

No. 26-179

In the
Supreme Court of the United States

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 RESPONDENT

TEAM BY
Counsel for Respondent

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QUESTIONS PRESENTED

(1) Whether defendants are precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1) under the Second Amendment, as the Eighth Circuit and its progeny hold, or whether as-applied Second Amendment challenges to § 922(g)(1) remain available to defendants, as the Third Circuit and its progeny hold.

(2) Assuming an as-applied challenge exists, whether application of 18 U.S.C. § 922(g)(1) to a single twenty-year-old conviction for felony child neglect violates the Second Amendment.

STATEMENT OF THE CASE

Statement of the Facts

In July of 2000, Terry Branders, Petitioner, began operating a day care center in her home in Alexandria, Virginia. R. at 2. Despite not having a daycare license, Branders often cared for ten or more children at a time. *Id.* Branders's son, Nelson, assisted Branders's daycare venture by picking up and dropping off children using a fifteen-passenger van. *Id.* At this time, Nelson had just graduated high school, and his only job was providing with transportation for the children. *Id.* This allowed Nelson to have quite the social life. *Id.* After a late night out, Nelson, having only gotten a few hours of sleep, picked up twelve children, who were mostly of preschool age. *Id.* Only one child, Kenneth Drew, who was only eleven months old, was the only child in a car seat and slept during Nelson's route. *Id.* Nelson dropped off all the children with Branders except Drew, who was not old enough to unbuckle himself and get out of the van without an adult. *Id.* Nelson then drove to his apartment, parked the van, and went inside to sleep, leaving Drew alone in the van on a hot summer's day. *Id.* Branders did not notice that Drew was missing until Branders went to get Drew from his crib about two hours after Nelson had dropped off the other children. *Id.* Branders spent over an hour trying to reach Nelson and Drew's mother until Branders finally decided to call 911. *Id.* By the time the police found Drew in the van, he was still alive but had suffered severe heat-related injuries. *Id.* Drew was quickly rushed to the hospital, but he did not survive. *Id.*

Branders and Nelson were both convicted of felony neglect of a child under Va. Code § 18.2-371. *Id.* Branders was also convicted of operating a daycare without a license, which was a misdemeanor. R. at 3.

In 2020, Branders moved to Appleton, Newcoastland. *Id.* Branders became involved in various charities, where she became friends with another volunteer, Becky Haskill. *Id.*

Recently, Nelson moved in with Branders to assist Branders in her old age. *Id.* Nelson lived in Branders's basement. *Id.* Nelson had difficulty maintaining a job, and Branders suspected that Nelson might use or sell drugs. When Nelson had friends over, Branders found them scary. *Id.* One day, Branders told Haskill about the trouble she was having with her son. *Id.* Haskill subsequently gave Branders a gun, and Branders took the gun home. *Id.*

In June of 2024, the DEA got a tip about Nelson's activities. *Id.* Knowing that Nelson lived with Branders, DEA agents searched the database for any criminal records related to the location. R. at 3-4. That search revealed that both Branders and Nelson had felony convictions. R. at 4. One day, DEA agents approached Branders's house and knocked on the door. *Id.* DEA Agent Sue Stern asked Branders if the agents could search Branders's house, and Branders consented. When the agents found Branders's gun, Branders admitted that it was hers. *Id.*

Procedural Background

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.* Branders moved to dismiss the charge on the grounds that the statute violated her Second Amendment rights. *Id.* The United States District Court for the Eastern District of Newcoastland allowed Branders to bring an as-applied challenge and decided that § 922(g)(1) was unconstitutional as applied to Branders because Branders had no other felony convictions and

posed no credible threat to the safety of others. R. at 6. The United States District Court thus granted her motion to dismiss. *Id.*

The United States Court of Appeals for the Fourteenth Circuit reversed the District Court's decision and remanded for further proceedings consistent with its opinion. R. at 8, 10. The Circuit Court followed the text of the statute, found that the statute was a categorical ban, and found that the ban applied to Branders. R. at 10. The Circuit Court was not willing to deviate from the law that Congress passed. *Id.*

On remand, the District Court denied Branders's motion to dismiss, and Branders took an *Alford* plea, reserving the right to appeal the denial of her motion to dismiss that challenged the statute as having an unconstitutional application. R. at 12. Branders appealed the motion to dismiss. *Id.* The Circuit Court affirmed the denial of Branders's motion. *Id.*

SUMMARY OF THE ARGUMENT

First, Branders should be precluded from bringing an as-applied challenge because the Constitution does not require this Court to create an exception for non-violent felons. History shows that legislatures are permitted to ban categories of groups from possessing firearms even if those categories are non-violent. These restrictions have traditionally been designed to reduce the risk of firearm misuse by individuals who violate the law, not just the risk of "violent" people misusing firearms. Because the Constitution does not require this Court to make an exception for Branders, this Court would be exceeding its constitutional authority if it were to make an exception for non-violent felons. The legislative branch has the sole authority to create laws. If this Court were to grant an exception for non-violent felons, this Court would undermine and disrespect Congress's constitutional authority to legislate.

Second, even in circumstances where individualized as-applied challenges remain available, § 922(g)(1) remains constitutional as applied to Branders. *Bruen* and *Rahimi* do not require the existence of a Founding-era statute identical to § 922(g)(1); they require a relevant historical analogue. The historical record demonstrates a recurring principle: legislatures may impose firearm restrictions when an individual's conduct or circumstances reveal danger to the physical safety of others. Branders's predicate felony falls squarely within this principle, as the predicate conduct underlying her child-neglect conviction directly endangered an infant's physical safety and resulted in the child's death. The absence of malicious intent does not remove Branders's conduct from the relevant historical tradition because her predicate conduct still directly endangered another person's physical safety. Nor does this circumstance make her situation analogous to challengers whose predicate offenses involved no comparable risk of physical harm. The passage of more than two decades does not, by itself, extinguish the historical justification for her continued firearm disability. Branders's rehabilitation and favorable post-conviction conduct are relevant factors, but neither completion of her sentence, the passage of time, nor rehabilitation alone automatically restores her firearm rights. Accordingly, Branders's challenge fails under either approach.

ARGUMENT

The Second Amendment confers an individual right to keep and bear arms; however, this right is subject to limitations. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). In contemporary Second Amendment jurisprudence, courts must define the boundary between the right to armed self-defense and the government's authority to regulate firearms in the interest of public safety. While *Heller*, *Bruen*, and *Rahimi* have elucidated significant aspects of this analytical framework, unresolved questions persist regarding § 922(g)(1)—specifically, whether convicted felons may pursue individualized as-applied challenges and, if permitted, what historical

standard governs such challenges. This uncertainty has led courts of appeals to adopt divergent approaches. See Anthony J. Zarillo III, *Going Off Half-Cocked: Opposing As-Applied Challenges to the “Felon-in-Possession” Prohibition of 18 U.S.C. § 922(g)(1)*, 126 Penn St. L. Rev. 211, 213 (2021). This case presents that tension directly. Branders requests that this Court permit an individualized exception to the categorical prohibition of § 922(g)(1) or, in the alternative, declare the statute unconstitutional as applied to her decades-old felony child-neglect conviction. The respondent prevails under either approach.

I. BRANDERS SHOULD BE PRECLUDED FROM BRINGING AN AS-APPLIED CHALLENGE AGAINST 18 U.S.C. § 922(g)(1).

Branders’s as-applied challenge should be precluded because Branders is asking this Court to make an exception to 18 U.S.C. § 922(g)(1) that this Court does not have the authority to make. This Court does not have the authority to make an exception for non-violent felons because the Constitution does not require that such an exception be made. Since the Constitution does not require that an exception be made, this Court does not have the judiciary authority under the Constitution to make an exception for non-violent felons.

A. The Constitution Does Not Require This Court To Make An Exception To 18 U.S.C. § 922(g)(1) For Branders.

Branders’s as-applied challenge should be precluded because the Constitution does not require this Court to make an exception to 18 U.S.C. § 922(g)(1) for Branders. When a party challenges a statute, the party brings either a facial challenge or an as-applied challenge. A facial challenge requires that the party establish that the challenged “law cannot be valid under any set of circumstances,” and, if established, the court must invalidate the law as a whole. *United States v. Salerno*, 481 U.S. 739, 745 (1987). When a party brings an as-applied challenge, the party is asking the court to consider the factual record and the application of the statute to the party and

find that the statute is unconstitutional as it applies to the party. *Richmond Med. Ctr. for Women v. Herring*, 570 F.3d 165, 172 (4th Cir. 2009). If the court finds that the application of the statute is unconstitutional as it applies to the party, the court then grants the party an exception to the statute. *Id.*

To determine whether the Constitution requires an exception, the text of the Constitution and the history and traditions of the nation are examined. The Second Amendment provides: “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. Amend. 2. This Court recognizes that this right is not unlimited, just as the other amendments in the Constitution are not unlimited. *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). Legislatures are permitted to regulate firearms as long as the “regulation is consistent with this Nation’s historical tradition[s]....” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022). Looking to this Nation’s history, legislatures have historically possessed the authority to prohibit the possession of firearms by felons. *Heller* at 626; (see also *United States v. Rahimi*, 602 U.S. 680, 699 (2024)). “History shows that the right to keep and bear arms [is] subject to restrictions that include[] prohibitions on possession [of firearms] by certain groups of people.” *United States v. Jackson*, 110 F.4th 1120, 1126.

The history of legislatures prohibiting certain groups of people from possessing firearms began at the inception of this Nation during the Revolutionary War. *Id.* at 1127. Continental Congress and several states “prohibited possession of firearms by people who refused to declare an oath of loyalty.” *Id.* Early legislatures also prohibited possession of firearms by those who committed non-violent hunting offenses and those who deceitfully and wrongfully took property. *Id.* In the early twentieth century, many states prohibited non-citizens from possessing firearms.

Joseph G.S. Greenlee, *The Historical Justification For Prohibiting Dangerous Persons From Possessing Arms*, 20 Wyo. L. Rev. 249, 272 (2020) (citing 1909 Pa. Laws 466 § 1; 1915 N.D. Laws 225-26, ch. 161 § 67; 1915 N.J. Laws 662-63, ch. 355 § 1; 1921 N.M. Laws 201- 02, ch. 113 § 1; 1923 Conn. Acts 3732, ch. 259 § 17; 1917 Utah Laws 278; 1917 Minn. Laws 839-40, ch. 500 § 1).

This history demonstrates that legislatures traditionally possess discretion to prohibit categories of people from possessing firearms “to address a danger of misuse by those who deviate from legal norms” and not solely “to address a person’s demonstrated propensity for violence.” *Jackson* at 1126. This history also demonstrates that there is “no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons.” *Id* at 1128. “[T]here is no need for felony-by-felony litigation regarding the constitutionality of §922(g)(1).” *Id* at 1125; see also *United States v. Hunt*, 123 F.4th 697, 708 (2024). This historical background of when and upon whom legislatures can place restrictions on people’s right to possession of firearms shows that the Constitution does not require courts to grant an exception for non-violent felons.

This Nation continues to recognize the legislature’s authority to ban certain categories of people from possessing firearms. Those “who ha[ve] been adjudicated as a mental defective or who ha[ve] been committed to a mental institution” are prohibited from possessing firearms. 18 U.S.C. § 922(g)(4). Children are prohibited from possessing handguns. 18 U.S.C. § 922(x)(2). Unlawful aliens are prohibited from possessing firearms. 18 U.S.C. § 922(g)(5). Those who have been discharged from the Armed Forces under dishonorable conditions are prohibited from possessing firearms. 18 U.S.C. § 922(g)(6). All of these bans are within the legislature’s authority to ban categories of people from possessing firearms.

The Constitution does not entitle Branders to an exception to § 922(g)(1). Prohibitions on felons possessing firearms fall squarely within the historical understanding of legislatures' power to prohibit categories of people from possessing firearms, and this Nation continues to recognize such power. Congress has the authority to pass § 922(g)(1), which prohibits felons, violent and non-violent alike, from possessing firearms.

Branders is not exempt from this statute just because she claims to be a non-violent felon. The Constitution does not require individualized determinations to determine whether a felon is violent, just as the Constitution does not require individualized determinations of violence for the mentally ill, children, unlawful aliens, or the dishonorably discharged. Such a determination is not required because § 922(g)(1) addresses more than a person's propensity for violence; it also addresses the danger of misuse of firearms by the person who deviated from legal norms by violating the law. For this same reason, the mentally ill, children, unlawful aliens, or the dishonorably discharged are prohibited from possessing firearms, not because of their propensity for violence but for their propensity for misuse. "Where the sovereign has labeled [a] crime a felony, [the sovereign] represented [its] determination that the crime reflects grave misjudgment and maladjustment." *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017). Such misjudgment and maladjustment is why legislatures have prohibited felons from possessing firearms.

To further support the fact that the Constitution does not require that courts make an exception to § 922(g)(1) for Branders, Branders has other viable avenues of relief that she has not exhausted. While administrative exhaustion is not required under § 922(g)(1), the following exceptions are important to note because Branders could have the relief she is seeking. Section 922(g)(1) does not make Branders's firearm rights disappear forever. What Branders is seeking is already permitted under 18 U.S.C. §§ 925(c) and 921(a)(20).

Under 18 U.S.C. § 925(c), Branders can apply to have her federal firearm rights restored. 18 U.S.C. § 925(c). The Attorney General may restore federal firearm rights if the applicant can establish to the Attorney General's satisfaction that "the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest." *Id.* Instead of trying to prove these circumstances to this Court under § 922(g)(1), where consideration of such circumstances is not permitted, Branders should be presenting all the facts of her case to the Attorney General, who Congress has granted the authority to restore her rights. The Attorney General would be likely to restore Branders's rights given her current reputation in her community and her unlikeliness to be a danger to public safety. Even if the Attorney General were to deny Branders's application, Branders, under § 925(c), would be able to petition the denial of her application to the appropriate district court. *Id.* Branders has a perfectly viable remedy under § 925(c) that Branders is choosing to ignore.

Branders can also get her underlying conviction expunged, set aside, or pardoned under 18 U.S.C. § 921(a)(20). 18 U.S.C. § 921(a)(20). Under Virginia law, where Branders's underlying conviction was prosecuted, Branders can get her underlying conviction sealed by petitioning the court where the conviction was. Va. Code Ann. § 19.2-392.12A. Branders was convicted of a Class 6 felony after January 1, 1986, as required by the statute. *Id.* Branders must set forth the relevant facts surrounding her underlying conviction. *Id.* If the court grants the sealing of her underlying conviction, Branders's firearm rights will be restored. 18 U.S.C. § 921(a)(20).

Sections 925(c) and 921 (a)(20) do not undermine the purpose of § 922(g)(1) because these exceptions ensure that the applicant is responsible enough to possess a firearm. Congress has determined that these statutes are the best and most effective way to ensure that non-law-abiding

citizens are not possessing firearms. “[C]ourts must accord substantial deference to the predictive judgment of Congress.” *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 665 (1994). The purpose of § 922(g)(1) is being fulfilled by the procedures laid out in §§ 925(c) and 921(a)(20).

Branders’s firearm rights are not gone forever. Branders’s firearm rights can be restored under § 925(c) and § 921 (a)(20). Congress passed §§ 925(c) and 921 (a)(20) as avenues of relief from § 922(g)(1). Congress deems these statutes as the most appropriate way to restore firearm rights that have been revoked under § 922(g)(1). This Court must accord Congress deference when it comes to how Congress structured § 922(g)(1) and its exceptions. As such, this Court should require Branders to apply for her firearm rights in the manner that Congress has provided.

The Constitution does not require that Branders be permitted to possess a firearm. Congress’s authority to prohibit felons, including non-violent felons, from possessing firearms is supported by historical evidence. Additionally, Branders has other avenues of the relief she is asking this Court to grant, furthering the conclusion that the Constitution does not require this Court to create an exception under § 922(g)(1).

B. Since The Constitution Does Not Require This Court To Make An Exception, This Court Cannot Make An Exception To 18 U.S.C. § 922(g)(1) Without Exceeding Its Judiciary Authority.

As-applied challenges can only succeed where the Constitution requires courts to grant the challenger an exception. Since the Constitution does not require courts to make an exception for Branders, as discussed in the previous section, this Court cannot grant Branders an exception without exceeding its judicial authority. If this Court were to grant Branders an exception, this Court would be creating a new law, which the judiciary does not have the authority to do under the Constitution.

Article I of the Constitution states that “All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” U.S. CONST. Art. I, § 1. This means that only Congress has the authority to pass federal laws. *Id.* When Congress provides a rule, the judiciary cannot depart from it. *The Francis Wright*, 105 U.S. 381, 385 (1881). The judiciary has the authority to decide whether congressional or executive actions are constitutional, and the authority to interpret statutes legislatures pass (interpretation is not at issue here). U.S. CONST. Art. III, § 1. The judiciary does not have the authority to pass new laws or change laws already enacted. *Id.*

The relief Branders is asking this Court to grant creates a separation-of-powers issue. Where there is a separation-of-powers issue, a case is nonjusticiable under the political question doctrine. The political question doctrine provides that a court must identify those controversies that should be decided by the other branches of government because the Constitution requires that disposition. *Baker v. Carr*, 369 U.S. 186, 217 (1962). A case is a political question where there is

“[(1)] a textually demonstrable constitutional commitment of the issue to [the appropriate] political department, [(2)] a lack of judicially discoverable and manageable standards for resolving [the issue], [(3)] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion, [(4)] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due [the appropriate] branches of government, [(5)] an unusual need for unquestioning adherence to a political decision already made, or [(6)] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.”

Id. When one of these factors is inextricable from the case at bar, the case should be dismissed for nonjusticiability on the grounds of a political question's presence. *Id.*

It is not uncommon for courts to recognize when they do not have authority to grant what a party is asking for. For example, the Supreme Court of Tennessee recognized that it did not have the authority to allow what the Tennessee Legislature had prescribed. *In re Estate of Chastain*, 401

S.W.3d 612, 618 (Tenn. 2012). A party to the case wanted the Court to execute a will even though the testator did not sign the will but instead signed a self-proved affidavit. *Id* at 613. Tennessee law required that the testator sign the will, and the requirement had to be strictly complied with. *Id* at 618. The party asked the Court to allow for the will to be executed despite not strictly complying with the law. *Id*. The Court declined to do so, deciding that the lower court did not have the authority to dispense with the statutory mandate that the testator's signature be on the will. *Id* at 620. "The Legislature had the authority to prescribe conditions by which property may be transferred by will in this State. The General Assembly exercised this power in 1941 by enacting the Execution of Wills Act." *Id* at 618. The Court declined to relax the statutory requirements because such a decision of relaxation should be made by the Legislature. *Id* at 622.

Here, whether non-violent felons should be barred from possessing firearms is a political question, and this Court should not contradict what Congress has clearly laid out. As is shown by comparing Articles I and III of the Constitution, there is a textually demonstrable constitutional commitment that the legislative branch has to passing statutes such as § 922(g)(1), and the legislative branch is thus the appropriate political department to handle this issue. Courts only have the authority to determine whether the laws Congress passes are constitutional. Branders is asking this Court to relax what is required by § 922(g)(1). If this Court were to grant the relief Branders is seeking, such an action would undermine and disrespect Congress's authority to pass laws. Just as the Supreme Court of Tennessee respected Tennessee's Legislature's decision to enforce strict compliance for wills, so too should this Court respect Congress's decision to prohibit non-violent felons from possessing firearms. The decision of whether to allow non-violent felons to possess firearms is strictly Congress's decision, not the courts' decision. This Court does not have the constitutional authority to dispense of the statutory prohibition by creating an exception for non-

violent felons. The forgoing separation-of-powers issues are inextricable from the case at bar. This Court cannot grant Branders the relief she is seeking without exceeding its constitutional authority.

II. APPLYING 922(g)(1) TO BRANDERS IS CONSISTENT WITH THIS NATION’S HISTORICAL TRADITION OF DISARMING PERSONS WHOSE DANGEROUS OFFENSES ENDANGER HUMAN LIFE, AND THE PASSAGE OF TIME DOES NOT AUTOMATICALLY EXTINGUISH THAT JUSTIFICATION.

There is no dispute that Branders’s firearm possession falls under the Second Amendment. R. at 10. Nonetheless, the Government may restrict firearm possession when it shows that the restriction aligns with the Nation’s historical tradition of firearm regulation. *Bruen*, 597 U.S. at 24. This inquiry requires courts to compare historical and modern regulations based on their purpose and practical operation—the “why” and “how” of the burden imposed. *Id.* at 29–30. *Rahimi* clarified that the Government is not required to identify a “historical twin,” and *Hemani* recently confirmed that the Government may reason by analogy or historical analogue to regulations that are relevantly similar to well-established historical restrictions. *Rahimi*, 602 U.S. at 691–92; *United States v. Hemani*, 608 U.S. 772 (2026). This framework is significant in the present context because there is no Founding-era statute that specifically prohibited firearm possession by persons convicted of felony child neglect. The absence of an identical historical law is not dispositive. The key question is whether the historical record shows a comparable regulatory principle that includes the conduct at the heart of Branders’s conviction. Respondent relies on the historical principle permitting firearm restrictions where an individual’s conduct demonstrated danger to the physical safety of others.

Section § 922(g)(1), as applied in this case, imposes a firearm disability triggered by a qualifying criminal conviction. Federal legislation disarming felons developed over the twentieth century to restrict firearms from entering the hands of dangerous people. The Federal Firearms Act

of 1938 was the first federal statute to restrict firearm possession by persons convicted of “crimes of violence,” and subsequent legislation expanded these restrictions to include all convicted felons. Anthony J. Zarillo III, *Going Off Half-Cocked: Opposing As-Applied Challenges to the “Felon-in-Possession” Prohibition of 18 U.S.C. § 922(g)(1)*, 126 Penn St. L. Rev. 211, 220–22 (2021). This twentieth-century legislative history does not define the Second Amendment’s original meaning. Instead, it documents the evolution and practical operation of the modern federal prohibition, which must be compared to the historical tradition required by *Bruen*. The question of whether Branders’s continued firearm disability remains justified more than two decades after her predicate conviction is addressed separately in Section C.

A. The Historical Record Reflects A Recurring Principle Permitting Firearm Restrictions When Conduct Or Circumstances Demonstrated Danger To The Physical Safety Of Others.

Applying *Bruen* and *Rahimi*, the historical record supports applying § 922(g)(1) where predicate conduct demonstrates danger to the physical safety of others. Respondent does not rely on felony status alone or a generalized assertion that anyone labeled “dangerous” may be disarmed. Instead, the historical principle invoked here is narrower: firearm restrictions have historically been imposed where an individual’s conduct or circumstances provided a particularized basis for concern about physical harm. *Rahimi*, 602 U.S. at 695–700; *United States v. Williams*, 113 F.4th 637, 650–58 (6th Cir. 2024).

In *Heller*, the Supreme Court deemed certain firearm regulations “presumptively lawful,” including longstanding prohibitions on the possession of firearms by felons. *Heller*, 554 U.S. at 626–27 & n.26. The Court did not identify the historical justification underlying those restrictions. Instead, it explained that it would have time to “expound upon the historical justifications” for those exceptions if and when they came before the Court. *Id* at 635; *see also* Joseph G.S. Greenlee,

The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms, 20 Wyo. L. Rev. 249, 249–50 (2020). Nearly two decades later, *Bruen* and *Rahimi* have clarified the methodology for resolving Second Amendment challenges, but the specific historical justification for § 922(g)(1) remains unresolved; even *Hemani* expressly noted that this question remains unsolved. For nearly two decades, courts and litigants have awaited the historical justification *Heller* left for another day. That day has arrived. *Hemani*, 146 S. Ct. at 1693–94. The historical record supports disarming persons whose conduct demonstrates danger to others' physical safety, and Branders's predicate felony falls within that tradition.

Heller and *Bruen* consistently characterized ordinary, law-abiding citizens as typical bearers of the Second Amendment right. However, *Rahimi* warned that using "responsible" as a criterion is too vague to determine who is outside the Amendment's scope. *Rahimi*, 602 U.S. at 701–02. Therefore, the respondent does not claim that Branders is "irresponsible." The key historical distinction is more specific: simply possessing arms peacefully differs from actions or situations that create a particularized fear of physical harm. This distinction is supported by references to *Heller*, *Bruen*, and *Rahimi*.¹

History rarely speaks with one voice when statutes are examined in isolation. Surety laws, going-armed laws, and English restrictions associated with rebellion can support different conclusions depending on how generally the historical principle is stated. *Rahimi* illustrates this difficulty: the majority and Justice Thomas considered many of the same sources but disagreed

¹ *Heller* characterized the Second Amendment right as pertaining to ordinary, law-abiding citizens while acknowledging longstanding restrictions on that right. *Heller*, 554 U.S. at 626–27, 635. Similarly, *Bruen* frequently referenced the rights of regular citizens and examined surety laws that added restrictions after specific concerns about potential injury arose. *Bruen*, 597 U.S. at 8–10, 55–59. *Rahimi* drew on the traditions of surety and carrying arms and concluded that individuals who pose a clear threat of violence may be disarmed. *Rahimi*, 602 U.S. at 695–700.

over whether those sources reflected sufficiently similar justifications and burdens. *Rahimi*, 602 U.S. at 695–702. Scholarship examining the post-*Bruen* dangerousness approach likewise cautions against defining the tradition at too high a level of generality. Jack Baker, *Beyond Redemption?: Examining the Sixth Circuit’s Dangerousness Approach for As-Applied Challenges to the Felon-in-Possession Ban*, 79 Vand. L. Rev. 631, 649–51 (2026). Respondent therefore relies on the narrower physical-safety principle reflected in the sources that follow.

1. Ratification-Era Sources Reflect Concern With Threatened Violence And Public Injury.

The ratification period matters because courts interpret constitutional rights according to their public understanding at the time of adoption. *Bruen*, 597 U.S. at 20, 28. Early post-ratification history may also serve as a critical tool of constitutional interpretation if it confirms that understanding. *Id.* at 35. Evidence from the ratification era reflects a significant concern with threatened violence and public injury. A proposed amendment in Massachusetts would have protected the right of “peaceable citizens” to keep arms, and in the Founding era, “peaceable” meant persons who were “not violent,” “not bloody,” and “not turbulent.” *Kanter v. Barr*, 919 F.3d 437, 455–56 (7th Cir. 2019) (Barrett, J., dissenting). New Hampshire proposed that Congress “shall never disarm any Citizen, unless such as are or have been in actual Rebellion,” while the Pennsylvania minority proposed that no person could be disarmed except “for crimes committed, or real danger of public injury from individuals.” *Williams*, 113 F.4th at 655–56; Matthew Matherne, *A Dangerous Challenge to the Constitutionality of the Felon-in-Possession Statute: United States v. Bullock*, 43 Miss. C. L. Rev. 48, 70–71 (2025).

Although these proposals did not result in the Second Amendment, they provide contemporaneous evidence of how the ratifying generation understood the right. Together, they

highlight a common concern about threatened violence and public harm, supporting Respondent’s more limited view that the key distinction lies in conduct or circumstances affecting physical safety, not just felony status.

2. Surety And Going-Armed Laws Illustrate A Historical Practice Of Restricting The Possession Of Arms In Response To Threats Of Physical Harm.

Surety laws provide a particularly clear example. These laws permitted a person who reasonably feared injury or breach of the peace to require another individual to post a bond before being allowed to continue carrying arms. *Bruen*, 597 U.S. at 55–59. In contrast to New York’s broad public-carry restriction addressed in *Bruen*, surety laws generally imposed a burden only after a specific, individualized reason to fear injury was identified. *Id.* *Rahimi* therefore found these same laws relevant to § 922(g)(8), which similarly operated after legal proceedings established a threat to another person. *Rahimi*, 602 U.S. at 695–700.

Going-armed laws reflected a comparable concern. These statutes punished individuals who carried dangerous weapons in a manner that terrorized others. *Rahimi* concluded from the surety and going-armed traditions that “[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” *Id.* at 697–98. Their significance for present purposes is not that they imposed the precise disability now found in § 922(g)(1), but rather that they demonstrate arms-related restrictions imposed in response to particularized threats of physical harm.

Early legal commentary confirms this distinction. William Rawle explained that the right to bear arms could not be “abused to the disturbance of the public peace,” and that carrying arms under circumstances giving “just reason to fear” an unlawful use could require surety of the peace. William Rawle, *A View of the Constitution of the United States of America* 125–26 (2d ed. 1829);

see also *Heller*, 554 U.S. at 607; *Bruen*, 597 U.S. at 56. The distinction, then, was between peaceable possession and circumstances giving rise to a particularized reason to fear physical harm.

3. English And Colonial Sources Offer Additional Evidence That Threats To Public Safety Were Invoked To Justify Arms Restrictions.

English history provides supplementary context, as the English Bill of Rights served as a significant predecessor to the Second Amendment. *Bruen*, 597 U.S. at 39, 42–44. English authorities frequently justified arms restrictions by referencing danger, rebellion, and threats to public order. Even under the sweeping royal authority of Charles II and James II, disarmament was framed in terms of danger and disaffection rather than solely as an exercise of the tyrant kings' divine right. See Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 Drexel L. Rev. 1, 24, 26–30 (2024).

Religious disarmament followed the same asserted rationale. Blackstone described restrictions on Catholics as necessary to counter their perceived “dangerous spirit,” and colonial measures in Maryland, Pennsylvania, and Virginia similarly invoked claims that Catholics threatened the safety of the community. See *id* at 24, 45–46. The relevance of this history is not that religious discrimination provides a legitimate modern analog. Instead, it demonstrates that physical danger, rebellion, and public disorder were repeatedly cited as justifications for disarmament.

These sources must be approached with caution and do not independently serve as Respondent’s historical analogue. Justice Thomas, for example, questioned the usefulness of English “dangerous person” restrictions in *Rahimi*, noting that laws addressing treason and rebellion rested on a justification distinct from restrictions addressing interpersonal

violence. *Rahimi*, 602 U.S. at 754–57 (Thomas, J., dissenting). Class-based historical disarmament often focused on rebellion, insurrection, and political allegiance rather than abstract dangerousness. Jack Baker, *Beyond Redemption?: Examining the Sixth Circuit’s Dangerousness Approach for As-Applied Challenges to the Felon-in-Possession Ban*, 79 Vand. L. Rev. 631, 649–51 (2026). Thus, their significance here is supplementary to the more directly analogous ratification-era, surety, and going-armed evidence.

Section 922(g)(1), as applied to Branders, is relevantly similar to that tradition both in its purpose and its operation. As to the “why,” Respondent relies on preventing the type of physical danger demonstrated by Branders’s adjudicated predicate conduct. This rationale parallels the historical concern with preventing physical harm where conduct or circumstances supplied a particularized basis for imposing an arms-related restriction. As to one aspect of “how” historical regulations imposed arms-related consequences after conduct, circumstances, or legal proceedings distinguished an individual from an ordinary peaceable citizen, Branders’s disability, likewise, arose only after a formal criminal conviction. *Bruen*, 597 U.S. at 29–30; *Rahimi*, 602 U.S. at 691–92, 695–700. However, the comparison is not exact. Section 922(g)(1) imposes a broader and potentially longer-lasting burden than many historical restrictions. However, *Rahimi* requires relevant similarity, not a “historical twin.” *Rahimi*, 602 U.S. at 692. Whether that greater duration remains constitutionally justified more than two decades after Branders’s conviction is addressed separately in Section C.

Taken together, these sources illustrate a recurring historical principle permitting firearm restrictions where conduct or circumstances demonstrated danger to the physical safety of others. That principle supplies Respondent’s historical justification; Section B addresses why Branders’s predicate conduct falls within that principle.

B. Branders’s Predicate Offense Falls Within The Historical Physical-Safety Principle Because Her Predicate Conduct Directly Endangered An Infant’s Physical Safety.

Section 922(g)(1) remains constitutional as applied to Branders, as the conduct underlying her predicate felony directly endangered human life and fits squarely within the historical physical-safety principle outlined in Section A. The district court reached a different conclusion, characterizing Branders’s conviction as the “result of negligence rather than malice” and noting that she was not convicted of “purposefully dangerous behavior.” R. at 6. This reasoning effectively treats purposeful or malicious intent to cause harm as a constitutional prerequisite for disarmament, a proposition neither *Bruen* nor *Rahimi* requires.

The relevant inquiry is whether the conduct forming the basis of the predicate conviction is sufficiently linked to the historical justification—danger to the physical safety of others—rather than whether Branders acted with a specific intent to harm. *See Rahimi*, 602 U.S. at 695–700; *Williams*, 113 F.4th at 657–60. In this constitutional context, the absence of intentional violence does not end the analysis; courts may evaluate the nature and circumstances of the predicate conduct. *See Williams*, 113 F.4th at 657–60; *United States v. Morgan*, 147 F.4th 522, 528–30 (5th Cir. 2025). This distinction is significant because a dangerous predicate offense and a presently dangerous individual are not constitutionally identical. *Williams* recognized that the character of a prior offense may serve as evidence of dangerousness, while still permitting a defendant to demonstrate lack of present dangerousness. *Williams*, 113 F.4th at 658–63; Jack Baker, *Beyond Redemption?: Examining the Sixth Circuit’s Dangerousness Approach for As-Applied Challenges to the Felon-in-Possession Ban*, 79 Vand. L. Rev. 631, 647–48 (2026).

Virginia law further demonstrates the error in the district court’s reasoning. The relevant felony-neglect statute applies to any person responsible for a child’s care who engages in a willful act or omission “so gross, wanton and culpable as to show a reckless disregard for human life.” Va. Code § 18.2-371.1(B)(1).² Thus, the predicate offense cannot be dismissed as mere carelessness simply because Branders lacked malicious intent. The statutory standard captures conduct that goes well beyond ordinary negligence and directly implicates a child’s physical safety.

The record confirms that Branders’s conviction implicated serious concerns for physical safety. She operated an unlicensed daycare, sometimes caring for more than ten children, and relied on her son, Nelson, for transportation. R. at 2. After a late-night socializing, Nelson slept only a few hours before transporting twelve children, most of them preschoolers. *Id.* He inadvertently left eleven-month-old Drew in the van and returned to his apartment, still with Drew inside. *Id.* Because Nelson usually placed Drew in a crib, Branders did not notice his absence for about two hours. *Id.* She spent more than an hour attempting to contact Nelson and Drew’s mother before calling 911. *Id.* Police discovered Drew with severe heat-related injuries, and he later died. *Id.*

If § 922(g)(1) is constitutionally applied to predicate offenses such as vehicle theft, drug trafficking, and offenses whose dangerousness arises from the manner in which they are committed, then Branders’s predicate offense—which directly threatened the safety of an infant and resulted in his death—clearly falls within the historical principle of physical safety that underlies disarmament.

² The record identifies Branders’s conviction under Va. Code § 18.2-371.1 but does not specify the subsection. R. at 2. Respondent therefore does not contend that Branders was necessarily convicted under subsection (B)(1); that provision supplies statutory context, while Respondent’s argument rests on the conduct reflected in the record.

United States v. Diaz provides a model for historical analysis. In that case, the Fifth Circuit considered whether § 922(g)(1) could be constitutionally applied to an individual with a prior vehicle theft conviction. *United States v. Diaz*, 116 F.4th 458, 468–71 (5th Cir. 2024). Rather than demanding a Founding-era firearm law specifically addressing vehicle theft, the court compared modern vehicle theft to historical theft offenses, such as horse theft, and examined *Bruen*’s key inquiries into “why” and “how.” *Id* at 468–70. Although the district court acknowledged the *Diaz* analogical framework, it did not apply it. R. at 6.

The respondent does not need to specify an eighteenth-century law that disarms individuals convicted of felony child neglect. Instead, the appropriate question is whether the present restriction is reasonably similar in its “how” and “why” to the historical regulations discussed above. *See Rahimi*, 602 U.S. at 692. The key is not that theft and child neglect are alike, but that a historical analogue need not be an offense bearing the same name from the Founding era. *Diaz*, 116 F.4th at 468–71. This methodology is consistent with *Rahimi*, which focuses on relevant similarity rather than an exact historical counterpart. The dissent’s argument that Founding-era child-neglect statutes are absent is therefore incorrect; Judge Pinckney himself recognized that the surety laws provide a relevant analogue. R. at 11. The lack of a directly labeled offense from the Founding era does not undermine Respondent’s historical comparison.

Morgan, *Palomares*, and *Watson* collectively support an approach that examines whether the predicate conduct implicated physical danger, rather than relying solely on labels such as “violent,” “nonviolent,” or “negligent.” In *Morgan*, the court analyzed the defendant’s drive-by shooting but expressly left unresolved whether criminal negligence alone has a historical analogue. *Morgan*, 147 F.4th at 528–30. Similarly, *Palomares* upheld § 922(g)(1) where alien smuggling was deemed an “inherently dangerous felony,” even though it was not a traditional

crime of interpersonal violence. *United States v. Palomares*, 183 F.4th 375, 377–78 (5th Cir. 2026). Likewise, *Watson* upheld § 922(g)(1) as applied to a defendant convicted of possession of cocaine with intent to distribute, reasoning that drug dealing is inherently dangerous, while reserving judgment on whether nondangerous felonies may justify disarmament. *United States v. Watson*, 171 F.4th 1012, 1024–25 (7th Cir. 2026). The Fourteenth Circuit cited *Watson* as an example of the type of historical analysis the district court failed to engage in. R. at 10. Collectively, these cases support focusing on the physical-safety implications of the predicate conduct, rather than treating the absence of malicious or conventionally violent behavior as dispositive. See Samuel Roos, “What’s Brewin’ with Bruen?” *Why, and How, We Must Permit Certain Felons to Possess Firearms*, 128 Dick. L. Rev. 379, 410–12 (2023).

The same emphasis on physical danger distinguishes *Range*. There, the predicate conviction involved a false statement to obtain food stamps, and the Government failed to establish a historical basis for disarmament. *Range v. Att’y Gen.*, 124 F.4th 218, 231–32 (3d Cir. 2024). The district court analogized *Branders* to *Range*, asserting that *Range* was “exactly what we have here” due to *Branders*’s lack of other felony convictions, absence of purposefully dangerous conduct, and no showing of a present credible threat. R. at 6.

However, the conduct in *Range* did not pose a comparable risk of physical harm, unlike *Branders*’s actions, which directly affected an infant’s safety. The key difference is not just the seriousness of the conduct but whether a physical safety concern exists, which was not present in *Range*. *Pitsilides* further confirms that an individualized review can consider multiple factors: predicate conduct, the defendant’s wider criminal history, and post-conviction behavior, rather than focusing solely on the offense label. *Pitsilides v. Barr*, 128 F.4th 203, 211–13 (3d Cir. 2025). Therefore, *Branders*’s absence of malicious intent is not conclusive, but her age at the time of

conviction and her subsequent behavior are still relevant factors in determining whether ongoing disarmament is appropriate.

Applied to Branders, this principle is satisfied. She assumed responsibility for multiple young children, relied on her eighteen-year-old son for transportation, failed to realize for approximately two hours that eleven-month-old Drew had not arrived, and then spent over an additional hour attempting to contact Nelson and Drew's mother before calling 911. R. at 2–3. The record does not indicate an intent to harm, but it does reflect an adjudicated failure in caring for a highly vulnerable child, resulting in exposure to lethal physical danger. Unlike *Range*, Respondent's justification here is grounded in a direct risk to bodily safety, rather than on felony status or economic misconduct.

Cockerham addresses the distinct question of whether a historical justification continues to support disarmament over time. In *Cockerham*, the debtor analogue ceased to justify disarmament once the defendant paid his child-support debt, since the historical disability ended upon satisfaction of the debt. *United States v. Cockerham*, 162 F.4th 500, 504–07 (5th Cir. 2025). By contrast, Branders's case concerns adjudicated conduct implicating physical safety, rather than a condition extinguished by payment. The continued sufficiency of that justification after more than two decades is examined in Section C.

Therefore, the district court erred by considering purposeful or malicious behavior as decisive. Branders's initial conduct directly affected an infant's physical safety, even without an intent to cause harm.

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C. The Historical Justification For Branders’s Disarmament Does Not Automatically Expire With The Passage Of Time.

The passage of time since Branders’s conviction raises a distinct issue from whether her predicate felony falls within the historical physical-safety principle. Branders received a two-year suspended sentence and probation in 2001. R. at 3. More than twenty years have elapsed. Even assuming her criminal supervision concluded long ago, completion of a sentence does not, by itself, terminate an otherwise constitutional firearm disability.

In *Kimble*, the court upheld § 922(g)(1) after the defendant served his entire sentence, reasoning that his predicate drug-trafficking felonies were inherently dangerous. *United States v. Kimble*, 142 F.4th 308, 313, 318 (5th Cir. 2025). Similarly, *Palomares* upheld lifetime disarmament when the predicate alien-smuggling felony was also deemed inherently dangerous. *Palomares*, 183 F.4th at 377–78. *Diaz* confirms that the historical consequences linked to the predicate conduct—not just the completion of a sentence—are key to the analysis. *Diaz*, 116 F.4th at 468–71. These rulings do not mean that every felony allows for permanent disarmament; instead, they clarify that serving a sentence does not automatically terminate constitutional restrictions.

Rahimi does not need to establish that Branders currently presents a “credible threat.” This requirement stems from § 922(g)(8)’s trigger—an active qualifying restraining order—while § 922(g)(1) is triggered by a relevant conviction. *Rahimi*, 602 U.S. at 698–702. The case does not establish a general need to reevaluate ongoing dangerousness for continued application of § 922(g)(1). A predicate offense that involves physical safety is still notably different from a person who is currently dangerous. *Williams* approves of considering both the predicate offense and the individual's circumstances, a point also noted in related commentary. *Williams*, 113 F.4th at 658–63; Jack Baker, *Beyond Redemption?: Examining the Sixth Circuit’s Dangerousness Approach for*

As-Applied Challenges to the Felon-in-Possession Ban, 79 Vand. L. Rev. 631, 647–48 (2026). The respondent is not required to predict future violent acts by Branders.

The Government must, however, address the restriction's duration. *Range* and *Cockerham* show that a historical justification must continue to support the imposed disability. In *Range*, the Government failed to justify permanent disarmament of an individual whose predicate offense was a false statement to obtain food stamps. *Range*, 124 F.4th at 231–32. In *Cockerham*, the historical debtor analogue ceased to justify disarmament once the defendant paid the child-support debt, as the condition underlying the analogue no longer existed. *Cockerham*, 162 F.4th at 504–07. Neither case establishes a fixed time limit. Unlike the extinguished debt in *Cockerham* or the economic dishonesty in *Range*, Respondent's justification is based on adjudicated conduct directly implicating another person's physical safety.

Branders's later actions support her case and should be considered. Branders engaged in charitable activities, and her only recorded offense since then is a misdemeanor reckless driving conviction. R. at 3. Branders obtained the firearm for self-defense and stored it separately from ammunition in locked drawers. R. at 3–4. These details support her claim that her current situation differs markedly from her decades-old conviction. See Jack Baker, *Beyond Redemption?: Examining the Sixth Circuit's Dangerousness Approach for As-Applied Challenges to the Felon-in-Possession Ban*, 79 Vand. L. Rev. 631, 647–48 (2026). However, rehabilitation alone does not automatically reestablish firearm rights. Cases like *Williams* and *Pitsilides* permit consideration of recent circumstances after conviction: *Williams*, 113 F.4th at 658–63; *Pitsilides*, 128 F.4th at 211–13. Using that same logic, in *Taylor*, the Sixth Circuit rejected the argument that twelve-year-old drug trafficking convictions were too remote to consider. *United States v. Taylor*, 165 F.4th 1029, 1035–36 (6th Cir. 2026).

Therefore, Branders's enduring conviction and good behavior after her sentence complicate this case, in contrast to cases involving recent offenses or current supervision. Nonetheless, these cases collectively demonstrate that neither serving a sentence nor the passage of time alone automatically lifts a firearm disability. Because Branders's conduct relates to a core safety issue, more than twenty years passing does not automatically make § 922(g)(1) unconstitutional as applied.

CONCLUSION

In conclusion, this Court should preclude Branders from bringing an as-applied challenge. The Constitution does not require an exception for Branders, as Congress has long had the authority to prohibit certain categories of individuals from possessing firearms, regardless of their propensity for violence. Section 922(g)(1) was enacted to prevent individuals with a propensity to misuse firearms from accessing firearms. Because the Constitution does not require an exception to § 922(g)(1) for non-violent felons, granting such an exception for Branders would exceed this Court's constitutional authority. The power to enact laws resides solely with Congress, and judicially creating an exception to § 922(g)(1) for non-violent felons would undermine and disrespect Congress's constitutional role.

Alternatively, even if individualized as-applied challenges are allowed, § 922(g)(1) remains constitutional as it applies to Branders. The nation's historical tradition includes a principle that allows firearm restrictions when someone's actions or circumstances pose a threat to others' physical safety. Branders's felony conviction falls within this principle because her conduct directly endangered an infant's safety. More than twenty years passing does not, by itself, remove the historical basis for her firearm disqualification. While her positive post-conviction behavior is

relevant to an individualized evaluation, completing her sentence, rehabilitation, or the passage of time alone do not automatically make her eligible to possess firearms. Therefore, this Court should uphold the Fourteenth Circuit's judgment.

For the forgoing reasons, Respondent respectfully requests that this Court affirm the Fourteenth Circuit's decision denying Branders's motion to dismiss.

Respectfully submitted this 30th day of September, 2026,

/s/ Team BY

Team BY
Counsel for Respondent