

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

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QUESTIONS PRESENTED

1. The Second Amendment applies to “the people.” Every other time the Constitution uses the phrase “the people,” it is referring to all members of the political community, not an unspecified subset. Terry Branders is undoubtedly a member of the political community. Can Branders raise an as-applied challenge to a statute that infringes on her Second Amendment rights, or can courts give the legislature the power to create an unreviewable label that contravenes the policy balancing already present in the Second Amendment?
2. Assuming Branders can raise an as-applied challenge, whether the application of 18 U.S.C. § 922(g)(1) to Branders violates the Second Amendment of the Constitution.

STATEMENT OF THE CASE

A. Factual Background

After her retirement, Petitioner Terry Branders operated a day care center for children of her former colleagues in her Alexandria, Virginia, home. R. at 2. Terry's son, Nelson, assisted Terry by picking up and dropping off the children in his fifteen-passenger van. R. at 2. One morning in July 2000, while operating on only a few hours of sleep, Nelson picked up twelve children, dropped them off, and returned to his apartment to sleep. R. at 2. However, Nelson forgot to bring an eleven-month-old inside the daycare. R. at 2. Terry did not notice the baby was missing until two hours later. R. at 2. She then spent an hour trying to contact Nelson and the baby's mother before calling 911. R. at 2. Unfortunately, by the time police discovered the baby, he had suffered heat-related injuries and passed away. R. at 2. Terry was subsequently convicted of felony neglect of a child under Va. Code § 18.2-371 and received a two-year suspended sentence in March of 2001. R. at 2-3.

Terry used the recent pandemic as an opportunity to start a new life and put her previous conviction behind her. R. at 3. She moved to a new state where she became involved in various charities, including a local food bank. R. at 3. Further, following her conviction, the only interaction she had with law enforcement was when an officer pulled her over for driving 83 in a 65 miles per hour zone. R. at 3. Nelson also moved in with Terry to assist her as she ages. R. at 3. However, he cannot hold a job, so Terry often suspected he might be selling drugs. R. at 3.

While volunteering at a food bank, Terry formed a friendship with another volunteer, Becky Haskill. R. at 3. While discussing each of their family's respective issues, Becky suggested that Terry should get a gun for protection. R. at 3. Becky then offered one of her late

husband's firearms to Terry, which she accepted, took home, and placed in a locked drawer in her living room. R. at 3.

In June 2024, the DEA received a tip about Nelson's activities. R. at 3. Instead of acquiring a warrant, the agents decided to ask for Terry's consent to search the house because they thought it would be easier than the alternative. R. at 4. Terry consented to the search, and the agents found her to be cooperative. R. at 4. The search yielded no evidence of drug activity, but the agents found Terry's gun, which she claimed ownership of. R. at 4. Terry was subsequently charged with possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). R. at 4.

B. Procedural Background

Before her trial, Terry moved to dismiss the indictment on the grounds that it violated the Second Amendment as applied to her. R. at 4. The District Court agreed, finding that the indictment violated the Second Amendment as applied to Terry, and granted her motion to dismiss. R. at 7. On appeal, the Fourteenth Circuit reversed, holding that a categorical ban on felons owning firearms was permissible under the Second Amendment, thus precluding any as-applied challenges. R. at 10. On remand, Terry entered an *Alford* plea while maintaining her right to appeal the Fourteenth Circuit's decision. R. at 12. This Court then granted certiorari to determine whether defendants are precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1) under the Second Amendment, and if not, whether 18 U.S.C. § 922(g)(1) as applied to Terry violates her Second Amendment rights.

SUMMARY OF THE ARGUMENT

I

The text and purpose of the Second Amendment confirm that it applies to felons and therefore allows them to raise as-applied challenges to statutes that limit their right to bear arms. The Second Amendment maintains that “the right of the people to keep and bear arms shall not be infringed.” U.S. Const. amend. II. In all other places in the Constitution where the phrase “the people” is used, that right applies to all members of the political community, not “an unspecified subset.” *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008). Branders is a member of the political community. Therefore, she is covered by the plain text of the Second Amendment, allowing her to raise an as-applied challenge to 18 U.S.C. § 922(g)(1). Insofar as legislatures can restrict rights given to “the people,” those restrictions can only apply to political rights, not individual rights such as the right to bear arms. *See Kanter v. Barr*, 919 F.3d 437, 462 (7th Cir. 2019) (Barrett, J., dissenting).

The purpose of the Second Amendment confirms this result. The Second Amendment was enacted against the backdrop of the Crown attempting to strip British citizens and colonists of their right to bear arms. *Heller*, 554 U.S. 594-96. Thus, the Second Amendment is the product of policy balancing by the framers, which elevated the right to keep and bear arms for self-defense over the government’s need to regulate firearms. *New York State Rifle and Pistol Association v. Bruen*, 597 U.S. 1, 3 (2022). Therefore, this Court warned against submitting to further legislative balancing dealing with the right to bear arms. *Id.* The government’s position does precisely that. If the government were to win on this issue, legislatures would be free to create an unreviewable label that strips people of their right to bear arms. That is exactly the kind of legislative balancing that the framers intended the Second Amendment to forbid.

II

As applied to Terry Branders, § 922(g)(1) violates the Second Amendment. Terry Branders was convicted of Felony Child Neglect twenty years before she was arrested and charged with violation of 18 U.S.C. § 922(g)(1) for possessing a handgun in her home for self-defense. All because Terry Branders was convicted of a felony, she is now disbarred from exercising the Second Amendment for life by the federal government and faces a fifteen-year term of imprisonment for such possession. This sort of categorical disarmament on a class of persons convicted of a crime known as a “felony” is unknown to the historical traditions of firearms regulation in and before the United States.

The government must sufficiently produce a tradition of laws that satisfies the *Bruen* Test. They must not only be well established and representative of the general tradition of regulation, but the group of regulations must be a historical analogue to the modern law the government seeks to support. That is, the historical analogue must mirror the modern law in purpose (why) and operation (how). For the case at bar, that means the government must show a pervasive tradition of laws that would strip a defendant of their constitutional rights for life and imprison them because of their membership in a class. Terry Branders’ conduct was well within the type protected by the Second Amendment—owning a handgun for self-defense in the home—and so the burden falls to the government to establish a historical analogue. No such tradition exists. Therefore, 18 U.S.C. § 922(g)(1) is unconstitutional as applied to Terry Branders.

ARGUMENT

I. PRECLUDING AS-APPLIED CHALLENGES TO 18 U.S.C. § 922(g)(1) GOES AGAINST THE TEXT AND PURPOSE OF THE SECOND AMENDMENT.

The Second Amendment mandates that “[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. In *District of Columbia v. Heller*, this Court held that the Second Amendment when someone keeps a weapon for self-defense, unconnected to any military service. 554 U.S. 570, 636 (2008). Thus, the Second Amendment is necessarily implicated because the government charged Branders for keeping a firearm for self-defense.

A. The Plain Text of the Second Amendment Indicates That It Applies to All People, Including Felons, Thus Permitting As-Applied Challenges.

In the six other provisions where the Constitution uses the phrase “the people,” it unambiguously refers to all members of the political community, not an “unspecified subset.” *Heller*, 554 U.S. at 580. This Court, in *United States v. Rahimi*, reaffirmed this view. *See* 602 U.S. 680, 752 (2024) (Thomas, J., dissenting) (“it is undisputed that the Second Amendment applies to Rahimi. . . . Since Rahimi is a member of the political community, he falls within the Second Amendment’s guarantee”); *see also* 602 U.S. 680, 708 (Gorsuch, J., concurring) (“In this case, no one questions that the law Mr. Rahimi challenges addresses individual conduct covered by the text of the Second Amendment”). Thus, the Second Amendment is a right guaranteed to all Americans, including those convicted of felonies. *New York State Rifle and Pistol Association v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *Heller*, 554 U.S. at 581).

While it is true that rights derived from the phrase “the people” can be abrogated by certain statuses, namely prisoner status, felons are not categorically barred from these rights. *See Pell v. Procunier*, 417 U.S. 817, 822 (1974) (holding that prisoners do not have the right to assemble); *Hudson v. Palmer*, 468 U.S. 517, 526 (1984) (holding that there is no Fourth Amendment protection for searches of prison cells). The closest analogue to the government’s proposed categorical ban on felons is the states’ ability to prevent felons from voting or serving on juries. However, the right to vote and the right to serve on juries are collective rights distinct from the individually held rights expressed by the First, Second, and Fourth Amendments. *See Kanter v. Barr*, 919 F.3d 437, 462 (7th Cir. 2019) (Barrett, J., dissenting) (“[T]he right to vote is held by individuals, but they do not exercise it solely for their own sake; rather, they cast their votes as part of the collective enterprise of self-governance”). In cases of individual rights like those expressed by the First, Second, and Fourth Amendments, the phrase “the people” is expansive and applies to all people. *See* Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 267-71 (Little, Brown & Co. 1880). While a felon may lose the right to vote, they cannot be stripped of their right to speak freely or practice the religion of their choice. Thus, precluding a felon from challenging 18 U.S.C. § 922(g)(1) as applied to them violates the plain text of the Second Amendment.

In the circuits that apply preclusive bans on as-applied challenges, those courts point to language from *Heller* to suggest that the Supreme Court endorses the view that as-applied challenges to 18 U.S.C. § 922(g)(1) are unnecessary. *See, e.g., United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) (quoting *Heller*, 554 U.S. at 626 (“nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons”). However, *Heller* only speaks in terms of a presumption. *See Heller*, 554 U.S. at 627 n.26 (“We

identify these *presumptively* lawful ... measures only as examples”) (emphasis added); *Rahimi*, 602 U.S. at 682 (“*Heller* stated that many such prohibitions, like those on possession of firearms by ‘felons of the mentally ill’ are ‘*presumptively* lawful’”) (emphasis added). Thus, a complete and total bar on as-applied challenges is a misapplication of *Heller* because if there is a presumption, it implies that such restrictions on the right to bear arms can be challenged. Similarly, these circuits also rely on language in *Heller* that suggests the right to bear arms only applies to “law-abiding, responsible citizens.” *Id.* at 626. However, that language was only used in response to the dissent, as the Court explained the right “belongs to all Americans,” not an “unspecified subset.” *Id.* at 580-81. A person’s status as a felon only becomes relevant in a Second Amendment analysis when a court applies the history and tradition test from *Bruen*, such a status cannot serve as a completely preclusive bar to felons’ ability to raise as-applied challenges to statutes that restrict their right to bear arms. 597 U.S. at 24.

**B. A Preclusive Ban On As-Applied Challenges to 18 U.S.C. § 922(g)(1)
Contravenes the Purpose of the Second Amendment.**

The Framers drafted the Second Amendment to protect the people’s ability to protect themselves from the coercive power of the state. At the time of the founding, the Framers were well aware of the Crown’s attempts to disarm Protestant dissidents during the Glorious Revolution and the colonists themselves during the American Revolution. *Heller*, 554 U.S. 594-96. To ensure compliance with this original purpose, *Bruen* mandates that courts should not submit to legislative interest balancing in the Second Amendment context because the Second Amendment is “the very product of an interest balancing by the people” and “elevates the right . . . to use arms for self-defense.” *Id.* at 3 (quoting *Heller*, 554 U.S. at 635). By rejecting as-applied challenges outright before reaching the merits test under *Bruen*, courts gift legislatures

the extreme power to create an unreviewable label that strips people of one of their fundamental rights, akin to the Crown's attempts to disarm its dissidents. Under such a system, an overzealous legislature, with a policy interest in limiting firearm access, could turn misdemeanors into felonies or create new felonies, and the courts would be entirely powerless to enforce the right to bear arms because they could not even reach the merits test under *Bruen*, as they would be shackled by their own precedent. In the context of other rights guaranteed to "the people" by the Constitution, it would be absurd to suggest that a legislature could effectively strip that right without any review by the courts. Just because someone is a felon does not mean that the legislature can take away their right to speak freely or to practice their preferred religion. *Heller* counsels that "the enshrinement of constitutional rights necessarily takes certain policy choices off the table." 554 U.S. at 26. This is one of those choices.

II. APPLICATION OF 18 U.S.C. § 922(g)(1) TO TERRY BRANDERS BASED SOLELY ON HER TWENTY-YEAR-OLD CONVICTION FOR FELONY CHILD NEGLECT VIOLATES THE SECOND AMENDMENT.

A. Branders' Possession of a Commonly Held Firearm in the Home for Self-Protection Falls Squarely Within Conduct Protected Under the Plain Text of the Second Amendment.

As set forth above, Second Amendment jurisprudence clearly supports the proposition that the right to keep and bear arms for self-defense is an individual right, belonging to every one of "the people." See *Heller* at 581. Brander's possession of a handgun in the home qualifies as keeping of "arms."

The possession of a handgun in the home for self-defense, as is the case here, is presumptively protected by the second amendment. *See Heller* at 626-628. That is because a handgun is an arm and storing it within one's house qualifies as “keeping of arms.” *See Id.* The Second Amendment extends its protections to all instruments that constitute bearable arms, especially weapons invented after the founding. *Id.* at 581-82. However, like the other amendments that express individual rights, they are not unlimited. In *United States v. Miller*, this Court explained that the types of arms protected were those “in common use at the time.” 307 U.S. 174, 179 (holding that sawed off double barrel shotguns were not part of ordinary military equipment and could not contribute to common defense). The handgun is considered by the American people to be the quintessential self-defense weapon, *Heller* at 629, and they are indisputably in “common use” for self-defense today. *Bruen*, 597 U.S. 1, 47 (2022).

To “keep arms” means to have weapons. The most natural reading of this phrase is just that. *Heller* at 582. Further, William Blackstone wrote in 1769 that Catholics convicted of not attending church suffered certain penalties, one of which was that they were not permitted to “keep arms in their houses,” referring to firearms. *See Heller*, 554 U.S. 570, 582 (2008) (citing 4 Commentaries on the Laws of England 55 (1769)). *Heller* foreclosed any suggestion that keeping arms requires some connection to some organized militia by holding that the individuals possess a right to keep and bear arms for self-defense. *Heller* at 592. Branders keeping a handgun, in her home, for protection, lies at the core of the plain text of the Second Amendment and is presumptively protected. R. at 3.

B. The Government must identify a well-established and long-standing historical tradition of firearms regulation that is comparable to 18 U.S.C. § 922(g)(1) in both purpose and operation.

1. The government must identify a well-established historical tradition of firearms regulation that comparably disarms and imprisons people in Branders' circumstance.

Once the Second Amendment's plain text covers the conduct of the challenger, the government now bears the burden of producing a well-established historical tradition of firearms regulation that justifies the current regulation. *See Bruen*, 597 U.S. 1, 17 (2022). While the government need not identify a "historical twin," it must show that the law mirrors a well-established analogue in "purpose and operation." *See Hemani*, 146 S. Ct. 1677, 1685-86 (2026). The closer the contemporary law mirrors the proposed historical analogue in "why" and "how," the better chance it will be upheld. *Id.* But the more the modern and historical laws diverge in this respect, the more courts are inclined to reject the government's argument. *Id.* While there is no exhaustive survey of factors that render laws sufficiently similar, this court's jurisprudence points towards two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense. *Bruen*, 597 U.S. 1, 29 (2022); *See also Heller*, 554 U.S. 570, 585 (2008).

Here the government must identify a historical analogue that similarly disarms a member of "the people" for life and imprisons them for some non-frivolous amount of time. The government now seeks to imprison Terry Branders for up to fifteen years because she was convicted of felony child neglect under Va. Code § 18.2-371 twenty years ago. R. at 4. This conviction stems not only from the negligent conduct of another, Nelson Branders, but also does

not involve a firearm or any malintent greater than criminal negligence. R. at 2-3. The government must show for whatever historical analogue they propose, that it mirrors the operation of 18 U.S.C. § 922(g)(1), in that it seeks to remedy similar harms to society (why) and that it does so in a similar manner (how). *See Bruen*, 597 U.S. 1, 17 (2022).

2. An offered analogue is insufficient when it addresses materially different societal issues or restricts the right through different means and to different extents.

In *Hemani*, the government sought to prosecute a defendant under 18 U.S.C. § 922(g)(3) (“unlawful user of or addicted to any controlled substance”) because he used marijuana a few times a week and owned a gun. 146 S. Ct. 1677, 1684 (2026). To meet its burden, the government advanced an analogy to “habitual drunkard” laws that fell into three categories: (1) vagrancy laws, (2) civil commitment statutes, and (3) surety laws. *Id.* at 1686. The government argued that these historical laws targeted habitual drunkards for the same reason that 18 U.S.C. § 922(g)(3) targets individuals, namely, because they regularly use intoxicants. *Id.* at 1687. Further, they argued that the laws restricted the liberties of the people for similar goals, to protect the public from “unusually dangerous” individuals who commit “violent crimes. *Id.* And finally, they advanced that they operated in the same way – allowing the government to detain people and temporarily disarm unlawful users – but this court disagreed.

The government had offered no evidence that Mr. Hemani used firearms in an unsafe or unreasonably dangerous way. *Id.* at 1689. § 922 (g)(3) housed no differentiation between someone who uses drugs to the point of incapacity and someone who uses unlawful drugs recreationally. *Id.* However, under some relevant “Habitual Drunkard” analogues proposed: To qualify as a habitual drunkard under an early Arkansas law, someone had to drink to such excess

that he was “incapable of conducting [his] own affairs.” Ark. Rev. Stat., ch. 78, §1 (1838) (W. Ball & S. Roane eds.). A statute in the Minnesota Territory required an individual to be “mentally incompetent.” Minn. Terr. Rev. Stat., ch. 67, §12 (1851). The scale of these laws, the court found, was incongruous and in short, the historical laws did not exist to protect the public, like § 922(g)(3) purportedly does. *Hemani*, 146 S. Ct. at 1689. The divergence was not limited to the why requirements either. *Id.* In analyzing the operation similarities of the modern and historical laws, this court noted that not a single law cited by the government automatically divested an individual of his right to keep or bear arms the moment he became a user of some unlawful substance – without any pre-deprivation process. *See Hemani*, 146 S. Ct. at 1691-92.

The relevant jurisprudence of this court shows that when weighing proposed analogues similarities to modern laws, this court has especially noted: (1) categorical versus individualized restrictions, (2) temporary versus permanent restrictions, (3) presence or absence of judicial process, (4) severity of consequence, and (5) prevalence of like regulations. *See generally Welford v. Lopez*, 146 S. Ct. 2032, 2050-53 (2026); *Hemani*, 146 S. Ct. at 1688-1992 (2026); *Bruen*, 597 U.S. 1, 51-70 (2022). If the proposed analogue differs on any of these accounts substantially, then it is insufficient and should be rejected by this court.

3. An offered analogue is sufficient when the historical and modern laws target a comparable concrete societal issue or harm through comparably tailored restrictions.

In *United States v. Rahimi*, this court found that when pursuant to a restraining order an individual is found to pose a credible threat to the physical safety of an intimate partner, they may be banned from possessing firearms while the order is in effect. 602 U.S. 680, 690 (2024).

The earliest days of common law barred people from using weapons to harm or menace others: The act of “go[ing] armed to terrify the King’s subjects” was recognized at common law as a “great offence.” *Id.* at 693-94 (citing *Sir John Knight’s Case*, 3 Mod. 117, 118, 87 Eng. Rep. 75, 76 (K. B. 1686)). These laws, known as “going armed” or “affray laws,” have a well-established, long history in medieval England and colonial United States. *Id.* at 697-98. The government also relied on surety laws, which in short were a form of preventative justice that required bonds. *Id.* at 695.

While by no means were “going armed” and “surety laws” identical to 18 U.S.C. § 922 (g)(8)(C)(i), they confirmed a well-established historical tradition that when an individual poses a clear threat of physical violence to another, the threatening individual may be constitutionally disarmed. *Id.* at 698. Importantly, the burden imposed by § 922(g)(8) on the right to bear arms was of a limited nature, like surety bonds were of a limited nature, and the punishment, like “going armed” laws, was imprisonment. *Id.* Here the disarmament was temporary with an individualized finding of dangerousness by a court, not a categorical disarmament. *Id.* The Court distinguished that restriction from the broad public carry restriction invalidated in *Bruen*. See *Rahimi*, 602 U.S. 680, 697–99 (2024); *Bruen*, 597 U.S. 1, 70–71 (2022). The “how” and “why” nexus here was satisfied, and laws were sufficiently similar; this is the requisite level of similarity the government must show to prevail against Terry Branders in this case.

C. There is no comparable historical analogue to 18 U.S.C. § 922(g)(1) within the historical tradition of the United States and as a result is unconstitutional as-applied to Branders.

The government will not be able to carry its burden. There is no well-established tradition of firearms regulation that even approximates the purpose and operation of 18 U.S.C. § 922(g)(1) as applied to Terry Branders. To prevail, the government must posit a historical tradition of laws that similarly disarmed and imprisoned a member of “the people” due to a negligent, attenuated, albeit serious crime, that occurred over twenty years ago. R. at 2-4.

1. Surety Laws do not establish a tradition supporting § 922(g)(1)

The first candidate the government may assert is the long history of surety laws existing from medieval England to Antebellum America and beyond. One of the earliest codified “surety” laws is the 1361 Justices of the Peace Act; this act permitted justices or lords to demand sureties from certain persons considered dangerous or “not of good fame” to ensure they did not engage in misconduct. Justices of the Peace Act 1361, 34 Edw. III, c.1. The law also stated a purpose “to restrain the Offenders, Rioters, and all other Barators, and to pursue, arrest, take....” *Id.* This law and its stated purpose mirror the treatment that English barrister and legal writer Micheal Dalton described in his highly influential manual “The Country Justice” nearly three hundred years later. Michael Dalton, *The Country Justice* 140–44 (2d ed. 1619) (describing the power of lords to demand sureties for good behavior for peace-based threats, fear or suspected misconduct).

Then in 1769, William Blackstone published his fourth commentary on the Laws of England, and he describes these surety laws in much the same way. 4 William Blackstone, *Commentaries on the Laws of England* 249-55. The title of the relevant chapter is “Of The

Means Of Preventing Offences,” and he describes the laws as doing that, preventative justice against parties for whom there was probable grounds to anticipate future misbehavior. *Id.* And the operation of the law was just to demand a bond, not a lifetime disarmament or fifteen-year prison sentence. *Id.* This tradition of regulation continued past the founding of the United States and most notably, as this court’s opinions have cited, are the Massachusetts surety statutes and acts. See 1795 Mass. Acts ch. 2, in *Acts and Resolves of Massachusetts*, 1794-95, ch. 26, pp. 66-7-67; Mass. Rev. Stat. Ch. 134 § 16 (1836) (stating that when reasonable cause to fear a breach of the peace existed, a magistrate was permitted to require a person carrying a dangerous weapon to post a surety for up to six months).

Importantly, what all these laws seek to accomplish is the prevention of a breach of peace by someone who, like the defendant in *Rahimi*, posed a credible threat. *See Rahimi*, 602 U.S. 680, 687 (2024). Here the government has not alleged that Terry Branders poses any threat to anyone. R. at 4. In fact, § 922(g)(1) criminalizes the mere possession of a firearm as a categorical restriction on a class of person. In that sense, surety laws' purpose was to protect the peace from credible threats, but 922(g)(1) disarms persons categorized as felons, regardless of their threat level. Additionally, surety laws simply require a bond be posted, whereas §922(g)(1) disarms the defendant for life and imprisons them for up to fifteen years. The government cannot point to a single instance where someone convicted of a negligent criminal offence was subject to a surety bond. And thus, surety laws do not qualify as a sufficiently similar historical analogue.

2. Going – Armed/ Affray laws do not establish a tradition supporting § 922(g)(1)

One of the earliest “going-armed/affray” laws is the Statute of Northampton. 2 Edw. III, c.3 (1328). This court in *Bruen*, after examining the case of Sir John Knight and the 1689

English Bill of Rights, concluded that public carry of a weapon would not violate the statute. *See Bruen*, 597 U.S. 1, 44-46 (2022); *see also Sir John Knight's Case*, 3 Mod. 117, 87 Eng. Rep. 75, 76 (K. B. 1686); Bill of Rights 1689, 1 W. & M. sess. 2, c. 2, cl. 7 (Eng.). While the punishment would be disarmament and a short term of imprisonment, the law required some “affray” or conduct that terrifies the people. *Id.* Further, William Hawkins, in his widely read 1716 treatise, confirmed that “no wearing of Arms is within the meaning of [the Statute of Northampton], unless it be accompanied with such Circumstances as are apt to terrify the People.” 1 William Hawkins, *A Treatise of the Pleas of the Crown* 136 (1716). Clearly this early history describes laws that require some showing of dangerousness, not simply keeping a weapon in one’s home. Further, these are not categorical restrictions; the circumstances surrounding the offense mattered. While the punishment could involve arms forfeiture, it did not disarm the offender for life or criminalize possession inside the home. 4 William Blackstone, *Commentaries on the Laws of England* 145, 149, 254 (1769).

The colonial and founding era laws in the United States followed suit with this tradition. *See An Act for the Punishing of Criminal Offenders*, 1692 Mass. Acts and Laws no. 6, pp. 11–12; *An act Forbidding and Punishing Affrays*, ch. XLIX, 1786 Va. Acts 35. While these laws could involve arms forfeiture and imprisonment, they were not lifetime bans on firearm ownership nor were they fifteen-year prison sentences. *Id.* They also still required some showing of mal-intent by the offender. *Id.* The earliest American judicial decisions of affrays involve individuals in public with weapons that potentially intimidate or terrify other members of the public. *See Simpson v. State*, 13 Tenn. 356, 358-61 (1833); *State v. Huntly*, 25 N.C. (3 Ired.) 418, 420-23 (1843) (per curiam). The conduct presently at issue is utterly devoid of any type of menacing or disturbance of the peace. R. at 4. Affray laws meant to protect the public from

people who harbored some intent to terrify others while armed with weapons. While the operation may be similar, arms forfeiture and imprisonment, the purpose and scope of these laws greatly diverge from 18 U.S.C. § 922(g)(1). Affray laws would not criminalize the possession of a single firearm in someone's home because they were convicted of a negligent offense twenty years ago. The going-armed or affray legal tradition is not a sufficiently similar analogue.

3. Political, loyalty-based, and discriminatory disarmament laws do not establish a tradition supporting § 922(g)(1)

The tradition of disarmament based on political allegiances and race after the civil war plainly are not historical analogues. An early example of a political disarmament is the Militia Act of 1662, which authorized royal officials to seize arms from persons judged to be a threat to the kingdom's peace. Militia Act 1662, 14 Car. 2 c. 3 § 13. These types of laws, like affray laws, operated to stifle dissent or quell unruly citizens at a time of unrest, not as lifetime bans on codified rights. *See* Papist Disarmament Act, 1 W. & M. c. 15 § 4, 3 Eng. Stat. At Large 399. These laws continued into the colonies of the new world, predicated on loyalty to the crown. *See* Massachusetts loyalty disarmament law, ch. 7, 1775-1776 Mass. Acts 31-35. One of the most compelling examples comes from Pennsylvania's Act of April 1, 1778, which prohibited oath refusers from carrying or keeping arms in their homes, subject to forfeiture. *See* 9 Statutes at Large of Pennsylvania 238-39, 242-43. However, these laws largely disappear after the United States gains independence and the laws start to look much more like what is known as "Black codes."

However, Black Codes, like these categorical disarmament statutes, are prohibited by the Fourteenth Amendment. *See United States v. Rahimi*, 602 U.S. 680, 724 (2024) (Kavanaugh, J., concurring) (explaining that courts must rely on history that the Constitution has "actually

incorporated,” not history “the Constitution left behind”). So, laws like the Mississippi’s Black Code that restricted black Americans possession of firearms discriminately cannot be relied upon as a valid historical analogue. *See* Mississippi Black Code, Certain Offenses of Freedmen, 1865 Miss. Laws 165, § 1. Neither can the loyalty and political based disarmament laws for the very same reason. Even so, these laws differed greatly in purpose and operation from that of 18 U.S.C. § 922(g)(1). For instance, § 922(g)(1) operates to disarm felons largely for perceived public safety, but the proposed historical analogues were either discriminatory or used to quell political dissent and ensure loyalty to the crown. *See Rahimi*, 602 U.S. at 755–57 (Thomas, J., dissenting); Edward McPherson, *The Political History of the United States of America During the Period of Reconstruction* 33, 40 (1871). Plainly, the government cannot rely on a historical tradition of firearms regulation that has been repudiated by the verdict of history, and for that reason black codes and political disarmament laws do not qualify as historical analogues.

4. The brief histories of estate forfeiture and early felon disarmament laws do not establish a traditional supporting § 922(g)(1).

As William Blackstone described in 1769 felonies could be punished with the forfeiture of lands or goods and often accompanied by death. *See* 4 William Blackstone, *Commentaries on the Laws of England* 95, 98 (1769). In a historical period with a fraction of the felonies that exist today, this was the punishment often imposed. *Id.* However, the first Congress of the United States affirmatively rejected estate forfeiture for federal convictions effectively ending any historical tradition of estate forfeiture. *See* Crimes Act of 1790, ch. 9, § 24, 1 Stat. 112, 117 (providing that no conviction under the act would result in any forfeiture of estate). While these laws are not rooted in historical tradition because they are largely repudiated, they also fail because the forfeiture was imposed by the sentencing court to goods already owned, not as a

prospective lifetime prohibition, and especially not with an extra fifteen-year sentence imposed for keeping arms in the home. *See* Crimes Act of 1790, ch. 9, § 24, 1 Stat. 112, 117; 4 William Blackstone, *Commentaries on the Laws of England* 95, 98 (1769); see also *Range v. Attorney General*, 124 F.4th 218, 231-32 (3d. Cir. 2024) (en banc) (stating that the founding era principle of punishing some non-violent crimes with death does not suggest that lifetime disarmament for all felonies and felony equivalent misdemeanors is rooted in our nation’s history).

The earliest forms of felon disarmament statutes were largely state legislation in the early 1920’s that held if someone convicted of “a felony against the person or property of another or against the government...,” they would not be allowed to possess a firearm. Act of June 13, 1923, ch. 339, § 2, 1923 Cal. Stat. 695, 696. While some other states restricted certain groups or “Excepted Classes” from owning or possessing handguns around the same time. *See* Act of Feb. 26, 1925, ch. 260, § 2, 1925 Or. Gen. Laws 468. However, importantly, the first Federal act that restricted certain classes from dealing with firearms was the Federal Firearms Act of 1938. *See* Federal Firearms Act, ch. 850, §§ 1(6), 2(d)–(f), 52 Stat. 1250, 1250–51 (1938). This act only restricted the interstate shipment, transport or receipt of firearms by persons convicted of a specifically defined “crime of violence.” *Id.* While possession could be used to prove receipt, it itself was not criminalized, and further, “crime of violence” as defined by the act, did not include felony child neglect, or any other negligent mens rea crime. *Id.* It wasn’t until 1961 when Congress broadened the reach of this statute and replaced “crime of violence” with “crime punishable by imprisonment for a term exceeding one year.” *See* An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757 §§ 1–2 (1961).

While these laws may seem to qualify under the *Bruen* test, that court specifically rejected late 19th century laws because they did not provide much insight into the meaning of the second amendment, and further noted their temporal distance from the founding. See *Bruen*, 597 U.S. 1, 66 (2022). So, laws passed almost half a century later will provide even less insight to historical traditions of firearms regulation. This court also went on to elucidate the fact that laws cited by the government were not widespread and thus did not evince a “tradition” of firearms regulation pervasive enough to qualify as “well established.” *Id.* at 67-68. The government must not only connect modern law to the historical analogue in purpose and operation, but they must also show that the law was representative and well-established. *Id.* Here the government cannot merely cite a few isolated laws or cite laws that were passed hundreds of years after the founding. To prevail, they must bring forth a well-established historical tradition of firearms regulation that mirrors the purpose and operation of 18 U.S.C. § 922(g)(1) as applied to Terry Branders. Petitioner contends they cannot, and § 922(g)(1) is unconstitutional as applied to her.

CONCLUSION

For the foregoing reasons, this Court should hold that defendants may bring as-applied Second Amendment challenges to 18 U.S.C. § 922(g)(1) and that the statute is unconstitutional as applied to Terry Branders. The Court should reverse the judgment of the United States Court of Appeals for the Fourteenth Circuit and remand with instructions to vacate Branders’ conviction and dismiss the indictment.

Respectfully Submitted,

/s/ Team JU

Attorneys for the Petitioner