

No. _____

In the
Supreme Court of the United States

William Robert Shepherd, III,
Petitioner,

v.

United States of America,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether short-barreled shotguns are “arms” protected by the Second Amendment.

PARTIES TO THE PROCEEDING

Petitioner, William Robert Shepherd, III, was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

RELATED PROCEEDINGS

- *United States v. Shepherd*, No. 3:23-cr-39-1, U.S. District Court for the Southern District of Mississippi. Judgment entered December 4, 2024.
- *United States v. Shepherd*, No. 24-60622, U.S. Court of Appeals for the Fifth Circuit. Judgment entered April 2, 2026.

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PETITION FOR A WRIT OF CERTIORARI

William Robert Shepherd, III, seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's opinion is reported at 2026 WL 907785 and is reproduced in Appendix A at App.1a–2a.

JURISDICTION

The Fifth Circuit entered its judgment on April 2, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

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

Section 5841(a) of Title 26 of the United States Code provides, in relevant part:

(a) Central registry. – The Secretary shall maintain a central registry of all firearms in the United States which are not in the possession or under the control of the United States. This registry shall

be known as the National Firearms Registration and Transfer Record.
The registry shall include –

- (1) identification of the firearm;
- (2) date of registration; and
- (3) identification and address of person entitled to possession of the firearm.

Section 5845(a) of Title 26 defines the term “firearm” to include, among other things, “(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.”

Section 5861(d) of Title 26 makes it unlawful for a person “to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record.”

Section 5871 of Title 26 provides that “[a]ny 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.”

STATEMENT

I. Legal background

This petition presents a question of “revitalized relevance”¹ in Second Amendment jurisprudence: what types of “arms” does the Second Amendment protect? Lower courts grappling with this question have focused on three of this Court’s opinions.

1. In *United States v. Miller*, 307 U.S. 174 (1939), the Court considered the constitutionality of the National Firearms Act (NFA), which imposes registration and taxation requirements for short-barreled shotguns and other selected firearms. An indictment charged the defendants with violating the NFA by transporting an unregistered short-barreled shotgun. *Id.* at 175. The district court dismissed the indictment, holding that the prosecution violated the Second Amendment. *Id.* at 177.

This Court reversed and remanded. *Id.* at 183. It explained that the Second Amendment’s “obvious purpose” is “to assure the continuation and render possible the effectiveness of” the militia. *Id.* at 178. It reasoned that the Second Amendment “must be interpreted and applied with that end in view.” *Id.*

The Court then canvassed the historical role of the militia. It explained that the militia “comprised all males physically capable of acting in concert for the common defense.” *Id.* at 179. These men were “civilians primarily, soldiers on

¹ *United States v. Daniels*, 77 F.4th 337, 359 n.8 (5th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2707, 219 L. Ed. 2d 1313 (2024) (Higginson, J., concurring).

occasion.” *Id.* “[W]hen called for [militia] service,” they “were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.” *Id.*

Bearing in mind the Second Amendment’s purpose and the militia’s historical role, the Court held that it could not “say that the Second Amendment guarantees the right to keep and bear” short-barreled shotguns. *Id.* at 178. That was because the record lacked “any evidence tending to show that possession or use of a” short-barreled shotgun “at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia.” *Id.* And it was “not within judicial notice that” the short-barreled shotgun was “any part of the ordinary military equipment or that its use could contribute to the common defense.” *Id.*

2. Nearly seventy years later, the Court issued its opinion in *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Court struck down a law prohibiting the possession of handguns in the home, holding that the law violated the Second Amendment’s guarantee of an individual right to keep and bear arms for self-defense. *Id.* at 635.

Two aspects of *Heller* are particularly relevant here. First, *Heller* undertook a “textual analysis” of the Second Amendment, including its use of the term “arms.” *Id.* at 578, 581. The Court explained that “[t]he 18th-century meaning” of the term “arms” was “no different from the meaning today. The 1773 edition of Samuel Johnson’s dictionary defined ‘arms’ as ‘[w]eapons of offence, or armour of defence.’” *Id.* (quoting 1 Dictionary of the English Language 106 (4th ed.) (reprinted 1978)). And “Timothy Cunningham’s important 1771 legal dictionary defined ‘arms’ as ‘any thing

that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.” *Id.* (quoting 1 A New and Complete Law Dictionary). The Court concluded that “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms.” *Id.* at 582.

Second, the Court recognized an “important limitation on the right to keep and carry arms.” *Id.* at 627. The Court explained that the Second Amendment protects “the sorts of weapons” that are “in common use at the time.” *Id.* (quotation omitted). The Court emphasized that this common-use limitation is “fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Id.*

5. Finally, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 10 (2022), this Court struck down New York’s public-carry licensing regime, holding that the regime violates the Second Amendment’s guarantee of an individual right to carry a handgun for self-defense outside the home. The Court reaffirmed *Heller*’s focus on “text, as informed by history.” *Id.* at 19. To that end, it articulated a two-part framework for evaluating Second Amendment challenges. *Id.* at 24. It instructed courts to consider, first, whether the “Second Amendment’s plain text covers an individual’s conduct.” *Id.* If it does, the Constitution “presumptively protects that conduct,” and courts must consider, second, whether the government has met its burden to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*

II. Factual background

1. An indictment charged William Robert Shepherd, III, with one count of receipt or possession of an unregistered short-barreled shotgun in violation of the NFA, 26 U.S.C. §§ 5841, 5861(d), and 5871. ROA.15–16 (indictment).

2. Shepherd moved to dismiss the indictment, arguing that the NFA’s registration, taxation and penalty provisions are unconstitutional facially and as applied to short-barreled shotguns in light of the Supreme Court’s decision in *Bruen*. ROA.89–110 (motion to dismiss), 123–131 (reply). Citing *Bruen*’s two-part framework, Shepherd argued, first, that the plain text of the Second Amendment covered his conduct, so the Constitution presumptively protected that conduct. ROA.99–106. He argued, second, that the government could not justify the NFA’s burdens on the Second Amendment right. ROA.106–108.

The government opposed the motion. ROA.111–122. It argued that “(1) [s]hort-barrel[ed] shotguns do not fall under the Second Amendment’s protection; (2) the [NFA’s] ... registration and taxation requirements do not ‘infringe’ on the right to keep and bear arms; and (3) the NFA’s registration and taxation requirements are analogous to historical laws regulating commerce in firearms.” ROA.111.

The district court denied Shepherd’s motion to dismiss. ROA.150–161. It resolved Shepherd’s Second Amendment challenge at *Bruen*’s step one, concluding that (1) the Second Amendment does not protect short-barreled shotguns, and (2) the NFA’s registration and taxation requirements do not infringe the right to keep and bear arms. ROA.157–61.

Shepherd pled guilty to the indictment pursuant to a plea agreement. ROA.181 (judgment), 285 (change of plea), 368–74 (plea agreement), 375–79 (plea supplement). He reserved his right to appeal the district court’s order denying his motion to dismiss. ROA.287 (change of plea), 373 (plea agreement).

The district court sentenced Shepherd to 24 months of imprisonment, three years of supervised release, an assessment of \$100, and a fine of \$1,000. ROA.181–87 (judgment), 357 (sentencing).

3. On appeal, Shepherd pressed his argument that the NFA violates the Second Amendment on its face and as applied to the possession of short-barreled shotguns. The Fifth Circuit rejected Shepherd’s Second Amendment challenges. It concluded that these challenges were foreclosed by *United States v. Hernandez*, 159 F.4th 425, 427–28 & n.1 (5th Cir. 2025). App.2a. In *Hernandez*, the Fifth Circuit read *Miller* and *Heller* to hold that “the Second Amendment does not protect a right to possess short-barreled shotguns.” *Hernandez*, 159 F.4th at 427.

REASONS FOR GRANTING THE PETITION

I. Lower courts need guidance on *Miller*'s reach and continued validity.

The Fifth Circuit concluded that *Miller* foreclosed Shepherd's Second Amendment challenge. App. 2a (citing *Hernandez*, 159 F.4th at 427–28 & n.1). That conclusion is wrong, and there are important reasons for this Court to correct the error.

1. The Fifth Circuit overstated *Miller*'s holding. *Miller* held only that, on the record before it and at that time, it could not “say that the Second Amendment guarantees the right to keep and bear” short-barreled shotguns. *Miller*, 307 U.S. at 178. The Court's holding was narrow in two respects. First, the Court phrased its holding not as a definitive statement on the Second Amendment's reach but rather as a tentative statement on what the evidence proved in that case. The Court's restraint makes sense. As this Court recognized in *Heller*, “[t]he defendants made no appearance in [*Miller*], neither filing a brief nor appearing at oral argument; [and] the Court heard from no one but the Government.” *Heller*, 554 U.S. at 623. The one-sided presentation is “reason enough ... not to make” *Miller* “the beginning and the end of this Court's consideration of the Second Amendment.” *Id.*

Second, *Miller*'s holding was expressly time-limited. The Court relied on the state of the evidence “at this time.” *Id.* The times have changed. As of May 2024, there were 1,035,466 short-barreled firearms (shotguns and rifles) on the national registry, including 165,180 short-barreled shotguns.² The number of registered short-barreled

² See U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Firearms Commerce in the United States: Statistical Update 2024, 11–

shotguns alone is comparable to the number of lawfully possessed stun guns that a member of this Court found sufficient to characterize stun guns as “widely owned and accepted as a legitimate means of self-defense.” *See Caetano v. Massachusetts*, 577 U.S. 411, 420 (2016) (Alito, J., concurring).

2. There are important reasons for the Court to address *Miller*’s modern reach. First, updated guidance could resolve the tension between *Miller*, on the one hand, and *Heller* and *Bruen*, on the other. *Heller* and *Bruen* “demand[ed] a test rooted in the Second Amendment’s text, as informed by history.” *Bruen*, 597 U.S. at 19. Yet in *Miller*, the Court performed no analysis of the Second Amendment’s plain text, and it included “[n]ot a word (*not a word*) about the history of the Second Amendment.” *See Heller*, 554 U.S. at 624. Updated guidance is important to apply *Bruen*’s historical rigor to the question of what types of weapons the Second Amendment protects.

Second, updated guidance could have widespread implications for Second Amendment cases. Lower courts have relied on *Miller* and the common-use limitation to analyze whether a variety of weapons fall within the Second Amendment’s reach. *See infra* at 11–12. Updated guidance on *Miller* would be useful to lower courts in adjudicating these challenges.

3. This Court should grant review to clarify *Miller*’s reach and continued validity.

12 (2024), available at <https://www.atf.gov/media/22706/download> (last visited June 26, 2026).

II. The courts of appeals are divided about how to determine the types of arms the Second Amendment protects.

Answering the question presented would allow this Court to provide much-needed guidance on determining what types of arms the Second Amendment protects. This Court has said that the Second Amendment protects arms that are “in common use at the time.” *Heller*, 554 U.S. at 627. But lower courts disagree over when and how to perform the common-use inquiry.

1. There is disagreement about whether courts should conduct the common-use inquiry in step one or two of the *Bruen* framework. See *Bevis v. City of Naperville, Illinois*, 85 F.4th 1175, 1198 (7th Cir. 2023) (“There is no consensus on whether the common-use issue belongs at *Bruen* step one or *Bruen* step two.”); *Duncan v. Bonta*, 133 F.4th 852, 900 (9th Cir. 2025) (en banc) (Bumatay, J., dissenting) (Whether to consider common use in *Bruen*’s step one or two “has divided panels.”).

At least three circuits have held that courts should conduct the common-use inquiry in *Bruen*’s step one. The Second Circuit described *Bruen*’s step one as asking, among other things, “whether the weapon concerned is in common use.” *Antonyuk v. James*, 120 F.4th 941, 981 (2d Cir. 2024), *cert. denied*, 145 S. Ct. 1900, 221 L. Ed. 2d 646 (2025) (quotation marks omitted). The Fourth Circuit held that *Bruen*’s step one requires an assessment of “the historical scope of the right to keep and bear arms,” including an evaluation of whether a weapon is in common use today. *Bianchi v. Brown*, 111 F.4th 438, 448, 454–61 (4th Cir. 2024) (en banc), *cert. denied sub nom. Snope v. Brown*, 145 S. Ct. 1534, 222 L. Ed. 2d 1059 (2025). And the Tenth Circuit

asks, “[a]t step one,” “whether the item at issue is an arm that is in common use today for self-defense.” *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 114 (10th Cir. 2024) (quotations marks omitted).

The Sixth Circuit, on the other hand, has held that courts should conduct the common-use inquiry in *Bruen*’s step two. *United States v. Bridges*, 150 F.4th 517, 525–28 (6th Cir. 2025). In analyzing the constitutionality of a ban on machinegun possession, the court held, in *Bruen*’s step one, that the Constitution presumptively protects the possession of machinegun because “a machinegun ... is undoubtedly an ‘Arm[]’ that one can ‘keep and bear.’” *Id.* at 524. In *Bruen*’s step two, the court held that machineguns do not fall within the Second Amendment’s “historical scope” because they are “dangerous and unusual,” and therefore not in common use today. *Id.* at 525–28.

2. Lower courts also disagree on the content of the common-use inquiry. This Court has not “elucidated a precise test for determining whether a regulated arm is in common use for a lawful purpose.” *United States v. Price*, 111 F.4th 392, 403 (4th Cir. 2024) (en banc), *cert. denied*, 145 S. Ct. 1891, 221 L. Ed. 2d 583 (2025). In that vacuum, the courts of appeals have adopted different and sometimes conflicting criteria for determining whether a weapon is in common use.

Lower courts disagree, for example, on the import of a weapon’s prevalence in the community. The Fifth, Sixth, and D.C. Circuits have evaluated the prevalence of an arm to determine whether it is in common use. The Fifth Circuit explained that “statistics” including “raw number, percentage and proportion, jurisdiction-counting”

are “potentially relevant data for the common use inquiry.” *Hollis v. Lynch*, 827 F.3d 436, 449 (5th Cir. 2016), *abrogated on other grounds by United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024). The Sixth Circuit determined that machineguns were not in common use after consulting “machinegun-ownership data” that the parties compiled. *Bridges*, 150 F.4th at 526. And the D.C. Circuit found that extra-large capacity magazines were in common use in part because of their “sufficiently wide circulation,” even though it explained that the prevalence of a weapon should not be the sole criterion for evaluating common use. *Hanson v. D.C.*, 120 F.4th 223, 233 (D.C. Cir. 2024), *cert. denied*, 145 S. Ct. 2778, 222 L. Ed. 2d 1075 (2025).

The Fourth and Seventh Circuits, on the other hand, have deemphasized prevalence as a criterion for common use. The Fourth Circuit found that assault weapons were not in common use because they are “ill-suited and disproportionate to self-defense,” *Bianchi*, 111 F.4th at 461, even though there was evidence that “millions of law-abiding citizens” possess them, *id.* at 459. And the Seventh Circuit minimized the importance of the popularity of AR-15 weapons, concluding that the “relevant question” for the common-use inquiry is “what are the modern analogues to the weapons people used for individual self-defense in 1791, and perhaps as late as 1868.” *Bevis*, 85 F.4th at 1199.

Lower courts also disagree about the relevance of a weapon’s military usefulness. The Fourth Circuit used the AR-15’s “military origin” and “combat features” as evidence that the weapon was not in common use. *Bianchi*, 111 F.4th at

454–56. Likewise, the Seventh Circuit explained that the term “Arms” in the Second Amendment meant “non-militaristic weapons.” *Bevis*, 85 F.4th at 1199.

The D.C. Circuit, on the other hand, rejected the argument that extra-large capacity magazines “are outside the scope of the Second Amendment because they are most useful in military service.” *Hanson*, 120 F.4th at 233. It explained that an arm “‘may be banned’ not because of its military use but because of the ‘historical tradition of prohibiting the carrying of dangerous and unusual weapons.’” *Id.* (quoting *Heller*, 554 U.S. at 627).

3. This Court should grant review to provide much-needed guidance on the timing and content of the common-use inquiry.

III. This case is a good vehicle for addressing the question presented.

1. This case cleanly presents the question presented. The Fifth Circuit resolved this case on the grounds that the Second Amendment does not protect short-barreled shotguns. App.2a; *see also Hernandez*, 159 F.4th at 427–28 & n.1. This case would allow the Court to address *Miller* and expand on the appropriate standard for the common-use inquiry.

Should this Court agree that the Second Amendment protects short-barreled shotguns, the Court could follow its usual practice of remanding to the Fifth Circuit for it to consider, in the first instance, whether the NFA’s registration, taxation and penalty provisions violate the Second Amendment. *See, e.g., Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 525 (1991) (remanding for the lower court to consider in the first instance an issue “it did not have occasion to address”).

2. Shepherd's claims are properly before this Court. In both the district court and the Fifth Circuit, Shepherd pressed his facial and as-applied Second Amendment challenges. ROA.89–110, 123–31.

3. If the Court grants certiorari in another case presenting a similar question, Shepherd requests that the Court hold the instant petition and grant, vacate, and remand if the Court thereafter issues an opinion that bears on the common-use inquiry. *See Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 166 (1996); *Stutson v. United States*, 516 U.S. 163, 181 (1996) (“We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted *in order that* (if appropriate) they may be ‘GVR’d’ when the case is decided.”) (Scalia, J., dissenting) (emphasis in original). There are several pending petitions that raise issues implicating the timing and content of the common-use inquiry. *See, e.g., Gator’s Custom Guns Inc. v. Washington*, No. 25-153; *Duncan v. Bonta*, No. 25-198; *Viramontes v. Cook County, Ill.*, No. 25-238; *National Association for Gun Rights v. Lamont*, No. 25-421.

CONCLUSION

Petitioner William Robert Shepherd, III, respectfully requests that this Court grant the petition for a writ of certiorari. Alternatively, the Court should grant review in one or more of the many cases presenting a similar question, and hold petitioner's case pending disposition of that case.

Respectfully submitted this 29th day of June, 2026.

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