

No. 26-179

In The

**Supreme Court of the
United States of America**

OCTOBER TERM 2026

TERRY BRANDERS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF FOR PETITIONER

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Counsel for Petitioner
September 30, 2026

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QUESTIONS PRESENTED

1. Whether Ms. Branders is precluded from asserting an as-applied challenge to 18 U.S.C. § 922(g)(1) under the Second Amendment, based on dicta as the Eighth Circuit holds, or whether she still is entitled to an as-applied challenge to § 922(g)(1) following the test demanded by this Court in *Bruen* as the Third Circuit holds?
2. Whether application of 18 U.S.C. § 922(g)(1) to Ms. Branders's single twenty-five-year-old conviction for felony child neglect unconstitutionally violates the Second Amendment and the natural right of self-defense it codifies?

STATEMENT OF THE CASE

I. Statement of Facts

In July of 2000, Terry Branders (“Ms. Branders”), a retired factory worker, began operating a day care center in her home in Alexandria, Virginia. R. at 2. She sometimes cared for ten or more children at a time. *Id.* Her 18-year-old son, Nelson, was in charge of picking up and dropping off the children. *Id.* Nelson had just graduated from high school and was usually up late socializing. *Id.* After a particularly late evening, Nelson got up with just a few hours of sleep. *Id.* He had picked up 12 children, dropped them off at the daycare, driven to his apartment, parked the van, and went to sleep. *Id.* 11-month-old Kenneth Drew (“Kenneth”), whom Nelson usually placed in a crib in a separate bedroom where he would sleep through the whole pick-up routine, was still in his van. *Id.* Tragically, Ms. Branders did not notice that Kenneth was missing until she went to wake him about 2 hours later. *Id.* Frantically, Ms. Branders spent over an hour trying to reach Nelson and Kenneth’s mother before calling 911, but by the time the police arrived, they found Kenneth in Nelson’s van with severe heat-related injuries. *Id.* Despite rushing him to the hospital, Kenneth did not survive. *Id.*

Nelson and Ms. Branders were both convicted of felony neglect of a child under Va. Code § 18.2-371. *Id.* Ms. Branders was also convicted of running a day care without a license, which is a misdemeanor. R. at 3. Ms. Branders was sentenced on March 5, 2001, and given a two-year suspended sentence and placed on probation. *Id.* On the same day, Nelson was given a 4-year prison sentence. *Id.*

In 2020, Ms. Branders, wanting a new start, moved to Appleton, New Coastland. *Id.* She became involved with various charities, volunteering in the local food bank and stocking school supplies for children in need. *Id.* Since her past conviction, she has only had one run-in with the law, a misdemeanor crime for driving 83 in a 65-mph zone where her license was suspended for

6 months. *Id.* Ms. Branders's son, Nelson, still living in his mom's basement, blames her for everything wrong with his life, has difficulty maintaining a job, and has frequent angry outbursts. *Id.* Ms. Branders fearfully complies with Nelson's demands. *Id.* She finds him and his friends scary, suspecting them of using or selling drugs. *Id.*

After confiding in another volunteer at the food bank, Becky Haskill, about Ms. Branders's fears, Becky thought that Ms. Branders needed a firearm for protection. *Id.* Ms. Branders was unsure, but Becky offered her a handgun from her late husband's collection, which Ms. Branders accepted and took home. *Id.* She placed the gun and ammunition in separate locked drawers in her living room. R. at 4. In June 2024, the DEA got a tip about Nelson possibly being involved in criminal activities. R. at 3. When Nelson left Ms. Branders's home, DEA Agent Sue Stern knocked on the door and asked Ms. Branders if she could search the house. R. at 4. Agent Sue Stern testified that because Ms. Branders was a fragile and impressionable older woman in her late 70s, she was certain she could get her to consent to search the house rather than having to get a warrant. *Id.* Ms. Branders allowed the DEA to search the house, was cooperative, and even proudly told the agents that she had a firearm locked safely away. *Id.* She was surprised when she was placed under arrest. *Id.*

II. Procedural Background

Ms. Branders was charged on July 3, 2024, with possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). *Id.* In the United States District Court for the Eastern District of New Coastland, Ms. Branders filed a motion to dismiss the indictment, arguing that the statute violated the Second Amendment as-applied to her. *Id.* The District Court agreed, reasoning that Ms. Branders was a woman who had no prior felony convictions and did not receive the conviction for engaging in purposefully dangerous behavior. R. at 6. The court explained that

there is no historical analogue that would support a finding that Ms. Branders should be permanently disarmed and declined to apply a categorical approach as adopted by the Eighth Circuit. *Id.* The court instead adopted the Fifth Circuit’s approach and allowed as-applied challenges to be brought. *Id.*

Subsequently, the Government appealed to the Fourteenth Circuit Court of Appeals. R. at 8. The Fourteenth Circuit reversed and remanded, reasoning that 18 U.S.C. § 922(g)(1) is presumptively lawful and there is no need to revisit every felony conviction to determine whether it would have qualified as a felony at the founding. *Id.* The court decided to adopt the reasoning of the Eighth Circuit by holding that legislatures traditionally possess discretion to disqualify categories of people from possessing firearms. *Id.* Circuit Judge PINCKNEY dissented, arguing that at the time of the Founders there were few laws related to child neglect, and it would be unlikely that neglect would have resulted in permanent disarmament. R. at 11.

SUMMARY OF ARGUMENT

Ms. Branders is not precluded from asserting an as-applied challenge to 18 U.S.C. § 922(g)(1) under the Second Amendment because of her status as a felon. The Constitution applies equally to all people, including felons. The Constitution doesn’t create classes of people or hold that one person is less than another. Denying the petitioner the opportunity to challenge 18 U.S.C. § 922(g)(1) as applied to her would misinterpret this Court’s precedent by treating dicta as binding. It would also ignore the Second Amendment’s text and this Court’s own interpretation of that text, departing from how the Founders understood the right “to keep and bear Arms” as reflected in our nation’s history.

First, the Court should not follow the Fourth, Eighth, and Tenth Circuits’ interpretation of *Heller*’s language. *Heller* stated that prohibitions on the possession of firearms by “felons and the

mentally ill” are presumptively lawful. *D.C. v. Heller*, 554 U.S. 570, 626–27 (2008). The Fourth, Eighth, and Tenth Circuits treated the language as binding and precluded challengers from asserting as-applied challenges. They failed to consider that the language in *Heller* was dicta. Neither *Heller* nor *Rahimi* presented the question of whether felons could be disarmed. Because neither holding required this Court to decide whether felons could possess firearms, the felon-related language in each opinion is dicta. This Court held in *Bruen* that when the plain text of the Second Amendment’s covers an individual’s conduct, the Constitution presumptively protects that conduct. Only a court can conclude that the conduct in question falls outside the Second Amendment. Therefore, because the language in *Heller* was dicta, this Court must apply *Bruen*’s plain text and historical analogue analysis.

Second, both the Constitution’s text and this Court’s precedent show that felons cannot be categorically barred from possessing firearms under the Second Amendment. First, the use of “people” rather than “citizen” or “people of the United States” in the Second Amendment shows an intention to codify a preexisting right that applies to all people and not just a certain category of people. In past decisions, this Court has held that the Second Amendment is like the First Amendment in applicability. The Second Amendment is equal to the First Amendment; hence, its applicability to the people should be similar as well.

Third, there is no legitimate historical tradition supporting categorical, status-based bans. The clearest historical examples of categorical bans are the Black Codes of the 1860s. These bans were part of the Black Codes, enacted not to protect public safety but to preserve racial hierarchy. Our history reveals no legitimate historical analogues for categorical bans, status-based bans that are untainted by animus. Additionally, founding-era proposals in Pennsylvania, Massachusetts, and New Hampshire would have expressly excluded certain categories of people

from the right. The Founders rejected each of these proposals, showing that they did not intend to exclude any class of people from the Second Amendment's protection.

Ms. Branders is not precluded from bringing an as-applied challenge to 18 U.S.C. § 922(g)(1), and the statute unconstitutionally restricts her Second Amendment right. In *Bruen*, this Court set out a two-part analysis to determine whether a restriction on a person's Second Amendment right is unconstitutional; the Government fails both.

18 U.S.C. § 922(g)(1) when applied to Ms. Branders's single twenty-five-year-old conviction for felony child neglect violates the Second Amendment. First, section 922(g)(1) clashes with the "plain text" of the Second Amendment. Ms. Branders is one of "the people" who is entitled to use her natural right of self-defense. Her twenty-five-year-old felony conviction does not remove her from the protections of the Second Amendment. The Second Amendment right to "keep and bear Arms" is not limited to law-abiding citizens, virtuous citizens, or responsible citizens. Rather, it is a natural right that is guaranteed to "all Americans." 18 U.S.C. § 922(g)(1) unconstitutionally clashes with the plain text of the Second Amendment because it prohibits Ms. Branders from ever, under any circumstances, exercising her right to defend herself and her home with a handgun, or "Arms".

Turning to the second step of the mandatory *Bruen* analysis, the Government has failed to demonstrate that permanently disarming Ms. Branders under 18 U.S.C. § 922(g)(1), for a nonviolent crime, is consistent with our nation's historical tradition of firearm regulation. Throughout our nation's history of firearm regulation, the same story repeats: one group is trying to prevent a dangerous individual or a threat to public peace from having "Arms". From early English Law in the Militia Act of 1662 to surety laws in early America, our nation's historical restrictions are not similar in purpose when compared to 18 U.S.C. § 922(g)(1). The history of

our nation supports the purpose, or the “why”, in disarming those that present a credible threat of danger or are actively dangerous to the public. Ms. Branders is not being restricted because she is a threat. She is a woman in her late 70s who committed a crime by omission, which resulted in a horrible accident, the death of a child. She is not who the Founders intended to limit, but rather the exact kind of individual that they codified the natural right to self-defense for, a vulnerable individual seeking to use it to protect herself in her home. The history of our nation’s restrictions on the Second Amendment is not “relevantly similar” in how it applies to Ms. Branders. Even if Ms. Branders was deemed to be a threat to society, she was not punished in a comparable way to the historical analogues. The historical analogues that support the purpose behind restrictions also set limitations for those restrictions. The restrictions were temporary and only for as long as the individual presented a threat to public peace. Furthermore, even when restrictions were placed upon an individual, like the Loyalist and Catholics there were exceptions if the individual wanted to possess of “Arms” for self-defense purposes. Ms. Branders is a benevolent woman in her late 70s who is fearful for her safety and because of 18 U.S.C. § 922(g)(1) she is permanently restricted from her natural right because of a conviction 20 years ago that could, but did not, lead to more than a year incarcerated.

Ms. Branders is unconstitutionally restricted under 18 U.S.C. § 922(g)(1), and therefore this Court should grant the motion to dismiss the indictment.

ARGUMENT

The great dissenter Justice Harlan once said that, in the eyes of the Constitution and in the eyes of the law, there is “no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.” *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896). This statement encompasses principles that extend beyond race. The Constitution does not create a lesser class of citizens based on status, including

felony convictions. Felons should have no less protection or fewer rights under the Constitution simply because of their status.

I. Ms. Branders Is Not Precluded from Asserting an As-Applied Challenge to 18 U.S.C. § 922(g)(1) Under the Second Amendment Because of Her Status as a Felon.

There are two sides to this argument. The Fifth, Third, and Sixth Circuits have held that a defendant is not precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1). See *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); see *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024); see *Range v. Att’y Gen. United States*, 124 F.4th 218 (3d Cir. 2024). The Eighth, Tenth, and Fourth Circuits have held that a defendant is precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1). See *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025); see *United States v. Hunt*, 123 F.4th 697, 702 (4th Cir. 2024); see *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024). The Eighth, Fourth, and Tenth Circuits relied on the Supreme Court’s language in *Heller* to hold that defendants are precluded from asserting as-applied challenges. See 127 F.4th at 1265; see 123 F.4th at 702; see 110 F.4th at 1125. These courts uniformly relied on dicta. In *Heller*, this Court stated that, “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons” 127 F.4th at 1265; 123 F.4th at 702; 110 F.4th at 1125. These Circuits solely relied on dicta and did no further analysis on the issue. The Fifth, Third, and Sixth Circuits did more and faithfully applied the *Bruen* test as binding Supreme Court precedent. See 116 F.4th at 458; see 113 F.4th at 637; see 124 F.4th at 218. Accordingly, 18 U.S.C. § 922(g)(1) was examined as any other restriction on an individual’s Second Amendment rights under *Bruen*. This Court should adopt the Fifth, Third, and Sixth Circuits’ application for the following reasons. First, the felon presumption language in *Heller* is dicta and not binding. Second, the text of the Second Amendment and this Court’s precedent require that felons be within the scope and protection of

the Constitution. Third, our nation’s history supports the conclusion that the Founders interpreted the Second Amendment to apply to everyone. The legislature may only limit this right if it is consistent with historical restrictions on the Second Amendment.

A. The felon prohibition language in *Heller* is dicta and is therefore not binding on this Court.

Just as some judicial decisions carry more precedential weight than others, so too does different language within a single decision. *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 419 (2024) (GORSUCH, concurring) (Not only did different decisions carry different weight, so did different language within a decision). Not every word is binding. *Id.* The Court’s language in *District of Columbia v. Heller*, which stated that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons...” is dicta and should be treated as such. 554 U.S. at 626–27. Dicta provides courts with a source of “thoughtful advice,” not judicial commands. *Id.* This Court has even gone so far as to state that it is “generally undesirable, where holdings of the Court are not at issue, to dissect the sentences of the United States Reports as though they were the United States Code.” *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993).

There is no doubt that the language in *Heller* and *Rahimi*, where this Court stated that prohibitions on the possession of firearms by “felons and the mentally ill” are presumptively lawful, is dicta. *United States v. Rahimi*, 602 U.S. 680, 699 (2024); see 554 U.S. 570, 626–27 (2008). In *Heller*, the statute at issue prohibited *all people* from possessing handguns within their homes. 554 U.S. at 570. Firearm prohibitions on felons were not at issue, and the statement was not necessary to arrive at the holding in *Heller*. In *Rahimi*, the statute at issue was § 922(g)(8). 602 U.S. at 680. This statute barred individuals subject to domestic violence restraining orders from possessing a firearm. 602 U.S. at 685. Restrictions on felons owning or possessing firearms

were not at issue and were not necessary for the Court to arrive at its holding that § 922(g)(8) was constitutional as applied to Rahimi. As Justice Gorsuch cautioned, the Court can only address the issues before it and judicial statements made must be read “in connection with the case” in which they were made and should not be “stretch[ed] . . . beyond their context.” 602 U.S. at 714 (GORSUCH concurring). In *Cent. Green Co. v. United States*, this Court explained that dictum is any sentence that is not essential to the disposition of any of the issues contested. *Cent. Green Co. v. United States*, 531 U.S. 425, 431 (2001); see also *Humphrey’s Executor v. United States*, 295 U.S. 602, 627 (1935) (dicta “may be followed if sufficiently persuasive” but are not binding). This Court held that if the dictum is not clear, it is appropriate to resort back to the text at issue. 531 U.S. at 431. This is precisely what this Court should do. It should go back to the language of the Second Amendment to determine whether prohibitions on felons possessing firearms are constitutional. This Court commanded that “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct . . . [and] [o]nly then may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” 597 U.S. at 17. Applying the standard in *Bruen* requires this Court to do an examination into the Second Amendment’s text and history rather than focusing on categorical reliance as dicta.

B. The plain text of the Second Amendment does not categorically exclude felons from the protected right of all Americans.

The Constitution should ultimately control whether as-applied challenges are foreclosed to the petitioner rather than dicta controlling that determination. Looking to the Second Amendment, our Founders wrote that the “right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. Unlike other amendments and clauses in the Constitution, the Founders chose to use the word “people” rather than “People of the United States” or “Citizens.”

See U.S. Cons. preamble; U.S. Const. art. IV, § 2, cl. 1. “People” is the broadest term used to describe individuals in the United States. The use of “people” rather than “citizen” or “people of the United States” shows an intention to codify a preexisting right that applied to *all people* and not just a certain category of people. See *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (“ . . . ‘the people’ protected by the Fourth Amendment, and by the First and Second Amendments . . . refers to a class of persons who are part of a national community. . . .”). Additionally, Black’s Law Dictionary defines people as “[a] nation in its collective and its political capacity,” showing that “the people” is meant to represent everyone in our nation, all Americans, not just a subset or category of people. Black’s Law Dictionary 885 (1st ed. 1891). Since the Founders chose the broadest possible term, felons, like all people, fall within the Second Amendment’s protection.

This same argument is supported by this Court’s reasoning in *U.S. v. Cruikshank*. This Court explained that the Second Amendment was not a right that was granted by the Constitution, and neither is it dependent upon the Constitution. See *United States v. Cruikshank*, 92 U.S. 542, 553 (1875) (explaining that the Second Amendment “has no other effect than to restrict the powers of the national government”). This was further expanded upon in *Heller*, where this Court stated that “it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right.” 554 U.S. at 592. This Court has explained that the Second Amendment was not merely a right given by Congress to the lucky few; rather, it is a right that has been understood to apply to everyone. *Id.* The Second Amendment was an express command forbidding Congress from infringing upon our natural right without historical justifications. *Id.* The Second Amendment is no less protected than the First Amendment. In *Bruen*, this Court stated that the right to self-defense under the Second

Amendment is not a second-class right that is subject to different rules than the other Bill of Rights guarantees. 597 U.S. at 70–71. This Court further explained that the First, Sixth, and Second Amendments apply without requiring the rights-holder to satisfy any special threshold conditions. *Id.* It is undisputed that all people in the United States hold First Amendment rights by default, and that those rights may be restricted only through an individualized judicial determination. A restriction on a person due to their status is not enough. As discussed above, the Second Amendment must be read and treated as the First Amendment. The Second Amendment is not a second-class right.

C. History confirms that felons retain their constitutional rights, and that categorical bans based on status are not historically supported.

This same idea is supported by our nation’s history. In pre-colonial times, hunting was a necessity, unlike in England, where it was legally restricted to a certain class of wealthy people. George C. Neumann, *Hunting Guns in Colonial America*, NRA American Rifleman (Sept. 10, 2026), <https://www.americanrifleman.org/content/hunting-guns-in-colonial-america/>. North America had land that was readily available, and hunting with firearms was the primary way to feed settlers’ large families. *Id.* Having a firearm was as important as having food and water. *Id.* It was not seen as an offensive weapon; rather, it was seen as a tool necessary for survival. Categorical bans on firearms did not become prevalent in the United States until after the Constitution was drafted and adopted. The most well-documented and historically significant of these restrictions were firearm bans targeting African Americans.

Starting with prohibitions on African Americans, Black Codes were not enacted for protection; rather, they were enacted to maintain the prewar racial hierarchy. See *Timbs v. Indiana*, 586 U.S. 146, 153 (2019). For example, in 1865, Louisiana enacted a law that prohibited people from carrying firearms on the premises or plantations of citizens without the

consent of the owner. The statute stated, “That it shall not be lawful for any person or persons to carry fire-arms on the premises or plantations of any citizen, without the consent of the owner or proprietor. . . .” *An Act to Prohibit the Carrying of Fire-Arms on Premises or Plantations of Any Citizen, Without the Consent of the Owner*, §§ 1–2, 1865 La. Acts 14, 14–16 (J. O. Nixon, 1866). Although the law appears facially neutral, its aim was to restrict the ability of freed people to hunt and engage in other activities, in order to force them back into agricultural labor. Pete Patterson, *The Black Codes must not define America’s fundamental freedoms*, SCOTUSblog (Feb. 4, 2026, 10:00 AM), <https://www.scotusblog.com/2026/02/the-black-codes-must-not-define-americas-fundamental-freedoms/>. Although laws like these are part of our nation’s history of categorical firearm bans, they should not serve as legitimate historical analogues because of their discriminatory purpose.

This Court cannot look to tainted history and laws whose very purpose was to deprive a disfavored class of citizens of the benefits afforded by the right to keep and bear arms. *Id.* Doing so means doing the very thing that the Second Amendment was meant to prohibit. *Id.* Using a provision that originated from Black Codes to truncate the rights of modern Americans is the very line of thinking that should be avoided rather than adhered to. *Id.*

Next, looking to Pennsylvania’s ratifying convention, the Anti-Federalists proposed a draft constitutional amendment stating that “no law shall be passed for disarming the people . . . unless for crimes committed, or real danger of public injury from individuals.” Bernard Schwartz, *The Bill of Rights: A Documentary History* 665 (1971). Despite explicitly proposing that disarmament be permitted for “crimes committed,” this language was rejected, and the Second Amendment, as ratified, contained no exception. *Id.* This shows that the Founders expressly decided to exclude a category of people based on crimes. The same broader pattern

occurred in Massachusetts, where Anti-Federalists proposed a change that would have prevented the government from restricting “peaceable citizens” from “keeping their own arms.” *Id.* at 681. The Founders again expressly declined to exclude a category of people based on crimes. New Hampshire also considered a similar change: a proposal proposed that Congress “shall never” disarm citizens unless they “are or have been in actual rebellion.” 1 Jonathan Elliott, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 326 (2d ed. 1891). Each of these proposals confirms that the Founding generation, even when directly presented with crime- or status-based disarmament language, consistently rejected or narrowly limited it.

The Government cites *United States v. Jackson* to support their blanket rule that the categorical disarmament of anyone convicted of a felony, without asking whether the individual is dangerous or a threat to the public, is constitutionally valid under our nation’s history and precedent. 110 F.4th at 1226. The court in *Jackson* is correct that class-based disarmament appears in history, but the existence of such laws does not just end the analysis or allow Congress to strip large groups of their Second Amendment right. *Id.* In *Rahimi*, this Court specifically looked at why a particular category of individuals was restricted. See 602 U.S. at 682. The Court emphasized that for a category of people to be disarmed, there must be evidence that they posed “a credible threat” to the “physical safety” of others. *Id.* Additionally, England disarmed Catholics not because they were Catholic but because it had a very real fear that they would use their “Arms” for a violent rebellion. 113 F.4th at 651. Similarly, the Loyalists were disarmed not simply because of their loyalty to England but because they were engaged in an actual rebellion against the new government and could use their “Arms” to join the British and take American lives. *Id.* at 654. These classifications were made solely to prevent serious threats

to the safety of the people and the nation. A legislature cannot “define away a fundamental right” through the vast modern category of felony status. *Id.* at 660–61. “The very premise of constitutional rights is that they don’t spring into being at the legislature’s grace.” *Id.* Felony status cannot act as an unconstitutional catch-all under § 922(g)(1) to strip everyone who could have been sentenced to more than a year of the natural right to self-defense.

Even if the legislatures could categorically bar all felons from their natural right based solely on felony status, the historical analogues show that the restricted individual had an opportunity to rebut the presumption of dangerousness. English Catholics could establish that they were not dangerous and retain their “Arms” and even those who could not were able to keep them for self-defense purposes. *Id.* at 651. Loyalists during the founding era had the same opportunity to swear loyalty to the United States and retain their “Arms.” *Id.* at 654. This history requires the Court to “focus on each individual’s specific characteristics.” *Id.* at 657. This analysis therefore keeps the avenue of as-applied challenges open.

II. 18 U.S.C. § 922(g)(1) When Applied to Ms. Branders’s Single Twenty-Five-Year-Old Conviction for Felony Child Neglect Violates the Second Amendment

A. Ms. Branders’s twenty-five-year-old modern “felony” conviction does not remove her from “the people” whose right to keep and bear “Arms” is protected by the Second Amendment at the threshold plain-text inquiry.

Constitutional interpretation must begin with the ordinary public meaning of the text at the time the Second Amendment was adopted. 554 U.S. at 576. Accordingly, “as with any Second Amendment challenge” the Court begins by asking “whether the restrictions imposed by the challenged law fall[s] within the plain text of the Second Amendment.” *Wolford v. Lopez*, 146 S. Ct. 2032, 2047 (2026). If the text covers an individual’s conduct, then “the Constitution presumptively protects that conduct.” *Id.*; 602 U.S. at 750. The Second Amendment demands that “[t]he right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend

II. In *Wolford v. Lopez*, the Supreme Court identified three questions for determining whether the challenged law unconstitutionally clashes with the “plain text.” 146 S. Ct. at 2044. First, does the challenged law apply to “the people”? *Id.* Second, does the law regulate “Arms”? *Id.* Lastly, does the law place a restriction upon the Second Amendment’s right to keep or bear those “Arms”? *Id.*

By itself, A modern felony conviction does not remove an individual from their guaranteed Second Amendment right. See *Id.* In *Range v. AG United States*, the Government failed to remove an individual convicted of food stamp fraud because he was part of the class of “all Americans” articulated in *Heller and Bruen*, and later reemphasized in *Hemani* and *Wolford*. 124 F.4th at 226; 554 U.S. at 581 (explaining that there is a “strong presumption that the Second Amendment right is exercised individually and belongs to all Americans”); 597 U.S. at 7 (“the Second Amendment guaranteed to ‘all Americans’ the right to bear commonly used arms”); 146 S. Ct. at 1685 (the Second Amendment protects the right of ‘all Americans’ to keep and bear firearms for self-defense”); 146 S. Ct. at 2043 (defining “the people” as “all members of the political community”). The Third Circuit rejected this attempted reclassification and held that felons are not stripped from their constitutional protections afforded to “the people” under the First and Fourth Amendment simply because of their new felony status. See 124 F.4th at 226. In *Range*, the Government based their argument around the “law-abiding citizen” language articulated in *Heller*, but when read in context “law-abiding citizen” was used by the court to describe the types of weapons that are not typically “possessed by law-abiding citizens for lawful purposes” not to create a subset of individuals entitled to the Second Amendment. *Id.*; 554 U.S. at 625. When defining who holds the Second Amendment right, this Court made it clear that “the people” “unambiguously refers to all members of the political community, not an unspecified

subset” and therefore the Second Amendment right presumptively “belongs to all Americans.” 554 U.S. at 580-81.

The history of the United States also clarifies that the Founders never intended law-abiding-citizens, or virtuous citizens to be the only subset of Americans entitled to their Second Amendment. 113 F.4th at 648. The founding generation only applied the virtuous citizen standard to civic rights, such as the right to vote, sit on a jury, or serve in the militia. *Id.* These rights were “limited to those members of the polity who were deemed capable of exercising [them] in a virtuous manner” because those kinds of rights were “exercised collectively, for the benefit of the community.” *Id.* The Supreme Court even addressed the Second Amendment as an individual right in *Heller*. 554 U.S. at 595.

Here, Ms. Branders is entitled to her Second Amendment right because she is and remains one of “the people” whose natural right of self-defense was acknowledged by the Founders in establishing the Second Amendment. 146 S. Ct. at 2044. She is a member of the political community, an American citizen, and she is entitled to exercise her Second Amendment right by keeping and bearing a handgun in her home for self-defense. 146 S. Ct. at 1685. Ms. Branders’s felony conviction does not expel her from the class of “all Americans” and strip her of her rights protected by the Second Amendment. *Id.* If it did, then anyone who was issued a speeding ticket or jaywalked would also be stripped of their fundamental right. Though she is no longer a law-abiding citizen, her conviction alone does not bar her from enjoying her God given Second Amendment right. 124 F.4th at 226.

1. 18 U.S.C. § 922(g)(1) unconstitutionally prohibits the very conduct which the Second Amendment was enacted to protect: keeping a handgun at home for self-defense.

Turning to the two remaining subsidiary questions for determining whether the challenged law unconstitutionally clashes with the “plain text of the Amendment’s language,”

the Supreme Court asks whether the law concerns any form of “Arms” and if so does the law restrict the people’s Second Amendment right to keep and bear those “Arms.” 146 S. Ct. at 2044. “Arms” is “any weapon customarily used for offensive or defensive purposes.” *Id.*; 554 U.S. at 58. Under 18 U.S.C. § 922(g)(1), it is illegal for a person who has been convicted of “a crime punishable by imprisonment for a term exceeding one year” to “possess in or affecting commerce, any firearm or ammunition.”

Here, Ms. Branders was convicted of felony neglect of a child under Va. Code § 18.2-371.1 in 2001. R. at 3. Over twenty-five years later, she was found by the DEA with a handgun and ammunition in separate locked drawers for self-defense purposes. R. at 3. A handgun is a form of “Arms.” 146 S. Ct. at 2044. Because Ms. Branders’s was convicted of a felony under the modern standard, meaning she could have been sentenced to prison for over a year, she is restricted from keeping a handgun in her home for self-defense purposes under 18 U.S.C. § 922(g)(1). Self-defense is the “central component” of the Second Amendment. 554 U.S. at 599. Section 922(g)(1) bars Ms. Branders from exercising her natural right to self-defense, her ability to protect herself, and her ability to protect her home from her unpredictable and possibly dangerous son. R. at 3. Therefore, section 922(g)(1) places restrictions on the Second Amendment; hence the Constitution presumptively protects Ms. Branders’s conduct. 146 S. Ct at 2047; 602 U.S. at 750.

B. The Government has failed to meet its burden to demonstrate that permanently disarming Ms. Branders under 18 U.S.C. § 922(g)(1) is relevantly similar to the nation’s historical tradition of “Arms” regulation.

The Government has the power to restrict the Second Amendment only if it can establish that the challenged regulation fits within the “historical tradition of firearm regulation.” 602 U.S. at 691; 146 S. Ct. at 2044; 597 U.S. at 28. To determine whether these historical analogues justify disarmament, the Court will look to whether Government has met this heavy burden by

establishing that the analogue is “relevantly similar to the modern law.” *Id.*; 602 U.S. at 692; *United States v. Hembree*, 165 F.4th 909, 912 (5th Cir. 2026) (explaining that the government’s failed to meet this heavy burden). The analogue does not have to be a “historical twin,” but it must be “relevantly similar” in both the “how” and “why.” *Id.*; 146 S. Ct. at 2037. The “why” asks whether the analogue was imposed for a similar reason and the “how” asks whether the analogue imposed a similar burden. *Id.*

1. From English law through our Founding era, disarmament was tied to dangerousness and people who threatened the public peace.

To determine if there “is anything magical about being a ‘felon’” that is enough to “that vaporizes one’s Second Amendment rights” the Government must find a historical analogue to support the disarmament of Ms. Branders. C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol’y 695, 698 (2009); 602 U.S. at 689.

- a. English Law restricted the rights of those whose possession of “Arms” was dangerous or threatened others.

Over 500 years ago, the question of whether to take away the right of self-defense from an individual did not depend on if they simply broke the law, but instead the restrictions were targeted on those who posed a threat to others or the public peace. See 602 U.S. at 693–94. Under the Statute of Northampton of 1328, an individual could not carry “Arms” in a way that would cause terror to the people or suggest an intent to commit violence. 602 U.S. at 697. That purpose remained in the “Militia Act of 1662,” which gave authority to the King’s agents to seize the “Arms of any person that was judged to be “dangerous to the Peace of the Kingdome.” *Id.* at 694. The English common law also made it a “great offence” to go “armed to terrify the King’s subjects.” *Id.* at 693-94. English surety laws were also grounded in the same purpose: to prevent a perceived threat to the public from carrying “Arms.” *Id.* at 695. The surety laws did

this by requiring that an individual who was reasonably suspected of future misconduct to provide security and pledge that they would “keep the peace.” *Id.* at 695.

Even England’s categorical restrictions were grounded in dangerousness. 113 F.4th at 651(explaining that Parliament disarmed Catholics, because it feared a “violent rebellion” and disarming would “spare England from the religious wars that had rocked the kingdom for decades”). Yet still, Catholics were able to rebut this presumption by “declaring loyalty to the crown” and therefore no longer being considered dangerous *Id.* Additionally, Self-defense was considered so fundamental to an individual that Catholics who remained “dangerous” to the English crown kept their right to bear arms for the defense “of his House or person” with “permission from the justice of the peace.” *Id.* at 652.

The practice of banning dangerous individuals or those who threatened the general public from possessing “Arms” was a valid practice in England. 113 F.4th at 651–52. The Constitutional principle for disarmament reflected throughout history is based on dangerousness, who is a threat to the public peace, not merely being convicted of some sort of crime.

- b. The Founding era provides the most helpful evidence in interpreting the Second Amendment and establishes that the practice of restricting the right to keep and bear “arms” was based on an individual’s perceived threat or dangerousness.

Since the founding, “our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms.” 602 U.S. at 690. Early colonial laws in Massachusetts, New Hampshire, and Virginia restricted the right to keep and bear “Arms” for offensive reasons or to go “in Terror of the People.” Greenlee, 20 Wyo. L. Rev. at 262–63. During the Revolutionary War, the Continental Congress proactively addressed those considered to be a threat to the new nation by recommending that the colonies disarm anyone who was “notoriously disaffected to the cause of America” or who refused to defend the united colonies. 113 F.4th at 653-54. Pennsylvania called it “very improper and dangerous” for

Loyalists to keep their weapons. *Id.* at 654. New York said it was “absolutely necessary” to disarm “the most dangerous.” *Id.* New Jersey demanded the disarmament of anyone who was “dangerous to the present Government.” *Id.* Even with the very real threat of treason surrounding this era, colonial laws still afforded Loyalists, who were categorically disarmed, the opportunity to show that they were not dangerous. *Id.* (explaining that Loyalists could retain firearms if they showed that they were a friend to the United Colonies or gave satisfactory reasons for needing weapons).

This enduring practice of preventing threats to the public and disarming dangerous individuals continued during the ratification of the Constitution. The Supreme Court in *Heller* called the state’s proposals “highly influential” sources without it being the law itself because they provide evidence of the public meaning surrounding the Second Amendment. 554 U.S. 603–04; 116 F.4th 458, 470. In Massachusetts, Samuel Adams proposed that the Constitution should never be construed to withhold the right to keep and bear “Arms” from “peaceable citizens.” 113 F.4th at 654–55. “Peaceable citizen,” according to founding-era dictionaries, was understood to mean “not bloody,” “not violent,” “not quarrelsome,” and “not turbulent,” and was not intended to cover the seemingly endless amount of modern conduct that a person can be imprisoned for over a year for. 919 F.3d at 455–56 (Barrett, J., dissenting). Massachusetts’s proposal was not focused on the distinction between a felon and a non-felon but instead was consistent with history in wanting to distinguish between those who threatened the peace and those who did not. 113 F.4th at 654–55.

Lastly, Pennsylvania proposed that “no law shall be passed for disarming the people . . . unless for crimes committed, or real danger of public injury from individuals.” 113 F.4th at 655. “Crimes committed,” as emphasized by the Third Circuit, does not simply encompass all felons,

violent and non-violent felons alike. *Id.* Instead, Pennsylvania’s proposal restricted two types of dangerous individuals. *Id.* The delegates restricted people who had already committed a crime that demonstrated dangerousness and dangerous people who had not yet committed a crime, like someone who was a traitor. *Id.* Pennsylvania’s proposal was trying to cover dangerous crimes and dangerous individuals, not establish an avenue for the government to permanently disarm every modern offense that the legislature considers a felony.

These three proposals all point to the one conclusion, the Second Amendment could only be restricted against those “who presented a danger to the public.” *Binderup v. Attorney General*, 836 F.3d 336, 368 (3d Cir. 2016) (en banc) (Hardiman, J., concurring in part and concurring in the judgments). Nothing in these proposals identifies the broad conduct encompassed by the modern felony label itself to be the dividing line between permissible restrictions and unconstitutional infringement.

In 1836, Massachusetts required a person who was carrying the type of weapon that was considered to be offensive or dangerous to provide surety only after a person who had “reasonable cause to fear that the accused would do him harm or breach the peace” complained. Mass. Rev. Stat. ch. 134, § 16 (1836); 602 U.S. at 696–97. Still, even with reasonable cause that the person would do “harm or breach the peace”, the restriction placed on the individual’s “Arms” could only last six months and contained an exception for self-defense. 602 U.S. at 697. In *Bruen*, the Court identified at least nine other jurisdictions later adopted similar surety laws. *Bruen*, U.S. at 56. These surety laws responded to an individualized threat of harm or a perceived dangerousness, not simply basing the restriction in an individual’s status alone. *Id.*

The tradition of our nation was limited to disarming those who posed a danger to the public. The historical evidence, from English law through the Founding, establishes

dangerousness as the justification for disarmament. Categorical status, as being a Catholic or Loyalist, was not itself the Constitutional justification for disarmament, rather it was the perceived threat that they posed. Even individuals who were subject to categorical disarmament because they posed a threat and were labeled dangerous had an opportunity to retain their arms if they could show that they were not a danger to anyone in the kingdom. *Id.* An individual's Second Amendment right may only be restricted once a defendant has been found to pose a credible threat to the physical safety of others. To place 922(g)(1)'s restriction upon Ms. Branders, the government would have to establish that Ms. Branders is dangerous. Ms. Branders was convicted under Va. Code § 18.2-371.1 because of a negligent omission, not an intentional armed attack. She committed criminal negligence more than twenty-five-years ago. R. at 4. She is an old woman who volunteers at her local food bank and stocks school supplies for children in need. *Id.* In the twenty-five years since the accident her only illegal conduct has been a speeding ticket. R. at 3. A 70 year old woman who committed a felony under criminal negligence is not a current threat to the public. R. at 4. She is the opposite who the Founders would have considered a threat with her "Arms" and even practices gun safety by keeping the handgun and ammunition locked in separate drawers. R. at 4. While the government is correct that not all Catholics or Loyalists were violent or dangerous people, both Catholics and Loyalists had the opportunity to rebut that dangerous presumption, and Ms. Branders is entitled to hers and prevails in her individual dangerousness analysis. 113 F.4th at 662.

2. Section 922(g)(1) differs in both the "why" and the "how" to these historical analogues.

The government has failed to meet its burden in establishing that the historical analogues are relevantly similar in why they were enacted and how they burdened Ms. Branders's right to keep and bear arms. Section 922(g)(1) differs in both respects when applied to Ms. Branders

because her current modern felony status does not communicate a threat of dangerousness, and even historical disarmaments of dangerous individuals were not permanent and had a rebuttable presumption. 18 U.S.C. § 922(g)(1).

- a. Section 922(g)(1) differs in the “why” because Ms. Branders’s modern felony label does not establish that she is a present danger to the public.

Preventing threats and maintaining the public peace was the core purpose of the English Laws. See 602 U.S. at 693–95, 97; 113 F.4th at 651. England’s surety laws subjected individuals to restrictions in order to limit the threat of reasonably anticipated harm against another. 602 U.S. at 695–97. The Founding era and the states’ proposals at the time of ratification were all concerned with dangerous individuals being restricted while protecting Americans’ rights to keep and bear arms. 113 F.4th at 654–55. Even when categories were disarmed, it was not based on their status; rather, it was based on a fear of rebellion or a threat to the government. 113 F.4th at 651-52. In essence, their proclivity for dangerousness determined whether they were disarmed. *Id.* These laws were based on real harm and a real threat to society. *Id.* It was not a punishment, but a strategy to protect public peace. *Id.* The Third Circuit in *Range* explained that someone who committed food stamp fraud was not a dangerous individual under 922(g)(1). 124 F.4th at 230. The Sixth Circuit in *Vanochten* held that an individual shooting a rifle in his backyard, drunk and high on marijuana, toward a propane tank with three homemade pipe bombs in his possession created a “clear risk of future harm to others,” and 922(g)(3) was constitutionally applied to him. *United States v. Vanochten*, 150 F.4th 552, 562 (6th Cir. 2025). It is easy to see the difference between these two cases. In *Range* someone who commits food stamp fraud isn’t going to terrorize others, while the man in *Vanochten* was clearly not only a danger to himself, but a real threat to the public. 150 F.4th at 562; 124 F.4th at 230.

Section 922(g)(1) does not require that the individual be dangerous, simply that the punishment for the modern felony exceed one year. 18 U.S.C. § 922(g)(1). The Fifth Circuit began with the premise that just because an individual is a “felon today” does not mean that they “would have been one in the 18th century” because “simply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen*.” 116 F.4th 458. Section 922(g)(1) does ask whether stripping an individual of their Second Amendment right is justified. It doesn’t whether a weapon was misused, whether the person is a current threat to the public, or whether this individual intentionally harmed another. 18 U.S.C. § 922 (g)(1); Va. Code § 18.2-371.1. Section 922(g)(1) does not distinguish between someone who commits food stamp fraud to feed themselves or someone who is playing with pipe bombs while being high and drunk at the same time. 18 U.S.C. § 922(g)(1); 150 F.4th at 562; 124 F.4th at 230. Section 922(g)(1) can disarm someone who collects oysters in the wrong way (Va. Code § 28.2-523), someone who steals five dollars worth of chicken (Va. Code § 18.2-97), someone who records part of a movie in a theater without authorization (18 U.S.C. § 2319B) all the way up to someone who intentionally slaughters their neighbor (Va. Code § 18.2-32.). *Id.* Simply classifying something as a felony does not satisfy Bruen’s constitutional rigorous historical analogue test. 116 F.4th at 458. The Government fails to establish that 18 U.S.C. § 922 (g)(1)’s current purpose is to prevent dangerous individuals or those who posed a threat to the public from keeping and bearing “Arms.” *Id.*

Here, Ms. Branders is not dangerous and does not pose a threat to the public. *Id.* She was convicted under Va. Code 18.2-371.1, because through a “willful omission”, she operated a “home-based child care” facility without first obtaining a license. Va. Code 18.2-371.1A. The conduct she was convicted for did not establish her as a threat; rather, it showed she was merely

negligent by running an unlicensed day care in which a horrible accident occurred. R. at 3. Even in her sentencing, the state court acknowledged that Ms. Branders was not a threat to the public by not subjecting her to imprisonment, but rather probation for two years. *Id.* Her conviction was not due to dangerousness, but rather a foolish judgment that had indirect, but severe consequences.

The historical analogues that the Government relies on to disarm Ms. Branders applies to those who are likely to possess or do possess “Arms” for the purpose of harming others. 150 F.4th at 562. Va. Code 18.2-371.1A tells us nothing about Ms. Branders’s dangerousness over twenty-five years ago at the time of her conviction and even less today as an elderly woman seeking “Arms” to protect herself in her home. Ms. Branders was convicted under Va. Code § 18.2-371.1 because of a negligent omission. The accident was just that, an accident, not an intentional armed attack. Ms. Branders is in her late 70s. R. at 4. The crime that still restricts her was a criminal negligence charge over twenty-five-years ago. R. at 4. While Ms. Branders’s omission resulted in the worst possible outcome, this kind of indirect harm is not supported by historical analogues. The Government has failed to establish that section 922(g)(1) has the same purpose as historical restrictions.

- b. Section 922(g)(1)’s burden is not relevantly similar to the historical analogues because Ms. Branders was permanently disarmed while the historical analogues support temporary disarmament based on the current threat level of an individual.

Even if the government met its burden establishing that section 922(g)(1) “regulates arms-bearing for a permissible reason,” section 922(g)(1) is not compatible with the Second Amendment because it goes “beyond what was done at the founding.” 146 S. Ct. at 1691; 18 U.S.C. § 922(g)(1). The *Bruen* inquiry does not require a showing that an individual who was convicted of any felony was burdened in the same way, but that an individual convicted of an

“analogous felony was punished in a comparable way.” *United States v. Mitchell*, 160 F.4th 169, 191 (5th Cir. 2025). If Ms. Branders was once constitutionally disarmed under 922(g)(1) because she was dangerous or a threat to the public, historical analogues do not support her being permanently disarmed for twenty-five years past her conviction.

In *Rahimi*, the manner and duration of the restriction were essential to the Court’s analysis to determine if the restriction was constitutional. 602 U.S. at 697. This Court emphasized that surety laws during our Founding Era were temporary and could only last six months at a time until the court performed a new threat analysis. See 602 U.S. at 697. This Court then deemed that section 922(g)(8)’s restriction was valid because an individual was only subject to a restraining order if they were a present threat. *Id.* at 699. Consistently, section 922(g)(8) restrictions lasted as long as the threat did. *Id.*

Likewise, the Catholics in England and the Loyalists during the Founding were not subject to permanent disarmaments, but temporary restrictions that allowed them to regain their “Arms” once they established that they no longer posed a threat. 113 F.4th at 662–64. Even if they were still a threat, they were allowed to retain their arms for self-defense purposes. 113 F.4th at 662–64. In New Hampshire, the delegates wanted to disarm only those they perceived as actively dangerous and did so by proposing that Congress “shall never disarm any Citizen unless such as are or have been in actual Rebellion.” *Id.* at 655.

Permanent disqualification from exercising a fundamental right is a severe punishment for even violent felons. See 919 F.3d at 465 (Barrett, J., dissenting). Lower circuits have also agreed that the length of disarmament should be tied to the threat. In *Susman v. Sullivan*, the court explained that because mental illness is not permanent, firearm restrictions are tied to the length of time that the individual is considered a threat. *Susman v. Sullivan*, No. 24-CV-1281-LJV,

2026 U.S. Dist. LEXIS 69762, at 27–28 (W.D.N.Y. Mar. 31, 2026). In *United States v. Harris*, the court found that historical restrictions on drunkards were temporary and lasted until he was no longer a threat and sobered up. *United States v. Harris*, 144 F.4th 154, 163 (3d Cir. 2025) (case was vacated and remanded, however, the historical justification is still valid evidence). In *United States v. Hostettler*, the court recognized that “historical traditions may justify temporary deprivations of an individual’s Second Amendment right”, like while someone finishes their criminal sentence, but historical restrictions do “not support disarmament of any criminal defendant under any criminal justice sentence in all circumstances.” *United States v. Hostettler*, 170 F.4th 539, 545 (6th Cir. 2026). The relevant historical analogues were consistent with this commonsense theory that just because someone is considered dangerous once does not mean they are dangerous forever.

Ms. Branders was sentenced in 2001 under Va. Code § 18.2-371 and was given a two-year suspended sentence and placed on probation. R. at 3. She is currently being restricted by the government of her natural right, her Second Amendment right, based on a conviction that did not even require her to be imprisoned. *Id.* As *Holtsettler* explains, Ms. Branders’s disarmament may have been a valid exercise of section 922(g)(1) while she was on probation, but it is foolish to think that a woman in her late 70s, who volunteers regularly, poses the same threat that she may have when she was convicted twenty-five years earlier for a nonviolent crime. 170 F.4th at 545. Even more, the Catholics in England were still able to retain their weapons for self-defense despite being considered dangerous, but 922(g)(1) strips Ms. Branders of her right despite her only wishing to own a handgun to protect herself and her home from her son and his angry outbursts R. at 3; 113 F.4th at 662. While the government is correct that not all Catholics or

Loyalists were violent or dangerous people, both Catholics and Loyalists had the opportunity to rebut that dangerous presumption, and Ms. Branders is entitled to hers. 113 F.4th at 662.

The Government will likely cite 18 U.S.C. § 925(c) as an avenue for disarmed felons to regain their “Arms”; however, section 925(c) will not provide adequate relief because it is not and has not been a real option for felons for over 30 years, and it falls outside of the Department of Justice’s constitutional authority.

Since 1992, 18 U.S.C. § 925(c) has been inoperative because “Congress has repeatedly barred the Attorney General from using appropriated funds to investigate or act.” 919 F.3d at 439. In 2026, section 925(c) regained some applicability, but it came too late for Ms. Branders. U.S. Dep’t of Just., *Federal Firearm Rights Restoration* (August 17, 2026), <https://www.justice.gov/ffrr>. In September 25, 2026, applications opened only to invited candidates. *Id.* On November 4, 2026, only after this argument is heard, will applications be open to the public and then it is still only the first 5,000 applicants. *Id.* Where “the government has expressly offered” and the claimant “refused to attempt to . . . remedy his injury,” lower courts have still been wary about whether section 925(c) is a viable avenue. See *Freeman v. Bondi*, No. 3:25-CV-00926 (SFR), 2026 U.S. Dist. LEXIS 174177, at *24-25 (D. Conn. Aug. 5, 2026) (explaining that the court declined to resolve his selective enforcement claim because he had a remedy he could have pursued). Ms. Branders has been barred with no avenue for reinstatement of her Second Amendment rights since 2001. R. at 3. For over twenty-five years, 925(c) was nothing more than an empty promise, leaving individuals like Ms. Branders subject to permanent unconstitutional restrictions with no avenue, no matter how much time had passed. *Id.* Nothing has changed for Ms. Branders. She is still permanently barred from possessing a firearm for self-defense and has not been invited or had the opportunity to apply under section 925(c). *Id.*

Additionally, under 18 U.S.C. 925(c), the Attorney General has the complete discretion whether to return or deny someone their constitutional rights. It is the “province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The Department of Justice’s does not have the power to make discretionary calls on whose constitutional rights are upheld and whose are taken away

Whether Section 922(g)(1) is constitutional as applied to Ms. Branders, falls directly within the Court’s jurisdiction to determine if the 922(g)(1) comports with the Constitution. An executive agency is not the proper branch of government to make these determinations. In *U.S. v. Nixon*, the Court stated, “[i]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others” but ultimately it is still “the province and duty of the judicial department to say what the law is.” *United States v. Nixon*, 418 U.S. 683, 703 (1974).

Therefore, Section 922(g)(1) is not relevantly similar in how it burdens Ms. Branders’s natural right to self-defense because it is permanent disarmament and not based on the individual’s present threat.

CONCLUSION

This Court should reverse the Fourteenth Circuit’s decision and grant Terry Branders’s motion to dismiss the indictment, finding that 18 U.S.C. § 922(g)(1) violates the Second Amendment as applied to her. Ms. Branders is not barred from raising an as-applied challenge to 18 U.S.C. § 922(g)(1) under the Second Amendment simply because of her status as a felony. The Felon Prohibition language in *Heller* is dicta and is not binding on this Court today. What is binding is the test laid out in *Bruen*, which requires an analysis into whether the conduct prohibited falls under the plain text of the Second Amendment and if so, whether there are historical analogues that are relevantly similar that justify the restriction. This analysis leaves no

room for categorical restrictions that are not grounded in the “why” and “how” of the historical analogues. Under the *Bruen* test, the restriction placed upon Ms. Branders to not possess a firearm in her home for self-defense falls within the plain text of the Second Amendment. Lastly, the Government has failed to demonstrate that permanently disarming Ms. Branders is relevantly similar to a historical restriction of “Arms” in the purpose and the burden that is imposed. Our nation's history of firearm restriction revolves around the dangerousness or threat of an individual. As a woman in her late 70s convicted of a crime of omission, Ms. Branders is not a threat. Restrictions historically were temporary and based on the current threat level of an individual. Ms. Branders was restricted permanently and, as of right now, has no access to any avenue that would provide her relief. This Court must provide Ms. Branders relief from the unconstitutional application 18 U.S.C. § 922(g)(1) under the Second Amendment and reverse the Fourteenth Circuit’s decision, granting Terry Branders’s motion to dismiss the indictment.

Respectfully submitted,

/s/ Team AZ
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