No. _____

In the
Supreme Court of the United States

GEORGE PETERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the National Firearms Act's taxation-and-registration scheme for covered firearms can be justified as a licensing law.

2. Whether the National Firearms Act's taxation-and-registration scheme violates the Second Amendment with respect to firearm suppressors.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Peterson*, No. 24-30043 (5th Cir.) (order denying rehearing en banc filed Dec. 9, 2025)
- *United States v. Peterson*, No. 2:22-cr-231 (E.D. La.) (judgment entered Jan. 9, 2024).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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There is no historical practice of firearm regulation that could justify a registration scheme allowing the government to systematically track who in the community owns arms. Indeed, in the leadup to the Revolution, the British "Crown began to disarm the inhabitants of the most rebellious areas," *District of Columbia v. Heller*, 554 U.S. 570, 594 (2008), and the Second Amendment was understood to prevent any similar "flagitous attempt" by the government of this Nation to "disarm the people," *id.* at 607 (quoting WILLIAM RAWLE, A VIEW OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA 121–22 (1825)).

Against this backdrop, it cannot seriously be maintained that in declaring that "the right to keep and bear arms . . . shall not be infringed," the Framers and ratifiers of the Bill of Rights understood the Government to be authorized to maintain a registry that would facilitate the very infringements that the Second Amendment was meant to prohibit. Yet that is what the Fifth Circuit held in this case, albeit only by misconstruing the National Firearms Act's taxation-and-registration regime as a shall-issue-licensing law. Petitioner George Peterson was sentenced to twenty-four months in prison for possessing a firearm suppressor in a safe in his bedroom closet. The suppressor was not registered in the National Firearms Registration and Transfer Record as required by the National Firearms Act, nor had Peterson paid the requisite tax under the Act. Peterson moved to dismiss the indictment on the ground that the Act's taxation-and-registration regime violates the Second Amendment. The district court denied the motion.

The Fifth Circuit affirmed. Based on a concession by the Government, the Fifth Circuit assumed that the Second Amendment protects the possession of suppressors. App.14a. It thus assumed that Peterson's conduct was presumptively covered by the Second Amendment under the framework that this Court established in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). *See* App.14a. But rather than require the Government to justify the Act's application to suppressors as consistent with this Nation's historical tradition of firearm regulation, as *Bruen* requires, the Fifth Circuit held that it is "presumptively constitutional" as a "shall-issue" "suppressor-licensing scheme." App.14a. That presumption relieved the Government of any obligation to identify a historical basis for the Act. It shifted the burden to Peterson to prove that the regime had been "put toward abusive ends" as applied to him specifically. App.16a. (quoting *Bruen*, 597 U.S. at 38 n.9). And it allowed the Fifth Circuit to affirm his conviction without ever conducting the historical analysis that *Bruen* requires.

The Fifth Circuit's decision is wrong, and its consequences are sweeping. By equating the Act's taxation-and-registration requirements with shall-issue licensing, the decision below conflates critically distinct methods of regulation. While licensing may ensure that individuals acquiring firearms have not forfeited their right to possess them, registration tracks who owns firearms and therefore is often perceived as a "half-a-loaf measure[] aimed at deterring gun ownership." *Heller v. District of Columbia* ("*Heller II*"), 670 F.3d 1244, 1291 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). The Fifth Circuit collapsed that distinction. It also treated the Act's $200 revenue tax—equivalent to $4,800 in today's

dollars when the Act was enacted—as though it were a routine administrative fee, despite this Court's repeated holdings that the exercise of constitutional rights may not be singled out for special taxation. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105 (1943); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966); *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983).

In addition to being impossible to square with this Court's precedents on taxing constitutional rights, the Fifth Circuit's decision below also cannot be squared with this Court's precedents addressing the constitutionality of the NFA. In *United States v. Miller*, 307 U.S. 174 (1939), this Court affirmed an indictment for shipping an unregistered short-barreled shotgun in interstate commerce. As explained in *Heller*, the *Miller* decision turned on the "character of the weapon" at issue. 554 U.S. at 622. That focus is inconsistent with the assertion that the NFA's registration scheme is constitutional as applied to protected arms. If registration of protected arms were constitutionally permissible, "it would have been odd to examine the character of the weapon rather than simply note" that it was not registered. *See id.*

Most troublingly, the decision below has no limiting principle. Because the Fifth Circuit assumed that suppressors are "arms" within the Second Amendment's scope, its reasoning would apply with equal force to a registration-and-taxation scheme for handguns, rifles, or shotguns. All the Government would need to do is structure the regime so that it has no discretion to deny registrations from otherwise law-abiding citizens, and the entire scheme would be constitutional, immune from historical-tradition analysis. Even the Government recognized this

problem, conceding below that "registration laws or taxes targeting . . . firearms likely would not serve or be proportionate to any legitimate public-safety purpose." Gov'ts Suppl. Resp. to Def.-Appellant's Pet. ("Gov't Supp. Resp."), Doc. 135 at 8 n.9 (5th Cir. May 29, 2025). Yet the Government's own proposed limiting principle—that suppressors are "specially adaptable to criminal misuse"—went unexamined and unadopted by the Fifth Circuit. The Fifth Circuit went further than the Government asked, erecting a blanket presumption of constitutionality that neither side advocated.

The question presented is important because the decision below opens the door to a nationwide registry for any firearm protected by the Second Amendment. The decision below is wrong because there is no historical tradition that supports registration and taxation of firearms protected by the Second Amendment. And this case is a good vehicle because whether the Act's registration-and-taxation scheme escapes *Bruen*'s historical-tradition test is squarely presented. This Court should grant certiorari. In the alternative and at a bare minimum, it should grant and summarily vacate the Fifth Circuit's manifestly erroneous conclusion that the NFA's taxation-and-registration scheme is in fact a shall-issue licensing system.

OPINIONS BELOW

The Fifth Circuit's second substituted opinion is reported at 161 F.4th 331 and reproduced at App.1a. The Fifth Circuit's first substituted opinion, which was subsequently withdrawn, is reported at 150 F.4th 644. The Fifth Circuit's initial opinion, which was subsequently withdrawn, is reported at 127 F.4th 941. The Eastern District of Louisiana's order denying

Peterson's motion to dismiss is unreported but is available at 2023 WL 5383664 and reproduced at App.27a.

JURISDICTION

On December 9, 2025, the Fifth Circuit issued a second substituted opinion, App.1a, and denied a timely petition for rehearing en banc, App.25a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the Appendix. App.33a–43a.

STATEMENT OF THE CASE

Hiram Percy Maxim invented the first commercially successful suppressor at the dawn of the twentieth century. He dubbed his invention a "silencer" and applied to patent it in 1908. Silent Firearm, U.S. Patent No. 958,935 (filed Nov. 30, 1908), https://perma.cc/FNR4-ZFBU. He later explained that he invented the device to reduce sound disturbance caused by firearms. HIRAM PERCY MAXIM, EXPERIENCES WITH THE MAXIM SILENCER 2–3 (1915), https://perma.cc/WY37-3YE2. Sporting goods magazines of the era regularly advertised the "Maxim Silencer," and its purchasers included President Theodore Roosevelt, who affixed Maxim's suppressor to his Winchester rifle. *See* David Kopel, *The Hearing Protection Act and 'Silencers*,' WASH. POST. (June 19, 2017), https://perma.cc/FYQ7-D7E3.

Several decades after Maxim invented his suppressor, Congress defined suppressors as "firearms" under the National Firearms Act of 1934 ("NFA"), Pub. L. No. 73-474, 48 Stat. 1236 (codified as amended at 26 U.S.C. § 5801–5872). The NFA

established a national registry of certain classes of firearms, including suppressors, known as the National Firearms Registration and Transfer Record ("NFRTR"). 26 U.S.C. § 5841(a). The NFRTR contains information on each firearm, the firearm's registration date, and the identification and address of the person entitled under law to possess it. *Id.* § 5841(a)(1)–(3). An individual who makes a firearm must complete an application identifying both the firearm and the applicant, submit copies of his fingerprints and photograph, and pay a $200 tax. *Id.* §§ 5821, 5822. An individual who transfers a firearm must complete an application identifying the firearm, applicant, and transferee; include the transferee's fingerprints and photograph; and pay a $200 tax. *Id.* §§ 5811, 5812. When adopted, the $200 tax was equivalent to approximately $4,800 today. *See CPI Inflation Calculator*, U.S. BUREAU LAB. STAT., https://perma.cc/6YBY-EDSB.

The NFA provides for denial of an application for making or transferring a firearm if making, transferring, or possessing the firearm would violate the law. 26. U.S.C. §§ 5812(a), 5822. Upon approval, the maker or transferor must register the firearm in the NFRTR. *Id.* § 5841(b). Makers must mark each firearm with a serial number. *Id.* § 5842(b). Failure to comply with this registration-and-taxation scheme subjects an individual to up to ten years' imprisonment. *Id.* §§ 5861, 5871. Although Congress recently eliminated the $200 tax on the making and transferring of suppressors, *see* One Big Beautiful Bill Act, Pub. L. No. 119-21, § 70436, 139 Stat. 72, 247 (2025), the taxation requirement was in effect at all times relevant to this petition, *see* 26 U.S.C. § 5821 (2022), and the registration requirement remains in place.

Modern suppressors, which are hollow tubes with holes at both ends and a series of interior walls called baffles, affect the operation of firearms in several ways. Matthew Every, *How Does a Silencer Work?*, FIELD & STREAM (May 11, 2023), https://perma.cc/3RFQ-6L9Q. When a round is fired, the bullet travels down the barrel, out the muzzle, and enters the suppressor with high-pressure gas following it. *Id.* The baffles capture the gas as the bullet passes, so the gases will dissipate more slowly. *Id.* This gas capture moderately reduces both the sound of the muzzle blast from hot gases exiting the barrel and the flash of the firearm. *See* E. John Wipfler III, *"Sound Arguments for the Purchase and Use of Firearm Suppressors" A Physician's Perspective and Recommendations*, AM. COLL. EMERGENCY PHYSICIANS (July 25, 2023), https://perma.cc/8XFC-K8QN.

Suppressors reduce the concussive force and volume of sound produced by a firearm, which helps to prevent hearing damage to those nearby when it is fired. *See* Brian J. Fligor, *Prevention of Hearing Loss from Noise Exposure*, BETTER HEARING INST., 8 (2011), https://perma.cc/TE5F-4PU8. A suppressor will reduce sound intensity by about 30 decibels. *See* Glenn Kessler, *Are Firearms with a Silencer 'Quiet'?*, WASH. POST. (Mar. 20, 2017), https://perma.cc/757W-YHUF. Decibels operate on a logarithmic scale, so a 10-decibel increase denotes a sound that is 10 times as intense, and a 20-decibel increase denotes a sound that is 100 times as intense. In terms of sound perception, a listener perceives a 10-decibel increase as doubling in loudness and a 20-decibel increase as quadrupling in loudness. So, a listener perceives a 70-decibel sound, like a vacuum cleaner, as half as loud as an 80-decibel sound like a garbage disposal. *Noise*

Sources and Their Effects, PURDUE UNIV., https://perma.cc/5T4B-5JC3.

Despite their lower volume, suppressed firearms are still quite "loud." Stephen P. Halbrook, *Firearm Sound Moderators: Issues of Criminalization and the Second Amendment*, 46 CUMB. L. REV. 33, 35 (2016). Suppressors do not actually silence the discharge of a firearm; they simply reduce the noise that a firearm emits. *Id.* at 36. For example, the 127 decibels generated by a suppressed 9mm pistol are comparable to a firecracker or an ambulance siren, Fligor, *supra*, at 8, and the 132 decibels generated by a suppressed AR-15 rifle are comparable to a jackhammer, *see* Kessler, *supra*. Without the use of suppressors, however, almost all gunshots generate sound greater than 140 decibels. *Recreational Firearm Noise Exposure*, AM. SPEECH-LANGUAGE-HEARING ASS'N (2017), https://perma.cc/DYS7-8AXH. And the CDC warns that even momentary exposure to sounds above that threshold risks hearing loss. *How Hearing Loss Occurs*, CDC, https://perma.cc/D6BC-96SA.

Accordingly, suppressors are critical components of firearm safety. They are far more effective for mitigating potential hearing damage than personal protective equipment such as earplugs or earmuffs, which are susceptible to misuse. *See* Matthew P. Branch, *Comparison of Muzzle Suppression and Ear-Level Hearing Protection in Firearm Use*, 144 OTOLARYNGOLOGY HEAD & NECK SURG. 950, 950 (2011) ("All suppressors offered significantly greater noise reduction than ear-level protection, usually greater than 50% better. Noise reduction of all ear-level protectors is unable to reduce the impulse pressure below 140 dB for certain common firearms, an international standard for prevention of

sensorineural hearing loss."). Indeed, the CDC has stated that the "only potentially effective noise control method to reduce . . . noise exposure from gunfire is through the use of noise suppressors that can be attached to the end of the gun barrel." Lilia Chen & Scott E. Brueck, *Noise and Lead Exposures at an Outdoor Firing Range – California*, NAT'L INST. OCCUPATIONAL SAFETY & HEALTH, 5 (2011), https://perma.cc/GD82-YSL9.

Unlike personal protective equipment, suppressors also protect *other people*, not just the firearm user, by reducing sound intensity at the source. They may even be more effective at protecting bystanders than they are at protecting users. *See* Edward Lobarinas et al., *Differential Effects of Suppressors on Hazardous Sound Pressure Levels Generated by AR-15 Rifles: Considerations for Recreational Shooters, Law Enforcement, and the Military*, 55 INT'L J. AUDIOLOGY S59, S63 (2016) (showing greater reduction in decibels one meter to the left of the muzzle than at the user's right or left ear). This feature is crucial in enclosed settings—such as home-defense situations—where hearing protection may be unavailable and communication is essential.

Suppressors offer other critical safety and functionality advantages for self-defense situations. An individual who stores a firearm with a suppressor attached is ensured hearing protection in the event of a late-night home invasion when there is no time to locate or equip earplugs or muffs and the need for hearing protection is at its zenith because the sound of a firearm indoors cannot disperse like it would in an outdoor setting. *See* Scott E. Brueck et al., *Measurement of Exposure to Impulsive Noise at Indoor*

and Outdoor Firing Ranges During Tactical Training Exercises, NAT'L INST. OCCUPATIONAL SAFETY & HEALTH, 10 (2014), https://perma.cc/JX79-KXY3 (At an indoor firing range, "instructors were exposed to more reverberant noise because the shooters were relatively close to the walls and ceiling of the nearby bullet trap."). Suppressors also aid recoil management and reduce muzzle rise, so individuals can more effectively put follow-up shots on target, especially in self-defense scenarios. *See* Wipfler, *supra*; Wesley Nunley, *The Impact of Suppressors on Shooting Performance*, BLACK CREEK FIREARMS (last updated Aug 19, 2024), https://perma.cc/SCU6-4E4M. For this reason, some firearms safety instructors prefer that their students use suppressors when training because it prevents them from developing a flinch when they fire a gun. Kopel, *supra*.

In contrast—and although this Court has repeatedly noted that it is irrelevant, *e.g.*, *Heller*, 554 U.S. at 634 (rejecting argument premised on the notion that "handgun violence is a problem")—suppressors are very rarely used for criminal purposes. Indeed, the Federal Government has acknowledged that suppressors' "beneficial use is overwhelming in relation to their criminal use." Gov't Supp. Resp. at 7. "Overall numbers . . . suggest that silencers are a very minor law enforcement problem." Paul A. Clark, *Criminal Use of Firearm Silencers*, 8 W. CRIM. REV. 44, 51 (2007). One study estimated that there are only 30 to 40 suppressor-related federal prosecutions a year compared to roughly 75,000 to 80,000 total prosecutions. *Id.* This includes prosecutions for possession of suppressors that are not registered in accordance with federal law and not any actual misuse. *Id.* In crime, unsuppressed "firearms are far more likely to be actively employed, as well as

used to injure a victim." *Id.* at 52. Indeed, given that suppressed firearms are still as loud as firecrackers or ambulance sirens, for example, it makes sense that suppressors are not of much use to criminals. *See* Fligor, *supra*, at 8.

Today, millions of suppressors are owned by law-abiding Americans. Suppressors are legal to possess in 42 states, Ronald Turk, *White Paper: Options to Reduce or Modify Firearms Regulations,* BATFE, 6 (Jan. 20, 2017), https://perma.cc/J6HR-4R3T, and the number registered with the ATF has increased from 2.6 million as of 2021 to 4.5 million as of December 2024 to 5.77 million at the end of 2025, *Firearms Commerce in the United States: Annual Statistical Update 2021*, BATFE, 16 (2021), https://perma.cc/9FXV-62FU; *Suppressor Owner Study*, NSSF, 29 (2025), https://perma.cc/BRS8-4ZK6; *ATF Provides Updated Suppressor Registration Data*, AM. SUPPRESSOR ASS'N (Jan. 23, 2026), https://perma.cc/8QLJ-HUMJ.

Despite the widespread popularity of suppressors, the burdens of the NFA's registration-and-taxation scheme ensnares individuals such as George Peterson who possess them. Following a law enforcement raid on Peterson's home and firearm business in 2022, a grand jury indicted him for possession of an unregistered suppressor under 26 U.S.C. §§ 5841, 5861(d), 5871. App.2a–4a. The district court had jurisdiction under 18 U.S.C. § 3231. Peterson moved to dismiss his indictment and argued that the National Firearms Act's registration-and-taxation regime violates the Second Amendment to the United States Constitution. Mot. to Dismiss ("MTD"), Doc. 42 at 4 (E.D. La. Jul. 10, 2023). The district court denied that motion, reasoning that suppressors "are not

bearable arms within the scope of the Second Amendment" and are thus unprotected. App.29a. Peterson then pleaded guilty while preserving his challenge to the constitutionality of the registration-and-taxation requirement. App.4a. The district court sentenced Peterson to twenty-four months' imprisonment for possessing, in a safe in his bedroom closet, a suppressor that he made from an at-home kit. App.3a–4a.

After sentencing, Peterson appealed and argued that the Second Amendment covers suppressors and the NFA's registration-and-taxation scheme violates the right of law-abiding citizens to keep and bear arms. Def.-Appellant's Opening Br. ("Opening Br."), Doc. 23-1 at 16–17 (5th Cir. May 2, 2024). A panel of the Fifth Circuit heard oral argument during which Peterson contended that the burden imposed by the NFA's registration-and-taxation scheme still violates the Second Amendment even if the NFA gives the government no discretion to prevent an individual from registering a suppressor under it. Oral Argument at 4:50–7:00 (5th Cir. Dec. 4, 2024).

The Fifth Circuit panel then issued its initial opinion, which agreed with the district court that the possession of a suppressor does not implicate the Second Amendment. Ex. A to Def.-Appellant's Pet. for Reh'g En Banc, Doc. 95-2 at 8–9 (5th Cir. Mar. 6, 2025). The panel reasoned that suppressors are not themselves "arms" and the possession of firearm accessories is not covered by the Second Amendment. *Id.* at 7–8.

Peterson responded by filing his first petition for rehearing en banc. In the petition, Peterson argued that the panel's carveout for firearm accessories was inconsistent with this Court's precedent. Def.-

Appellant's Pet. for Reh'g En Banc, Doc. 95-1 at 6–7 (5th Cir. Mar. 6, 2025). The Government, which had maintained that suppressors are not protected by the Second Amendment, also filed a brief after revisiting its prior position. In its new brief, the Government informed the Fifth Circuit that it now agreed with Peterson that the "Second Amendment protects firearm accessories and components such as suppressors." Gov't Supp. Resp. at 1. But the Government still maintained that the NFA's "registration and taxation requirement is constitutional because it imposes a modest burden on a firearm accessory that is consistent with this Nation's historical tradition." *Id.* at 1–2. Notably, the Government did not equate the NFA with a shall-issue licensing regime or argue that it was presumptively constitutional. The Government simply argued that the NFA is consistent with our historical tradition under *Bruen* and purported to identify a historical analogue. Gov't Supp. Resp. at 6–9.

The panel then issued its first substituted opinion, which withdrew the holding that suppressors are entitled to no Second Amendment protection and instead assumed without deciding that they "constitute 'arms' under the Second Amendment." Ex. 1 to Def.-Appellant's Pet. for Reh'g En Banc ("Ex. 1 Panel Op."), Doc. 156-2 at 12 (5th Cir. Sep. 10, 2025). This time though, the panel conflated the NFA's taxation-and-registration regime with mere licensing and reasoned that the regime is presumptively constitutional as a "shall-issue licensing regime" under a footnote from *Bruen*. Ex. 1 Panel Op. at 10–12 (citing *Bruen*, 597 U.S. at 38 n.9). The panel thus excused the Government from establishing that the NFA's regime is consistent with

our historical tradition of firearm regulation—a burden the Government itself had acknowledged that it bore, Gov't Supp. Resp. at 5. The panel also determined that Peterson had not established that the NFA's regime "has been 'put toward abusive ends'" and thus concluded that his challenge under the Second Amendment again failed. *Id.* at 14–15.

Following the substituted opinion, Peterson filed a second petition for rehearing en banc. Peterson argued that the panel made two new foundational analytical errors that brought Fifth Circuit precedent out of line with this Court's precedent. First, Peterson argued that the panel improperly conflated the NFA's taxation-and-registration regime with mere licensing and thus failed to ask the correct analytical question: whether the NFA's regime is consistent with our historical tradition of firearm regulation. Def.-Appellant's Pet. for Reh'g En Banc, Doc. 156-1 at iv (5th Cir. Sep. 10, 2025). Second, Peterson argued that the panel incorrectly equated a licensing fee that defrays the costs of granting licenses with the NFA's revenue-raising tax on the exercise of a constitutional right. *Id.* at iv–v. Peterson also noted that the substituted opinion, at the time, created a circuit split with the Third Circuit, which had held unconstitutional a handgun-carry-permit fee that went beyond defraying the costs of running the permitting scheme. *Id.* at v; *see Koons v. Att'y Gen. N.J.*, 156 F.4th 210, 246–47 (3d Cir. 2025), *reh'g en banc granted*, 162 F.4th 100 (3d Cir. 2025) (Mem.).

The panel again withdrew its opinion, issued a second substituted opinion, and denied Peterson's motion for rehearing. Once more, the panel assumed without deciding that suppressors are "arms" protected by the Second Amendment. App.14a. But

the panel stood by its conflation of the NFA's taxation-and-registration regime with shall-issue *licensing*. App.11a–14a. The panel explained that the Fifth Circuit's earlier decision in *McRorey v. Garland*, 99 F.4th 831, 836–37 (5th Cir. 2024), required it to presume the constitutionality of "shall-issue 'ancillary firearm regulations'" under *Bruen*. App.13a (quoting *McRorey*, 99 F.4th at 837). Applying this framework, the panel also again concluded that Peterson had not established that the "NFA has been 'put toward abusive ends' as applied to him." App.16a.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Erroneously Conflates Registration and Taxation with Licensing and thus Raises Important Questions About the Scope of *Bruen*.

If left undisturbed, the Fifth Circuit's decision establishes a framework under which the Federal Government may require identification of every firearm and its owner—complete with fingerprints and photographs—in a national database, tax the lawful possession of those firearms, and prosecute anyone who fails to comply. More than 5.77 million suppressors are registered in the United States, *ATF Provides Updated Suppressor Registration Data*, *supra*, and suppressors are legal to possess in 42 States, Turk, *supra*, at 6. Every American who owns a suppressor is already subject to the NFA's regime. But the implications of the decision below extend beyond suppressors to every kind of firearm. Whether the Federal Government may track lawful possession of every firearm in the country and treat the Second Amendment as a second-class right by taxing its exercise are undoubtedly important questions to the

law and the tens of millions of law-abiding citizens who possess all kinds of firearms.

The decision below has no limiting principle. Because the Fifth Circuit assumed that the possession of a suppressor is presumptively protected by the Second Amendment, its subsequent refusal to ask whether the NFA's regime is consistent with our historical tradition of firearm regulation creates a gaping loophole that could apply to the registration and taxation of any firearm. *See* App.14a, 16a. Under the Fifth Circuit's reasoning, all that is required to trigger this loophole is that the regime deny the Government discretion to prohibit the possession of firearms. App.14a. If the regime has that singular feature, the Government is presumptively free to track lawful firearm ownership, complete with sensitive personal identifying information about the owner of any specific firearm. *See* 26 U.S.C. §§ 5812(a), 5822. This loophole would apply to a registration-and-taxation scheme for handguns, rifles, or shotguns all the same because the Fifth Circuit assumed that suppressors are "arms" within the scope of the Second Amendment's plain text. *See* App.14a.

The consequence of the Fifth Circuit's loophole is that it upends who bears the burden of establishing constitutionality under *Bruen*. If the Second Amendment covers an individual's conduct—as the Fifth Circuit assumed here—the "*government* must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24 (emphasis added). But the Fifth Circuit reads a footnote from *Bruen* that explained that *Bruen* "should [not] be interpreted to suggest the unconstitutionality" of

"'shall-issue' *licensing* regimes," *Id.* at 38 n.9 (emphasis added) (citation omitted), to establish a presumption of constitutionality for *any* regime—including registration and taxation—that denies the government discretion to prohibit firearm possession. App.11a–14a. Under the decision below, once this presumption is triggered, law-abiding citizens—not the Government—bear the burden to establish whether the regime "has been 'put toward abusive ends' through 'exorbitant fees' or 'lengthy wait times in processing license applications.'" App.16a. (quoting *Bruen*, 597 U.S. at 38 n.9).

In departing from *Bruen*, the Fifth Circuit departed even from the Government's position below. The Government conceded that "registration laws or taxes targeting . . . firearms likely would not serve or be proportionate to any legitimate public-safety purpose." Gov't Supp. Resp. at 8 n.9. The Government therefore proposed a limiting principle based on its belief that suppressors are "specially adaptable to criminal misuse" and that the NFA is thus consistent with a purported historical tradition of regulating such firearms. *Id.* at 8. That is, the Government asked the Fifth Circuit to apply *Bruen*'s historical-tradition analysis. But the Fifth Circuit neither performed that analysis nor adopted the Government's limiting principle. Instead, it erected a blanket presumption of constitutionality for what it characterized as a "shall-issue licensing requirement." App.15a. The Government never asked for that blanket presumption with no anchor in the historical analysis that *Bruen* requires—a sign that something has gone seriously awry.

The decision below raises an important question about the distinction between licensing and

registration. The two are not the same, *Heller II*, 670 F.3d at 1270 (Kavanaugh, J., dissenting), even though the decision below treated them as such. "Licensing requirements" might "advance gun safety by ensuring that owners understand how to handle guns safely, particularly before guns are carried in public," *id.* at 1291, or "ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens,'" *Bruen*, 597 U.S. at 38 n.9 (quoting *Heller*, 554 U.S. at 635). But "[r]egistration requirements . . . require registration of individual guns and do not meaningfully serve the purpose of ensuring that owners know how to operate guns safely in the way certain licensing requirements can," so they "are often seen as half-a-loaf measures aimed at deterring gun ownership." *Heller II*, 670 F.3d at 1291 (Kavanaugh, J., dissenting). By treating the nondiscretionary aspect of the NFA as the key feature for purposes the constitutional analysis, the decision below erases the distinction between licensing and registration.

The erasure of that distinction is inconsistent with this Court's precedents, which have treated registration differently than licensing by expressing serious doubt about the constitutionality of the former. In *Miller*, this Court affirmed a prosecution for possessing an unregistered short-barreled shotgun because the Court was not presented with "any evidence tending to show" that short-barreled shotguns were protected and declined to take judicial notice that they were. 307 U.S. at 178. But "if registration could be required for all guns, [*Miller*] could have just said so and ended its analysis; there would have been no need to go to the trouble of considering whether the gun in question was the kind protected under the Second Amendment." *Heller II*, 670 F.3d at 1294 (Kavanaugh, J., dissenting). And in

Heller, this Court suggested that the NFA's "restrictions on machineguns . . . might be unconstitutional" if machineguns were protected arms. 554 U.S. at 624. By contrast, footnote 9 of *Bruen* suggested that licensing might be constitutionally applied to protected arms. *See* 597 U.S. at 38 n.9 ("[T]hese shall-issue regimes . . . are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" (quoting *Heller*, 554 U.S. at 635)).

The decision below also raises an important question about the extent to which, if at all, the Government may tax the exercise of Second Amendment rights. Licensing fees and taxes are not the same. In the licensing context, fees are generally capped at the cost of administering the licensing process. *See Cox v. New Hampshire*, 312 U.S. 569, 577 (1941) ("The fee was held to be 'not a revenue tax, but one to meet the expense incident to the administration of the act and to maintenance of the public order in the matter licensed.'"). Thus, the Second Circuit has applied *Cox* in the Second Amendment context to determine whether a licensing fee is "designed to defray (and does not exceed) the administrative costs associated with the licensing scheme." *Kwong v. Bloomberg*, 723 F.3d 160, 166 (2d Cir. 2013). The NFA taxes at issue here are flat taxes on the transfer or making of firearms. They generate revenue for the Government based solely on the exercise of constitutional rights, and they are not pegged in any way to the cost of administering the NFA. Instead, they were set at approximately the cost of a machinegun at the time the NFA was adopted. *National Firearms Act of 1934: Hearings on H.R. 9066 Before the H. Comm. on Ways and Means*, 73d Cong. 11 (1934).

The NFA's tax on the possession of suppressors is just that, a tax. Indeed, the NFA was justified as an exercise of Congress's tax power. *See Sonzinsky v. United States*, 300 U.S. 506, 513–14 (1937). When the NFA was adopted in 1934, its $200 tax was equivalent to over $4800 today. *See CPI Inflation Calculator*, *supra*. The tax plainly was prohibitive when enacted—a point the Government acknowledges. *See National Firearms Act*, ATF, https://perma.cc/UZ5A-GQZ5 ("The $200 making and transfer taxes on most NFA firearms were considered quite severe and adequate to carry out Congress' purpose to discourage or eliminate transactions in these firearms."). Although inflation has reduced the burden of the NFA's $200 tax, that does not change the fact that it is a flat revenue tax, not an administration fee. Just as it failed to distinguish between registration and licensing, the decision below failed to distinguish between fees and taxes when it presumed the constitutionality of the NFA's $200 tax because of the nondiscretionary nature of the registration process. App.14a.

The NFA's tax is unconstitutional. As Chief Justice Marshall famously put it, "the power to tax involves the power to destroy." *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819). This Court has already held in several different contexts that the exercise of constitutional rights may not be subject to special taxation. *See, e.g.*, *Murdock*, 319 U.S. at 114; *Harper*, 383 U.S. at 668; *Minneapolis Star*, 460 U.S. at 591. In the First Amendment context, this Court has said that the relevant burden is the mere "threat of burdensome taxes" that is "implicit in singling out the press" for special taxation, *Minneapolis Star*, 460 U.S. at 585 & n.7, not a judicial assessment of whether taxes have reached an abusive

level in any particular case. In *Harper*, this Court invalidated a poll tax of $1.50, reasoning that "introduc[ing] wealth or payment of a fee as a measure of a voter's qualifications" is unconstitutional regardless of "[t]he degree of the discrimination." 383 U.S. at 668. If the Second Amendment is truly "not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees,'" these principles establish that the NFA's tax is unconstitutional. *Bruen*, 597 U.S. at 70 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality op.)).

The Third Circuit's now-vacated decision in *Koons v. Attorney General of New Jersey* further underscores the unsettled and important nature of the taxation issue. In *Koons*, a panel of the Third Circuit held that a $50 fee imposed on handgun-carry-permit applicants, which went beyond defraying the costs of administering the permitting program, was likely unconstitutional. 156 F.4th at 246–47. Although that panel reasoned that "shall-issue licensing regimes and their associated fees . . . remain presumptively constitutional," it still conducted an independent analysis and asked whether the fee served a purpose beyond administration of the licensing program itself. *Id.* That approach stands in sharp contrast to the decision below, which treated the label "shall-issue" as nearly dispositive. App.14a. The part of the Third Circuit panel's decision holding the fee unconstitutional was unanimous, *see Koons*, 156 F.4th at 274 (Porter, J., concurring the judgment in part and dissenting in part), and the grant of rehearing came on petitions by the parties challenging the fee, Pls.-Appellees' Pets. for Reh'g En Banc, *Koons v. Att'y Gen. N.J.*, 162 F.4th 100 (3d Cir. 2025) (Nos. 23-1900 & 23-2043), ECF Nos. 126, 127. So, it appears likely that

the en banc Third Circuit will adhere to the holding that the fee is likely unconstitutional and thus split with the decision below. But only this Court can provide definitive clarity about the analytical framework that governs the registration and taxation of firearms and resolve the tension between circuits that the decision below is likely to engender.

II. The NFA's Scheme is Inconsistent with this Nation's Historical Tradition of Firearm Regulation.

Putting aside the Fifth Circuit's manifest error that allowed the NFA's scheme to escape the analysis that *Bruen* requires, the decision below is wrong still because the NFA's registration-and-taxation scheme is inconsistent with our historical tradition of firearm regulation. In the Fifth Circuit, the Government argued that the NFA could satisfy that test because, in its view, suppressors are "specially adaptable to criminal misuse," and there is a historical tradition of regulating such weapons. Gov't Supp. Resp. at 2. But the Government's criminal-misuse category finds no support in history and precedent. And, in any event, the Government fails even its own test because suppressors are not specially adaptable to criminal misuse.

The Government cannot satisfy its burden under *Bruen*. 597 U.S. at 17. *Heller* and *Bruen* have provided the sole historical tradition that can remove an arm from the Second Amendment's protective scope—the tradition of restricting the use of dangerous and unusual weapons. *Heller*, 554 U.S. at 627; *Bruen*, 597 U.S. at 46–48. To fit that tradition, a firearm must be "*both* dangerous *and* unusual." *Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring in the judgment) (emphases in original).

By its own admission, the Government cannot establish that suppressors fit the category of "dangerous and unusual weapons." The Government conceded below that a "complete ban on suppressors would be unconstitutional." Gov't Supp. Resp. at 11. *Bruen* and *Heller*, however, acknowledged "that colonial legislatures sometimes prohibited the carrying of 'dangerous and unusual weapons.'" *Bruen*, 597 U.S. at 47 (citing *Heller*, 554 U.S. at 627)). By conceding that it cannot prohibit the carry of suppressors, the Government implicitly acknowledged that suppressors are not dangerous and unusual.

The Government instead tried to thread the needle with an interim category of "arms" subject to special regulation but not outright bans: arms that are "specially adaptable to criminal misuse." Gov't Supp. Resp. at 2. Suppressors fit this category because, in the Government's view, "they make it harder for law enforcement to identify or detect the source and direction of gunfire." *Id.* at 7. In other words, an arm that is easily concealable is an arm that the Government considers "specially adaptable to criminal misuse."

This Court's precedents refute the existence of this interim category. Handguns are the quintessential concealable weapon. The "very attributes that make handguns particularly useful for self-defense are also what make them particularly dangerous." *Heller*, 554 U.S. at 711 (Breyer, J., dissenting). "That they are maneuverable and permit a free hand likely contributes to the fact that they are by far the firearm of choice for crimes such as rape and robbery." *Id.* Yet *Bruen* held that handguns are "indisputably in 'common use' for self-defense today"

and are thus not subject to lesser protection despite their easily concealable nature. 597 U.S. at 47.

To satisfy *Bruen*, the Government would thus need to establish a historical tradition of regulating protected arms, which it cannot do. There is no historical tradition of requiring the registration of protected arms at all, much less punishing the failure to do so with hefty criminal penalties. *See* Joseph G.S. Greenlee, *The Tradition of Short-Barreled Rifle Use*, 25 WYO. L. REV. 111, 142–47 (2025). There is no serious argument that registration with the Government, complete with fingerprinting, photo submission, potential approval delays, and felony criminal penalties for noncompliance, *see* 26 U.S.C. §§ 5812, 5822, 5861(d), form part of any relevant historical tradition. The Founders did not require registration of privately owned arms.

There can be little doubt that had King George III sought to require the colonists to register all of their firearms with the crown, it would have "provoked polemical reactions by Americans invoking their rights as Englishmen to keep arms." *Heller*, 554 U.S. at 594. Although this Court has suggested that licensing regimes may be "designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens,'" *Bruen*, 597 U.S. at 38 n.9 (quoting *Heller*, 554 U.S. at 635), registration is wholly unnecessary for that purpose. Indeed, even if the NFA were held unconstitutional as applied to suppressors, commercial suppressor sales would still be subject to the background check requirements of the Gun Control Act. *See* 18 U.S.C. § 921(a)(3), 922(t). Unlike licensing, registration allows the Government to track who has what arms and therefore could facilitate an effort to disarm the populace. *See*

generally STEPHEN P. HALBROOK, GUN CONTROL IN THE THIRD REICH: DISARMING THE JEWS AND "ENEMIES OF THE STATE" (2013).

The lack of a historical tradition of registration accords with this Court's precedents. Were registration of protected arms consistent with the Second Amendment, this Court would not have needed to consider whether the short-barreled shotguns at issue in *Miller* were protected arms. *Heller II*, 970 F.3d at 1294 (Kavanaugh, J., dissenting); *see also Miller*, 307 U.S. at 178 (explaining that this Court was not presented with "any evidence tending to show" that short-barreled shotguns were protected and declining to take judicial notice that they were). And in *Heller*, this Court suggested that the NFA's "restrictions on machineguns . . . might be unconstitutional" if machineguns were protected arms. 554 U.S. at 624.

Although the absence of a historical tradition is fatal to the NFA's scheme, the Government fails even its own test. Suppressors are not "specially adaptable to criminal misuse." Suppressors are safety devices that reduce the sound intensity of a gunshot by approximately 30 decibels, Kessler, *supra*, protecting the hearing of the user and bystanders, *see* Lobarinas, *supra*. The CDC has identified suppressors as "the only potentially effective noise control method to reduce . . . noise exposure from gunfire." Chen, *supra*, at 5. They serve important functions in self-defense scenarios, where they reduce not only noise but also recoil and muzzle rise, enabling more accurate follow-up shots. Wipfler, *supra*; Nunley, *supra*. And suppressors are especially beneficial in home self-defense scenarios when there is no time to locate

earplugs or muffs and effective communication with family members and first responders is imperative.

Firearms affixed with suppressors are still quite loud. A suppressed 9mm handgun produces approximately 127 decibels, comparable to an ambulance siren, Fligor, *supra*, at 8, and a suppressed AR-15 rifle produces approximately 132 decibels, comparable to a jackhammer, see Kessler, *supra*. What is more, suppressors extend the length and add to the weight of a firearm, therefore reducing its concealability and maneuverability, which are key features of handguns that make them the weapon of choice for armed criminals. *See Heller*, 554 U.S. at 711 (Breyer, J., dissenting). So contrary to Hollywood depictions of suppressors as tools of stealth that silence the sound of a firearm and allow criminals to evade detection, suppressors merely reduce the risk that firearms pose to the hearing of those who use them and others nearby.

Indeed, criminal activity seldom involves the use of a suppressor. The decision below acknowledged that "in the ten-year period between 1995 and 2004, one researcher found 'only two federal cases where a silencer was used in a murder,'" App.6a (quoting Stephen P. Halbrook, *The Power to Tax, the Second Amendment, and the Search for Which "'Gangster' Weapons" to Tax*, 25 WYO. L. REV. 149, 185 (2025)), and that "another study revealed only sixteen 'serious criminal cases' between 2011 and 2017 involving the use of a suppressor," App.6a–7a (quoting Robert J. Spitzer, *Gun Accessories and the Second Amendment: Assault Weapons, Magazines, and Silencers*, 83 L. & CONTEMP. PROBS. 231, 252 (2020)). By contrast, there are more than 5.77 million lawfully registered suppressors in the United States. *ATF Provides*

Updated Suppressor Registration Data, *supra*. As the Government conceded below, the ratio of "beneficial use is overwhelming in relation to . . . criminal misuse." Gov't Supp. Resp. at 7.

The NFA's taxation-and-registration scheme violates the Second Amendment. Suppressors are common, safe, and overwhelmingly possessed for lawful purposes. There is no historical tradition of regulating arms "specially adaptable to criminal misuse," and even if there were, suppressors would not fit that category.

III. This Case Is a Good Vehicle.

This case is a good vehicle because it squarely tees up both questions presented. Peterson has consistently challenged the constitutionality of the NFA's registration-and-taxation scheme since he was indicted for possessing a suppressor. MTD at 4; Opening Br. at 17. The decision below assumed that suppressors are protected arms, so this case gives this Court an opportunity to consider whether the NFA's taxation-and-registration scheme is constitutional as applied to a protected arm, without having to reach the threshold question of whether a suppressor is a protected arm.

This case also gives this Court an opportunity to correct a fundamental misunderstanding about the nature of the NFA. The decision below characterized the NFA as a "shall-issue licensing requirement." App.15a. That characterization was patently incorrect. At a minimum, this Court should grant and summarily vacate to correct the Fifth Circuit's manifest error of failing to consider whether the NFA's regime is supported by a historical tradition. *Cf. Caetano*, 577 U.S. at 412 (per curiam) (granting

petition and vacating decision below because it "contradicts this Court's precedent").

Two elements of the decision below warrant brief discussion to confirm why this case is a good vehicle. First, Peterson did not concede that the NFA's regime is presumptively constitutional. The Fifth Circuit cited Peterson's response at oral argument as a "conce[ssion]" that the NFA is a "shall-issue regime." App.14a. (citing Oral Argument at 4:45). But Peterson did not concede that the NFA's registration-and-taxation regime is a presumptively constitutional shall-issue licensing regime, which is the legal conclusion the Fifth Circuit drew from the exchange. *See* App.15a (referring to the NFA as a "shall-issue licensing requirement"). Peterson agreed only that the NFA is "shall-issue" in the sense that the Government has no discretion to refuse registration by a person whose possession would not violate the law as opposed to a "may-issue" regime that vests officials with subjective discretion. Oral Argument at 4:45–7:00. That observation does not bear on the constitutional analysis, because, as explained above, the NFA's registration-and-taxation requirements are fundamentally different from licensing, but the Fifth Circuit erroneously treated them the same.

Further confirming that Peterson's supposed "conce[ssion]" does not touch the question presented is that the question that the Fifth Circuit posed to Peterson referred to the regime as a "registration requirement." *Id.* at 4:54–5:20. Peterson's acknowledgment that the registration requirement is shall-issue is not an agreement that registration is the equivalent of licensing, given the that the question made no mention of licensing. As explained, licensing and registration are distinct. *See Heller II*, 670 F.3d at

1291 (Kavanaugh, J., dissenting). Equating one with the other was the Fifth Circuit's foundational error—not Peterson's concession.

In any event, Peterson addressed in a supplemental letter brief why footnote 9 of *Bruen* does not make the NFA's registration-and-taxation scheme constitutional. Def.-Appellant's Letter Br., Doc. 137 at 7 (5th Cir. Jun. 12, 2025). To the extent that this argument was not central to Peterson's earlier briefing, it is because no party—including the Government—asked the panel to erect a blanket presumption of constitutionality for the NFA's regime. The Government believed itself bound by *Bruen* to engage in the ordinary historical-tradition analysis. Gov't Supp. Resp. at 5–11. The Fifth Circuit, in contravention of party presentation, introduced the more extreme proposition that the Government's regime is presumptively constitutional. A litigant should not be faulted for failing to anticipate an argument that even his adversary did not make. *Cf. Clark v. Sweeney*, 607 U.S. 7, 8 (2025) (reversing for departure from party-presentation principle).

Second, the Fifth Circuit's characterization of Peterson's challenge as "as-applied" does not preclude this Court's review. The decision below characterized Peterson's challenge as "as-applied" and faulted him for failing to establish that the NFA's regime had been applied abusively to him specifically. App.16a–19a. For example, the panel noted that Peterson "neither alleges that he applied for an NFA license to make a suppressor, nor asserts that he paid the $200 tax, nor claims that the tax or application-processing times discouraged him from submitting an application." App.16a.

But Peterson's challenge does not depend on facts specific to his case apart from the fact that it concerns a suppressor (and not, say, a machinegun). His core contention in the district court was that the NFA's regime "burdens lawful gun owners' Second Amendment rights." MTD at 4. He reiterated that challenge in his opening brief in the Fifth Circuit. Opening Br. at 17. The burdens of the NFA's regime—the $200 tax, the submission of fingerprints and a photograph, the entry of the firearm and its owner in a national registry, and up to ten years' imprisonment for noncompliance—are enshrined in federal statute and apply to every person who seeks to make or acquire a suppressor. *See* 26 U.S.C. §§ 5812, 5822, 5861, 5871. They are not adjudicative facts unique to Peterson. Whether those burdens are consistent with our historical tradition of firearm regulation is a legal question that does not turn on whether Peterson personally applied for registration, paid the tax, or was discouraged from doing so. And, in any event, Peterson was not required to yield to the NFA's unconstitutional regime before challenging it. *Cf. Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969).

In light of the breadth and gravity of the Fifth Circuit's error, there is no reason for delay and every reason for this Court to grant review.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari or, in the alternative and at a minimum, grant and summarily vacate the Fifth Circuit's manifestly erroneous decision.

Dated: March 9, 2026

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED DECEMBER 9, 2025

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-30043

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GEORGE PETERSON,

Defendant-Appellant.

Filed December 9, 2025

OPINION

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CR-231-1

Before ELROD, *Chief Judge*, and HIGGINBOTHAM and SOUTHWICK, *Circuit Judges.*

JENNIFER WALKER ELROD, *Chief Judge*:

We withdraw our prior opinion and substitute the following.

Appendix A

Following a law enforcement raid on his home and place of business, George Peterson pleaded guilty to possessing an unregistered suppressor in violation of various provisions of the National Firearms Act (NFA). On appeal, he challenges the denial of two pretrial motions: a motion to dismiss his indictment on Second Amendment grounds and a motion to suppress evidence on Fourth Amendment grounds.

Assuming without deciding that the Second Amendment protects suppressors, we AFFIRM the district court's denial of Peterson's motion to dismiss because we agree with the government that the NFA's shall-issue licensing regime is presumptively constitutional under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and Peterson's as-applied challenge fails on this record. Furthermore, because the exclusionary rule's good-faith exception prevents suppression of the suppressor discovered at Peterson's home, we also AFFIRM the district court's denial of his motion to suppress.

I

A

In the summer of 2022, federal and state law enforcement officers executed a warrant at PDW Solutions, LLC, Peterson's firearm business that he operated out of his home. An Eastern District of Louisiana magistrate judge issued that warrant based on an affidavit submitted by a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) officer.

According to the officer, the ATF had spent several months investigating Peterson before seeking the warrant. In one instance, the ATF sent a Jefferson Parish Sherriff 's Office deputy into PDW to purchase two handguns. Peterson sold the officer the guns, but he did not report the transaction to the ATF despite 27 C.F.R. § 478.126a's requirement that he must. In another instance, an undercover ATF agent patronized PDW with a confidential informant. Even though Peterson was aware that the informant could not lawfully purchase a firearm, he nevertheless sold the agent two firearms after watching the informant hand the agent money for the purchase. Peterson failed to report this transaction as well. And because all of this occurred at Peterson's home, the ATF believed that Peterson had also violated 18 U.S.C. § 1001(a)(3) by representing, in his federal-firearms-license application, that he would conduct business only at gun shows and out of a leased storage unit.

In light of this information, the magistrate judge issued a warrant authorizing a search of Peterson's home (where the ATF alleged he stored his inventory) and of another structure attached to his home (where it alleged he conducted business). The warrant also authorized seizure of PDW's transactional and financial records, proceeds from firearm sales, firearms themselves, and computers and other digital devices, among other things.

The ATF executed the warrant the next day. During the search, ATF agents discovered a firearm suppressor inside Peterson's bedroom-closet safe. Peterson did not purchase this suppressor from a manufacturer; he

acquired materials and a kit to make it himself. The suppressor was in working condition, but it neither had a serial number nor was registered in the National Firearms Registration and Transfer Record.

B

An Eastern District of Louisiana grand jury indicted Peterson for possession of an unregistered suppressor under 26 U.S.C. §§ 5841, 5861(d), and 5871.

In response, Peterson filed a motion to dismiss the indictment and a motion to suppress the evidence obtained through the ATF's search of his property. Peterson argued: (1) that the indictment should be dismissed because the NFA's registration scheme violates the Second Amendment as applied to him; and (2) that the evidence obtained from the ATF's search of his home should be suppressed because that search violated the Fourth Amendment.

The district court denied both motions, and Peterson agreed to enter a conditional guilty plea. He reserved the right to appeal the denial of his motion to dismiss and of his motion to suppress. Peterson elected not to challenge the NFA's registration requirement on its face.

The district court sentenced Peterson to twenty-four months of imprisonment, and he timely appealed his two preserved issues.

Appendix A

II

Peterson first challenges the district court's denial of his motion to dismiss. Specifically, he argues that the NFA's suppressor-registration requirement unconstitutionally burdens his Second Amendment rights. We first provide background on suppressors and the NFA before turning to Peterson's as-applied challenge on Second Amendment grounds.

A

A suppressor is "a device that attaches to the muzzle of a firearm and makes the firearm quieter when discharged." *Paxton v. Dettelbach*, 105 F.4th 708, 710 (5th Cir. 2024); *see also* 18 U.S.C. § 921(a)(25) ("The terms 'firearm silencer' and 'firearm muffler' mean any device for silencing, muffling, or diminishing the report of a portable firearm . . . ."). Though many use the term "silencer," that term "is a misnomer, in that—despite movie fantasies—a noise suppressor reduces decibels[] but does not actually 'silence' the discharge of a firearm. Noise may be muffled or diminished, and maybe by only a few decibels at that, but it can still be heard." Stephen P. Halbrook, *Firearm Sound Moderators: Issues of Criminalization and the Second Amendment*, 46 Cumb. L. Rev. 33, 36 (2015) [hereinafter Halbrook, *Firearm Sound Moderators*].

Suppressors function by causing the gasses emanating from a fired weapon to do so more slowly and therefore more quietly. *Id.* at 41–42. Hiram Maxim (whom TIME

Magazine affectionately labeled "Dr. Shush" and "noise's bogeyman") is credited not only with inventing the suppressor but also with using the same sort of technology to abate the noise produced by early combustion engines. *Id.* at 41, 45 & n.79.

Many commentators have recognized the benefits of suppressors. For example, while many firearms produce "noise levels of between 140–160 decibels, at which level hearing can be permanently impaired," suppressors can reduce the noise to around 135 decibels, at which level hearing loss is less likely to occur. *See* Robert J. Spitzer, *Gun Accessories and the Second Amendment: Assault Weapons, Magazines, and Silencers*, 83 Law & Contemp. Probs. 231, 249–50 (2020). Further, hunters may use suppressors to avoid spooking game and to reduce noise pollution in the jurisdictions that permit suppressors in the field. Halbrook, *Firearm Sound Moderators*, *supra*, at 35; *see also id.* at 76–78 (collecting European laws on suppressor use for hunting). Suppressors may also reduce "noise, recoil, and muzzle rise" in self-defense scenarios, giving the shooter an advantage. *See id.* at 69.

Commentators have also noted that criminals infrequently use suppressors, despite a historical "association of the use of silencers with criminal acts." Spitzer, *supra*, at 249, 252. For example, in the ten-year period between 1995 and 2004, one researcher found "only two federal cases where a silencer was used in a murder." Stephen P. Halbrook, *The Power to Tax, the Second Amendment, and the Search for Which "'Gangster' Weapons" to Tax*, 25 Wyo. L. Rev. 149, 185 (2025) [hereinafter Halbrook, *The Power to Tax*]. Another

study revealed only sixteen "serious criminal cases" between 2011 and 2017 involving the use of a suppressor. Spitzer, *supra*, at 252. Scholars debate whether the lack of association between suppressors and criminality is due to criminals' lack of interest in using suppressors, or whether the NFA has proven effective in keeping them out of the hands of criminals. *Id.* Either way, and despite the lack of correlation between suppressors and criminal activity, some oppose suppressors on the basis that they may inhibit detection of crime. *See id.* at 252–53.

At the federal level, the ATF regulates suppressors through enforcement of the NFA.[1] The NFA instructs the Attorney General to "maintain a central registry of all firearms"—known as the National Firearms Registration and Transfer Record—"in the United States which are not in the possession or under the control of the United States." 26 U.S.C. § 5841(a). The National Firearms Registration and Transfer Record contains information on each firearm, the firearm's date of registration, and the identification and address of the person entitled to possess the firearm. *Id.* § 5841(a)(1)–(3). The term *firearm* is defined to include any suppressor. *Id.* § 5845(a).

1. States also regulate suppressors. At least eight states have banned them outright, meaning that possession of a suppressor is unlawful even if a person may lawfully possess a suppressor under the NFA. Halbrook, *The Power to Tax*, *supra*, at 184; *see, e.g.*, Cal. Penal Code § 33410 ("Any person, firm, or corporation who within this state possesses a silencer is guilty of a felony . . . ."); N.Y. Penal Law § 265.02(2). Louisiana, the state in which agents recovered Peterson's unregistered suppressor, does not prohibit suppressor possession.

To register a firearm under the NFA, the person making the firearm must complete an application identifying the firearm and the applicant and submit it to the ATF. *Id.* § 5822. The application must contain copies of the applicant's fingerprints and his photograph. *Id.* In addition to submitting an application, the applicant must pay a $200 "tax" to register the firearm. *Id.*; *see also id.* § 5821(a). A completed application "shall be denied if the making or possession of the firearm would place the person making the firearm in violation of law." *Id.* § 5822; *accord* 27 C.F.R. § 479.65.[2]

If the application is approved, the individual may then make the suppressor and, if he does so, he must register it in the National Firearms Registration and Transfer Record. 26 U.S.C. § 5841(b). The individual making the firearm must also mark it with "a serial number which may not be readily removed, obliterated, or altered . . . ." *Id.* § 5842(a). If an application is denied, on the other hand, the $200 tax payment is refunded and the denial will explain the reason for disapproval. 27 C.F.R. § 479.64.

The NFA makes it unlawful for an individual to receive or possess a firearm when the firearm is not registered

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2. The NFA imposes nearly identical registration requirements for applicants who wish to "transfer" a firearm. 26 U.S.C. §§ 5811–5812; 27 C.F.R. §§ 479.84–.87. The term *transfer* is defined to include "selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of." 26 U.S.C. § 5845(j). Because Peterson made the unregistered suppressor that the ATF discovered, we focus on the "making" provisions.

to him under the National Firearms Registration and Transfer Record. 26 U.S.C. § 5861(d); *see also id.* § 5871.

B

We now turn to Peterson's as-applied challenge to the NFA's suppressor-registration requirement under the Second Amendment. Peterson contends that suppressors are "Arms" protected under the Second Amendment and that the NFA is unconstitutional. The government agrees that the Second Amendment protects suppressors, but it maintains that the NFA is constitutional under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

1

"We review *de novo* a district court's denial of a motion to dismiss an indictment, including any underlying constitutional claims." *United States v. Parrales-Guzman*, 922 F.3d 706, 707 (5th Cir. 2019).

The Second Amendment protects "the right of the people to keep and bear Arms." U.S. Const. amend. II. But as Justice Scalia cautioned in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that right "is not unlimited." *United States v. Diaz*, 116 F.4th 458, 463 (5th Cir. 2024) (citing *Heller*, 554 U.S. at 626), *cert. denied*, — S. Ct. —, 2025 WL 1727419 (2025). To identify its limits, we employ a two-step analysis. *Bruen*, 597 U.S. at 24. "We start, as always, with the text." *United States v. Giglio*, 126 F.4th 1039, 1042 (5th Cir. 2025). That is, we first consider whether "the Second Amendment's plain text covers an

individual's conduct." *Bruen*, 597 U.S. at 24. If it does, "the Constitution presumptively protects that conduct," and we then turn to the second step, which compares our "Nation's historical tradition of firearm regulation" against the regulation at issue. *See id.*

In *Bruen*, the Supreme Court applied the foregoing approach when it considered the constitutionality of New York State's prohibition on possessing firearms without a license. *Id.* at 11–15. To obtain a license to carry a pistol outside of the home, New York law required an applicant to show "proper cause," meaning a demonstrated "special need for self-protection distinguishable from that of the general community." *Id.* at 12 (first quoting N.Y. Penal Law § 400.00(2)(f); and then quoting *In re Klenosky*, 428 N.Y.S.2d 256, 257 (N.Y. App. Div. 1980)). In practice, New York required evidence of threats, attacks, or other "extraordinary danger[s] to personal safety." *Id.* at 13 (quoting *In re Martinek*, 743 N.Y.S.2d 80, 81 (N.Y. App. Div. 2002)). The law vested "licensing officer[s]" with the decision to issue a license and provided limited judicial review of officers' decisions. *Id.* The Court had "little difficulty" concluding that this regime impinged on the right to bear arms in public, meaning that the law's challengers surpassed step one. *Id.* at 32–33.

Accordingly, the Court then proceeded to the second step, where it asked whether New York's licensing regime fit with our Nation's tradition of firearm regulation. The Court's detailed survey of the "Anglo-American history of public carry" revealed that historical restrictions touched on the "intent for which one could carry arms,

the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms . . . ." *Id.* at 70. Historical restrictions did not, however, require law-abiding Americans to demonstrate a special need to exercise their Second Amendment rights. *Id.* As the Court explained, it knew "of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need." *Id.* It therefore concluded that the New York licensing regime violated the Second Amendment, as made applicable to New York by the Fourteenth Amendment. *Id.* at 70–71.

Relevant here, the Court in *Bruen* contrasted so-called "may-issue" licensing regimes like New York's with "shall-issue" regimes that require state authorities to issue licenses "whenever applicants satisfy certain threshold requirements." *Id.* at 13. "Because these [shall-issue] licensing regimes do not require applicants to show an atypical need for armed self-defense, they do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second Amendment right to public carry." *Id.* at 38 n.9 (quoting *Heller*, 554 U.S. at 635). Rather, "shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Id.* (quoting *Heller*, 554 U.S. at 635). Shall-issue regimes do so by applying "narrow, objective, and definite standards" to guide licensing officials' decisions. *Id.* (quoting *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969)).

Because shall-issue regimes employ objective criteria, the Court noted that nothing in its analysis of the New York may-issue law "should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes . . . ." *Id.* (citing *Drake v. Filko*, 724 F.3d 426, 442 (3d Cir. 2013) (Hardiman, J., dissenting)). Justice Kavanaugh likewise addressed the constitutionality of shall-issue regimes. *Id.* at 80 (Kavanaugh, J., concurring). He also listed some administrative conditions that shall-issue licensing regimes may impose, like "fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements." *Id.* at 80.

Even so, the Court cautioned that shall-issue licensing laws are not necessarily impregnable. As it explained, shall-issue regimes remain subject to as-applied challenges where "lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." *Id.* at 38 n.9 (majority opinion). Justice Kavanaugh expressed similar concerns in concurrence, stating that "shall-issue licensing regimes are constitutionally permissible, subject of course to an as-applied challenge if a shall-issue licensing regime does not operate in that manner in practice." *Id.* at 80 (Kavanaugh, J., concurring).

After *Bruen*, we considered a challenge to a background-check requirement and considered the following questions: "What part of *Bruen* controls our evaluation of a firearm regulation? Its imposition of an historical showing to be made by the government? Or its

various assurances that it did not disturb common-place regulations in shall-issue regimes?" *McRorey v. Garland*, 99 F. 4th 831, 834 (5th Cir. 2024). We answered, "the latter." *Id.*

As we explained in *McRorey*, the Supreme Court in *Heller* "described 'conditions and qualifications on the commercial sale of arms' as 'presumptively lawful.'" *Id.* at 836 (quoting *Heller*, 554 U.S. at 626–27, 627 n.26). "*Bruen* did nothing to disturb that part of *Heller*." *Id.* So, we read *Bruen* to implement a "presumption" of constitutionality for shall-issue "ancillary firearm regulations such as background checks preceding sale." *Id.* at 836–37; *see also Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 216, 227 (4th Cir. 2024) (en banc) (concluding that a shall-issue licensing regime was "presumptively constitutional because it operates merely to ensure that individuals seeking to exercise their Second Amendment rights are 'law-abiding' persons"), *cert. denied*, 145 S. Ct. 1049 (2025).

We then considered the *McRorey* plaintiffs' challenge to the National Instant Criminal Background Check System (NICS), under which federally licensed firearm dealers first acquire information from prospective firearm purchasers and then submit that information to NICS for a background check. *Id.* at 834. After conducting the background check, NICS provides a federal dealer one of three responses: (1) "Proceed," if the proposed purchase would not place the purchaser in violation of 18 U.S.C. § 922 or state law, (2) "Denied," if the proposed sale would place the purchaser in violation of those laws, or (3) "Delayed," if further investigation is required. *Id.*

at 834–35 (citing 28 C.F.R. § 25.6(c)(1)(iv)(A)–(C)). In that way, NICS approval hinges on "narrow, objective, and definite standards" to ensure that purchasers are "law-abiding, responsible citizens." *Id.* at 837 (quoting *Bruen*, 597 U.S. at 38 n.9). NICS, therefore, was presumptively constitutional as a shall-issue condition on the purchase of arms. *Id.* at 838–39.

Turning to this case, we assume without deciding that suppressors constitute "arms" under the Second Amendment, as both parties now contend. Even so, the NFA suppressor-licensing scheme is presumptively constitutional because it is a shall-issue regime, as Peterson's counsel conceded at oral argument. Oral Argument at 4:45. His briefing before the district court and this court does not otherwise contest the "shall issue nature" of the requirement. The NFA provides that the ATF will deny a firearm-making application if the "making or possession of the firearm would place the person making the firearm in violation of law." 26 U.S.C. § 5822; *see also* 27 C.F.R. § 479.65. This is precisely the "objective[] and definite" licensing criterion held permissible under *Bruen*. 597 U.S. at 38 n.9; *see id.* at 80 (Kavanaugh, J., concurring).

Further, we have no reason to doubt on this record that the NFA's fingerprint, photograph, and background-check requirements are "designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Id.* at 38 n.9 (majority opinion) (citation omitted); *see also* 27 C.F.R. §§ 479.62–65. Peterson's failure to make any showing as to how the requirement places an unconstitutional burden on his

Second Amendment rights alone is dispositive. It is not even clear he could claim that this requirement posed an unconstitutional burden as applied to him given his explanation that he failed to register because he "forgot" to do so. Finally, the NFA enforces its objective shall-issue licensing requirement through prohibiting suppressor possession by unlicensed persons, 26 U.S.C. § 5861(d), as did several of the "shall-issue" licensing regimes that *Bruen* cited approvingly. *See* 597 U.S. at 13 n.1, 38 n.9; *see also* Del. Code Ann. tit. 11, § 1442(a).

Peterson's merits brief does not address the applicability of the shallissue presumption; in fact, it does not cite *Bruen* at all. Peterson has instead argued—both in this court and the district court—that the NFA is unconstitutional under the "two-step" means-end scrutiny that *Bruen* overruled almost two years before his appeal was lodged and more than one year before he filed his motion to dismiss.

Peterson mentions *Bruen*'s shall-issue presumption only once, in his post-oral-argument briefing, where he dismisses the presumption as "dicta." But we rejected that argument squarely in *McRorey*, a case that Peterson nowhere cites:

> [Plaintiffs] characterize passages such as footnote 9 [of the *Bruen* opinion] as *dicta*. We, however, "are generally bound by Supreme Court dicta, especially when it is recent and detailed." And it doesn't get more recent or detailed than *Bruen*.

McRorey, 99 F.4th at 837 (citation omitted).

These challenged provisions are therefore "presumptively lawful." *Id.* at 838–39.

2

We now turn to whether the NFA has been "put toward abusive ends" through "exorbitant fees" or "lengthy wait times in processing license applications." *Bruen*, 597 U.S. at 38 n.9. We first note that Peterson brings an as-applied challenge to the NFA. In such a challenge, we consider the facts of the defendant's "own case." *See United States v. Rahimi*, 602 U.S. 680, 693 (2024).

Here, Peterson neither alleges that he applied for an NFA license to make a suppressor, nor asserts that he paid the $200 tax, nor claims that the tax or application-processing times discouraged him from submitting an application to the ATF. Instead, he explains that he "simply forgot to do the paperwork after" he made the suppressor. The record is therefore devoid of any facts indicating that the NFA has been "put toward abusive ends" as applied to him. *See United States v. Phillips*, 645 F.3d 859, 863 (7th Cir. 2011) ("[W]hen we are presented with an as-applied challenge, we examine only the facts of the case before us and not any set of hypothetical facts under which the statute might be unconstitutional.").[3]

3. For example, Peterson nowhere contends or produces evidence that a $200 tax as applied to him would "deny" him his Second Amendment rights. *See Bruen*, 597 U.S. at 38 n.9; *see also Watterson v. ATF*, No. 4:23-CV-00080, 2024 WL 897595, at *19 (E.D. Tex. Mar. 1, 2024) (rejecting challenge to NFA, in part, because "Plaintiff cannot show that a $200 tax is so exorbitant

In addition, the record does not reveal how long applicants must wait for the ATF to process their NFA applications. Peterson cites nothing to support his claim that current processing times for NFA license approval can be upwards of eight months. When pressed on his failure to produce evidence on this claim at oral argument, Peterson's counsel acknowledged the lack of evidence, Oral Argument at 6:03, and later offered to file a supplemental letter brief with the court containing support for his claim. He has never done so, though it would have been prudent to do so given that the government at oral argument disputed his eight-month claim and asserted that current NFA processing times run only "a few days" with "returns as quickly as one day." Oral Argument at 20:40. We decline to resolve this factual dispute and decide only that Peterson's unsupported claim that applicants must wait eight months on average before they can obtain a suppressor is insufficient to overcome *Bruen*'s presumption.[4] *See Justice v. Hosemann*, 771 F.3d 285, 292 (5th Cir. 2014) (holding that "a developed factual record" with "[p]articularized

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that he is effectively denied his Second Amendment right to bear arms"). We agree with Peterson that the $200 tax denied ordinary citizens the right to carry when it was initially passed in 1934; at that time, the tax was equivalent to over $4,800 in today's money. But that fact has no bearing on whether the tax is unconstitutional as applied to him today.

4. We note that our court has concluded that the 10-business-day wait time for the NICS background check is permissible under *Bruen*. *McRorey*, 99 F.4th at 840; *see also Md. Shall Issue, Inc.*, 116 F.4th at 227 (upholding shall-issue law when the "record therefore reveal[ed] that, in some cases, the process for obtaining a handgun qualification license can take only a few days").

facts" is "essential" to support an as-applied challenge); *Does 1-7 v. Abbott*, 945 F.3d 307, 310 n.3 (5th Cir. 2019) (reasoning that plaintiffs could not maintain an as-applied challenge because "they did not plead sufficient facts to support an as-applied challenge, and the complaint made only general allegations of unconstitutionality").

* * *

In sum, *Bruen*'s presumption of constitutionality for shall-issue licensing regimes applies to the NFA's application procedures. Peterson cannot overcome that presumption because the record does not reveal that the NFA has effectively "den[ied]" him his Second Amendment rights.[5] *Bruen*, 597 U.S. at 38 n.9. Accordingly, the district

5. Were Peterson able to show the NFA's requirements had been "put toward[s] abusive ends" as applied to him, we would proceed to the second step of the *Bruen* analysis. *McRorey*, 99 F.4th at 839 (alteration in original) (quoting *Bruen*, 597 U.S. at 38 n.9). Under that step, the "government must 'identify a well-established and representative historical analogue'" for the NFA. *Giglio*, 126 F.4th at 1042 (quoting *Bruen*, 597 U.S. at 30). We note that some courts have concluded that the NFA's suppressor-registration requirements pass constitutional muster under *Bruen*'s second step, although we do not reach that issue here. *See, e.g.*, *United States v. Serrano*, 651 F. Supp. 3d 1192, 1211–13 (S.D. Cal. 2023) (concluding that suppressors do not fall within scope of Second Amendment but, even if they did, the NFA's registration requirements comport with this Nation's historical tradition of firearms regulation); *United States v. Lightner*, No. 8:24-CR-21, 2024 WL 2882237, at *3 (M.D. Fla. June 7, 2024) (same); *United States v. Villalobos*, No. 3:19-CR-40, 2023 WL 3044770, at *13 (D. Idaho Apr. 21, 2023) (same and explaining that "the regulation of

court did not err when it denied Peterson's motion to dismiss the indictment.

In so holding, we do not foreclose the possibility that another litigant may successfully challenge the NFA's requirements. Here, in light of the parties' agreement that suppressors are "Arms" for purposes of the Second Amendment, we decide only that Peterson has failed to "develop any argument" or record to show that the NFA is unconstitutional as applied to him. *See United States v. Bridges*, 150 F.4th 517, 531 (6th Cir. 2025) (Nalbandian, J., concurring). We need not, and therefore do not, go further. *Id.* at *9 ("If it is not necessary to decide more, it is necessary not to decide more." (alteration and citation omitted)).

III

Next, Peterson challenges the denial of his motion to suppress the suppressor.

The district court concluded that the good-faith exception barred application of the exclusionary rule. On appeal, though, Peterson does not mention the good-

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silencers is readily analogous to the Nation's history of imposing commercial regulations on firearms"); *United States v. Beaty*, No. 6:22-CR-95, 2023 WL 9853255, at *8 n.11 (M.D. Fla. Jan. 20, 2023) ("The NFA's record-keeping and attendant payment requirements are consistent with our Nation's historical regulation of firearms."). *But see* Oliver Krawczyk, Comment, *Dangerous and Unusual: How an Expanding National Firearms Act Will Spell Its Own Demise*, 127 Dick. L. Rev. 273, 300–01 (2022).

faith exception. He instead argues "that the affidavit in support of the subject warrant application failed to establish probable cause . . . in violation of the Fourth Amendment." Even if this were true, it would not go toward establishing that the good-faith exception does not apply. *See United States v. Sibley*, 448 F.3d 754, 757 (5th Cir. 2006) (enumerating the four scenarios wherein the good-faith exception does not apply). Accordingly, Peterson has likely forfeited his good-faith-exception argument. *Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021).

But we need not rest our conclusion on this basis because, as we explain *infra*, we would affirm the district court's good-faith-exception decision even if Peterson's argument were preserved. That is, irrespective of whether the underlying affidavit actually gave rise to probable cause, we conclude that it was reasonable for the officers executing the warrant to rely on it. Accordingly, the exclusionary rule does not serve to bar admission of the suppressor, and the district court rightly denied Peterson's motion to suppress.

A

When considering appeals of motion-to-suppress rulings, we review "factual findings for clear error and legal conclusions *de novo*, viewing the evidence in the light most favorable to the prevailing party." *United States v. Martinez*, 102 F.4th 677, 683 (5th Cir. 2024). "The district court's determination of the reasonableness of a law enforcement officer's reliance upon a warrant issued

by a magistrate [judge]—for purposes of determining the applicability of the good-faith exception . . . —is also reviewed *de novo*." *United States v. Cherna*, 184 F.3d 403, 406–07 (5th Cir. 1999) (italics added).

If the good-faith exception applies, we "affirm the district court's denial of the motion to suppress." *Sibley*, 448 F.3d at 757.

B

As the district court correctly reasoned, "[t]he good-faith exception allows reliance on [a] warrant even if the search warrant is defective as long as that reliance is objectively reasonable." "Issuance of a warrant by a magistrate [judge] normally suffices to establish good faith on the part of law enforcement officers who conduct a search pursuant to the warrant." *United States v. Craig*, 861 F.2d 818, 821 (5th Cir. 1988). But the "exception does not apply when: (1) the magistrate [judge] issuing the warrant was misled by information in an affidavit that the affiant knew or should have known was false; (2) the issuing magistrate [judge] abandoned the judicial role; (3) the warrant was based on an affidavit so lacking in indicia of probable cause as to render belief in its existence entirely unreasonable; or (4) the warrant was so facially deficient that the executing officers could not have reasonably presumed it to be valid." *Sibley*, 448 F.3d at 757.

The district court rightly construed Peterson's argument as getting closest to addressing the third exception to the exception. And we agree that, despite

Peterson's protests, neither it nor any of the other exceptions apply. As the government relates, the warrant described "Peterson's false representation to the ATF that he would not store or sell guns on his property; three separate law enforcement purchases from PDW; [and] PDW's failure to ever file a multiple sales report." Regardless of whether these facts would actually give rise to probable cause, they at least present "indicia of probable cause" sufficient to render belief in its existence reasonable. *See Sibley*, 448 F.3d at 757. Indeed, the affidavit at issue here stands in stark contrast to the sorts of "bare bones" affidavits that have been deemed insufficient. *See United States v. Brown*, 941 F.2d 1300, 1303 n.1 (5th Cir. 1991) (collecting examples). Accordingly, we conclude that the officers who executed the warrant acted reasonably in relying on it. And because none of the exceptions to the good-faith exception apply, it bars application of the exclusionary rule and the district court rightly denied Peterson's motion to suppress.

IV

For the foregoing reasons, we AFFIRM the district court's denial of Peterson's motion to dismiss and its denial of his motion to suppress.

APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED AUGUST 27, 2025

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-30043

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GEORGE PETERSON,

Defendant-Appellant.

Filed August 27, 2025

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CR-231-1

JUDGMENT

Before ELROD, *Chief Judge*, HIGGINBOTHAM, and SOUTHWICK, *Circuit Judges*.

This cause was considered on the record on appeal and was argued by counsel.

Appendix B

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See FED. R. APP. P. 41(b). The court may shorten or extend the time by order. See 5TH CIR. R. 41 I.O.P.

APPENDIX C — SECOND ORDER DENYING REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED DECEMBER 9, 2025

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-30043

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GEORGE PETERSON,

Defendant-Appellant.

Filed December 9, 2025

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CR-231-1

ON PETITION FOR REHEARING EN BANC

Before ELROD, HIGGINBOTHAM, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:

Appendix C

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

APPENDIX D — ORDER AND REASONS OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, FILED AUGUST 21, 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CRIMINAL ACTION 22-231
SEC. "A"

UNITED STATES OF AMERICA,

VERSUS

GEORGE PETERSON

Filed August 21, 2023

ORDER AND REASONS

Before the Court are the Defendant's **Motion to Dismiss *Count 1 of the Indictment* (Rec. Doc. 42)** and the Defendant's **Motion to Suppress (Rec. Doc. 43)** filed by George Peterson. The motions are based on the search of the Defendant's home with an alleged deficient search warrant, and the October 2022 indictment of possession of an unregistered firearm in violation of Title 26, United States Code, Sections 5841, 5861(d) and 5871 (Rec. Doc. 1). The Defendant's motions are DENIED for the following reasons.

Appendix D

In June of 2022, ATF Special Agent Jared Miller applied for a search warrant to United States Magistrate Judge Donna Phillips Currault to search the Defendant's residence and storefront PDW Solutions. In its affidavit, the Government averred that the Defendant had violated four federal statutes, including failure to report multiple sales of firearms and making a false statement to an ATF agent. As to all four alleged crimes, the Government included articulable facts in support of the finding of probable cause by Judge Currault. The warrant was issued and the search was conducted the next day. As a result of the search, the silencer which forms the basis of the present charges was found.

MOTION TO DISMISS

The Defendant moves for his indictment to be dismissed in light of the recent Supreme Court case of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) and Rule 12(b)(3)(B)(v) of the Federal Rules of Criminal Procedure.

Numerous courts across the nation have ruled on this exact issue. This Court agrees with those courts and finds the statute to be constitutional.

In the wake of the Supreme Court's recent decision in *Bruen*, courts across the country have addressed an increase in constitutional challenges of various prohibitive weapon restriction statutes. The Second Amendment to the U.S. Constitution provides: "[T]he right of the people to keep and bear Arms, shall not be infringed." U.S.

Const. amend. II. However, no right is unlimited. *District of Columbia v. Heller*, 554 U.S. 570 (2008). Therefore, pursuant to *Bruen* the Court must engage in a two-step inquiry to determine whether a regulation placing restrictions on a party's Second Amendment rights is constitutional. *Bruen*, 142 S. Ct. at 2129-30. First, a court must ask whether "the Second Amendment's plain text covers an individual's conduct." *Id.* If the Second Amendment does cover the individual's conduct, the court must then ask whether "the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* Only where the regulation is "consistent with the Second Amendment's text and historical understanding" can it pass constitutional muster. *See Id.* at 2131.

'Bearable Arms' as defined by the Supreme Court are, "weapons of offence or armour of defence that a man wears for his defence or take into his hands or useth in wrath to cast at or strike another." *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008) (Quoting Dictionary of the English Language 106, 4th ed.). Since silencers are not arms, but rather an accessory, they are not not protected by the Second Amendment. *United States v. Cox*, 906 F.3d 1170, 1186 (10th Cir. 2018). A silencer is not a 'weapon of offence or an armour of defence' because it cannot on its own cause any harm and is not useful independent of its attachment to a firearm. *United States v. Hasson*, 2019 WL 4573424, at *4(D. Md. Sept. 20, 2019), *aff'd*, 26 F.4th 610 (4th Cir. 2022).

Consequently, silencers are not bearable arms within the scope of the Second Amendment even in light of *Bruen*

or its progeny. The Defendant's motion fails the first step of the *Bruen* analysis—that the plain text of the Second Amendment includes silencers. Therefore his motion must be dismissed.

MOTION TO SUPPRESS

The Defendant also moves to suppress the evidence seized based on the search of his home and residence that was executed in June of 2022. The Defendant argues that there was a lack of probable cause and articulable facts contained within the Government's search warrant affidavit.

The Court must determine if the search was proper in light of the exclusionary rule. In determining a challenge to seized evidence under the Fourth Amendment, the Court must determine whether the good-faith exception to the exclusionary rule articulated in *United States v. Leon*, 468 U.S. 897 (1984) applies. The good-faith exception allows reliance on the warrant even if the search warrant is defective as long as that reliance is objectively reasonable. *Id.* The only scenario where the good-faith exception would not apply are: 1) when the magistrate is misled by information in the affidavit the affiant knew or should have known was false, 2) the issuing magistrate abandoned the judicial role, 3) the warrant was based on an affidavit that lacked an indicia of probable cause, or 4) the warrant was so facially deficient that the executing officers could not have reasonably presumed it to be valid. *United States v. Sibley*, 448 F.3d 754, 757 (5th Cir. 2006). Accordingly, if the good-faith exception applies, a motion

to suppress to review the magistrate's determination of probable cause fails and the analysis need not go any further.

Here, the Court finds that the good-faith exception applies to the search and seizure of the Defendant's home and office. In his motion, the Defendant does not rebut the good-faith exception to the Fourth Amendment, but rather focuses on Magistrate Judge Currault's finding of probable cause and issuance of a search warrant. The type of warrants that fall into the third exception to the good-faith exception argued by the Defendant are based on wholly conclusory statements that lack articulable facts and circumstances for a judge to determine probable cause. *United States v. Gonzalez*, 766 Fed. App'x 178, 182 (5th Cir. 2019). This is not true in the matter before the Court as each offense was supported by specific facts of the criminal misconduct by the Defendant. Most notably, the Defendant concedes that probable cause existed to search his property pursuant to his failure to report multiple sales of firearms. The good-faith exception applies to this search, and the analysis need not go any further. The Defendant's motion must be DENIED.

ACCORDINGLY;

> **IT IS ORDERED** that the Defendant's **Motion to Dismiss Indictment (Rec. Doc. 42)** is **DENIED**.
>
> **IT IS FURTHER ORDERED** that the Defendant's **Motion to Suppress (Rec. Doc. 43)** is **DENIED**.

Appendix D

New Orleans, Louisiana, August 21, 2023.

/s/ Jay C. Zainey
Judge Jay C. Zainey
United States District Judge

APPENDIX E — CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amend. II.

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.

* * *

Appendix E

18 **U.S.C. § 921. Definitions**

* * *

(25) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

* * *

Appendix E

26 U.S.C. § 5811 (2022). Transfer tax

(a) Rate

There shall be levied, collected, and paid on firearms transferred a tax at the rate of $200 for each firearm transferred, except, the transfer tax on any firearm classified as any other weapon under section 5845(e) shall be at the rate of $5 for each such firearm transferred.

(b) By whom paid

The tax imposed by subsection (a) of this section shall be paid by the transferor.

(c) Payment

The tax imposed by subsection (a) of this section shall be payable by the appropriate stamps prescribed for payment by the Secretary.

* * *

Appendix E

26 U.S.C. § 5812. Transfers

(a) Application

A firearm shall not be transferred unless (1) the transferor of the firearm has filed with the Secretary a written application, in duplicate, for the transfer and registration of the firearm to the transferee on the application form prescribed by the Secretary; (2) any tax payable on the transfer is paid as evidenced by the proper stamp affixed to the original application form; (3) the transferee is identified in the application form in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph; (4) the transferor of the firearm is identified in the application form in such manner as the Secretary may by regulations prescribe; (5) the firearm is identified in the application form in such manner as the Secretary may by regulations prescribe; and (6) the application form shows that the Secretary has approved the transfer and the registration of the firearm to the transferee. Applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.

(b) Transfer of possession

The transferee of a firearm shall not take possession of the firearm unless the Secretary has approved the transfer and registration of the firearm to the transferee as required by subsection (a) of this section.

Appendix E

26 U.S.C. § 5821 (2022). Making tax

(a) Rate

There shall be levied, collected, and paid upon the making of a firearm a tax at the rate of $200 for each firearm made.

(b) By whom paid

The tax imposed by subsection (a) of this section shall be paid by the person making the firearm.

(c) Payment

The tax imposed by subsection (a) of this section shall be payable by the stamp prescribed for payment by the Secretary.

* * *

Appendix E

26 U.S.C. § 5822. Making

No person shall make a firearm unless he has (a) filed with the Secretary a written application, in duplicate, to make and register the firearm on the form prescribed by the Secretary; (b) paid any tax payable on the making and such payment is evidenced by the proper stamp affixed to the original application form; (c) identified the firearm to be made in the application form in such manner as the Secretary may by regulations prescribe; (d) identified himself in the application form in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph; and (e) obtained the approval of the Secretary to make and register the firearm and the application form shows such approval. Applications shall be denied if the making or possession of the firearm would place the person making the firearm in violation of law.

Appendix E

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. 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.

(b) By whom registered

Each manufacturer, importer, and maker shall register each firearm he manufactures, imports, or makes. Each firearm transferred shall be registered to the transferee by the transferor.

(c) How registered

Each manufacturer shall notify the Secretary of the manufacture of a firearm in such manner as may by regulations be prescribed and such notification shall effect the registration of the firearm required by this section. Each importer, maker, and transferor of a firearm shall,

prior to importing, making, or transferring a firearm, obtain authorization in such manner as required by this chapter or regulations issued thereunder to import, make, or transfer the firearm, and such authorization shall effect the registration of the firearm required by this section.

(d) Firearms registered on effective date of this Act

A person shown as possessing a firearm by the records maintained by the Secretary pursuant to the National Firearms Act in force on the day immediately prior to the effective date of the National Firearms Act of 1968[1] shall be considered to have registered under this section the firearms in his possession which are disclosed by that record as being in his possession.

A person possessing a firearm registered as required by this section shall retain proof of registration which shall be made available to the Secretary upon request.

* * *

1. So in original. See References in Text notes below.

Appendix E

26 U.S.C. § 5845. Definitions

For the purpose of this chapter—

(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; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun 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.

* * *

Appendix E

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; * * *

* * *

Appendix E

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.

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