. Id. at 1 (citation omitted).

The district court denied petitioner's motion to dismiss the indictment, rejecting his argument that the NFA, on its face and as applied, violates the Second Amendment. Pet. App. A3-A13. Rejecting petitioner's facial challenge, the court stated that "weapons regulated under [the NFA] are outside the Second Amendment's scope" because they "are unusually dangerous and aren't typically used by law-abiding citizens for lawful purposes." Id. at A9, A11. The court also concluded that petitioner had failed to "develop an as-applied argument" and that "it would be premature" to address such a challenge at the motion-to-dismiss stage. Id. at A13.

Petitioner pleaded guilty without a plea agreement to the first count of the indictment, and the government dismissed the remaining counts. Judgment 1. The district court sentenced him to 51 months of imprisonment, to be followed by one year of supervised release. Judgment 2-3.

3. The Seventh Circuit summarily affirmed. Pet. App. A1-A2. The court had held in United States v. Rush, 130 F.4th 633 (7th Cir. 2025), petition for cert. pending, No. 24-1259 (filed June 6, 2025), that the application of the NFA to a short-barreled

rifle complies with the Second Amendment. See id. at 635-636. Petitioner did not dispute that Rush was "dispositive as to the issues raised in this appeal." Pet. App A1.

ARGUMENT

Petitioner argues (Pet. 8-20) that the NFA's prohibition on the possession of unregistered firearms violates the Second Amendment. The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or any other court of appeals. Moreover, to the extent petitioner seeks to raise an as-applied challenge, he failed to preserve such a challenge in the lower courts. The petition for a writ of certiorari should be denied.

1. Petitioner first argues (Pet. 10) that the NFA "facially" violates the Second Amendment. The court of appeals and district court correctly rejected that claim. 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 has at least some valid applications. For instance, 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

NFA also is plainly valid as applied to other unprotected weapons, such as a "machinegun," "bomb," "grenade," or "missile." 26 U.S.C. 5845(a) and (f). Indeed, petitioner himself concedes (Pet. 19) that "the NFA's restrictions are valid as applied to arms that are not protected." That ends the facial challenge.

Petitioner also raises (Pet. 10) an "as-applied" challenge, but he did not preserve such a challenge in the lower courts, and the courts accordingly did not consider it. The district court explained that petitioner did not "develop an as-applied argument" and that "it would be premature" to address such an argument at the motion-to-dismiss stage. Pet. App. A13. And in the court of appeals, petitioner "preserved his position that the [NFA] is facially unconstitutional," C.A. Doc. 22, at 2 (Apr. 7, 2025), but did not raise or preserve an as-applied challenge. Because petitioner's as-applied challenge was "not pressed or passed upon below," United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted), it is not properly before this Court.

In any event, petitioner's as-applied claim lacks merit. The Second Amendment protects arms that are "in common use" for lawful purposes such as the common defense and self-defense. NYSRPA v. Bruen, 597 U.S. 1, 21 (2022) (citation omitted). The type of weapon petitioner possessed here -- a crude pipe that expels a projectile, see PSR ¶ 5 -- is not in common use for such purposes. To the contrary, the factual record in the case shows that the

weapon is unusually dangerous; petitioner's acquaintance accidentally shot herself with it because she found it difficult to distinguish the two ends of the gun. PSR ¶ 4. Moreover, the NFA is less burdensome than historical laws prohibiting weapons not in common use for lawful purposes. See, e.g., District of Columbia v. Heller, 554 U.S. 570, 625-627 (2008). The NFA does not prohibit the manufacture or possession of the slam-fire device at issue here; rather, it requires registration and the payment of an excise tax.

Petitioner contends (Pet. 9) that the Second Amendment protects the right to manufacture and possess "homemade firearms." But the NFA does not prohibit "homemade firearms"; instead, it requires the registration of and imposes a tax on specific types of firearms, regardless of whether those weapons are made at home. For the reasons discussed above, that regulation is consistent with the Second Amendment.

2. The decision below does not conflict with the decision of any other court of appeals. After Heller, several courts of appeals rejected Second Amendment challenges to the NFA. 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. Rush, 130 F.4th 633, 645 (7th Cir. 2025), petition for cert. pending, No. 24-1259 (filed Jun. 6, 2025); United States v. Robinson, No. 23-12551, 2025 WL 870981, at *3-*6 (11th Cir. Mar. 20, 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. Dec. 12, 2024) (short-barreled shotguns).

Petitioner cites no case in which a court of appeals has held the NFA unconstitutional, let alone as applied to the type of weapon at issue here. He instead asks this Court to grant review to address other analytical issues, such as the meaning of the word "Arms" in the Second Amendment, see Pet. 13-14; whether the Amendment protects arms in common use, see Pet. 14-17; and how to determine whether arms are in common use, see ibid.

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 deciding those issues, both because petitioner failed to preserve his as-applied challenge and because that challenge would fail under any plausible conception of the common-use test. 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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