

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 OF PETITIONER**

Team HQ  
Counsel for Petitioner

## TABLE OF CONTENTS

|                                                                                                                                                                                                                                 |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES .....                                                                                                                                                                                                      | ii |
| QUESTIONS PRESENTED .....                                                                                                                                                                                                       | 1  |
| STATEMENT OF THE CASE .....                                                                                                                                                                                                     | 2  |
| SUMMARY OF THE ARGUMENT .....                                                                                                                                                                                                   | 5  |
| ARGUMENT .....                                                                                                                                                                                                                  | 7  |
| I. AS-APPLIED CHALLENGES UNDER THE SECOND AMENDMENT EXIST FOR THE PETITIONER BECAUSE APPLYING 18 U.S.C. § 922(g)(1) TO ALL FELONS IS UNCONSTITUTIONAL .....                                                                     | 7  |
| A. <u>Categorically Foreclosing As-Applied Challenges to 8 U.S.C. § 922(g)(1) Incorrectly Relies on <i>Heller</i>’s Dicta Rather Than the Enumerated Analysis Laid Out in <i>Bruen</i></u> .....                                | 7  |
| B. <u>The <i>Bruen</i> Test’s Historic Analog Requirement Calls for Individualized Inquiry and Thus Cannot Foreclose As-Applied Challenges to the Statute</u> .....                                                             | 11 |
| C. <u>Precluding As-Applied Challenges Unjustifiably Suppresses an Individual’s Right To Defend Herself and Her Home, Deviating Significantly from Historical Practice</u> .....                                                | 13 |
| II. THE ASSUMING AS-APPLIED CHALLENGES EXIST FOR THE DEFENDANT, APPLICATION OF 18 U.S.C. 922(g)(1) IS UNCONSTITUTIONAL AS APPLIED TO THE PETITIONER’S PREVIOUS SINGULAR, NONVIOLENT, 20-YEAR-OLD FELONY FOR CHILD NEGLECT ..... | 16 |
| A. <u>18 U.S.C § 922(g)(1) is Unconstitutional As-Applied to the Petitioner Because Her Previous Nonviolent Felony Fails to Meet the High Standard Required to be Indicative of Future Probable Danger</u> .....                | 17 |
| 1. Nonviolent felonies fail to establish justifiable proof of future harm.....                                                                                                                                                  | 17 |
| 2. A singular felony inadequately predicts whether the defendant may harm in the future.....                                                                                                                                    | 18 |
| B. <u>Nonviolent Felons Should Be Allowed to Own Firearms Because Disarming Them Reinforces Old Discriminatory Frameworks for Denying Constitutional Rights to Classes of People</u> .....                                      | 19 |

|                  |    |
|------------------|----|
| CONCLUSION ..... | 21 |
|------------------|----|

## **TABLE OF AUTHORITIES**

### **CASES**

|                                                                                                      |               |
|------------------------------------------------------------------------------------------------------|---------------|
| <i>District of Columbia v. Heller</i> ,<br>554 U.S. 570 (2008).....                                  | <i>passim</i> |
| <i>N.Y. State Rifle &amp; Pistol Ass’n Inc. v. Bruen</i> ,<br>597 U.S. 1 (2022) .....                | <i>passim</i> |
| <i>Range v. Att’y Gen. U.S.</i> ,<br>124 F.4th 218 (3d Cir. 2024) (en banc).....                     | 9, 11-12      |
| <i>United States v. Banks</i> ,<br>793 F. Supp. 3d 896 (N.D. Ohio 2025).....                         | 16            |
| <i>United States v. Diaz</i> ,<br>116 F.4th 458 (5th Cir. 2024).....                                 | 7-8, 10       |
| <i>United States v. Flores</i> ,<br>No. 24-cr-20579, 2025 WL 348390 (E.D. Mich. Jan. 30, 2025).....  | 17            |
| <i>United States v. Green</i> ,<br>No. 23-cr-20506, 2024 WL 4469090 (E.D. Mich. Oct. 10, 2024) ..... | 16            |
| <i>United States v. Hemani</i> ,<br>No. 24-1234, slip op. (U.S. June 18, 2026).....                  | <i>passim</i> |
| <i>United States v. Jackson</i> ,<br>110 F.4th 1120 (8th Cir. 2024) .....                            | 8, 11         |
| <i>United States v. Levasseur</i> ,<br>2026 U.S. App. LEXIS 28377 (1st Cir. Sept. 16, 2026) .....    | 12-14         |

|                                                                                                      |               |
|------------------------------------------------------------------------------------------------------|---------------|
| <i>United States v. McDaniel</i> ,<br>No. 22-cr-176, 2024 WL 3964339 (E.D. Wis. Aug. 28, 2024) ..... | 17            |
| <i>United States v. Rahimi</i> ,<br>602 U.S. 680 (2024).....                                         | <i>passim</i> |
| <i>United States v. Williams.</i> ,<br>113 F.4th 637 (6th Cir. 2024).....                            | 9,15-17       |
| <i>Zherka v. Bondi</i> ,<br>140 F.4th 68 (2d Cir. 2025) .....                                        | 11            |

## STATUTES

|                                                                                                                                                                                        |               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Act of Apr. 2, 1779, reprinted in Laws Enacted in the Second Sitting of the Third General Assembly of the Commonwealth of Pennsylvania 199 (John Dunlap ed., Philadelphia, 1779) ..... | 13            |
| Act of Mar. 30, 1876, § 9, 19 Stat. 10–11.....                                                                                                                                         | 14            |
| 18 U.S.C. § 921(a)(20) .....                                                                                                                                                           | 8             |
| 18 U.S.C. § 922(g)(1). .....                                                                                                                                                           | <i>passim</i> |
| 18 U.S.C. § 922(g)(8) .....                                                                                                                                                            | 11            |
| Va. Code § 18.2-371.....                                                                                                                                                               | 2             |

## CONSTITUTIONAL PROVISIONS

|                             |   |
|-----------------------------|---|
| U.S. CONST. amend. II ..... | 4 |
|-----------------------------|---|

## OTHER AUTHORITIES

|                                                                                                                                    |    |
|------------------------------------------------------------------------------------------------------------------------------------|----|
| Jamie G. McWilliam, <i>Refining the Dangerousness Standard in Felon Disarmament</i> , 108 Minn. L. Rev. Headnotes 315 (2024) ..... | 18 |
| 2 Bernard Schwartz, <i>The Bill of Rights: A Documentary</i> , 681 (1971).....                                                     | 1  |

### **QUESTIONS PRESENTED**

1. Whether defendant is precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1) under the Second Amendment, when the governing *Bruen* test requires a historical analog to justify the burden on the defendant's constitutional right?
2. Assuming as-applied challenge exists, whether application of 18 U.S.C. § 922(g)(1) to a single nonviolent twenty-year old conviction for felony child neglect violates the Second Amendment?

## STATEMENT OF THE CASE

In July 2000, Petitioner Terry Branders (“Branders”) operated a day care center in her home in Alexandria, Virginia, without a daycare license. R. at 2. Petitioner’s son, Nelson, assisted Branders in picking up and dropping off the daycare children. *Id.* After a late night, Nelson picked up 12 children including 11-month-old Kenneth Drew (Drew) who was in a car seat. *Id.* When Nelson dropped all the children off with his mother, he forgot Drew and drove back to his apartment to sleep. *Id.* Because Drew slept through the whole pick-up routine, and Nelson usually just placed him in a crib in a bedroom, Branders did not notice that he was missing until she went to wake him about two hours later. *Id.* After trying to reach Nelson, Branders called 911. *Id.*

The police found Drew and took him to the hospital; however, Drew did not survive. Nelson and Branders were both convicted of felony child neglect under Va. Code § 18.2-371. *Id.* The court convicted Branders of operating a day care without a license, a misdemeanor. R. at 3. The court sentenced Branders on March 5, 2001, and given a two-year suspended sentence and placed on probation. *Id.* The court sentenced Nelson to a four-year term of imprisonment. *Id.* Branders has only had one other run-in with the law, when police caught her speeding. *Id.* The traffic court convicted Branders of misdemeanor and had her license suspended for 6 months. *Id.*

In 2020, Branders chose to create a new start to her life and moved to Appleton, Newcoastland, where she volunteered with various charities. *Id.* Nelson also moved in with Branders during this time. *Id.* Nelson insisted on living in the basement and coming and going as he pleased and that Branders never entered the basement. *Id.* Nelson frequently has angry outbursts and struggles to keep a job. *Id.* Branders has suspected that Nelson sells drugs and has found some of his “friends” to be scary. Branders became friends with a food bank volunteer,

Becky Haskill (Haskill), who encouraged Branders to get a gun for protection after hearing about Branders' issues with her son. *Id.* Haskill then offered to give Branders one of Haskill's late husband's guns, and Branders accepted, placing the gun in a locked drawer in her living room and keeping the ammunition in a separate drawer. *Id.*

In June 2024, DEA agents wanted to enter Brander's home without a warrant due to suspicion of Nelson's illegal activities. *Id.* The agents knocked on Brander's door and believed that getting permission from Banders to search the house would be easier than getting a warrant due to inadequate probable cause. R. at 4. Branders was cooperative and let the agents search her house. *Id.* The agents found no evidence of drug activity but found Branders' gun thus leading to her arrest for possessing the firearm. *Id.*

The State charged Branders with a violation of 18 U.S.C. § 922(g)(1). *Id.* She filed a motion to dismiss the charges on a basis that it violated her Second Amendment rights as applied to her. *Id.* The United States District Court for the Eastern District of Newcoastland reviewed the motion to dismiss on the issue of whether the 18 U.S.C. § 922(g)(1) is unconstitutional as applied to Branders. R. at 1. District Judge Madison acknowledges this case as one of first impressions for the Fourteenth District. R. at 1. The District Court ruled that 18 U.S.C. § 922(g)(1) was unconstitutional as applied to Branders and subsequently granted her motion to dismiss the indictment. R. at 2,7.

The government appealed the decision of the District Court, and the case went under *de novo* review on May 15, 2026, in the U.S. Court of Appeals for the Fourteenth Circuit. R. at 8. The Court of Appeals determined the District Court erred as (1) Branders is precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1), and (2) the statute is not unconstitutional as applied to Branders. R. at 10. The Court of Appeals reversed the District Court's decision, vacating the Motion

to Dismiss and remanding the case for further proceedings. *Id.*

On June 1, 2026, Branders entered an *Alford* plea, in which she reserved the right to appeal the decision of the Court of Appeals. R. at 12. The Supreme Court granted Branders' Petition for Certiorari. R. at 13. The Supreme Court certified arguments for the following issues of: (1) whether Branders is precluded from asserting as-applied challenges to the statute under the Second Amendment, and (2) assuming as-applied challenge exists, whether application of the statute to Branders' felony conviction is unconstitutional. R. at 12.

## **SUMMARY OF THE ARGUMENT**

### **I. AS-APPLIED CHALLENGES UNDER THE SECOND AMENDMENT EXIST FOR THE PETITIONER BECAUSE APPLYING 18 U.S.C. § 922(g)(1) TO ALL FELONS IS UNCONSTITUTIONAL.**

Defendants are not precluded from asserting an as-applied challenges to 18 U.S.C. § 922(g)(1). The Court of Appeals incorrectly applied the legal standard this Court created in *Bruen* for statutory challenges under the Second Amendment. *Bruen* requires a historical analogue that represents the country's "history of firearm regulation." Only when a court can demonstrate the regulation that does adhere to traditional firearm regulation can a defendants' firearm possession fall outside of the second amendment. A "presumptively lawful" restriction does not categorically deny Branders' claim, nor does it place her outside of "the people" protected by the Second Amendment. Branders' conviction insufficiently establishes she's a public danger over two decades later. The historic analog requirement of the *Bruen* test requires individualized inquiry of defendants, which renders categorical denial to all felons inapplicable. The crime just being a felony does not meet the historic analog test this Court established in *Bruen*. Instead, courts need to apply the same "why" and "how" analysis to meet the rigor required under the *Bruen* test. Finally, by denying all defendants from asserting as-applied challenges, this Court would deviate significantly from historical practice. Analyzing several previously used historical analogs, the standard is clear: firearm regulation is proper when there is a vested concern for public safety. The lower courts failed to properly apply historical analogies to Branders' specific case. Her criminal record and predicate crime do not adequately predict future harm.

**II. ASSUMING AS-APPLIED CHALLENGES EXIST FOR THE DEFENDANT, APPLICATION OF 18 U.S.C § 922(g)(1) IS UNCONSTITUTIONAL AS-APPLIED TO THE PETITIONER’S PREVIOUS SINGULAR, NONVIOLENT, TWENTY-YEAR-OLD CONVICTION FOR FELONY CHILD NEGLECT.**

Section 922(g)(1) is unconstitutional as applied to Branders’ conviction and previous criminal history. Section 922(g)(1) regulates dangerous individuals who are likely to misuse firearms. Not all felonious individuals are dangerous in the way the statute incapsulates. To assess dangerousness first, courts must analyze the predicate offense. Here, Branders’ predicate offense is felony child neglect. The circumstances of this offense were nonviolent and over two decades ago. Felony child neglect does little to predict the dangerousness of the Branders. Additionally, Branders’ did not obtain a firearm in connection with any future crime, such as drug trafficking or flight from the police. Second, the Court can analyze “judicially noticeable information.” This information includes a defendant's entire criminal record to help predicate the individual's dangerousness. Besides Branders’ single felony conviction, she has only two other misdemeanor convictions on her record. Neither misdemeanor gives any indication of future harm that Branders may cause. Instead, it demonstrates very minor incidents with the law. Finally, categorically denying an entire class of people reinforces a discriminatory framework for denying constitutional rights to entire classes of people. The statute focuses not on what felons might do in the future, but what they have done. By broadly regulating a class of people instead of using individualized inquiry, courts inadequately uphold the standards of constitutionally guaranteed rights.

## ARGUMENT

### **I. AS-APPLIED CHALLENGES UNDER THE SECOND AMENDMENT EXIST FOR THE PETITIONER BECAUSE APPLYING 18 U.S.C. § 922(g)(1) TO ALL FELONS IS UNCONSTITUTIONAL.**

Section 922(g)(1) prohibits a person convicted of a crime punishable by more than one year of imprisonment from possessing a firearm or ammunition in or affecting interstate commerce. 18 U.S.C. § 922(g)(1). Petitioner respectfully requests that this Court reverse the Fourteenth Circuit’s categorical rejection of her as-applied challenge. First, the potential-sentence threshold in 18 U.S.C. § 922(g)(1) defines statutory coverage; it does not, by itself, remove Branders from “the people” protected by the Second Amendment. The court of appeals acknowledged that the Amendment’s text covers her keeping a handgun at home. *District of Columbia v. Heller*, 554 U.S. 570, 580–81 (2008); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). Second, when the text covers the conduct, *Bruen* requires the Government to justify disarmament through a historical tradition comparable in why and how it burdens armed self-defense; an identical historical law is unnecessary. 597 U.S. 1, 17, 29–30 (2022); *United States v. Rahimi*, 602 U.S. 680, 691–92, 698 (2024). Third, barring every as-applied challenge prevents consideration of whether the tradition of gun ownership justifies the burden on Branders’ right to defend herself in her home. *Heller*, 554 U.S. at 628–29. This Court should permit her challenge and remand for the historical inquiry the Fourteenth Circuit refused to undertake.

#### **a. Categorically Foreclosing As-Applied Challenges to 18 U.S.C. § 922(g)(1) Incorrectly Relies on *Heller*’s Dicta Rather Than the Enumerated Analysis Laid Out in *Bruen*.**

The Second Amendment presumptively protects an American citizen’s possession of an ordinary handgun in the home for self-defense. *Heller* construed “the people” to include “all

members of the political community, not an unspecified subset,” and identified armed self-defense in the home as the right’s core. *Heller*, 554 U.S. at 580–81, 628–35 (2008). *Heller*’s dicta recognized limits to this scope stating some “presumptively lawful” regulatory measures such as “longstanding prohibitions on the possession of firearms by felons and the mentally ill” and listed some. *Heller*, 554 U.S. at 626–27. Circuits against as applied challenges to 18 U.S.C. § 922(g)(1) incorrectly rely on this dictum even after the subsequent opinion in *Bruen* expressly clarified Second Amendment regulation analysis. See e.g. *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024); *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025).

In *Bruen*, the Supreme Court laid out a test for courts to use when analyzing the constitutionality of firearms regulations. See *Bruen*, 597 U.S. at 1. Under this test the Constitution presumptively protects a defendant’s conduct when covered by the Second Amendment’s plain text. *Id.* at 24 The burden falls on the government to justify the regulation by demonstrating the regulation’s consistency with a historical firearm regulation. *Id.* Only after this burden is met may a defendant’s conduct fall outside second amendment protections. *Id.* Finding a historical analog entail comparing “why” lawmakers enacted the regulation and “how” it operates. *Rahimi*, 602 U.S. at 692. The closer the statute “reflects its historical analog in principle and operation, the more likely it is to be upheld.” *United States v. Hemani*, 146 S. Ct. 1677, 1686 (2026). The purpose of this requirement is not to find a “historical twin” but rather to find a justification for why the regulation should be applied to the specific felony. *United States v. Diaz*, 116 F.4th 458, 464-66 (5th Cir. 2024).

Under *Bruen*, the Second Amendment certainly covered conduct under the statute as it burdens the right to bear arms. *Id.* at 466. However, many circuits argue that defendants under

the statute are not part of “the people” protected by the Second Amendment to avoid a *Bruen* analysis entirely. *Id.* (“The government also raises the familiar argument that the defendant is not among “the people” protected by the Second Amendment”). This reasoning incorrectly conducts the *Bruen* test by using a historical analysis at the first step rather than the second step. *See United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024). In *Jackson*, the court used historical records at *Bruen*’s first step to determine that the defendant was not part of the class of people protected by the Second Amendment. *Id.* Misapplying the *Bruen* test in this manner contradicts the Supreme Court’s rule gives the government a way to avoid their burden in the second step of *Bruen*. This reasoning utilizes *Heller*’s dicta to avoid felony-by-felony analysis entirely. *Jackson*, 110 F.4th at 1125. The Supreme Court clarified in *Rahimi*, that “when the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to “justify its regulation.” *Rahimi*, 602 U.S. at 691 (quoting *Bruen*, 597 U.S. at 24). Thus, a defendant’s status as a felon only becomes relevant at *Bruen*’s second step and does not preclude him from being in the class of people protected by the second amendment. *See Diaz*, 116 F.4th at 466-67.

Branders’ circumstances fit within this rule. She is an American citizen who kept a handgun at home for protection, locked the weapon in one drawer, stored the ammunition separately, and cooperated with federal agents. Her charged conduct therefore falls within the Amendment’s text and this Court’s precedent.

A potential sentence may define federal statutory liability, but it cannot categorically define constitutional membership. Section 922(g)(1) includes a person convicted of “a crime punishable by imprisonment for a term exceeding one year,” subject to § 921(a)(20). 18 U.S.C. §§ 921(a)(20), 922(g)(1). Because that rule primarily turns on the authorized maximum

imprisonment term, it reaches some misdemeanors. See *United States v. Williams*, 113 F.4th 637, 640 n.1 (6th Cir. 2024); *Range v. Att’y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024). *Range* and *Williams* accordingly treat a qualifying conviction as relevant to historical justification, not as an automatic exclusion from “the people.” *Range*, 124 F.4th at 226–28; *Williams*, 113 F.4th at 648–50. Branders qualifies under the statute because Virginia authorized more than one year, although the sentencing court suspended her two-year sentence and placed her on probation. Thus, Branders is within the scope of the Second Amendment analysis and is not *de facto* excluded from qualifying.

A “presumptively lawful” restriction is not categorically a textual exclusion. *Heller* stated that its decision should not “cast doubt on longstanding prohibitions on the possession of firearms by felons” and described those prohibitions as “presumptively lawful.” 554 U.S. at 626–27 & n.26. The *Rahimi* opinion repeated the same brightline and did not hold § 922(g)(1) as always running against Second Amendment considerations. *Rahimi*, 602 U.S. at 699. Neither decision placed every person covered by § 922(g)(1) outside “the people” or completely barred an as-applied challenge. Applied here, the presumption preserves § 922(g)(1)’s valid applications while allowing Branders to show that her remote, negligence-based conviction does not establish a continuing danger of firearm misuse that conforms to the Anglo-American tradition of firearm ownership.

Pre-deprivation process establishes the predicate conviction of the analysis, but it does not conclusively establish the historical test required for lifetime disarmament. *United States v. Hemani* distinguished § 922(g)(1) from the unlawful-user prohibition because a felony conviction supplies “some manner of pre-deprivation process.” *Hemani*, 608 U.S. at 791. But *Hemani* neither examined § 922(g)(1)’s historical foundation nor barred individualized review.

*Id.* at 780–81, 790–95. Branders’ conviction conclusively establishes her past guilt for the neglect that caused Kenneth Drew’s death. However, it does not establish that she remains a societal danger with a firearm decades later.

This Court should hold that Branders remains one of “the people” and require the Government to justify her permanent disarmament based on the tests articulated by this Court in *Rahimi* and *Bruen* and accounting for her actual offense, sentence, history, and firearm conduct.

b. **The *Bruen* Test’s Historic Analog Requirement Calls for Individualized Inquiry and Thus Cannot Foreclose As-Applied Challenges to the Statute.**

18 U.S.C. § 922(g)(1) cannot categorically apply to all felons because it fails at *Bruen*’s second step. The Second Amendment’s plain text covers the conduct of the statute. *Rahimi*, 144 S. Ct. at 1907 (*Gorsuch*, J., concurring). Once the Amendment’s text covers a person and her conduct, the Government must justify the restriction through a well-established historical analogue that is relevantly similar in both why and how it burdens armed self-defense. *Rahimi*, 602 U.S. at 692. The analogue does not need to be a “historical twin,” but it must reflect the same underlying principle. *Rahimi*, 602 U.S. at 691–92. In assessing similarity between the modern and historical regulation, the court assesses the burden on the defendant’s Second Amendment right and whether that burden is comparably justified. *Diaz*, 116 F.4th at 467.

In *Diaz*, the government had to show which specific previous crime, car theft, evading arrest, or possessing a firearm as a felon, could serve as a predicate for the § 922(g)(1) charge. The government showed in the colonial-era, lawmakers charged theft crimes with the death penalty, creating a historical analogue for the defendant’s crime of theft. *Id.* at 468. The court in *Diaz* emphasized that “Simply classifying a crime as a felony does not meet the level of historical

rigor required by *Bruen*.” *Id.* at 469. In *Rahimi*, the government provided surety law as a historical analogue for a challenge to 18 U.S.C. § 922(g)(8). *Rahimi*, 602 U.S. at 498. The defendant sustained a temporary restriction imposed after a court found a credible threat to another person’s physical safety. *Id.* at 698–700, 702.

Some circuits have tried to justify a categorical ban on all felons in *Bruen*’s second step. The Second Circuit ruled that there existed historical analogues consistent with 18 U.S.C. § 922(g)(1) pointing to general 17<sup>th</sup> century laws that regulated firearms. *Zherka v. Bondi*, 140 F.4th 68, 78 (2d Cir. 2025). Similarly, the Eighth Circuit pointed to a history of generally allowing classes of people to be banned from possession due to the risk of harm they may possess. *Jackson*, 110 F.4th at 1128. By failing to conduct a “why” and “how” analysis, both circuits have failed to meet the historical analogue rigor required by *Bruen* in pointing to general prohibitions for their reasoning. *See generally United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024); *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025). The Second Circuit further admits:

Those laws alone may not be sufficient to establish a historical tradition of firearms regulation, but the modern concerns that they addressed, and continue to address, diminish the government's burden of drawing a tight historical analogy to Section 922(g)(1).

*Zherka*, 140 F.4th at 79. *Range*, by the Third Circuit, properly analyzes the second step of *Bruen*. *See Range v Att’y Gen*, 124 F.4th 218 (3d Cir. 2024). In *Range*, the government offered historical analogues like those in *Jackson*. *See Range*, 124 F.4th at. 229. However, the Third Circuit concluded that these analogues are too broad under *Bruen*. *Id.* Furthermore, the court concluded that general historical laws disarm categories of people, such as race and religion,

would be unconstitutional today. *Id.* Thus, under a complete *Bruen* analysis, there exists no historical analogue to justify a categorical application of 18 U.S.C. § 922(g)(1) to all felons.

The nature of *Bruen*'s second step analysis calls for individual analysis of each felony. Thus, as applied challenges should exist for Branders, simply categorizing her as a felon fails the strict inquiry of *Bruen*. Branders' circumstances are markedly and materially different. Her nearly twenty-five-year-old conviction arose from negligence and involved no firearm, threat, or intentional violence. She completed her punishment, had no other felony convictions identified in the record, and stored the handgun safely. A statutory maximum penalty does not establish that these facts fit a historical tradition of permanent disarmament.

c. **Precluding As-Applied Challenges Unjustifiably Suppresses an Individual's Right to Defend Herself and Her Home, Deviating Significantly from Historical Practice.**

The *Bruen* test calls for an analysis of historical tradition to ensure that laws are consistent with the Nation's "tradition of firearm regulation." *Bruen*, 597 U.S. at 2. As established, these analogies need not be identical to the questioned regulation. *Rahimi*, 602 U.S. at 682. A historical analogy needs only to be "relevantly similar." *Id.* at 698. In previously used historical analogies, the standard is clear: courts can only infringe on second amendment rights when there is a vested concern for public safety. *See Rahimi*, 602 U.S. at 697; *see also U.S. v. Levasseur*, 2026 U.S. App. LEXIS 28377, at \*16 (1st Cir. Sept. 16, 2026). The regulation sought by the Respondents exceeds any scope granted by previously used historical analogies.

In *Rahimi*, the Court connects surety laws to Section 922(g), citing precedents that prohibit the misuse of firearms. *Rahimi*, 602 U.S. at 698. Surety laws allowed for targeted restrictions protecting against the misuse of firearms. The Massachusetts government used surety laws to regulate specific dangerous individuals from handling deadly weapons. *Id.* at 697. The

Court states that surety laws confirm what “common sense suggests” that courts may disarm dangerous individuals. *Id.* The Court in *Rahimi* specifically cites under surety laws that an accused could request an exception to his firearm restriction if he “needed his arms for self-defense.” *Id.* at 697.

Under the same historical analogy in *Rahimi*, Branders would not qualify as a dangerous individual. Branders is a woman in her late 70s who only obtained a firearm for her own protection and cooperated with law enforcement that entered her home. One twenty-five-year-old nonviolent felony conviction is hardly within the scope of what historical lawmakers intended with firearm regulation. She is far from the “dangerous” individual imagined by Massachusetts lawmakers under Surety Laws. As the district court puts, Branders’ crime is one of negligence, not one of violence.

The First Circuit looked back to the 1770s, choosing to analogize laws that disarmed British loyalists during the Revolutionary War. *Levasseur*, 2026 U.S. App. LEXIS 28377, at \*14-15. These laws cited a desire to disarm “persons disaffected to the liberty and independence of [the country] ...” *Levasseur*, 2026 U.S. App. LEXIS 28377, at \*16 [quoting act of Apr. 2, 1779, reprinted in *Laws Enacted in the Second Sitting of the Third General Assembly of the Commonwealth of Pennsylvania* 188 (John Dunlap ed., Philadelphia, 1779)]. These laws contain a distinct concern for public safety, choosing to regulate only British loyalists. *Id.* at \*16. The early U.S. governments saw British loyalists as a distinct, specific threat to the country. *Id.* at \*17. However, Branders is much unlike the British loyalists many founding fathers sought to regulate. Branders has no interest in disrupting public safety. Distinctly, Branders wanted a firearm for her own protection as a single, older woman living on her own.

Regulating her desire for protection contrasts with what founding lawmakers wanted regarding Second Amendment limitations. Lawmakers tested the scope of the Second Amendment during the 1770s, writing laws in a way that upheld the protecting for peaceful citizens. *Id.* at \*17. The Founding Fathers carefully selected the words of the Second Amendment denoting that it guarantees the “right of the people to keep and bear arms.” U.S. Const. amend. II. A right further discussed in Massachusetts to encompass “peaceable citizens.” *Levasseur*, 2026 U.S. App. LEXIS 28377, at \*17 (quoting Schwartz, *supra*, at 681). To supersede the rights guaranteed to “peaceable citizens” it is clear the law needs to target specific classes of dangerous individuals. Generalizing all felons falls short of the standard set by these historic analogues. Since her charge in 2001, Branders maintains a clean record besides a misdemeanor charge for reckless driving. *R.* at 3. Stripping a peaceable citizen of her constitutionally guaranteed right when she is not a threat to public safety is beyond the limitations of the Constitution.

In *U.S. v. Hemani*, the Court analyzes habitual drunkard laws; laws focused on regulating the behavior of individuals who drank regularly. *Hemani*, 146 S. Ct. at 1687-8. Concentrated mostly in the early 1800s, these habitual drunkard laws allowed the government to protect public safety by disarming intoxicated individuals. *Id.* However, habitual drunkard laws had an extremely small scope. *Id.* at 1688. Lawmakers solely intended habitual drunkard laws to regulate the level of intoxication that left the individual incapable of controlling his behavior. *Id.* Habitual drunkard laws targeted those without “self-control” or who were a “[danger] to himself or others.” *Id.* (quoting Act of Mar. 30, 1876, §9, 19 Stat. 10-11). Lawmakers had a narrow scope that focused on protecting public safety, and there is a clear intention to only regulate individuals deemed dangerous. *Id.* These laws would focus only on those who might be repeatedly intoxicated. *Id.*

History dictates a much more concentrated and specific category of dangerous people. Branders is not a repeat offender. Her felonious conduct was an isolated instance that occurred over two decades ago. Using a habitual drunkard law as a backdrop, Branders is hardly a dangerous or out-of-control individual that the law can regulate. The discussed historical precedent greatly favors a strict reading of the scope granted by the Second Amendment. Surety laws, early 1770s laws focused on British loyalists, and habitual drunkard laws all selected specific categories of citizens deemed as dangerous. All these laws give leeway to regulate the Second Amendment, but do not broadly infringe on the rights of peaceable citizens. History dictates a much more concentrated and specific category of dangerous people. By precluding as-applied challenges to broadly regulate all felons' second amendment rights, this Court would greatly diverge from established historical practice.

**II. ASSUMING AS-APPLIED CHALLENGES EXIST FOR THE DEFENDANT, APPLICATION OF 18 U.S.C § 922(g)(1) IS UNCONSTITUTIONAL AS-APPLIED TO THE PETITIONER'S PREVIOUS SINGULAR, NONVIOLENT, TWENTY-YEAR-OLD CONVICTION FOR FELONY CHILD NEGLECT.**

Petitioner respectfully requests that this Court reverse the Fourteenth Circuit's alternative holding that Section 922(g)(1) is constitutional as applied to Branders. First, courts must assess the predicate conviction for what it shows about danger, not its felony label alone. Kenneth Drew's death was a grave consequence of Branders' neglect, but her offense involved no intentional violence, threat with a weapon, or firearm. Second, the inquiry must account for her entire record. *See United States v. Williams*, 113 F.4th 637, 659–60, 662–63 (6th Cir. 2024). Her later reckless-driving conviction warrants consideration, but it does not erase the significance of more than two decades without another felony or any identified misuse of a firearm. She kept the handgun locked at home for protection. Third, historical laws disarming groups once deemed dangerous cannot substitute for an analogy that fits both the justification and burden of this

continuing prohibition. See *United States v. Rahimi*, 602 U.S. 680, 691–92 (2024). Branders’ particular offense, subsequent record, and manner of possession do not justify applying Section 922(g)(1) to her.

a. **18 U.S.C § 922(g)(1) is Unconstitutional As-Applied to the Petitioner Because Her Previous Nonviolent Felony Fails to Meet the High Standard Required to be Indicative of Future Probable Danger.**

1. **Nonviolent felonies fail to establish justifiable proof of future harm.**

An as-applied challenge requires examination of the predicate conduct and the defendant’s entire record, including whether later conduct supports a finding of dangerousness. *Williams*, 113 F.4th at 657–60, 662–63 (6th Cir. 2024). In *United States v. Green*, that record included five felonies, a high-speed flight from police, repeated drug trafficking, and firearm possession while on supervised release. No. 23-cr-20506, slip op. at 2–3, 8–12 (E.D. Mich. Oct. 10, 2024). Branders’ neglect caused a child’s death, which weighs heavily in the analysis. But the record identifies no comparable pattern after that offense: the unlicensed-daycare misdemeanor arose from the same episode, and her only later conviction was speeding. Branders did not use her firearm to further trafficking, flee from the police, or violate supervised release conditions.

Courts must evaluate later driving offenses for the danger their circumstances demonstrate. In *United States v. Banks*, the court considered two misdemeanor DUI convictions and numerous other driving offenses but found that, together with an older attempted drug-possession felony, they did not establish a dangerous pattern warranting disarmament. 793 F. Supp. 3d 896, 908–10 (N.D. Ohio 2025). *Banks* does not resolve the weight of Branders’ felony, but demonstrates that her separate driving conviction cannot simply add to the predicate

offense. Courts must still look for a continuing pattern of physical danger and carefully examine the particulars of a driving offense.

The relationship between the predicate offense and firearms provides other factual distinctions. In *United States v. Flores*, the defendant's sole felony was attempted unlawful carrying of a concealed gun, so the predicate itself demonstrated unlawful firearm conduct. No. 24-20579, slip op. at 1, 4–5 (E.D. Mich. Jan. 30, 2025). Branders' predicate involved no firearm, and agents found her handgun and ammunition in separate locked drawers at home. *United States v. McDaniel* reasoned that pending child-neglect charges alone did not establish a danger justifying the restriction. No. 22-cr-176, 2024 WL 3964339, at \*8 (E.D. Wis. Aug. 28, 2024). Branders' conviction and its consequence demand scrutiny, but neither *Flores* nor *McDaniel* permits the offense label alone to substitute for an assessment of her actual conduct and subsequent record.

## **2. A singular felony inadequately predicts whether the defendant may harm in the future.**

For certain crimes, dangerousness is not a difficult label to apply as the crime itself is inherently dangerous. *Williams*, 113 F.4th at 659. However, in such cases where a crime is not inherently dangerous, Courts have utilized different methods in determining whether disarmament is applicable. In *United States v. Williams*, the Sixth Circuit postured that situations where the felony is not dangerous require courts to look beyond the current proceedings to past proceedings involving the defendant. *Id.* at 659. The Sixth Circuit applies a “commonsense” approach to evaluate a defendant's criminal history to determine dangerousness. *Id.* at 660.

Under this approach, courts need not find a “‘categorical’ match,” and must instead evaluate defendants based on “judicially noticeable information.” *Id.* Besides neglect, Branders

has no other felony convictions. As the district court states, Branders' crime is one of "negligence" and not one of violence. Branders was ignorant and careless in hiring her son, which caused the death of a young child. However, unlike traditionally dangerous crimes like kidnapping or homicide, Branders had no active role in the crime that caused her felony conviction. Branders' felony conviction punishes her inaction, rather than her actions.

Branders does have two misdemeanors: one for operating a childcare facility without a permit, and one more recent for reckless driving. Using the Sixth Court's commonsense approach, neither of Branders' misdemeanors were dangerous. The permit misdemeanor is the result of failing to fill out and submit proper paperwork. The second is a minor traffic infraction that resulted in a suspension of Branders' license for a short period of time. However, neither of those counts were punishable in the same extreme manner as a felony. Both crimes demonstrate Branders' unlikeliness to become a repeat offender. From the 20 years since becoming a felon, and the decades before them, Branders has had minimal run-ins with the law. She has only a single, minor, traffic infraction for speeding. Taking both misdemeanors into consideration, Branders' record demonstrates the unlikeness of Branders to be dangerous and a repeat felony offender. Branders' felony falls far from the level of scrutiny, founding lawmakers intended when they created disarmament. Categorically stripping Branders of her rights because of a single felonious instance occurring over twenty years ago is fundamentally unconstitutional.

**b. Nonviolent Felons Should be Allowed to Own Firearms Because Disarming Them Reinforces Old Discriminatory Frameworks for Denying Constitutional Rights to Classes of People.**

Disarming all felons under 18 U.S.C. § 922(g)(1) is consistent with discriminatory practices of disarming classes of people from many points in America's history. Jamie G. McWilliam, *Refining the Dangerousness Standard in Felon Disarmament*, 108 Minn. L. Rev.

Headnotes 315, 319 (2023). During the 17<sup>th</sup> and 18<sup>th</sup> century, the American government denied arms to many classes of people including African Americans, Native Americans, and Catholics. *Id.* at 318. These classes shared a common feature; the government thought them to be dangerous. *Id.* at 319. However, their dangerousness was not determined through previous violent offenses, rather, lawmakers evaluated them for the potential of future violence. *Id.* at 320. Laws disarmed the Catholics due to fear that they *may* side with the French in the French and Indian war. *Id.* The government disarmed the slaves due to fear that they *may* “resist the tyranny of their owners.” *Id.* Under this standard, all felons meet the standard for disarmament because they may be more dangerous. *Id.* Employing this reasoning is not only discriminatory but unnecessary when the principles underlying the Second Amendment provide a solution that balances the interests of Constitutional rights and dangerous persons owning firearms. *Id.* at 321.

Defense against danger is a key principle underlying the Second Amendment. *Id.* One of these “dangers” is threats of personal violence such as rape, murder or battery. *Id.* at 322. Self-defense is a natural impulse that supports the right to protect one's life. *Id.* Furthermore, protecting one's life serves “the common good of the individual and their political community.” *Id.* The right to bear arms supports the right of self-defense by allowing an individual to have the appropriate tools to defend themselves in a dangerous scenario. *Id.* A consequence of this right would be that the Second Amendment does not protect those who have committed the acts that would require a firearm to protect oneself. *Id.* at 323. Disarming those who committed these violent crimes would further fulfil the principle of serving the common good of the individual and their political community because it protects individuals from harm and appropriately decreases danger to others by disarming individuals proven to attack others. *Id.* at 324. By

relying on definitive past dangerous conduct, the risk of discriminatory discretion decreases by utilizing solid evidence for disarmament. *Id.*

Haskill gifted Branders the gun for the very principle justifying the Second Amendment: self-defense. She was an elderly mother who feared the actions of her son who was known to be violent. She has never created a situation that would require someone else to protect themselves with a firearm because she has no history of violence. Therefore, Branders belongs in the class of people protected under the Second Amendment and deserves the right to defend herself. Thus, this court should reverse the lower court's holding and rule that 18 U.S.C. § 922(g)(1) is unconstitutional as applied to Branders.

### **CONCLUSION**

This Court should reverse the lower court's decision as defendants are not precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1) pursuant to this Court's decision for a two-factor test in *Bruen* and restricting Branders' ability to own a firearm violates her Second Amendment rights as she is not a dangerous felon the statute precludes.

Respectfully Submitted,

/s/ Team HQ  
Counsel for Petitioner