

Initial Brief on the Merits

Case No: 2026-100-202

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2026

TERRY BRANDERS,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

- I.** Whether an as-applied challenge to 18 U.S.C. § 922(g)(1) can be mounted when individualized review is woven into the fabric of this Nation’s judicial system and this Court is in the midst of an unrelenting march towards as-applied challenges on the basis of Second Amendment rights.
- II.** Whether 18 U.S.C. § 922(g)(1), as-applied to Ms. Branders, violates her Second Amendment right to keep and bear arms where, in the twenty-five years since her felony conviction, she has demonstrated rehabilitation and successful reintegration back into “the people.”

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

Ms. Branders, an Apple Newcoastland resident in her late seventies, has been forced to live with her son, Nelson Branders, due to her frailty. R. at 2. Nelson is known to have “frequent angry outbursts.” R. at 3-4. Ms. Branders finds Nelson’s friends “scary,” and she suspects that Nelson “use[s] or sells drugs.” *Id.* Ms. Branders, who spends her free time being involved with “various charities, volunteering in the local food bank and stocking school supplies for children in need,” was gifted a handgun by another volunteer for protection. *Id.* Ms. Branders accepted the gift, and she kept the handgun and its bullets locked in separate drawers. R. at 4.

In June of 2024, the Drug Enforcement Agency (“DEA”) received a tip regarding Nelson’s drug-related activities and began stakeout operations outside Ms. Branders’s home. R. at 3. The DEA performed a criminal record search for both Ms. Branders and Nelson, which returned their twenty-five-year-old convictions. *Id.* The convictions stemmed from what was supposed to be a well-intentioned home daycare operation run by Ms. Branders in Alexandria, Virginia. R. at 2. Ms. Branders, a retired factory worker, set up and operated the daycare center out of her home to provide reliable childcare services and support for her former colleagues. *Id.* Nelson’s responsibilities included transporting the children to and from the home daycare. *Id.* As part of this daily task, Nelson was supposed to remove a boy named Kenneth from his car seat and place him in a crib inside the house. *Id.* On the day of the incident, Nelson mistakenly left Kenneth in the van. *Id.* When Ms. Branders discovered that Kenneth was not in his crib, she tried desperately to reach Nelson and Kenneth’s mother and then called emergency services. *Id.* Despite all efforts, Kenneth passed from heat-related injuries. *Id.*

Ms. Branders and Nelson were convicted under Va. Code § 18.2-371 for “felony neglect of a child.” *Id.* Further, Ms. Branders was convicted of a misdemeanor for operating her daycare without proper licensing. R. at 3. Ms. Branders was subsequently given a two-year suspended sentence and placed on probation. *Id.* This incident fractured Ms. Branders's relationship with her son and her friends. *Id.* Despite that unfortunate event, Ms. Branders has since lived a law-abiding life, with only a single driving infraction in twenty-five years. *Id.*

Upon learning of their prior convictions, the DEA agents approached Ms. Branders’s home when Nelson was out. R. at 4. Ms. Branders allowed the agents to search her home and was “quite cooperative.” *Id.* The search produced only the lone firearm and bullets. *Id.* Ms. Branders was subsequently arrested for possessing the firearm she kept for her own protection nearly twenty-five years after completing her probation. *Id.*

II. PROCEDURAL HISTORY

Ms. Branders was charged with violating 18 U.S.C. § 922(g)(1), commonly known as the “felon-in-possession statute,” for possessing a firearm while being a convicted felon. *Id.* Ms. Branders moved to dismiss the charge, arguing that the felon-in-possession statute infringes on her Second Amendment right to bear arms. *Id.* The district court granted Ms. Branders’s Motion to Dismiss, holding 18 U.S.C. § 922(g)(1) as-applied to Ms. Branders was violative of her Second Amendment rights. R. at 7. The appellate court held that the district court erred when granting Ms. Branders’s Motion to Dismiss. R. at 9-10. The appellate court remanded the case, and this appeal followed. R. at 10.

SUMMARY OF THE ARGUMENT

Issue I. Individuals should not be barred from asserting an as-applied challenge to 18 U.S.C. § 922(g)(1). The current circuit split rests upon *dicta* from this Court’s precedent and mistakes a successful as-applied challenge with the ability to engage in one. History supports

engaging in individualized review when examining weapons regulations. This tradition was then codified in the Constitution in Article III, granting the Supreme Court original jurisdiction to decide cases and controversies. Additionally, statutory precedent provided for individualized review specifically in the realm of Second Amendment regulation. As-applied challenges have been the traditional legal mechanism used to challenge restrictions placed on other constitutional rights. Therefore, the Second Amendment should not be an exception.

There has been a sizeable shift in this Court's precedent which supports allowing as applied challenges to § 922(g). This Court has already heard cases involving § 922(g)(8) and § 922(g)(3); there is a dangerousness in handpicking which subsections are worthy of individualized review. Lastly, allowing as-applied challenges addresses the statute's overbreadth while preserving its underlying policy.

Issue II. The felon-in-possession statute violates Ms. Branders's Second Amendment rights as-applied to her. Her conduct falls within the Amendment's plain text because she is among "the people," her handgun constitutes an "arm," and possessing that handgun in her home for self-protection falls within the right to "keep" arms. Her felony conviction alone does not remove her from the class protected by the Amendment's text.

Because Ms. Branders satisfies the textual inquiry, the burden shifts to the Government to identify a historical firearm regulation sufficiently analogous in both burden and justification to her permanent disarmament. The historical laws commonly invoked to justify felon disarmament do not satisfy that standard as-applied to Ms. Branders. Those laws generally targeted dangerous or disloyal groups, often permitted individualized restoration, or imposed punishment for particular criminal conduct rather than disarmament based solely on felony status. Ms. Branders's negligence-based conviction does not implicate those historical justifications. Her

lack of criminal conduct post-conviction and her meaningful reintegration efforts further confirm that permanent disarmament is unjustified. Accordingly, Ms. Branders’s challenge succeeds.

ARGUMENT

I. AS-APPLIED CHALLENGES TO 18 U.S.C. § 922(g)(1) SHOULD REMAIN AVAILABLE TO CHALLENGE GOVERNMENTAL INFRINGEMENT ON SECOND AMENDMENT RIGHTS

The federal circuit courts stand divided on whether a defendant may mount an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1). The felon-in-possession statute prohibits persons convicted of a crime punishable by more than one year of imprisonment from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(1). An as-applied challenge does not contend that the felon-in-possession statute is unconstitutional in all applications; rather, it argues that the law is invalid in the way it is applied to a specific person. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 19 (2022).

The circuit split turns on whether the text-and-history framework demanded by *Heller* and honed by *Bruen* and *Rahimi* requires the Government to justify disarming each defendant, or whether *dicta* from *Heller* describing felon dispossession laws as "presumptively lawful," forecloses the need for individualized review. *United States v. Williams*, 113 F.4th 637, 644 (6th Cir. 2024). The Fifth, Third, and Sixth Circuits allow as-applied challenges to the felon-in-possession statute. The remaining circuits treat felony status as dispositive under the statute.

A. Allowing As-Applied Challenges to the Felon-In-Possession Statute Better Accords with the Second Amendment, as Recognized by the Fifth, Third, and Sixth Circuits

The Second Amendment secures to “the people” an individual constitutional right to keep and bear arms. U.S. Const. amend. II. The Second Amendment did not create a new right, but “codified a pre-existing right” inherited from English legal tradition. *District of Columbia v.*

Heller, 554 U.S. 570, 592 (2008). This right is fundamental and applies to the States through the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 767–68 (2010).

This Court’s decisions in *Heller*, *Bruen*, and *Rahimi* form a trilogy governing Second Amendment constitutional challenges. *See Heller*, 554 U.S. 570; *Bruen*, 597 U.S.; *United States v. Rahimi*, 602 U.S. 680 (2024). In *Heller*, this Court held that the Second Amendment protects an individual’s right to keep and bear arms for lawful self-defense and established the text-and-history framework to define the scope of the right. *Heller*, 554 U.S. at 595, 628; *see infra* Part II.

Among the circuits that allow as-applied challenges, the Fifth Circuit conducts the narrowest form of individualized review. *United States v. Diaz*, 116 F.4th 458, 469–70 (5th Cir. 2024). The Circuit rejects the shifting, modern felony classification as sufficient to show that history supports lifetime disarmament under the felon-in-possession statute. *Id.* Instead, the court focuses principally on the predicate offense alone and asks whether that offense is analogous to crimes historically subject to permanent punishment or disarmament. *United States v. Kimble*, 142 F.4th 308, 311 (5th Cir. 2025).

The Third Circuit also rejects felony status alone as an irrebuttable basis for disarmament but uses a broader lens in terms of what facts it considers. *Range v. Att’y Gen.*, 124 F.4th 218, 226–32 (3d Cir. 2024). The court requires the Government to show that history supports disarming a person like the defendant by examining the nature of the predicate offense and the defendant’s criminal history. *Id.* at 223. The Third Circuit stresses the individual’s post-conviction conduct in determining the need for continued disarmament. *Pitsilides v. Barr*, 128 F.4th 203, 212 (3d Cir. 2025). While utilizing more individualized methods, the Third Circuit’s adaptation of the *Heller* test implements the same core inquiry as the Fifth Circuit.

The Sixth Circuit takes the most individualized approach. The circuit permits as-applied challenges understanding historical disarmament practices to have allowed categorical presumptions of dangerousness only where individuals retained an opportunity to demonstrate that the justification for disarmament did not apply to them. *Williams*, 113 F.4th at 657–63. The Sixth Circuit does not limit the inquiry to the predicate conviction. *Id.* The Sixth Circuit conducts a fact-specific dangerousness inquiry considering the nature of the predicate offense, the defendant’s individual characteristics, and their criminal history. *Id.* at 659–60, 663.

Circuits that reject as-applied challenges to the felon-in-possession statute have done so for differing reasons. The Fourth and Eighth Circuits rely on *dicta* from *Heller* describing felon-in-possession restrictions as “presumptively lawful” to conclude that historical laws disarming categories of persons are sufficient analogues to justify disarming all modern felons as a class. *United States v. Hunt*, 123 F.4th 697, 702–08 (4th Cir. 2024) (holding that history supports disarming categories of persons who have demonstrated dangerousness or a disregard for legal norms); *United States v. Jackson*, 110 F.4th 1120, 1125–29 (8th Cir. 2024) (holding that historical status-based restrictions justify categorical felon disarmament and eliminate the need for “felony-by-felony litigation”). The Ninth Circuit adds to the Eighth and Fourth Circuits’ analysis by considering the history of severe punishments imposed for serious crimes and concluding individualized dangerousness determinations are unnecessary. *United States v. Duarte*, 137 F.4th 743, 755–61 (9th Cir. 2025). By contrast, the Tenth and Eleventh Circuits treat existing circuit precedent as foreclosing renewed individualized review after *Bruen*. *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 892–94 (11th Cir. 2025).

The individualized approach taken by the Third, Fifth, and Sixth Circuits better accords with *Bruen*'s command to compare the justification and burden of a modern restriction with those reflected in the Nation's history. *Bruen*, 597 U.S. at 29. This approach preserves *Bruen*'s presumption of the Second Amendment's textual protection and places the historical burden where the Supreme Court assigned it: on the Government. *Id.* Circuits that foreclose as-applied challenges collapse the distinction between felony status and dangerousness, treating the former as sufficient proof of the latter, without requiring the Government to meet its burden. Although history supports disarming individuals found to pose a danger, it does not establish that every modern felony conviction may serve as a proxy for dangerousness, nor justify permanent disarmament without any opportunity to rebut the basis for the restriction. In plain terms, if the Government's historical rationale is "danger," then the Constitution should not permit disarmament where danger is absent. Accordingly, courts should permit a person subject to the felon-in-possession statute to challenge the law as-applied to his or her particular circumstances.

B. Anglo-American Legal Tradition from English Practice to Modern Law Supports Individualized Review Through As-Applied Challenges

Before courts adopted the modern term "as-applied challenge," individualized review was a characteristic of the Anglo-American legal tradition. That principle is especially clear in the history of arms regulation itself. Although historical governments imposed a range of firearm restrictions on groups considered dangerous, those laws often preserved avenues for individuals to retain or regain arms by demonstrating loyalty, peacefulness, and good behavior. *Williams*, 113 F.4th at 651–55.

1. English Practice Recognized Individualized Review

As early as the Saxton era, the English surety system sought to prevent future violence and breaches of the King's peace by requiring individuals who posed a risk to provide security

for their future good behavior. *Rahimi*, 602 U.S. at 695–96. A justice of the peace could require a surety only upon “due cause.” *Range*, 124 F.4th at 239 (Matey, J., concurring). For example, a surety could be imposed when a person threatened to kill or injure another, engaged in an affray, or carried unusual weapons in a manner that terrorized the public. *Id.* Thus, restraint under the surety system depended on an individualized determination, supported by concrete grounds that the person posed a future danger.

This principle later carried over into English arms regulations. During the Restoration of Charles II, Parliament enacted the Militia Act of 1662 to organize the kingdom’s militia and secure the peace. *Id.* The Act authorized local militia officials to seize arms from persons they judged “dangerous to the Peace of the Kingdome,” but it also permitted those arms to be restored when the officials deemed restoration appropriate. An Act for Ordering the Forces in the Several Counties of this Kingdom, 14 Car. 2, c. 3, § 13 (1662).

After the Glorious Revolution, Parliament, treating Catholics as a politically dangerous class due to fears of renewed conflict and disloyalty to the Protestant Crown, enacted a law that prohibited Catholics from possessing arms unless they declared an oath of loyalty. *Range*, 124 F.4th at 239. By taking the prescribed oath, an individual Catholic could show that he did not pose the danger underlying the restriction and could therefore retain his arms. *Id.*

2. Colonial Era and Founding Era Disarmament Laws Similarly Preserved Individualized Review

Colonial laws show that the English tradition of disarming those considered dangerous carried into America. The tradition of allowing individual members to show that the justification for disarmament did not apply to them and thereby retaining the right for individualized review was also embraced. *Williams*, 113 F.4th at 654. In 1637, the Massachusetts Bay Colony ordered a group of seditious libelers to surrender their arms because colonial authorities viewed them as

dangerous to the colony's stability. *Id.* at 652. But the disability was not permanent. *Id.* A court could authorize an individual to buy or borrow weapons again, and those who disavowed the offending libel could have their arms restored. *Id.*

Colonial Virginia's treatment of Catholics provides another example of categorical disarmament tempered by individualized relief. *Id.* at 653. During the French and Indian War, Virginia disarmed Catholics because officials feared they might side with Catholic France. *Id.* at 653. Yet the restriction was not absolute as it allowed for a justice of the peace to authorize an individual Catholic to keep weapons necessary to defend his person or home. *Id.*

Revolutionary-era Loyalist laws followed the same pattern. *Id.* at 653-54. Although several states disarmed people viewed as disaffected or dangerous to the revolutionary government, some allowed individuals to retain or recover arms upon an individualized showing of loyalty. *Id.* Connecticut permitted persons to retain firearms if they were "friendly to this and the other United Colonies," while Rhode Island and Massachusetts provided relief upon "satisfactory reasons" or by order of colonial committees. *Id.*

At our Nation's founding through Article III of the Constitution the Supreme Court was authorized with original jurisdiction to decide cases and controversies related to governmental infringement on constitutional rights. U.S. Const. amend. art. III. Resolving a controversy is equivalent to conducting an as-applied challenge. The Founding-era practices surrounding firearm regulations show the importance of rehabilitation and the opportunity to earn one's arms back. *Williams*, 113 F.4th at 650. Although not done under the term "as-applied challenge," this Nation's earliest courts allowed for a legal remedy based on an individualized showing of redemption and rehabilitation. *See Heller*, 554 U.S.; *Bruen*, 597 U.S.; *Rahimi*, 602 U.S.; *United States v. Hemani*, 608 U.S. 722 (2026). Many states had categorical firearm bans based on race,

religious affiliation, propensity for violence, or loyalty to country. *Range*, 124 F.4th at 229; *United States v. Watson*, 171 F.4th 1012, 1020-22 (7th Cir. 2026). These laws included the right to bear arms for the purposes of self-defense and encouraged, whether formal or informal, a fact-based inquiry to determine if that individual could be released from the limitation placed on their rights. *Williams*, 113 F.4th at 657 (stating that “[e]ven though some of those classifications would offend both modern mores and our current Constitution...individuals could demonstrate that their particular possession of a weapon posed no danger to peace”). The current circuit split surrounding as-applied challenges to the felon-in-possession statute is inconsistent with the Founding-era’s position, which favored using as-applied challenges as a mechanism to argue for looser restrictions on constitutional rights. *Id.* at 654 (explaining that the history of individualized challenges to the possession of weapons “[d]id not change when the future Americans decided whether to ratify their new Constitution”).

3. Statutory Authority and Other Constitutional Challenges Support Individualized Review to Limitations on Constitutional Rights

Current statutory authority and legal precedent surrounding challenges to other constitutional amendments support using as-applied challenges to loosen limitations placed on protected rights. *See* Gun Control Act, Pub. L. No. 90-618 § 102, 82 Stat. 921-28 (1968). This further evidences the command that as-applied challenges have on the United States’ judicial system and why the felon-in-possession statute should not be precluded from being challenged as-applied to an individual.

The original Gun Control Act of 1968, the predecessor to the current felon-in-possession statute, included § 925 titled “Exceptions: Relief from disabilities,” gave authority to the Bureau of Alcohol, Tobacco, and Firearms (“ATF”) to review applications for individuals wanting to restore their right to bear arms. 18 U.S.C. § 925(c). If an applicant was denied restoration of their

Second Amendment rights through this statutory scheme, Congress allowed those individuals to “submit petitions in federal court.” *Firearms Owners’ Protection Act*, Pub. L. No. 99-308, § 105, 100 Stat. 449, 459 (1986). This statutory as-applied remedy was only available to individuals who had been convicted of a “non-firearm related felony.” Jordan Cohen & Dave Sidhu, CONG. RSCH. SERV., IF13273, THE DEPARTMENT OF JUSTICE PROPOSED RULE TO RESTORE FIREARMS RIGHTS TO “PROHIBITED PERSONS” (2026). Review of such applications offers proof that fact-based inquiries are appropriate when examining firearm regulations and the Second Amendment's right to bear arms. *Id.* Recently, the application process that was statutorily prescribed by § 925(c) has been reinstated. *Id.* (explaining that the proposal would specifically include individuals currently prohibited from possessing a firearm under § 922(g)(1) provided that the Attorney General found that possession “[w]ould not be contrary to public safety and the public interest”).

This shift recognizes the importance of the rights afforded under the Second Amendment confirming that individualized review, whether via application with an administrative agency or suit with the judiciary, is a way to rebut the assertion that the felon-in-possession statute is “presumptively lawful” regardless of the predicate felony. *See Hunt*, 123 F.4th; *Jackson*, 110 F.4th; *Bondi*, 127 F.4th; *Duarte*, 137 F.4th. The statutory precedent and shift surrounding § 925(c) and § 922(g), specifically Congress’ intent for denied applications to be submitted to federal courts for further consideration, reflects a broader shift that has been playing out in the judicial branch. This Court’s decisions in *Heller*, *Bruen*, *Rahimi*, and *Hemani* march towards as-applied challenges.

Outside of the Second Amendment context, as-applied challenges are the default mechanism for challenging governmental infringement on an individual’s constitutional rights.

Judges are not novices when it comes to fact-based inquiries. *Williams*, 113 F.4th at 660. Fact-based inquiries based on individualized determinations are used across the Constitution, therefore the Second Amendment should not be an exception. *See e.g., Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) (conducting an as-applied challenge to state action based on the rights afforded by the Free Exercise Clause of the First Amendment); *Katz v. United States*, 389 U.S. 347 (1967) (holding that fact specific inquiry is necessary for determining an individual’s reasonable expectation of privacy for purposes of lawful searches and seizures under the Fourth Amendment); *Atkins v. Virginia*, 536 U.S. 304, 321 (2002) (holding that a fact specific inquiry is necessary to prevent a violation of the Eighth Amendment’s cruel and unusual punishment prohibition when the State pursues capital punishment against a “mentally retarded offender”); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (ruling on an as-applied challenge to the Equal Protection Clause of the Fourteenth Amendment regarding prohibition of contraception to unmarried individuals by a reproductive activist). Such analyses are what Ms. Branders urges this Court to adopt when examining firearm regulations for non-violent, rehabilitated felons under the Second Amendment. R. at 4, 12-13.

In summarizing as-applied challenges, the circuit court in *Williams* stated that, “when the legislature disarms on a class-wide basis, individuals must have a reasonable opportunity to prove that they don’t fit the class-wide generalization.” 113 F.4th at 661. Like *Williams*, Ms. Branders should be able to “avail[] [herself] of [her] constitutionally required opportunity to show that [she] is not dangerous.” *Id.* at 662. As noted in *Range*, “in the absence of other channels for individualized review, the doors to the federal courthouse *must* be open.” 124 F.4th at 276 (Krause, J., concurring) (emphasis added). The Constitutional protections afforded to the people cannot bend the knee to the inconvenience of the judiciary.

C. This Court’s Precedent in *Rahimi* and *Hemani* Demonstrate a Shift in Second Amendment Jurisprudence

Circuit courts have misinterpreted this Court’s precedent by confusing the success of an as-applied challenge with the ability to engage in one. Both *Rahimi* and *Hemani*, the most recent cases heard by this Court on § 922(g), have effectively been as-applied challenges to § 922(g)(8) and § 922(g)(3)—§ 922(g)(1) should not be an exception. *See Rahimi*, 602 U.S. (challenging § 922(g)(8)); *Hemani*, 608 U.S. (challenging § 922(g)(3)).

In *Rahimi*, this Court stated that the question before it was “whether this provision [18 U.S.C. § 922(g)(8)] may be enforced *against him* consistent with the Second Amendment.” 602 U.S. at 686 (emphasis added). By using the phrase “against him,” this Court has maintained an exhausting neutrality towards as-applied challenges by refusing to directly use the term “as-applied.” Although, this Court in *Rahimi* ultimately found that Rahimi’s right to bear arms could continue to be restricted based on his existing restraining order, that decision followed the analogical framework prescribed by this Court in *Heller* and used by the circuit courts to evaluate the constitutionality of the felon-in-possession subsection. 602 U.S. at 689. This Court engaged in an analysis of Rahimi’s criminal record and the criminal activity which was used to convict him under § 922(g)(8). *Id.* at 686-690. After balancing Rahimi’s constitutional right to bear arms against the danger he posed to others because of the violent, intentional nature of his criminal record, this Court concluded that Rahimi’s Second Amendment rights could be restricted. *Id.* at 690, 702. The decision in *Rahimi* looked at the particularized facts of Rahimi’s criminal record and the ensuing restraining order. *Id.* at 693 (“Section 922(g)(8) survives *Rahimi’s challenge*”) (emphasis added). Plainly, *Rahimi* was an-as applied challenge in everything but name. *Id.* at 690 (“*As applied* to the facts of this case, Section 922(g)(8) fits comfortably within [the tradition of preventing those who are a threat from having a firearm]”)

(emphasis added); *Id.* at 693 (stating that the restriction provided by the statute was “temporary as applied to Rahimi”) (emphasis added).

Similarly, in *Hemani*, the question presented before this Court was whether, based on Hemani’s occasional marijuana use, “the government’s prosecution of *Mr. Hemani* [under § 922(g)(3)] is consistent with the Second Amendment.” *Hemani*, 608 U.S. at 777 (emphasis added). Once again, this Court examined another challenge to a different subsection of § 922(g). *Id.* And once again, this Court employed the two-step framework from *Heller* to essentially answer whether, based on the facts surrounding Hemani’s arrest, the government could infringe on his Second Amendment rights. *Id.* at 780. This Court cloaked an as-applied challenge to a subsection of § 922(g) in amorphous and avoidant language. *Id.* at 795 (holding that the government did not provide an adequate analog, therefore this Court “[could] not say [the Government] has carried its conceded burden of showing its prosecution of *Mr. Hemani* complies with the Second Amendment”) (emphasis added). In *Hemani*, this Court ensured a narrow ruling, listing out the various instances the constitutionality of other limitations on Second Amendment rights would remain untouched while lifting the restrictions imposed only against Hemani. *Id.* at 794 (“We do not address 18 U.S.C. § 922(g)(1)’s provision disarming individuals convicted of felonies (often including drug-related ones’’)). This Court acknowledges the burden the Government must carry but fails to provide a clear pathway to rebut it. *Id.* at 781. This Court explains the Government’s burden under *Bruen* but fails to provide a pathway for Hemani to succeed, other than that the Government must fail. *Id.*

This Court has never held as-applied challenges are prohibited when challenging the constitutionality of a statute which infringes on an individual’s Second Amendment right. *Rahimi*, 602 U.S. at 702; *Hemani*, 608 U.S. at 795. *Heller*, *Bruen*, *Rahimi*, and *Hemani* illustrate

the shift back to what was originally intended for Second Amendment constitutional challenges. *Williams*, 113 F.4th at 654. Neither *Rahimi* nor *Hemani* prohibited the use of as-applied challenges as the legal mechanism for challenging § 922(g)(1); only piecemeal quotations spun by the circuit courts into law has. Nor did *Rahimi* endorse permanent disarmament, even for individuals who are dangerous. 602 U.S. at 702 (“[W]e conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be *temporarily disarmed* consistent with the Second Amendment”) (emphasis added). The holdings in both *Rahimi* and *Hemani* make it clear that a one-size fits all categorical prohibition with no avenue for individualized review produces unjust results. *Rahimi*, 602 U.S. at 702; *Hemani*, 608 U.S. at 795. Courts cannot cherry pick which subsections of § 922(g) are allowed to be challenged using the as-applied legal mechanism. That type of haphazard judicial review leaves the entire Bill of Rights subject to the whims of the judiciary.

D. Allowing an As-Applied Challenge Aligns with the Statutory and Policy Purpose behind the Felon-in-Possession Statute

As-applied challenges ensure that the purpose and the protections of the statute remain intact while allowing a path to recourse for non-violent felons who have already paid their debts to society and have shown rehabilitation—a goal central to the American penological system. R. at 2-3. As-applied challenges remedy the overbroad effects of the statute while still protecting victims and the public from dangerous individuals possessing, trafficking, and selling firearms.

1. The Current Iteration of the Felon-In-Possession Statute is Overbroad

The current felon-in-possession statute's predecessor, the Federal Firearms Act (1938) was limited in its application. *Range*, 124 F.4th at 229; Jordan Cohen & Dave Sidhu, THE DEPARTMENT OF JUSTICE PROPOSED RULE TO RESTORE FIREARMS RIGHTS TO “PROHIBITED PERSONS” (2026). The original act prohibited violent individuals who had been convicted of “[a]

limited set of violent crimes such as murder, rape, kidnapping, and burglary” from possessing firearms. *United States v. Booker*, 644 F.3d 12, 24 (1st Cir. 2011). In other words, only the most violent crimes against the person permitted lifelong disarmament. *Williams*, 113 F.4th at 658-660. However, that is not the situation before this Court. R. at 2-3.

Unlike the original Federal Firearms Act of 1938, the current subsection before this Court makes no such distinction among crimes. 18 U.S.C. § 922(g)(1). There is no requirement that the individual committed the predicate offense with a firearm, served time in a penal institution, committed a crime of violence, or committed a crime with malice. *Id.* The only requirement for permanently stripping the right to bear arms is the designation of being “[c]onvicted in any court of, a crime punishable by imprisonment for a term exceeding one year. . . .” *Id.* This language is overbroad and sweeps in white collar crimes and negligent or unintentional crimes, therefore no longer serving the purpose of the felon-in-possession statute. *See infra* Part I.D.2. As noted by this Court in *Lange v. California*, “a felon is not always more dangerous than a misdemeanor.” 594 U.S. 295, 305 (2021).

This Court has already “rejected the argument that a person could be disarmed merely for being irresponsible.” *Watson*, 171 F.4th at 1024 (quoting *Rahimi*, 602 U.S. at 701-02). Allowing permanent disarmament based on the length or potential length of imprisonment with no regard to the particularities of the offense is contradictory to what this Court already announced in *Rahimi*. 602 U.S. at 698. In practice, many as-applied challenges to § 922(g)(1) fail, not because the legal mechanism used to challenge the statute is improper, but because the predicate felony is a violent one. *United States v. Woolsey*, 759 F.3d 905, 909 (8th Cir. 2014). To continue the route of prohibiting as-applied challenges to the felon-in-possession statute, circuits would ensure that the law “operates ‘at such a high level of generality that it waters down the right’” guaranteed to

the people by the Second Amendment. *Range*, 124 F.4th at 230 (quoting Barrett J., concurrence in *Rahimi*). As noted by the majority in *Williams*, “the very premise of constitutional rights is that they don't spring into being at the legislature's grace,” thus, if a “disarmament statute doesn't provide an administrative scheme for individual exceptions, as-applied challenges provide a mechanism for courts to make individualized dangerousness determinations.” 113 F.4th at 661. The “*dicta* from *Heller*” should not “bind [the circuits] and obviate the need” to conduct a *Bruen* analysis when faced with an as-applied challenge to the felon-in-possession statute. *Watson*, 171 F.4th at 1071.

2. Allowing As-Applied Challenges Maintains the Core Policy Goals Underlying the Felon-in-Possession Statute

Outlined in § 922(q)(1)(A-I), Congress describes the legislative intent of the statute. The legislative intent behind the creation of a statute serves an important function in understanding how the statute should be applied and to whom it should be applied to. The legislative intent that was purposefully built into the statute illustrates why the district court was correct in interpreting this Court's firearm trilogy of *Heller*, *Bruen*, and *Rahimi* to allow for an as-applied challenge to Ms. Branders's conviction. R. at 4-6. According to subsection (q), Congress identified a substantial link between drugs, violence, and crime. 18 U.S.C. § 922(q)(1). Specifically, Congress looked at the “interstate movement” or trafficking of drugs and guns by criminal enterprises. *Id.* Congress cited that the transportation of weapons from state to state was linked to an increase in school shootings and weapons being found on school aged children. *Id.* Most importantly, the legislature was concerned with the decline of education because of gun-related violence and drugs. *Id.*

Allowing as-applied challenges for individuals like Ms. Branders to restore their right to bear arms is not dismissive or contrary to the above objectives. The decline in education and the

fear surrounding school violence, addiction, and gang related activities is legitimate and uncontested. However, preventing individuals like Ms. Branders who do not pose this specific threat from having a weapon to defend themselves sweeps in an individual whose rights the legislature had no intention of restricting.

Since its inception, the American legal system has afforded defendants with the opportunity to rebut the presumptions on which the government relies to justify restrictions on their rights. *See e.g., Estelle v. Williams*, 425 U.S. 501, 503 (1976) (holding that the “presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice”). Maintaining the position that permanent disarmament laws are “presumptively lawful” while denying any legal mechanism to rebut that presumption strikes at the heart of the American justice system.

II. THE FELON-IN-POSSESSION STATUTE AS-APPLIED TO MS. BRANDERS IS VIOLATIVE OF HER SECOND AMENDMENT RIGHTS

To evaluate claims arising under the Second Amendment, this Court established the governing framework in *Heller* and subsequently refined that framework in *Bruen* and *Rahimi*. The *Heller* test utilizes a two-part framework; the first prong asks whether the defendant’s conduct at issue falls within the scope of the Second Amendment’s plain text. *Heller* 554 U.S. at 576. The second prong, often referred to as the historical-analogue inquiry, considers whether the challenged legislation is analogous to a historical firearm regulation. *Id.* at 602.

The circuits that recognize as-applied challenges to the felon-in-possession statute employ the same framework from *Heller*. *See supra* Part I.A. Each circuit uniformly applies the first prong of the *Heller* test, the textual coverage analysis. The circuits’ approaches differ in the degree to which the second prong of the *Heller* test is individualized. *Id.* The Fifth Circuit conducts the narrowest individualized inquiry, looking only to the category of the predicate

felony and seeking a historical analogue for that category. *United States v. Hernandez*, 159 F.4th 425, 428 (5th Cir. 2025); *Diaz*, 116 F.4th at 469–70. The Third Circuit goes further, considering both the predicate offense and the defendant’s subsequent criminal history. *Pitsilides*, 128 F.4th at 212. The Sixth Circuit conducts the most individualized inquiry, considering the predicate offense, the defendant’s subsequent criminal history, and case-specific facts bearing on whether the defendant poses a danger to society. *Williams*, 113 F.4th at 657–63.

These approaches reflect differences in the extent of individualization, but they share the same underlying framework. Each circuit seeks to adapt the *Heller* historical analogue prong to an as-applied challenge by looking beyond the defendant’s status as a felon and considering specific facts and criteria about the offense and offender. Whether this Court adopts the approach of the Fifth, Third, or Sixth Circuit, Branders’s challenge prevails. The Sixth Circuit’s approach, however, best embodies the individualized character of an as-applied challenge. Accordingly, this Court should adopt the Sixth Circuit’s adaptation of the *Heller* test in resolving Ms. Branders’s as-applied challenge.

A. Ms. Branders’s Conduct Falls Within the Second Amendment’s Plain Text

The first prong of the *Heller* test requires courts to examine the “normal and ordinary meaning” of the Second Amendment’s operative clause. *Heller*, 554 U.S. at 576 (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)). *Heller* divided the textual coverage prong into three parts, each isolating a particular clause of the Second Amendment. *Id.* Courts applying the textual analysis must determine (1) “whether the person challenging the gun regulation is among ‘the people whom the Second Amendment protects,’” (2) “whether the person’s weapons are ‘in common use’ for a lawful purpose,” and (3) “whether the person’s ‘proposed course of conduct’ is covered by the textual right to keep or to bear arms.” *Bruen*, 597 U.S. at 31–32.

1. Ms. Branders is Among “the people” Protected by the Second Amendment

Ms. Branders is one of “the people” protected by the Second Amendment’s text. Her criminal record does not remove her from that class. R. at 2-3. References to “the people” appear in seven distinct provisions of the Constitution¹, and this Court has already interpreted its meaning throughout those provisions. In *United States v. Verdugo-Urquidez*, this Court held that “‘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 or who have otherwise developed sufficient connection with this country to be considered part of that community.” 494 U.S. 259, 265 (1990) (citing *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1904)). Nothing in this Court’s interpretation of “the people” suggests that criminal status removes a citizen from the class entitled to constitutional protections. While Ms. Branders’s criminal history may bear on whether the government can lawfully restrict her exercise of certain rights, it does not determine whether she possesses the right at all.

Because the defendants’ criminal statuses were not at issue in *Heller* or *Bruen*, the Courts’ references to “law abiding citizens” were descriptive and did not create an independent limitation on the Second Amendment’s textual scope. *United States v. Calhoun*, 710 F. Supp. 3d 575, 586 (N.D. Ill. 2024) (“[t]he [position] that felons fall outside the Second Amendment’s plain text relies heavily on the Supreme Court’s *dicta* in *Heller* and *Bruen*.”). Justice Thomas explained that *Bruen* used the phrase “ordinary, law-abiding citizens” “merely to describe those who were unable to publicly carry a firearm in New York,” rather than to define the outer bounds of “the

¹ U.S. Const. pmb.; U.S. Const. art. I, § 2; U.S. Const. amend. I; U.S. Const. amend. IV; U.S. Const. amend. IX; U.S. Const. amend. X; U.S. Const. amend. XVII.

people” protected by the Second Amendment. *Rahimi*, 602 U.S. at 773 n.7 (Thomas, J., dissenting).

Justice Thomas emphasized that “the Court has never adopted anything akin to” the Government’s proposed rule limiting Second Amendment protection to law-abiding or non-dangerous citizens. *Rahimi*, 602 U.S. at 773–74 (Thomas, J., dissenting). Any alternative interpretation is invariably erroneous. This Court has cautioned against the overreading of non-binding language, “we think it 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) (receiving negative treatment only as to its Title VII pretext holding, not its discussion of *dicta*).

Rahimi further disclaims any limitation on the class of individuals to which the Second Amendment’s protections apply. There, this Court proceeded directly into the historical analogue prong of the *Heller* framework. *Rahimi*, 602 U.S. at 680. This Court presumed textual coverage despite *Rahimi*’s prior criminal conduct. *Id.*; *United States v. Rahimi*, 61 F.4th 443, 448 (5th Cir. 2023), *rev’d and remanded*, 602 U.S. 680 (2024) (detailing *Rahimi*’s criminal history). The notion that “law-abiding citizens” fall within the Second Amendment’s protection implies no limitation on its outer boundary; express inclusion within a protected group does not categorically exclude all others. *Rahimi*, 602 U.S. at 702 (“[*Heller* and *Bruen*] did not define the term [responsible citizen] and said nothing about the status of citizens who were not ‘responsible.’”).

Reaffirming *Verdugo-Urquidez*, the Court in *Heller* made clear that “the people” protected by the Second Amendment “unambiguously refers to all members of the political community, not an unspecified subset.” *Heller*, 554 U.S. at 580. *Bruen*’s progeny in the lower courts has

embraced that broad understanding of “the people,” uniformly concluding that a criminal history does not remove an individual from the protected class, even when the court ultimately upheld a prohibition on firearm possession. *Duarte*, 137 F.4th at 753; *Zherka v. Bondi*, 140 F.4th 68, 77 (2d Cir. 2025); *United States v. Simmons*, 150 F.4th 126, 131 (2d Cir. 2025); *United States v. Harrison*, 153 F.4th 998, 1014 (10th Cir. 2025); *Range*, 124 F.4th at 222. As the Sixth Circuit explained, “a group may be historically excluded from the right to bear arms while, nonetheless, being a part of ‘the people.’” *United States v. Escobar-Temal*, 161 F.4th 969, 975 (6th Cir. 2025) (citing *Williams*, 113 F.4th at 649–50). Criminal status cannot exclude Ms. Branders from membership among “the people” protected by the Second Amendment.

2. Ms. Branders’s Handgun is an “arm” Protected by the Second Amendment

Ms. Branders’s handgun falls within this Court’s definition of “arms.” In the textual analysis of the Second Amendment conducted in *Heller*, Justice Scalia defines “arms” by adopting the meaning of the same used by 18th century dictionary sources, reasoning that their “meaning is no different from the meaning today.” *Heller*, 554 U.S. at 581. Samuel Jonson’s 1773 dictionary defines “arms” as “[w]eapons of offense, or armor of defense.” *Id.* Timothy Cunningham’s 1771 legal dictionary uses “any thing that a man wears for his defense, or takes into his hands, or useth in wrath to cast at or strike another.” *Id.* *Heller* rejected the argument that only 18th century weapons are protected, instead extending the scope of Second Amendment protection to “all instruments that constitute bearable arms, even those not in existence at the founding.” *Id.* at 582. Even so, this Court has recognized that the definition of “arms” has an outer limit.

In order to fall within the textual confines of the Second Amendment, the weapon must be “in common use at the time” the controversy is heard by the court. *Id.* at 624. *Heller* itself describes handguns as falling within “common use,” describing them as “the most preferred firearm in the

nation to keep and use for protection . . .” *Id.* at 628 (quoting *Parker v. District of Columbia*, 478 F.3d 370, 400 (D.C. Cir. 2007)). Courts have been consistent in finding handguns squarely within the definition of “arms” for Second Amendment purposes. *See e.g., Bruen*, 597 U.S.; *McCoy v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 140 F.4th 568 (4th Cir. 2025); *United States v. Cruz-Jimenez*, 772 F. Supp. 3d 242 (D.P.R. 2025); *Renna v. Bonta*, 667 F. Supp. 3d 1048 (S.D. Cal. 2023).

3. Ms. Branders’s Possession of a Handgun in Her Home for Self-Protection Falls Within the Second Amendment Right to “keep” Arms

The final inquiry that comprises the textual coverage prong of the *Heller* test is whether the conduct in which the defendant sought to engage in falls within the meaning of “to keep or bear arms.” *Heller*, 554 U.S. at 582. Ms. Branders’s conduct falls within the textual scope of the Second Amendment. Relying upon 18th century commentary, this Court in *Heller* determined that “the most natural reading of keep arms is to have weapons,” and to “bear arms” meant to “carry for the purpose of confrontation.” *Heller*, 554 U.S. at 582-83; 1 Samuel Johnson, *A Dictionary of the English Language* 161 (4th ed. 1773); Webster; T. Sheridan, *A Complete Dictionary of the English Language* (1796); 2 Oxford English Dictionary 20 (2d ed.1989); 1 William Blackstone, *Commentaries* 136, 139–40 (1765). The right to possess a firearm in the home for protection has been routinely affirmed as the touchstone of the Second Amendment. *See McDonald*, 561 U.S.; *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012); *United States v. Masciandaro*, 638 F.3d 458, 468 (4th Cir. 2011); *Altman v. Cnty. of Santa Clara*, 464 F. Supp. 3d 1106, 1117 (N.D. Cal. 2020). Ms. Branders’s possession of a handgun in her bedroom for self-protection therefore falls within this core protected conduct. R. at 3.

Each element of the textual coverage prong of the *Heller* test is satisfied. Ms. Branders is among “the people,” her handgun constitutes an “arm,” and possessing that firearm in her home in anticipation of self-defense is conduct expressly covered by the right to “keep arms.”

Once textual coverage is clear, *Bruen* requires only one additional prong of analysis—the historical analogue. This Court in *Bruen* departed from prior Second Amendment tests that utilized varying levels of scrutiny, calling such an analysis “one step too many.” *Bruen*, 597 U.S. at 2. *Bruen* and, later, *Rahimi* clarified that while the rejection of means-end and other levels of scrutiny began in *Heller*, it was largely misunderstood by lower courts. *Rahimi*, 602 U.S. at 691-92; *Bruen*, 597 U.S. at 22-24; *Heller*, 554 U.S. at 634. A means-end scrutiny analysis would be inappropriate in the Second Amendment context because it would allow courts to inject a policy analysis, potentially overriding an enumerated constitutional right. *Rahimi*, 602 U.S. at 731 (Kavanaugh, J., concurring) (“Whatever the label of the day, that balancing approach is policy by another name.”); *Bruen*, 597 U.S. at 22-23. Absent an application of scrutiny, once an individual demonstrates that the “Second Amendment’s plain text covers an individual’s conduct,” the burden shifts to the Government to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 17.

B. The Government Cannot Identify a Historical Analogue Supporting Ms. Branders’s Permanent Disarmament

The second prong of the *Heller* test requires the Government to demonstrate a historical analogue of firearm regulation that is similar to the challenged law in both the manner in which it burdens the Second Amendment right and its justification. *Heller*, 554 U.S. at 601. That inquiry requires careful consideration of which historical firearm regulations may properly serve as analogues and the weight those regulations should receive. The historical laws commonly invoked to justify felon disarmament must then be measured against that standard to determine

whether they are sufficiently similar in “burden and justification” to the felon-in-possession statute as-applied to Ms. Branders. *Bruen*, 597 U.S. at 29. The analogues routinely relied upon by the Government to justify felon disarmament do not satisfy that standard.

1. The Government Must Identify a Historical Analogue Relevantly Similar in Burden and Justification to Permanently Disarm Ms. Branders

In the second step of the *Heller* framework, the Government bears the burden of demonstrating that the challenged restriction is consistent with this Nation’s historical firearm regulation. *Bruen*, 597 U.S. at 29. *Bruen* clarified that the Government need not identify a “historical twin” to the modern regulation, but it must identify a sufficiently similar “analogue.” *Id.* at 30. Whether a historical regulation is sufficiently analogous turns on “how and why” that law burdens the right to self-protection. *Id.* at 29. The regulations must be evaluated by comparing the manner in which the historical and modern laws operate and the purposes those restrictions served. *Id.*

Not every historical regulation that limited firearm possession is sufficient to serve as an analogue. This Court has discounted purported analogues because of temporal distance from the Founding, limited geographic reach, materially different burdens on the right, or fundamentally different regulatory structures. *See Bruen*, 597 U.S. 1 (2022). Recently, this Court in *Wolford v. Lopez* declined to rely upon laws arising from “so-called Black Codes that aimed to perpetuate the subjugation of blacks.” 146 S. Ct. 2032, 2053 (2026). The mere existence of a historical restriction on firearm possession therefore does not establish a constitutionally relevant analogue. The Government must identify historical regulations that meaningfully resemble the challenged law in both their justification and operation.

The historical analogue inquiry carries an acknowledged methodological limitation. Courts have routinely emphasized the time of the Founding and Reconstruction as most pertinent to the

Second Amendment test from *Heller*. See e.g., *Bruen* 597 U.S. 1 (2022); *Heller*, 554 U.S. 570. However, state laws from these time periods predate incorporation of the Second Amendment to the States. See *McDonald*, 561 U.S. Because individuals subject to Founding- and Reconstruction-era firearm regulations lacked a Second Amendment mechanism for challenging their validity, the fact that those laws went facially unchallenged does not necessarily show that they reflected a broadly accepted understanding of permissible firearm regulation. This Court has acknowledged the tension between the merits of the historical review and the imperfect conclusions that are drawn from laws enacted before the Second Amendment constrained state regulations. *Bruen*, 597 U.S. at 37. This limitation does not displace the historical analogue inquiry, but it does demand careful scrutiny of the weight afforded to purported analogues before treating them as evidence of established historical tradition.

2. Historical Disarmament Laws Differ in Both Burden and Justification from Permanently Disarming Ms. Branders

Routinely invoked “analogues” to sustain the disarmament of felons are insufficient to pass constitutional muster as-applied to Ms. Branders. Courts defending modern felon disarmament have relied primarily upon status-based disarmament laws, loyalty restrictions, Founding-era capital punishment and forfeiture laws, and laws prohibiting going armed to the terror of the public. See, e.g., *Jackson*, 110 F.4th at 1129; *United States v. Fulcar*, 701 F. Supp. 3d 49, 56 (D. Mass. 2023). None of these regulations provide a sufficient analogue for permanently disarming Ms. Branders based on her negligence-based felony conviction. R. at 2-3.

The historical laws differ in why they imposed disarmament. The status-based restrictions relied upon in *Jackson* disarmed groups whom the governing authority perceived as threatening to public safety or political order. 110 F.4th at 1126–27. Those restrictions included laws directed at persons who refused to swear loyalty during the Revolutionary-era and against

dangerous or disloyal groups. *Id.* Historical laws disarming Native Americans and religious minorities have likewise been invoked as class-based analogues for modern felon disarmament. But this Court has already rejected discriminatory class-based restrictions of that kind as reliable historical analogues. *See Wolford*, 146 S. Ct. at 2053; *See supra* Part I.B.1.

The common thread running through the historically relevant restrictions was not the formal status of the persons disarmed, but the fear that they posed some threat to the public or political community. Ms. Branders falls outside of that historical rationale. Her predicate conviction was a result of negligence rather than violent, malicious, or intentionally dangerous conduct, leaving the mere title of her felony status as the only basis for continued disarmament. R. at 2-3.

The historical regulations also differ in how they imposed disarmament. Many status-based restrictions permitted the affected person to escape or terminate the disability through some individualized showing; these laws did not impose an irrevocable disability based solely upon membership in a disfavored class. *See supra* Part I.B.2.

These historical opportunities for restoration reflect the longstanding value placed on rehabilitation and reintegration after conviction. American criminal law does not treat past misconduct as invariably defining an individual forever; instead, it recognizes that subsequent conduct may demonstrate meaningful rehabilitation and reduced risk. *See Pepper v. United States*, 562 U.S. 476 (2011). The current felon-in-possession statute does not give the same effect to that principle. The modern statute therefore differs from the historical restrictions in both how it imposes disarmament and why that disarmament continues.

Founding-era capital-punishment and estate-forfeiture laws present additional problems as historical analogues. Circuit courts have pointed out that the greater does not logically include the lesser, and that the power to execute a felon does not logically encompass the power to

permanently disarm one who was not executed. *Range*, 124 F.4th at 231. After *Range*, the Western District of Texas further distinguished forfeiture laws, noting that English forfeiture laws did not carry over to the United States in the same form and the First Congress in fact abolished forfeiture of estate as punishment for felons. *United States v. Melendrez-Machado*, 677 F. Supp. 3d 623, 632 (W.D. Tex. 2023). That historical rejection weakens forfeiture's value as evidence of an enduring American tradition supporting permanent deprivation of a constitutional right. Moreover, capital punishment and estate forfeiture historically operated as punishments for particular criminal acts, rather than as continuing disabilities imposed solely because of an individual's status as a felon. *United States v. Williams*, 807 F. Supp. 3d 853, 860 (S.D. Ill. 2025). Their operation therefore differs materially from a modern statute that imposes continuing disarmament based upon conviction status.

The differences in both how and why the historical laws operated prevent them from supplying a sufficient analogue for the felon-in-possession statute as applied to Ms. Branders. The historical regulations invoked by the Government to sustain the felon-in-possession statute either targeted persons thought to pose a particular danger, permitted individualized means of escaping disarmament, imposed punishment for specified criminal conduct rather than status, or otherwise operated differently from the permanent restriction imposed here. No historical analogue therefore justifies permanently disarming Ms. Branders based on the kind of felony she committed. R. at 2-3. Accordingly, her challenge succeeds even if this Court adopts the Fifth Circuit's predicate offense-focused adaptation of the *Heller* test.

C. Ms. Branders's Individual Circumstances Do Not Justify Her Permanent Disarmament

The Third and Sixth Circuits both engage in an assessment of the individual defendant. The Third Circuit looks to the defendant's criminal record after the predicate felony conviction in an

effort to prevent individuals engaging in recidivism from having firearm possession reinstated. The Sixth Circuit takes the individual assessment further and looks at the individual in their entirety and places a burden on the defendant to prove they are not dangerous. *Range*, 124 F.4th at 232. Under either framework, Ms. Branders’s circumstances do not demonstrate the continuing danger necessary to support permanent disarmament.

1. Ms. Branders’s Post-Conviction Record Does Not Demonstrate Recidivism or Continuing Danger

Permanently disarming a felon is justified when the felon continues to present a danger to society. *Range*, 124 F.4th at 230. Range successfully challenged the felon-in-possession statute because the court found that his criminal history following his nonviolent felony conviction did not indicate that he was dangerous or had engaged in recidivism warranting permanent disarmament. *Id.* After his predicate felony conviction, Range had minor parking, traffic, and fishing regulation infractions. *Id.* at 223. Ms. Branders similarly shows no indication she is engaging in recidivism. *R.* at 3. Ms. Branders has only received one speeding infraction since her predicate felony conviction. *Id.* With a subsequent record cleaner Range, Ms. Branders has not engaged in conduct validating permanent disarmament. The Sixth Circuit “requires the court to make fact-specific dangerousness determinations after taking account of the unique circumstances of the individual, including details of his specific conviction, when deciding whether a defendant can be prohibited from possessing a firearm.” *Williams*, 113 F.4th at 946. Under that fact-specific inquiry, Ms. Branders’s lone speeding misdemeanor does not demonstrate the dangerousness necessary to justify her permanent disarmament.

2. Ms. Branders’s Individual Circumstances Demonstrate That She Does Not Pose the Danger Necessary to Justify Permanent Disarmament

The Sixth Circuit places a burden on the defendant to make an individualized showing that they are not dangerous. *United States v. Taylor*, 165 F.4th 1029, 1033 (6th Cir. 2026). *Williams*

notes that courts may consider information beyond criminal convictions, citing *Rahimi* as an example of such an inquiry. *Williams*, 113 F.4th at 658. The Northern District of Ohio went on to utilize post-conviction rehabilitation evidence in a dangerousness assessment. *See United States v. Banks*, 793 F. Supp. 3d 896 (N.D. Ohio 2025). Here, the individual characteristics of Ms. Branders indicate successful rehabilitation after the predicate felony and that Ms. Branders is able to fulfill her burden of proving she is not dangerous and therefore should not be permanently disarmed. Ms. Branders is an elderly woman who, after the tragic events that led to her nonviolent felony conviction, became an active member of her community and engaged in volunteer work to contribute meaningfully to local foodbanks, schools, and other charitable organizations. R. at 3. Ms. Branders completed her probation, paid her debt to society, and demonstrated through years of rehabilitation and meaningful reintegration into her community that she no longer poses the danger that could justify permanent disarmament. Ms. Branders has demonstrated that her conduct falls within the protections of the Second Amendment's text. She has satisfied her burden of demonstrating she is not dangerous. Although the burden ultimately rests with the Government to identify a sufficiently analogous historical regulation supporting her permanent disarmament, Ms. Branders has gone further and demonstrated why historical laws of disarmament are not similar in burden and justification to the felon-in-possession statute as applied to her.

CONCLUSION

For all these reasons, this Court should reverse the Fourteenth Circuit's decision denying Ms. Branders her constitutional right to bear arms.

Respectfully submitted,

s/ Team CX
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