

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 THE RESPONDENTS

Team LO

Attorneys for Respondent

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QUESTIONS PRESENTED

1. Whether defendants may bring as-applied challenges to 18 U.S.C. § 922(g)(1), the felon-in-possession statute, when this Court has found felon-in-possession laws to be “presumptively-lawful?”
2. Assuming an as-applied challenge exists, whether applying 18 U.S.C. § 922(g)(1) to a twenty-year old conviction of felony child neglect that resulted in death violates the second amendment.

STATEMENT OF THE CASE

In July of 2000, Petitioner operated an unlicensed daycare in her home, sometimes caring for ten or more children at a time. R. at 1-2. Petitioner relied on her son, Nelson Branders, to pick-up and drop-off the children in “an old 15-passenger van.” R. at 2. After a “particularly late evening,” Nelson, with “just a few hours of sleep,” picked up twelve children. *Id.* Only Kenneth Drew, an eleven-month-old, was fastened in a car seat, although the children were “mostly preschoolers.” At drop off, Kenneth remained in the van and Petitioner did not notice that he was missing until “about two hours” later when she went to wake him from his usual nap. *Id.* Petitioner spent “well over an hour trying to reach Nelson and Kenneth’s mother before calling 911.” *Id.* By the time police found Kenneth, he suffered “severe heat-related injuries” and did not survive. *Id.* Petitioner was convicted of felony neglect of a child under Va. Code § 18.2-371.1 and of a misdemeanor for operating a daycare without a license. *Id.* Petitioner received a two-year suspended sentence and probation on March 5, 2001. *Id.*

In 2020, Petitioner moved to Appleton, Newcoastland to start a new life. *Id.* at 3. Her son Nelson soon moved into her basement. *Id.* Nelson struggled to hold a steady job and Petitioner believed he might be using or selling drugs. *Id.* Petitioner communicated her family issues to a friend, who suggested she get a handgun for protection. *Id.* Petitioner accepted the gun from her friend and placed it in a locked drawer in her living room. *Id.*

In June 2024, after receiving a tip about potential drug related activities, DEA agents surveilled Petitioner’s house and conducted a search for criminal records connected to the location. R. at 4. The agents knocked on the door and Petitioner consented to a search of her home. *Id.* The agents located Petitioner’s gun and arrested her for felony possession of a firearm. *Id.* Petitioner was charged on July 3, 2020, for violating 18 U.S.C. § 922(g)(1). *Id.*

The United States District Court for the Eastern District of Newcoastland found that 18 U.S.C. § 922(g)(1) violated the Second Amendment and granted Petitioner’s motion to dismiss the indictment. R. at 5. The United States Court of Appeals for the Fourteenth Circuit reversed and vacated the district court's decision and remanded for further proceedings. R. at 10. Back in the district court, Petitioner entered an *Alford* plea and subsequently, the United States Court of Appeals for the Fourteenth Circuit summarily affirmed. R. at 12.

SUMMARY OF THE ARGUMENT

This Court should affirm the judgment of the Fourteenth Circuit Court of Appeals and hold that 18 U.S.C. § 922(g)(1) falls within the “longstanding prohibitions on the possession of firearms by felons” recognized by this Court as “presumptively lawful.” *D.C. v. Heller*, 554 U.S. 570, 627 (2008). In *Heller*, this Court recognized that individuals may be disqualified from the exercise of second amendment rights. *Id.* at 635.

Moreover, history and tradition support disarming groups of people who refuse to follow “legal norms.” *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025). Felon-in-possession laws followed this historical tradition and the Gun Control Act of 1968 and Firearms Owner’s Protection Act of 1986 (which recodified 18 U.S.C. § 922(g)(1)) were also passed to keep guns from those, such as convicted felons “who might be expected to misuse them.” *See Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 112 (1983). Thus, 18 U.S.C. § 922(g)(1) is supported by the historical tradition of status-based restrictions.

Next, the Eighth Circuit and its progeny correctly concluded that there is “no need for felony-by felony litigation regarding the constitutionality of § 922(g)(1).” *Jackson*, 110 F.4th at 1125. Applying the rule laid out by the Eighth Circuit is simple: Petitioner was “convicted of

felony neglect of a child under Va. Code § 18.2-371” and was later charged with violating 18 U.S.C. § 922(g)(1). R. at 2, 4. As such, she falls under the prohibition.

In addition, this Court should decline to follow the Third Circuit and its progeny, which permit as-applied challenges to § 922(g)(1). This approach would cause “confusion and disuniformity” in the lower courts. *Range v. Att’y Gen. United States*, 124 F.4th 218, 294-95 (3d Cir. 2024) (Schwartz, J., Dissenting). This approach is also unnecessary as the issue of the constitutionality of § 922(g)(1) “has already been settled.” *United States v. Williams*, 113 F.4th 637, 665 (6th Cir. 2024) (Davis, J., Concurring).

Finally, felon-in-possession laws are an important and effective regulatory scheme. To replace the categorical rule would create an “extremely labor-intensive” process. Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 Cardozo L. Rev. 1573, 1575 (2022). Thus, this Court should uphold the approach of the Eighth Circuit and its progeny and preclude defendants from asserting as-applied challenges to 18 U.S.C. § 922(g)(1).

However, assuming an as-applied challenge exists, this Court should find § 922(g)(1) is constitutional as-applied to Petitioner, because it is consistent with the Nation's historical tradition. First, historical legislatures imposed permanent punishments on those convicted of serious offenses, which in effect subsumed disarmament. *United States v. Hunt*, 123 F.4th 697, 706 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025). Second, historical disarmament was not limited to violent offenders; legislatures disarmed those who “demonstrated disrespect for legal norms of society.” *Jackson*, 110 F.4th at 1127. Finally, historical analogues need not involve child neglect, as *Bruen* does not require a “historical twin.” 597 U.S. at 3. § 922(g)(1)'s purpose and method fit comfortably within historical tradition, and Petitioner's offense demonstrates the disrespect for legal norms that historical legislatures disarmed.

The categorical approach adopted by the majority of circuits provides a workable rule for applying this historical tradition. However, even if this court adopted the individualized dangerousness inquiry, Petitioner's claim still fails. Her actions and omissions endangered children in her care, resulting in the death of an eleven-month-old. R. at 2. Twenty-years does not change the result, as there is “no historical support” that passage of time can “restore Second Amendment rights. . .” *Binderup v. Atty. Gen. U.S. of Am.*, 836 F.3d 336, 350 (3d Cir. 2016).

Finally, courts and the Executive branch caution against the individualized approach, warning that the judicial branch is “not equipped” to conduct the wide-ranging investigations without a possibility of inconsistency and danger to the public if wrong decisions are made. *Id.* at 350; *see also* S. Rep. 102-353 (1992). Accordingly, § 922(g)(1) is constitutional as-applied to Petitioner and this Court should affirm the judgment of the Fourteenth Circuit Court of Appeals.

ARGUMENT

I. DEFENDANTS ARE PRECLUDED FROM ASSERTING AS-APPLIED CHALLENGES TO 18 U.S.C. § 922(g)(1).

This Court should hold that defendants are precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1) under the Second Amendment. This Court has consistently held that 18 U.S.C. § 922(g)(1)’s prohibition is “presumptively lawful” and supported by history and tradition. *Heller*, 554 U.S. at 580-627. Moreover, the Eighth Circuit and its progeny were correct in ruling out as-applied challenges to § 922(g)(1) because felons “disrespect...the legal norms of society.” *Jackson*, 110 F.4th at 1125, 1127-1128. Finally, felon-in-possession laws are effective policy, put in place to address the issue of violent crime and to preserve public safety. Allowing as-applied challenges would displace this effective and critical regulatory scheme. Therefore, this Court should affirm the Fourteenth Circuit and forbid defendants from bringing an as-applied challenge.

A. 18 U.S.C. § 922(g)(1) Is Presumptively Lawful Under The Second Amendment.

The Second Amendment provides 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. This Court in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, required the government to “affirmatively prove its firearms regulation is part of the historical tradition.” 597 U.S. 1, 19 (2022). This Court should hold that 18 U.S.C. § 922(g)(1) is “presumptively lawful” under the Second Amendment and therefore prohibit defendants from bringing as-applied challenges for two reasons. First, this Court has held felon-in-possession laws fall within the Nation’s “longstanding prohibitions.” *Heller*, 554 U.S. at 580-627. Second, history and tradition in the Second Amendment context support status-based restrictions. *Jackson*, 110 F.4th at 1127. Thus, this Court should affirm the holding of the Fourteenth Circuit and preclude defendants from bringing an as-applied challenge.

i. This Court has Held Despite the Protections of the Second Amendment, Certain “Longstanding Prohibitions” Still Apply.

Despite the protections of the Second Amendment, this Court has held that certain “longstanding prohibitions” still apply. *Heller*, 554 U.S. at 627; *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 786 (2010); *United States v. Rahimi*, 602 U.S. 680, 691-698 (2024). As such, this Court should affirm the judgment of the Fourteenth Circuit Court of Appeals and hold that 18 U.S.C. § 922(g)(1) falls within the “longstanding prohibitions on the possession of firearms by felons” recognized by this Court as “presumptively lawful.”

While the Second Amendment applies to “all Americans” and is “exercised individually,” the right “is not unlimited.” *D.C. v. Heller*, 554 U.S. 570, 580-627 (2008). In *Heller*, this Court explicitly stated that nothing in its opinion “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons,” which this Court labeled as “presumptively

lawful.” *Id.* at 627. The Supreme Court ruled that Heller, “*assuming he was not disqualified* from the exercise of Second Amendment rights” must be permitted to register his handgun and must be issued a license to have it in his home. *Id.* [emphasis added]. at 635. Thus, while recognizing that “all Americans” enjoy the protection of the Second Amendment, *Heller* clarified that individuals may be disqualified.

In *McDonald v. City of Chicago, Ill.*, this Court reaffirmed its decision in *Heller* “that [their] holding did not cast doubt on such longstanding regulatory measures such as ‘prohibitions on the possession of firearms by felons and the mentally ill.’” 561 U.S. 742, 786 (2010).

More recently, this Court, in *Rahimi*, emphasized that the Second Amendment, is not “a law trapped in amber,” and continued to rely on its holding in *Heller*, 602 U.S. at 691-698. This Court wrote that “the Second Amendment permits more than just those regulations identical to ones that could be found in 1791. Holding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers.” *Id.* at 692. Instead, this Court emphasized that “the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. . . [w]hy and how the regulation burdens this right are central to the inquiry.” *Id.* And while this Court concluded that an individual that poses a “credible threat to the physical safety of another” could be disarmed, this Court did not overrule *Heller’s* caution that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Id.* at 698 (Citing *Heller*, 554 U.S. at 626).

18 U.S.C. § 922(g)(1) regulates felons in possession of firearms or ammunition by making it illegal for “any person who has been convicted. . . of, a crime punishable by imprisonment for a term exceeding one year” to ship, transport, receive or possess “any firearm or ammunition.” This

regulation aligns with this Court’s precedent established in *Heller*, and reaffirmed by this Court in *McDonald* and *Rahimi*, that certain “longstanding prohibitions” still apply to felons. 554 U.S. at 580-627. As such, 18 U.S.C. § 922(g)(1) falls within the line of longstanding prohibitions on the possession of firearms by felons. Thus, this Court should find that 18 U.S.C. § 922(g)(1) is “presumptively lawful.”

ii. The History and Tradition of the Second Amendment Support Status Based Restrictions.

Examining the history and tradition of firearm restrictions reveals historical support for disarming groups of people based on legal norms. As such, this Court should hold that Congress followed this historical tradition when it passed 18 U.S.C. § 922(g)(1).

In *Bruen*, this Court held that when the Second Amendment applies, “the government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. This Court rejected the two-step framework established by circuit courts writing that it is “one step too many.” *Id.* at 17. This Court also rejected applying “means-end scrutiny” and wrote, “Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 19. This Court clarified that the government does not have to identify a “historical twin” or a “dead ringer” for the law to be constitutional. *Id.*

Laws restricting groups from possessing “armes” date back to the 1600s. For example, people deemed “dangerous to the peace of the kingdom” were restricted from having “armes” by the government of England in 1662. Militia Act of 1662, 13 & 14 Car. 2, c. 3, § 13.

In the colonies, these group-based arms restrictions continued. In Virginia, in 1705, it was the law that “any Indian, friendly or hostile, caught hunting on English owned land would lose his firearms and ammunition.” Michael A. Bellesiles, *Gun Laws in Early America: The Regulation of*

Firearms Ownership, 1607-1794, 16 Law & Hist. Rev. 567, 578-579 (1998). Additionally, in Massachusetts, Antinomians were prohibited from possessing firearms in 1637. In 1756, Maryland passed a law “expropriating all the arms and ammunition of Catholics and mandating prison terms for any Catholic found concealing arms.” *Id.* at 574. And during the Revolutionary War, the Continental Congress disarmed people not loyal to “the cause of America.” 4 *Journals of the Continental Congress, 1774-1789*, at 205 (Worthington Chauncey Ford ed., 1906).

It was also recognized in early America that forfeiture of weapons was appropriate for hunting crimes. In New Netherland (later New York) it was declared that the punishment for people who violated a hunting law was “forfeiting the gun.” Ordinance of the Director and Council of New Netherland, Oct. 9, 1652, reprinted in *Laws and Ordinances of New Netherland, 1638–1674*, at 138 (1868). A similar law was enacted in North Carolina. Act of Apr. 20, 1745, ch. III, reprinted in 23 *The State Records of North Carolina* 218–19 (Walter Clark ed., 1904).

Concerning the more recent history of felon-in-possession laws, the Federal Firearms Act of 1938 prohibited people convicted of “crimes of violence” from moving firearms in interstate commerce. *See United States v. Charles*, 633 F. Supp. 3d 874, 877 (W.D. Tex. 2022). Later, the Gun Control Act of 1968 expanded federal firearm regulations, including restrictions that applied to convicted felons. These regulations were recodified in 1986 in the Firearms Owner’s Protection Act. *See United States v. Schnur*, 684 F. Supp. 3d 522, 527-528 (S.D. Miss. 2023). 18 U.S.C. § 922(g)(1) then was “a consolidation of portions of three former provisions of Title 18.” *United States v. Langley*, 62 F.3d 602, 604 (4th Cir. 1995).

This Court requires that the government “affirmatively prove its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms. *Bruen*, 597 U.S. at 19. The historical record above shows that legislatures had the ability to “disqualify

categories of people from possessing firearms” to target “a danger of misuse by those who deviated from legal norms, not merely to address a person’s demonstrated propensity for violence.” *Jackson*, 110 F.4th at 1127. 18 U.S.C. § 922(g) was passed for similar reasons, as this Court wrote, “Congress obviously determined that firearms must be kept away from persons, such as those convicted of serious crimes, who might be expected to misuse them.” *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 112 (1983). As such, this Court should hold that Congress followed the historical tradition of status-based restrictions when it passed § 922(g)(1).

B. Circuit Court Treatment of § 922(g)(1) Supports Precluding Defendants From Asserting As-Applied Challenges.

After *Heller*, every circuit to consider facial constitutional challenges of § 922(g)(1) have ruled that § 922(g)(1) is constitutional. *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. 2025), *cert. denied*, 223 L. Ed. 2d 556 (Jan. 20, 2026). A facial challenge “requires a defendant to ‘establish that no set of circumstances exists under which the Act would be valid.’” *Rahimi*, 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). This Court should affirm the judgment of the Fourteenth Circuit Court of Appeals that “there is no need to revisit the underpinnings of every felony conviction.” R. at 9.

i. The Eighth Circuit and its Progeny Properly Preclude Defendants from Asserting As-Applied Challenges.

This Court should find that the Eighth Circuit and its progeny were correct when they concluded that there was “no need for felony-by felony litigation regarding the constitutionality of § 922(g)(1).” *Jackson*, 110 F.4th at 1125. The Eighth Circuit reasoned that felons have “demonstrated disrespect for legal norms of society” and “legislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed.” *Id.* at 1127-1128. The Eighth Circuit also noted the Supreme Court clarification that “recent decisions on the Second Amendment cast no doubt on the

constitutionality of prohibiting possession of firearms by felons” before holding that § 922(g)(1) was constitutional as-applied to Jackson. *Id.* at 1129.

The Fourth Circuit also rejected as-applied challenges to § 922(g)(1) on a categorical basis. *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024). The Fourth Circuit reasoned that legislatures can deprive people of “life, liberty, and property” when people engage in “serious criminal conduct” and “the same is true of the ability to lawfully possess a firearm.” *Id.* at 707. Even if the “historical regulation of firearms possession is viewed instead as an effort to address the risk of dangerousness”, § 922(g)(1) remains in sync with the historical tradition, for “a determination of dangerousness was sometimes made by status.” *Id.* “Past conduct (like committing a felony) can warrant keeping firearms away from persons ‘who might be expected to misuse them.’” *Id.* As such, no “individualized determination of dangerousness” is required. *Id.* The Fourth Circuit also cited to the Supreme Court’s “repeated instruction” that such prohibitions are “presumptively lawful” and rejected Hunt’s as-applied challenge. *Id.* at 708.

The Tenth Circuit, in *Vincent v. Bondi*, rejected an as-applied challenge and readopted its previous decision in *United States v. McCane* that “rejected the notion that *Heller* mandates an individualized inquiry concerning felons pursuant to § 922(g)(1).” 127 F.4th 1263, 1266 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 1768 (2026) (Citing 573 F.3d 1037 (10th Cir. 2009)).

Additionally, in *United States v. Dubois*, the Eleventh Circuit held that *Bruen* did not “abrogate” *Rozier*, a previous decision in which it was held that “felons are categorically ‘disqualified’ from exercising their Second Amendment right under *Heller*.” 139 F.4th 887, 893 (11th Cir. 2025), *cert. denied*, 223 L. Ed. 2d 570 (Jan. 20, 2026). And in *Duarte*, the Ninth Circuit concluded that “[w]e agree with the Fourth and Eighth Circuits” and upheld § 922(g)(1) to “all felons.” 137 F.4th at 761. In its reasoning, the Ninth Circuit cited to *Jackson* and *Hunt* and wrote

that “history does not require ‘felony-by-felony litigation’ to support the application of § 922(g)(1) before holding that § 922(g)(1) was “constitutional as-applied to Duarte and other non-violent felons.” *Id.* at 762.

Applying the rule laid out by the Eighth Circuit and endorsed by its progeny that there is “no need for felony-by felony litigation regarding the constitutionality of § 922(g)(1)” is straightforward here. Petitioner was “convicted of felony neglect of a child under Va. Code § 18.2-371.[1]” R. at 2. Petitioner was later charged with violating 18 U.S.C. § 922(g)(1). R. at 4. Consistent with the Eighth Circuit’s approach, the Fourteenth Circuit Court of Appeals held that “there is no need to revisit the underpinnings of every felony conviction.” R. at 9. Therefore, Defendants should be precluded from bringing an as-applied challenge to 18 U.S.C. § 922(g)(1).

ii. Other Circuits have Improperly Held that As-Applied Challenges to § 922(g)(1) Remain Available, an Unnecessary Step in an Issue Already Settled.

This Court should find that the Third Circuit and its progeny were incorrect when they concluded that as-applied challenges remain available. Such an approach would lead to “confusion and disuniformity” in the lower courts. *Range v. Att’y Gen. United States*, 124 F.4th 218, 294-295 (3d Cir. 2024) (Schwartz, J., Dissenting). Moreover, this approach engages in an analysis that examines “what has already been settled” and is unnecessary. *United States v. Williams*, 113 F.4th 637, 665 (6th Cir. 2024) (Davis, J., Concurring). Thus, this Court should affirm the judgment of the Fourteenth Circuit Court of Appeals. R. at 9.

The Third Circuit in *Range*, held that based on its view of history and tradition, “§ 922(g)(1) cannot constitutionally strip [Range] of his Second Amendment Rights.” 124 F.4th at 232. The court argued that a categorical ban went too far and interpreted *Rahimi* as requiring a threat to someone’s safety to disarm people. *Id.* at 230-231. As such, the Third Circuit reversed and

remanded “so the Court can enter a declaratory judgment for Range” and “enjoin enforcement of § 922(g)(1) against him.” *Id.* at 232.

However, it is noted that the decision in *Range* was not unanimous, in the dissent, Judge Schwartz and Restrepo criticized the majority for ignoring *Heller* and *McDonald* where “the Supreme Court stated that felon bans are consistent with our historical tradition.” *Id.* at 291 (Schwartz, J., Dissenting). The Dissent also argued that the Majority “incorrectly discounts the importance of the Supreme Court’s emphasis on law-abidingness as a limitation on the Second Amendment right” and cited *Bruen*’s use of the phrase fourteen times. *Id.* at 292 (Schwartz, J., Dissenting). Lastly, the Dissent also criticized the majority opinion on having “far-reaching consequences,” for “the Majority’s analytical framework leads to only one conclusion: there will be no, or virtually no, non-violent felony or felony-equivalent crime that will bar an individual from possessing a firearm.” *Id.* at 294-295 (Schwartz, J., Dissenting). As such, the Third Circuit’s reasoning should not apply and should not be followed.

Next, although other circuits left open the possibility of an as-applied challenge, these circuits did not find 18 U.S.C § 922(g)(1) to be unconstitutional. *See United States v. Diaz*, 116 F.4th 458, 472 (5th Cir. 2024); *See Williams*, 113 F.4th at 663; *See Medina v. Whitaker*, 913 F.3d 152, 160 (D.C. Cir. 2019).

Additionally, in the concurrence of *Williams*, Judge Davis wrote that this issue “has already been settled: categorical bans that prohibit felons from possessing firearms are ‘presumptively lawful’ and thus survive constitutional challenge.” *Id.* at 665 (Davis, J., Concurring). As such, there is no need to leave open the possibility of an as-applied challenge, for this Court already upheld felon-in-possession laws. Thus, this Court should affirm the judgment of the Fourteenth

Circuit Court of Appeals and hold that Petitioner should be precluded from asserting an as-applied challenge. R. at 9.

C. Felon-in-Possession Laws are Effective Policy.

The purpose of felon-in-possession laws is to enforce public safety and to address the issue of violent crime. When Congress enacted the Omnibus Crime Control and Safe Streets Act of 1968, it found that “the ease with which any person can acquire firearms other than a rifle or a shotgun. . . is a significant factor in the prevalence of lawlessness and violent crime in the United States.” Pub. L. No. 90-351, § 901(a)(1), (2), 82 Stat. 225, 225. Indeed, research has shown that felon-in-possession laws are effective, for when “criminal firearm markets do not function smoothly; firearms are not always easily obtained through them.” Garen J. Wintemute, *Broadening Denial Criteria for the Purchase and Possession of Firearms: Need, Feasibility, and Effectiveness*, in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* 77, 84 (Daniel W. Webster & Jon S. Vernick eds., 2013). And “denial appears to reduce risk for new criminal activity among those who were denied.” *Id.* at 85. Congress has also noted the consequences of restoring firearm rights, stating that “too many of these felons whose gun ownership rights were restored went on to commit violent crimes with firearms.” H.R. REP. 104-183, 15.

Furthermore, felon-in-possession laws are critical for firearm regulation. It is estimated that 88.5% of convictions under 18 U.S.C. § 922(g) are due to prior felony convictions. *See* U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (2024). Eliminating felon-in-possession laws would leave a “gaping hole in our entire national regulatory framework for guns.” Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 *Cardozo L. Rev.* 1573, 1575 (2022). Thus, allowing as-applied challenges would uproot this effective and critical regulatory scheme. For determining “whether a specific conviction was for a crime of violence has become

extremely labor-intensive for the judiciary, fraught with uncertainty and inconsistency.” *Id.* at 1605. And Congress itself instead wrote a clear categorical rule making it illegal for “any person who has been convicted. . . of, a crime punishable by imprisonment for a term exceeding one year” to ship, transport, receive or possess “any firearm or ammunition.” 18 U.S.C § 922(g)(1).

As such, this Court should preclude defendants from bringing an as-applied challenge, because felon-in-possession laws are an important part of firearm regulation, are effective policy, and are part of the clear categorical rule written by Congress.

II. ASSUMING AN AS-APPLIED CHALLENGE EXISTS, THE APPLICATION OF § 922(G)(1) TO PETITIONER DOES NOT VIOLATE THE SECOND AMENDMENT.

The question of § 922(g)(1) as-applied to the Petitioner presents a matter of first impression, concerning a predicate felony that has not yet been adjudicated before this Court. The question before this Court is whether the longstanding prohibition on felon firearm possession should extend to the Petitioner’s predicate felony under the Nation’s historical tradition.

This Court should find that § 922(g)(1) is constitutional as-applied to the Petitioner for three reasons. First, the Nation’s historical tradition supports disarming individuals whose circumstances are analogous to the Petitioner. Second, and alternatively, even under an individualized framework where dangerousness is required, the circumstances underlying the Petitioner’s felony conviction are sufficient to prove dangerousness. Finally, individualized dangerousness reviews are not suited for the judiciary, they risk inconsistency, public safety, and improperly restrict Congress’s ability to mitigate and prevent firearm related harm.

The Second Amendment states 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. There is no doubt, “that the Second Amendment conferred an individual right to keep and bear arms” however, “the right secured by the Second Amendment is not unlimited. . .”

Heller, 554 U.S. at 626. The Court has consistently indicated that “longstanding prohibitions on the possession of firearms by felons. . . are presumptively constitutional.” *Rahimi*, 602 U.S. at 735 (Justice Kavanaugh, concurring) (Citing *Heller*, 554 U.S. at 626-27).

When the Second Amendment’s plain text covers an individual’s conduct, the “government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation” including “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Bruen*, 597 U.S. at 24, 29. An as-applied challenge "asks whether the law, though constitutional, is nonetheless unconstitutional as-applied to a defendant’s activity." *United States v. Morgan*, 147 F.4th 522, 526 (5th Cir. 2025).

The felon-in-possession statute deems it unlawful for any person convicted of a crime punishable by imprisonment for a term exceeding one year to ship, transport, possess, or receive any firearm which has been shipped or transported in interstate commerce. 18 U.S.C. § 922(g)(1). The Petitioner’s possession of the firearm, as prohibited by the statute, falls within the plain text of the Second Amendment. The burden therefore shifts to the government to demonstrate that the regulation is consistent with the Nation’s historical tradition. See *Bruen*, 597 U.S. at 24.

A. § 922(g)(1) Prohibition As-Applied To Petitioner Is Consistent With The History And Tradition Of Firearm Regulation.

The Nation’s history shows a tradition of permanently punishing those convicted of severe crimes and disarming those who demonstrate a disregard for legal norms. This Court has made clear that “even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” *Bruen*, 597 U.S. at 30. Meaning, “analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.” *Id.* at 30 [emphasis added].

When it comes to interpreting the constitution, “not all history is created equal.” *Id.* at 4. “The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates or postdates either time may not illuminate the scope of the right.” *Id.* Laws at the founding that regulated firearm uses to address problems will be “a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations.” *Rahimi*, 602 U.S. at 692.

i. Historically, Legislatures Imposed Severe Punishments To Those Convicted Of Serious Crimes Like Petitioner.

During the founding era, legislatures imposed severe punishments for serious crimes, including non-violent offenses. Blackstone defined felony as “an offense which occasions a total forfeiture of either lands, or goods, or both, at the common law” to which “capital or other punishment may be superadded, according to the degree of guilt.” 4 William Blackstone, *Commentaries on the Laws of England* 95 (Harper ed. 1854). Indeed, in Blackstone’s words “the idea of felony is indeed so generally connected with that of capital punishment, that we find it hard to separate them” *Id.* at 98.

Modern courts conducting *Bruen*’s historical analysis have recognized this founding-era history as a relevant analogue to the constitutionality of § 922(g)(1). The Fifth Circuit reasoned that because capital punishment or estate forfeiture “the standard penalty” for serious crimes, “the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible.” *Diaz*, 116 F.4th at 468-69. The Fourth Circuit agreed that “early legislatures regularly punished felons and other non-violent offenders with estate forfeiture or death—far greater punishments that ‘subsumed disarmament.’” *Hunt*, 123 F.4th at 706. The Ninth Circuit found it “difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms.” *Duarte*, 137 F.4th at 756.

In 1820, Edward Livingston, described as “one of the nation’s best-known proponents of abolishing capital punishment,” prepared a systemic code for Louisiana which “replaced the death penalty for crimes such as forgery, perjury, and fraud with permanent forfeiture of certain rights, including the ‘right of bearing arms.’” *Id.* at 757. This history demonstrates that historical legislatures imposed severe punishments on those who committed serious crimes. While estate forfeiture and capital punishment are not identical to § 922(g)(1)’s prohibition, inherent in those punishments is a legal consequence that effectively deprived those who committed serious crimes of possessing arms.

§ 922(g)(1)’s prohibition accords with this tradition as-applied to Petitioner. Petitioner was convicted of a willful act, omission, or refusal to provide necessary care that causes or permits serious injury to the life of a child. Va. Code Ann. § 18.2-371.1 (2026). She would care for “ten or more children at a time,” despite “not having a daycare license.” and relied on her son to provide “pick up and drop off services using an old 15-passenger van” where only one child was safely restrained in a car seat. R. at 2. Most significantly, Petitioner failed to notice an eleven-month-old child was missing for approximately two hours, and he later died. *Id.* Petitioner’s offense resulted in the death of a vulnerable child and exposed numerous other children to similar unsafe conditions. *See id.* The historical tradition therefore supports treating her conviction as serious criminal conduct for which legislatures could impose disarmament. Thus, this court should find that § 922(g)(1) is constitutional as-applied to Petitioner.

ii. History And Tradition Permit Legislatures To Disarm Persons Who Demonstrate A Disregard For Legal Norms Like Petitioner.

Historically, firearm restrictions were not limited to persons who demonstrated a propensity of violence. *Jackson*, 110 F.4th at 1127. Rather, during the colonial era, the historical record suggests that legislatures traditionally “possessed discretion to disqualify categories of

people from possessing firearms to address a danger of misuse by those who deviated from legal norms” *Id.* In the late seventeenth century, the English government “disarmed individuals whose conduct indicated that they could not be trusted to abide by the sovereign and its dictates.” *Range*, 124 F.4th at 255. Following the English Civil War of 1642-1651, for example, monarchs disarmed nonconformist Protestants, in fear that “their faith exempted them from obedience to the law” even though “not all non-conformists were dangerous. . .” *Id.* at 255-256.

Similar restrictions emerged in the American colonies, where some of the earliest firearm laws in colonial America forbade “Native Americans and Black people,” and “full-fledged members of the political community. . . who the authorities believed could not be trusted to obey the law” from owning guns. *Id.* at 257. The colonies continued this tradition during the Seven Years’ War of 1756-1763, disarming Catholics based on their unwillingness to adhere to the King Sovereign. *Id.* at 258. Courts have acknowledged that these were overinclusive bans, as “not all Catholics posed a threat of misusing their firearms.” *Id.* at 259.

Shortly after Pennsylvania ratified their constitution in 1787, the “highly influential” *Dissent of the Minority* offered one of the first proposals for amendments to the Constitution, including on the right to bear arms. Saul Cornell, *Commonplace or Anachronism: The Standard Model, the Second Amendment, and the Problem of History in Contemporary Constitutional Theory*, 16 Const. Commentary 221, 233 (1999). Among its proposed amendments was an explicit suggestion that “people have a right to bear arms. . . unless for crimes committed, or real danger of public injury.” *Id.* Even then, the public's understanding of right to bear arms had limits and sought to exclude those who disregarded law from possessing firearms in fear of public harm.

Rahimi portrayed that more than one kind of historical regulation may justify a single contemporary law. *See Rahimi*, 602 U.S. at 698. Taken together, this historical evidence illustrates

the public's understanding of the Second Amendment around the time of its ratification and illustrates that the right to bear arms was never unlimited. Legislatures have long had a tradition of disarming those who violate the law or who pose a threat to safety.

Petitioner falls within this historical principle. Petitioner was convicted of felony child neglect after failing to provide the necessary care to children she was entrusted with, resulting in the death of an eleven-month-old. R. at 8. Her conviction reflects a serious departure from the legal duties and responsibilities governing those who are trusted to provide care for children. Section § 922(g)(1)'s application to Petitioner is therefore analogous to the historical tradition supporting disarmament for "crimes committed" and the "real danger of public injury" posed by those "who deviated from legal norms." *Jackson*, 110 F.4th at 1127; *Diaz*, 116 F.4th at 470. Thus, this Court should find § 922(g)(1) is constitutional as-applied to the Petitioner.

iii. There Is No Need For Historical Analogues Prohibiting Firearm Possession By Persons Convicted Of Child Neglect.

The absence of exact historical child-protection laws does not establish that § 922(g)(1) as-applied to Petitioner is not supported by historical tradition. Historically, "felony" was a "term of loose signification" and "not precisely the same in any two of the States." The Federalist No. 42, at 228 (James Madison). This Court has made clear that, "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Bruen*, 597 U.S. at 28. Accordingly, history guides "our consideration of modern regulations that were unimaginable at the founding." *Id.* at 28. The relevant historical challenge is therefore, (1) whether historical analogues impose a comparable burden (i.e. "how") and (2) whether that burden is comparably justified (i.e. "why"). *Duarte*, 137 F.4th at 763; (Citing *Bruen*, 597 U.S. at 29.)

There is no need for an exact founding-era analogue to the modern offense to meet the historical test laid out by this court in *Bruen*. The Fifth Circuit in *Diaz* considered an as-applied

predicate felony for vehicle theft exercising *Bruen*'s "why" and "how" framework. *Diaz*, 116 F.4th at 469. The Fifth Circuit found that the historical "why" for capital punishment in the colonial era "was threefold: deterrence, retribution, and penitence" *Id.* 469. And it held that § 922(g)(1) serves a similar purpose or "why", deterring violence and lawlessness by disarming those who are "a hazard to law-abiding citizens" and who demonstrate that are not to "be trusted to possess a firearm without becoming a threat." *Id.* The "how," was historically satisfied through "permanently punishing offenders," as does § 922(g)(1) with a lesser restriction of permanent disarmament. *Id.* Thus, although historical laws and § 922(g)(1) may have employed different means or deterred different crimes, the purpose and justifications were relevant. *Id.*

Diaz demonstrates what the Supreme Court has already addressed, that *Bruen* requires only a "historical analogue, not a historical twin." *Id.* at 30. The founding era had no law specifically addressing car theft because they did not exist; yet *Diaz* found a sufficient historical analogue. Likewise, the absence of an exact historical statute addressing child neglect is not dispositive. The relevant historical purposes of "deterrence, retribution, and penitence" are implicated here. *Diaz*, 116 F.4th at 469. Petitioner's felony child neglect resulted in the death of an eleven-month-old child. *R.* at 2-3. Therefore, the "why," of deterring and punishing, and the "how," permanently restricting her rights, support § 922(g)(1) as-applied to Petitioner.

B. Requiring Individualized Findings of Dangerousness has Resulted in Inconsistency and Negative Jurisprudential Results.

The federal circuits are divided on whether and how individuals may bring as-applied Second Amendment challenge under § 922(g)(1). In the post-*Bruen* era, two distinct approaches have emerged: a categorical approach, and an individualized dangerousness review approach.

Under the first approach, the majority of circuits, including the Eighth, Fourth, Tenth, Eleventh, and Ninth Circuits find § 922(g)(1) constitutional as-applied to felons as a class because

they pose a special danger of firearm misuse when armed. *Jackson*, 110 F.4th at 1129. The Supreme Court has denied certiorari in every one of these cases, leaving in place the consensus of these courts. This approach provides a workable rule, preserving the categorical benchmark that Congress wrote into § 922(g)(1) without requiring courts to predict future firearm misuse.

Under the second approach, the Third, Fifth, and Sixth Circuits undertake individualized reviews to determine dangerousness, considering an individual's entire criminal history, including the predicate offense and its underlying conduct. *See U.S. v. Mancilla*, 155 F.4th 449, 454 (5th Cir. 2025); *Williams*, 113 F.4th at 657, 663. This approach is unworkable, requiring case-by-case distinction between “dangerous” or “non-dangerous felons,” a legal gray area which varies by state and underlying facts. This poses numerous problems for the judiciary, the public, and a risk of inconsistency in its application to felons.

This Court should adopt the categorical approach, because it provides the Circuits with a workable and historically grounded application of § 922(g)(1) to felons. However, even under an individualized dangerousness inquiry, the Petitioner's challenge fails. Finally, the passage of time does not diminish the circumstances underlying the Petitioner's felony under either approach; therefore, this Court should affirm the Fourteenth Circuit Court of Appeals decision.

i. Under the Categorical Approach, Petitioners Conviction Demonstrates a Serious Disregard For legal norms, posing a risk of misuse if armed.

History recognizes that non-violent offenses can be sufficient to establish that an individual is more dangerous than the typical law-abiding citizen. *See Jackson*, 110 F.4th at 1125. In *Jackson*, the defendant argued that § 922(g)(1) is unconstitutional as-applied to him because his drug offenses were “non-violent.” *Id.* At 1125. The Eighth Circuit rejected this argument finding that historically, Congress had the authority to “prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society.” *Id.* at 1127. The historical tradition portrayed

that “the category as a whole presented an unacceptable risk of danger if armed” even when “not all persons disarmed. . . were violent or dangerous.” *Id.* At 1128. Thus, *Jackson* found that historical disarmament was premised on a danger of misuse not “a person’s demonstrated propensity for violence.” *Id.* at 1127.

The Fourth Circuit agreed that, historically, legislatures could disarm “persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed” without undergoing individualized findings of present dangerousness. *Hunt*, 123 F.4th at 707. The court found that historically disarmament was used “to address a risk of dangerousness” which attaches to those who have “already been found guilty of having broken the law.” *Id.* at 706. Consistent with *Jackson*, the court concluded that felons “present an unacceptable risk of danger if armed.” *Id.* at 708 (Citing *Jackson*, 110 F.4th at 1127-28).

Likewise, the Ninth Circuit found that that while founding era and colonial categorical laws “would not survive legal challenges today” they are “reflective of American history and tradition” revealing that legislatures were permitted to disarm those deemed dangerous “without having to perform ‘an individualized determination of dangerousness as to each person. . .’” *Duarte*, 137 F.4th at 760; *See also Vincent*, 127 F.4th at 1266, (Rejecting the need for individualized inquiry and upholding § 922(g)(1)’s against all felons, including those convicted of nonviolent offenses.)

The Seventh Circuit agreed that § 922(g)(1)’s categorical disarmament is consistent with historical tradition but considered this only in the case of a dangerous felony. *United States v. Watson*, 171 F.4th 1012, 1013 (7th Cir. 2026). Here, the court found that defendant’s “previous felony drug dealing conviction is inherently dangerous.” *Id.* In its reasoning the court explained that the historical tradition of categorical disarmament “taken together” with the use of capital punishment to address serious offenses support disarming those with dangerous felonies. *Id.* at

1020. Thus, the court held that legislatures could categorically disarm groups deemed dangerous but did not consider whether this applied to non-dangerous felonies. *Id.* at 1020.

Petitioner falls within this historical tradition because her predicate offense demonstrates a serious disregard for legal norms warranting disarmament. Historical tradition supports disarmament of those who “deviated from legal norms” not merely those with a “demonstrated propensity for violence.” *Jackson*, 110 F.4th at 1127. Petitioner’s felony reflects that serious departure from legal norms. She operated an unlicensed daycare and failed to notice that an eleven-month-old child in her care was missing for approximately two-hours, resulting in his death. *Id.* Her offense therefore demonstrates the serious disregard for legal norms and risk of dangerousness, that *Jackson* and *Hunt* hold historically relevant to disarmament, even without proof that she used physical violence in her felony.

Watson holds that felony drug distribution is “inherently dangerous” demonstrating that dangerousness arises from the circumstances and consequences surrounding criminal conduct rather than use of force. The circumstances and consequences of Petitioner’s felony child neglect demonstrate why her offense presents danger warranting disarmament. Petitioner operated a daycare for profit without proper licensing, endangering the welfare of more than ten children at a time and failing to ensure the safety of an eleven-month-old entrusted to her care. *R.* at 2. This is more than mere irresponsibility; her omissions placed vulnerable children in her care at a risk of serious harm and resulted in the “most horrific outcome possible,” a child’s death. *Id.* While Petitioner did not use force, her omissions to her duty of care and deviations from legal norms constituted a threat of danger to the children. *Id.* at 6. Thus, Petitioner’s predicate offense demonstrates both the serious departure from legal norms identified in *Jackson* and *Hunt*, and the dangerousness contemplated by *Watson*.

Thus, this Court should affirm the judgment of the Fourteenth Circuit Court of Appeals.

ii. Even Under An Individualized Dangerousness Inquiry, Petitioner's Conviction Demonstrates Sufficient Dangerousness If Armed.

Even if this Court chooses to apply the individualized dangerousness inquiry, Petitioner's as-applied challenge fails. The Sixth Circuit in *Williams* finds § 922(g)(1) is constitutional as-applied to dangerous people and instructs district courts to make "fact-specific dangerousness determinations" using the details of a defendant's conviction and broader criminal record. 113 F.4th at 663. Under their inquiry, an individual may be considered "dangerous" if they commit (1) "a crime 'against the body of another human being'" such as murder, rape, or assault, or (2) a crime that "inherently poses a significant threat of danger." *Id.* The more difficult category "involves crimes that pose no physical threat of danger." *Id.* Applying that framework, the court held that the defendant's convictions for aggravated robbery and attempted murder are sufficient to conclude that if armed, he presents a danger to the public. *Id.* at 663

In *Range*, the Third Circuit held that legislatures could not automatically disarm individuals with non-violent convictions without "relevantly similar" historical analogues. *See* 124 F.4th at 103. There, the defendant was prohibited from owning a firearm due to a 1995 misdemeanor conviction for making false statements to obtain food stamps. *Id.* at 223. The court emphasized that *Range* was convicted of "a nonviolent, non-dangerous misdemeanor and had not been incarcerated." *Id.* at 224. The court held that although *Rahimi* blessed disarming "physically dangerous people," *Range*'s misdemeanor for food stamp fraud was not associated with physical danger and fell outside of that historical rationale. *Id.*

Although the Third Circuit achieved a different result, their decision was not unanimous, and members of the court expressly disagreed with the majority's strict historical analysis. Judge Krause specifically criticized the strict conclusion that historical legislatures had the authority to

disarm only “physically dangerous felons” rather than “a wide range of groups considered to present a special danger.” *Id.* at 253 (Judge Krause, concurring). In fact, she cites that this courts insistence on a historical twin “cannot be squared with Supreme Court and historical precedent. . .” and “portends confusion and inconsistency among the district courts,” weighing against treating *Range* as persuasive authority. *Id.* (Judge Krause, concurring).

The Ninth Circuit similarly rejected this narrow historical approach emphasizing that *Bruen* and *Rahimi* made clear that analogical reasoning does not require modern-day firearm regulations to be a “dead ringer” for historical precursors. *Duarte*, 137 F.4th at 755. Rather, “such a narrow view of history” would create “a law trapped in amber.” *Id.* at 759.

Petitioner’s predicate offense, regardless of its name and classification was a felony that caused or permitted the death of an eleven-month-old child. R. at 2. Although it may not fit in the traditional category of a “a crime ‘against the body of another human being,’ it at a minimum is a crime that “inherently poses a significant threat of danger. . .” *Williams*, 113 F.4th at 663. Petitioner delegated the transport of multiple vulnerable children to her son without safety precautions and failed to notice for nearly two hours a missing eleven-month-old child trusted to her care. R. at 2. Similar to burglary which “creates the possibility of a violent confrontation,” Petitioner’s willful omissions created an ongoing risk of harm to more than ten vulnerable children and ultimately resulted in the death of a child. *Williams*, 113 F.4th at 659. This conduct demonstrates a greater risk of danger than crimes “that pose no threat of physical danger.” *Id.* at 633. Thus, even under *Williams*’ individualized framework, the circumstances of Petitioner’s conviction would provide sufficient evidence that she poses a danger if armed.

Unlike *Range* who was convicted of a single “nonviolent, non-dangerous misdemeanor” Petitioner’s offense resulted in a child’s death. 124 F.4th at 224. While *Range*’s court could

confidently conclude that food-stamp fraud is not “closely associated with physical danger,” Petitioner’s underlying conviction does not warrant the same holding. *Id.* at 230. Petitioner’s conviction is premised on causing or permitting “serious injury to the life or health of” a child, not a mere economic offense. Va. Code Ann. § 18.2-371. Therefore, Petitioner’s circumstances are distinguishable from *Range*, and her underlying is directly connected to the harm that caused the death of a child in her care. Thus, even under the more demanding individualized-dangerousness approach, this Court should find that Petitioner’s as-applied challenge fails and affirm.

iii. Even Considering the Twenty-Year Gap, Petitioner’s Predicate Conviction Places Her In The Class Of Individuals Subject To § 922(g)(1).

Even considering the twenty-year gap between the predicate conviction and this claim, Petitioner’s conviction places her within the class of individuals subject to disarmament under § 922(g)(1). The Circuit’s differing approaches do not change this result, as each framework gives significance to the predicate offense under *Bruen*’s two-step framework.

Under the categorical approach adopted by the majority of circuits, the relevant inquiry is whether the defendant’s predicate conviction falls within the historical tradition of disarming categories of people who deviate from legal norms or pose a risk of misusing firearms. *See Jackson*, 110 F.4th at 1128; *Hunt*, 123 F.4th at 706. The passage of time under this inquiry therefore does not transform a qualifying felony into a lesser offense.

The Sixth Circuit’s individualized approach likewise does not put much weight on the age of a conviction. It requires their courts to consider “the unique circumstances of the individual, including details of his specific conviction.” *Williams*, 113 F.4th at 663. Even under this more individualized approach, *Williams* recognized that “violent crimes are at least strong evidence that an individual is dangerous, if not totally dispositive.” *Id.* at 658. Thus, the predicate conviction remains relevant to determining dangerousness, not the time that has passed.

The Fifth Circuit takes an even narrower approach. It has declined to “embrace the view that courts should ‘look beyond’ a defendant’s predicate conviction ‘and assess whether the felon’s history or characteristics make him likely to misuse firearms.’” *United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025). Rather, *United States v. Cockerham* illustrates that Fifth Circuit precedent focuses “on the nature of the predicate offense rather than on the defendant’s broader criminal history or individual characteristics.” 162 F.4th 500, 507 (5th Cir. 2025). The courts analyze offenses that are “punishable by imprisonment for a term exceeding one year” in searching for a historical analogue. *Morgan*, 147 F.4th at 528. Although *U.S. v. Alaniz*, considered “a defendant’s entire criminal record,” including state felonies, it declined to consider misdemeanor offenses. 146 F.4th 1240, 1242 (5th Cir. 2025). Thus, even when the Fifth Circuit considers criminal history, the inquiry remains tied to qualifying criminal convictions.

The Third Circuit’s treatment of the passage of time further supports that neither the twenty-year gap nor Petitioner’s subsequent conduct removes her from § 922(g)(1). In *Binderup v. Atty. Gen. U.S. of Am.*, the court expressly states that there is “no historical support for the view that the passage of time or evidence of rehabilitation can restore Second Amendment rights that were forfeited.” 836 F.3d 336, 350 (3d Cir. 2016).

Thus, under the categorical approach, Petitioner’s felony remains central. Petitioner remains convicted of serious felony for child neglect, arising from omissions that permitted the death of an eleven-month-old. R. at 2. The passage of time does not change the severity of the offense or remove Petitioner from the historical category of persons who were disarmed.

Under the Sixth Circuit’s individualized approach, courts consider a “defendants entire criminal record” and the “unique circumstances of the individual, including details of his specific conviction.” *Williams*, 113 F.4th at 663. Even bearing the passage of time, those circumstances

weigh against Petitioner. Her felony conviction arose from a willful omission to provide necessary care to vulnerable children, which, paired with an unlicensed daycare misdemeanor, ultimately resulted in the death of an eleven-month-old child. R. at 2. Her subsequent conduct is also relevant. Twenty-years later, Petitioner, knowing she was a convicted felon, accepted a handgun from a friend and “took the gun home” despite suspecting that “her son might sell or use drugs.” R. at 3. Petitioner’s record and disregard for legal norms do not “make an individualized showing that” she is not dangerous. *Williams*, 113 F.4th at 663.

Lastly, the Fifth Circuit’s approach is equally unfavorable for the Petitioner, it “focuses its analysis on qualifying convictions rather than personal characteristics,” and thus Petitioner’s conviction would be undisturbed by the passage of time. *See Kimble* 142 F.4th at 318.

Thus, although the circuit courts may differ methodologically when considering an as-applied challenge, no circuit holds that the age of a qualifying conviction eliminates its constitutional significance. Under each framework, the application of § 922(g)(1) supports Petitioner’s disarmament under relevant historical tradition. Accordingly, this Court should affirm and find § 922(g)(1) constitutional as-applied to Petitioner.

C. A Requirement for Individualized Dangerousness Reviews Would Improperly Restrict Congress’s Ability to Prevent Firearm Related Harm.

Congress crafted § 922(g)(1) to categorically disarm serious offenders who may pose a risk to public safety if armed, supported by the longstanding prohibition on felons. Requiring judges to undergo an individualized dangerousness review in every challenge to § 922(g)(1) would undermine this intent, overburden the courts, and contribute to the inconsistency we are witnessing firsthand in the circuit courts.

Courts have recognized in the Second Amendment context that “the Judicial Branch is not ‘institutionally equipped’ to conduct ‘a neutral, wide-ranging investigation’ into post-conviction

assertions of rehabilitation or to predict whether particular offenders are likely to commit violent crimes in the future” *Binderup*, 836 F.3d at 350. Even determining whether a conviction was “for a crime of violence has become extremely labor-intensive for the judiciary, fraught with uncertainty and inconsistency.” Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 Cardozo L. Rev. 1573, 1605 (2022). Congress itself has recognized that granting relief from § 922(g)(1) is a “very difficult and subjective task” that may “have devastating consequences for innocent citizens if the wrong decision is made.” *See* S. Rep. 102-353 (1992).

Rather, 18 U.S.C. § 925(c) provides the appropriate mechanism for individualized relief. Under the proposed Federal Firearm Rights Restoration program, prohibited persons may seek relief by demonstrating that they “are not likely to act in a manner dangerous to public safety, and that granting such a relief would not be contrary to the public interest.” U.S. Dep’t of Justice, AG Order No. 7109-2026, *Application for Relief from Disabilities Imposed by Federal Laws with Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms*, at 1 (2026). The program, scheduled to begin November 4, 2026, “goes beyond what courts have deemed required in their second amendment jurisprudence” by incorporating individualized determinations “as opposed to relying solely on categorical or presumptive rules.” *Id.* at 15, 38. Investigating an individual’s propensity for recidivism or dangerousness is a job that is an “inherently policy-based decision that is best left in the hands of an agency.” Stevenson at 1619, (quoting *United States v. Bean*, 537 U.S. at 77). As such, individualized determinations of dangerousness are best left as a function to be performed by the executive branch using specialized statutory relief under § 925(c).

Accordingly, this court should affirm and dismiss the Petitioner’s as-applied challenge.

CONCLUSION

For the foregoing reasons, this Court should affirm the Fourteenth Circuit's ruling. First, defendants should be precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1) under the Second Amendment. This Court has upheld the constitutionality of felon-in-possession laws, which fall within the Nation's historical tradition of status-based restrictions.

Second, 18 U.S.C. § 922(g)(1) is constitutional as-applied to Petitioner. Its prohibition on Petitioner falls within the Nation's historical tradition of disarmament. Even under an individualized approach, her predicate offense and subsequent conduct support her disarmament. For these reasons, this Court should affirm the Fourteenth Circuit's dismissal of Petitioner's claim.

Respectfully submitted this 30th of September, 2026.

Respectfully submitted,

/s/Team LO

Team LO

Attorneys for Respondent