

No: 26-179

IN THE SUPREME COURT OF THE UNITED STATES

TERRY BRANDERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR RESPONDENT

TEAM NL
COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS	<i>ii</i>
TABLE OF AUTHORITIES	<i>iii</i>
QUESTIONS PRESENTED	<i>iv</i>
STATEMENT OF THE CASE	<i>1</i>
A. Procedural History	<i>1</i>
B. Statement of Facts	<i>1</i>
C. Standard of Review	<i>3</i>
SUMMARY OF THE ARGUMENT	<i>4</i>
ARGUMENT	<i>6</i>
I. Petitioner is Categorically Precluded From Raising an As-Applied Second Amendment Challenge to 18 U.S.C. § 922(g)(1)	<i>6</i>
A. This Court’s Controlling Second Amendment Precedents Treat Felon-Dispossession Laws As Presumptively Lawful Categorical Prohibitions.	<i>6</i>
B. The Categorical Approach to As-Applied Challenges Properly Treats Felony Status as the Legally Operative Classification Under § 922(g)(1).	<i>9</i>
C. Under This Court’s History and Tradition Framework, Congress is Authorized to Disarm Felons Through Class-Based Restrictions Rather Than Individualized Inquiry.	<i>12</i>
D. Enforcing a Case-By-Case Framework Would Create an Unworkable Judicial Standard and Improperly Usurp Congressional Authority.	<i>15</i>
II. The Nation’s Historical Tradition Permits Disarming Persons Whose Criminal Conduct Demonstrates Disregard For The Physical Safety Of Others	<i>17</i>
A. The Nation’s Historical Tradition Permits Disarming Persons Whose Serious Criminal Conduct Demonstrates Disregard For The Physical Safety Of Others.	<i>17</i>
B. Section 922(g)(1) Is Constitutional as Applied to Petitioner Under the Individualized Approaches Adopted by the Courts of Appeals.	<i>19</i>
C. Neither the Age of the Conviction nor the Absence of a Founding-Era Child Neglect Statute Alters the Result.	<i>23</i>
CONCLUSION	<i>26</i>
APPENDIX A	<i>27</i>

TABLE OF AUTHORITIES

CASES

Supreme Court of the United States

<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	passim
<i>McDonald v. City of Chicago, Ill.</i> , 561 U.S. 742 (2010)	16
<i>N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen</i> , 597 U.S. 1 (2022)	passim

Court of Appeals

<i>Hamilton v. Pallozzi</i> , 848 F.3d 614 (4th Cir. 2017).....	24
<i>Pitsilides v. Barr</i> , 128 F.4th 203 (3d Cir. 2025)	23
<i>Range v. Attorney General</i> , 124 F.4th 218 (3d Cir. 2024) (en banc).....	5, 22, 23, 24
<i>United States v. Hunt</i> , 123 F.4th 697 (4th Cir. 2024)	24
<i>United States v. Diaz</i> , 116 F.4th 458 (5th Cir. 2024)	passim
<i>United States v. Goins</i> , 118 F.4th 794 (6th Cir. 2024).....	21
<i>United States v. Hembree</i> , 165 F.4th 909 (5th Cir. 2026)	23
<i>United States v. Hernandez</i> , 159 F.4th 425 (5th Cir. 2025)	19
<i>United States v. Jackson</i> , 110 F.4th 1120 (8th Cir. 2024)	passim
<i>United States v. Kimble</i> , 142 F.4th 308 (5th Cir. 2025)	19
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	passim
<i>United States v. Watson</i> , 171 F.4th 1012 (7th Cir. 2026)	21, 22
<i>United States v. Williams</i> , 113 F.4th 637 (6th Cir. 2024)	21, 22
<i>Vincent v. Bondi</i> , 127 F.4th 1263 (10th Cir. 2025)	10, 11, 15, 24
<i>Zherka v. Bondi</i> , 140 F.4th 68 (2d Cir. 2025)	17

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. II	passim
-----------------------------	--------

STATUTES

18 U.S.C. § 921(a)(20)	5, 23
18 U.S.C. § 922(g)(1)	passim
18 U.S.C. § 922(g)(8)	7, 14, 18
18 U.S.C. § 922	26
Va. Code § 18.2-371	27

QUESTIONS PRESENTED

1. Whether, under current Supreme Court and Circuit precedent, 18 U.S.C. § 922(g)(1)'s categorical prohibition on firearm possession by convicted felons forecloses individualized as-applied challenges under the Second Amendment?
2. Whether a convicted felon whose underlying offense resulted in the death of another, may invoke the Second Amendment to challenge a subsequent prosecution under 18 U.S.C. § 922(g)(1), based on the passage of time and self-defense?

STATEMENT OF THE CASE

A. Procedural History

Petitioner Terry Branders was initially charged with possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1) on July 3, 2024. R. at 4. The Petitioner has since moved to dismiss the charge, contending that the statute violated the Second Amendment as applied to her. R. at 4. On December 22, 2025, the District Court held that the statute violated the Petitioner's Second Amendment rights and dismissed the charge on those grounds. R. at 7. The Government appealed the District Court's holding, arguing that it erred by applying a case-by-case analysis rather than the historical analysis the Supreme Court laid out. R. at 8. On June 10, 2026, the Court of Appeals for the Fourteenth Circuit ruled for the Government and upheld the Petitioner's charge. R. at 10. The case was then remanded to the District Court, where the Petitioner entered an *Alford* plea, reserving the right to appeal the denial of her motion to dismiss the indictment and her challenge. R. at 12. The Supreme Court of the United States has since granted certiorari in this case for the October Term. R. at 13.

B. Statement of Facts

In 2000, Petitioner Terry Branders owned and operated a daycare business out of her home in Virginia. R. at 2. The daycare business was often quite popular, caring for ten or more children at one time, despite operating without a license. R. at 2. While the Petitioner did not operate this business alone, her sole employee was her son Nelson Branders. R. at 2. At the time of the business' operation, Nelson was eighteen years old, had just graduated from high school, and was tasked with driving a fifteen-person passenger van to and from the Branders' daycare service. R. at 2.

As a teenager, Nelson had a very lively social life, including late nights and early mornings. R. at 2. On the day in question, Nelson, having had only a few hours of sleep, was tasked with picking up a group of twelve children, mostly preschoolers. R. at 2. One of the children, Kenneth Drew, an eleven-month-old baby, was left in the van due to Nelson's exhausted state, causing heat-related injuries, which resulted in Kenneth's death. R. at 2. Although the Petitioner did not normally oversee the children's transportation, she operated the daycare in the house and failed to look for Kenneth until two hours after his drop-off was supposed to have occurred. R. at 2. Shortly after this tragic event, the Petitioner and her son Nelson were charged with felony child neglect under Virginia law.¹ R. at 2.

Twenty years later, the Petitioner, now in her seventies, attempted to start a new life for herself in Newcoastland. R. at 3. In this attempt at a fresh start, the Petitioner became involved with local charities, volunteered at food banks, and stocked school supplies for needy children. R. at 3. However, the Petitioner did have a run-in with law enforcement that re-exposed her reckless nature; she was caught going eighty-three miles-per-hour in a sixty-five mile-per-hour zone. R. at 3. This run-in was not taken lightly, as the Petitioner was convicted of misdemeanor reckless driving and received a six-month license suspension. R. at 3. Nelson, seeing that his mother was aging, decided to move in to assist her. R. at 3.

While living with his mother, Nelson stayed in the basement and kept to himself, despite having "frequent angry outbursts." R. at 3. The Petitioner was suspicious that her son was dealing drugs out of her basement, but no evidence of this was ever found. R. at 3. At a volunteer event, the Petitioner met Becky Haskil, who was recently widowed. R. at 3. There, the Petitioner expressed her family issues, including her fear of her son and his friends. R. at 3. Haskil, after

¹ See Appendix A, *infra* note 2.

hearing this, convinced the Petitioner to take one of her late husband's handguns, despite her being a felon. R. at 3. After an anonymous tip, the DEA came to the Branders' house to investigate Nelson's potential criminal activity; none was found. R. at 4. However, the DEA agents lawfully found the firearm the Petitioner now possessed, and she "proudly" stated to the police officers that she was a responsible gun owner and that the weapon was gifted to her, not bought. R. at 4. The Petitioner was "shocked" to be arrested for possession of a firearm. R. at 4.

C. Standard of Review

Constitutional challenges to a statute are reviewed de novo. *United States v. Diaz*, 116 F.4th 458, 462 (5th Cir. 2024). The Supreme Court reviews Second Amendment claims arising out of 18 U.S.C. § 922(g)(1) through an analysis focused on our nation's history and tradition. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). To challenge a statute that restricts gun ownership, the challenger must show that the plain text of the Second Amendment protects them. *Id.* The burden then shifts to the Government to prove the link between the nation's history and tradition and the statute in question. *Id.* Since *Bruen*, the Court has clarified that this historical link need not be a twin; rather, a relatively significant historical analogue is sufficient. *United States v. Rahimi*, 602 U.S. 680, 692 (2024).

SUMMARY OF THE ARGUMENT

The Appellate Court correctly overturned the District Court's decision to dismiss the Petitioner's criminal charge under 18 U.S.C. § 922(g)(1). Statutorily disarming the Petitioner fully comports with the nation's history and tradition.

This country's history and tradition of firearm regulation shows that the Petitioner is categorically foreclosed from bringing an as-applied constitutional challenge. Under controlling precedent from *District of Columbia v. Heller*, *N.Y. Rifle and Pistol Ass'n v. Bruen*, and *United States v. Rahimi*, laws prohibiting convicted felons from possessing firearms are presumptively lawful. Legislatures, not individual courts, possess the authority to impose widespread disarmaments for those who disrespect legal norms. Adopting a categorical approach would preserve legislative power while avoiding subjecting the judiciary to an unworkable scheme of case-by-case evaluations and inquiries into dangerousness.

Even if the as-applied challenge to § 922(g)(1) is found to be a valid claim, Petitioner's challenge fails under every existing federal circuit standard. Under the offense-focused analysis, the Petitioner's predicate felony conviction for child neglect resulted in the death of an infant under her care. Historically, crimes that resulted in mortality, especially when the victim is an infant, have been subject to severe penalties. The Petitioner's predicate conviction reflects severe criminal culpability; disarmament under § 922(g)(1) easily aligns with the type of punishment historically laid upon similar offenders.

Under the case-by-case approach, courts assess whether the individual's broader record of conduct poses a continued risk to public safety or reflects a disregard for law and order. The Petitioner's recent conviction for high-speed driving, acquisition of an unlawful firearm, and her

volatile home environment establish a continued risk to public safety. The Petitioner cannot satisfy this standard.

Additionally, the ruling in *Range* does not address the Petitioner's as-applied challenge to § 922(g)(1). The Court in *Range* did not create an avenue to assert that the as-applied challenge is constitutional as applied to the Petitioner. The facts in *Range* are distinguished from the present case; *Range* involved no victim and the harm was purely economic. In the instant case, the Petitioner's offense led to death, so the narrow exception produced in *Range* does not reach the Petitioner.

Lastly, neither the age of the conviction nor the lack of a founding-era statutory "twin" alters this result. A long period of time since a conviction does not automatically restore Second Amendment rights, as Congress has specifically delegated relief elsewhere through 18 U.S.C. § 921(a)(20). The statute is constitutional both categorically and as-applied to the Petitioner; therefore, this Court should affirm the judgment of the Court of Appeals.

ARGUMENT

I. Petitioner is Categorically Precluded From Raising an As-Applied Second Amendment Challenge to 18 U.S.C. § 922(g)(1).

This Court should rule that, as a matter of law, the Petitioner may not raise an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1) because she belongs to the class of persons categorically prohibited from possession of firearms by the statute. (A) This Court’s controlling precedents establish that longstanding felon-dispossession laws are presumptively lawful and that courts do not need to conduct individualized Second Amendment inquiries for every felon. (B) The categorical approach to as-applied challenges adopted by the Tenth, Eighth, and Fourth Circuits best applies this Court’s rule by treating felony status, rather than the circumstances of a predicate conviction, as the legally relevant statutory class. The competing circuit authority on which this Petitioner relies fails to show that this Court’s Second Amendment jurisprudence requires individualized inquiry. (C) This Court’s history and tradition framework, likewise, provides no basis for treating § 922(g)(1)’s categorical prohibition as requiring an individualized inquiry. (D) Allowing for the Petitioner’s challenge would compel lower courts to create their own exceptions and standards, resulting in inconsistent decisions that fall outside of Congress’s express directive.

A. This Court’s Controlling Second Amendment Precedents Treat Felon-Dispossession Laws As Presumptively Lawful Categorical Prohibitions.

The existence of the Petitioner’s predicate felony conviction is independently sufficient to resolve her challenge to § 922(g)(1) because this Court has recognized felon-dispossession laws as presumptively lawful. Since the statute is enforceable as a class-wide restriction, the Second Amendment does not require an additional inquiry into the narrow circumstances of each predicate

conviction. As such, the Fourteenth Circuit properly found that the Petitioner's claim is foreclosed by this Court's controlling authority.

The rights protected by the Second Amendment are not absolute and remain subject to statutory limitations created by Congress. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). The right to own and possess firearms extends only to responsible, law-abiding citizens; those who demonstrate serious disregard for legal norms fall outside of Second Amendment protections. *Bruen*, 597 U.S. at 17. Longstanding prohibitions on the possession of firearms by felons are presumptively lawful regulatory measures. *Heller*, 554 U.S. at 627. Courts are not required to conduct extensive inquiry into the full scope of the Second Amendment before applying a lawful firearm restriction. *Rahimi*, 602 U.S. at 702.

In *District of Columbia v. Heller*, this Court confirmed that the right to possess firearms does not invalidate categorical restrictions on firearm possession. 554 U.S. at 570. A District of Columbia police officer challenged a statute that prohibited handgun possession in the home, even for the purposes of self-defense. *Id.* at 574-76. This Court found that the prohibition violated the Second Amendment because it unduly burdened the right to possess firearms for traditionally lawful purposes. *Id.* at 628-29. However, the Court also emphasized and recognized that federal prohibitions on possession by felons and the mentally ill are presumptively constitutional. *Id.* at 626-27. As such, the *Heller* Court distinguished between unconstitutional restrictions and longstanding categorical restrictions directed at particular classes of persons.

In *United States v. Rahimi*, this Court reaffirmed the presumptive lawfulness of such prohibitions, upholding the government's authority to disarm a defendant who was subject to a domestic-violence restraining order under § 922(g)(8). 602 U.S. at 699. In its analysis, this Court did not require the government to prove that the defendant was dangerous at the moment he

possessed the firearm, nor did it require a separate judicial inquiry into the circumstances surrounding his predicate restraining order. *Id.* This Court upheld the statute's as-applied constitutionality, finding that the restriction was consistent with the nation's tradition of firearm regulation. *Id.* at 693-702. The Court rejected the argument that the modern firearm regulation had to have an exact historical twin and instead examined whether the regulation was adequately consistent with the principles underlying the cited tradition. *Id.* at 690-692.

Here, rather than challenging the facial constitutionality of § 922(g)(1), the Petitioner asks the Court to recognize an exception for a specific member of the statutory class based on the age of her predicate conviction, the circumstances surrounding that conviction, and her recent post-conviction conduct. R. at 3-7. This is, however, plainly inconsistent with this Court's findings in both *Heller* and *Rahimi* which do not require courts to determine, on a felon-by-felon basis, whether the surrounding circumstances are sufficient to qualify for an exemption from § 922(g)(1)'s prohibition. The *Rahimi* Court's decision to not require an analysis of the defendant's individual circumstances demonstrates that those circumstances are not material to the as-applied constitutionality of § 922(g)(1).

As such, the Petitioner's status as somebody convicted of a qualifying predicate felony is the only relevant legal classification under § 922(g)(1). R. at 2-3. The individual circumstances relied upon by the Petitioner may distinguish her from other felons for the purposes of prosecutorial discretion at trial; however, they do not change Congress's longstanding decision to subject that class to firearm restrictions. Treating the Petitioner's circumstances as sufficient to distinguish and remove her from the statutory class would require a legal exception that does not exist in § 922(g)(1) or this Court's law.

The Petitioner will assert that the presumptive lawfulness of prohibitions on felons' possession of firearms is no longer controlling law because *Bruen* has abrogated and superseded *Heller*. *Heller*, 554 U.S. at 627. However, this claim fundamentally misconstrues both decisions because the Court in *Bruen* did not overrule *Heller*; it merely removed the means-end scrutiny test that was required for Second Amendment analysis. *Bruen*, 597 U.S. at 26. *Bruen* reaffirmed the *Heller* Court's legal conclusion by focusing entirely on whether the statute is consistent with the longstanding regulatory tradition of the United States. *Id.* *Heller*'s historical methodology and its classification of felon firearm possession bans as presumptively lawful remain standard law; this Court should apply that precedent to all cases regarding § 922(g)(1).

Thus, because this Court's controlling rulings treat felon-dispossession laws as presumptively lawful, the Court should rule that the Petitioner is subject to § 922(g)(1) without the need for an individualized constitutional inquiry.

B. The Categorical Approach to As-Applied Challenges Properly Treats Felony Status as the Legally Operative Classification Under § 922(g)(1).

The Tenth, Eighth, and Fourth Circuits have adopted a categorical approach which properly applies this Court's precedents by treating felony conviction status as adequate to bring a defendant under § 922(g)(1) enforcement. These courts recognize that Congress intentionally drew a legal line at felony status and decline to redraw that line through case-by-case litigation of every predicate offense subject to review.

Historically, legislatures have had the discretion to disqualify specific classes from owning firearms to address the danger of misuse by those who deviate from established legal norms. *United States v. Jackson*, 110 F.4th 1120, 1125-27 (8th Cir. 2024). Applying this rule, several circuits have concluded that felony-by-felony litigation is not constitutionally necessary because felony

status is the materially relevant classification, not the dangerousness of an individual defendant. *Id.* The categorical approach adopted by these circuits flows from this Court’s instruction that courts do not need to undertake exhaustive historical analysis regarding the Second Amendment’s full scope as applied to every defendant. *United States v. Rahimi*, 602 U.S. at 702.

In *United States v. Jackson*, the Eighth Circuit rejected a defendant’s as-applied challenge to § 922(g)(1) without considering whether his prior offense made him sufficiently dangerous to justify disarmament. 110 F.4th at 1125-27. The defendant contended that his predicate offense of federal drug violations could not justify permanent disarmament and that the statute, therefore, violated the Second Amendment. *Id.* However, the Eighth Circuit ruled that a felony conviction was itself sufficient to sustain the government’s prohibition, reasoning that Congress exercised its constitutional discretion by statutorily disqualifying felons as an entire class. *Id.* Consequently, the court determined the defendant’s individual circumstances to be legally irrelevant to the adjudication of his challenge. *Id.*

The Tenth Circuit reached the same conclusion when applying the categorical approach to a non-violent predicate offense in *Vincent v. Bondi*. 127 F.4th 1263 (10th Cir. 2025). The defendant in *Vincent* was convicted of felony bank fraud, an offense which involved no physical violence or bodily injury to victims. *Id.* Despite the fact that the defendant’s circumstances lacked the aggravating factors involved in *Jackson*, the majority rejected the defendant’s challenge, holding that a conviction for felony bank fraud “subjects a felon to § 922(g)(1) prohibitions” without the need for any further inquiry into the defendant’s present dangerousness. *Id.* According to the court, the government’s failure to demonstrate individual dangerousness did not place the defendant outside of the class Congress had expressly disqualified from Second Amendment protections. *Id.*

Here, these circuit rulings are not themselves binding upon this Court and the Petitioner will rely upon authority from other circuits allowing as-applied challenges. However, those competing rulings fail to establish that this Court's holdings in *Heller*, *Bruen*, or *Rahimi* legally compel courts to allow such challenges. As such, the controlling question in this case is which circuit approach best preserves and follows this Court's precedents. The categorical approach does this by treating both *Heller*'s recognition of the presumptive lawfulness of felon-dispossession laws and *Rahimi*'s instruction that courts need not undertake exhaustive inquiry in every case as controlling.

The district court's ruling erroneously treated the age of the Petitioner's conviction, her post-conviction conduct, and the absence of additional felony convictions as adequate reasons to treat her as separated from the class regulated by § 922(g)(1). R. at 3-7. The case-by-case approach used by the district court improperly and without binding authority presumes that § 922(g)(1) creates a constitutional requirement for individualized inquiry. As previously established, neither the controlling law in *Heller* nor *Rahimi* expressly requires such inquiry for as-applied challenges. The categorical approach deployed by the courts in *Jackson* and *Vincent* resolves the district court's error by recognizing that a defendant's undisputed status as a felon is legally controlling. Under this rule, the additional circumstances relied upon by the district court and the Petitioner are immaterial and cannot create a separate cause of action outside of a determination of her status as a felon.

Thus, to properly implement the Court's controlling law, this Court should adopt the categorical approach and rule that the Petitioner, as a member of the class covered expressly by § 922(g)(1), is unable to bring an as-applied Second Amendment challenge based on the circumstances of her prior felony conviction.

C. Under This Court’s History and Tradition Framework, Congress is Authorized to Disarm Felons Through Class-Based Restrictions Rather Than Individualized Inquiry.

This Court’s ruling in *Bruen* directs the lower courts, when faced with a Second Amendment challenge, to evaluate whether the challenged regulation comports with the nation’s history and tradition of firearm regulation. Under this rule, the approach required by this Petitioner’s as-applied challenge finds no adequate historical analogue. Felon-dispossession laws, however, are plainly consistent with this nation’s founding-era regulatory tradition.

Once an individual’s conduct is protected by the plain text meaning of the Second Amendment, the government must show only that the challenged regulation is “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. This showing requires neither an exact historical twin for the modern regulation nor a completely exhaustive historical analysis. *Rahimi*, 602 U.S. at 702. A relatively significant and representative historical analogue is sufficient to satisfy the government’s burden of proof and sustain the restriction. *Id.*

In *Rahimi*, this Court demonstrated that the controlling inquiry under this framework is the historical basis for the regulatory restriction, not the factual circumstances surrounding individual defendants. The defendant in *Rahimi* was statutorily disarmed on the basis of being subject to a domestic-violence restraining order. 602 U.S. at 689-91. This Court evaluated the government’s presented historical analogue of founding-era “going armed” laws. *Id.* at 697-99. This Court ruled that the nation has long permitted the disarming of individuals whose conduct demonstrated a threat to the safety of others. *Id.* at 698-700. The majority emphasized that the modern regulation does not need to exist in an identical form as its founding-era counterpart. *Id.*

In *United States v. Diaz*, this Court’s historical methodology was applied by the Fifth Circuit to a non-violent property crime, confirming that the historical analogue required by *Bruen* is not required to be an offense-specific twin. 116 F.4th at 458. The defendant was convicted of

the theft of a motor vehicle and subsequently challenged the constitutionality of § 922(g)(1). *Id.* The Fifth Circuit upheld the firearm prohibition as applied, ruling that vehicle theft had a historical analogue in other founding-era theft crimes such as the theft of horses, which carried a “historical tradition of severely punishing [offenders].” *Id.* at 468-69. The Fifth Circuit affirmed the validity of § 922(g)(1) through reference to that broader regulatory tradition without requiring a founding-era statute that addressed the theft of motor vehicles specifically. *Id.*

Here, the Petitioner’s challenge would require the exact kind of individualized inquiry that the courts in both *Rahimi* and *Diaz* declined to include as part of their history and tradition analysis. This Petitioner does not dispute that she was convicted of a qualifying predicate felony under § 922(g)(1). R. at 2-3. Rather, the challenge depends exclusively on those asserted facts surrounding the conviction and the Petitioner’s subsequent conduct, which the district court considered in its decision. R. at 3-7. These facts, however, are irrelevant to the regulatory tradition recognized by this Court as sufficient to sustain felon-dispossession statutes. Neither *Rahimi* nor *Diaz* establish that the history and tradition analysis requires courts to consider those individual circumstances to create exceptions to a categorical firearm regulation.

The going-armed laws referenced by this Court in *Rahimi* demonstrate that, during the founding era, legislatures were authorized to respond to conduct threatening public safety by forfeiting defendants’ arms and imposing strict penalties. 602 U.S. at 697-99. These laws did not require or involve a separate determination of dangerousness before the restriction could be enforced by statute. Under this tradition, the government could disarm individuals and impose punishment purely on the basis of them having engaged in the kinds of conduct prohibited by law. Congress’s decision to prohibit firearm possession by convicted felons regulated a statutorily defined class based on a demonstration of unlawful conduct in the same way founding-era

legislatures were authorized to under this tradition. The fact that the Petitioner's predicate offense did not exist in its modern form during the founding era does not defeat the probative value of the historical analogy here. As the *Rahimi* Court correctly observed, the relevant tradition concerns the government's authority to disarm individuals based solely upon serious criminal misconduct.

The Petitioner's reliance on *Rahimi*, 602 U.S. at 702, for the proposition that firearm restriction requires a demonstration that an individual represents a credible threat to the safety of others is fundamentally misplaced. *Rahimi* does not evaluate the § 922(g)(1) felony gun prohibition; instead, it evaluates § 922(g)(8), which restricts individuals subject to domestic violence restraining orders from owning a firearm. *Id.* at 680. The Court used this language to determine how the statute pertaining to *Rahimi* should be interpreted, not the § 922(g)(1) categorical ban on felon gun ownership. As such, nothing in the *Rahimi* ruling is meant to overturn or alter *Heller's* declaration that categorical bans on felons are presumptively lawful. Additionally, the nation's history and tradition of firearm regulation clearly shows that legislatures, not the courts, have the authority to regulate firearms. In *Bruen*, the Court cited multiple examples demonstrating that, historically, legislatures have consistently disarmed those who posed a risk to "breach the peace." *Bruen*, 597 U.S. at 56 (2022). A convicted felon is someone who would pose such a risk, and legislatures have the power to prohibit those individuals from owning firearms. This Court should rule in accordance with Supreme Court precedent, continuing the tradition of disarming those who pose a threat to society rather than risking someone who is dangerous or irresponsible possessing a deadly weapon.

Therefore, because the government's enforcement of § 922(g)(1) against this Petitioner has a strong basis in a regulatory tradition which has already been recognized by this Court as legally

sufficient to resolve an as-applied challenge, this Court should rule that the Petitioner's challenge is judicially foreclosed.

D. Enforcing a Case-By-Case Framework Would Create an Unworkable Judicial Standard and Improperly Usurp Congressional Authority.

This Court must also consider the public policy consequences of allowing the Petitioner to raise her as-applied challenge to the statute. Even if the Court rules that § 922(g)(1) as applied does not violate the Constitution on the merits, finding that her challenge can be raised in the first place would compel the lower courts to create individualized statutory exceptions to a prohibition Congress enacted as categorical.

Congress clearly designated the relevant class covered by the statute by prohibiting possession only for those convicted of felonies. The statute in no way instructs the courts to consider the age of a conviction, how serious or dangerous the underlying conduct was, the severity of the imposed sentence, how likely a defendant must be to misuse a firearm, or any other factors. Turning those factors into constitutionally required considerations would require lower courts to construct judicial standards not enacted by the legislature.

The district court relied upon the twenty-four years following the Petitioner's predicate conviction, her private charitable activities, and the absence of an additional felony conviction. R. at 3-7. Under a case-by-case approach, a different court would have to determine how much weight to assign each consideration and which additional facts matter in making such determinations. No legally relevant guidance in § 922(g)(1), *Heller*, or *Rahimi* provides such a judicial formula. Accordingly, it would become the responsibility of individual courts to make determinations in the absence of such guidance.

The categorical approach adopted by the Tenth Circuit and its progeny avoids this problem by strictly and narrowly enforcing the legislative line that was actually created by Congress. *Jackson* recognized that legislatures have historically had the authority to disqualify certain classes from firearm possession and, as such, rejected the need for courts to determine whether a defendant was individually dangerous. 110 F.4th at 1125-27. Likewise, *Vincent* demonstrates that the categorical rule does not depend on whether the underlying conduct was violent or involved danger to the public. 127 F.4th at 1263. Circuits that deploy the categorical approach have preserved the judiciary's role in determining the statute's applicability, while preventing judicial overreach and revision of the Congress-defined prohibition.

The Petitioner's challenge asks for the opposite approach to the Tenth Circuit's. After Congress has designated felony offenders as a restricted class, courts would be empowered to determine which individual felons should nevertheless be exempt based solely on factors derived from litigation. This case-by-case approach would not merely interpret § 922(g)(1), it would enforce a judicially created qualification to the statute. Because *Heller* and *Rahimi* recognize the legitimacy of status-based firearm restrictions, and because the categorical approach preserves Congress's legislative judgment without requiring open-ended inquiry, the Petitioner's challenge should not be recognized as a cognizable claim by this Court.

The Petitioner will rely on the *McDonald* Court's assertion that self-defense is a historically recognized basic right which would allow any individual to challenge the removal of their firearms. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 767 (2010). This interpretation conflates a constitutional right with the legal consequences of criminal conduct. While self-defense is undoubtedly central to the Second Amendment, criminal activity has routinely resulted in the forfeiture of fundamental liberties such as the right to vote, the right to serve on juries, and even

personal liberty (e.g., incarceration). This nation has long held that the right to keep and bear arms is subject to heavy regulation or restriction when someone has demonstrated a “disrespect for legal norms in society.” *Jackson*, 110 F.4th at 1127. By allowing individual felons to create an exception to 18 U.S.C. § 922(g)(1) based on a defendant’s need for self-defense, doing so would strip legislative authority and empower courts to act as a dangerousness evaluator for each individual case.

Thus, because allowing for the Petitioner’s challenge would improperly substitute an open-ended judicial inquiry for Congress’s categorical judgment and produce inconsistent constitutional rules for similarly situated felons, this Court should affirm the Fourteenth Circuit’s judgment and hold that § 922(g)(1) forecloses the Petitioner’s challenge.

II. The Nation’s Historical Tradition Permits Disarming Persons Whose Criminal Conduct Demonstrates Disregard For The Physical Safety Of Others.

A. The Nation’s Historical Tradition Permits Disarming Persons Whose Serious Criminal Conduct Demonstrates Disregard For The Physical Safety Of Others.

i. *Rahimi* Requires a Historical Analogue, Not a matching statute.

The dissent below reasons that no founding-era legislature permanently disarmed anyone for child neglect. But *Rahimi* rejects a demand for a matching historical statute: the question is whether the modern regulation fits the principles underlying a historical tradition. *Rahimi*, 602 U.S. at 692, 701-02. *Bruen* asks how and why the historical and modern regulations burden the right. *Bruen*, 597 U.S. at 29. The Government must identify a relevant tradition, but it need not find an eighteenth-century law naming the same offense.

Rahimi drew on surety and going-armed laws to hold that a person found to pose a credible threat to another’s physical safety may be temporarily disarmed. *Rahimi*, 602 U.S. at 698-99. That decision did not decide the constitutionality of § 922(g)(1)’s continuing disability. But the Eighth

Circuit, examining the broader tradition, concluded that legislatures could disqualify categories of persons whose disregard of legal norms created a danger of firearm misuse. *Jackson*, 110 F.4th at 1125-29. The Second Circuit likewise sustained § 922(g)(1) against an individualized challenge without demanding a founding-era statute identical to it. *Zherka v. Bondi*, 140 F.4th 68, 82 (2d Cir. 2025), *cert. denied*, No. 25-269, 2026 WL 135708 (U.S. Jan. 20, 2026).

Petitioner’s contrary approach would require a historical counterpart for each predicate offense. That is too exacting under *Rahimi*. At the same time, the government cannot rest on the word “felony” alone if this Court assumes individualized review. The pertinent question is whether the historical principles justify disarming someone whose custodial failure formed the basis of a felony conviction in a case involving a child’s death, considered alongside the rest of her record.

The Petitioner relies on the *Rahimi* language that one must pose a credible threat to have their firearm removed. The Petitioner will paint the picture that, because of social reform and non-criminal activity over the past twenty years, no credible threat exists from owning a weapon. This reliance is fundamentally misplaced, because *Rahimi* discusses a standard that does not apply to § 922(g)(1) but rather § 922(g)(8). Under *Bruen*, the correct standard to be applied to someone who violated § 922(g)(1) is whether they are a reasonable risk to “breach the peace” or disregard public safety. *Bruen*, 597 U.S. at 56. Here, the Petitioner falls directly into that category because the operation of an unlicensed daycare, often with more than ten children at a time in her care, and the owner’s failure to account for an eleven-month-old infant, resulting in a heat-related death, demonstrates a wanton disregard for human life. Disarming someone like that falls comfortably within the nation’s history and tradition of disarming those who endanger the public. Even if present dangerousness were required, the argument would still fail, as the Petitioner has shown she remains a credible danger to the public. The Petitioner brought an unlicensed firearm into a volatile

household, where she lives with her son, who had been convicted of the same felony as the Petitioner, has “frequent angry outbursts,” and of whom she is openly fearful. R. at 3. This behavior does not show a reformed person; rather, it shows a habitual cycle of recklessness.

ii. *A criminal conviction is a stronger predicate than a civil finding.*

Rahimi involved a civil protective order containing a judicial finding that Mr. Rahimi posed a credible threat to his partner’s safety. *Rahimi*, 602 U.S. at 688-90. Here, the Petitioner’s conviction rests on criminal process and proof beyond a reasonable doubt, which makes the underlying finding of wrongdoing more secure. The analogy is limited, the protective-order disability in *Rahimi* was temporary, whereas § 922(g)(1) continues indefinitely. That difference is vital, and reiterates the point that the court need not spend valuable resources deciding if every negligent felony justifies disarmament.

B. Section 922(g)(1) Is Constitutional as Applied to Petitioner Under the Individualized Approaches Adopted by the Courts of Appeals.

The courts of appeals have applied various methodologies of individualized review. The Fifth Circuit has focused on the predicate offense; the Sixth Circuit considers the defendant’s dangerousness and broader record; the Seventh Circuit has upheld disarmament based on a dangerous predicate; and the Third Circuit examines whether continued disarmament is warranted in light of the whole record. Petitioner’s challenge fails under the reasoning of those decisions when her conviction and later conduct are assessed accurately.

i. *Offense-focused analysis supports disarmament.*

In *Diaz*, the Fifth Circuit examined the predicate conviction and its legal elements rather than the defendant’s personal circumstances. *Diaz*, 116 F.4th at 466-72. Because our government during the founding era punished theft severely, including with capital punishment and estate

forfeiture, the court held that a modern and comparatively mild firearm disability was consistent with tradition as applied to a vehicle thief. *Id.* at 466-69. The Fifth Circuit has since applied that method to drug trafficking, *United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025), and to assault of a family member. *United States v. Hernandez*, 159 F.4th 425 (5th Cir. 2025).

Diaz concerned vehicle theft, which did not itself injure a person. Here, the record stipulates a felony child neglect conviction arising from Kenneth Drew's death. Nelson left Kenneth in the van; Petitioner's own failure was not noticing his absence and waited well over an hour after noticing his absence before calling 911. R. at 2. The district court described her conduct as negligent rather than malicious. Regardless of how the district court labeled her conduct, Virginia law punished her negligent failure of care as a felony because that failure had fatal consequences.

Diaz also supports the comparison of burdens, although it does not decide this case by itself. The Fifth Circuit explained that severe founding-era punishments for theft supported the modern firearm restriction as applied to that predicate. *Diaz*, 116 F.4th at 467-69. Section 922(g)(1) applies here because the Petitioner's underlying conduct directly compromised physical safety aligning with historical tradition of disarming those who demonstrate disregard for human life.

Petitioner will argue that, under the offense-focused methodology outlined in *Diaz*, she would not be disarmed because she is a one-time offender and has since been on a mission of reform. In *Diaz*, the felon in question was a repeat offender. *Diaz*, 116 F.4th at 462. Which made the court assess all of the predicate offenses leading to his disarmament. *Id.* at 469. This argument fails because the severity of the felony Petitioner committed is equal to that of a repeat offender for lesser crimes. Under *Diaz*, a modern firearm disability is constitutional if the underlying

offense is one that founding-era legislatures punished with severe penalties, like estate forfeiture or execution. *Id.* at 467-68. Here, Petitioner’s inaction and negligence led to the death of an infant and subsequent conviction for felony child neglect. R. at 2. Causing the death of another in one’s care has routinely been held to a high standard of punishment in this country, even if the individual is a first-time offender. Stripping the Petitioner’s right to bear arms as a consequence of that conviction is consistent with the offense-focused analysis in this case.

ii. *Under the Case-by-Case Approach, Petitioner Cannot Satisfy the Burden Created by Williams.*

The Sixth Circuit allows for a defendant to argue that they are not sufficiently dangerous, but the burden of proof for that claim falls on the defendant. *United States v. Williams*, 113 F.4th 637, 657-63 (6th Cir. 2024). *Williams* identifies crimes against persons as strong evidence of danger, offenses such as drug trafficking and burglary as creating substantial risks to others, and offenses such as fraud as less probative of physical danger. *Id.* at 658-60. These are guides to individualized judgment, not automatic labels that resolve every case.

Petitioner’s conviction arose from a grave failure in the care of an infant, with a fatal result. Nelson’s decision to leave Kenneth in the van was his own. Petitioner’s failure to account for a child in her care and her delay in seeking emergency help nonetheless bear on her judgment concerning another person’s physical safety. The record thus presents a materially stronger case for danger than the economic offenses *Williams* placed at the less probative end of its discussion.

Williams also considers the defendant’s broader record. *Id.* at 657-58, 662-63; *accord United States v. Goins*, 118 F.4th 794, 801-05 (6th Cir. 2024). Petitioner has had no further felony conviction over roughly twenty-five years. But her intervening misdemeanor reckless-driving conviction for traveling eighty-three miles-per-hour in a sixty-five mile-per-hour zone is relevant evidence of unsafe judgment. The record permits an inference of continuing disregard for physical

safety, even though it contains no allegation that she threatened anyone with a gun. Under *Williams*, the question is whether she has carried her burden to show she is not dangerous; the government submits that she has not.

The Seventh Circuit likewise held that § 922(g)(1) may be applied to a defendant whose predicate felony is dangerous, while reserving the status of non-dangerous felonies. *United States v. Watson*, 171 F.4th 1012, 1023-25 (7th Cir. 2026). *Watson* involved drug distribution and its connection to violence. Petitioner's offense is different: it involves a serious failure of care, not violence or firearm misuse. Still, its direct connection to a child's physical safety supports treating it as dangerous under *Watson*'s framework, especially when considered with the later reckless-driving conviction.

Petitioner will argue that the inquiry into dangerousness outlined in *Williams* is dispositive in her favor because her predicate crime involved negligence rather than danger. Furthermore, Petitioner will make the point that she is insufficiently dangerous to justify the firearm restriction because of her attempts to reform as well as her responsible gun ownership. However, this argument fails because the Court in *Williams* required a holistic review of an individual's entire record, not merely the predicate offense. *Williams*, 113 F.4th at 660. Here, when considering the totality of the facts, the Petitioner poses an ongoing threat to public safety and a substantial risk for firearm misuse. Throughout her life, the Petitioner has routinely violated legal norms. Following her conviction of felony child neglect while operating an unlicensed business, she continued her reckless behavior by being convicted of reckless driving. R. at 3. Further, in her gun ownership, Petitioner brought an unlawfully possessed weapon into an unstable home environment with an unstable son and his friends, whom she is fearful of. R. at 3. A persistent history of reckless

behavior, combined with procuring an unlawful weapon into an unstable home environment, demonstrates the Petitioner cannot satisfy her burden under a dangerousness evaluation.

iii. Range does not reach this case.

Petitioner has relied upon *Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024) (en banc), but that decision emphasized its narrow record. Bryan Range understated his income to obtain food-stamp benefits; his state misdemeanor counted as a federal predicate because of its possible sentence, and he had lived an essentially law-abiding life with no evidence that he posed a physical danger if armed. *Id.* at 221-24, 232. *Pitsilides v. Barr* makes clear that the Third Circuit considers the age of the conviction, the conduct underlying it, and post-conviction evidence bearing on present danger. 128 F.4th 203, 210-16 (3d Cir. 2025). Although the Petitioner attempts to rely on the age of her conviction and post-sentence conduct, *Range* provides no shelter for offenders whose conduct resulted in physical harm.

The Fifth Circuit's decision in *United States v. Hembree*, 165 F.4th 909, 916-18 (5th Cir. 2026), likewise sustained a challenge involving simple methamphetamine possession after examining the proposed historical analogues. That offense did not itself entail injury to another person. Petitioner's conviction arose in a case involving an infant's death. The government should prevail because the nature of her custodial failure and the intervening safety-related conviction supply a stronger connection to physical danger, not simply because the earlier outcome was tragic.

C. Neither the Age of the Conviction nor the Absence of a Founding-Era Child Neglect Statute Alters the Result.

i. The passage of time does not resolve the challenge.

Petitioner was sentenced in March 2001, more than two decades before this appeal. R. at 3. That span of time, as well as the absence of another felony conviction, are substantial evidence in her favor. 18 U.S.C. § 921(a)(20) also excludes certain expunged, set-aside, pardoned, or civil-rights-restored convictions from the federal definition, subject to its firearm-rights qualification. The Petitioner has failed to demonstrate that any controlling exception applies to these facts. Those statutory routes provide context; they do not themselves answer an assumed constitutional as-applied challenge. The Fourth Circuit has rejected the proposition that rehabilitation or the age of the conviction alone justifies an exemption for a felony conviction. *Hamilton v. Pallozzi*, 848 F.3d 614, 626-28 (4th Cir. 2017); see *United States v. Hunt*, 123 F.4th 697, 704-08 (4th Cir. 2024).

The Petitioner contends that because she attempted to change her life through volunteering at food banks and helping with charities, R. at 3, she is entitled to as-applied relief pursuant to the decision in *Range*. While the *Range* Court considered the defendant's lack of criminal history and the age of his predicate conviction, the facts in *Range* are distinguished from the present case. In *Range*, the appellant was convicted of misdemeanor food stamp fraud and only technically qualified as a felony due to the length of the sentence; here, the Petitioner was convicted of felony child neglect that resulted in the death of a child. The stark contrast in severity limits how much the span of time and rehabilitative efforts can support the claim of a constitutional violation under § 922(g)(1). Additionally, in *Range*, the appellant had nearly thirty years between his felony and an unblemished criminal record since conviction. *Range*, 124 F.4th 218 at 223. In contrast, the Petitioner has a more recent predicate felony conviction, committed a felony more dangerous in nature, and received a recent conviction for reckless driving. R. at 3. *Range* created a narrow exception to felony gun disarmament for minor offenses, not a shield for all felons.

Vincent v. Bondi illustrates the categorical view; following remand in light of *Rahimi*, the Tenth Circuit rejected an individualized challenge based on a bank fraud conviction and adhered to its precedent upholding § 922(g)(1). 127 F.4th at 1265-66. If this Court instead permits individualized review, *Vincent* cannot replace that review. Neither Petitioner’s community service nor the passage of time overcomes her demonstrated disregard for public safety, as evidenced by her fatal predicate omission and her reckless-driving conviction.

ii. *The Absence of a Founding-Era Child Neglect Statute Does Not Control the Analogy.*

The dissent from Circuit Judge Pickney observed that child-protective societies arose later than societies for preventing cruelty to animals and inferred that child neglect would not have prompted permanent disarmament at the founding. R. at 11. That history deserves an answer, but the date of a specialized society does not determine whether an individual who endangered another person could be restricted from bearing arms. *Rahimi* looks to the principles underlying historical regulations rather than a statute with a matching modern label. 602 U.S. at 692, 701-02. The government’s analogy is the historical concern with threats to physical safety. Its limit is equally clear, the surety and going-armed laws addressed threatening conduct and often imposed temporary burdens. The felony conviction, its connection to the safety of a child entrusted to Petitioner, and the later safety-related offense together make the case for applying that principle here.

A narrow holding suffices. This Court need not decide whether every negligent felony justifies disarmament, whether every old conviction retains its force, or whether as-applied challenges are categorically unavailable. Assuming such a challenge exists, it may hold that § 922(g)(1) is constitutional on this record. A felony child neglect conviction arising from

Petitioner's serious custodial failure, in a case involving an infant's death, with the favorable evidence of rehabilitation and careful storage fully considered. Accordingly, the Court should affirm the judgment.

CONCLUSION

For the foregoing reasons, the Respondent respectfully urges this Court to affirm the Fourteenth Circuit Court of Appeals' decision and uphold the constitutionality of 18 U.S.C. § 922(g)(1) as applied to the Petitioner.

Respectfully Submitted,

COUNSEL FOR RESPONDENT

APPENDIX A

Section 922 of Chapter 18 of the United States Code provides (in relevant portion) that:

(g) It shall be unlawful for any person—(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; ...or (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922.

Title 18.2 of Chapter 8, Article 4, § 18.2-371 of the Code of Virginia states as follows:

Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition that (a) causes a child younger than 11 years of age to commit an act that would be delinquent if committed by a child 11 years of age or older; (b) renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228; or (c) causes any child to participate in or become a member of a criminal street gang in violation of Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 or (ii) engages in consensual sexual intercourse or anal intercourse with or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild *is guilty of a Class 1 misdemeanor* (emphasis added).

Va. Code § 18.2-371.²

² The Eastern District of Newcoastland relies on Va. Code § 18.2-371 as the statutory basis of the felony conviction for Petitioner. R. at 2. However, this is believed to be a scrivener's error, since Va. Code § 18.2-371.1 appears to be the intended citation. Va. Code § 18.2-371.1 states: Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or willful omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child *is guilty of a Class 4 felony* (emphasis added).