No. 25-

IN THE

Supreme Court of the United States

MATTHEW ENGLAND,

Petitioner,

v.

UNITED STATES,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), this Court adopted a two-step text-and-history standard for analyzing whether laws regulating firearm possession violate the Second Amendment. Under *Bruen*, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The Government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. *Id*. at17. Many lower courts, including the Fourth Circuit in this case, have concluded that the *Bruen*'s textual step one may be satisfied ***only*** where the protected conduct involves a firearm (1) that is not "dangerous and unusual" ***and*** (2) also "in common use for a lawful purpose." The Fourth Circuit and others have separately concluded that *Bruen*'s textual step one may be satisfied **only** where "law abiding citizens" are engaged in the protected conduct.

The three questions presented by this Petition are:

1. Whether the "in common use for lawful purposes" measure for applying Second Amendment protections to certain firearms is determined as part of *Bruen*'s step one textual/conduct analysis, or *Bruen*'s step two historical analysis?

2. Whether 26 U.S.C. § 5861(d), part of the National Firearms Act, violates the Second Amendment as applied to England's possessing an unregistered short-barreled shotgun, where England introduced uncontradicted evidence proving that firearm is no more dangerous and unusual than comparable unregulated non-NFA weapons in common use for lawful purposes?

3. Whether the individual right to keep and bear arms guaranteed by the Second Amendment applies only to "law-abiding citizens" who have no prior convictions?

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States v. England, No. 25-4130, 2025 WL 3046484, U.S. Court of Appeals for the Fourth Circuit. Judgment affirming district court rulings denying England's motion to dismiss entered October 31, 2025.

United States v. England, Case No. 5:23-cr-00093, U.S. District Court for the Southern District of West Virginia. Judgment entered February 24, 2025.

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The Fourth Circuit affirmed the denial of England's motion to dismiss in an unpublished per curium decision, *United States v. England*, 2025 WL 3046484 (4th Cir. Oct. 31, 2025), which is attached to this Petition as Appendix A. The district court's memorandum opinion adopting the proposed findings and recommendation of the magistrate judge that England's motion to dismiss should be denied is also an unpublished decision, *United States v. England*, 2024 WL 3582209 (S.D. W. Va. July 30, 2024), and is attached to this Petition as Appendix B. The magistrate judge's recommendation is also unpublished, *United States v. England*, 2024 WL 2194476 (May 14, 2024), and attached as Appendix C. England's judgment order is unpublished and is attached as Appendix D.

JURISDICTION

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered October 31, 2025. No petition for rehearing was filed. This Petition is filed within 90 days of the date the court's entry of its judgment. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

STATUTES AND REGULATIONS INVOLVED

This Petition requires interpretation and application of the Second Amendment to the United States Constitution:

> 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.

As well as certain provisions of the National Firearms Act, codified as follows:

> 26 U.S.C. § 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. The registry shall be known as the National Firearms Registry 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 firearm transferred shall be registered to the transferee by the transferor.
>
> * * *
>
> 26 U.S.C. § 5845. Definitions
>
> (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;
>
> * * *
>
> (c) 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.
>
> 26 U.S.C. § 5861. Prohibited acts

It shall be unlawful for any person –

* * *

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

26 U.S.C. § 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.

And separately the following provision of the Gun Control Act of 1968, codified at 18 U.S.C. § 922, which provides:

(g) It shall be unlawful for any person –

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

* * *

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

A. Federal Jurisdiction

On June 1, 2023, a federal grand jury sitting in the Southern District of West Virginia returned a two-count indictment charging Matthew Harris England with (1) possessing a firearm after sustaining a felony conviction, under 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and (2) possessing an unregistered short-barreled shotgun (alternately

"SBS") in violation of 26 U.S.C. § 5861(d). JA11-14.[1] Because both charges constitute an offense against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. The district court denied Petitioner's *Bruen*-based motion to dismiss. JA198-210; JA237-242. This is an appeal from a final judgment and sentence imposed on February 24, 2024, after England pled guilty to the indictment without a plea agreement. JA294; JA377-384; *see also Class v. United States*, 138 S. Ct. 798 (2018). England timely filed a notice of appeal on March 7, 2025. JA385. The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3731.

[1] "JA" refers to the Joint Appendix that was filed with the Fourth Circuit in this appeal.

B. Relevant Second Amendment Jurisprudence

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court rejected the collectivist, militia-based construction of the Second Amendment which had prevailed since 1939 in favor of recognizing an individual right to self-defense unconnected with militia service. Foundational to that individual right, this Court defined the "people" in the Second Amendment's plain text as including all members of the political community, not an unspecified subset. *Id.* at 579-580. This Court further defined "arms" as all bearable arms and "the substance of the right" (i.e. ***conduct***) protected by the Second Amendment as possessing and/or carrying "arms" for purposes of individual self-defense. *Id.* at 581-595. Rejecting Justice Breyer's interest balancing approach for defining the scope of that individual right, this Court held that the Second Amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635.

This Court emphasized that it was not reading the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, and that the right secured by the Second Amendment "is not unlimited." *Heller*, 554 U.S. at 595, 626. This Court further added, without identifying what specific longstanding prohibitions it was relying on: "[a]lthough we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearm by felons. *Id.* at 626. Those regulations were identified "only as examples." at 627 n.26.

Heller did emphasize the right was not a right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S. at 626. With respect to what weapons could be subject to Second Amendment protections, this Court read *United States v. Miller*, 307 U.S. 174 (1939), to say "weapons not typically possessed by law abiding citizens for lawful purposes, like short-barreled shotguns" are not protected. *Heller*, 554 U.S. at 625.

This Court concluded by acknowledging that *Heller* was its first in-depth examination of the Second Amendment, that it was not intended to clarify the field, and that "[t]here will be time enough to expound upon the historical justifications for the exceptions . . . when those exceptions come before us." *Id.* at 635.

Before *Heller*'s ink was even dry, the Government seized upon certain language – "longstanding prohibitions," "presumptively lawful," "in common use for lawful purposes," and "by law-abiding and responsible citizens" – as if it was the substance of this Court's holding. Based upon *Heller*'s *dicta*, the Government has consistently maintained that (a) Second Amendment protections apply only to law-abiding and responsible citizens, and (b) by virtue of *Heller*'s "presumptively-lawful" comment, a presumption of constitutionality applies to regulations, like 18 U.S.C. § 922(g)(1), which permanently disarm convicted felons.

The Fourth Circuit (as well as many lower courts), ultimately accepted the Government's assertions, adopting an intermediate scrutiny standard to adjudicate diminished Second Amendment protections for persons who were not "law-abiding and responsible" citizens (however those terms may be defined). *See, e.g., United*

States v. Chester, 628 F.3d 673, 678 (4th Cir. 2010). Because the Second Amendment codified a pre-existing right, and because *Heller* said the scope of Second Amendment protections is subject to historical limitation, *Chester* adopted a two-step test for analyzing Second Amendment challenges.

It is important for purposes of this Petition to recognize that *Chester*'s first step ***combined*** a text-and-history inquiry (regarding the Second Amendment's scope at the time of its ratification) with an evaluation of the challenged regulation's burden on protected conduct. If the regulation burdened protected conduct, then *Chester*'s second step was to apply the appropriate level of means end scrutiny. *Chester*, 628 F.3d at 680. *Chester* placed the burden for the textual-historical step one inquiry entirely on the defendant, and for means-end scrutiny step two inquiry on the Government.

Thereafter, as *Heller*-based Second Amendment litigation ensued, the Fourth Circuit held that *Heller*'s "presumptively lawful" *dicta* completely foreclosed facial Second Amendment challenges to § 922(g)(1). *United States v. Moore*, 666 F.3d 313, 316-319 (4th Cir. 2012). This was despite having previously found, in the context of analyzing a Second Amendment challenge to 18 U.S.C. § 922(g)(9), that federal felon disarmament laws did not exist until the Twentieth Century and that the historical evidence on whether felons enjoyed Second Amendment protections was inconclusive.[2] *Chester*, 628 F.3d at 679. While still allowing for ***possible*** as-applied

[2] It did so following similar findings by the Seventh Circuit in both *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010), and Judge Sykes' dissent in *United States v. Skoien*, 614 F.3d 638, 649 (7th Cir. 2010). *Moore*'s approach, particularly after *Bruen*,

challenges to § 922(g)(1), due to *Heller*'s presumptively lawful language, *Moore* limited the availability of such challenges to individuals who could show that they were outside the mine-run convicted felon case. Ultimately, *Moore* held that this placed the burden on the challenger in *Chester*'s step one to show their factual circumstances were those of a law-abiding, responsible citizen. *Moore*, 666 F.3d at 319-320.

The Fourth Circuit took *Moore* further in *United States v. Smoot*, 690 F.3d 215, 220-221 (4th Cir. 2012), holding that a felon convicted of a prior violent offense was incapable of possessing a firearm in his home like a law-abiding responsible citizen. *United States v. Pruess*, 703 F.3d 242 (4th Cir. 2012), in turn, denied an as-applied Second Amendment challenge based a non-violent felony conviction for the same reason. Then *Hamilton v. Pallozzi*, 848 F.3d 614, 625 (4th Cir. 2017), a civil challenge to Maryland firearm regulations, finally cut the cord, holding that as-applied challenges to felon disarmament laws were foreclosed unless that citizen had received a pardon or the law forming the basis of the predicate conviction had been declared unconstitutional or otherwise unlawful. Crucial for this Petition's purposes, particularly given the Fourth Circuit's future reliance on *Hamilton*, is that any historical inquiry regarding the Second Amendment's scope was supplanted by "the more direct question of whether the challenger's conduct is within the protected Second Amendment right of 'law-abiding, responsible citizens to use arms in defense

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however, raises questions regarding *Heller's* "longstanding" prohibitions, which with respect to Congressional regulations do not predate the 1961 Federal Firearms Act.

of hearth and home.'" *Hamilton*, 848 F.3d at 624. For *Hamilton*, ***any*** disrespect for the law was sufficient to deny Second Amendment protection, no matter how old the prior conduct, whether it was violent, or whether the citizen had taken steps after the fact to rehabilitate themselves and avoid recidivism. Instead, *Hamilton* not only limited as-applied Second Amendment challenges to felon disarmament laws to law-abiding and responsible citizens, it expressly held that the relative seriousness of the predicate conviction, evidence of rehabilitation, the likelihood of recidivism, and the passage of time "may not be considered at the first step of the *Chester* inquiry." *Id.* at 626-629.

Five years after *Hamilton*, and fourteen years after *Heller*, in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), this Court dispensed with means-end scrutiny for Second Amendment challenges altogether. *Bruen* effectively eliminated *Chester*'s step two, instead establishing a "text and history" framework for analyzing whether a firearm regulation violates the Second Amendment. Specifically, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the Government must demonstrate that the challenged regulation is consistent with this Nation's historical tradition of firearm regulation. *Id.* at 17. Structurally, *Bruen*'s text-and-history standard still involves two distinct inquiries or steps. Where *Chester*'s step one ***combined*** a textual and historical inquiry regarding the scope of Second Amendment protections, *Bruen* split the analysis into two separate questions. The first is textual, simple, and arguably intended to provide meaningful deference to Second

Amendment protections. The second consults history, and requires an affirmative showing of a well-established and representative tradition of firearm regulation consistent with the statute being challenged. Unlike *Chester*'s original first step, *Bruen'*s second step places the burden squarely on the Government to establish the historical tradition supporting the challenged modern firearm regulation. 597 U.S. at 17.

Despite this Court's bifurcation and burden reallocation of *Chester*'s first step, little has changed in the Fourth Circuit in the wake of *Bruen*. In *United States v. Price*, 111 F.4th 392 (4th Cir. 2024)(*en banc*), the court addressed whether 18 U.S.C. § 922(k), which makes it a crime to possess a firearm with an altered serial number, violates the Second Amendment. In overturning the district court's grant of a motion to dismiss on that basis, the court concluded that "the conduct regulated by § 922(k) does not fall within the scope of the right enshrined in the Second Amendment because a firearm with a removed, obliterated, or altered serial number is not a weapon in common use for lawful purposes." *Id*. at 397. Recognizing that "*Bruen* set forth a new framework" from the one that developed in the wake of *Heller*, the court stated that "[f]irst, we must ask whether the Second Amendment's plain text covers the conduct at issue. If not, that ends the inquiry." *Id*. at 398. Only if that conduct is covered must the court "ask whether the Government has justified the regulation as consistent with the 'principles that underpin' our nation's historical tradition of firearm regulation." *Ibid*; citing *United States v. Rahimi*, 602 U.S. 680, 692 (2024). The court rejected Price's argument that "our inquiry at step one is extremely narrow"

and "the only relevant question is whether the regulation criminalizes 'keep[ing] and bear[ing]' any 'Arms,'" concluding that "we can *only* properly apply the step one of the *Bruen* framework by looking to the historical scope of the Second Amendment right." *Id*. at 398, 401. That conclusion led the Fourth Circuit to improperly determine, at Bruen's step one, whether the defendant was among the people who enjoyed Second Amendment protections and whether the firearm at issue was in common use for lawful purposes.

Next, the Fourth Circuit concluded that § 922(g)(1) "is facially constitutional because it has a plainly legitimate sweep and may be constitutional in at least some set of circumstances." *United States v. Canada*, 123 F.4th 159, 161 (4th Cir. 2024)(cleaned up). Finally, in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), the court addressed as-applied challenges to § 922(g)(1). It concluded that "neither *Bruen* nor *Rahimi* abrogates this Court's precedent [i.e. *Hamilton*] foreclosing as-applied challenges to Section 922(g)(1)," as well as holding "in the alternative . . . that Section 922(g)(1) would pass constitutional muster even if we were unconstrained by circuit precedent." *Id*. at 702.

Prior to *Bruen*, for fourteen years Justice Thomas had consistently observed both the states and lower federal courts were resisting this Court's decisions in *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), by failing to protect Second Amendment rights to the same extent they protected other constitutional rights.[3]

[3] S*ee, e.g.*, *Rogers v. Grewal*, 140 S. Ct. 1865, 1866 (2020)(appeal of New Jersey may issue carry permit requirement and near-total prohibition on public carry: "many courts have resisted our decisions in *Heller* and *McDonald*."); *New York State Rifle &*

Bruen was the predictable reaction to this. The Fourth Circuit, including the panel in this case, has misapplied *Bruen*'s step one, in a manner that imitates intermediate means-end scrutiny by continuing to avoid meaningful historical justification of regulations burdening Second Amendment protections. For example *Hunt* relies on *Price* for the proposition that historical limits on the scope of Second Amendment protections are properly assessed at *Bruen*'s step one. *Hunt*, 123 F.4th at 705. Yet *Hunt*'s reliance on *Hamilton* completely side-steps *Bruen*'s intended historical inquiry when the underlying predicate conviction is a felony – thereby ensuring the challenging citizen "flunks" the law-abiding citizen test.

C. Facts Pertinent to the Issues Presented

1. England is arrested for possessing an unloaded short-barreled shotgun ("SBS") in his home.

On April 3, 2023, authorities responded to a 911 call regarding an alleged domestic dispute at England's Summers County, West Viriginia residence. JA39. After determining that the alleged dispute was merely a verbal altercation, responding officers were asked to assist in finding the girlfriend's keys inside

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Pistol Ass'n v. City of New York, NY, 590 U.S. 336, 340-341 (2020)(appeal of New York firearm license ordinance, dismissed as moot when city amended ordinances during appeal; Justice Alito dissent joined by Justice Gorsuch and Justice Thomas); *Silvester v. Becerra*, 138 S. Ct. 945, 950-951 (2018)(appeal of California's 10-day waiting/ cooling off period for firearm purchases); *Peruta v. California*, 137 S. Ct. 1995, 1999 (2017)(appeal of California's prohibition of public carry and carrying concealed firearms in public); *Voisine v. United States*, 136 S. Ct. 2272, 2291-92 (2016)(appeal of denying Second Amendment protections based on reckless misdemeanor conduct); *Friedman v. Highland Park*, 136 S. Ct. 447, 449 (2015)(appeal of Illinois' AR-style rifle and large capacity magazine bans); *Jackson v. City and County of San Francisco, California*, 135 S. Ct. 2799, 2800-02 (2015)(appeal of California ordinance requiring trigger locks for handguns stored in residences).

England's home. *Id.* During that search, officers found an unloaded 1966 Savage, Stevens Model 94F, breach-action shotgun. *Id.* The 20-gauge single-shot shotgun appeared to have a barrel measuring less than 18 inches, and an overall length that was less than 26 inches. JA39-40.

Discovery of the shotgun prompted England's arrest, JA40, after which authorities learned he had a 2014 federal conviction for aiding and abetting the possession of stolen firearms by his ex-wife. JA42. ATF agents later determined England's weapon had a barrel length of approximately 14 inches, an overall length of 22½ inches, and was not registered to him on the NFRTR. JA74-89. Two months later England was indicted for being a felon in possession, and for possessing an unregistered NFA firearm. JA40-42.

2. England moves to dismiss his indictment based on *Bruen*.

England moved to dismiss the indictment based on *Bruen*. JA38-124, arguing at *Bruen*'s step one that despite being a convicted felon he was still one of the "people" under the Second Amendment, and that his possession of a firearm (even an SBS) in his home for purposes of self-defense was protected conduct burdened by both the 1934 National Firearm Act, 26 U.S.C. § 5861(d), and the 1968 Gun Control Act, 18 U.S.C. § 922(g) - rendering those laws presumptively unconstitutional. England argued the Government would be unable to carry its burden under *Bruen*'s step two because there were no founding era laws permanently disarming felons, or regulating the possession or use of short-barreled shotguns. JA38-39. Based on the unrebutted

presumptive unconstitutionality, England argued the indictment against him had to be dismissed. *Id.*

3. England presents evidence that his firearm is not "dangerous and unusual" and is "in common use for lawful purposes" in support of his motion to dismiss.

Due to the "dangerous and unusual"/"in common use" limitation attributed to *Miller* by *Heller, see supra* at 6, England retained a firearm expert to test fire his SBS. The test-fire was conducted to evaluate the SBS's functional dangerousness relative to two popular non-NFA-firearms that are in common use for lawful purposes: a Remington 870 12-gauge shotgun, and the Mossberg 590 Shockwave 20-gauge smooth-bore firearm. Importantly the Shockwave has a 14.375-inch barrel, and an overall length of 26.5 inches, which renders it functionally similar to England's SBS as demonstrated in the following photographs:

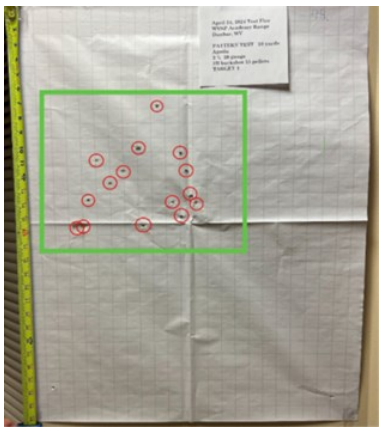
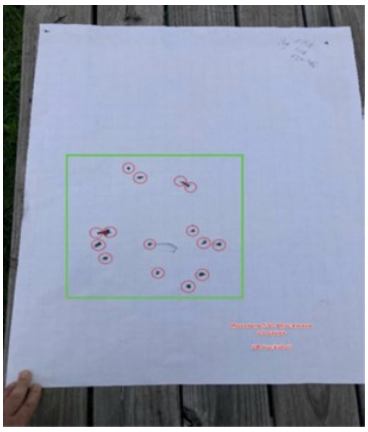
England's 1966 Savage, Stevens Model 94F SBS with 14 inch barrel

England's 1966 Savage, Stevens Model 94F SBS – overall length 22 ½ inches

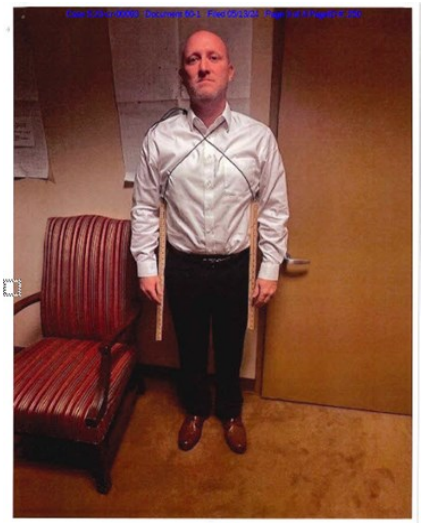
Mossberg 590 Shockwave with 14.375 inch barrel and 26.5 inch overall length

England's expert test-fired all three weapons to compare muzzle velocity and pattern spread, and concluded that England's SBS was no more dangerous or lethal than both guns, or more concealable than the Shockwave. The expert further concluded the Shockwave was actually more dangerous due to it being a pump-action weapon capable of firing multiple rounds before reloading (5 standard size shells, 10 mini shells).[4]

[4] Standard shotgun shells are 2¾ to 3 inches long. The standard mini shotgun shell is 1¾ inches long. Arman Badiei, The Evolution and Benefits of Mini Shotgun Shells, True Shot Academy Blog,

Those conclusions and the supporting test-fire evidence were memorialized in a report that was appended to England's motion to dismiss and discussed during the motions hearing. Also at the hearing, England conducted a demonstration based on measured lengths to compare the relative concealability of his SBS and the Shockwave - as a non-NFA firearm in common use for lawful purposes:


JA196


JA197

Finally, England submitted industry materials regarding the Shockwave and its use in home defense, JA93-94, JA100-101 & JA111, as well as ATF data showing

https://trueshotammo.com/blogs/true-shot-academy/the-evolution-and-benefits-of-mini-shotgun-shells (last viewed Jan. 17, 2026).

that over 176,000 SBSs were listed on the NFRTR as evidence of both weapons' common use for lawful purposes.[5] JA91.

4. The lower courts do not meaningfully address England's uncontradicted evidence, and deny his motion.

Neither the magistrate judge or the district court invested much time analyzing England's § 922(g)(1) argument. Both fell back on cases following *Heller's dicta* respecting convicted felons. *See* 2024 WL 3582209 at *2-*3; 2024 WL 2194476 at *4. Similarly, neither the magistrate judge nor district court analyzed England's comparative evidence, or the NFRTR materials establishing that the SBS "in common use". Instead, while the magistrate judge accepted England's positions that short-barreled shotguns existed at the time of the Founding and were in common use both then and now (noting the Shockwave), the court nevertheless concluded "that … short-barreled shotguns are not necessarily recognized for self-defense purposes in modern times," and instead "enjoy a history of being noted as the tool for criminal purposes." *See* 2024 WL 2194476, at *6. On that basis the magistrate judge followed other post-*Bruen* district court cases finding SBSs were "dangerous and unusual" and, based on *Heller*'s reading of *Miller*, not protected by the Second Amendment. *Ibid*. Reaching this conclusion, the magistrate judge did not properly apply *Bruen*'s two-step framework, but instead followed Justice Kavanaugh's *Bruen* concurrence quoting *Heller*'s language that "the sorts of weapons protected were those in common

[5] A transfer of a NFA firearm requires ATF approval, based in part on a statement by the transferor about why the transferee "needs" the NFA weapon being transferred. To be listed on the NFRTR, therefore, necessarily infers that the listed weapon is possessed for a lawful purpose.

use at the time … [a] limitation [that] is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons." *Bruen* at 597 U.S. at 17 (Kavanaugh, J., concurring). *See England*, 2024 WL 2194476, at *5-*6.

The district court affirmed the magistrate judge's § 922(g)(1) analysis, relying further on prohibition against facial challenges from *Canada*, and then performing a very light as-applied analysis based on a summary of England's criminal history from his pretrial services report. 2024 WL 3582209 at *1-*2. Since *Bruen* did not overrule *Miller,* the district court likewise concluded SBSs are "dangerous and unusual weapons" such that England's SBS possession is not entitled to Second Amendment protections. *Id.* at *3.

5. The Fourth Circuit summarily affirms the denial of England's motion to dismiss in a per curiam opinion without oral argument based on intervening circuit law.

The Fourth Circuit concluded that *Canada* foreclosed England's facial 922(g)(1) challenge, 2025 WL 3046484, at *2, just as *Hunt* foreclosed England's as-applied 922(g)(1) challenge. *Id*. The Fourth Circuit further concluded that England's NFA challenge was resolved by *Miller*, *Heller*, and *Price*. *Id.*

REASONS FOR GRANTING THE WRIT

A. Review is necessary to correct the growing number of courts' misapplication of this Court's Second Amendment jurisprudence, including the Circuit split concerning "in common use" and *Bruen*'s two steps.

England has consistently argued that 26 U.S.C. § 5861(d) burdens conduct protected by the Second Amendment- here a citizen possessing a firearm inside his home for purposes of self-defense. The Second Amendment's plain text says nothing

about what "people" can or cannot keep and bear arms, and thereby makes no distinction between felons and non-felons. It simply says "the right of the people to keep and bear Arms." The Second Amendment's plain text likewise does not mention, what arms may be kept or borne.

In recognizing the individual right to self-defense protected by the Second Amendment, *Heller* has already defined those terms. Again, the "people" are all Americans. *Heller*, 554 U.S. at 581. "Arms" are all instruments that constitute bearable arms. *Id*. at 582. *Bruen*'s textual inquiry about protected conduct, therefore, does not go into "who" can possess a firearm, or "what" firearm may be possessed. Instead, the sole question at *Bruen*'s step one is whether a regulation burdens "conduct" protected by the Second Amendment, which *Heller* identified this as keeping and bearing arms in case of confrontation. *Id*. at 592.

England has maintained that this is the substance of *Bruen*'s textual first step. The Sixth Circuit agrees. *United States v. Bridges*, 150 F.4th 517 (6th Cir. 2025); *See also Snope v. Brown*, 605 U.S. ___, 145 S. Ct. 1534, 1535-1538 (2025)(Thomas, J. dissenting denial of cert). The Third, Fourth, Seventh, Ninth, and Tenth Circuits, however, do not. *Compare United States v. Morgan,* 150 F.4th 1339, 1343-1344 (10th Cir. 2025); *United States v. Rush*, 130 F.4th 633, 638-639 & n.10 (7th Cir. 2025); *Range v. Attorney General*, 124 F.4th 218, 225-226 (3rd Cir. 2024); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 114 (10th Cir. 2024); *United States v. Price*, 111 F.4th 392, 399-402 (4th Cir. 2024)(*en banc*); *Bianchi v. Brown*, 111 F.4th 438, 448 (4th Cir. 2024)(*en banc*); *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023);

United States v. Alaniz, 69 F.4th 1124, 1128 (9th Cir. 2023); *but see United States v. Duarte*, 137 F.4th 743, 752-755 (9th Cir. 2025)(*en banc*)(finding felons were still part of the people in *Bruen*'s step one).

Inquiry into whether a firearm is "dangerous and unusual" and "in common use for a lawful purpose" should be reserved for the historical analysis under *Bruen*'s step two. *See Snope*, 145 S. Ct. at 1536-1537. The Sixth Circuit in *Bridges* supports this, as *Heller* arguably does – *see Snope*, 145 S. Ct. at 1535 (discussing), such that under *Bruen* the burden is placed on the Government to establish "in common use." *Price* and *Rush*, however, disagree, with *Price* insisting that "common use" must be addressed at *Bruen*'s first step, with the burden on the defendant. The Seventh Circuit has noted disagreement over where to decide the question, with *Rush* declining to resolve the issue. This obviously will continue to be a recurring conflict in Second Amendment cases given *Heller*'s reading of *Miller* and the structure of *Bruen'*s two step standard. It is also an extremely important and determinative issue because whoever must carry the burden of establishing or disproving "in common use" will be detrimentally impacted when the historical record is contradictory, inconclusive, incomplete, or worse – non-existent. Both the conflict among the lower courts and the repeating nature of the issue are "compelling reasons" to support grating certiorari in this case. *See*, Rules of the Supreme Court 10(a), (c).

B. Certiorari is necessary to overrule *Miller*, or to at least clarify *Miller*'s limited scope as interpreted in *Heller*.

Over eighty years ago, *United States v.* Miller, 307 U.S. 174, 178-182 (1939), tied Second Amendment protections exclusively to militia service. *Miller*'s

justification for holding that short-barreled shotguns were not protected by the Second Amendment (and thus that the NFA was constitutional) - had nothing to do with firearm characteristics that were unusually dangerous and especially desirable to criminal actors, nor did it have anything to do with any historical analysis of traditional firearm regulation. *Heller*, 554 U.S. at 624. Instead, *Miller*'s holding was based entirely on an "absence of evidence" that SBSs were part of the ordinary military equipment that could contribute to the common defense. *Miller*, 307 U.S. at 178. *Miller* cited two pre-1791 colonial statutes authorizing militia service, which also specified that musket barrels be greater than 18 inches in length. *Id.* at 180. Those statutes, however, did not ban or attempt to regulate SBSs in any way; rather, they merely standardized the barrel length for weapons used when militiamen mustered for service. Given the technology at the time, this made some sense to ensure firearm barrels conformed to interchangeable ramrod lengths, shot size, and apportioned amounts of powder distributed to each soldier by the colonial government. Ultimately, the exclusion of SBSs from the Second Amendment by *Miller* was simply due to a lack of evidence of military utility, not an affirmative finding of undue dangerousness, unfitness, or unlawful use.

Importantly for this Petition's purposes, *Miller* was not even a fully adjudicated case. It was an appeal of a demurrer granted by the district court to the defendants answering that criminal case. As this Court has already observed, - "the defendants made no appearance …, neither filing a brief nor appearing at oral argument; the Court heard from no one but the Government …." *Heller,* 554 U.S. at

623. Further, the Government's brief "provided scant discussion of the history of the Second Amendment – and the Court was presented with no counter discussion." *Id.* at 623-624. "*Miller* only stands for the proposition that the Second Amendment right, whatever it is, extends only to certain types of weapons." *Id.* at 623. For these reasons, *Heller* cautioned that "[i]t is particularly wrongheaded to read *Miller* for more than what it said, because the case did not even purport to be a thorough examination of the Second Amendment." *Ibid.*

It is also important that *Miller* never used "dangerous and unusual" or "in common use for a lawful purpose" to identify firearms subject to Second Amendment protections. *Miller* instead required no more than that any protected arms be ordinary military equipment and "of the kind in ordinary use at the time". *Id.* at 179. Yet lower courts post-*Bruen* consistently attribute more to *Miller* than this holding, as well as a categorical rule that SBSs are dangerous and unusual. *See* cases cited by district court below, in Appxs. B & C.

In his *Heller* dissent, Justice Stevens relied on *Miller* to argue that the Second Amendment protects firearm use and possession for certain military purposes, but does not prevent regulation of non-military firearm use and ownership. *Heller*, 554 U.S. at 637-638 (Stevens, J., dissenting). Justice Scalia, writing for the majority, countered, noting that *Miller* said nothing like that, and read *Miller* as saying the Second Amendment protects firearms "in common use at the time for lawful purposes," but does not protect firearms "not typically possessed by law-abiding citizens for lawful purposes, such as short-barrel shotguns." *Id.* at 625. This Court

found that reading to be wholly consistent with the individual right interpretation of the Second Amendment. *Id.*

Importantly, this Court in *Heller* adopted its own "in common use" reading of *Miller*, only after broadly defining "the people" and "to keep and bear arms" in the Second Amendment's plain text. *Compare Heller*, 554 U.S. at 579-592, and 625-626. *Heller* further characterized its "in common use for lawful purposes" limitation as being consistent with the historical understanding of the scope of the right. *Id.* at 625.

Outside of discussing *Miller* itself, this Court in *Heller* mentions short-barreled shotguns only once: as an example of weapons not typically possessed by law abiding citizens for lawful purposes. *Heller*, 554 U.S. at 621-622. Yet while *Heller* expressly used SBSs as an example of unprotected firearms, prior to 1934 there was no federal regulation of any kind respecting SBSs, much less imprisoning citizens for possessing unregistered SBSs.

Just as the Government's brief in *Miller* provided "scant discussion" of the history of the Second Amendment, *Heller* similarly said very little to explain why – other than the National Firearms Act itself - SBSs are not commonly possessed by law abiding citizens for lawful purposes. The Fourth Circuit has already said uses "for lawful purposes" are a matter of common sense. *Price*, 111 F.4th at 405. Given the growing use of smooth bore, short-barreled firearms in lawful home defense today (as evidenced by the popularity of non-NFA firearms like the Shockwave), however, it is just not that simple. Firearm consumers, homeowners, and courts alike are all lacking sorely needed guidance from this Court, which neither *Miller* nor *Heller*'s

interpretation of *Miller* provide. For example, what dimensions or functional characteristics make a given firearm sufficiently more dangerous and unusual than any other firearms to warrant denial of Second Amendment protections for possessing them? How many firearms must be possessed by how many citizens to constitute "common use"? What facts or evidence are required to show "for a lawful purpose"? And what characteristics of a given firearm or category of firearms make it/them "attractive for unlawful use" any more than any other firearm such that denial of Second Amendment protections is justified?

Heller has so substantially superseded *Miller* by both it's individual right holding and it's limited "reading" - that *Miller* should be overruled. And while the question of what firearms are entitled to such protections was not even before this Court in *Heller*, a general standard was still identified by that opinion. *Heller's Miller dicta* should not be treated as an unanalyzed categorical constitutional rule. *See Snope*, 145 S. Ct. at 1537 (Thomas J. dissenting denial of cert.)("Our Constitution allows the American people – not the government – to decide which weapons are useful for self-defense … we have never relied on our own assessment of how useful an arm is for self-defense before deeming it protected."). Instead, this Court should clarify that not all short-barreled firearms are categorically and automatically "dangerous and unusual" and not used for lawful purposes. It should relatedly flesh out the contours of how *Heller*'s "in common use for lawful purposes" is determined – textually, as well as through in-depth historical analysis - to ensure consistent future application by gun owners and courts alike.

C. This case is an appropriate vehicle for an as-applied Second Amendment challenge to 26 U.S.C. § 5861(d), based on evidence that England's SBS is no more dangerous and unusual than comparable firearms in common use today for lawful purposes that do not fall within the scope of § 5861(d).

This Court has previously described SBSs as extremely dangerous and uniquely attractive to violent criminals, because they are much easier to conceal than long-barreled shotguns used for hunting and other lawful purposes. *See e.g. Johnson v. United States*, 576 U.S. 591, 640 (2015)(Alito, J., dissenting). Like a handgun, they can be fired with one hand, except with more lethal effect. SBSs therefore combine the deadly characteristics of conventional shotguns with the more convenient handling of handguns. These characteristics alone supposedly make SBSs not typically possessed for lawful purposes. *Ibid; accord, United States v. Hall,* 972 F.2d 67, 70 (4th Cir. 1992)("criminals' use of short-barreled or 'sawed-off' shotguns is particularly dangerous, … for two reasons: because shot scatters more widely from a short barrel, thus killing indiscriminately, and because a shortened shotgun is easier to conceal and wield.").

Other courts have held the NFA regulates barrel length because a SBR's concealability coupled with its heightened capability to cause damage makes the weapon more appealing than a handgun to those who intend to use it unlawfully. *United States v. Rush*, 130 F.4th 633 (7th Cir. 2025); *United States v. Cox*, 906 F.3d 1170, 1185 (10th Cir. 2018); *United States v. Thompson/Ctr. Arms. Co.*, 504 U.S. 505, 517 (1992). The NFA's regulations of SBSs have been similarly sustained because such weapons are "likely to be used for criminal purposes". *See e.g. United States v.*

Brooks, 2023 WL 6880419 (EDKY 2023)(also involving a Savage, Stevens Model 94, 16-guage w/ barrel length of 13 inches, and overall length of 19 inches). These "criminal preference" and "criminal likelihood" conclusions, however, are merely hypothetical and are not supported by available statistical evidence.

Bureau of Alcohol, Tobacco, and Firearms ("ATF") firearm trace data shows that law enforcement agencies submitted a total of 1,922,577 "crime guns" (combined federal and state) for tracing between 2017 and 2021. "Crime guns" are firearms recovered by authorities that are connected to actual committed crimes. The data shows an average of 68% (1,306,804) of traced crime guns were handguns, while only 6.9% (133,024) were shotguns (irrespective of barrel or overall length).[6] Updated 2022-2023 ATF data confirms that "crime guns" are more frequently handguns – up to 74.2% or 769,498 - while shotguns decreased to 5.3 % or 55,070 (again, irrespective of barrel or overall length).[7]

To put these points in still further perspective, the number of short-barreled shotguns registered on the NFRTR as of May, 2024 is 165,100 – which is greater than the populations of Columbia, South Carolina or Alexandira, Virginia. While not remotely close to the number of machineguns (782,958), short-barrel rifles (870,266), or silencers (3,536,623) also listed on the NFRTR, or the 9,772,259 total firearms

[6] *See* ATF, National Firearms Commerce and Trafficking Assessment: Part III, Crime Guns Recovered and Traced Within the United States and Its Territories (2024), at 16-18, & Tables CCG-01 - CCG-4a & Fig. CCG-01, https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download (last viewed Jan. 21, 2026).

[7] *See* NFCTA: Part III: Crime Gun Tracing Updates and New Analysis at 2 & Table CGT-02 https://www.atf.gov/firearms/docs/report/nfcta-volume-iv-part-iii-%E2%80%93-crime-gun-tracing-updates-and-new-analysis/download (last viewed Jan. 21, 2026).

manufactured and sold domestically in 2023, the number of short-barreled shotguns possessed for lawful purposes registered on the NFRTR is still constitutionally relevant.[8] This Court has never articulated any *de minimis* intrusion exception to the Second Amendment, just as it has previously found that the ability to exercise a constitutional right one way does not justify excluding another. *Heller*, 554 U.S. at 629 ("it is no answer to say, … that it is permissible to ban the possession of handguns so long as the possession of other firearms (i.e. long guns) is allowed.").

On the unlawful use side of the equation, 13.2% of all federal criminal convictions in FY 2024 were for firearm offenses: 8,131 individual defendants out of 61,678 total. Even assuming that all 8,131 defendants were guilty of unlawfully possessing short-barrel shotguns (which they obviously were not), that number pales in comparison to those lawfully registered on the NFRTR and authorized by the ATF to possess for lawful purposes. So again, the "criminal preference" and "criminal likelihood" assumptions being adopted by courts for SBSs are simply not borne out by conditions on the ground.

D. Review is necessary to resolve the Circuit split over whether as-applied challenges to 18 U.S.C. § 922(g) can only be made by "law abiding citizens."

Finally, England seeks this Court's review of the decision of the Fourth Circuit's application of *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024) in his case, because both involve an important question of federal constitutional law that

[8] And this does even not take into account the number of non-NFA short-barreled weapons (like Mossberg's Shockwave and AfterShock, having 14.375 to 14.75 inch barrels respectively) that have been sold in the United States since 2017 for the lawful use in home defense.

has not been, but certainly should be, settled by this Court. *See* Rules of the Supreme Court 10(c). That is, whether, when analyzing a challenge to a firearm regulation under the Second Amendment, Second Amendment protections apply only to "law-abiding citizens" who have never been convicted of any crime. The Fourth Circuit has also decided that important federal constitutional question in a way which conflicts with the plain text of the Second Amendment as well as relevant decisions of this Court. In addition, the Court should separately accept review because *England*, following *Hunt*, directly conflicts with cases from the Third, Fifth, and Sixth Circuits on the same and related important constitutional questions and where the split of authorities is both likely to grow and spill over into litigation involving other federal firearm regulations. *See* Rules of the Supreme Court 10(a).

1. *Hunt* conflicts with the plain text of the Second Amendment, as well as with this Court's precedents by failing to apply the historical analysis and allocation of burdens required by the *Bruen/Rahimi* framework.

Just as the Second Amendment's plain text makes no distinction between keeping and bearing arms in the home as opposed to outside the home, it likewise makes no textual distinction as to what citizens can or cannot keep and bear arms. The Fourth Circuit's conclusion that only law-abiding citizens are entitled to Second Amendment protections, therefore, contradicts the plain text of the amendment itself.

Heller broadly defined "the people" in the Second Amendment's plain text, which is contradicted by the Fourth Circuit's § 922(g)(1) jurisprudence defining "the

people" as including only law-abiding citizens.[9] Neither *Heller* nor *Rahimi,* limit the Second Amendment's scope to that discrete subsection of the American population.

The Fourth Circuit has now repeatedly held that the analysis under *Bruen*'s step one ***must*** include an evaluation of the historical scope of the Second Amendment right. *See e.g. United States v. Price*, 111 F.4th 392, 401 (4th Cir. 2024)(*en banc*). If true, then *Bruen*'s step two historical analysis becomes meaningless. Historical analysis in *Bruen*'s step one, which places the burden on the regulation's challenger, will effectively ensure no historical analysis is ever conducted at *Bruen*'s step two, particularly under the Fourth Circuit's law-abiding-citizen standard.

The Fourth Circuit's post-*Heller* deference to statutory regulations rather than the right protected by the Second Amendment is unfounded and contrary to this Court's precedents. Since *Heller* was decided, the Government (with the help of many courts) has sought to limit the Second Amendment to only "law-abiding" citizens. *See Rahimi*, 602 U.S. at 772-773 (Thomas, J., dissenting). Prior to *Hunt*, the Government's claim plainly lacked any basis in this Court's precedents or the Second Amendment's text, such that it was "specious at best." *Rahimi*, at 772 (Thomas, J., dissenting). The Fourth Circuit in *Hunt* nevertheless adopted and advanced the Government's ill-conceived positions such that they are now the controlling law in at least five states. *Hunt*, which was applied as controlling in this case, must be reviewed and addressed by this Court.

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[9] Before *Rahimi*, the Fourth Circuit only extended Second Amendment protections to "law-abiding, responsible citizens." *See Hunt*, 123 F.4th at 703 (emphasis removed); *See also Rahimi*, 602 U.S. at 701 & 772 (Thomas, J., dissenting).

2. Lower court decisions on as-applied Second Amendment challenges to § 922(g)(1) have created a split that cannot be reconciled without this Court's intervention.

Through *United States v. Canada*, 123 F.4th 159 (4th Cir. 2024), and *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), the Fourth Circuit has completely foreclosed Second Amendment challenges to § 922(g)(1), with *Hunt* holding that neither *Bruen* nor *Rahimi* affected its post-*Heller* jurisprudence.

The existing circuit split on the availability of as-applied challenges to § 922(g)(1) is well summarized in *United States v. Duarte*, 137 F.4th 743, 747-748 (9th Cir. 2025)(*en banc*). *Hunt* has placed the Fourth Circuit in line with at least four other Circuits effectively foreclosing as-applied Second Amendment challenges to felon disarmament laws. These Circuits are in direct conflict with the Third, Fifth, and Sixth Circuits, with the first two actually sustaining as-applied challenges to § 922(g)(1), and the remaining circuit leaving open the door for future as-applied challenges. *See United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025); *Range v. Att'y Gen.*, 124 F.4th 218 (3d Cir. 2024)(en banc); *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024); *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024).

CONCLUSION

Through this Petition, two of *Heller's* exceptions, 554 U.S. at 635. are now before the Court: how "in common use for lawful purposes" is determined for firearms entitled to Second Amendment protections, and whether "the people" as used by the Second Amendment only means "law abiding citizens." The answers to these questions are not just exceptionally important, they are foundational and already

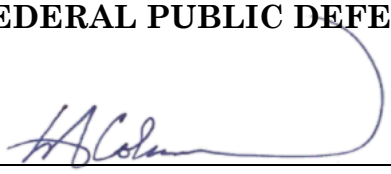
dividing the Courts of Appeals. Further "percolation" of these questions "is of little value" when lower courts are already misapplying this Court's Second Amendment precedents. *Snope*, 145 S. Ct. at 1538 (Thomas, J. dissenting denial of cert.). Yet until this Court is vigilant about enforcing it, the right to bear arms will remain a "second class right". *McDonald v. Chicago,* 561 U.S. 742, 780 (2010). England's Petition should be granted.

Respectfully submitted,

MATTHEW ENGLAND

By Counsel

WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER



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Jonathan D. Byrne
Appellate Counsel

Dated: January 28, 2026.

APPENDIX

TABLE OF APPENDICES

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-4130

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MATTHEW HARRIS ENGLAND,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Frank W. Volk, Chief District Judge. (5:23-cr-00093-1)

Submitted: September 25, 2025 Decided: October 31, 2025

Before QUATTLEBAUM, Circuit Judge, and TRAXLER and KEENAN, Senior Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Wesley P. Page, Federal Public Defender, Jonathan D. Byrne, Lex A. Coleman, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. Lisa G. Johnston, Acting United States Attorney, Lesley Shamblin, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In 2023, a federal grand jury charged Matthew Harris England with possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(8) (Count 1), and possession of an unregistered short-barreled shotgun, in violation of the National Firearms Act (NFA), 26 U.S.C. §§ 5841, 5861(d), 5871 (Count 2). England moved to dismiss the indictment, arguing that both charged counts violated the Second Amendment in light of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). After the district court denied England's motion, he pled guilty, without a plea agreement, to both counts. The district court sentenced him to 20 months' imprisonment, to be followed by three years of supervised release.[1] On appeal, England reiterates his Second Amendment challenges.

As a preliminary matter, the Government argues that by entering an unconditional guilty plea, England waived the right to raise his as-applied constitutional challenges. "It is the general rule that when a defendant pleads guilty, he waives all nonjurisdictional defects in the proceedings conducted prior to entry of the plea, and thus has no non-jurisdictional ground upon which to attack that judgment except the inadequacy of the plea." *United States v. Lozano*, 962 F.3d 773, 778 (4th Cir. 2020) (citation modified). But in *Class v. United States*, 583 U.S. 174, 178 (2018), the Supreme Court made clear that a

[1] England's March 2025 release from prison does not render this appeal moot, as he is challenging his convictions—rather than his sentence—and because he still has to serve his supervised release term. *See United States v. Ketter*, 908 F.3d 61, 65-66 (4th Cir. 2018) (discussing applicability of mootness doctrine in criminal appeals).

"guilty plea by itself [does not] bar[] a federal criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal." This is so, the Court explained, because such claims "challenge the Government's power to criminalize [a defendant's] (admitted) conduct. They thereby call into question the Government's power to constitutionally prosecute him." *Id.* at 181-82 (citation modified).

The parties disagree as to whether as-applied constitutional challenges fall within the general rule, or within the *Class* exception. But because England concedes that his claims fail on the merits, "we need not resolve that issue." *See United States v. Pittman*, 125 F.4th 527, 531 (4th Cir. 2025) (observing that "it could be argued that [the defendant's] unconditional guilty plea . . . waived any as-applied constitutional challenges" but instead reviewing claim—which defendant forfeited by failing to raise in the district court—under applicable plain error standard).

Turning to the merits, "when reviewing the denial of a defendant's motion to dismiss an indictment, we review the district court's legal conclusions de novo and its factual findings for clear error." *United States v. Skinner*, 70 F.4th 219, 223 (4th Cir. 2023) (citation modified). *Bruen* instructs that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24 (citation modified). Thus, under *Bruen*'s two-step inquiry, the Court first "must ask whether the Second Amendment's plain text covers the conduct at issue. If not, that ends the inquiry: the

Second Amendment does not apply." *United States v. Price*, 111 F.4th 392, 398 (4th Cir. 2024) (en banc) (citation modified), *cert. denied*, 145 S. Ct. 1891 (2025).

England concedes that his challenges to Count 1 are foreclosed by *United States v. Canada*, 123 F.4th 159 (4th Cir. 2024), and *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024). In *Canada*, we reaffirmed that § 922(g)(1) is facially constitutional. 123 F.4th at 160-62. In *Hunt*, "we conclude[d] that neither *Bruen* nor *Rahimi*[2] abrogates this Court's precedent foreclosing as-applied challenges to Section 922(g)(1)" and, in the alternative, "that Section 922(g)(1) would pass constitutional muster even if we were unconstrained by circuit precedent." 123 F.4th at 702.

England further concedes that his challenges to Count 2 are resolved by *United States v. Miller*, 307 U.S. 174 (1939), and *Price*, 111 F.4th 392. In *Miller*, the Supreme Court considered a challenge to the constitutionality of § 5861(d)'s predecessor and reasoned, "in the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." 307 U.S. at 178 (citation modified). The Court later interpreted this holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008), observing that "*Miller* stands . . . for the proposition that the Second Amendment right, whatever its nature, extends only to certain types of weapons," *id.* at 623, and that "the Second Amendment does not protect

[2] *United States v. Rahimi*, 602 U.S. 680 (2024).

those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns," *id.* at 625. And we are bound by *Price*, which affirmed that "[n]othing in *Bruen* abrogated *Heller*'s extensive discussion of the contours of the scope of the right enshrined in the Second Amendment." 111 F.4th at 400.

The district court therefore properly denied England's motion to dismiss the indictment. Accordingly, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT BECKLEY

UNITED STATES OF AMERICA

v. CRIMINAL ACTION NO. 5:23-cr-00093

MATTHEW HARRIS ENGLAND

MEMORANDUM OPINION AND ORDER

Pending are Defendant Matthew Harris England's objections [ECF Nos. 62, 67] to Magistrate Judge Aboulhosn's Proposed Findings and Recommendation, filed May 19, 2024, and June 20, 2024.[1]

I.

The Court is required "to make a de novo determination of those portions of the report or specified findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The Court need not, however, conduct de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

II.

On June 1, 2023, a two-count Indictment [ECF 1] was returned against Mr. England, charging him with being a felon in possession of a firearm, in violation of 18 U.S.C. §§

[1]Also pending is the Government's Motion to File Response to Defendant's Supplemental Objection. The Court **GRANTS** the Motion [**ECF 68**] and considers the Government's response [**ECF 69**] herein.

922(g)(1) and 924(a)(8), and knowingly receiving and possessing an unregistered firearm, namely a short-barreled shotgun, in violation of 26 U.S.C. §§ 5841, 5861(d), and 5871.

On May 6, 2024, Mr. England moved to dismiss the Indictment [ECF 56], contending the charging statutes are unconstitutional under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). The Motion was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R").

On May 14, 2024, Magistrate Judge Aboulhosn recommended the Court deny the Motion. [ECF 61]. Magistrate Judge Aboulhosn concluded neither 18 U.S.C. § 922(g)(1), nor 26 U.S.C. §§ 5841, 5861(d), and 5871 are unconstitutional. Respecting Section 922(g)(1), the Magistrate Judge reiterated Courts in this District have previously concluded, on numerous occasions, it does not contravene the Second Amendment. *See*, *e.g.*, *United States v. Bever*, 669 F. Supp. 3d 578 (S.D.W. Va. 2023) (Faber, J.); *United States v. Bradley*, No. 2:22-cr-00098, 2023 WL 2621352, at *2 (S.D.W. Va. Mar. 23, 2023) (Berger, J.); *United States v. Manns*, No. 5:22-cr-00066, 2023 WL 312130, at *3 (S.D.W. Va. Apr. 27, 2023) (Volk, J.); *United States v. Bolling*, No. 2:21-cr-00087, 2023 WL 4874482, at *5 (S.D.W. Va. Jul. 31, 2023) (Faber, J.); *United States v. Nellum-Toney*, No. 2:23-cr-00034, 2023 WL 6449443, at *5 (S.D.W. Va. Oct. 3, 2023) (Faber, J.); *United States v. Price*, No. 2:22-cr-00097, 2022 WL 6968457, at *8 (S.D.W. Va. Oct. 12, 2022) (Goodwin, J.).

Additionally, as recognized by Mr. England, our Court of Appeals recently reached the same conclusion in *United States v. Canada*, 103 F.4th 257, 258 (4th Cir. 2024), holding "Section 922(g)(1) is facially constitutional because it 'has a plainly legitimate sweep' and may constitutionally be applied in at least *some* 'set of circumstances.'" *Id*. (emphasis in original)

(quoting *Washington State Grange v. Washington State Republican Party*, 522 U.S. 442, 449 (2008)). Our Court of Appeals supplied a non-exhaustive list of convictions falling into such "circumstances," such as "people who have been convicted of a drive-by shooting, carjacking, armed bank robbery, or even assassinating the President of the United States." *Id*. The Court went on to explain as follows:

> Whether the proper analysis focuses on the definition of the "people," the history of disarming those who threaten public safety, *Heller's* and *Bruen's* assurances about longstanding prohibitions, or circuit precent, the answer remains the same: the government may constitutionally forbid people who have been found guilty of such acts from continuing to possess firearms. That ends this facial challenge.

Id. at 258-59. Nonetheless, the Court "assumme[d] for the sake of argument" there is yet "*some* room for as-applied challenges to Section 922(g)(1)." *Id*. at 258 (emphasis in original) (internal citations and quotations omitted). In light of *Canada*, Mr. England now asserts in his supplemental objections an as-applied challenge pursuant to *Bruen*. Specifically, he contends his felony convictions triggering his prohibited status under Section 922(g)(1) are non-violent thus rendering Section 922(g)(1) unconstitutional as applied to him. The Court disagrees.

According to the Pretrial Services Report, Mr. England has felony convictions for grand larceny and aiding and abetting the possession of stolen firearms. [ECF 24]. His grand larceny conviction resulted from him robbing a tobacco store of $4,464.20 while brandishing a firearm. His aiding and abetting conviction resulted from the burglary of a sporting goods store where he stole fourteen firearms, various ammunition, and a small sum of currency. Such convictions are no less dangerous to the public than those supplied in *Canada's* non-exhaustive list of convictions to which Section 922(g)(1) is constitutionally applied.

Respecting §§ 5841, 5861(d), and 5871, in a well-reasoned analysis, Magistrate Judge Aboulhosn concluded these statutes and the restrictions they impose on the ownership of

certain firearms do not offend the Second Amendment, to which Mr. England objects. Specifically, Magistrate Judge Aboulhosn explained "[w]hile *Bruen* changed the legal landscape as to assessing the constitutional validity of firearm regulations, it did not wholesale find restrictions or criminalization of firearm possession unconstitutional." [ECF 61 at 12]. Magistrate Judge Aboulhosn further explained *Bruen* did not overturn the prior Supreme Court ruling in *United States v. Miller*, 307 U.S. 174, 178 (1939), wherein the Court held that "the protections afforded under the Second Amendment did not extend to the right to keep and bear a 'shotgun having a barrel of less than eighteen inches in length,'" [ECF 61 at 10 (quoting *Miller*, 307 U.S. at 178)], which was subsequently reaffirmed in *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). Furthermore, as recognized by Magistrate Judge Aboulhosn, the *Bruen* Court itself noted as follows:

> [A]s *Heller* and *McDonald* established and the Court today again explains, the Second Amendment "is neither a regulatory straightjacket nor a regulatory blank check." *Ante*, at 2133. Properly interpreted, the Second Amendment allows a "variety" of gun regulations. *Heller*, 554 U. S. at 636, 128 S.Ct. 2783. As Justice Scalia wrote in his opinion for the Court in *Heller*, and Justice Alito reiterated in relevant part in the principal opinion in *McDonald*:
>
> > "Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . .[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of fire-arms by felons . . . or laws imposing conditions and qualifications on the commercial sale of arms.[]
> >
> > "We also recognize another important limitation on the right to keep and carry arms. Miller said, as we have explained, that the sorts of weapons protected were those in common use at the time. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons." *Heller*, 554 U.S. at 626−627, and n. 26 (citations and quotation marks omitted); *see also McDonald*, 561 U.S. at 786, 130 S.Ct. 3020 (plurality opinion).

Bruen, 597 U.S. at 17 (Kavanaugh, J., concurring).

Having considered Mr. England's objections, the Magistrate Judge's thorough analysis, along with the analyses of the numerous courts to consider the issue -- *see, e.g.*, *United States v. Holton*, 639 F. Supp. 3d 704 (N.D. Tex. 2022) (finding Section 5861(d) constitutional inasmuch as the National Firearms Act regulates dangerous and unusual weapons, not protected conduct); *United States v. Brooks*, 2023 WL 6880419, at *4 (E.D. Ky. Oct. 18, 2023) (finding Section 5861 constitutional following *Bruen* inasmuch as the same "does not prohibit the unregistered possession of all firearms" but merely regulates "unregistered possession of 'unusual or dangerous' firearms," which "fall outside the Second Amendment's scope"); *United States v. Miller*, 2023 WL 6300581, at *3-4 (N.D. Tex. Sep. 27, 2023) (denying motion to dismiss charges under 26 U.S.C. §§ 5841, 5861(d), and 5871 as unconstitutional following *Bruen* inasmuch as "short-barreled rifles are dangerous and unusual weapons" unprotected by the Second Amendment); *United States v. Rush*, 2023 WL 403774. At *2 (S.D. Ill. Jan. 25, 2023) (finding Section 5861(d) constitutional inasmuch as *Bruen* did not alter the exclusion of "dangerous and unusual firearms," such as short-barreled rifles and shotguns, "from Second Amendment protection") -- the Court finds no error in the Magistrate Judge's conclusion that §§ 5841, 5861(d), and 5871 do not run afoul of the Second Amendment.

Without unnecessarily belaboring the matter, Mr. England's contentions are also decisively undermined by the Supreme Court's most recent Second Amendment iteration. *See United States v. Rahimi*, 144 S. Ct. 1889, 1897 (2024) ("At the founding, the bearing of arms was subject to regulations ranging from rules about firearm storage to restrictions on gun use by drunken New Year's Eve revelers. Some jurisdictions banned the carrying of 'dangerous and unusual weapons.'").

III.

Based on the foregoing discussion, the Court **OVERRULES** Mr. England's objections [**ECF 62, 67**], **ADOPTS** the Magistrate Judge's PF&R [**ECF 61**], and **DENIES** Mr. England's Motion to Dismiss Indictment [**ECF 52**].

The Clerk is directed to send a copy of this written opinion and order to the Defendant and counsel, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTER: July 30, 2024

Frank W. Volk
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BECKLEY DIVISION

UNITED STATES OF AMERICA

v. CRIMINAL ACTION NO. 5:23-cr-00093

MATTHEW HARRIS ENGLAND

ORDER

On May 13, 2024, the parties came before the undersigned for a hearing concerning the ***Defendant's Bruen-Based Motion to Dismiss*** (ECF No. 52), the ***Response of United States in Opposition to Defendant's Bruen-Based Motion to Dismiss*** (ECF No. 56), the ***Defendant's Bruen Motion Reply & Supplemental Authorities*** (ECF No. 57), as well as the ***Defendant's Supplemental Bruen Reply*** (ECF No. 58). For the reasons stated herein, the Court finds that the Defendant's motion should be **DENIED**.

Background

The Defendant was charged with possession of a firearm that was not registered to the Defendant, a convicted felon, in the National Firearms Registration and Transfer Record, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8), and 26 U.S.C. §§ 5841, 5861(d), and 5871 in an indictment returned on June 1, 2023 (ECF No. 1). The two-count indictment charges that, on or about April 3, 2023, at or near Meadow Bridge, Summers County, West Virginia, the Defendant knowingly received and possessed a firearm, a Savage, model Stevens 94F, 20-gauge shotgun, having a modified barrel length of less than 18 inches and an overall length of less than 26 inches. The indictment further alleges that at the time the Defendant possessed the firearm, he knew that

he had been previously convicted of a crime punishable by imprisonment for a term exceeding one year, as defined in 18 U.S.C. § 921(a)(20), that is, convicted on or about May 9, 2014 in the United States District Court for the Southern District of West Virginia, criminal case number 2:14-cr-00030-01, of aiding and abetting the possession of stolen firearms, in violation of 18 U.S.C. §§ 922(j) and 924(a)(2).

Neither party disputes the fact that the Defendant possessed a firearm, or that he was convicted felon. However, the Defendant asks this Court to dismiss the indictment returned against him on the basis of the opinion set forth in New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022) concerning Second Amendment challenges to gun regulations.

As an initial matter, the undersigned observes that this District has previously determined numerous times that 18 U.S.C. § 922(g)(1) is constitutional.[1] Therefore, the undersigned will not belabor that segment of the Defendant's arguments, but instead focuses on the issue concerning the constitutionality of 26 U.S.C. §§ 5841, 5861(d), 5871, which appears to be a matter of first impression in this District.

Legal Standard

Rule 12(b)(3)(B)(v) of the Federal Rules of Criminal Procedure establishes that a court may dismiss a defective indictment for failure to state an offense where the indictment alleges the defendant violated an unconstitutional statute. *U.S. v. Price*, No. 2:22-cr-00097, 635 F.Supp.3d

[1] See, e.g., *United States v. Price*, No. 2:22-cr-00097, 2022 WL 6968457, at *8 (S.D.W. Va. Oct. 12, 2022)(Goodwin, J.); *United States v. Bradley*, No. 2:22-cr-00098, 2023 WL 2621352, at *2 (S.D.W. Va. Mar. 23, 2023)(Berger, J.); *United States v. Bever*, No. 2:22-cr-00164, 669 F.Supp.3d 578 (S.D.W. Va. Apr. 18, 2023)(Faber, J.); *United States v. Manns*, No. 5:22-cr-00066, 2023 WL 312130, at *3 (S.D.W. Va. Apr. 27, 2023)(Volk, J.); *United States v. Nellum-Toney*, No. 2:23-cr-00034, 2023 WL 6449443, at *5 (S.D.W. Va. Oct. 3, 2023)(Faber, J.); *United States v. Bolling*, No. 2:21-cr-00087, 2023 WL 4874482, at *5 (S.D.W. Va. Jul. 31, 2023)(Faber, J.).

455, 457–458 (S.D.W. Va. Oct. 12, 2022)(citing U.S. v. Engle, 676 F.3d 405, 415 (4th Cir. 2012)(Goodwin, J.); U.S. v. Brown, 715 F. Supp. 2d 688, 689 (E.D. Va. 2010) (citing In re Civil Rights Cases, 109 U.S. 3, 8–9, 3 S.Ct. 18, 27 L.Ed. 835 (1883)); U.S. v. Vandevere, 2019 WL 4439483, at *1 n.1 (W.D.N.C. Sep. 16, 2019). "To warrant dismissal of the indictment, [the defendant] would need to demonstrate that the allegations therein, even if true, would not state an offense." U.S. v. Thomas, 367 F.3d 194, 197 (4th Cir. 2004)(citing U.S. v. Hooker, 841 F.2d 1225, 1227–28 (4th Cir. 1988)(*en banc*)).

Arguments

The Defendant contends that pursuant to Bruen, which instructs courts to consider only the Second Amendment's plain text and history, that if the Second Amendment covers an individual's conduct, then the Constitution presumptively protects that conduct. (ECF No. 52 at 1) Further, the Defendant asserts that because possession of a firearm falls within the Second Amendment's plain text, thus, his conduct is presumptively protected, and it is the government's burden to rebut that presumption. (Id.) The Defendant argues that in this case, not only there is no well-established and representative historical tradition of permanently disarming convicted felons, but also no separate prohibition of possessing short-barrel firearms or conditioning Second Amendment protections for such arms on the payment of transfer taxes. (Id.)

The Defendant explains that the firearm seized from his residence is a 1966 Savage Arms, Stevens Model 94F, 20-gauge shotgun, which had portions of both the barrel and stock removed: the Defendant himself did not alter this firearm in any way, and does not dispute that it is a weapon made from a shotgun, as defined under the National Firearms Act ("NFA"), but attributes it as a "family gun" that belonged to his deceased father. (Id. at 6) As to the charges against him in this

indictment, the Defendant notes that all NFA firearms are required to be registered with the National Firearm Registration and Transfer Record ("NFRTR"), with the underlying purpose of the NFA to curtail, if not prohibit, transactions in NFA firearms – in short, those NFA provisions relevant to the Defendant make it unlawful to possess a firearm not registered to him in the NFRTR. (Id. at 7)

The Defendant points out that prior to Bruen, courts employed a "means-end scrutiny" to assess the government's interest in firearm restrictions against a challenger's interest in exercising the right to keep and bear arms – however, Bruen has dispensed with means-end scrutiny, and all modern federal firearm regulations are now subject to reexamination under the Second Amendment, using Bruen's plain text and history standard. (Id. at 23-24) This pertains to all the charging statutes against the Defendant; Bruen provides that the Second Amendment's plain text covers an individual's conduct, irrespective of who that individual is, "or what bearable arm they possess – the Constitution presumptively protects that conduct." (Id. at 25) Bruen holds that the government must demonstrate that the firearm regulation is consistent with this Nation's historical tradition of firearm regulation . . . [o]nly if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' " (Id., quoting Bruen, at 17, 2126)

The Defendant contends that the Second Amendment "does not distinguish between law abiding and non-law-abiding citizens, convicted felons and non-convicted felons, or citizens favored or disfavored by a given Congress." (Id. at 25-26) The Second Amendment plainly states that "the right of the people to keep and bear arms shall not be infringed" which a growing number of courts have found since Bruen is limited to the protected "conduct" of possessing and carrying

bearable arms, and that "the people" include individuals like the Defendant. (Id. at 26-28) Consequently, the Defendant enjoys Second Amendment protections the same as any other citizen. (Id. at 28)

Regarding the subject firearm, the Defendant's modified Stevens Model 94F shotgun, the Supreme Court of the United States had determined prior to Bruen that a textual analysis of the Second Amendment's operative clause makes clear that "arms" means "all firearms", not just those Congress believes should be regulated. See District of Columbia v. Heller, 554 U.S. 570, 581, 128 S.Ct. 2783, 2791, 171 L.Ed.2d 637 (2008). (Id. at 28-29) The Defendant notes that Heller's textual analysis of the Second Amendment underscores that there is no mention of "common use." (Id. at 29) Following the Bruen decision, the Government is required to rebut the presumption of unconstitutionality: in this case, not only does the Defendant enjoy Second Amendment protections for his conduct possessing his father's modified firearm in his residence for self-defense purposes, but also, this firearm is also no more dangerous and unusual than the Mossberg Shockwave, which is an ATF approved non-NFA firearm in common use today.[2] (Id. at 29-31)

Applying the presumption of unconstitutionality established under Bruen, the Government must show evidence that a well-established, representative tradition of firearm regulation exists that not only supports disarming felons, but also for separately taxing and criminally regulating

[2] From field testing, the Defendant contends that the firearm seized from his home is comparable to other firearms that are ***non***-NFA, legal firearms, such as a shoulder-fired Remington Model 870 Wingmaster 20-gauge shotgun, and a Mossberg 590 20-gauge Shockwave (See ECF No. 52 at 15-22). The Defendant's expert has determined from his testing that the Defendant's modified Stevens Model 94F 20-gauge shotgun is not functionally different from the 20-gauge Mossberg Shockwave, which is sold legally in the United States without NFA registration since 2017 (Id. at 17). Because the Defendant's firearm is "no more dangerous, lethal, or easily concealed" than the Mossberg weapon, under the auspices of Bruen, it is unconstitutional that the Defendant is facing a felony conviction and up to a ten-year prison sentence for possessing a weapon that has absolutely no functional significance from another weapon currently sold in the United States without NFA registration. (Id.)

short barrel shotguns. (Id. at 31) The Defendant asserts there is none, and asks this Court to follow the framework established by Bruen which supports a finding that Section 922(g)(1) and Sections 5841, 5861(d), and 5871 are unconstitutional, and dismiss the indictment against him. (Id.)

In response, the United States asserts that Bruen did not abrogate the longstanding prohibition on the possession of short-barreled shotguns recognized by United States v. Miller, 307 U.S. at 178. (ECF No. 56 at 10-11). The United States argues that the Defendant's claims that his firearm, which has a shortened stock, shortened barrel and "appears to be held together with electrical tape and deck screws, is no less dangerous or unusual than a shotgun that has not been so modified, or the Mossberg Shockwave and other similar firearms that have similar features as a shotgun but are designed to be handheld rather than fire from the shoulder, are essentially meaningless against Miller's backdrop." (Id. at 11) The United States points out that Fourth Circuit jurisprudence since 1992 has consistently found that NFA regulations surrounding such firearms proper, as they found such to be dangerous and unusual, and typically used by persons engaged in unlawful activities. (Id. at 11-12) Moreover, the United States contends that even the Defendant's expert's report failed to acknowledge the potential uses for the Mossberg Shockwave do not include use as a concealed carry weapon or inflicting deadly violence to others, which are reasons why the NFA weapons are subject to additional regulations. (Id. at 12) The United States further highlights that the difference between the Defendant's firearm and the Mossberg Shockwave is three-to-four inches, which underscores the concealability for such a firearm – further, even considering the Defendant's purported statistics as to registration with the NFA for shotguns having a barrel or barrels less than eighteen inches in length, the numbers for same are significantly lower than other types of NFA weapons, indicating short-barreled shotguns are not particularly

common in the United States. (Id. at 12-13) Also, in light of the Bruen framework, which mandates courts to examine whether modern or historical regulations impose a comparable burden on the right of armed self-defense, and whether that burden is comparably justified, the United States notes that the Miller Court identified several Founding-era laws providing that weapons for use in military service required firearms to be no less than a certain length, which are analogous to the restrictions imposed by the NFA. (Id. at 13-14) In short, the NFA does not endorse a blanket prohibition of firearms, even short-barreled ones, it merely requires registration of certain weapons with characteristics that make them particularly dangerous – it does not require a person to show a special need for such firearms, which is the discretionary statute that came under fire in Bruen. (Id. at 14) At bottom, the Defendant, a convicted felon, simply cannot possess a short-barreled shotgun even it had been properly registered to him. (Id. at 15) The United States asks the Court to deny the Defendant's motion because his conduct falls outside the Second Amendment's protections. (Id.)

In further support of his motion to dismiss, the Defendant submitted two reply briefs: first, he notes that the United States' arguments that the Second Amendment's protections do not extend to him just because he is a not a law-abiding citizen, and that the weapon seized from his residence is dangerous and unusual, have been rejected by an increasing number of courts nationwide. (ECF No. 57 at 1-2) The Defendant disputes the United States' assertion that Miller found short-barreled shotguns dangerous, and Heller did not recognize any textual or historical regulatory basis for that observation. (Id. at 2). Bruen does not distinguish between a partial or total burden upon Second Amendment conduct – what matters here is that NFA provisions plainly burden protected conduct, and the Defendant's weapon is not any more dangerous and unusual from similar weapons sold

today without the additional burden imposed by the NFA. (Id. at 3) Because the presumption of unconstitutionality under Bruen's step one has been triggered, and the United States has failed to show a historical firearm regulation that justifies these modern restrictions, the presumption under Bruen's step two fails. (Id. at 4-5)

In his supplemental reply brief, the Defendant observes the United States does not rebut the presumption of unconstitutionality under Bruen's step two by showing the Defendant's weapon is somehow dangerous and unusual. (ECF No. 58 at 1) While his weapon is four inches shorter than the Mossberg Shockwave, this makes no functional difference between the weapons in terms of dangerousness, lethality, or concealability. (Id. at 2; see also ECF No. 60-1) The focus here is on the historical tradition or understanding of the Second Amendment, and since the plain text of the Second Amendment does not include the terms "in common use" or "dangerous and unusual", the burden is on the United States to identify historical regulations from colonial times to justify laws regulating such firearms today. (Id. at 3) The United States' argument runs contrary to Bruen's step two historical analysis, and is essentially asserting because the NFA imposes certain restrictions or regulations governing short barrel shotguns, then the regulation is constitutional – in short, "[a] law's existence cannot be the source of it's own constitutional validity."[3] (Id. at 4-5)

Discussion

Both parties observe that the Supreme Court rejected the two-part test in favor of greater focus on a historical analysis of acceptable forms of gun regulation. Bruen, 597 U.S. at 17, 142 S.Ct. at 2126. The Court held that "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation

[3] Quoting Friedman v. City of Highland Park, Illinois, 784 F.3d 406, 409 (7th Cir. 2015). (Id. at 5)

is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' " Id. Moreover, since pre-Bruen cases relied in part upon the means-ends scrutiny rejected in Bruen, the Defendant encourages the Court to disregard those precedents and embrace a thorough exploration of this Nation's history to challenge the constitutional legitimacy of 18 U.S.C. § 922(g), as well as 26 U.S.C. §§ 5841, 5861(d), and 5871.

Of interest here, the NFA provides that: "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 NFA further provides that "[a]ny person who violates or fails to comply . . . shall, upon conviction, be fined not more than $10,000, or be imprisoned not more than ten years, or both." 26 U.S.C. § 5871. The NFA states:

> The term "firearm" means . . . (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 . . . [t]he term "firearm" shall not include an antique firearm or any device (other than a machine gun 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.

26 U.S.C. § 5845(a).

To lawfully possess the firearms identified by the NFA, the Act requires individuals to register their firearms in the NFRTR. 26 U.S.C. § 5841(b). To register, any "manufacturer, importer, [ ] maker" and transferor must file an application with the Secretary of the Treasury that includes: (1) the proper stamp evidencing payment of the $200 tax; (2) identification for the firearm to be registered; and (3) identification of the applicant (if the firearm is being transferred, the application must identify both the transferor and the transferee), including fingerprints and a

photograph. 26 U.S.C. §§ 5811, 5812, 5821, 5822. However, the NFA establishes that the Secretary will deny an application if the making, transfer, receipt, or possession "of the firearm would place the person making the firearm [or the transferee] in violation of the law." 26 U.S.C. §§ 5812, 5822.

There is no dispute that the Defendant's firearm falls within the NFA's definition, and neither party advances the exception that it is an "antique" or a "collector's item" or is "not likely to be used as a weapon" – indeed, the Defendant indicated his modified Stevens Model 94F 20-gauge shotgun is for self-defense purposes in his home. There is also no dispute the Defendant did not register his firearm with the NFRTR.

It is significant that Bruen did not overturn a prior Supreme Court ruling that the protections afforded under Second Amendment did not extend to the right to keep and bear a "shotgun having a barrel of less than eighteen inches in length." United States v. Miller, 307 U.S. 174, 178, 59 S.Ct. 816, 83 L.Ed. 1206 (1939). Bruen did not overturn the reaffirmation of that holding in Heller, either: "We therefore read Miller to say only 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 625, 128 S.Ct. 2783. It is also relevant here that the Bruen Court noted:

> [A]s Heller and McDonald established and the Court today again explains, the Second Amendment "is neither a regulatory straightjacket nor a regulatory blank check." *Ante*, at 2133. Properly interpreted, the Second Amendment allows a "variety" of gun regulations. Heller, 554 U. S. at 636, 128 S.Ct. 2783. As Justice Scalia wrote in his opinion for the Court in Heller, and Justice ALITO reiterated in relevant part in the principal opinion in McDonald:
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> > "Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a

> right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . .[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of fire-arms by felons . . . or laws imposing conditions and qualifications on the commercial sale of arms.[]
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> "We also recognize another important limitation on the right to keep and carry arms. Miller said, as we have explained, that the sorts of weapons protected were those in common use at the time. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons." Heller, 554 U.S. at 626−627, and n. 26 (citations and quotation marks omitted); see also McDonald, 561 U.S. at 786, 130 S.Ct. 3020 (plurality opinion).

See Bruen at 597 U.S. at 17, 142 S.Ct. at 2126 (Kavanaugh, J., concurring). While the undersigned acknowledges the Defendant's argument that short-barreled shotguns existed, in some form or another (i.e., blunderbuss), at the time the Second Amendment's drafting, and was in "common use" at the time[4], as it is still is today (i.e., Mossberg Shockwave), this still ignores the notion that short-barreled shotguns are not necessarily recognized for self-defense purposes in modern times: many courts have found that *handguns* are recognized as the class of weapons deserving of protection for self-defense, not necessarily short-barreled shotguns, which enjoy a history of being noted as the tool for criminal purposes. See, e.g., United States v. Saleem, 659 F.Supp.3d 683, 693-694 (W.D.N.C. Mar. 2, 2023).

To expand on this, other courts have even found that even since Bruen, 26 U.S.C. § 5861(d) does not offend the Second Amendment: United States v. Brooks, 2023 WL 6880419 (E.D. Kentucky Oct. 18, 2023)(denying defendant's motion to dismiss indictment charging him with violation of 18 U.S.C. § 922(g)(1), 26 U.S.C. §§ 5841, 5861(d), and 5871, holding the defendant's

[4] Bruen, at U.S. 597 at 21, 142 S.Ct. at 2128 (quoting Heller, 554 U.S. at 627, 128 S.Ct. at 2783 (quoting Miller, 307 U.S. at 179, 59 S.Ct. at 818).

conduct of failing to register a short-barreled shotgun is outside the scope of the Second Amendment because it is an "unusual or dangerous" firearm); United States v. Rush, 2023 WL 403774 (S.D. Ill. Jan. 25, 2023)(Section 5861(d) constitutional because precedent establishes short-barreled shotguns are dangerous and unusual weapons unprotected by the Second Amendment); United States v. Holton, 639 F.Supp.3d 704 (N.D. Tex. Nov. 3, 2022)(holding Section 5861(d) constitutional because the NFA regulates dangerous and unusual weapons but not protected conduct); United States v. Miller, 2023 WL 6300581 (N.D. Tex. Sep. 27, 2023)(denying motion to dismiss charges under 26 U.S.C. §§ 5841, 5861(d), and 5871 as unconstitutional following Bruen); United States v. Jones, 2023 WL 8374409 (S.D. Alabama Dec. 3, 2023)(holding 26 U.S.C. § 5861(d) is not protected activity under Second Amendment, but falls under the NFA, and thus not unconstitutional)[5]; see also, United States v. Hoover, 635 F.Supp.3d 1305 (M.D. Fla. Oct. 18, 2022); United States v. Fencl, 2022 WL 17486363 (S.D. Cal. Dec. 7, 2022). Bruen also recognized that background checks did not offend the U.S. Constitution, which constitutes a restriction or burden of sorts governing firearm possession, and also demonstrates that the Supreme Court acknowledged that the Second Amendment was not unlimited.[6]

While Bruen changed the legal landscape as to assessing the constitutional validity of firearm regulations, it did not wholesale find restrictions or criminalization of firearm possession unconstitutional.[7] While the undersigned appreciates the Defendant's concerns surrounding the

[5] It is noted this case is pending appeal before the 11th Circuit Court of Appeals.

[6] Moreover, the Supreme Court expressly noted that states maintain the right under the U.S. Constitution to require gun licenses for lawful possession. Id. at 597 U.S. at 38, 142 S.Ct. at 2138, fn 9.

[7] During the hearing, counsel for the Defendant advised the Court that those decisions concerning the constitutionality dispensed with the Bruen mandate to analyze the historical tradition behind Title 26 statutes, by simply finding because the Government met its burden at step one, the other statutes were constitutional. Counsel conceded, however, there were no other courts or case law he could identify that supported a finding that the pertinent statutes here under Title

additional charging statutes under Title 26 as being burdensome to his protected conduct under the Second Amendment, the undersigned observes the Defendant, in this District, does not have the benefit of protected conduct of possessing a firearm, be it a short-barreled shotgun or even a handgun, because he remains a convicted felon. In short, the Defendant could not legally register his modified shotgun regardless.

For the reasons set forth above, the Court **DENIES** the ***Defendant's Bruen-Based Motion to Dismiss*** (ECF No. 52).

Because of the imminency of trial, and in the event that the parties intend to object to the undersigned's ruling on this particular issue, the undersigned finds that an expedited timeframe for filing objections is necessary pursuant to Rule 59(b) of the Federal Rules of Criminal Procedure governing rulings on dispositive motions.[8] Accordingly, this ruling may be contested by filing objections with District Judge Frank W. Volk no later than **Monday, May 20, 2024.** Any response to any objections will be due no **later three (3) business days** following the filling of any objections and any replies must be filed **within two (2) business days** thereafter. If objections are filed, the District Court will consider the objections and modify or set aside any portion of the Order found clearly erroneous or contrary to law.

The Clerk is directed to send a copy of this Order to the Defendant, Counsel for Defendant, and to the Assistant United States Attorney.

ENTER: May 14, 2024.

Omar J. Aboulhosn
United States Magistrate Judge

26 were unconstitutional since Bruen. To be fair, neither has the undersigned.

[8] Objections to rulings on dispositive motions typically are to be filed within 14 days. As the modified schedule provides, all pleadings regarding objections will be fully briefed no later than the end of business on May 28, 2024.

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA
v.
MATTHEW HARRIS ENGLAND

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:23-cr-00093

USM Number: 12179-088

Lex A. Coleman
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) Counts One and Two of the 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.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	Felon in Possession of a Firearm	4/3/2023	1
26 U.S.C. §§ 5841, 5861(d), and 5871	Possession of an Unregistered Short-Barrel Shotgun	4/3/2023	2

The defendant is sentenced as provided in pages 2 through 8 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.

It is ordered that the defendant must 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 must notify the court and United States attorney of material changes in economic circumstances.

February 14, 2025
Date of Imposition of Judgment

Frank W. Volk
Frank W. Volk
Chief United States District Judge

February 24, 2025
Date

DEFENDANT: MATTHEW HARRIS ENGLAND
CASE NUMBER: 5:23-cr-00093

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Twenty (20) months as to Count 1, Twenty (20) months as to Count 2, to run concurrently

*The court did not specifically state the concurrent sentences during the oral imposition. If counsel and the defendant desire for the Court to reconvene in order to correct the matter, it will do so on proper motion filed no later than March 5, 2025.

☑ The court makes the following recommendations to the Bureau of Prisons:
The Defendant should (1) receive a full mental and physical evaluation upon arrival at the designated facility, (2) participate in mental health treatment, and (3) be incarcerated as close as possible to his family in West Virginia.

☑ 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.

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

DEFENDANT: MATTHEW HARRIS ENGLAND
CASE NUMBER: 5:23-cr-00093

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Three (3) years as to Count 1, Three (3) years as to Count 2, to run concurrently

*The court did not specifically state the concurrent sentences during the oral imposition. If counsel and the defendant desire for the Court to reconvene in order to correct the matter, it will do so on proper motion filed no later than March 5, 2025.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: MATTHEW HARRIS ENGLAND
CASE NUMBER: 5:23-cr-00093

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer, but may decline to do so if you believe it will incriminate you.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: MATTHEW HARRIS ENGLAND
CASE NUMBER: 5:23-cr-00093

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

91. In addition to the above Standard Conditions of supervised release, the defendant is subject to the following six Additional Standard Conditions pursuant to Local Rule of Criminal Procedure 32.3, as adopted by the Judges of this District.

92. If the defendant is unemployed, the probation office may direct the defendant to register and remain active with Workforce West Virginia.

93. Defendants shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Defendants shall not use any method or device to evade a drug screen.

94. As directed by the probation officer, the defendant will make co-payments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.

95. A term of community service is imposed on every defendant on supervised release or probation. Fifty hours of community service is imposed on every defendant for each year the defendant is on supervised release or probation. The obligation for community service is waived if the defendant remains fully employed or actively seeks such employment throughout the year.

96. The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers), and shall reside in a residence free from such items.

97. The defendant shall not purchase, possess, or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids, or other designer stimulants.

DEFENDANT: MATTHEW HARRIS ENGLAND
CASE NUMBER: 5:23-cr-00093

SPECIAL CONDITIONS OF SUPERVISION

98. In addition to the above Mandatory and Standard Conditions of supervised release, the probation officer recommends that the defendant be subject to the following Special Conditions of supervised release.

99. You must participate in a mental health treatment program and follow the rules and regulations of the program as directed by the probation officer. The probation officer, in consultation with the treatment provider, will supervise your participation in the program.

DEFENDANT: MATTHEW HARRIS ENGLAND
CASE NUMBER: 5:23-cr-00093

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	$ 200.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

☐ 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.

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

TOTALS	$ 0.00	$ 0.00

☐ 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 the 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 the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* 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.
*** 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.

DEFENDANT: MATTHEW HARRIS ENGLAND
CASE NUMBER: 5:23-cr-00093

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 $ 200.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance with ☐ 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:
If not paid immediately, the defendant shall pay the special assessment while incarcerated through participation in the Inmate Financial Responsibility Program by paying quarterly installments of $25.00 each.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	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:
a Savage, model Stevens 94F 20-guage shotgun and all related ammunition, seized by law enforcement officers on April 3, 2023.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.