

No. 2026-100-202

**IN THE SUPREME COURT OF THE
UNITED STATES**

TERRY BRANDERS, PETITIONER,

V.

UNITED STATES OF AMERICA, RESPONDENT.

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

BRIEF FOR THE RESPONDENT

Team EV

Counsel for Respondent

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QUESTIONS PRESENTED

- I. Is a felon in possession of a firearm precluded from asserting as-applied challenges to 18 U.S.C. §922(g)(1) under the Second Amendment of the Constitution without inquiry into the specific felony?
- II. Assuming an as-applied challenge exists, should the application of 18 U.S.C. §922(g)(1) remain constitutionally valid under the Second Amendment when applied to a case of felony child neglect?

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

In July 2000, Terry Branders (“Petitioner”) began operating an unlicensed daycare center from her home in Alexandria, Virginia, where she took responsibility for ten or more children at a time. R. at 2. She enlisted the help of her 18 year old son, Nelson Branders (“Nelson”), who had just graduated from high school and had “quite a social life.” R. at 2. Nelson contributed to the unlicensed daycare services by providing pick-up and drop-off services using an old 15-passenger van. R. at 2. After a particularly late night out, with only a few hours of sleep, Nelson picked up 12 children who were mostly preschoolers. R. at 2. Nelson, after thinking he dropped off all the children, drove the van to his apartment and fell asleep. R. at 2. However, Nelson failed to safely drop off one of the children, leaving 11-month old Kenneth Drew (“Kenneth”) inside the car. R. at 2.

Two hours passed before Petitioner noticed that Kenneth had not been dropped off. R. at 2. After realizing that Kenneth was missing from his crib, Petitioner then spent over another hour attempting to reach both Nelson and Kenneth’s mother before calling 911. R. at 2. Police arrived at the scene and found the infant in the van. R. at 2. By the time they found Kenneth, he had already “suffered severe heat-related injuries.” R. at 2. Although Kenneth was quickly brought to the hospital, he did not survive. R. at 2. Both Petitioner and Nelson were charged with felony child neglect under Va. Code § 18.2-37; Petitioner was also charged with operating a day care without a license, a misdemeanor. R. at 2-3. On March 5, 2001, Petitioner was convicted and received a two-year suspended sentence and probation, while Nelson received a four-year term of imprisonment. R. at 3.

In 2020, Petitioner moved to Appleton, Newcoastland for a fresh start. R. at 3. During the intervening years, she had an additional run-in with the law. R. at 3. Petitioner was convicted of reckless driving and got her license suspended for 6 months for speeding 83-mph in a 65-mph zone. R. at 3.

Recently, Nelson moved into Petitioner's basement. R. at 3. Nelson had difficulty maintaining a job, and Petitioner had suspected that Nelson was involved with drugs. R. at 3. One of Petitioner's friends offered Petitioner a gun for protection, which Petitioner accepted and brought home. R. at 3. Petitioner acquired the gun from the late husband of her friend. R. at 3.

In June 2024, the DEA got a tip about Nelson's activities, and searched its database for his criminal records and address. R. at 4. The search revealed both Nelson's and Petitioner's felony convictions. R. at 4. DEA agents asked to search the house. R. at 4. Petitioner consented to DEA agents searching their home, finding her illegally possessed firearm. R. at 4. The DEA agents arrested Petitioner for possessing the firearm as a convicted felon. R. at 4.

II. PROCEDURAL HISTORY

On July 3, 2024, Petitioner was charged in the United States District Court for the Eastern District of Newcoastland with possessing a firearm as a felon, a violation of 18 U.S.C. §922(g)(1). R. at 4. Petitioner moved to dismiss the indictment, arguing that §922(g)(1), as applied to her, violated the Second Amendment. R. at 1. On December 22, 2025, the district court granted Petitioner's motion and dismissed the indictment. R. at 1. The government appealed. R. at 8.

On June 10, 2026, the United States Court of Appeals for the Fourteenth Circuit reversed the decision of the district court and found it erred in dismissing the indictment. R. at 8, 10. The Fourteenth Circuit held that conducting a case-by-case analysis of Petitioner's predicate felony

was inconsistent with the presumptively lawful ban on felons in possession of firearms recognized by the Supreme Court. R. at 9-10. The court vacated the decision of the district court and remanded the case for further proceedings. R. at 10.

On remand, Petitioner entered an *Alford* plea, reserving her right to appeal the denial of her motion to dismiss the indictment and challenge the constitutionality of §922(g)(1). R. at 12. The Fourteenth Circuit concluded that Petitioner's arguments were properly preserved but summarily affirmed. R. at 12. The United States Supreme Court granted certiorari. R. at 13.

SUMMARY OF ARGUMENT

Respondent respectfully requests that this Court affirm the judgment below for two independent reasons, either of which is distinctly sufficient.

First, Petitioner is precluded from asserting an as-applied challenge to 18 U.S.C. §922(g)(1), because this Court has never recognized a felon's Second Amendment right to possess a firearm and has repeatedly held such prohibitions presumptively lawful. *Heller* identified felon disarmament as a "longstanding" and "presumptively lawful" restriction. This Court drew a line between the core right of law-abiding citizens and the disarmament of those who have a felony conviction, whom the law has determined may be disarmed. *Bruen* and *McDonald* preserved that same carveout even while expanding Second Amendment protections elsewhere; *Rahimi* confirmed that the government need only identify a historical analogue, not a historical twin, to justify a modern restriction. That historical tradition reaches back well before the Founding of the United States, from the Statute of Northampton through the Militia Act of 1662, which establishes that the government's authority to disarm was never limited to violent offenders; it extended to any class of persons who had deviated from legal norms. Consistent with that history, the majority of circuits, the Fourth, Eighth, Ninth, Tenth, and Eleventh, have

maintained a categorical ban on felon possession, correctly deferring to this Court's precedent absent an express directive to depart from it. Even the minority of circuits that entertain as-applied review have found the presumption against felons virtually impossible to rebut, given the breadth of historical analogues supporting disarmament even for nonviolent conduct. A categorical rule is not just historically compelled but institutionally necessary: it supplies the clear, administrable standard that individualized review would lack, avoids arbitrary and inconsistent results between similarly situated defendants, and respects Congress's decision not to build a time-based restoration mechanism into the statute.

Second, even if an as-applied challenge to §922(g)(1) was cognizable, its application to Petitioner's felony child-neglect conviction does not violate the Second Amendment. An as-applied challenge, where available at all, asks only whether the defendant's conduct falls within the historical tradition of disarming those who have demonstrated a danger to the physical safety of others. Petitioner's conduct sits at the center of that tradition: danger demonstrated by outcome, not danger inferred from status. This Court drew the same distinction in *Hemani* when it declined to disarm a habitual marijuana user based on status alone. Unlike *Hemani*, Petitioner's offense placed a vulnerable child's physical safety at risk, resulting in death. The passage of time does not entitle Petitioner to a second, judicially administered inquiry into her present dangerousness. The individualized element an as-applied challenge requires is satisfied once, at conviction, when the fact-finder found every element of the offense proved beyond a reasonable doubt; courts have neither a reliable metric for measuring present dangerousness nor a record-development process suited to making that finding decades later.

Accordingly, whether this Court reaches the question as a categorical matter or as applied to Petitioner's own conduct, the result is the same: §922(g)(1) does not violate the Second Amendment, and the judgment below should be affirmed.

ARGUMENT

I. DEFENDANTS ARE PRECLUDED FROM ASSERTING AS-APPLIED CHALLENGES TO 18 U.S.C. § 922(g)(1) BECAUSE THE SECOND AMENDMENT PERMITS DISARMING THOSE WHO BREAK THE LAW.

The Second Amendment of the United States Constitution affords individuals the right to keep and bear arms. U.S. Const. amend. II. This right is not unlimited and is subject to reasonable and well-defined restrictions. *See District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). 18 U.S.C. §922(g)(1) prohibits possession of a firearm by any person convicted of a crime punishable by imprisonment over one year; this is more commonly known as a ban on felon possession of a firearm. *Old Chief v. United States*, 519 U.S. 172, 174 (1997).

Petitioner is barred from bringing an as-applied challenge because this Court has never recognized a Second Amendment right for felons to possess firearms and has repeatedly upheld the presumptive lawfulness of felon-disarmament laws. *Heller*, 554 U.S. at 626-27; *United States v. Rahimi*, 602 U.S. 680, 699 (2024). Even when clarifying the rights of law-abiding citizens, this Court has taken care to explicitly preserve the presumptive lawfulness of felon-disarmament laws. *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2009); *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 26, 71 (2022). Our Nation's historical tradition supports categorical firearm prohibitions for individuals who demonstrate their disregard for legal norms through serious criminal conduct. *See generally, Rahimi*, 602 U.S. 680.

The majority of circuit courts have held that §922(g)(1) should apply categorically to all felons when interpreting this Court's precedent. *See Vincent v. Bondi*, 127 F.4th 1263, 1264 (10th Cir. 2025); *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024); *United States v.*

Jackson, 110 F.4th 1120, 1125 (8th Cir. 2024); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024). These many circuits interpret *Heller*’s presumption of lawfulness for felon disarmament as a categorical ban, especially because this Court has continually reaffirmed that presumption. *Id.* When circuit courts apply the *Bruen* test, they recognize strong historical analogues that support categorical disarmament of felons. *See e.g. United States v. Duarte*, 137 F.4th 743, 755 (9th Cir. 2025). The circuits that have correctly applied the *Bruen* test have yet to find a defendant that could rebut the presumption against them. *See United States v. Diaz*, 116 F.4th 458, 472 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 662 (6th Cir. 2024); *United States v. Watson*, 171 F.4th 1012, 1013 (7th Cir. 2026). *But see Range v. Att’y Gen., United States*, 124 F.4th 218, 222 (3rd Cir. 2024).

§922(g)(1)’s categorical rule provides the clear, administrable standard that individualized Second Amendment review lacks, avoiding arbitrary and inconsistent outcomes based on judicial assessments of dangerousness and historical analogues. *See Range*, 124 F.4th at 222-23; *Rahimi*, 602 U.S. at 746 (Jackson, J., concurring) (emphasizing legal standards that promote “stability,” “consistency,” and “predictability”).

A. The Supreme Court Has Never Recognized a Felon’s Second Amendment Right to Possess a Firearm and Has Repeatedly Held Such Prohibitions as Presumptively Lawful.

Petitioner cannot bring an as-applied challenge to 18 U.S.C. §922(g)(1) because this Court has never recognized a Second Amendment right for felons to possess firearms and has repeatedly treated felon-disarmament laws as presumptively lawful. *Heller*, 554 U.S. at 626-27; *Rahimi*, 602 U.S. at 699. In *Heller*, this Court characterized such restrictions as “longstanding” and “presumptively lawful,” distinguishing the Second Amendment’s core protection for law-abiding citizens from restrictions applying to individuals the law has deemed disqualified from possessing firearms. 554 U.S. at 626-27. *Bruen* and *McDonald* preserved this distinction while

expanding Second Amendment protections in other contexts. *Bruen*, 597 U.S. at 26, 71; *McDonald*, 561 U.S. at 786. Finally, *Rahimi* confirmed that a modern firearm restriction need only have a historical analogue, not an exact historical twin, to satisfy the Second Amendment. 602 U.S. at 701-02. Our Nation’s historical tradition supports categorically prohibiting firearm possession by felons. *See generally, Rahimi*, 602 U.S. 680.

1. *Heller* and *Rahimi* recognize felon disarmament as presumptively lawful.

Petitioner is barred from bringing an as-applied challenge of §922(g)(1) because this Court recognizes long standing restrictions on firearm possession by felons. The Second Amendment of the United States Constitution affords individuals the right to keep and bear arms. U.S. Const. Amend. II. This right is not unlimited. *Heller*, 554 U.S. at 626. The right to bear arms is a qualified right, subject to reasonable and well-defined restrictions. *See Heller*, 554 U.S. at 581.

This Court most prominently recognized constitutional limits on the Second Amendment in *Heller*. Although the Second Amendment protects an individual right to possess firearms for traditionally lawful purposes, that right is “not unlimited.” *Id.* at 595. This Court made that limitation explicit: “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill,” which it identified as “presumptively lawful.” *Id.* at 626-27. Although this Court struck down D.C. 's handgun ban because it prohibited an entire class of arms commonly chosen for lawful self-defense, this Court explicitly left undisturbed a carveout for felon disarmament. *Id.* at 628-29. *Heller* therefore drew a line between regulations that limit the core right of law-abiding citizens to possess firearms and longstanding restrictions directed at individuals whom the law has determined may be disarmed: felons.

The plaintiff in *Heller* himself fell on the protected side of this line. He was a law-abiding citizen who committed no offense placing him outside the scope of Second Amendment protection. *Heller*, 554 U.S. at 576. Petitioner in the present case falls squarely within the class of persons *Heller* identified as subject to “long-standing” and “presumptively lawful” restrictions. Petitioner’s status as a convicted felon is not a mere distinction in facts. It is the very characteristic that distinguishes her from the “law-abiding, responsible citizens” at issue in *Heller*. Petitioner’s felony conviction places her within the class of people whom longstanding firearm restrictions have historically disarmed. *Id.* at 635.

This Court reaffirmed its position that felon disarmament is presumptively lawful in *United States v. Rahimi*. 602 U.S. 680, 699 (2024). This Court upheld a federal prohibition on firearm possession by individuals subject to qualifying domestic violence restraining orders. *Id.* at 702. In doing so, this Court explained that a modern firearm regulation need not have a “historical twin” to satisfy the Second Amendment. *Id.* at 701-02. Rather, courts must determine whether the modern regulation is “relevantly similar” to laws that our historical tradition understood as valid. *Id.* at 692. Thus, the relevant inquiry is not whether the Founders enacted a statute identical to §922(g)(1), but whether the Government’s decision to disarm individuals who have demonstrated, through serious criminal conduct, they have violated legal norms is consistent with historical tradition.

Courts have since applied this principle to uphold modern restrictions. *See United States v. Diaz*, 116 F.4th 458, 468-69 (5th Cir. 2024) (holding vehicle theft is sufficiently analogous to historical theft offenses, including horse theft, that carried severe punishments); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) (holding history supports the “authority of Congress to prohibit firearm possession by persons who have demonstrated disrespect for legal

norms”). The same reasoning applies here. §922(g)(1) need not have an exact historical counterpart to be constitutional; it need only be consistent with the Nation’s historical tradition of restricting firearm possession by individuals the law has determined may be disarmed.

2. This Court has consistently reaffirmed that the Second Amendment protects law-abiding citizens, not felons.

This Court’s decisions striking down firearm regulations have never disturbed felon disarmament laws. Even when vindicating the rights of law-abiding citizens, this Court has repeatedly affirmed the presumptive constitutionality of felon disarmament laws. In *McDonald v. City of Chicago*, this Court held that the Second Amendment right is “fully applicable to the States” through the Fourteenth Amendment. 561 U.S. at 791. Despite striking down Chicago’s ban on handgun possession in the home, this Court expressly stated its holding did not disturb the longstanding regulatory prohibitions on felons. *Id.* at 786. Even when extending the Second Amendment’s reach to bind every state, this Court took care to directly preserve felon-disarmament laws.

Bruen likewise left felon in possession laws intact. There, this Court struck down a New York State licensing regime that conditioned public-carry licenses on a demonstrated special need for self-defense. *Bruen*, 597 U.S. at 11. In doing so, this Court replaced the two-step, mean-end scrutiny approach developed in *Heller* to assess Second Amendment claims. *Id.* at 17-18. Under the new *Bruen* framework, the government must affirmatively demonstrate that a regulation is consistent with the Nation’s historical tradition of firearm regulation. *Id.* at 24. Importantly, this Court’s holding was limited to the rights of “law-abiding, responsible citizens.” *Id.* at 70-71. This Court expressly preserved the longstanding prohibition on felons in possession of firearms. *Bruen*, 597 U.S. at 80 (Kavanaugh, J., concurring). Justice Kavanaugh’s concurrence emphasized that “the Second Amendment allows a ‘variety’ of gun regulations.” *Id.* Moreover,

this Court recognized that the decision does not expand the categories of people who may lawfully own a gun. *Bruen*, 597 U.S. at 73 (Alito, J., concurring). The deliberate retention of this carveout confirms that even under *Bruen*'s simplified framework, the prohibition on felons in possession of firearms remains presumptively lawful.

Unlike the petitioners in *McDonald* and *Bruen*, all of whom were law-abiding citizens whose unqualified right to possess firearms was burdened by overbroad regulations, Petitioner here is a convicted felon. Each time this Court has struck down a firearms regulation, it has done so on behalf of law-abiding citizens and simultaneously reaffirmed that felon-disarmament laws remain presumptively lawful. *Heller*, 554 U.S. at 626-27; *McDonald*, 561 U.S. at 786; *Bruen*, 597 U.S. at 80 (Kavanaugh, J., concurring); *Rahimi*, 602 U.S. 680 at 699. The consistent thread across these decisions is clear: the right to keep and bear arms belongs to "law-abiding, responsible citizens," and Congress may constitutionally exclude those who have forfeited that status through serious criminal conduct. *See Id.*

3. Historical analogues confirm the Founders' understanding that individuals who deviated from legal norms could be disarmed.

Felon disarmament is constitutional because the historical record demonstrates that the Founders understood the Second Amendment right was not absolute; the Founders instead accepted restrictions disarming classes of people deemed unfit to possess firearms. *See generally Rahimi*, 602 U.S. at 680. At the Founding, the right to bear arms was subject to "regulations ranging from rules about firearm storage to restrictions on gun use." *Id.* at 691. The relevant historical tradition, therefore, is not limited to disarming individuals who pose a demonstrated risk of future violence. Rather, it includes categorical restrictions based on demonstrated deviation from legal norms. Felons simply did not fall within the benefits of the common law

right to possess arms. Don B. Kates, Jr., *Handgun Prohibition and The Original Meaning of The Second Amendment*, 82 MICH. L. REV. 204, 266 (1983).

This tradition of categorical disarmament based on status and deviation from legal norms is well-established and reaches back before the Founding. The Statute of Northampton demonstrates the longstanding authority of the government to regulate the carrying of arms to preserve public peace. 2 Edw. 3, c. 3 (1328). Likewise, William Blackstone explained that “goods and chattels . . . are totally forfeited by conviction of . . . felony in general, and particularly of felony de se, and of manslaughter,” and “[a]ll these offences . . . induce a total forfeiture of goods and chattels.” 4 William Blackstone, *Commentaries on the Laws of England* 420 (1769). Blackstone’s commentary reflects how serious criminal conduct historically carried substantial restrictions on not only individual rights but also property. *Id.* More importantly, the historical records display that the government’s authority extended beyond regulating the manner of carrying arms to disarming defined classes of people. *Id.*

That tradition continued into the seventeenth and eighteenth centuries. *Rahimi*, 602 U.S. at 694. The Militia Act of 1662 authorized the King’s agents to “seize all Armes in the custody or possession of any person” judged “dangerous to the Peace of the Kingdome.” *Id.* Likewise, a 1736 Virginia legal manual authorized a constable to “take away Arms from such who ride, or go, offensively armed, in Terror of the People” and bring both the offender and his arms before a Justice of the Peace. Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 262 (2020). Furthermore, during the Revolutionary War, several states disarmed disaffected colonists, fearing that such individuals would join or support insurrections. *Greenlee, Historical Justification*, at 263-65.

Ultimately, these laws authorized the government to remove firearms from defined classes of people.

Founding-era evidence further confirms that criminal conduct itself provides an independent basis for exclusion from the right to bear arms. The influential Dissent of the Minority of the Convention of the State of Pennsylvania proposed that “no law shall be passed for disarming the people or any of them unless for crimes committed, or real danger of public injury from individuals.” *Heller*, 554 U.S. at 658. The phrase “crimes committed” is an independent basis, separate from “real danger of public injury,” supporting the position that criminal conduct itself is sufficient justification for disarmament. These laws reflect a broader principle: the government could categorically disarm individuals based on their status or their demonstrated departure from the legal order.

Historical tradition did not limit disarmament to individuals who committed violent offenses. Instead, the law permitted the government to disarm individuals deemed sufficiently dangerous or unfit to possess them. Greenlee, *Historical Justification*, at 262. Petitioner’s attempt to cast the predicate felony as merely negligent rather than malicious ignores historical tradition, which did not condition disarmament on an offender having committed a violent or malicious offense. *See Hunt*, 123 F.4th at 706 (noting that colonial-era offenders who committed non-violent hunting offenses were ordered to forfeit their firearms); *Jackson*, 110 F.4th at 1127 (recognizing that legislatures historically possessed authority to disarm categories of persons based on disregard for legal norms, rather than solely on a demonstrated dangerousness); *United States v. Medina*, 913 F.3d 152, 158-60 (D.C. Cir. 2019) (rejecting the argument that only “dangerous” felons may be disarmed).

Section 922(g)(1) reflects the same category-based principle recognized throughout the historical tradition. Congress did not condition the prohibition on a separate finding that each individual felon poses a present danger. Instead, Congress identified conviction of a crime punishable by imprisonment for a term exceeding one year as the legally significant status that removes an individual from the class entitled to possess firearms. Because the Founders recognized that legislatures could disarm persons on a categorical basis, §922(g)(1) does not exceed the scope of the right as originally understood.

B. Most Circuit Courts Have Upheld §922(g)(1)’s Categorical Disarmament of Felons as Consistent with Our Nation’s Historical Tradition.

Categorical felon disarmament accords with the majority of circuit court decisions and ensures a consistent standard grounded in our Nation’s tradition. Most circuits have upheld §922(g)(1)’s categorical ban for two principal reasons. First, those courts have reasoned that this Court has never given any indication that felon disarmament is unconstitutional and has instead repeatedly described such prohibitions as presumptively lawful. *See Vincent*, 127 F.4th at 1264; *Hunt*, 123 F.4th at 700; *Jackson*, 110 F.4th at 1125; *Dubois*, 94 F.4th at 1293. Second, those courts have recognized felon disarmament statutes satisfy *Bruen*’s requirement that a firearm regulation be consistency with our Nation’s historical tradition. *Bruen*, 597 U.S. at 17. Well-established historical analogues justify disarming individuals who have violated legal norms, including through nonviolent crimes. *Duarte*, 137 F.4th at 755. Properly applied, the *Bruen* test leaves virtually no circumstances in which felon disarmament would lack a historical analogue.

The minority of circuits that have not upheld §922(g)(1) categorically have either (1) never identified a convicted felon who could overcome the statute’s presumptive lawfulness or (2) misapplied the test this Court set forth in *Bruen*. *See Diaz*, 116 F.4th at 472; *Williams*, 113 F.4th at 662; *Watson*, 171 F.4th at 1013. *But see Range*, 124 F.4th at 222. Even when examining

each individual felony, those circuit courts have still identified representative historical analogues that justify disarmament. *Bruen*. See *Diaz*, 116 F.4th at 472; *Williams*, 113 F.4th at 662; *Watson*, 171 F.4th at 1013. But see *Range*, 124 F.4th at 222. Therefore, this Court should hold §922(g)(1) applies categorically rather than require a case-by-case inquiry into the nature of each felony because that inquiry consistently yields the same result.

1. Absent any directive from this Court to depart, most circuit have properly applied §922(g)(1) categorically to felons.

This Court should bar Petitioner's as-applied challenge to §922(g)(1) and establish that §922(g)(1) applies categorically to ensure a consistent standard that already reflects the interpretation of the majority of circuit courts. The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have applied a categorical approach to the disarmament of felons when interpreting this Court's decisions in *Heller*, *Bruen*, and *Rahimi*. These courts have done so because this Court has repeatedly reaffirmed that felon disarmament laws are presumptively lawful and has never identified circumstances that overcome that presumption. *Heller*, 554 U.S. at 626-27; *Rahimi*, 602 U.S. at 699. As the First Circuit observed in *United States v. Langston*, this Court has stated repeatedly over sixteen years, from *Heller* to *Rahimi*, that felon-in-possession laws are presumptively lawful. 110 F.4th 408, 420 (1st Cir. 2024). If circuit courts abandon their categorical approach and begin drawing lines among felons, they would be violating their duty as a court: to read precedent harmoniously with Supreme Court precedent, whenever possible. *Short v. Hartman*, 87 F.4th 593, 605 (4th Cir. 2023). Thus, the circuits that apply §922(g)(1) categorically correctly apply the presumption of lawfulness this Court established.

In *Vincent v. Bondi*, the Tenth Circuit upheld §922(g)(1) as a categorical ban applicable for both violent and non-violent felons. 127 F.4th 1264. The court rejected Vincent's argument that §922(g)(1) could not apply to her because her felony bank fraud conviction was nonviolent.

Id. at 1264. Under Tenth Circuit’s precedent in *United States v. McCane*, §922(g)(1) applies to all felons regardless of type or nature of violence. 573 F.3d 1037, 1047 (10th Cir. 2009). The Tenth Circuit in *Vincent* upheld precedent in *McCane* because their categorical ban relied on the presumptive lawfulness of felon dispossession affirmed in *Heller* and *Rahimi*. *Vincent*, 127 F.4th at 1265; *Heller*, 554 U.S. at 626-27; *Rahimi*, 602 U.S. at 699. The Tenth Circuit considered the effect of *Rahimi*, deciding the case did not abrogate the existing precedent of a categorical ban of felons in possession. 127 F.4th at 1265. In *Vincent*, the Tenth Circuit joined the majority of other circuits, explicitly referencing the Fourth, Eighth, and Eleventh circuits, by upholding a categorical ban against felons in possession, regardless of the nature of the felony. *Id.* Therefore, when interpreting this Court’s recent precedent, the Tenth Circuit evaluated that a categorical ban for felons in possession appropriately reflected the intent of this Court, joining the majority of circuits.

Like *Vincent*, the Fourth Circuit held in *United States v. Hunt*, that §922(g)(1) was constitutional as a categorical ban, without an assessment of the defendant’s specific conviction. 123 F.4th at 700. There, the defendant was found in possession of a firearm after being convicted of felonious breaking and entering. *Id.* at 700-01. In *Hunt*, the Fourth Circuit reaffirmed §922(g)(1) was facially constitutional due to the presumption of lawfulness established by this Court in *Heller*, consistent with *Bruen* and *Rahimi*. *Hunt*, 123 F.4th at 702; *Bruen*, 597 U.S. at 26, 71; *Rahimi*, 602 U.S. at 699. The Fourth Circuit’s existing precedent in *United States v. Moore* also confirmed felons fall outside the scope of Second Amendment protections for “law-abiding, responsible citizens,” and could not be restored to that class of law-abiding citizens. *Hunt*, 123 F.4th at 703; *Moore*, 666 F.3d 313, 319-20 (4th Cir. 2012); *Bruen*, 597 U.S. at 26, 71. The circuit derived their holding from the presumption of lawfulness for felon disarmament

statutes in *Heller* and determined that “nothing in *Bruen* or *Rahimi*” undermines the reliance on that presumption. *Hunt*, 123 F.4th at 703. In *Hunt*, the Fourth Circuit established that this Court provided no basis to depart from a categorical ban, rejecting of a case-by-case inquiry into specific convictions. *Id.* at 704.

Further, both the Eighth and Eleventh Circuits also found no reason to deviate from precedent regarding a categorical ban against felons. *Jackson*, 110 F.4th at 1125; *Dubois*, 94 F.4th at 1293. In *Jackson*, the Eighth Circuit reaffirmed that there is “no need for felony-by-felony litigation” regarding the constitutionality of felon disarmament statutes. 110 F.4th at 1125. There, the Eighth Circuit held Congress may disarm categories of people from possessing firearms which is consistent with historical tradition. *Id.* at 1129. Thus, there was no reason to abrogate their precedent in *United States v. Bena*, which upheld §922(g)(1)’s categorical disarmament. 664 F.3d 1180, 1184 (8th Cir. 2011). The Eighth Circuit reconciled *Bena* with this Court’s recent decisions, because ample historical support exists for disarming categories of people who deviated from legal norms, including non-violent offenders. *Jackson*, 110 F.4th at 1126. Similarly, the Eleventh Circuit held in *United States v. Dubois*, that this Court’s decision in *Bruen* reaffirmed the presumption of lawfulness in *Heller*. 94 F.4th at 1293. In *Dubois*, the Eleventh Circuit accordingly joined the majority of circuits in upholding a categorical disarmament of felons, and declined to overrule their existing precedent. *Id.*

Ultimately, these many circuit courts uphold §922(g)(1) without inquiring into the specific underlying felony. *Dubois*, 94 F.4th at 1293; *Jackson*, 110 F.4th at 1125; *Hunt*, 123 F.4th at 700; *Vincent*, 127 F.4th at 1264. Their reasoning is based on this Court’s repeated affirmations that felon disarmament is presumptively lawful and consistent with our Nation’s historical traditions. *Id.* These courts recognize that their role is to apply this Court’s decisions,

not supplement the law with their own judgements. *See generally Taylor v. Grubbs*, 930 F.3d 611, 619 (4th Cir. 2019). This Court has issued no decision undermining the presumptive lawfulness of felon-disarmament statutes, so the circuits have no basis to depart from their precedent.

2. Historical analogues render §922(g)(1)'s presumptive lawfulness virtually irrebuttable.

Several circuits have established that when applying the *Bruen* two-part test, the historical justification for firearm prohibition will almost always, if not always be met. 597 U.S. at 17. *See e.g. Duarte*, 137 F.4th at 755. In *United States v. Bruen*, this Court established a two-step framework for analyzing the constitutionality of firearm regulations. *Id.* at 17. First, the court must determine whether the Second Amendment covers an individual's conduct. *Id.* Second, the court must evaluate whether our Nation's historical tradition justifies the regulation. *Id.* This Court clarified in *Rahimi* that the government need only identify a historical analogue, not a historical twin, to justify a firearm regulation. 602 U.S. at 699. Because many historical analogues support felon disarmament, including for non-violent crimes, circuit courts have found rebutting the presumption of lawfulness of felon disarmament statutes virtually impossible. *Duarte*, 137 F.4th at 755; *Hunt*, 123 F.4th at 706; *Jackson*, 110 F.4th at 1126.

In *United States v. Duarte*, the en banc Ninth Circuit joined the majority of circuit courts by upholding §922(g)(1) categorically after applying the *Bruen* analysis. 137 F.4th at 755. There, the court acknowledged that the defendant's status as a felon did not remove him from the Second Amendment's protections. *Id.* at 752-53. The court therefore proceeded to the second step of the *Bruen* test. *Id.* In the second stage of analysis, the court recognized the categorical ban as consistent with our Nation's historical tradition of firearm regulation; legislatures have historically disarmed individuals who committed serious crimes or were deemed dangerous,

often without individual determinations of their dangerousness. *Duarte*, 137 F.4th at 755. As historical analogues, the court referenced capital punishment, estate forfeiture, and categorical disarmament for groups like “tramps” and those who refused loyalty oaths. *Id.* at 760-61. Not all the underlying conduct was violent, yet those groups were disarmed. Therefore, history reflects categorically disarming felons, even for non-violent crimes, as consistent with our Nation’s historical tradition. This Court denied certiorari on *Duarte*. 137 F.4th 743, *cert. denied*, 223 L. Ed. 2d 556 (Jan. 20, 2026).

The reasoning in *Duarte* is consistent with the Fourth Circuit’s analysis in *Hunt* and the Eighth Circuit’s analysis in *Jackson*. *Hunt*, 123 F.4th at 706; *Jackson*, 110 F.4th at 1126. In *Hunt*, the court upheld the constitutionality of the §922(g)(1) on the basis of circuit precedent without conducting a *Bruen* analysis. 123 F.4th at 705. Nevertheless, the Fourth Circuit explained they would reach the same conclusion under *Bruen*’s second step. *Id.* In *Hunt*, the court linked modern legislatures’ authority to disarm people convicted of serious felonious conduct to the discretion that pre-colonial and colonial era legislatures had to disarm categories of people who failed to adhere to legal norms. *Id.* at 706.

In *Jackson*, the Eighth Circuit identified several historical analogues that justify a categorical ban of felons. 110 F.4th at 1126. Dating back to seventeenth century England, those who refused to join the established church and those deemed threats to the peace were categorically disarmed. *Id.* During the Revolutionary War, the states disarmed individuals who refused to declare their loyalty. *Id.* Further, the Anti-Federalist delegates in Pennsylvania explicitly advocated for people to generally have the right to possess arms unless they have committed crimes or posed a danger to society. *Id.* at 1127. The presumption for lawfulness of felon disarmament statutes is therefore virtually impossible to rebut. Numerous

historical analogues justify categorically disarming felons and satisfy *Bruen*'s second step, regardless of when the felon's conduct falls within the Second Amendment's plain text.

Even in the minority of cases where circuit courts have declined to apply §922(g)(1) categorically, and have instead entertained an as applied challenge, they have almost always upheld the statute as constitutional to the felon before them. *Diaz*, 116 F.4th at 472 (finding a sufficient analogue for a defendant convicted of drug possession and attempted burglary because there were historical punishments for theft, including capital punishment and forfeiture); *Williams*, 113 F.4th at 662 (finding a sufficient analogue for aggravated robbery because of longstanding historical traditions of disarming individuals deemed to be dangerous); *Watson*, 171 F.4th at 1013 (finding a sufficient analogue for possession with intent to distribute because the court deemed the defendant dangerous, which aligned with the historical tradition of disarmament). The fact that these as-applied challenges fail, even when circuits entertain them, shows the presumptive lawfulness of felon disarmament because many historical analogues support disarming individuals deemed dangerous.

The only circuit decision holding §922(g)(1) unconstitutional as applied is *Range*. 124 F.4th at 222. There, the Third Circuit held the statute unconstitutional as applied to the defendant whose predicate offense was a misdemeanor, punishable by up to five years imprisonment, for making false statements to obtain food stamps. *Id.* at 222-23. *Range* misapplied the *Bruen* test by demanding something close to a historical twin, the very approach this Court rejected in *Rahimi*. Morgan Schmidt, *Felons in Possession: Rejecting the Third Circuit and its Application of Bruen*, 69 ST. LOUIS L. REV. 409, 423 (2025). As Judge Schwartz explained in dissent, the majority overlooked that *Bruen* invoked the limitation of "law-abiding" citizens fourteen times and

disregarded that fraud was a capital offense at our Nation's founding. 124 F.4th at 292-93 (Shwartz, J., dissenting).

Ultimately, even when an individual falls within the Second Amendment's protections, felon status virtually ensures that §922(g)(1) satisfies *Bruen*'s second step, leaving *Heller*'s presumption of lawfulness intact. *Heller*, 554 U.S. at 626-27; *Rahimi*, 602 U.S. at 699; *Bruen*, 597 U.S. at 17. A categorical rule is therefore appropriate. And even without a categorical ban, a felon will virtually never prevail on an as applied challenge, given the many historical analogues supporting the disarmament of those who have violated legal norms, even for nonviolent crimes.

3. Utilizing a categorical ban ensures a justiciable standard that protects law abiding citizens of the United States.

A categorical rule provides the clear, administrable standard that individualized Second Amendment review would lack. Requiring courts to determine, decades after a conviction, whether each felon remains sufficiently dangerous to justify disarmament would invite arbitrary results. Two defendants convicted of comparable felonies could receive differential constitutional treatment. Decisions like *Range* produce exactly that inconsistency: individuals convicted of more severe crimes, may regain the right to possess firearms based on a judge's subjective interpretation of historical analogues and what circuit they reside in. This is an unsound basis for determining the rights of those convicted of serious crimes.

By contrast, the categorical ban set out in §922(g)(1) gives courts an objective rule to apply: any person who falls within the statutory category of convicted felons is prohibited from possessing firearms. This bright-line rule promotes judicial efficiency while ensuring that firearm restricts do not turn on unpredictable, case-by-case judgments. Writing in concurrence in *Rahimi*, Justice Jackson emphasized the importance of having "legal standards that foster stability, facilitate consistency, and promote predictability," calling them essential to our democracy.

Rahimi, 602 U.S. at 746. A case-by-case approach offers no such stability or consistency, risking inconsistent application and uncertainty in Second Amendment jurisprudence.

While Petitioner may emphasize the passage of time between the predicate felony and the firearm possession offense, §922(g)(1) provides no mechanism for restoring firearm rights based on the mere passage of time. Had Congress intended to provide such relief, it could have done so. This Court should not rewrite the statute to create an exception that Congress deliberately omitted.

II. EVEN IF AN AS-APPLIED CHALLENGE TO §922(g)(1) IS COGNIZABLE, ITS APPLICATION TO A FELONY CHILD-NEGLECT CONVICTION DOES NOT VIOLATE THE SECOND AMENDMENT.

Even assuming, *arguendo*, that *Bruen* and *Rahimi* leave room for an individualized as-applied challenge to 18 U.S.C. §922(g)(1), Petitioner cannot carry the burden such a challenge would require. Where a court entertains an as-applied challenge at all, it asks only whether the particular defendant falls within the historical tradition the government invokes: the disarmament of persons who, by their conduct, have demonstrated a danger to the physical safety of others. *See Rahimi*, 602 U.S. at 698. Petitioner's conviction places her at the center of that tradition, not its margins.

A. Felony Child Neglect Demonstrates a Sufficient Danger to Others to Justify the Disarmament of the Perpetrator.

Rahimi did not require the government to identify a founding-era "historical twin" for §922(g)(1); it required only a well-established and representative historical analogue. *Id.* at 692. This Court found that analogue in surety laws, which allowed a magistrate to require a person who threatened to harm another to post a bond before carrying a weapon in public, and in "going armed" laws, which provided for forfeiture of the arms of a person who terrorized others by going armed. *Id.* at 698-99. Both traditions share a common thread: the government's authority to

disarm someone turns on the danger that person's conduct poses to the physical safety of others, not on whether that conduct happens to fall under a criminal-code heading labeled "violent."

Petitioner's conduct falls squarely within that tradition.

Even under an individualized inquiry, Petitioner's circumstances confirm that she poses exactly the danger the historical tradition permits the government to guard against. Petitioner operated an unlicensed, unpermitted child-care business, and a child in her care died as a result. R. at 2. Petitioner operated her business without the permitting, registration, or licensure the law requires of anyone entrusted with the custody of small children. R. at 2. That regulatory framework exists because unsupervised, untrained caregivers cannot be relied on to recognize or respond to the emergencies that arise when children are gathered in groups. Petitioner's decision to operate outside it was not a paperwork lapse. It was a decision to expose children to precisely the risks the licensing scheme exists to prevent. Without the training, teacher ratios, or protocols the law requires, children can die. The danger was confirmed by what happened when the emergency occurred; Petitioner did not summon help immediately. R. at 2. The delay between the onset of the child's medical crisis and her call to 911 is not incidental to the offense, it is the offense. A defendant who is merely careless makes a mistake; a defendant who watches a child in medical distress and hesitates before calling for help has made a choice, in the moment that mattered most, to prioritize something other than that child's physical safety. That is the same indifference to the safety of another that surety and going-armed laws targeted, compressed into a single, fatal afternoon.

This Court's recent decision in *United States v. Hemani* confirms rather than undermines that conclusion. 146 S. Ct. 1677, 1693 (2026). *Hemani* held that the government could not disarm a habitual marijuana user under §922(g)(3) where its case rested on regular use of

marijuana alone, with no showing of intoxication while armed, no violence, and no injury to anyone. 146 S. Ct. at 1693. In *Hemani*, the government offered a label and nothing more; here, a jury found conduct that cost a child's life. Many of the predicate offenses the courts of appeals have sustained since *Rahimi* share a feature *Hemani*'s predicate lacked: each involves either the use or threat of force, or an outcome that placed another person's physical safety at risk. See *United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025) (drug trafficking); *United States v. Schnur*, 132 F.4th 863, 870-71 (5th Cir. 2025) (robbery and burglary); *United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024) (vehicle theft). Petitioner's offense sits with that list, not with *Hemani*'s. A child is dead because of conduct Petitioner chose. That is danger demonstrated by outcome, not danger inferred from status, precisely the distinction *Hemani* drew.

Petitioner's felony conviction is unlike the predicate offenses underlying the as-applied challenges that have drawn serious judicial consideration: a false statement on a food-stamp application or a bad check written seventeen years earlier, which involved no violence or threat of violence. See *Range*, 124 F.4th at 222 (predicate offense was a false statement on a food-stamp application); *Vincent*, 127 F.4th at 1264 (predicate offense was a bad check written seventeen years earlier). Petitioner ran an illegal enterprise that took custody of other people's children without any of the safeguards the law requires, and, when a child's life hung in the balance, did not act with the urgency that moment demanded. R. at 2. If the historical tradition permits disarming anyone based on the danger their conduct poses to others, it permits disarming someone whose conduct results in the death of a child.

Felony child neglect takes a wide variety of forms, and the label alone says little about how dangerous the underlying conduct was. At one end of the spectrum sits a parent who leaves young children briefly unsupervised while running an errand, conduct that can support a felony

neglect conviction even though the risk never materializes and no child is harmed. *See Barnes v. Commonwealth*, 622 S.E.2d 278, 282 (Va. Ct. App. 2005) (affirming conviction of a mother who left her two- and four-year-old children alone in an unlocked apartment while she went grocery shopping, although neither child was injured). At the other end sits Petitioner, whose neglect ended in a child's death. R. at 2. Because the same label spans both, any individualized inquiry must look past the label to the conduct itself and ask whether it demonstrates the kind of danger to others that history permits legislatures to guard against. *See Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (explaining that history supports the legislative power to disarm those who pose a danger to others). By that measure, this case is not close. Unlike the mother in *Barnes*, whose children were never harmed, Petitioner operated an unlicensed child-care business, delayed summoning help when a child in her care suffered a medical emergency, and that child died. R. at 2.

The Second Amendment's own text requires courts to look to history and tradition. It has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. *Heller*, 554 U.S. at 592. The text of the Amendment implicitly recognizes the pre-existence of that right and declares only that it "shall not be infringed." *Id.* A right that pre-existed the Constitution necessarily pre-existed alongside traditional limits, including the disarmament of those who posed a danger to others. This Court has already offered sufficient guidance to the lower courts on where that tradition leads with respect to felons, cautioning that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." *Id.* at 626-27. The Ninth Circuit, sitting en banc, has now held that §922(g)(1) is not unconstitutional even as applied to non-violent felons, aligning itself with the Fourth, Eighth, Tenth, and Eleventh

Circuits. *Duarte*, 137 F.4th at 755. *Duarte*'s own predicate offenses were nonviolent property and drug crimes. If five nonviolent priors and a discarded handgun do not create a valid as-applied challenge, a felony that killed a child should not either.

B. Courts Should Not Reassess Dangerousness Years After Conviction Because No Judicially Manageable Standard Exists and §925(c) Already Provides That Review.

To whatever extent an as-applied challenge to §922(g)(1) is cognizable at all, the individualized element that challenge requires is satisfied once, at the moment of conviction. When deciding whether the elements of the predicate offense are met, a jury places a defendant within a class of persons the Nation's regulatory tradition permits legislatures to disarm. *See Kimble*, 142 F.4th at 318 (a felony's fit within that tradition "does not depend on an individualized assessment that [the defendant] is dangerous," and courts should not "look beyond a defendant's predicate conviction" to assess the defendant's likelihood of misusing a firearm). The fact-finder who convicted Petitioner already found, beyond a reasonable doubt, every element of an offense that placed a child's physical safety in her hands and ended in that child's death. Nothing about the passage of time erases that finding or entitles Petitioner to a second, judicially administered inquiry into who they have since become.

Making §922(g)(1)'s constitutionality turn on a case-by-case judicial assessment of a defendant's present dangerousness is not only doctrinally incorrect but institutionally untenable: it forces courts to draw lines they have no reliable way to draw. Years after a conviction, a court has no judicially manageable standard for measuring whether a defendant remains dangerous, no reliable metric for rehabilitation, remorse, or risk, and no record-development process suited to making that finding. Legislatures, not courts, have always drawn that category-wide line, and for good reason: they are built to weigh risks across populations, while courts are built to decide individual cases. *See Rahimi*, 602 U.S. at 698; *cf. Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622,

665-66 (1994) (plurality opinion). Congress made that judgment when it enacted §922(g)(1). The Executive Branch has since built the individualized mechanism Petitioner is effectively asking this Court to invent in its place. In August 2026, the Department of Justice finalized a rule implementing 18 U.S.C. §925(c). *Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms*, 91 Fed. Reg. 54,054 (Aug. 20, 2026). Under §925(c), a disarmed felon may petition the Attorney General to restore their firearm rights. Petitioner must show that they are not likely to act in a manner dangerous to public safety and that relief would not be contrary to the public interest. The rule adds waiting periods and presumptions against relief for certain categories of offenders, while still permitting relief in extraordinary circumstances. 91 Fed. Reg. at 54,057–58, 54,066. Furthermore, an applicant who is denied may seek review in federal district court. §925(c). That is the individualized reassessment Petitioner seeks, conducted by an agency equipped for the fact-intensive inquiry it requires and subject to judicial review. The Second Amendment does not give felons a right to relitigate their dangerousness in court decades after conviction. Courts should not invent that process by applying a standard no legislature wrote and no record could reliably support.

Whatever the outer boundaries of that line-drawing problem, this case does not sit near them. Crimes that result in the death of a child reflect a threat to society as serious as any the criminal law recognizes. Of the circuits to have addressed §922(g)(1) since *Rahimi*, only the Third Circuit has invalidated the statute as applied to any defendant, and even that outlier involved a single, decades-old, purely regulatory false statement, not physical harm to another person. *Range*, 124 F.4th at 222. Every other circuit to reach the question, including as to nonviolent offenders, has rejected the as-applied challenge. *Duarte*, 137 F.4th at 755; *Vincent*,

127 F.4th at 1263; *Jackson*, 110 F.4th at 1129. As the Solicitor General put it to this Court in defending that consensus, whatever disagreement exists among the circuits over the availability of as-applied challenges “is shallow.” Br. for the United States in Opp. at 11, *Vincent v. Bondi*, No. 24-1155 (U.S. filed Aug. 11, 2025). This Court has had repeated opportunities to disturb that consensus and has declined every one within the past year. *See Duarte v. United States*, No. 25-425 (U.S. Jan. 20, 2026) (denying certiorari); *Vincent v. Bondi*, No. 24-1155 (U.S. Mar. 2, 2026) (same); *Diaz v. United States*, No. 24-6625 (U.S. June 23, 2025) (same); *French v. United States*, No. 24-6623 (U.S. May 19, 2025) (same). A felony that resulted in a child's death, brought about by an unlicensed operation and a documented delay in seeking emergency care, should not be the first.

CONCLUSION

This Court should AFFIRM the judgment of the United States Court of Appeals for the Fourteenth Circuit in all respects.

Dated: September 29, 2026

Respectfully Submitted,

s/ Team EV

Counsel for Respondent