

NO. 26-179

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2026

TERRY BRANDERS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

- I. Whether as-applied challenges to 18 U.S.C. § 922(g)(1), as permitted by the Third Circuit and its progeny, remain available where *Bruen* and *Rahimi* require a comprehensive historical inquiry into the Nation's tradition of firearm regulation.
- II. Whether the Second Amendment is violated when 18 U.S.C. § 922(g)(1) is applied to an individual convicted of a single twenty-year-old offense for felony child neglect with no history of violence.

STATEMENT OF THE CASE

In 2000, Terry Branders (“Ms. Branders”), a retired factory worker, began operating a day care center from her home in Alexandria, Virginia, where she provided care for the children of her former colleagues. R. at 2. Her then eighteen-year-old son, Nelson Branders (“Nelson”), assisted her by transporting children to and from the daycare. *Id.* One day, after not getting much rest, Nelson picked up twelve children. *Id.* Nelson then brought eleven of the twelve children into Ms. Branders’ home but negligently left eleven-month-old Kenneth Drew (“Kenneth”) in his van. *Id.* Ms. Branders, relying on her son and going about her usual routine, did not realize Kenneth was missing from his crib for approximately two hours. *Id.* After discovering Kenneth was missing, Ms. Branders spent more than an hour trying to reach Kenneth’s mother and Nelson, both of whom were unreachable, before calling 911. *Id.* Upon discovery by law enforcement, Kenneth had suffered heat-related injuries and, despite medical attention, died shortly thereafter. *Id.*

On March 5, 2001, Nelson was convicted of felony child neglect pursuant to Va. Code § 118.2-371.1 and was sentenced to four years in prison. R. at 2-3. Ms. Branders was also convicted of felony child neglect and operation of a daycare without a license, a misdemeanor. *Id.* Ms. Branders was given a two-year suspended sentence and placed on probation. R. at 3. There is nothing in the record to suggest that she served any time in prison or violated her probation. *Id.*

In 2020, Ms. Branders moved to Appleton, Newcoastland, seeking a new start. *Id.* There, she was involved with various charities and volunteer activities, serving the community’s local food bank and stocking school supplies for children in need. *Id.* In the several years following her conviction, Ms. Branders’ only encounter with law enforcement was for a driving misdemeanor. *Id.* Her license was suspended for six months. *Id.*

Recently, Nelson moved into Ms. Branders’ home. *Id.* He insisted on living in the basement and was persistent that she did not enter. *Id.* Relying on her son’s assistance as she aged, Ms.

Branders complied with his demands because she was afraid of his “frequent angry outbursts” and the company he kept. *Id.* Ms. Branders, suspecting that her son may be using or selling drugs, confided in Becky Haskill (“Ms. Haskill”), a friend whom she met volunteering at the food bank. *Id.* Ms. Haskill insisted that Ms. Branders procure a gun for personal protection. *Id.* Ms. Branders accepted a handgun from Ms. Haskill and stored it in a locked drawer in her living room. *Id.*

In June 2024, Agents from the Drug Enforcement Administration (“DEA”), acting on a tip about Nelson’s alleged narcotics activities, surveilled the home and discovered Nelson and Ms. Branders’ prior convictions through a law enforcement database. R. at 3-4. After Nelson left the house one day, DEA agents approached the home. R. at 4. Agent Sue Stern (“Agent Stern”) testified that because Ms. Branders was a woman in her seventies, she was certain Branders would consent to a search of the house, noting it would be “way easier” than getting a warrant. *Id.* Agent Stern also testified that Ms. Branders was “quite cooperative.” *Id.* Agents found no evidence of drug activity but did discover Ms. Branders’ handgun in a locked drawer in the living room. *Id.* Ms. Branders told the agents the handgun was gifted to her and that she considered herself to be a responsible gun owner, keeping the ammunition and the firearm in separate locked drawers. *Id.* Ms. Branders was “surprised” when DEA agents arrested her for possession of the handgun. *Id.*

On July 3, 2024, Ms. Branders was charged pursuant to 18 U.S.C. § 922(g)(1) for possession of a firearm with a felony conviction. R. at 4. She moved to dismiss the indictment and argued that § 922(g)(1) violated the Second Amendment as applied to her. *Id.* On December 22, 2025, the Eastern District Court of Newcoastland granted Ms. Branders’ motion and dismissed the indictment. R. at 7. On June 10th, 2026, the Fourteenth Circuit reversed the dismissal. R. at 10. Ms. Branders entered an *Alford* plea and reserved her right to appeal. R. at 12. This Court granted certiorari in the October 2026 term. R. at 13.

SUMMARY OF THE ARGUMENT

This Court should reject the categorical rule barring as-applied challenges to 18 U.S.C § 922(g)(1), and instead adopt the individualized approach employed by the Third Circuit and its progeny. Under this Court's precedent, the government bears the burden to demonstrate that the challenged law is consistent with those enacted throughout history. Lower courts may not avoid this inquiry merely because an offense is punishable by over one year of imprisonment. The categorical rule, employed by the Eighth and Fourteenth Circuits, permits exactly this. By treating every felony conviction as sufficient to justify permanent disarmament, these courts avoid the rigorous analysis emphasized by this Court in *Bruen* and *Rahimi*. Individualized as-applied challenges alternatively ensure the Government meets its burden of identifying a historical tradition supporting the disarmament of the individual before the court. This Court should therefore instruct lower courts to permit as-applied challenges and allow Ms. Branders to challenge the statute as applied to her.

Upon ruling that as-applied challenges are permissible, this Court should find that § 922(g)(1) is unconstitutional as applied to Ms. Branders because historical analysis only permits disarming individuals who are dangerous. The Government must equate the principles of historical regulatory tradition to the challenged regulation, and there are no historical analogues to support the permanent disarmament of individuals for acts of omission. Ms. Branders' predicate offense of felony child neglect was not an intentional act of violence. Further, an individual's specific circumstances should be considered to ascertain whether they would pose a special danger of firearm misuse. Here, Ms. Branders has never committed an act of violence and has continued to display peaceable behavior for the twenty-five years following her felony conviction. She has never been convicted of a firearm-related offense, nor does she present any clear indication that she poses a threat to public safety. Ms. Branders' conduct is not consistent with that of the

individuals who were disarmed throughout history. This Court should therefore reverse the judgment of the Fourteenth Circuit and remand with instructions to vacate Ms. Branders' conviction.

ARGUMENT

I. THIS COURT SHOULD REVERSE THE DECISION OF THE FOURTEENTH CIRCUIT WITH INSTRUCTIONS PERMITTING MS. BRANDERS' AS-APPLIED SECOND AMENDMENT CHALLENGE TO 18 U.S.C. § 922(g)(1) IN ACCORDANCE WITH THE THIRD CIRCUIT AND ITS PROGENY.

The Second Amendment to the United States Constitution protects the right of the people to keep and bear arms. U.S. CONST. amend. II. That right, however, is not unlimited. *District of Columbia v. Heller*, 554 U.S. 570, 595, 626 (2008). 18 U.S.C. § 922(g)(1) is one such limitation. The federal statute makes it unlawful for any person who has been convicted of a “crime punishable by imprisonment for a term exceeding one year” to possess or receive a firearm or ammunition. 18 U.S.C. § 922(g)(1). To date, this Court has not applied its existing framework to a constitutional challenge to § 922(g)(1). This case requires this Court to do so.

Three decisions define this Court's framework for reviewing Second Amendment challenges to firearm regulations and require the inquiry to turn on historical tradition: *District of Columbia v. Heller*, 554 U.S. 570 (2008); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); and *United States v. Rahimi*, 602 U.S. 680 (2024).

Beginning this Court's modern Second Amendment jurisprudence, *Heller* established that the Second Amendment protects the right to bear arms for “all members of the political community,” not just for individuals in connection with militia service. *Heller*, 554 U.S. at 580. The Court emphasized that “the inherent right of self-defense” is central to the Second Amendment, but noted that the right is not “unlimited,” and cautioned that prohibitions on firearm possession by felons remain “presumptively lawful.” *Id.* at 580, 626, n. 26. Lower courts have disagreed over

the significance of that language when assessing Second Amendment challenges to § 922(g)(1). *Compare Range v. Att’y Gen.*, 124 F.4th 218, 225-26 (3d Cir. 2024), with *United States v. Jackson*, 110 F.4th 1120, 1125-29 (8th Cir. 2024).

In *Bruen*, this Court clarified the framework governing Second Amendment challenges. When the “Second Amendment’s plain text covers an individual’s conduct,” the Constitution presumptively protects that conduct. *Bruen*, 597 U.S. at 24. The burden then shifts to the Government to demonstrate that the challenged regulation is “consistent with the Nation’s historical tradition of firearm regulation” through a “well-established and representative historical analogue.” *Id.* at 24, 30.

Rahimi clarified how courts conduct the *Bruen* historical tradition inquiry when faced with a challenge to § 922(g).¹ *Rahimi*, 602 U.S. at 680. This Court explained that the historical analogue need not be identical to historical regulations but only “relevantly similar.” *Id.* at 692 (internal citation omitted). Central to that inquiry is “why and how the regulation burdens the right.” *Id.* Thus, the modern regulation need not be a “‘dead ringer’ or a ‘historical twin,’” but must be consistent with the factors underlying the Nation’s tradition of firearm regulation. *Id.* (internal citation omitted).

Taken together, these cases establish a framework for appellate review of firearm regulation challenges and provide the principles necessary for assessing the competing approaches that circuit courts have adopted for § 922(g)(1) challenges. Accordingly, where this Court has not yet resolved the constitutionality of a particular firearm restriction, courts must apply the required historical analysis rather than rely on a categorical label. *See United States v. Hemani*, 146 S. Ct. 1677, 1686 (2026).

¹ *Rahimi* concerned § 922(g)(8), rather than § 922(g)(1), which is at issue here, but applied the same historical tradition inquiry under *Bruen* to a Second Amendment challenge to § 922(g).

A. This Court Should Permit As-Applied Challenges to 18 U.S.C. § 922(g)(1) Because a Felony Conviction Alone Cannot Supplant the Historical Tradition Inquiry This Court Demands in *Bruen* and *Rahimi*.

Though *Heller* described the longstanding prohibition on firearm possession by felons as “presumptively lawful,” this Court did not examine the historical justification for those restrictions as *Bruen* and *Rahimi* now require. *Heller*, 554 U.S. at 626, n.26. Nor has this Court directly addressed the constitutionality of § 922(g)(1), as its jurisprudence has “not ‘undertake[n] an exhaustive historical analysis . . . of the full scope of the Second Amendment.’” *Rahimi*, 602 U.S. at 702 (*quoting Bruen*, 597 U.S. at 31). As a result, circuit courts are split over whether the historical tradition must justify disarming an individual challenger or felons as a class.

On one side of the split, the Third Circuit—and its progeny encompassing the Fifth and Sixth Circuits, among others—preserves the constitutionality of § 922(g)(1) where history supports disarmament. This approach simultaneously secures the rights of individuals like Ms. Branders who would otherwise be stripped of their constitutional protections solely because they share a statutory label with offenders whose conduct is vastly different. These courts do so by assessing the constitutionality of § 922(g)(1) as applied to the individual challenger. In adopting this individualized approach in *Range*, an en banc Third Circuit held that § 922(g)(1) was unconstitutional as applied to a nonviolent challenger who had been convicted of a misdemeanor punishable by imprisonment for over one year for making false statements to obtain food stamps. *Range*, 124 F.4th at 222, 229. Because a Second Amendment challenge to § 922(g)(1) affects an individual’s right, the Third Circuit’s inquiry turns on an individual’s circumstances and conduct, not on a statutory label. *Pitsilides v. Barr*, 128 F.4th 203, 207 (3d Cir. 2025). Ms. Branders’ circumstances demonstrate the importance of that distinction. Like *Range*’s, her predicate offense, child neglect, is nonviolent and bears no relationship to danger resulting from firearm misuse, and her possession of an unloaded handgun, locked in a drawer in her home for self-defense, presents

no risk of harm to the public at large. R. at 2-3, 4. Under the Third Circuit’s framework, the nature of Ms. Branders’ predicate offense and post-conviction conduct matter. *See Pitsilides*, 128 F.4th at 205, 212. Thus, this approach permits Ms. Branders, and other nonviolent felons to challenge regulations that infringe upon their fundamental rights secured at our Nation's founding.

By contrast, the Eighth Circuit—and its progeny encompassing the Fourth, Ninth, and Tenth Circuits, among others—treats felony status alone as sufficient to strip all individuals convicted of an offense punishable by over a year of incarceration of their Second Amendment rights. Rather than asking whether history justifies disarming the individual challenger, these courts look to the historical tradition of disarming broad “categories of persons.” *Jackson*, 110 F.4th at 1128. The Eighth Circuit adopted this approach in *Jackson*, where an individual with two felony convictions totaling 220 months of incarceration fled from police with a concealed firearm after officers responded to a call for shots fired in the area. *Jackson*, 110 F.4th at 1122-23. Under this categorical rule, challengers such as Jackson, whose underlying conduct and circumstances justify disarmament, are treated no differently than Ms. Branders, who is peaceable and nonviolent. This is the primary issue with the Eighth Circuit approach. By foreclosing on “felony-by-felony” determinations, the Eighth Circuit’s framework may disarm individuals who pose no threat of danger if rearmed and suppresses the Second Amendment rights of individuals without justification. *Id.* at 1122; *United States v. Cunningham*, 114 F.4th 671, 675 (8th Cir. 2024).

The fundamental disagreement amongst the circuits is therefore not whether § 922(g)(1) has constitutional applications; rather, it is whether a felony conviction categorically forecloses a court’s consideration of the history and tradition of firearm regulation as applied to the individual before the court. This Court should reject the categorical approach and permit individualized as-applied challenges to § 922(g)(1).

B. This Court Should Not Adopt the Eighth Circuit’s Categorical Approach as It Conducts the Historical Inquiry at Too High a Level of Generality to Satisfy This Court’s Precedent Under *Bruen* and *Rahimi*.

By conducting the historical inquiry at the level of felons as a class, the Eighth Circuit wrongfully disarms individuals like Ms. Branders, whose circumstances and conduct are vastly different from those of the individuals before the court when it adopted this framework. *See Jackson*, 110 F.4th at 1122; *see also Cunningham*, 114 F.4th at 673. The Eighth Circuit reasons that because “[l]egislatures historically prohibited possession by categories of persons . . . there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons.” *Jackson*, 110 F.4th at 1128. Consistent with the reasoning of collective dangerousness of a class, the Eighth Circuit rejects “felony-by-felony” determinations and instead relies on *Heller*’s description of felon-dispossession laws as “presumptively lawful” to conclude that the longstanding prohibition on firearm possession by felons is constitutional without requiring an individualized historical justification for each person subject to § 922(g)(1). *Heller*, 554 U.S. at 626-27, n.26; *Cunningham*, 114 F.4th at 675.

The facts of *Jackson* and *Cunningham* illustrate why the categorical rule sweeps too broadly and should not apply to Ms. Branders. Like Jackson, who had multiple convictions for narcotics and subsequent flight from police while armed, the challenger in *Cunningham*, in which the Eighth Circuit reaffirmed *Jackson*’s framework for § 922(g)(1) challenges, was still on supervised release when found with a firearm alongside narcotics packaged for distribution. *Cunningham*, 114 F.4th at 673-74. Even under the Third Circuit’s approach, drug trafficking may justify disarmament, as the drug trade inherently possesses a risk of violence. *See Pitsilides*, 128 F.4th at 212-13. Ms. Branders’ conduct is drastically different. Her sole conviction over two decades ago, and possession of an unloaded handgun locked in a drawer in her home for self-defense, are far different from the conduct of formerly incarcerated repeat offenders armed in

connection with further criminal activity. R. at 2-4; *Jackson*, 110 F.4th at 1122; *Cunningham*, 114 F.4th at 673. These distinctions are precisely what individualized inquiry is capable of addressing.

Jackson’s and Cunningham’s predicate offenses and underlying conduct supply the grounds for disarmament, not their felony status. Yet instead of resolving these challenges on the basis that actually made Jackson or Cunningham eligible for disarmament, the Eighth Circuit foreclosed individualized review for every person subject to the broad reach of the modern felony category, dangerous or not. *Jackson*, 110 F.4th at 1126-27. That methodology is flawed. The underlying circumstances and conduct that justify disarming these felons cannot, without further inquiry, justify permanently disarming Ms. Branders, or every person subject to § 922(g)(1). This Court should reject the categorical leap employed by the Eighth Circuit and require the Government to justify disarming the individual challenger.

Further, the Eighth Circuit conducts the historical inquiry under *Bruen* and *Rahimi* at too high a level of generality by failing to ask whether the historical “why” and “how” supporting disarmament are comparable to § 922(g)(1) as applied to the individual challenger. *Bruen* requires the Government to identify a “well-established and representative historical analogue,” while *Rahimi* emphasizes that “why and how the regulation burdens the right” is central to the inquiry. *Bruen*, 597 U.S. at 30; *Rahimi*, 602 U.S. at 692. The Eighth Circuit fails to adhere to this. By treating felony status as sufficient to establish a historical tradition of disarmament, the Eighth Circuit lightens the burden the Government bears. *Bruen* and *Rahimi* require a far deeper analysis than reliance on a statutory label. The Eighth Circuit’s framework therefore “operates ‘at such a high level of generality that it waters down the right.’” *Range*, 124 F.4th at 230 (quoting *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring)).

Neither of the principal historical justifications identified by the Eighth Circuit—departure from “legal norms” or an “unacceptable risk of danger if armed”—support disarming all individuals subject to § 922(g)(1). *Jackson*, 110 F.4th at 1127-28. Where dangerousness supplies the historical “why,” felony status alone is insufficient, as § 922(g)(1) turns on the punishment attached to a particular offense, not the dangerousness an individual poses if armed. Indeed, *Jackson* acknowledges that “not all persons disarmed under historical precedents . . . were violent or dangerous persons.” *Id.* at 1128. Yet the Eighth Circuit wrongly extends its categorical rationale to all felonies despite this distinction. The Third Circuit rejects that approach as an attempt to “stretch dangerousness” to cover all felonies. *Id.* at 1128-29; *Range*, 124 F.4th at 229. Alternatively, departure from “legal norms” is a circular argument. By treating Congress’s decision to make an offense punishable by more than one year of imprisonment as sufficient to justify disarmament, the Eighth Circuit essentially relieves the Government of the burden *Bruen* assigns and circumvents the *Rahimi* analysis of why disarmament is justified.

The Eighth Circuit’s inquiry into “how” historical restrictions burdened the right to bear arms is equally flawed. Its historical analogues imposed materially different burdens from § 922(g)(1), ranging from disarmament of particular groups thought to present specific threats to imposing forfeiture or even death for particular offenses. See *Jackson*, 110 F.4th at 1126-29. By contrast, § 922(g)(1) imposes a life-long prohibition on firearm possession based solely on a modern statutory classification regardless of the underlying conduct. Those differences matter. Treating historically different restrictions as analogous merely because they each resulted in disarmament transforms the “how” inquiry into a comparison of outcomes rather than burdens. This is precisely the level of generality that Justice Barrett warned against in *Rahimi*. *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

Additionally, other courts have extended the Eighth Circuit’s categorical approach, either by replacing individual review with class-wide assumptions or by going so far as to omit the historical inquiry that *Bruen* requires. Citing *Jackson*, the Fourth Circuit held that “status-based restrictions” are sufficient “to disqualify categories of persons from possessing firearms,” thereby rejecting individual review. *United States v. Hunt*, 123 F.4th 697, 705 (4th Cir. 2024) (quoting *Jackson*, 110 F.4th at 1129). Similarly, the Ninth Circuit expressly joined the Fourth, Eighth, Tenth, and Eleventh Circuits, holding that “§ 922(g)(1) is not unconstitutional as applied to nonviolent felons.” *United States v. Duarte*, 137 F.4th 743, 749 (9th Cir. 2025).

Much like the Eighth Circuit, the Fourth and Ninth Circuits repeat *Jackson*’s class-wide inquiry without asking whether historical tradition justifies disarming the particular challenger. These courts adopt this framework in cases where the challenger’s individual conduct and circumstances may themselves support disarmament. *Hunt* had a predicate breaking-and-entering conviction and was later found with a gun during a domestic violence incident, while *Duarte* had five felony convictions involving controlled substances and evasion from police. *Hunt*, 123 F.4th at 708-09; *Duarte*, 137 F.4th at 748-49. Much like *Jackson* and *Cunningham*, these circumstances may independently support disarmament of those petitioners, but do not independently establish that every individual subject to § 922(g)(1), including Ms. Branders, presents the same historical justification.

More troubling, the Tenth and Eleventh Circuits reach the same categorical result while circumventing this Court’s instruction in *Bruen*. In *Vincent v. Bondi*, the Tenth Circuit relied on its pre-*Bruen* decision in *United States v. McCane* as controlling, while the Eleventh Circuit in *United States v. Dubois* did the same with its decision in *United States v. Rozier*. See *Vincent v. Bondi*, 127 F.4th 1263, 1264-66 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 893-94

(11th Cir. 2025). Both circuits thereby risk transforming *Heller*’s “presumptively lawful” dicta into the end of the inquiry rather than conducting the historical analysis *Bruen* requires. *Heller*, 554 U.S. at 626, n.26; *See Vincent*, 127 F.4th at 1265; *Dubois*, 139 F.4th at 891-92. As evident from the Tenth and Eleventh Circuits, the categorical approach leaves the door open for dangerous precedent. Rather than independently determining whether § 922(g)(1) satisfies the historical framework *Bruen* mandates, *Vincent* and *Dubois* ask whether *Bruen* and *Rahimi* sufficiently abrogated pre-*Bruen* circuit precedent. *See Vincent*, 127 F.4th at 1265-66; *Dubois*, 139 F.4th at 891-92. Both courts held that they do not. *Id.* This is not only problematic for individuals like *Vincent* and Ms. Branders, who stand before the court on nonviolent felony offenses, but also ignores years of this Court’s Second Amendment Jurisprudence. *See Vincent*, 127 F.4th at 1264-66 (involving a predicate conviction for nonviolent bank fraud); R. at 2-4. The distinction between these approaches and that of the Third Circuit is ultimately one of fidelity to this Court’s precedent. Because this Court has never held that § 922(g)(1) is constitutional in every application, prior circuit precedent cannot substitute for the historical showing *Bruen* requires.

C. This Court Should Adopt the Framework of the Third Circuit and Its Progeny Because *Bruen* and *Rahimi* Require the Government to Justify Disarming Ms. Branders as an Individual.

By refusing to treat modern felony status as dispositive and instead permitting as-applied challenges to the constitutionality of § 922(g)(1), the Third Circuit and its progeny supply the depth of historical analysis missing from the Eighth Circuit’s categorical approach. In *Range*, the court held that “[t]o preclude *Range* from possessing firearms, the Government must show that § 922(g)(1), as applied to him, ‘is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.’” *Range* 124 F.4th at 228 (*quoting Bruen*, 597 U.S. at 19). In permitting as-applied challenges, the Third Circuit holds that a challenger’s relief in a § 922(g)(1)

challenge “turns on [a challenger’s] individual circumstances and conduct,” including their entire criminal history, predicate offense, and post-conviction conduct. *Pitsilides*, 128 F.4th at 205, 212. Under this framework, a challenger’s single, nonviolent offense and absence of any history of risk of danger may be insufficient to establish the historical justification necessary for permanent disarmament. *See Range*, 124 F.4th at 229-32. By contrast, the same framework may permit disarmament where an individual’s circumstances demonstrate a risk of danger. *See Pitsilides*, 128 F.4th at 211-13; *see also United States v. Walters*, 151 F.4th at 134-35 (3d Cir. 2025) (rejecting relief where defendant’s extensive criminal history included several drug-trafficking convictions).

Ms. Branders’ individual conduct and circumstances demonstrate why individualized review matters. In light of the circumstances the Third Circuit considers in *Pitsilides*, an appellate court should consider the following: (1) Ms. Branders has no history of felonies aside from felony neglect of a child two decades ago; (2) the predicate offense was nonviolent and unintentional; (3) she has had no further encounters with law enforcement absent a moving violation; and (4) the firearm was kept in the home for self-defense. R. at 3; *see Heller*, 554 U.S. at 628 (emphasizing “the need for defense of self, family, and property is most acute” in the home). Ms. Branders’ individual circumstances therefore do not justify disarmament, and only under the approach of the Third Circuit and its progeny does that distinction affect the analysis.

Further, in examining “how” and “why” historical regulations justify disarmament, the Third Circuit faithfully gives effect to this Court’s instructions in *Bruen* and *Rahimi* rather than relying on a categorical label. In addition to the *Bruen* historical analysis, the Third Circuit also gives weight to *Heller*’s emphasis on “an individual right to keep and bear arms,” reasoning that the determination of whether an individual right may constitutionally be withdrawn “necessarily demands individualized fact-finding.” *Heller*, 544 U.S. at 662; *Pitsilides* 128 F.4th at 210. Thus,

the Third Circuit’s inquiry begins with individual rights, while the Eighth Circuit reverses that logic and begins with felony status, which it treats as dispositive of disarmament.

In assessing “why” a historical analogue may be applicable, the Third Circuit’s approach asks whether the challenger’s offense, conduct, and history reflect the concerns that historically justified disarmament. *See Pitsilides*, 128 F.4th at 211-13. This individualized inquiry prevents the Government from avoiding its burden by “stretch[ing] dangerousness” to cover all felonies. *Range*, 124 F. 4th at 230. Instead, a challenger’s individual circumstances must establish whether they meet the “threshold for continued disarmament.” *Pitsilides*, 128 F.4th at 212. This notion rests on the reality that not all felons pose a danger to society if armed. Likewise, in assessing “how” historical regulations burdened the right, the invocation of founding-era laws imposing severe punishments for certain nonviolent offenses does not itself establish that permanent disarmament under § 922(g)(1) imposes a comparable burden. *See Range*, 124 F.4th at 230-32. Thus, individual review holds the Government to the proper burden that this Court assigned to it in *Bruen* and *Rahimi*. *See Bruen*, 597 U.S. at 24-5; *Rahimi*, 602 U.S. at 681, 691.

The Third Circuit’s approach therefore gives this Court’s precedent full effect by asking whether history justifies disarming the individual before the court. A categorical rule, by contrast, ends the inquiry prematurely by substituting felony status for the required comparison between modern and historical burdens.

Other circuits similarly preserve individual review, concluding that § 922(g)(1) may be unconstitutional as applied to nonviolent felons. The Fifth Circuit has held that “[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny.” *United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024). That court subsequently explained that *Diaz* “left the door open for § 922(g)(1) to be unconstitutional as applied to some

felons.” *United States v. Mitchell*, 160 F.4th 169, 179 (5th Cir. 2025). Likewise, the Seventh Circuit has permitted as-applied challenges to § 922(g)(1) and has upheld the constitutionality of the statute where felons pose a risk of danger if re-armed, but expressly “reserve[d] ruling” on an as-applied challenge by a person “whose predicate felony offense is not ‘dangerous.’” *United States v. Watson*, 171 F.4th 1012, 1024-25 (7th Cir. 2026). The Sixth Circuit, though allocating the burden differently, likewise rejects the proposition that felony status forecloses an individual challenge to § 922(g)(1), explaining that when the legislature’s decision to criminalize or punish certain conduct “implicates a fundamental, individual right, judicial deference [to the legislature] is simply not an option.” *United States v. Williams*, 113 F.4th 637, 661 (6th Cir. 2024). Accordingly, “as-applied challenges provide a mechanism for courts to make individualized dangerousness determinations.” *Id.* Under that framework, a challenger may demonstrate that their particular circumstances do not establish the level of dangerousness that historically justified disarmament. *Id.* at 662-63.

These decisions reinforce the legitimacy of individualized review. Though not employing identical burden allocations, these circuits all recognize that the modern felony label alone cannot satisfy *Bruen*’s historical inquiry. As the Fifth Circuit observes, “not all felons today would have been considered felons at the Founding.” *Diaz*, 116 F.4th at 469. This is significant for challengers like Ms. Branders. With a single nonviolent felony conviction over twenty years ago resulting in a suspended sentence, she poses no threat to the public if armed. R. at 3. Her lack of incarceration demonstrates as much. *Id.* Where the Government seeks to permanently strip an individual of their constitutional rights, a label alone cannot substitute for the rigorous historical inquiry that this Court requires. Ms. Branders’ felony status may put her within the statutory crosshairs of § 922(g)(1), but it cannot, standing alone, resolve whether she may be constitutionally disarmed.

This Court should therefore preserve as-applied review and require the Government to justify disarming Ms. Branders based on her individualized conduct and circumstances.

D. Individualized Review Preserves Constitutional Applications of 18 U.S.C. § 922(g)(1) While Protecting Individual Rights and Avoiding Unjust Outcomes.

Individualized review preserves the constitutional applications of § 922(g)(1) while respecting this Court’s precedent without unnecessarily burdening the Second Amendment right. Constitutional rights do not “spring into being at the legislature’s grace.” *Williams*, 113 F.4th at 661. Early federal firearm regulations limited disarmament to individuals convicted of defined “crimes of violence,” and while Congress later extended this prohibition to include all persons convicted of crimes punishable by more than one year, “the history of § 922(g)(1) shows that it grew out of concern for guns in the hands of dangerous criminals.” *Id.* at 659; *see* Federal Firearms Act of 1938, ch. 850, §§ 1(6), 2(f), 52 Stat. 1250, 1250-51 (1938); An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, §§ 1-2, 75 Stat. 757 (1961). Indeed, in enacting the Gun Control Act of 1968, which established the modern 922(g) framework, Congress identified the “fight against crime and violence” and the avoidance of “undue or unnecessary” burdens on lawful firearm possession as the central purposes of the legislation. Gun Control Act of 1968 § 101, 82 Stat. at 1213-14. Legislative intent matters, as the original “crime of violence” approach focused on convictions indicating that an offender “actually poses some danger of physically harming others rather than simply being dishonest or otherwise unsavory.” C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?*, 32 HARV. J.L. & PUB. POL’Y 695, 728-29 (2009).²

² Marshall’s historical analysis has been cited by numerous courts examining the historical scope of firearm disarmament. *See, e.g., Zherka v. Bondi*, 140 F.4th 68, 80 (2d Cir. 2025); *Binderup v. Att’y Gen.*, 836 F.3d 336, 369, 375 (3d Cir. 2016); *Williams*, 113 F.4th at 659-60.

This Court’s recent decision in *United States v. Hemani* reinforces that notion. Although addressing § 922(g)(3), the Court rejected the Government’s categorical dangerousness theory where historical regulations did not support disarmament and expressly left open whether the restriction could be constitutionally enforced based on individual circumstances. *Hemani*, 146 S. Ct. at 1693. The same principle supports individualized review under § 922(g)(1). Because § 922(g)(1) and § 922(g)(3) are of the same statutory scheme, they warrant consistent constitutional treatment. *Erlenbaugh v. United States*, 409 U.S. 239, 244 (1972) (explaining that “individual sections of a single statute should be construed together.”). That parallel reinforces the need to distinguish statutory status from dangerousness. As Marshall observes, “[t]he real issue, then, is not so much having guns in one’s home, but rather readily carrying them out of the home for criminal purposes.” Marshall, *supra*, at 734. Ms. Branders, who possessed an unloaded handgun in her home for self-defense, falls outside of that concern. R. at 3. Because § 922(g)(1) provides no functioning mechanism for individualized relief, as-applied review supplies a means to determine whether individual disarmament is justified. *See Williams*, 113 F.4th at 661. This Court should therefore reverse and permit Ms. Branders’ as-applied challenge to § 922(g)(1), rather than treating her decades-old nonviolent conviction as dispositive of her Second Amendment right.

II. THIS COURT SHOULD REVERSE THE FOURTEENTH CIRCUIT’S HOLDING THAT 18 U.S.C. § 922(g)(1) IS CONSTITUTIONAL AS APPLIED TO MS. BRANDERS BECAUSE THERE ARE NO HISTORICAL ANALOGUES THAT SUPPORT PERMANENT DISARMAMENT OF AN INDIVIDUAL CONVICTED OF A NONVIOLENT, NONDANGEROUS CRIME WHO DOES NOT POSE A THREAT TO PUBLIC SAFETY.

The Second Amendment guarantees all individuals, including Ms. Branders, the right to self-defense, and the government faces a high burden to revoke it. It is firmly established that “the right to keep and bear arms is among the ‘fundamental rights necessary to our system of ordered liberty.’” *United States v. Rahimi*, 602 U.S. 680, 690 (2024) (quoting *McDonald v. Chicago*, 561

U.S. 742, 778 (2010)); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). However, this right is not unlimited, and this Court has upheld firearm restrictions where the individual poses a credible threat of danger. *See District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) (explaining that the right to bear arms does not extend to every circumstance); *see also Rahimi*, 602 U.S. at 700 (approving of the tradition of disarming “individuals who present a credible threat to the physical safety of others.”). Firearm restrictions will not stand, however, unless they are “consistent with the Nation’s history and tradition of firearm regulation.” *Rahimi*, 602 U.S. at 703. Accordingly, this Court should reverse the Fourteenth Circuit’s holding that 18 U.S.C. § 922(g)(1) is constitutional as applied to Ms. Branders.

The test to challenge a statute that burdens Second Amendment rights is two-fold. In a firearm regulation challenge, the court must first ask whether the “Second Amendment’s plain text covers an individual’s conduct” and if it does, then the “Constitution presumptively protects that conduct.” *Bruen*, 597 U.S. at 24. Felons are widely considered to be a part of “the people” the Second Amendment protects, and the Constitution covers conduct prohibited by § 922(g)(1). *Range v. AG United States*, 124 F.4th 218, 228 (3d Cir. 2024); *see Heller*, 554 U.S. at 581 (stating that the “Second Amendment right . . . belongs to all Americans.”). Since Ms. Branders’ firearm ownership is protected, the Government must then justify deprivation of her right to bear arms pursuant to § 922(g)(1) by providing a historical analogue that demonstrates that the challenged restriction shares the same principles as the Nation’s traditional firearm regulations. *Rahimi*, 602 U.S. at 703-04. Following this Court’s recognition that felon-in-possession statutes, such as § 922(g)(1), are “presumptively lawful,” courts assert that defendants may rebut this presumption in an as-applied challenge. *Heller*, 554 U.S. at 626 (2008); *Range*, 124 F.4th at 253; *United States v.*

Williams, 113 F.4th 637, 657 (6th Cir. 2024); *United States v. Diaz*, 116 F.4th 458, 466 (5th Cir. 2024).

In as-applied jurisprudence, there are two predominant burden-shifting frameworks to rebut this presumption; however, regardless of which framework this Court utilizes to evaluate the claim, § 922(g)(1) is unconstitutional as applied to Ms. Branders. The Third and Fifth Circuits read *Bruen* and *Rahimi* to place the burden on the Government to identify a historical analogue that is “‘relevantly similar’ to the challenged law.” *Diaz*, 116 F.4th at 467 (quoting *Bruen*, 597 U.S. at 24). To do so, the Government must demonstrate that the principles that stripped individuals of their firearm rights throughout this Nation’s regulatory tradition would also strip this particular individual of her rights. *Range*, 124 F.4th at 228. If the Government cannot meet this burden, the individual cannot be disarmed.

Alternatively, the Sixth Circuit reasons that there are historical analogues to support the disarmament of those convicted of a crime punishable by imprisonment of one year or more, but only so far as the individual committed a dangerous crime. *Williams*, 113 F.4th at 657. If the individual properly falls within the scope of § 922(g)(1), this approach assumes that the Government has met its burden to justify the regulation, and the burden shifts to the individual to show that these historical principles do not apply to them because they are not dangerous. *Id.* Nevertheless, 18 U.S.C. § 922(g)(1) is unconstitutional as applied to Ms. Branders.

A. Ms. Branders Cannot Be Disarmed Because There Are No Historical Analogues to 18 U.S.C. § 922(g)(1) That Adequately Apply to the Predicate Offense of Va. Code § 18.2-371.1 and Also Comport With the History and Tradition of Firearm Regulation.

A historical analogue only justifies a modern firearm regulation if the principles demonstrated in regulatory tradition are consistent with those of the modern regulation. *Rahimi*, 602 U.S. at 692. An analogue does not need to be an exact replica of the modern regulation; it only

needs to show that the historical regulation and modern regulation impose “similar restrictions for similar reasons.” *Id.* This necessitates an analysis of “why and how the regulation burdens the right” to bear arms. *Id.* Where § 922(g)(1) categorically burdens all felons for life, history and tradition only permit disarmament for dangerous individuals.

There is no historical analogue that justifies disarmament of individuals convicted of felony child neglect specifically. Ms. Branders’ predicate offense of felony child neglect is a crime of omission “where the law requires care, or inaction where it imposes a duty,” and it is enforced to promote the welfare of children. *Morissette v. United States*, 342 U.S. 246, 255 (1952). As applied to Ms. Branders’ conviction, § 922(g)(1) burdens her right to bear arms by disarming her for life to protect the public from those who have neglected the welfare of children. However, child welfare was not regulated at the founding and did not become a country-wide concern until the establishment of the U.S. Children’s Bureau in 1912. R. at 10-11; Children’s Bureau Act, ch. 73, 37 Stat. 79 (1912). Regulation related specifically to child neglect is not rooted in history and tradition; even so, this Court does not require an analogue to replicate the modern regulation exactly. A general analysis, which instead identifies the “principles” of the regulations, is imperative when there is not an analogue on point. *See Rahimi*, 602 U.S. at 703-04. A broader interpretation of § 922(g)(1)’s application to Ms. Branders shows that the Government, in this instance, seeks to permanently disarm her, where she did not act when the law required action. Accordingly, an analysis of regulatory tradition which categorically disarmed whole groups, the general purpose of historical firearm regulations, and the burdens imposed by comparable crimes of omission, shows that this Nation’s history does not support the disarmament of those convicted of child neglect.

It is undisputed that statutes that categorically disarmed entire groups of people were prevalent at the founding, but there is no historical tradition of disarmament simply because of someone's status as a felon. *See Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (stating that “[f]ounding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons.”); *see generally* Mark Frassetto, Firearms and Weapons Legislation up to the Early Twentieth Century (Jan. 15, 2013) (unpublished manuscript), <https://ssrn.com/abstract=2200991> [<https://perma.cc/6FGV-6LYA>]. Instead, these statutes were motivated by the real fear of violent political unrest. One of the most distinct examples of this were English laws that disarmed Protestants, Catholics, and those suspected of disloyalty to the King. Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 DREXEL L. REV. 1, 11-14 (2024). These English statutes inspired similar regulations in Colonial America, wherein loyalists and Native Americans were disarmed, and States proposed Amendments to their Constitutions which guaranteed the right to remain armed unless an individual was involved in rebellion. *Id.* at 11; Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 266 (2020). While these laws seem to show a history of disarmament based on nonviolent characteristics, the King instituted these laws at a time when those in disagreement with the Church of England turned to rebellion, and America faced similar conflict with those who remained loyal to England during the Revolution and Native Americans who sought to defend their land. Greenlee, *Disarming the Dangerous*, *supra*, at 7, 29, 50. Both the English and Colonial Americans instituted these laws for the same purpose: to prevent the uprising of those they believed presented a danger of insurrection. *Id.* at 19; Greenlee, *The Historical Justification*, *supra*, at 258, 264; Ethan Tourtellotte, *Second Chances for Second Amendment Rights: Prohibited Persons, Restoration of Rights, and Lifetime*

Bans in Light of New York State Rifle & Pistol Ass'n v. Bruen, 48 OKLA. CITY U.L. REV. 109, 113 (2023).

A broader analysis of common firearm regulations reveals that not only were historical firearm laws applied only to dangerous people, but they also did not strip away the right for life. Until the National Firearms Act was passed in 1934, the first major federal firearm statute, no state passed any other law categorically disarming a group of individuals other than minors, religious groups, and minority racial groups. *See generally* Frassetto, *supra*; *Range*, 124 F.4th at 265. As the Fourteenth Amendment renders the majority of these laws unconstitutional, courts often turn to a general analysis of the prevalent firearm regulations throughout history. Going-armed laws, which punished those who intentionally brandished firearms to menace others, and surety laws, which required those likely to misbehave in the future to post bond, are among those most often cited. *Rahimi*, 602 U.S. at 697. Going-armed laws and surety laws were frequently intertwined; those who were “going armed” were disarmed or imprisoned for conduct that may reasonably result in “actual violence,” but could have their firearm rights restored if they vowed to uphold the peace by posting a surety bond. *Id.* at 768; *Williams*, 113 F.4th at 650. Neither of these historic laws imposed a burden comparable to the lifetime ban on firearm ownership that § 922(g)(1) places on individuals, as they only temporarily disarmed wrongdoers. However, much like the categorical bans placed on those who presented a special danger of insurrection and attack, these laws establish a regulatory tradition of disarming individuals who “pose[] a clear threat of physical violence to another.” *Rahimi*, 602 U.S. at 698.

This tradition of disarming the dangerous continued throughout American history with the Federal Firearms Act of 1938, which set the stage for statutes such as § 922(g)(1). Notably, this legislation would not have disarmed people like Ms. Branders because it only disarmed criminals

who committed “crime[s] of violence.” Federal Firearms Act of 1938, Pub. L. No. 75-785, 52 Stat. 1250, 1251 (formerly codified at 15 U.S.C. §§ 901-909), *repealed by*, Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213; *Range*, 124 F.4th at 229. The statutory definition included in the class of individuals prohibited from firearm ownership those convicted of murder, manslaughter, burglary, and other intentional crimes which presented a danger to public safety. Federal Firearms Act of 1938, 52 Stat. at 1250. Where § 922(g)(1) contains broad language disarming all people convicted of a crime punishable by imprisonment for more than one year, its parent bill did not disarm peaceable individuals even if they were not law-abiding. *Id.* at 1251; Greenlee, *The Historical Justification*, *supra*, at 274-75. The Federal Firearms Act’s exclusive language illuminates that felon-in-possession statutes were established to prevent firearms from falling into the hands of those with a proclivity for violence, specifically individuals who committed violent acts or intended to act violently. In contrast, Ms. Branders was not charged with an act of any intentional, purposeful violence. R. at 2. Her offense was one of neglect, an omission of action, and would not have constituted a crime that warrants disarmament within the meaning of the Federal Firearms Act.

While crimes of omission were historically punished, there is no analogue for permanent disarmament for those crimes. Historically, misprision of felony and misprision of treason were offenses that punished failure to act where the law imposed a legal duty on the individual. Crimes Act of 1790, ch. 9, 1 Stat. 112, 112-13. Misprision laws originated in English common law as early as the sixteenth century and found their place in the United States with the enactment of the Crimes Act of 1790. *Id.*; Gabriel D. M. Ciociola, *Misprision of Felony and its Progeny*, 41 BRANDEIS L.J. 697, 699-701 (2003). These statutes imposed a duty to disclose any special knowledge of the commission of treason or a felony. Crimes Act of 1790, 1 Stat. at 112-13. Misprision of treason

imposed a maximum prison sentence of seven years and a maximum fine of one thousand dollars, and misprision of felony imposed a maximum prison sentence of three years and a maximum fine of five hundred dollars. *Id.* Here, Ms. Branders' predicate offense was similarly an act of omission. R. at 2. Felony child neglect, under Virginia law, punishes a failure to act for the welfare of a child where one has a special duty to do so. *See* VA. CODE ANN. § 18.2-371.1 (2026). Where the purpose of these charges is to punish failure to act, they must burden an individual in a similar manner to be analogous. By this Court's reasoning in *Rahimi*, this analogue is not comparable. A prison sentence of less than a decade is not proportionate to lifetime deprivation of a fundamental Constitutional right. R. at 3.

None of the aforementioned historical regulations place a burden on offenders that is akin to the lifetime ban imposed by § 922(g)(1). Colonial laws which categorically disarmed loyalists restored the right to bear arms if the individual established nondangerousness by an oath of allegiance; going armed laws predominantly required the forfeiture of the specific firearm used to menace the public, postage of a surety bond in a pledge to keep the peace, or imprisonment until the threat subsided; the Federal Firearms Act of 1938, which was indicative of the Nation's regulatory tradition, only prohibited violent criminals from interstate or foreign firearm purchases but did not regulate intrastate firearm purchases; and misprision laws only imprisoned offenders for a maximum period of seven years. Greenlee, *The Historical Justification*, *supra*, at 265; *Range*, 124 F.4th at 232; *Heller*, 554 U.S. at 633; Federal Firearms Act of 1938, 52 Stat. at 1251; Crimes Act of 1790, 1 Stat. at 112-13. Regulatory tradition does not support the permanent disarmament of people like Ms. Branders, whose predicate felony offense was one of a failure to act. At most, these historical regulations establish a tradition of disarming those believed to be dangerous and permit no more than temporary disarmament.

B. Ms. Branders' Predicate Offense of Felony Child Neglect Was Nonviolent, Nondangerous, and Her Personal Circumstances Show That She is Not a Danger to Public Safety.

Where there is a lack of history and tradition to support permanent disarmament, it is not enough to claim that an individual is “irresponsible”; rather, the Government must show that the individual poses a “special danger” of firearm misuse. *Rahimi*, 602 U.S. at 698-702. Courts have found that the history and tradition of firearm regulation demonstrate a consistent trend of disarming people believed to be dangerous regardless of their criminal classification, and in jurisdictions which analyze regulations as applied to an individual, there is a need for an individualized review of the facts at hand. *Range*, 124 F.4th at 245; *United States v. Hostettler*, 170 F.4th 539, 544 (6th Cir. 2026). Where the Fifth Circuit declines to look beyond the predicate offense to determine dangerousness, the more prevalent approach by the Third and Sixth Circuits requires consideration of the individual’s entire criminal record and any other information necessary to determine whether the individual poses a danger to the public. *United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025); *Williams*, 113 F.4th at 657-58; *Pitsilides v. Barr*, 128 F.4th 203, 211 (3d Cir. 2025). As the Second Amendment is an individual right, and historical firearm regulations allowed the restoration of firearm rights after a case-by-case examination of peaceability, an individualized inquiry into Ms. Branders’ broader circumstances is required to determine dangerousness.

A close examination of Ms. Branders’ predicate offense, as well as her court-mandated punishment, show that even at the time of the conviction, she was not dangerous. To begin with the predicate offense, Ms. Branders was convicted for a “willful act or willful omission” which resulted in “serious injury to the life or health” of a child in her care. VA. CODE ANN. § 18.2-371.1(A) (2026). In Ms. Branders’ instance, her operation of a daycare without a license constituted the “willful act or willful omission” necessary to convict her. *Id.*; R. at 3.

Dangerousness is one of many factors a judge considers during sentencing, and Virginia sentencing guidelines are developed in consideration of a felon's risk to public safety. *Williams*, 113 F.4th at 657; VA. CODE ANN. § 17.1-803 (2022). Notably, Virginia classifies felony child neglect as a nonviolent crime rather than a crime of violence for purposes of sentencing. VA. CODE ANN. § 19.2-316.4 (2024); VA. CODE ANN. § 19.2-297.1 (1996). Ms. Branders was also given a suspended sentence and probation, a lesser sentence as compared to Nelson's four-year term of imprisonment. R. at 3. This outcome suggests that the judge did not deem her a threat such that it was necessary to separate her from society. It was not through a violent or dangerous act that Ms. Branders committed this crime; instead, she was implicated in Nelson's irresponsibility. R. at 2. While not dispositive, the nonviolent label of the conviction and her lighter sentence suggest that the Virginia court did not consider Ms. Branders a threat to public safety.

Furthermore, crimes of omission are largely considered to be nondangerous for the purpose of a firearm regulation challenge. In *United States v. Cockerham*, the Fifth Circuit found § 922(g)(1) unconstitutional as applied to an individual who was convicted for failure to pay child support. *United States v. Cockerham*, 162 F.4th 500, 504 (5th Cir. 2025). The court recognized that historical tradition permitted disarming violent criminals, and in doing so distinguished Cockerham's crime of omission from intentional acts of overt violence. *Id.* at 506. In its assessment, the court found no historical analogues to support permanently disarming an individual like Cockerham, who committed a nonviolent crime and was placed on probation without serving a day in prison. *Id.* at 504. Like Cockerham, Ms. Branders was convicted of a crime classified as nonviolent and was placed on probation. R. at 3. She, too, did not serve a day in prison. *Id.* Both Cockerham's failure to pay child support and Ms. Branders' child neglect were charges based upon

failure to act, and are distinct from crimes of action motivated by malice. Thus, as in *Cockerham*, there is no regulatory tradition to support an assertion that Ms. Branders is dangerous.

Additionally, courts should consider the individual's unique circumstances, including the predicate offense's surrounding context and the individual's entire criminal record to accurately assess dangerousness. *Williams*, 113 F.4th at 663; *Pitsilides*, 128 F.4th at 212. On the day of the incident, Ms. Branders went about her usual routine and took in the eleven children, expecting that Nelson would bring Kenneth inside as he always did. R. at 2. When she noticed Kenneth was not in his crib, she immediately called Nelson, Kenneth's mother, and the police. *Id.* While it was perhaps irresponsible to not immediately account for Kenneth when the other children arrived, irresponsibility is not enough to strip away someone's Second Amendment right. *Rahimi*, 602 U.S. at 698. The crux of this analysis is that Ms. Branders' offense did not involve the use of force, nor did she attempt or threaten the use of physical force. As aforementioned, her crime was one of association where her son left a child in his hot car while performing duties associated with Ms. Branders' daycare. R. at 2. Ms. Branders did not perform the action that led to Kenneth's death.

While it is established that Ms. Branders was not dangerous at the time of her conviction, there is a greater concern about whether the individual poses a danger to the public in the current day. A review of Ms. Branders' entire criminal record and circumstances since her felony conviction twenty-five years ago demonstrate that she "does not currently present a special danger of misusing firearms." *Pitsilides*, 128 F.4th at 211. The Third Circuit in *Pitsilides* commented on the evolving trends in § 922(g)(1) jurisprudence and found that to satisfy the Third Circuit precedent, Sixth Circuit precedent, and the Supreme Court's reasoning in *Rahimi*, courts must consider an individual's record and personal characteristics in the present day to decide whether they currently pose a "special danger" if armed. *Id.* at 210-11. While the court in *Pitsilides* did not

have enough information to decide its case, courts applying *Pitsilides* have considered a long period of lawful behavior and demonstrated rehabilitation as signifiers of a lack of present danger. *United States v. Perez*, 809 F. Supp. 3d 272, 282-83 (W.D. Pa. 2025). In *Perez*, it had been over thirty years between the predicate offense and Perez’s § 922(g)(1) charge, with no other relevant criminal history. *Id.* at 280. The court found this to demonstrate “genuine rehabilitation and a lack of continued present danger.” *Id.* at 282. Ms. Branders shows an even stronger indication of rehabilitation. Since her conviction in 2001, Ms. Branders has been involved with numerous charities and volunteers to help those in need, including young children. R. at 3. Her only charge in the twenty-five years following the predicate offense was a moving violation. *Id.* She did not keep the handgun with the intent to disrupt the peace or cause harm, but for self-defense, as is her Constitutional right. *Id.*; *Heller*, 554 U.S. at 581. Taken together, these facts show that Ms. Branders does not present a special danger, nor does she presently pose a risk to public safety.

The Government may argue that some crimes are related enough to violence that an individual may be disarmed despite a nondangerous conviction, but this reasoning is inapplicable to felony child neglect. Several courts have considered whether certain crimes that are not inherently dangerous or violent may still warrant disarmament. For instance, the Fifth Circuit found that § 922(g)(1) was constitutional as applied to drug trafficking offenses because of the inherent link between the drug trade and violence. *Kimble*, 142 F.4th at 312. Similarly, the Third Circuit disarmed a gambler on the determination that illegal gambling rings created a danger of violent confrontation. *Pitsilides*, 128 F.4th at 213. At first glance, it may seem that these rulings support disarmament of all individuals whose conviction may lead to harm to another person, however attenuated the injury. This is not so. The concern regarding drug trafficking and illegal gambling was not merely their causal link to injury, but the intrinsic relation between these trades

and gun violence. *Kimble*, 142 F.4th at 316; *Pitsilides*, 128 F.4th at 213. Gambling and drug operations are often tied to underground crime organizations, and participation in either offense proliferates the profitability of these illegal businesses, which are associated with the use of firearms to threaten and intimidate. *Id.* These concerns cannot be extended to Ms. Branders' offense because her crime involved no weapons at all, nor any broader connection to gun violence or organized crime. She cannot be assumed to be dangerous on these grounds. Where an individual, like Ms. Branders, is nonviolent, nondangerous, and poses no threat to public safety, disarmament is unconstitutional and should not be permitted.

C. Application of 18 U.S.C. § 922(g)(1) to Nondangerous Individuals Improperly Assumes That All Felons Pose a Danger to the Public, Which Does Not Serve the Law's Purpose.

When Congress passed the Gun Control Act of 1968, first codifying § 922(g)(1), it did so with the purpose of fighting violence. Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213. This statute, at its formation, was designed to protect people from those who are dangerous and pose a heightened risk of harming innocent members of the community. Instead, it has been broadly applied to nonviolent, peaceable individuals simply because of their classification as a felon. Felonies are diverse and encompass a variety of behaviors, both violent and nonviolent. *Cockerham*, 162 F.4th at 503. They are inconsistent and ever-changing. What constituted a felony at the founding may no longer be, and some current felonies were never conceived of when the Constitution was written. *Diaz*, 116 F.4th at 469. What has not changed, however, is the country's desire to prevent the consequences of a firearm in the hands of a public threat.

Considered in tandem with the lack of historical justification to permanently disarm those convicted of nonviolent crimes, the purpose of § 922(g)(1) is not achieved through disarming individuals like Ms. Branders. Where Ms. Branders has no history of firearm violence, has not acted with physical force, and presents no threat to public safety, she never posed a danger of

violence that Congress has historically sought to prevent. To strip away the right to bear arms from nondangerous individuals would not only be contrary to the legislature's intent, but it would also deny individuals protected by the Second Amendment their fundamental right to bear arms. This forces these peaceable citizens to give up their right to self-defense and to accept the insecurity which comes with being unable to defend one's home and person. Ms. Branders did not keep a handgun to enact the kind of violence Congress foresaw; she feared for her own physical safety. R. at 3. Intimidated in her own home and demeaned, she only took a friend's advice to protect herself. *Id.* To disarm Ms. Branders would not result in progress toward the goal to keep the public free of threats. To do so would not comport with history and tradition, nor would it make the city of Appleton any safer.

CONCLUSION

As Ms. Branders falls within the plain text of the Second Amendment, the Government bears the burden of demonstrating that 18 U.S.C. § 922(g)(1), as applied to her, remains consistent with our Nation's history and tradition of firearm restrictions. In reviewing that inquiry of historical tradition, this Court should reject the categorical rule adopted by the Fourteenth Circuit, Eighth Circuit, and its progeny barring as-applied challenges. Instead, this Court should require an individualized historical analysis in line with this Court's precedent.

The record and the pertinent historical analogues here do not support permanent disarmament of Ms. Branders based on a conviction for a nonviolent offense over two decades ago. Therefore, this Court should find that, as applied to Ms. Branders, 18 U.S.C. § 922(g)(1) is unconstitutional, reverse the judgment of the Fourteenth Circuit, and remand with instructions to vacate Ms. Branders' conviction and dismiss the indictment.

Dated: September 29, 2026

Respectfully submitted,

/s/ Team MN

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