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COURT COMPETITION

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

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QUESTION PRESENTED

1. A government regulation violates the Second Amendment if the regulation is inconsistent with this nation's historical tradition of firearm regulation. 18 U.S.C. § 922(g)(1) bans convicted felons from possessing firearms. Is this categorical ban constitutionally permissible?
2. Despite this nation's historical tradition of firearm regulation allowing for categorical disarmaments, circuits have split as to whether nonviolent, versus violent, felons should have an exception. Should such an exception apply to a person who might not have been convicted of an explicitly violent crime, but still poses a special danger of misusing firearms?

STATEMENT OF THE CASE

I. Statement of Facts

Terry Branders began running an unlicensed daycare in her home in July of 2000, sometimes caring for more than ten children at a given time. R. at 2. Branders employed her eighteen-year-old son, Nelson, to help pick up and drop off the children who came to her daycare, despite his well-known proclivities for very late nights and an active social life. *Id.* After one such evening, Nelson failed to bring one child, eleven-month-old Kenneth Drew, into Branders' house. *Id.* This omission went unnoticed for over two hours—followed by one hour spent trying to locate Kenneth, who remained trapped in the car. *Id.* After the police were finally able to find Kenneth, it was too late; he had suffered severe heat-related injuries and died as a result. *Id.* Branders was convicted of felony child neglect as well as operating a daycare without a license (a misdemeanor). *Id.* at 2–3. Only Nelson was sentenced custodially; Branders was “given a two-year suspended sentence and placed on probation.” *Id.* at 3.

Nearly twenty years later, Branders and Nelson moved to Newcoastland, where her run-ins with the law consisted of a charge for misdemeanor reckless driving—83 mph in a 65 mph zone. *Id.* Branders' license was only suspended for six months. *Id.* Branders continued permitting Nelson to live with her, despite his escalating behavioral problems. *Id.* Nelson effectively runs Branders' household, “insist[ing] on living in the basement and coming and going as he pleased . . . blam[ing] Branders for everything wrong with his life . . . [and] ha[s] difficulty maintaining a job.” *Id.* Additionally, “Brander [sic] has often suspected that [Nelson] might use or sell drugs . . . [and] [s]he found some of his ‘friends’ to be particularly scary.” *Id.* In apparent recognition that she was in a dangerous situation with her volatile son, Branders accepted a gun from a friend, Becky, after Becky “offered to give Branders one of the guns” Becky's recently deceased husband

left behind. *Id.* The record is silent as to whether Branders attempted to properly purchase and/or license the gun. After the DEA became suspicious of Nelson’s drug-related activities, agents approached Branders to search her house. *Id.* at 4. DEA Agents found Branders’ gun, and promptly arrested her for being a felon in possession of a firearm. *Id.*

II. Procedural History

On July 3, 2024, Branders was charged with possessing a firearm as a felon in violation of U.S.C. § 922(g)(1). R. at 4. She moved to dismiss the charge, arguing § 922(g)(1) was inconsistent with the Second Amendment and therefore unconstitutional as applied to her. *Id.* On December 22, 2025, the United States District Court for the Eastern District of Newcoastland granted Branders’ motion to dismiss, holding that § 922(g)(1) should be evaluated as applied to a petitioner’s individualized conduct, and as applied to Branders violated the Second Amendment. R. at 7. The Fourteenth Circuit reversed the district court on June 10, 2026, and remanded the case back to the district court, holding § 922(g)(1) is constitutional as a categorical ban on felon possession of firearms. R. at 10. One Circuit Judge dissented, arguing that because child neglect laws did not exist at the founding, § 922(g)(1) failed to pass constitutional muster. R. at 10–11. On remand, Branders entered an *Alford* plea, “reserving the right to appeal the denial of her motion to dismiss the indictment and her challenge that § 922(g)(1) violates the Second Amendment as applied to her.” R. at 12. The Fourteenth Circuit affirmed this on June 10, 2026, with one Circuit Judge dissenting for the same reasons. *Id.* This Court granted certiorari for the October 2026 term. R. at 13.

SUMMARY OF THE ARGUMENT

The Fourteenth Circuit was correct when it ruled that the Second Amendment does not require that as applied challenges must remain available under 18 U.S.C. § 922(g)(1). This Court

in *Dist. of Columbia v. Heller* held that laws prohibiting firearm possession by felons are presumptively lawful. 554 U.S. 570, 626-27 (2008). This is language that has been consistently upheld in the dicta of the Court over the course of 21st century second amendment jurisprudence. *See McDonald v. Chicago*, 561 U.S. 742, 786 (2010); *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 81 (2022); *United States v. Rahimi*, 602 U.S. 680, 699 (2024); *United States v. Hemani*, 608 U.S. 772, 794 (2026); *Wolford v. Lopez*, 609 U.S. 185, 193 (2026). Under the *Bruen* analysis § 922(g)(1)’s categorical ban on felons possessing firearms is constitutional under the Second Amendment because it is consistent with historical legislatures disqualifying categories of people from possessing firearms to address a danger of misuse by those who deviated from legal norms. *See* 597 U.S. at 17; *see also Range v. Attorney General United States*, 53 F.4th 262, 276 (2022) (“The earliest firearm legislation in colonial America prohibited Native Americans, Black people, and indentured servants from owning firearms,” in addition to disarming Catholics who “were subject to disarmament without demonstrating a proclivity for violence.”) (citations omitted).

Finally, § 925I’s pathway for felons to regain their rights of firearm possession ensures § 922(g)(1)’s categorical ban is not overbroad. *See* 18 U.S.C. § 925I.

Branders wants this Court to carve out an exception for “non-violent” felons within the plain text of § 922(g)(1). But Branders’ argument fails on multiple accounts. First, Branders’ predicate conviction and—and subsequent conviction under § 922(g)(1)—is sufficiently analogous to crimes subject to historic firearm regulations to comply with the Second Amendments. Historical punishments for manslaughter—a crime containing practically the same *mens rea* and *actus reus* requirements as Branders’ underlying conviction—ran the gamut; from estate forfeiture right up to capital punishment. It is hard to conclude that the lesser punishment of permanent disarmament would not have been allowed where such serious punishments were. Second, even if

Branders’ suggestion for this court to create a felon-by-felon, as applied system to adjudicate claims, like Branders’, under § 922(g)(1), is adopted, Branders’ predicate conviction and behavior is not of the type to be protected. And third, Branders is effectively asking this Court to rehash the complex litigation surrounding the Armed Career Criminal Act’s requirement that a predicate crime for the purposes of enhancement be a violent felony. This Court ultimately determined that Congress could not have meant for courts to adjudicate individual, fact-intensive inquiries into defendants’ predicate felony convictions because that system led to nonsensical results; and what’s more, became judicially unworkable.

ARGUMENT

I. The Fourteenth Circuit was correct when it ruled that the Second Amendment does not require that as applied challenges must remain available under 18 U.S.C § 922(g)(1))

To determine whether a statute violates the Second Amendment, a plaintiff must establish a single truth—that the Second Amendment’s plain text covers their alleged conduct. *New York Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022). Once this has been proven, it is the government’s responsibility to “demonstrate that the regulation is consistent with this nation’s historical tradition of firearm regulation.” *Id.* “Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.” *Id.* Section 922(g)(1) states that “[i]t shall be unlawful for any person—who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” 18 U.S.C. § 922(g)(1)). Under the *Bruen*

test, § 922(g)(1) can be applied categorically because it falls within the history and tradition of the United States for the government to revoke the gun rights of individuals facing felony convictions.

A. In *District of Columbia v. Heller*, this Court held that laws prohibiting firearm possession by felons are presumptively lawful. This language has been consistently upheld in this Court’s dicta since then

District of Columbia v. Heller, the basis upon which our country’s modern Second Amendment’s jurisprudence is built, makes it abundantly clear that while this Court was prepared to reconsider its understanding of the right to bear arms, this reconsideration in no way applied to Congress’s longstanding prohibition of felons obtaining firearms after their conviction. 554 U.S. 570, 626–27 (2008) (“Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill”); *see also id.* At n.26 (while discussing the aforementioned prohibitions, Justice Scalia notes, “[w]e identify these *presumptively lawful regulatory measures* only as examples; our list does not purport to be exhaustive”) (emphasis added)). Section 922(g)(1)’s prohibition on felony possession of firearms was reaffirmed in the dicta of *McDonald v. Chicago* two years later, stating that, “[w]e made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as “prohibitions on the possession of firearms by felons and the mentally ill, ...We repeat those assurances here.” 561 U.S. 742, 786 (2010). Even *New York State Rifle & Pistol Association, Inc. v. Bruen*, largely considered the final nail in the coffin for mean-end scrutiny, maintained the sanctity of § 922(g)(1)’s prohibitions. 597 U.S. at 81 (J., Kavanaugh concurring) (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons” (quoting *Heller* 554 U.S. at 626-27 (2008))).

In the flurry of cases the Supreme Court has recently taken up regarding the constitutionality of § 922(g) in the wake of *Bruen*, this Court made clear it had no intention of abandoning Justice Scalia’s firmly held belief in § 922(g)(1)’s constitutionality. *See, e.g., United States v. Hemani*, 608 U.S. 772, 794 (2026) (explicitly stating the decision did not call § 922(g)(1)’s constitutionality into question). *United States v. Rahimi*, while debating the legality of § 922(g)(8)’s prohibition on individuals subject to certain domestic violence restraining orders to possessing firearms states, “*Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. In fact, our opinion stated that many such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.’” 602 U.S. 680, 699 (2024). Even *Wolford v. Lopez*, which answers the question of whether a state prohibits carrying firearms on others’ private property open to the public without permission, takes care to mention that the court is not calling into question § 922(g)(1)’s legality. 609 U.S. 185, 193 (2026) (“*Heller* explained—and later cases have reiterated—that the Second Amendment “codified a pre-existing right.” And this right, as understood at the time, was not an “unlimited” right “to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” Similarly, *Heller* warned that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.”) (citations omitted).

Yes, Second Amendment jurisprudence has evolved in the last two decades, and if this Court’s upcoming docket inclusion of *Viramontes v. Cook County* is indication of anything, it will continue to develop in the upcoming years. This does not mean that § 922(g)(1)’s validity as a categorical ban is ripe for dismantlement. In five of the seven Second Amendment cases decided by this Court after *Heller*, this Court has made it crystal clear they have no constitutional concerns.

This mentality has been taken up by a vast number of courts of appeals. Since *Rahimi*, six courts of appeals—the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits—have ruled that § 922(g)(1) is not susceptible to as applied challenges. See *United States v. Hunt*, 123 F.4th 697, 704–08 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025); *United States v. Jackson*, 110 F.4th 1120, 1125–29 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025); *United States v. Duarte*, 137 F.4th 743, 755–62 (9th Cir. 2025) (en banc), *cert. denied*, No. 25-425, 2026 WL 135692 (2026); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 1768 (2026); *United States v. Dubois*, 139 F.4th 887, 890–94 (11th Cir. 2025), *cert. denied*, No. 25-6281, 2026 WL 135685 (2026). *Zherka v. Bondi*, 140 F.4th 68, 91 (2d Cir. 2025), *cert. denied*, No. 25-269, 2026 WL 135708 (2026).

B. Under *Bruen*, § 922(g)(1)’s categorical ban on felons possessing firearms is constitutional

This Court held in *Bruen* that a statute calling into question the Second Amendment must be evaluated under a two-prong test. 597 U.S. at 17. The first step is to determine whether the Second Amendment’s plain text covers the statute’s alleged regulated conduct. *Id.* Once this has been proven, it is the government’s responsibility to “demonstrate that the regulation is consistent with this nation’s historical tradition of firearm regulation.” *Id.* “Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.* (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n.10 (1961)).

Section 922(g)(1) explicitly targets individuals who fall outside of our nation’s definition of “law abiding citizens,” and clearly belong to a category of actors that fall outside of American legal norms and public order. Given this nation’s history of disarming broad groups of individuals who fit these traits, § 922(g)(1)’s categorical ban survives *Bruen* analysis.

1. As defined by § 922(g)(1), felons are included within the “people” granted rights under the Second Amendment

The Fourteenth Circuit contends that there is “no question as to the first part of the [*Bruen*] inquiry, which is whether the second amendment applies to the Appellee.” R. at 9. (“it certainly does.”). We agree. The Second Amendment guarantees “the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. I. II. Here, “the people,” as discussed in *Heller*, “unambiguously refers to all members of the political community, not an unspecified subset” 554 U.S. at 580; *see also, id.* (citing *United States v. Redugo-Urquidez*, 494 U.S. 259, 265 (1990) (stating the uses of the term “the people” “suggest[s] that ‘the people’ protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth 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.”)). As the Fourteenth Circuit purports, “If Rahimi enjoyed such protection, despite his history of family violence” then certainly the felons who have finished out their sentences do as well. R. at 9.

“‘Like most rights,’ though, ‘the right secured by the Second Amendment is not unlimited.’” *Rahimi*, 602 U.S. at 690–91 (quoting *Heller*, 554 U.S. at 626).

2. Section 922(g)(1)’s regulation against felons possessing firearms is consistent with colonial legislatures’ tradition of prohibiting large classes of individuals—like Catholics and Native Americans—from owning firearms

Given felons as a category belong within the constitutional understanding of “the people,” The burden thus shifts to the government to demonstrate that regulating felon possession of firearms is “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. To satisfy this burden, the government must “identify a well-established and representative historical analogue, not a historical twin.” *Id.* at 30. This Court has acknowledged in both *Heller* and *Bruen*

that it understands that the society we live in today is not necessarily one that the founders could have predicted when drafting our nation’s foundational documents. This Court also emphasizes that these pivotal decisions do not mandate “a law trapped in amber,” and that the Second Amendment “permits more than just those regulations identical to ones that could be found in 1791.” *Rahimi*, 602 U.S. at 691–92 (discussing this Court’s decision in *Heller*). Instead, the relevant question is “whether the challenged regulation is consistent with the principles that underpin our regulatory tradition,” including “[w]hy and how the regulation burdens the right.” *Hunt* 123 F.4th 705.

i. The “How” and “Why” of § 922(g)(1)’s categorical disarmament of felons aligns with historical regulations disqualifying categories of people who deviated from legal norms from possessing firearms because they posed a danger of misuse, not merely to address their demonstrated propensity for violence

This Court in *Bruen* “requires courts to assess the ‘why’ and ‘how’ historical regulations burdened the rights to bear arms.” *United States v. Harrison*, 153 F.4th 998, 1027 (10th Cir. 2025). The “historical record suggests that legislatures traditionally possessed discretion to disqualify categories of people from possessing firearms to address a danger of misuse by those who deviated from legal norms, not merely to address a person’s demonstrated propensity for violence.” *Jackson*, 110 F.4th at 1127. Additionally, “[l]egislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed.” *Id.* at 1128.

In drafting the Gun Control Act, and therefore § 922(g)(1), Congress “sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous. These persons are comprehensively barred by the Act from acquiring firearms by any means.” *Barrett v. United States*, 423 U.S. 212, 218 (1976). Early legislatures disarmed people

categorically “because they refused to adhere to legal norms in the pre-colonial and colonial era.” *Hunt*, 123 F.4th at 707. Just like its historical predecessors, “today’s legislatures may disarm people who have been convicted of conduct the legislature considers serious enough to render it a felony.” *Id.* Therefore, “both the why (whether ‘modern and historical regulations’ impose a ‘burden’ on the Second Amendment right that was ‘comparably justified’) and the how (whether the regulations ‘impose a comparable burden on the right of armed self-defense’) support § 922(g)(1)’s constitutionality.” *Id.* (quoting *Bruen*, 597 U.S. at 29).

ii. Categorical disarmament of certain religious and racial classes by colonial legislatures is analogous to § 922(g)(1)’s categorical disarmament of felons

This historical understanding of the legislators’ ability to restrict gun ownership in the broader context should be enough to meet the “how” and “why” standard *Bruen* proposes for evaluating the categorical removal of gun ownership from felons. However, if this court finds such evidence to be lacking, there are clear examples throughout the nation’s early history of the use of this power against categories of individuals who as a group were considered dangerous *or* deviating from legal norms, but who individually may not have earned such a classification.

“The earliest firearm legislation in colonial America prohibited Native Americans, Black people, and indentured servants from owning firearms,” in addition to disarming Catholics who “were subject to disarmament without demonstrating a proclivity for violence” *Range v. Attorney General United States*, 53 F.4th 262, 276 (2022) (citing Michael A. Bellesiles, *Gun Laws in Early America: The Regulation of Firearms Ownership*, 1607-1794, 16 LAW & HIST. REV. 567, 578–79 (1998) [hereinafter “Bellesiles”]). Similarly, those disloyal to the government were the focus of most prohibitions throughout the colonial period. Bellesiles, at 578–79. There could not be a clearer example of a ban that ignored an individual’s propensity for violence in favor of ensuring

a class of people were kept from firearm possession. *See Hunt*, 123 F.4th at 706–07 (“True, many of these specific prohibitions would today be understood to violate other constitutional restrictions. But those examples remain “relevant here in determining the historical understanding of the right to keep and bear arms.” And those examples suggest legislatures historically had the power to disarm categories of people based on a legislative determination that such people “deviated from legal norms,” and “not merely to address a person’s demonstrated propensity for violence.” (quoting *Jackson*, 110 F.4th at 1126–27). Even though “not all Protestants or Catholics in England, not all Native Americans, not all Catholics in Maryland, not all early Americans who declined to swear an oath of loyalty ... were violent or dangerous persons,” all could be disarmed. *Jackson*, 110 F. 4th at 1128. “This history demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons.” *Id.* Instead, as here, past conduct (like committing a felony) can warrant keeping firearms away from persons “who might be expected to misuse them.” *Hunt*, 123 F.4th at 707.

Legislatures across the colonies also indicated a stark difference between the discernment of criminals and those individuals considered dangerous to public order. The Pennsylvania Address suggested that citizens have a personal right to bear arms “unless for crimes committed, or real danger of public injury.” Bernard Schwartz, *The Bill of Rights: A Documentary History* 662, 665 (1971). The usage of “or” here invokes the disjunctive canon of construction, indicating that “for crimes committed” and “real danger of public injury” exist as a disjunctive list. Either, not both, conditions can exist for Pennsylvania to revoke your rights to a firearm, indicating that the crimes in which cause such a revocation need not necessarily be dangerous at all. Such delineation is up to the discretion of the legislative body. Massachusetts’s proposed amendment said that the Constitution authorized “the people of the United States, who are peaceable citizens, [to keep]

their own arms.” *Id.* at 681. (They reveal that the right to bear arms at the time was not unlimited, and that the government could prevent people who had committed crimes or were “quarrelsome” from accessing weapons. *See* SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 1773) (defining “unpeaceable”). A key example of such discernment laws in action can be found in the case of Anne Hutchinson, who was charged in 1673 by the colony of Massachusetts with sedition after she criticized the colony’s clergy for “its legalistic interpretation of the Bible.” Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 263 (2020). “Anne Hutchinson and some of her supporters were banished from the colony. Of her supporters permitted to remain in the colony, seventy-six were disarmed.” *Id.*

C. This Court’s decision in *United States v. Hemani* is not dispositive of § 922(g)(1)’s fate and did not invite a discussion of the statute on its merits. In its 9-0 opinion, this Court vehemently indicated that their decision was narrow

In the majority opinion for *United States v. Hemani*, Chief Justice Roberts made it explicitly clear the court *only* decided that § 922(g)(3), which makes illegal the possession of firearms by individuals using or addicted to controlled substances, is unconstitutional when applied to individuals who smoke marijuana occasionally. 608 U.S. at 794 (“In many respects, this case is a narrow one.”). This decision was not meant to “address efforts to ban addicts, or those presently intoxicated, from possessing a firearm.” *Id.* It is also not meant to address § 922(g)(1)’s provision disarming individuals convicted of felonies (often including drug-related ones). *Id.* And, furthermore, “[w]e do not even address whether the government could bring a prosecution under § 922(g)(3) accompanied by individualized proof that the defendant’s use of marijuana (or any other drug) renders him a danger to himself or others . . . None of those issues is before us and we do not pass on them either way.” *Id.*

Even if *Hemani* indicated that this Court should reconsider a categorical ban on felons possessing firearms, the historical analogues provided to justify § 922(g)(3)’s categorical constitutionality are fundamentally different from the ones in which § 922(g)(1) take root. In *Hemani*, the government argued that the ban on the possession of firearms by an individual in use of a controlled substance could be akin to colonial vagrancy laws, civil-commitment laws, and surety laws as they related to habitual drunkards. 608 U.S. at 781–82 (2026). These laws, at the core, deal more with the *containment* of a deeply unwell individual before they commit an act that would go against the “good morals” of the community. *Id.* at 790. Unlike § 922(g)(3), which makes the possession of a firearm immediately illegal upon the use of a controlled substance, “[t]he historical laws the government identifies usually provided some form of process before an individual lost any of his liberties, even temporarily: ... a habitual drunkard could be assigned a guardian or committed to an asylum usually only after proceedings before something like a probate court.” *Id.* Furthermore, “surety statutes typically required a proceeding before a justice of the peace or a comparable officer before a bond could be ordered.” *Id.*

Unlike habitual drunkards, who were clearly treated with some patience and given avenues for rehabilitation, felons in colonial America were subject to no sympathies. Prior to the founding, the standard penalty for a felony, violent or otherwise, was death. 4 William Blackstone, COMMENTARIES *98 (1769). Because a convicted felon was “already dead in law,”—also known as a civil death— their civil rights were also considered extinct. *Avery v. Everett*, 18 N.E. 148, 150 (N.Y. 1888). Indeed, “[t]he idea of felony [was] so generally connected with that of capital punishment,” it was “hard to separate them.” 4 William Blackstone, COMMENTARIES *98. As made clear in *Rahimi*, the greater-includes-the-lesser theory should be applied when considering Second Amendment regulations. 602 U.S. at 699. There, “if imprisonment was permissible to respond to

the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament ... is also permissible.” *Id.* Here, if to be a felon was to be sentenced to death, surely disarmament is permissible.

D. Section 925I’s pathway for firearm restoration ensures that § 922(g)(1)’s categorical ban is not overbroad

Finally, § 922(g)(1)’s categorical ban does not leave convicted felons without avenues for relief and restoration. Section 925I of the Gun Control Act directs felons made ineligible for firearm possession to “make [an] application to the Attorney General for relief from the disabilities.” 18 U.S.C. § 925I. “It seems fully apparent to us that the existence of th[is] remed[y], ... suggests that Congress clearly intended that the defendant clear his status before obtaining a firearm, thereby fulfilling Congress’ purpose to “broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.” *Barrett v. United States*, 423 U.S. 212, 218, (1976). Furthermore, the Attorney General has recently issued a final rule transitioning the power to review these petitions from the Bureau of Alcohol, Tobacco, Firearms and Explosives to the Department of Justice and has begun reviewing applications accordingly. *See Withdrawing the Attorney General’s Delegation of Authority*, 90 Fed. Reg. 13,080 (Mar. 20, 2025); *see also Granting of Relief; Federal Firearms Privileges*, 90 Fed. Reg. 17,835 (Apr. 29, 2025). As of August 17, 2026, the Department of Justice has finalized its rule for restoring firearm rights. Press Release, U.S. Dep’t of Justice, Attorney General Blanche Launches New Process to Restore Federal Firearm Rights (Aug. 17, 2026), <https://www.justice.gov/opa/pr/attorney-general-blanche-launches-new-process-restore-federal-firearm-rights>. The revised process requires that an individual prove they are unlikely to be dangerous, holding that:

Each applicant must establish to the Attorney General’s satisfaction that the circumstances giving rise to the prohibition, together with the applicant’s record, reputation, and subsequent conduct, *demonstrate that the applicant is not likely to*

act in a manner dangerous to public safety and that granting relief would not be contrary to the public interest. The Department will consider the facts and circumstances of each application, while maintaining strong presumptions against relief for individuals whose crimes, conduct, or status demonstrate heightened risks to public safety.

Id.

Section 925I's as applied analysis addresses any concerns about § 922(g)(1)'s overbreadth as a categorical ban. Its functionality also closely aligns with firearm right restoration processes in action during colonial America. Much like a felon can apply for relief under § 925I, individuals subject to a categorical ban in the 1700's could restore their rights if they swore allegiance to the crown. *United States v. Williams*, 113 F.4th 637, 651 (2024) ("This focus on preserving peace by prohibiting dangerous people from owning weapons also appears in Parliament's exceptions to its Catholic disarmament policy. Laws only prohibited Catholics from owning guns if they would not declare loyalty to the crown." *See, e.g.,* An Act for the Better Securing the Government by Disarming Papists and Reputed Papists, 1 W. & M., Sess. 2, ch. 15, § 3 (1688) (Eng.))

II. Section 922(g)(1) is constitutional as applied to Branders

The federal Gun Control Act establishes nine categories of people who are prohibited from possessing firearms. 18 U.S.C. § 922(g). The first subsection in the Act, § 922(g)(1), provides that individuals "convicted in any court of a crime punishable by imprisonment for a term exceeding one year" are prohibited from possessing or receiving a firearm. 18 U.S.C. § 922(g)(1). Appellant, Terry Branders, argues that § 922(g)(1) is unconstitutional as applied to her because she was convicted of a non-violent felony. Branders is wrong.

Branders' as-applied challenge to the constitutionality of § 922(g)(1) fails for three reasons: (1) Branders' underlying conviction is sufficiently analogous to historic disarmament regulations in this country; (2) Branders' conviction is not the type to be excluded from § 922(g)(1)'s reach

because the facts of her crime(s) validate continued disarmament; and (3) Branders’ proposed carve out for “non-violent” felons creates an unworkable system for the judiciary—one which has been explicitly rejected before.

While Branders’ repeated failures to abide by both laws and societal norms demonstrate the prudence behind prohibiting a class of individuals from possessing firearms when those people have deviated from legal norms, this Court has articulated that the analysis for disarmament should be more historically focused. This Court’s rulings in *Heller*, *Bruen*, *Rahimi*, and *Hemani*, establish the standard for determining whether a firearm regulation is constitutional. First, the plain text of the Second Amendment must cover the conduct at issue. And second, if the conduct is so covered, the regulation must comport with this nation’s history of firearm regulations. *New York Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022). As § 922(g)(1) is at issue in this case, the previous steps become as follows: (1) does the plain text of the Second Amendment protect Branders’ rights to bear arms even though she is a convicted felon; and (2) if so, does § 922(g)(1) comport with this nation’s history and tradition of regulating gun possession. For the following reasons, this Court should hold that § 922(g)(1) does.

Historical precedents for class-based restrictions on firearms possession include an array of offenses, both violent and non-violent in nature. The type of historical analysis required by this Court in *Bruen* reveals only that categorical disarmaments were *de rigueur*, and that attempting to separate classes of crimes based on the level of violence is in and of itself ahistorical. *See, generally* Joseph Blocher & Caitlan Carberry, *Historical Gun Laws Targeting “Dangerous” Groups & Outsiders*, in *NEW HISTORIES OF GUN RIGHTS & REGULATIONS* 135, 142 (Joseph Blocher, Jacob D. Charles & Darrell A.H. Miller, eds., 2023) [hereinafter “Blocher & Carberry”] (relaying that “examples of laws limited the sale of guns to classes of people [exist] as early as 1633,” and that

states continued passing laws disarming political dissidents even after the Revolutionary War was over).

But this broad, class-wide disarmament is evocative of an even more serious principle; that when a “persons’ prior conduct, formally admitted or proven beyond a reasonable doubt . . . constitutes a serious violation of the law . . . this indicate[s] a serious disregard for fundamental legal norms . . . and demonstrates a character or temperament inconsistent with the safe and prudent possession of deadly weapons.” *Zherka v. Bondi*, 140 F.4th 68, 91 (2d Cir. 2025), *cert. denied*, No. 25-269, 2026 WL 135708 (2026). Congress determined people who have shown a serious disregard for fundamental legal norms should not possess firearms when it created § 922(g)(1), just as historical Congresses determined disaffected political groups should not possess firearms. *See United States v. Rahimi*, 602 U.S. 680, 700 (2024); *see also* Blocher & Carberry, at 143.

Had Branders wanted to restore her firearm privileges, there was a legal path she could have followed through § 925I of the same Gun Control Act. Instead, Branders demonstrated her continued lack of respect for a regulatory scheme aimed at protecting the public when she accepted a firearm from a friend, sans registration, sans licensing, sans any protective measures whatsoever. R. at 4. Such flagrant disrespect for the law should not be rewarded with the restoration of a qualified right. *See Rahimi*, 602 U.S. at 690 (quoting *Dist. of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (“‘Like most rights,’ though, ‘the right secured by the Second Amendment is not unlimited’ . . . [and] was never thought to sweep indiscriminately.”)).

A. Branders’ underlying conviction is analogous to historic examples of firearm regulation in this country

This Court’s test to determine the constitutionality of firearm regulations consists of two steps. First, does the plain text of the Second Amendment cover Branders’ conduct; and second, is the regulation “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. The regulation in question in this case—§ 922(g)(1)—states that it “shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.” 18 U.S.C. § 922(g)(1). Thus, the main question to which Branders seeks an answer is: is § 922(g)(1) consistent with the Nation’s historical tradition of firearm regulation? This Court should hold that it is and that Branders’ “conduct falls outside the Second Amendment’s ‘unqualified command,’” because firearm possession has historically been subject to categorical restrictions. *Bruen*, 597 U.S. at 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n.10 (1961)).

1. *Bruen* Step One: The plain text of the Second Amendment covers Branders’ conduct

In *District of Columbia v. Heller*, this Court held that “the people” referred to in, and protected by, the Second Amendment “unambiguously refers to all members of the political community, not an unspecified subset.” 554 U.S. at 580. This Court’s broad definition demonstrates that an individual’s rights under the Second Amendment are not purely contingent on their law-abiding status. Branders, therefore, “notwithstanding [her] felony conviction, is among ‘the people’ protected by the Second Amendment.” *Zherka*, 140 F.4th at 77. Having dispatched *Bruen*’s first step, we move to the second.

2. *Bruen* Step Two: § 922(g)(1) is consistent with this Nation’s historical tradition of disarming certain populations categorically

The second step in *Bruen*’s threshold inquiry focuses on whether § 922(g)(1) “addresses a general social problem that has persisted since the 18th century.” *United States v. Harrison*,

153 F.4th 998, 1016 (10th Cir. 2025). Or, in other words, a court must identify the societal problem the challenged regulation seeks to address and then ask “whether the challenged regulation is consistent with the principles that underpin our regulatory tradition” for firearms. *Rahimi*, 602 U.S. at 692. But as this Court emphasized, a modern-day regulation need not be “a dead ringer for historical precursors;” instead, this line of “analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.” *Bruen*, 597 U.S. at 30.

Section 922(g)(1) prohibits those individuals who deviated from legal norms from possessing firearms. Indeed, the “very structure of the Gun Control Act demonstrates that Congress . . . sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.” *Barrett v. United States*, 423 U.S. 212, 218 (1976). As discussed *supra*, categorical restrictions on firearm possession for even nonviolent offenders sit well within our Nation’s history and traditions. *See* discussion *supra* Section I.B.2.ii. And most federal courts of appeals agree with this interpretation. *See* DAVE S. SIDHU, CONG. RSCH. SERV., LSB11170, THE DEPARTMENT OF JUSTICE ASKS THE SUPREME COURT TO REVIEW CONSTITUTIONALITY OF FEDERAL PROHIBITION ON FELONS POSSESSING FIREARMS (2026) (discussing the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits holdings that § 922(g)(1) allows categorical dispossessions). But even if this Court determines that a categorical approach to § 922(g)(1) is warranted, there are sufficient historical analogues justifying Branders’ disarmament on the basis that a modern conviction for felony child abuse is sufficiently analogous to an historic conviction for manslaughter.

i. Manslaughter is sufficiently analogous to Brander’s underlying conviction to support § 922(g)(1)’s constitutionality in this case

Manslaughter as a concept developed out of the law regarding criminal negligence. William H. Coldiron, *Historical Development of Manslaughter*, 38 KY L. J. 527, 548 (1950) [hereinafter “Coldiron”]. As described by Sir Michael Foster, manslaughter, as a distinct criminal act considered homicide by accident, was a “species of homicide [] where a man is doing a lawful act without intention of bodily harm to any person, and using proper caution to prevent danger, unfortunately happeneth to kill.” SIR MICHAEL FOSTER, CROWN LAW (2d ed. 1791) at 258. Thus, homicide by criminal negligence is “the failure to use that caution.” Coldiron at 548. Sir Matthew Hale himself “cites another illustration of the degrees of criminal negligence” by separating a hypothetical into three portions: First, “if A drives his cart over a child intentionally and kills the child it is murder.” SIR MATTHEW HALE, PL-EAS OF THE CROWN 476 (1778 ed.). Second, “*if A drives a cart in such a reckless manner that the child was killed but the death could have been avoided but for A’s reckless driving, it is manslaughter . . .*” *Id.* (emphasis added). Finally, “if A is driving along the street and a child dashes in front of his cart and is killed it is misadventure only.” *Id.*

Another example presents itself is that a parent correcting a child is a lawful act, even if the child died as a result of the correction because it would have been considered an excusable homicide resulting from accident or misadventure, or *per infortunium*. Coldiron at 549. However, “if it were shown that unreasonable or excessive force was used or that a dangerous or deadly weapon was used in the correction, the slayer was guilty of at least manslaughter.” *Id.* at 548. Yet another example of criminal negligence amounting to manslaughter involves the willful neglect of a dangerous beast, known to be likely to cause harm, who then escapes and kills an innocent person. What all these examples—and so many more—illustrate is the concept that accidental

deaths were excusable, unless they had as elements the addition of neglect or unreasonable force, or even recklessness. *Id.* at 548–49 (also outlining an example of a workman failing to give a warning before throwing a timber out of a building being guilty of murder “if the workman knew that there was likely to be people below.”).

Terri Branders acted with reckless disregard when she entrusted her disaffected, and demonstrably irresponsible son, with the lives of multiple children while running her unlicensed daycare. R. at 2. Because of her actions, a child suffered an extreme death. *Id.* Because Branders “failed to use that degree of care which was proportionate to the probability of death resulting from [her] acts,” she would have been, at the very least, guilty of manslaughter at the time of the founding. Coldiron at 549–50. But the analysis does not have to stop here.

By the clear terms of the statute under which Branders was convicted, Va. Ann. Code § 18.2-371.1 (2026, Branders—guilty of at least a Class 4 felony—was a person who “by willful act or willful omission or refusal to provide any necessary care for the child’s health cases or permits serious injury to the life or health of such a child.” This means that Branders was a person responsible for a child’s care who created or inflicted, threatened to create or inflict, or allowed to be created or inflicted upon such child a physical or mental injury by other than accidental means, or created a substantial risk of death, disfigurement, or impairment of bodily or mental functions. Va. Ann. Code § 16.1-228 (2026) (defining what an “[a]bused or neglected child” means). Moreover, “willful act or willful omission” explicitly includes operating a child day program “without first obtaining a license such person knows is required.” Va. Ann. Code § 18.2-371.1 (2026). Branders’ conduct would have become an elevated offense during the founding era precisely because of her neglect, recklessness, and negligence. At the very least, her property (including her guns) would have been forfeited. *See United States v. Hunt*, 123 F.4th 697, 706 (4th

Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025). And at worst, Branders could have been killed for her crime. *Id.*

ii. Punishments were consistently severe for convictions less serious than the conviction Branders sustained, reaffirming § 922(g)(1)’s constitutionality

Individuals convicted of serious crimes at the time of the founding were subject to a fairly standard penalty: death. STUART BANNER, *THE DEATH PENALTY: AN AMERICAN HISTORY*, 23 (2002). What’s more, “the specific facts of the offense and the characteristics of the offender” were massively important to the founders. Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CAL. L. REV. 277, 324 (2014). They considered “the degree of harm caused, the defendant’s level of involvement and mens rea, the defendant’s actions after the crime, and other individual characteristics bearing on culpability.” *Id.* Manslaughter punishments were determined based on these external factors. *Id.* at 350. So, for example, the Vermont Acts and Resolves of 1779 punished manslaughter through at least forfeiture and corporal punishment, unless they could prove self-defense. 1779 Vt. Acts & Resolves 153–54.

Other provisions of § 922(g) have been upheld by concluding if a greater punishment was permissible, then the lesser restriction is also permissible. *See Rahimi*, 602 U.S. at 699 (“[I]f imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that § 922(g)(8) imposes is also permissible.”). And this “greater includes the lesser” analysis is not restricted to violent or dangerous offenses. Indeed, other Circuits have ruled that § 922(g)(1) is constitutional under this greater includes the lesser rationale and encompasses a range of offenses. *See United States v. Duarte*, 137 F.4th 743, 756 (9th Cir. 2025), *cert. denied*, No. 25-425, 2026 WL 135692 (2026) (“Certainly, if the greater punishment of death and estate forfeiture was permissible to punish felons, then the lesser restriction of permanent disarmament is also permissible”); *Medina v.*

Whitaker, 913 F.3d 152, 158 (D.C. Cir. 2019) (after describing that the founding generation’s conception of felonies was “so connected with capital punishment that it was hard to separate them,” held that felons were not within the scope of the Second Amendment because, “[w]ith this perspective, it is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms”); *United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025) (holding that “if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible.”); *United States v. Jackson*, 110 F.4th 1120, 1127 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025) (citing *Medina* and *Rahimi* in justifying disarmament of a non-violent drug offender on the greater includes the lesser theory); and *Hunt*, 123 F.4th at 705–06 (citing *Rahimi*, *Heller*, *Jackson*, and *Medina* to reject the felon’s argument that itself rejected the greater includes the lesser theory).

That historical regulations do not map perfectly onto the conviction underlying Brander’s § 922(g)(1) conviction has no bearing on Branders’ as applied challenge in this case. This Court has made pains to emphasize that one does not need an historical *twin*; where there are no meaningful distinctions between the modern and the historic regulations, the modern regulations are constitutionally permissible. *Rahimi*, 602 U.S. 680, 701 (2024). Rather, “the exposure to capital punishment and estate forfeiture is sufficient to demonstrate that the founding generation would view § 922(g)(1)’s permanent disarmament as consistent with the Second Amendment.” *Duarte*, 137 F.4th at 758.

The dissent in the Fourteenth Circuit makes the same error so many lower courts have: by requiring a historical twin, rather than a historical analogue. *See, e.g., Duarte*, 137 F.4th at 758 (stating that the Fifth Circuit erred by requiring an historical twin rather than an historical

analogue). It does not matter “that there were few laws, if any, related to child neglect, at the time of the founders.” *R.* at 11. Such a stringent requirement would “suggest a law trapped in amber;” an approach this Court has specifically rejected for the understandable reason that “[h]olding otherwise would be as mistaken as applying protections of the right [to bear arms] only to muskets and sabers.” *Rahimi*, 602 U.S. at 691. What matters is that “the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Id.* at 692. Because “[l]egislatures have historically retained the discretion to punish those who commit the most severe crimes with permanent deprivations of liberty, and [because] legislatures could disarm on a categorical basis those who present a ‘special danger of misuse’ of firearms,” § 922(g)(1) is “consistent with this Nation’s historical tradition of firearm regulation.” *Duarte*, 137 F.4th 761.

B. Even if this Court adopts an as applied analysis differentiating types of felons, § 922(g)(1) is still constitutional as applied to Branders because her failure to comply with this nation’s laws and regulations demonstrates that she poses a special danger of misusing firearms

Even if this Court determines a felony-by-felony approach is warranted, § 922(g)(1) is still constitutional as applied to Branders because her underlying conviction brings her within the category of people who present a special danger of misuse of firearms. *Rahimi*, 602 U.S. at 698 (citing *Heller*, 554 U.S. at 626).

While a finding of dangerousness can be more easily compared to disarmament laws during the founding era, precedents growing out of this Court’s jurisprudence since *Heller* also emphasize that individuals who pose a special danger of using firearms can be disarmed under similar justifications. *United States v. Hemani*, 608 U.S. 772, 772 (2026). The relevant inquiry centers on whether an individual poses a special danger of misuse, and not necessarily that they pose a danger of physical violence. *Id.* Section 922(g)(1) is justified in much the same way that colonial

legislatures justified their broad authority to disarm categories of individuals who could not be depended upon to operate within the rule of law. *See* discussion *supra*, I.B.2.i. Branders' argument that her conviction was non-violent is not sufficient on its own to explain why she does not also belong in the category of people who pose a special danger of misusing firearms. *See Rahimi*, 602 U.S. at 698 (citing *Heller*, 554, U.S. at 626).

Branders fits comfortably within the category of people who pose a special danger of misuse of firearms because she has failed to operate within any regulatory scheme into which she has come in contact. R. at 2–4. Branders was running an unlicensed daycare when the child in her care was killed after being left in a hot car for hours. R. at 2. Had Branders followed the local daycare licensing scheme, she would have known she had to confirm that all children had left a car whenever they had been transported anywhere. *See* 8 Va. Admin. Code § 20-780-580.k (2021) (providing that there be procedures whereby “[s]taff shall verify that all children have been removed from the vehicle at the conclusion of any trip.”). By failing to operate within the bounds of the law, Branders caused physical harm. This is precisely the type of behavior historical criminal laws were aimed at preventing and through which people were disarmed. *Hunt*, 123 F.4th at 706 (“English and colonial American governments also enacted other types of categorical bans on the possession of firearms by those who refused to follow less formal legal norms.”).

Removing firearms from groups of people “who deviated from legal norms,” has been, and continues to be, justified on multiple grounds. One of those grounds is that a government should not have to wait for unlawful action before disarming people. *See* Letter from George Washington to Nicholas Cooke (Jan. 6, 1776) in *The Writings of George Washington* 323 (Worthington Chauncey Ford ed., 1889) (encouraging other colonies to adopt a similar law to a 1775 law in Connecticut categorically disarming people convicted of libeling or defaming the nascent

republic). At the time of the founding, the government would not have to wait to disarm someone like Branders, and the government today should not have to do so.

The very nature in which Branders got her gun should be enough to demonstrate that she should not have access to a gun. R. at 3. Gun regulations exist to ensure public safety. Branders, in simply taking a gun from a friend, likely violated multiple sections of the law. For example, in Virginia, a person must be at least 21-years-old and provide proof of firearms training *before* applying for a concealed handgun permit in the locality of their residence. Va. Code Ann. § 18.2-308.02 (2026). Yes, these regulations must strike a balance to remain in compliance with the Second Amendment. But § 922(g)(1) has been upheld under these terms, and as a wise example of moderate gun regulations, since its enactment.

The same logic underpinning historical categorical disarmaments applies to offenders like Branders who violate statutes that are intended to ensure that only people who are unlikely to misuse firearms can possess them. A person who violates a firearm law misuses a firearm by definition because she fails to abide by the laws that seek to reduce the firearms' risk and thus failure to comply is dangerous. *See United States v. Dorsey*, 105 F.4th 526, 532 (3d Cir. 2024). Licensing requirements reflect a commonsense concern that firearms are uniquely dangerous and thus represent a commonsense attempt to minimize that danger. *See id.* (holding that “[f]ailure to comply with a state firearm law is at least arguably dangerous.”). Any person who disregards those restrictions poses a more significant danger to others than someone who complied with those restrictions. *See United States v. Walters*, 151 F.4th 122, 134 (3d Cir. 2025) (distinguishing their case from *Range* because “it is not plain that someone convicted of three drug trafficking convictions does not pose a physical danger to others.”).

Terry Branders has consistently proven she is not a law-abiding citizen. And, by failing to follow rules designed to ensure the safe handling, use, and storage of guns, Branders perfectly demonstrates the need for a regulatory scheme like § 922(g)(1) in the first place. This Court should not upset the reasonable regulatory balance struck by § 922(g)(1) now, and in the service of a woman whose negligence killed a child.

C. What Branders proposes—vis à vis an individualized finding of dangerousness—creates an unworkable standard that this Court has already rejected in similar contexts

Branders’ proposal for individualized determinations of violence for the purposes of disarmament would inevitably become “one royal mess.” Transcript of Oral Argument at 26, *United States v. Stitt*, 586 U.S. 27 (2018) (Alito, J.). Take the Armed Career Criminal Act, or § 924(e), which deployed a categorical approach “to determine whether an offense is a crime of violence . . . and draw lines based on the elements of the crime of conviction.” *Zherka*, 140 F.4th at 95 (citing *United States v. Evans*, 924 F.3d 21, 25 (2d Cir. 2019)). ACCA provided sentencing enhancements for individuals who “ha[d] three previous convictions . . . for a violent felony or a serious drug offense.” 18 U.S.C. § 924(e)(1). The problem was that “violent felony”—while defined within the contours of the ACCA as any crime, that has as an element the use or threat of force and is punishable by imprisonment for more than one year—led to some practical difficulties. 18 U.S.C. § 924(e)(2)(B)(i).

The categorical approach to the ACCA became “a system that each year proves more unworkable.” *Mathis v. United States*, 579 U.S. 500, 521 (2016) (Kennedy, J., concurring). The approach articulated by this Court “demand[ed] that federal courts employ an analysis for which they are not constitutionally (or practically) suited” by “paradoxically instruct[ing] courts resolving such cases to embark on an intellectual enterprise . . . discern[ing] the outer reaches of countless federal and state statutory provisions in an exercise most reminiscent of the law school

classroom, and quite alien to courts’ well-established role of adjudicating ‘concrete legal issues, presented in actual cases, not abstractions.’” *Evans*, 924 F.3d at 31 (quoting *United Public Workers v. Mitchell*, 330 U.S. 75, 89 (1947)).

In *Taylor v. United States*, this Court held that “Congress generally took a categorical approach to predicate offenses,” and that “[t]here was considerable debate over what kinds of offenses to include and how to define them. 495 U.S. 575, 599 (1990). Thus, because Congress did not suggest that the facts of an individual case should be taken into account, it seemed unlikely that “Congress had meant to adopt an approach that would require the sentencing court to engage in an elaborate factfinding process regarding the defendant’s prior offenses.” *Id.* at 601.

The very fact that this case is being litigated is per se indicative that the felon-by-felon, nonviolent or violent, approach would play out as it did in ACCA. Since *Rahimi* was decided on June 21, 2024, a cursory search reveals over 4,000 cases wherein appellants challenge § 922(g)(1)’s categorical prohibition. Case search, WESTLAW, <https://1.next.westlaw.com/Search/Results.html?query=a> (last visited Sep. 29, 2026). While the aspirations behind an individualized approach may be laudable, it also seems unlikely to be successful. *See Evans*, 924 F.3d at 31. In practice, as applied, case-by-case challenges make immediately apparent “the practical difficulties and potential unfairness that such a factual approach would present and which the categorical approach was developed to avoid.” *Zherka*, 140 F.4th at 95 (quoting *Taylor*, 495 U.S. at 601). This Court should adopt the categorical approach of the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits, preventing the need for individualized determinations. To the extent this Court is inclined to modify § 922(g)(1) to exclude nonviolent felons, it should resist and leave the legislative updates to Congress.

The same difficulties in requiring individualized findings of violence for the purpose of § 922(g)(1) would happen here. Like § 922(g)(1), “the language of § 924(e) generally supports the inference that Congress intended the sentencing court to look only to the fact that the defendant had been convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions.” *Taylor*, 495 U.S. at 600. It is “difficult to imagine, moreover, why the courts should embark on an enterprise that has consumed years of judicial effort, culminating in a solemn argument in the Supreme Court about whether murder under New York’s fairly typical definition was or was not categorically a ‘crime of violence.’” *Zherka*, 140 F.4th at 95 (quoting *Delligatti v. United States*, 604 U.S. 423 (2025)). When it comes to guns, forcing courts to equivocate over the level of violence inherent in a felony “does not seem a promising way to proceed.” *Id*

CONCLUSION

This court should affirm the judgement of the Fourteenth Circuit because § 922(g)(1)’s categorical prohibition is constitutional per *Bruen* analysis and as applied to Appellant, Terry Branders.

Dated: September 30, 2026

Respectfully Submitted,

By:/s/Team DW

Team DW

Counsel for Respondent