

No. 26-179

IN THE SUPREME COURT OF THE UNITED STATES

TERRY BRANDERS,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Fourteenth Circuit

BRIEF FOR RESPONDENT

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Counsel for Respondent

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 922(g)(1) (2024) permits challenges to the Second Amendment in either the Eighth Circuit and its progeny or Third Circuit and its progeny, when the defendant has a felony conviction that reflects the historical tradition for restricting firearms from dangerous persons?
2. Whether, consistent with the Second Amendment's text and historical tradition of firearm regulation, can 18 U.S.C. § 922(g)(1) (2024) constitutionally prohibit firearm possession by an individual convicted of felony child neglect?

STATEMENT OF THE CASE

Terry Branders (Petitioner), a retired factory worker, began operating a day care center in her home without a daycare license in Alexandria, Virginia. R. at 2. Her eighteen-year-old son, Nelson, helped Petitioner by providing pick-up and drop-off services for the children using his fifteen-passenger van. *Id.* After a late night out, with just a few hours of sleep, Nelson picked up twelve children ranging between preschool and the youngest, Kenneth being only eleven months old. *Id.* Nelson thought he dropped all the children off with his mother but mistakenly left Kenneth in the van and drove home to his apartment to sleep. *Id.* Petitioner had not noticed Kenneth was missing until two hours after Nelson dropped off the other children and spent over an hour attempting to reach Nelson and Kenneth's mother before calling 911. *Id.* Consequentially, when the police found Kenneth in the van, he had suffered severe heart-related injuries and shortly died after he arrived at the hospital. Nelson and Petitioner were both convicted of felony neglect of a child under Va. Code Ann. § 18.2-371.1. *Id.* Petitioner was also convicted of the misdemeanor of operating a daycare without a license and was sentenced on March 5, 2001, and given a two-year suspended sentence and was placed on probation. R. at 2-3.

In 2020, Petitioner moved to Appleton, Newcoastland and shortly after, was convicted of a misdemeanor for reckless driving and had her license suspended for 6 months. R. at 3. Branders recently let her son Nelson move in with her and resided in the basement and since the incident he has had difficulties with finding employment and Branders has suspected that he might use or sell drugs. *Id.* Petitioner befriended Becky Haskil (Haskil), a fellow volunteer at their local food bank. *Id.* One day after discussing each of their family issues, Haskil suggested that Petitioner should get a gun for protection and offered Petitioner one of her deceased husband's guns. *Id.* Petitioner accepted the gun and took it home. *Id.*

In June 2024, the DEA received a tip about Nelson's drug related activities and asked Petitioner to search her house. R. at 3-4. Petitioner allowed the officers to freely search the house and could not find any drug activity related evidence, but the officers did however recover Petitioner's gun. R. at 4. Petitioner admitted it was a gift and the officers, having knowledge that she was a convicted felon, they arrested her for possessing a firearm. R. at 4. Petitioner was charged on July 3, 2024, for possessing a firearm as a felon under 18 U.S.C. § 922(g)(1) and moved to dismiss the charge contending the statute violated the Second Amendment as-applied to her. R. at 4.

The United States District Court for the Eastern District of Newcoastland dismissed the charge finding that 18 U.S.C. § 922(g)(1) violated the Second Amendment because there is no indication that she poses a credible threat to the safety of others because her felony conviction was the result of negligence, not malice. R. at 6-7. The Government appealed the District Court's dismissal of the indictment against Branders on the grounds that Section 922(g)(1) violated the Second Amendment. R. at 8. The United States Court of Appeals for the Fourteenth Circuit reversed the District Court's dismissal stating the District Court erred in applied case-by-case analysis and further erred by using improper historical analysis. R. at 8-9. The Fourteenth Circuit remanded the case for further proceedings. *Id.* The Supreme Court of the United States granted the Petitioner's Petition for Certiorari. R. at 13.

SUMMARY OF THE ARGUMENT

The United States Court of Appeals for the Fourteenth Circuit correctly vacated the District Court's dismissal of Petitioner's indictment because 18 U.S.C. § 922(g)(1) is consistent with the Second Amendment's text and history. This Court should resolve the existing circuit split regarding whether felons can be disarmed by adopting the Eighth Circuit's categorical approach to Section 922(g)(1) as-applied challenges and uphold the Fourteenth Circuit's judgment.

First, the circuits are split as to whether Section 922(g)(1) allows defendants to bring as-applied challenges based on the individual circumstances surrounding their felony convictions. The Third, Fifth, Sixth, and D.C. Circuits allow as-applied challenges while the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh have rejected as-applied challenges. This split stems from the different interpretations of the historical analogue inquiry established in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).

Second, the Eighth Circuit’s categorical approach is consistent with the Second Amendment’s original meaning because *Bruen* requires courts to identify a historical analogue of firearm regulation, not a historical twin. The historical tradition of firearm regulation conveys that the government has restricted firearm possession by categories of persons. Hence, Section 922(g)(1) does not require a founding-era law to support each felony offense, and the Third Circuit’s approach improperly narrows the historical inquiry.

Third, even if we adopted the Third Circuit’s as-applied challenge to Section 922(g)(1), the statute is still constitutional as-applied to the Petitioner. The Petitioner’s felony conviction for child neglect which resulted in the death of an eleven-month-old, is conduct that is within historical tradition of disarmament persons convicted of serious crimes.

ARGUMENT

I. THE EIGHTH CIRCUIT’S INTERPRETATION OF THE SECOND AMENDMENT IS CORRECT BECAUSE ITS CATEGORICAL APPROACH IS CONSISTENT WITH THE SECOND AMENDMENT’S ORIGINAL MEANING, WHILE THE THIRD CIRCUIT IMPROPERLY APPLIES THE HISTORICAL ANALOGY TOO NARROWLY.

The Second Amendment’s historical origin extends back to England during the Restoration and Glorious Revolution. *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008). During the reigns of Stuart Kings Charles II and James II, the Crown used military forces to suppress and

disarm political opponents. *Id.* This ultimately contributed to the creation of the Declaration of Rights of 1689, which reflected the idea that Protestant people should have some ability to possess arms for self-defense and as a check against governmental abuse. *Id.* at 583. Throughout the period of the Revolutionary War, American colonists and the Founding Fathers were influenced by these English experiences and has been “the predecessor to our second amendment.” *Id.* at 583-84.

The Second Amendment’s Preamble states: “A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend II. The Second Amendment contains a prefatory clause and an operative clause. *Heller*, 554 U.S. at 577-78. The prefatory clause explains its purpose. *Id.* at 588-89. While the operative clause is the actual right, which is the right of the people to keep and bear arms.” *Id.* at 580-81.

The Omnibus Crime Control and Safe Streets Act of 1968 was enacted by Congress “[t]o assist State and local governments with reducing crime and increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.” Pub. L. No. 90-618, 82 Stat. 1213, 1216. “Congress found that there was a ‘widespread traffic in firearms’ being transported affecting interstate and foreign commerce that made it effortless for criminals, addicts, and individuals with mental deformities to possess firearms which has contributed to “violent crime in the United States.” *United States v. Jackson*, 110 F.4th 1120, 1128 (8th Cir. 2023) (quoting Pub. L. No. 90-351, § 901(a)(1), (2), 82 Stat. 225, 225). Congress found that federal control over these weapons was the only way this issue could be addressed. *Id.* at § 901(a)(3).

A. The Eighth Circuit Properly Applied *Bruen*’s Historical Tradition Analogue Framework

There is a circuit split as to whether the federal ban on individuals convicted of felonies from possessing firearms is unconstitutional, and whether defendants can bring as-applied challenges under 18 U.S.C. § 922(g)(1). The majority view, represented by the Eighth Circuit, rejects case by case felony review and has upheld Section 922(g)(1) based on our Nation’s historical tradition of disarming people categorically. *See Jackson*, 110 F.4th at 1126-27. The Fourth and Eleventh Circuits agree with the majority view but hold that felons are not part of “the people” and therefore fall outside the Second Amendment’s protected class. *See United States v. Hunt*, 123 F.4th 697, 703 (4th Cir. 2024); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025). The Second, Eighth, Ninth, and Tenth Circuits hold that felons are a member of the protected class but there is historical tradition that allows Congress to disarm felons, including non-violent offenses. *See Zherka v. Bondi*, 140 F.4th 68, 76 (2d Cir. 2025); *United States v. Duarte*, 137 F.4th 743, 753-54 (9th Cir. 2025); *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); *Jackson*, 110 F.4th at 1128.

By contrast, the minority-view circuits, allow as-applied challenges and conduct more individualized reviews on defendant felony disarmament but, lack a uniform approach. *See Range v. Att’y Gen. United States (Range I)*, 69 F.4th 96, 105 (3rd Cir. 2023); *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 650 (6th Cir. 2024); *Medina v. Whitaker*, 913 F.3d 152, 161 (D.C. Cir. 2019).

This Court reviews constitutional challenges de novo. *United States v. Diaz*, 116 F.4th 458, 462 (5th Cir. 2024) (citing *United States v. Perez-Macias*, 335 F.3d 421, 425 (5th Cir. 2003)). The Second Amendment protects an individual’s right to keep and bear arms, but that right is not unlimited. *Heller*, 554 U.S. at 626.

The Supreme Court rejected the lower courts' "means- end scrutiny" and established the framework for evaluating issues regarding the Second Amendment by establishing a textual and history approach. *Bruen*, 597 U.S. at 19. The approach adopted by this Court is "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 24. "The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* To satisfy this burden, the historical analogue does not require a "dead ringer," or "historical twin" and instead, requires the modern regulation to be "relevantly similar" to the historical regulation. *Id.* at 29-30. In *Bruen*, Justice Thomas writing for the majority, explained that a lack of distinctly similar historical regulation is relevant evidence to consider when a firearms law being challenged is inconsistent with the Second Amendment. *Id.* at 27. However, Justice Thomas further explained that some modern firearm laws address new or unprecedented social issues." *Id.* at 28. Therefore, courts should use analogical reasoning to compare historical laws to modern firearm regulations using "at least two metrics: how and why the regulations burden the right to armed self-defense." *Id.* at 29.

Here, the absence of a historical law specifically disarming individuals convicted of child neglect does not mean that Section 922(g)(1) is unconstitutional. R. at 6-7. As stated in *Bruen*, the proper framework requires courts to inquire whether the modern regulation is consistent with historical traditions of firearm regulation, not whether the regulation has a "historical twin" 597 U.S. at 29. *Bruen* also recognizes that modern laws may address societal issues that did not exist at the time of the Founding Era. *Id.* at 28. Therefore, the lack of historical regulation is not an automatic defeat of the Government's position, and the historical inquiry allows courts to consider

the broader principles in historical firearm regulations and compare them to the modern law when determining its constitutionality. *Id.* at 29.

In *United States v. Jackson*, Jackson challenged Section 922(g)(1) as-applied to him and argued that “his drug offenses were ‘non-violent’ and [did] not show that he is more dangerous than the typical law-abiding citizen.” 110 F.4th at 1125. The court upheld the conviction using *Bruen*’s analogical framework and identified historical laws that disarmed specific groups of people including religious groups, Native Americans, Catholics, Protestants, and those who refused to take loyalty oaths. *Id.* at 1126. The Eighth Circuit examined founding statutes and historical traditions of British and early American legislatures disarming individuals who committed non-violent offenses including hunting and theft which also could have been punishable by death. *Id.* at 1127. As the Eighth Circuit recognized in *Jackson*, both founding-era laws and Section 922(g)(1) operate through the exact same how which is to categorically dispossess specific groups of people from possessing firearms. *Id.* They also possess the same why which is to protect the public and establish order by disqualifying people from owning firearms who have proven to be more likely to not abide by the laws. *Id.* Therefore, disarming individuals who have proved to not be law abiding citizens is consistent within Congress’ powers and Section 922(g)(1) is not unconstitutional. History conveys that there is no dangerousness requirement. *Id.* at 1127-28.

This distinction is critical *sub judice*. Petitioners’ argument is materially similar to the argument rejected in *Jackson*. Like Jackson, Petitioner challenges Section 922(g)(1) because her conviction does not demonstrate a reputation of being dangerous. R. at 6-7. As the court in *Jackson* stated, the relevant inquiry is whether the Nation’s historical tradition supports categorical firearm restrictions based on a person’s status. Applying this framework here, Congress is justified in enacting Section 922(g)(1) as a categorical restriction on firearm possession by convicted felons.

Petitioner cannot invalidate this statute and its historical tradition solely by arguing that her offense was nonviolent. R. at 6-7. The individualized dangerous requirement would impose the historical twin requirement that *Bruen* specifically rejected.

The Eighth Circuit in *Jackson* also discussed why the Third Circuit has incorrectly interpreted *Bruen*'s two-step approach. Some courts have interpreted the phrase "presumptively lawful" to mean that the Court was suggesting a presumption of constitutionality that could be rebutted on a case-by-case basis. *Id.* at 1128. The court in *Jackson* rejected that interpretation because it would "cast doubt on the constitutionality of these regulations" in numerous cases, despite the Supreme Court's statement in *Heller* that "nothing in [its] opinion should be taken to cast doubt" on the regulations. *Id.* at 1128-29 (quoting *Heller*, 554 U.S. at 626-27). The court in *Jackson*, instead, explained that the Court described these regulations as "presumptively lawful" because they were not directly at issue in *Heller*, not because their constitutionality was dependent on a case-by-case basis. *Id.* at 1128.

This distinction further supports the majority approach because if Section 922(g)(1) required courts to inquire whether each individual felon is dangerous, the inquiry would then depend on the defendant's specific circumstances rather than the historical tradition. The Third Circuit's approach focuses on the wrong inquiry. The relevant inquiry is not whether the Petitioner is dangerous enough to justify disarmament but instead is whether the application of Section 922(g)(1) to persons convicted of felonies is consistent with this Nation's historical tradition of firearm regulation.

A. The Third Circuit's as-applied framework is so narrow that defendants with felony convictions cannot successfully raise claims of unconstitutionality about the Second Amendment.

The Third Circuit itself concluded its holding was "narrow," and limited it to the case at hand about a decades old felony related to fraudulent food stamps. *Range v. Att'y Gen. United*

States (Range II), 124 F.4th 218, 223–24, 232 (3d Cir. 2024) (en banc). As such, it is highly unlikely that defendants can successfully raise such claims. To do so would be to expand the test beyond its current scope. This logic more closely coincides with the reasoning applied by the Eighth Circuit. Thus, defendants with prior felonies are not likely to successfully bring claims.

The Third Circuit's approach to *Bruen* differs vastly from most Circuits and misapplies a major part of the framework. 597 U.S. at 17. *Bruen* established a two-step test to decide if a defendant's as-applied challenge to the Second Amendment is valid. *Id.* First, a court must ask whether “the Second Amendment's plain text covers an individual's conduct,” and if this occurs, “the Constitution presumptively protects that conduct.” *Id.* The Third and Fifth Circuits have held that the first step encompasses at least some individuals with felony convictions. *See Range II*, 124 F.4th at 223–25; *Diaz*, 116 F.4th at 464. (“The plain text of the Second Amendment covers the conduct prohibited by § 922(g)(1)”).

The Sixth Circuit has adopted three categories of “dangerousness” to consider when deciding an as-applied challenge. *Williams*, 113 F.4th at 663. The first was identified as crimes against the person, such as murder, rape, assault, and robbery, as particularly probative of dangerousness. *Id.* The second was identified as offenses like drug trafficking and burglary as crimes that, although not necessarily crimes against the person, pose a significant threat of danger. *Id.* Lastly, there are offenses such as mail fraud, tax fraud, and making false statements that do not themselves involve physical harm to another person or the community and therefore present a different dangerousness inquiry. *Id.* A defendant's entire criminal record may be considered to decide their level of dangerousness. *Id.* at 659–60.

The Third Circuit has not adopted the three categories, but the courts use the defendant's criminal record when evaluating an as-applied challenge. *See e.g., United States v. Williams*, No.

23-2773, 2025 WL 1341877, at *4–5 (3d Cir. May 8, 2025) (unpublished).¹ For example, the Third Circuit held that Rufus Williams’ convictions related to possession and distribution of drugs, as well as child endangerment were a “dramatically different criminal record” than the narrow constraints of *Range II*. *Id.* at *5.

The second part of the *Bruen* framework requires that the defendant’s offense has a “well-established and representative historical analogue, not a historical twin.” *Bruen*, 597 U.S. at 29. The Supreme Court reaffirmed this holding, finding a comparable offense is sufficient to follow historical firearm regulation. *See United States v. Rahimi*, 602 U.S. 680, 692–99 (2024).

Defendants with a history of felonies cannot simply invoke *Range II* to obtain a similar result and repossess their firearms because the Third Circuit’s holding was narrowly applied to the case at hand. *See* 124 F.4th at 232. Instead, the defendant must show both that their underlying criminal history does not pose danger and that their offense does not have a historical counterpart. *Bruen*, 597 U.S. at 17. Due to these narrow circumstances, it is unlikely a defendant can successfully raise an as-applied challenge under the Second Amendment.

II. APPLICATION OF 18 U.S.C. § 922(G)(1) TO A SINGLE TWENTY-YEAR-OLD CONVICTION FOR FELONY CHILD NEGLECT DOES NOT VIOLATE THE SECOND AMENDMENT ASSUMING AN AS-APPLIED CHALLENGE EXISTS.

The Supreme Court has thus far resolved only facial challenges to laws restricting firearm possession. *See Bruen*, 597 U.S. at 71; *Rahimi*, 602 U.S. at 702. It has not established a binding framework for determining whether federal laws are unconstitutional as-applied to a particular individual. *Id.* Accordingly, as-applied challenges to Section 922(g)(1) and similarly situated statutes remains largely confined to the federal district courts. *See Range II*, 124 F.4th at 232; *Williams*, 113 F.4th at 663; *United States v. Woolsey*, 759 F.3d 905, 909 (8th Cir. 2014). The Third

¹ While the case cited is unreported, it is nevertheless persuasive.

and Sixth Circuits have nevertheless begun to develop principles for addressing these challenges, providing budding guidance as courts navigate this developing area of Second Amendment jurisprudence. *See Range II*, 124 F.4th at 232; *Williams*, 113 F.4th at 663. Further, the Fifth and Eighth Circuits have also addressed as-applied challenges. *See Diaz*, 116 F.4th at 467 (holding the as-applied challenge applies to the individual because there is a tradition of disarmament felony conviction); *see also Woolsey*, 759 F.3d at 909 (rejecting defendant’s argument regarding as-applied challenges). Because as-applied challenges necessarily turn on the particular circumstances of the individual, no analogous case precedent directly addresses the specific type of felony and criminal record of Petitioner.

B. Petitioner’s felony child-neglect conviction is a violent offense that demonstrates the type of physical danger relevant to an as-applied challenge.

The distinction between Petitioner’s felony conviction and the felony conviction at issue in *Range II* is substantial. In *Range II*, the Third Circuit emphasized the defendant’s nonviolent offense and concluded that he did not “pose a physical danger to others” in holding Section 922(g)(1) is unconstitutional as-applied to him. 124 F.4th at 224, 232. The underlying offense in *Range II* involved making a false statement to obtain food-stamp assistance, which the court characterized as “a non-violent, non-dangerous misdemeanor[,]” and the defendant had not been incarcerated for the charge. *Id.* at 224. Petitioner’s underlying felony and incarceration is materially different. Her felony child neglect conviction is not comparable to making a false statement to obtain food-stamp assistance due to the presence of a violent crime as the underlying felony in the petitioner’s case. Virginia’s treatment of felony child neglect further underscores this distinction.

Virginia classifies a felony violation of Section § 18.2-371.1(A) as a violent crime. VA. CODE ANN. § 17.1-805(C) (West 2026). Petitioner was convicted of felony neglect of a child under

section 18.2-371.1. R. at 3. The felony statute is section 18.2-371.1(A), which discusses the conviction is considered a Class 4 Felony. VA. CODE ANN. §18.2-371.1. Further, unlike the defendant in *Range II*, the petitioner was incarcerated for four years. R. at 3. Accordingly, unlike the nonviolent and incarcerated offense at issue in *Range II*, Petitioner's underlying conviction involved felony child neglect and is treated as a violent crime under Virginia law. *See* VA. CODE ANN. §17.1-805(C). Thus, even applying the Third Circuit's reasoning in *Range II*, Petitioner's violent, incarcerated underlying felony places her case outside the factual circumstances which supported *Range II*'s as-applied holding and weighs against finding section 922(g)(1) unconstitutional as-applied to Petitioner.

A more comparable case is the Eighth Circuit's decision in *United States v. Woolsey*, where the court denied the defendant's as-applied challenge pursuant to Section 922(g)(1) in part because his felony convictions were "not non-violent crimes." 759 F.3d at 909. The defendant's convictions included aggravated assault and resisting arrest. *Id.* The court further concluded the defendant had not shown that he was "no more dangerous than a typical law-abiding citizen." *Id.* at 909. The consideration of violent convictions in *Woolsey* is particularly analogous here because Petitioner's felony child-neglect conviction resulted in the death of a child and, as discussed above, is treated as a violent crime under Virginia law. *See* VA. CODE ANN. §17.1-805(C). Although Petitioner's charge does not bear the same name as those in *Woolsey*, the violent character of the underlying conduct is sufficiently similar. *Woolsey*, therefore, provides a more analogous framework for this Court, because the underlying convictions involve violent conduct and that characteristic weighs against finding 18 U.S.C. § 922(g)(1) unconstitutional as-applied.

C. Petitioner's underlying conviction demonstrates she poses a physical danger to others.

Turning to the “pose a physical danger to others” element as discussed in *Range II*, Petitioner also loses merit in this category. 124 F.4th at 224, 232. The danger contemplated by child neglect is not theoretical. The offense concerns conduct that can result in serious physical injury or death to a child. *See* VA. CODE ANN. § 18.2-371.1(A). In Petitioner’s case, the physical danger was actualized by the child’s death. R. at 2. The elements of Virginia’s felony child neglect charge further speaks to the danger associated with this type of conviction, the statute including conduct that “causes or permits serious injury to the life or health of such child.” VA. CODE ANN. § 18.2-371.1(A). Further, “serious injury” includes, mutilation, and life threatening internal injuries. VA. CODE ANN. § 18.2-371.1(A). In this case, the child within Petitioner’s care died from severe heat-related injuries. R. at 2.

The definition of child neglect further demonstrates the physical danger inherent in the offense. Black's Law Dictionary provides that “[c]hild neglect is a form of child abuse” and explains that “[i]n a severe case, criminal charges may be filed against a person suspected of child neglect.” *Neglect*, BLACK'S LAW DICTIONARY (12th ed. 2024). The definition of neglect includes “[t]he failure to give proper attention to a person or thing, whether inadvertent, negligent, or willful; that act of treating someone or something heedlessly or inattentively.” *Neglect*, BLACK'S LAW DICTIONARY (12th ed. 2024). The definition of child abuse likewise demonstrates the physical danger associated with the offense. Black's Law Dictionary defines abuse as “[i]ntentional or neglectful physical . . . harm inflicted on a child, including . . . a parent's or caregiver's act or failure to act that results in a child's . . . serious physical or emotional injury . . . or death. An act or failure to act that presents an imminent risk of serious harm to a child.” *Child abuse*, BLACK'S LAW DICTIONARY (12th ed. 2024). Furthermore, other states statutes also reflect a legislative determination that child neglect and abuse can create serious physical danger and, where death

results, can constitute among the most serious forms of criminal conduct. These statutes range from elevating the offense to different classes of felonies to allowing a child abuse felony to serve as the prerequisite felony for felony murder. *See* IND. CODE ANN. § 35-46-1-4 (West 2026); WIS. STAT. ANN. § 948.21 (West 2026); COLO. REV. STAT. ANN. § 18-6-401(West 2026); TENN. CODE ANN. § 39-15-401(West 2026); KAN. STAT. ANN. § 21-5402 (West 2026).

This understanding also fits within *Williams*'s discussion of dangerous offenses when determining whether Section 922(g)(1) is constitutionally applied to a defendant. 113 F.4th at 658-61. In *Williams*, the Sixth Circuit compliments with the Third Circuit by applying the as-applied challenge. *Id.* The as-applied challenge was ultimately denied because the criminal record of the defendant, including aggravated robbery, was sufficient to show the defendant was dangerous. *Id.* at 662. The court introduced a framework for determining the constitutionality of as-applied challenges to defendants: “[i]n determining whether an individual has met his burden to demonstrate that he is not dangerous, and thus falls outside of [Section] 922(g)(1)’s constitutionally permissible scope, courts—much like the officials of old—must focus on each individual’s specific characteristics.” *Id.* at 657-58.

The *Williams* court split offenses into three categories. *Id.* at 658-61. The first is crimes against a person, which are crimes like murder, rape, and assault that speak directly to whether an individual is dangerous. *Id.* at 658. However, child neglect is likely not considered one of the aforementioned common law crimes against a person. The third category consists of crimes that are harder to address when determining dangerousness, such as mail fraud or making false statements, because “[o]ften, such crimes cause no physical harm to another person or community.” *Id.* at 659.; *see Range II*, 124 F.4th at 224, 232. This category is not applicable to Petitioner because

her crime is considered violent and resulted in physical harm, the death of a child. R.at 2; VA. CODE ANN. §17.1-805(C).

The second category fits Petitioner’s case. The *Williams* court defines such crimes as: “crimes against a person, [that] may nonetheless pose a significant threat of danger. These crimes do not always involve a immediate and direct threat of violence against a particular person.” *Williams*, 113 F.4th at 659. The court gave examples such as drug trafficking and burglary and explained how those crimes can lead to violence. *Id.* The court then communicated that “[u]ltimately, most of these crimes put someone’s safety at risk, and thus, justify a finding of danger.” *Id.* Petitioner’s conviction of child neglect, which resulted in the death of a child, fits within this principle because child neglect can place a vulnerable person in serious physical danger even when the offense is based upon an omission rather than an affirmative act of violence. *See Child abuse*, BLACK’S LAW DICTIONARY (12th ed. 2024). Here, that danger was not merely possible or hypothetical; the neglect resulted in the death of a child from severe heat-related injuries. R. at 2.

A. Historical laws disarming persons convicted of crimes of violence provide a relevant historical analogue for applying 18 U.S.C. § 922(g)(1) to the Petitioner.

The historical treatment of child abuse and neglect resulting in death provides an additional connection between Petitioner’s offense and the historical category of violent crime. Before 1930, state supreme courts before recognized that parents, stepparents, and caretakers could be charged with murder or manslaughter when their abuse or willful neglect of a child resulted in the child’s death. *See, e.g., Lewis v. State*, 72 Ga.164, 164 (1884); *State v. Barnes*, 212 S.W. 100, 101 (1919). These cases demonstrate a historical recognition that a parent’s or caretaker’s neglect or abuse of a child could constitute conduct sufficiently serious to support a murder or manslaughter charge when the child died. *See id.* Similarly, Petitioner’s felony conviction arose from the neglect of a

child in her care and involved the death of that child, conduct that potentially could have been charged as murder or manslaughter had Petitioner been charged under the laws in effect at the time of these cases. R. at 2-3; *See Lewis*, 72 Ga. at 164; *Barnes*, 212 S.W. at 101.

Pennsylvania's Uniform Firearms Act provides a direct historical example of a law disarming individuals convicted of crimes of violence. Section 4 the Act provided, "No person who has been convicted in this Commonwealth or elsewhere of a crime of violence shall own a firearm, or have on in his possession or under his control." 1931 Pa. Laws 498. The Act defined "crimes of violence" to include murder, aggravated assault, and others. 1931 Pa. Laws 497. Petitioner's felony child neglect conviction need not be identical to murder or the other enumerated crimes because the historical inquiry into the disarmament of crimes as-applied to Petitioner requires a historical *analogue* rather than a *twin*. *Bruen*, 597 U.S. at 30. The relevant comparison is the historical treatment of individuals whose criminal conduct demonstrated a sufficiently serious threat to others to justify disarmament.

The historical analogy does not depend upon treating felony child neglect as legally identical to murder. *Id.* Instead, it demonstrates that the law historically recognized a connection between neglect of a child, death resulting from that neglect, and serious criminal liability which could be charged as murder. *See Lewis*, 72 Ga. at 164; *Barnes*, 212 S.W. at 101. Under the Uniform Firearms Act, the crime of murder, which Petitioner likely would have been charged, would have been disarmed as a crime of violence. 1931 Pa. Laws 497. When combined with historical laws restricting firearm possession by persons convicted of crimes of violence, those authorities provide a relevant historical analogue for the application of Section 922(g)(1) to an individual whose violent felony conviction involved child neglect resulting in death.

CONCLUSION

For the reasons stated herein, the United States, the Respondent, respectfully requests that this Court affirm the Fourteenth Circuit's judgment vacating the District Court's ruling because the District Court improperly applied the historical inquiry under 18 U.S.C. § 922(g)(1).

Respectfully submitted,
/s/ Team IR
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