

NO. 26-179

IN THE SUPREME COURT OF THE UNITED STATES

TERRY BRANDERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR THE PETITIONER

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QUESTIONS PRESENTED

1. Whether a Defendant may assert an as-applied challenge to section 922(g)(1) when predicated on a non-violent offense where this nation has no historical tradition justifying the permanent disarmament of such non-violent offenders from possessing firearms?
2. Assuming an as-applied challenge exists, whether the application of 18 U.S.C. section 922(g)(1) to Branders violates the Second Amendment when Branders' sole felony conviction occurred two-decades ago for child neglect, and where Branders has no other felony convictions and sought to possess a firearm for self-defense in her home?

STATEMENT OF THE CASE

A. Statement of Facts

Terry Branders (“Branders”), a retired factory worker, operated an unlicensed daycare from her home to provide childcare assistance to former colleagues. R. at 2. Branders’ son, Nelson Branders (“Nelson”), assisted the operation by providing pickup and drop-off services utilizing a fifteen-passenger van. R. at 2. Nelson, who had recently graduated from high school, maintained an active social life. R. at 2. After a long evening with only a few hours of sleep, Nelson picked up twelve rambunctious children, most of whom were preschoolers. R. at 2. Eleven-month-old Kenneth Drew (“Drew”) was the only child secured in a car seat and usually slept throughout the pickup routine. R. at 2.

After dropping the other children off with Branders, Nelson returned to his apartment, parked the van, and went to sleep. R. at 2. Nelson mistakenly believed that he had brought all the children inside, unaware that he had left Drew behind in the van. R. at 2. Because Drew typically slept throughout the pickup routine and was ordinarily placed in a bedroom upon arrival, Branders did not realize that Drew was missing until she went to wake him approximately two hours later. R. at 2. Upon realizing that Drew was missing, Branders attempted to contact both Nelson and Drew’s mother before calling 911. R. at 2.

When police located Drew, he had suffered severe heat-related injuries and, despite being transported to the hospital, succumbed to his injuries. R. at 2. Nelson and Branders were subsequently convicted of felony neglect of a child under Va. Code § 18.2-371¹. R. at 2. Branders was also convicted of the misdemeanor offense of operating a daycare without a

¹ Although the record stipulates Branders was convicted of felony neglect under Va. Code § 18.2-371, that provision classifies a misdemeanor; whereas felony child neglect is governed by Va. Code §18.2-371.1.

license. R. at 3. On March 5, 2001, Branders received a two-year suspended sentence and was placed on probation, while Nelson received a four-year term of imprisonment. R. at 2-3.

Nineteen years later, during the pandemic, Branders moved to Appleton, Newcoastland, seeking a new start. R. at 3. She became an avid member of the community, volunteering with various charities, including a local food bank and stocking school supplies for children in need. R. at 3. In the years that followed her felony conviction, Branders had only one run-in with the law: a misdemeanor reckless driving conviction resulting in a penalty where her license was suspended for six months. R. at 3.

Branders, having grown old, had Nelson move into her home to assist her. R. at 3. Nelson agreed and insisted on living in the basement, coming and going as he pleased, and demanded that Branders never enter the basement. R. at 3. Nelson resented Branders, blaming her for his position in life. R. at 3. As a result, Nelson frequently had angry outbursts, causing Branders to comply with his demands. R. at 3. Branders also suspected that Nelson might use or sell drugs and found some of his associates “particularly scary.” R. at 3.

While volunteering at the local food bank, Branders had become friends with Becky Haskill (“Becky”), who had recently lost her husband. R. at 3. After the two commiserated about their respective family difficulties, Becky suggested that Branders “ought to get a gun for protection.” R. at 3. Branders expressed her hesitancy, saying “she just didn’t know about that,” and Becky explained that her late husband had owned several handguns and offered to give Branders one. R. at 3. Branders accepted the gun, took it home, and stored it in a locked drawer in her living room. R. at 3.

In June 2024, the Drug Enforcement Agency (“DEA”) received a tip concerning Nelson’s activities. R. at 3. The DEA searched a database for criminal records related to the home,

discovering both Nelson's and Branders' felony convictions. R. at 3-4. After Nelson left for the day, the agents approached Branders' home. R. at 4. DEA Agent Sue Stern ("Agent Stern") later testified that Branders cooperated with the agents, explained that Nelson resided in the basement, and informed them that she owned the home in its entirety and they were free to search it. R. at 4. Although the agents discovered no evidence of drug activity, they found Branders' firearm. R. at 4. Branders explained that the firearm had been gifted to her and that she considered herself a responsible gun owner because she kept the firearm and ammunition locked in separate drawers. R. at 4. Branders was "surprised" when the agents arrested her for possessing the firearm. R. at 4.

B. Procedural History

Branders was charged on July 3, 2024, for possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. section 922(g)(1). R. at 4. Branders moved to dismiss the charge, contending that as applied to her, enforcement of 18 U.S.C. section 922(g)(1) violated the Second Amendment. R. at 4. On December 22, 2025, the United States District Court for the Eastern District of Newcoastland granted Branders' motion to dismiss, holding that section 922(g)(1) was unconstitutional as applied to Branders. R. at 1, 7.

The United States ("Respondent") appealed to the United States Court of Appeals for the Fourteenth Circuit. R. at 8. On June 10, 2026, the Fourteenth Circuit reversed the District Court's judgment, vacated the dismissal, and remanded for further proceedings. R. at 8-10. The Fourteenth Circuit held that the District Court erred by applying a case-by-case analysis instead of simply applying the law. R. at 8. It further held that the court erred by failing to engage in an appropriate historical analysis. R. at 8.

On remand, Branders entered an *Alford* plea, preserving her right to appeal the denial of her motion to dismiss the indictment and her as-applied challenge to section 922(g)(1). R. at 12.

The Fourteenth Circuit held that Branders properly preserved the arguments. R. at 12. Branders sought review in the Supreme Court of the United States, and this Court granted her petition for a writ of certiorari. R. at 13. This appeal follows.

C. Standard of Review

This Court reviews the judgment of the Court of Appeals *de novo* as this case presents a constitutional challenge arising under the Second Amendment. *See United States v. Diaz*, 116 F.4th 458, 462 (5th Cir. 2024). Because the constitutionality of a statute as applied presents a question of law, this Court independently reviews whether section 922(g)(1) is constitutional as applied to Branders. *See United States v. Evans*, 476 F.3d 1176, 1178 (11th Cir. 2007).

D. Statement of Jurisdiction

The United States District Court for the Eastern District of Newcoastland had subject matter jurisdiction over this criminal prosecution pursuant to 18 U.S.C. section 3231, which gives federal district courts original jurisdiction over all offenses against the laws of the United States. Branders was indicted on July 3, 2024, for violating 18 U.S.C. section 922(g)(1), and moved to dismiss the indictment on the ground that, as applied to her, the statute violates the Second Amendment. On December 22, 2025, the District Court granted the motion and dismissed the indictment. On June 10, 2026, the United States Court of Appeals for the Fourteenth Circuit reversed the District Court's order, vacating the dismissal of the indictment and remanding it for further proceedings. After entering an *Alford* plea, Branders timely filed a petition for a writ of certiorari, and this Court granted the petition. This Court accepted jurisdiction. This Court has jurisdiction under 28 U.S.C. section 1254(1), granting a writ of certiorari after judgment.

SUMMARY OF THE ARGUMENT

This case involves the application of the Second Amendment in regard to regulated conduct. Utilizing the *Bruen* framework, to determine whether a firearm regulation passes constitutional muster, courts must first determine whether the challenged regulation falls within the plain text of the Second Amendment and if so, whether the regulation is consistent with the nation's standard of history and tradition. Being that Branders' weapon was kept in her home for the implicit purpose of self-defense, her conduct falls within the ambit of the plain text, and thus the Respondent bears the burden of showing that the application of section 922(g)(1) is consistent with the nation's historical framework.

The Court of Appeals incorrectly held that section 922(g)(1) could not be applied to Branders based on her past conviction for three reasons: (1) Branders' conviction does not eliminate the individualized inquiry required for an as-applied challenge, as *Heller's* "presumptively lawful" language does not establish that every application of section 922(g)(1) comports with the Constitution; (2) the inquiry requires the Court to consider the nature and circumstances of the predicate offense to determine if the restriction aligns with the nation's history and tradition; and (3) the Respondent can not establish a precise historical tradition supporting Branders' permanent disarmament because her conviction for a crime involving neglect does not demonstrate the level of dangerousness supporting firearm disarmament.

First, Branders' past child neglect conviction does not bar the need for an individualized inquiry by the Court as mandated for an as-applied challenge. Although, *Heller* described that long-standing restrictions regarding firearm regulation are "presumptively lawful," the Court in *Heller* did not administer every application of a firearm restriction as a broad class in determining constitutional permissibility. Respondent above all must establish that the firearm

restriction in question is consistent with the nation's standard of history and tradition regardless of the standing of Branders' past conviction. Branders' felony status cannot be the sole factor in determining whether an individualized inquiry will be conducted.

Second, the individualized inquiry requires deliberation by the Court into the nature and circumstances surrounding Branders' offense. Courts have a history of weighing a defendant's existent criminal history and circumstances before making an adjudication on whether the firearm restriction applies to said defendant. The relevant inquiry is whether the specific manifested behavior is analogous to behavior historically pertinent throughout this nation's founding to rationalize firearm disarmament.

Third, the Respondent fails to distinguish an analogous historical tradition supporting Branders' disarmament because Branders' isolated, remote conviction does not demonstrate the level of dangerousness historically affiliated with firearm disarmament. The Court has consistently limited such individuals when they pose a credible physical safety threat to others. Conversely, Branders' conviction arose from neglect rather than an intent to commit violence, threats of violence, or conduct that would demonstrate Branders' had a propensity for firearm misuse. The Respondent cannot solely rely on the gravity of Branders' past conviction to prove that disarming Branders is constitutional without conducting an individualized inquiry into history and tradition.

Accordingly, Branders' past felony status does not bar the need for constitutional review, and the nature and circumstances regarding the predicate offense must be considered. Here, there is a blatant lack of dangerousness presented in regard to Branders' remote, non-violent conviction. Therefore, as-applied to Branders, section 922(g)(1) is unconstitutional and this Court must reverse.

ARGUMENT

- I. THIS COURT SHOULD FIND THAT BRANDERS MAY ASSERT AN AS-APPLIED CHALLENGE TO § 922(g)(1) BECAUSE *HELLER* DOES NOT AUTOMATICALLY BAR INDIVIDUALIZED CONSTITUTIONAL REVIEW.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. However, *District of Columbia v. Heller*, 554 U.S. 570, 595-626 (2008) opined the right is "not unlimited." The statute at issue here, section 922(g)(1), makes it "unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . [to] possess in or affecting commerce, any firearm or ammunition." 18 U.S.C. § 922(g)(1). The question in this case is whether this statute is constitutional under the Second Amendment as applied to Branders.

In analyzing Branders' Second Amendment claim, this Court should find that Branders may assert an as-applied challenge to 18 U.S.C. section 922(g)(1) because neither this Court's Second Amendment precedent nor its recognition of presumptively lawful firearm restrictions automatically preclude individualized constitutional review. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court clarified the framework governing Second Amendment challenges, requiring courts to conduct a two-step inquiry, and explaining that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. *Id.* at 17, 24. The first inquiry surrounds the plain text of the Second Amendment, which protects the right of the people to keep and bear arms, encompassing the fundamental right of self-defense recognized by the framers of the Constitution. *United States v. Rebolgar-Osorio*, 174 F.4th 924, 926 (1st Cir. 2026). If the challenged regulation does in fact fall within the plain text of the Second Amendment, the inquiry proceeds to the second step, where the burden rests with the Government to affirmatively demonstrate that the

regulation in question is consistent with the nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at 17, 24. Thus, the constitutional inquiry does not end merely because the challenged restriction falls within a category of firearm regulation that *Heller* described as presumptively lawful. Accordingly, Branders may assert an as-applied challenge because (1) *Bruen*'s history and tradition framework requires courts to assess whether the challenged application is constitutionally justified, and (2) *Heller*'s presumption of lawfulness does not absolutely bar an individual from challenging the statute as applied to his or her circumstances.

A. The Court of Appeals Erroneously Reversed the Dismissal Because Courts Are Required to Assess Whether the Challenged Application is Justified Under the History and Tradition Framework.

This Court should conclude that the Court of Appeals erred in reversing without first analyzing whether the application of 922(g)(1) to Branders was consistent with the nation's standard of history and tradition. Courts confronting Second Amendment challenges must utilize the *Bruen* framework in determining that the conduct at issue comports with both the plain text of the Second Amendment and is consistent with the nation's standard of history and tradition. *Rebollar-Osorio*, 174 F.4th at 926. Government firearm regulation that falls outside the scope of a long-standing historical tradition will violate the Second Amendment. *Range v. Att'y Gen.*, 124 F.4th 218 (3d Cir. 2024). The standard of history and tradition requires an inquiry informed by what happened in the past, rooted in the text of the Second Amendment. *Bruen*, 597 U.S. at 19. For a firearm regulation to be constitutional, the Government must prove that the firearm regulation in question is comparable to an analogous historical tradition that delineates the extent of power of the right to keep and bear arms. *Id.* at 19. The Court rejected any prior or alternative testing, requiring a history and tradition framework analysis to be completed by the Court before finding a firearm regulation constitutional. *Id.*

In *United States v. Rahimi*, 602 U.S. 680 (2024), the Defendant was prohibited from possessing a firearm because of a restraining order for domestic abuse deeming the Defendant a danger to another party. This Court utilized the history and tradition framework to come to the determination that disarming the Defendant was proper. *Id.* at 753. This Court reasoned that there was a historical analogue for disarming individuals who pose a physical threat to others. *Id.* at 749. The relevant inquiry the Court focused on was whether the government could establish a historical tradition analogous to the regulation to decide if the disarmament was appropriate before automatically disarming the defendant based on their prior conviction. *Id.* at 750.

Unlike *Rahimi*, where the Court examined the firearm regulation in light of the defendant's circumstances to determine whether disarmament would be consistent with the nation's history and tradition, here the Court of Appeals conducted no such examination, concluding that the statute was constitutional as a whole, without further analysis. Furthermore, *Rahimi* identified a specific historical analogue supporting firearm restriction on individuals who pose a credible physical threat of violence toward others. In the instant case, no historical analogue exists; Branders' predicate conviction for child neglect does not establish the type of conduct historically associated with disarmament. This is evident by the absence of any historical tradition supporting disarming individuals based solely on child neglect, and absent such tradition, the Court of Appeals is required to conduct a subsequent inquiry to determine that the firearm restriction is indeed constitutional. The court in the case at hand relied solely on Branders' status as a convicted felon to automatically reverse the lower court's decision without determining the exact circumstances associated with Branders' conviction. While regulating a past convicted felon is a presumptively lawful regulation, an inquiry into history and tradition must still be conducted by the court to inquire whether the restriction is constitutional; not every

restriction against a past convicted felon is automatically constitutional. The framework outlined in *Rahimi* requires an analysis of history and tradition by the court for disarmament to be permissible; it does not allow the Court of Appeals to infringe on an individual's rights beyond their defined limit. The lack of the relevant historical analysis demonstrates that the Court of Appeals failed to properly apply the history and tradition framework and erroneously reversed.

Respondents may argue that the court properly followed the history and tradition standard because *Rahimi* demonstrates that the historical analogue of disarming individuals who pose a threat to others is appropriate. Thus, the historical tradition supports applying such a disarmament to Branders based on her prior conviction. However, that argument overlooks the fact that *Rahimi* requires courts to still compare the restriction to historical restrictions. The court here identified no historical tradition supporting disarmament based on a child neglect conviction and conducted no analysis to identify relevant historical analogues. Even a presumptively lawful restriction for those who may pose a threat to others requires an inquiry into the specific type of threat to determine whether disarmament is in the context of the text of the Second Amendment through history and tradition. Therefore, by conducting no history and tradition at all, the court failed to conduct the requisite analysis required before coming to a judgment. The Court of Appeals' reversal is improper because they failed to conduct an inquiry into the framework of history and tradition as required.

B. The Court of Appeals Erred Because *Heller*'s "Presumptively Lawful" Language Does Not Make Every Application of § 922(g)(1) Unequivocally Constitutional.

This Court should find that the Court of Appeals erred in reversing the dismissal of the indictment because *Heller's* characterization of felon-disarmament laws as "presumptively lawful" does not render section 922(g)(1) constitutional in every application. Although *Heller* recognized the presumptive validity of long-standing prohibitions on the possession of firearms

by felons, it did not hold that such prohibitions are immune from as-applied constitutional review. *Heller*, 554 U.S. at 626-27. The Third Circuit has accordingly interpreted *Heller's* use of the word “presumptively” to contemplate circumstances in which that presumption may be rebutted through an as-applied challenge. *United States v. Barton*, 633 F.3d 168, 173 (3d Cir. 2011).

In *Heller*, this Court considered a law that effectively prohibited handgun possession in the home and required lawful firearms kept in the home to remain inoperable. 554 U.S. at 628. There, the Court held that the Second Amendment protects an individual’s right to keep and bear arms and explained that the inherent right of self-defense is central to that guarantee. *Id.* at 595, 628-29. At the same time, the Court cautioned that the Second Amendment right is “not unlimited” and stated that nothing in its opinion should cast doubt on certain long-standing firearm regulations, including prohibitions on the possession of firearms by felons. *Id.* at 626-27. Significantly, however, the Court described those regulations as “presumptively lawful,” rather than categorically or consistently constitutional. *Id.* at 627. The Court further declined to “expound upon the historical justifications” for those restrictions because that question was not before it. *Id.* at 635.

In *Barton*, 633 F.3d at 170, the Third Circuit addressed the significance of that distinction where a defendant convicted under section 922(g)(1) brought both facial and as-applied Second Amendment challenges. The court rejected Barton's facial challenge because *Heller* requires courts to presume that felon-disarmament statutes are lawful under most circumstances. *Barton*, at 172. The court nevertheless concluded that *Heller* did not foreclose Barton's as-applied challenge, reasoning that *Heller's* use of the term “presumptively lawful” left open the possibility that the statute could be unconstitutional as applied in a particular case. *Barton*, at

173. Thus, although *Heller*'s presumption defeated Barton's facial challenge, the court still considered his as-applied challenge, which Barton ultimately failed to establish on the merits. *Barton*, at 173-74. The court's consideration of Barton's claim demonstrates that *Heller*'s presumption of lawfulness does not foreclose individualized constitutional review merely because a defendant has been convicted of a felony.

Similarly, in *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010), the Seventh Circuit rejected the Government's argument that section 922(g)(1)'s categorical prohibition ended the constitutional inquiry merely because Williams was a convicted felon. *Id.* at 692. The court explained that the Government does not receive a "free pass" simply because Congress has enacted a "categorical ban." *Id.* Instead, *Heller*'s description of felon-disarmament laws as "presumptively lawful" implied that an application of the statute could still prove unconstitutional in an appropriate as-applied challenge. *Id.* Although Williams ultimately failed to establish that section 922(g)(1) was unconstitutional as applied to him, the court nevertheless required constitutional review of the statute's application to his circumstances. *Id.*

Here, as in *Barton* and *Williams* (7th Cir. 2010), the Court of Appeals improperly transformed *Heller*'s presumption of lawfulness into an irrebuttable rule. The Court of Appeals acknowledged *Heller*'s characterization of felon-disarmament laws as "presumptively lawful," but nevertheless concluded that courts need not revisit the circumstances underlying individual felony convictions. That conclusion gives the word "presumptively" no operative effect. If section 922(g)(1) is constitutional in every application solely because an individual has been convicted of a qualifying offense, then the statute is not presumptively lawful—it is conclusively lawful. *Heller* did not announce such a categorical rule.

More fundamentally, whether Branders is subject to the statutory prohibition and whether the statute may constitutionally be applied to her are two separate inquiries. *See Rebollar-Osorio*, 174 F.4th at 927-30. Her felony conviction answers the first question; it does not necessarily answer the second one. *Rebollar-Osorio* illustrates this distinction. Although the defendant was subject to section 922(g)(5)(A)'s prohibition based on his immigration status, the court separately considered whether the statute's application was consistent with the nation's historical tradition of firearm regulation. *Id.* If the existence of a felony were sufficient to answer both questions, there would be no independent constitutional inquiry for a court to conduct. In effect, the statutory definition would itself determine the scope of the constitutional protection. That approach would permit Congress to define the class of persons subject to section 922(g)(1), and, by doing so, determine the scope of their Second Amendment protection without requiring the statute's application to withstand constitutional review. By treating Branders' felony status as sufficient to foreclose further review, the Court of Appeals allowed the statutory requirement itself to resolve the constitutional question.

Respondent may argue that *Heller's* assurance that its decision should not "cast doubt" on long-standing prohibitions on firearm possession by felons establishes the constitutionality of section 922(g)(1) without further review. However, that argument reads *Heller's* assurance in isolation from the Court's simultaneous description of those prohibitions as only "presumptively lawful." *Barton* demonstrates that the two statements can operate together: the statute may remain presumptively constitutional while a defendant is permitted to challenge its application to her particular circumstances. Indeed, Barton received individualized review and ultimately lost on the merits. Allowing Branders the same opportunity therefore does not cast doubt on section 922(g)(1)'s constitutional applications, it merely preserves the possibility contemplated by

Heller's chosen language. Accordingly, *Heller's* “presumptively lawful” language does not preclude an as-applied challenge, and the Court of Appeals therefore erred by treating Branders' felony status as sufficient to preclude individualized constitutional review.

II. THIS COURT SHOULD FIND THAT § 922(g)(1) CANNOT BE UPHELD AS APPLIED TO BRANDERS BASED SOLELY ON HER STATUS AS A CONVICTED FELON.

This Court should hold that section 922(g)(1) is unconstitutional as applied to Branders because an as applied challenge requires an individualized inquiry regardless of the felony status considering the nature of the offense. This Court’s precedent establishes a standard of history and tradition to justify the regulation, considering whether the regulation is consistent with the principles that underpin the regulatory tradition. *Rahimi*, 602 U.S. at 692-99. Why and how the regulation burdens the right are threshold questions, central to this inquiry. *Id.* Even a law that regulates firearm possession for a permissible reason will be found unconstitutional if the regulation goes beyond the scope of what has been permitted at the founding of the United States of America. *Id.* The burden lies with the government to establish that there is a long-standing tradition that supports depriving an individual of their firearm rights based on circumstances comparable to those presented. *Range*, 124 F.4th at 231-34. This Court has found it inappropriate to strip an individual of their vested Second Amendment rights without proving that long-standing traditions related to disarming the defendant in question indeed do exist. *Id.* A felony conviction alone will not absolve the need for an inquiry into history and tradition.

A. Branders' Felony Conviction Does Not Eliminate the Individualized Inquiry Required by an As-Applied Challenge.

This Court should hold that the Court of Appeals’ decision to reverse based on Branders' status as a convicted felon was improper because the court failed to conduct an individualized inquiry required for an as-applied challenge. Government firearm regulations only survive an as-

applied challenge when there are no set of circumstances where the regulation would be valid. *Rahimi*, 602 U.S. at 693-99. To prevail, the government has the burden of proof in conducting an individualized inquiry to prove they would succeed in a specific application of the regulation. *Id.* This Court has stated that a firearm regulation can not be made simply to advance an important interest. *Bruen*, 597 U.S. at 17, 24-31. The individualized inquiry is not precluded by felony status, the government must still prove the regulation is constitutional to every application of an analogous situation. *Id.*

In *Range*, the Defendant was prohibited from possessing a firearm due to a prior felony charge of making a false statement to obtain food stamps. 124 F.4th at 231-34. The court held that the prohibition was unconstitutional as applied to the Defendant's circumstances. *Id.* at 70. The court reasoned that there was a lack of evidence to indicate that this particular felony posed a credible threat to society, removing the Defendant from the scope of the protection of the Second Amendment. *Id.* The court further explained that despite the Defendant having a past felony conviction, the need for an individualized inquiry was not barred. *Id.* at 24, 26. Due to the government failing to demonstrate a historical tradition analogous to the Defendant's exact circumstances, disarmament was improper. *Id.* at 68-71.

Here, the court treated Branders' status as a convicted felon as sufficient to resolve the constitutional question without conducting an individualized inquiry. Conversely, the court in *Range* considered whether the firearm restriction was constitutional in regard to the Defendant's particular circumstances through an individualized inquiry, utilizing a history and tradition framework. This is legally significant because an as-applied challenge requires examination into the law's application to a particular defendant; felony status alone does not resolve that question. By treating Branders' felony conviction as dispositive, the court erroneously precluded the

individualized inquiry that it was required to conduct. Additionally, the court did not determine if the firearm restriction was constitutional as applied to Branders. Notably, the court never came to the conclusion that disarming the defendant was within the scope of the power enumerated by the Second Amendment. Therefore, the lack of analysis and subsequent individualized inquiry based solely on Branders' prior felony status by the court was improper.

Respondents may argue that Branders' past felony conviction means that an individualized inquiry is not required because Branders falls within a class of people convicted of a felony, therefore, the disarmament is constitutional because it prohibits a suspect class from owning a firearm. However, this argument fails because the determination of felony status does not mean there is no need for an individualized inquiry. The court must still consider whether the restriction in question is constitutional as applied to the particular defendant rather than treating felony status as dispositive. When determining whether there is a historical tradition of disarming individuals who have committed similar offenses before disarming them, the inquiry cannot end before it starts solely because the individual has a felony conviction. Thus, the Court of Appeals failed to determine whether section 922(g)(1) is constitutional as applied to Branders because they treated her felony status as dispositive and did not conduct the required individualized inquiry.

B. Courts Must Consider the Nature of the Predicate Offense to Determine Whether § 922(g)(1) is Constitutional As Applied to a Particular Defendant.

Courts must consider the nature and circumstances of a defendant's underlying offense when determining whether 18 U.S.C. section 922(g)(1) is constitutional as applied to that particular defendant. A modern felony classification alone does not establish that permanent disarmament is consistent with the nation's historical tradition of firearm regulation. Rather, once the Second Amendment's text covers the defendant's conduct, the Government must establish a

historical tradition supporting disarmament based on conduct analogous to the defendant's actual criminal history. *United States v. Diaz*, 116 F.4th 458, 467 (5th Cir. 2024). Under *Bruen*, the restriction must be supported by the legislature. *Bruen*, 597 U.S. at 90. Otherwise, the scope of the constitutional right would undermine the legislature's intent, as purported by the Constitution's text and historical tradition.

In *Diaz*, the Defendant challenged section 922(g)(1) as unconstitutional as applied to him after prior convictions for vehicle theft, evading arrest, and possession of a firearm by a felon. 116 F.4th at 462, 467. The Fifth Circuit ultimately upheld section 922(g)(1) as applied to Diaz because the Government established a historical tradition supporting the disarmament of persons with criminal histories analogous to his. *Id.* at 469-72. In reaching that conclusion, the court declined to treat Diaz's status as a convicted felon as dispositive. Instead, the court identified his relevant predicate offenses and required the Government to demonstrate a historical tradition supporting disarmament of someone with an analogous criminal history. *Id.* at 467-68. As applied to Diaz's theft conviction, that tradition was clear—at the time of the Second Amendment's ratification, those guilty of crimes like theft faced severe and permanent punishment, including disarmament. Such is a tradition which the application of section 922(g)(1) to Diaz "fits neatly" within. *Id.* at 472. The significance of *Diaz* is not whether or not he prevailed, but rather that the court reached its conclusion only after examining the nature of his predicate offenses and comparing his criminal history to historical tradition.

Similarly, in *United States v. Williams*, 113 F.4th 637, 662 (6th Cir. 2024), the Sixth Circuit considered whether section 922(g)(1) was constitutional as applied to a Defendant with an extensive criminal history that included aggravated robbery and attempted murder. The court held that section 922(g)(1) was constitutional as applied to Williams because his criminal history

demonstrated the type of dangerousness that historically justified disarmament. *Id.* at 662-63. In determining whether a defendant falls within the historically disarmed class, the court required a fact-specific inquiry accounting for the “unique circumstances of the individual, including [the] details of [the defendant's] specific convictions.” *Id.* The court explained that evidence of dangerousness is demonstrated by crimes against another person's body and offenses that inherently pose a significant threat of danger, whereas offenses posing no physical danger present a materially different inquiry. *Id.* at 659-63. Thus, as in *Diaz*, the Sixth Circuit did not end its analysis upon determining that Williams had been convicted of a felony. Instead, it examined the nature of his offenses to determine whether his particular disarmament was historically justified.

In *Pitsilides v. Barr*, 128 F.4th 203 (3d Cir. 2025), the Third Circuit similarly concluded that an as-applied challenge may require consideration of more than the statutory classification of the predicate offense. The Defendant had previously been convicted of offenses arising from illegal gambling activities and sought prospective relief from section 922(g)(1). *Id.* at 206-08. Relying on *Range*, the court explained that the constitutional inquiry turns on the defendant's “individual circumstances and conduct” and that, where the predicate offense does not itself establish a danger of firearm misuse, courts must consider the circumstances surrounding the offense and other facts bearing on the defendant's dangerousness. *Barr*, at 210-13. Because the existing record did not sufficiently establish those circumstances, the court remanded for further factual development. *Id.* at 213.

Here, as in *Diaz*, *Williams* (6th Cir. 2024), and *Barr*, the constitutionality of section 922(g)(1) as applied to Branders cannot be determined solely from the felony classification attached to her predicate conviction. Each of those courts looked beyond the defendant's status as

a convicted felon and considered the nature and circumstances of the conduct underlying the conviction before determining whether disarmament was constitutionally justified. Branders is entitled to the same individualized inquiry. Branders' conviction arose from a single incident of child neglect involving negligent conduct, unlike *Diaz* which involved vehicle theft, and *Williams* (6th Cir. 2024), which examined aggravated robbery and attempted murder. Such differences highlight why the felony classification alone cannot resolve the constitutional inquiry. The fact that Branders' child-neglect conviction was classified as a felony identifies the statutory consequence of her offense, but it does not account for the nature and circumstances of her conduct underlying it. Accordingly, the Court must consider Branders' predicate offense rather than treating its felony classification as dispositive.

Respondent may argue that *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) precludes such offense-specific review because the Eighth Circuit concluded that there is "no need for felony-by-felony litigation" under section 922(g)(1). However, *Jackson's* approach allows the modern felony classification to substitute for the historical inquiry required by *Bruen*. Congress's decision to classify an offense as a felony cannot itself establish that persons convicted of that offense are analogous to persons historically subject to disarmament. By contrast, both *Diaz* and *Williams* (6th Cir. 2024) instead examined the nature of the defendants' actual offenses before determining whether the challenged statute was constitutional as applied to them. Notably, both of the defendants ultimately lost their as-applied challenges, despite receiving individualized review. Individualized review therefore does not render section 922(g)(1) unenforceable; it merely requires the government to establish the constitutional justification for the statute's application, rather than treating the felony label itself as that justification. In the case at bar, the Court of Appeals erred by treating Branders' felony status as

sufficient to foreclose consideration of the nature of her predicate offense. Accordingly, the constitutionality of section 922(g)(1) as applied to Branders cannot be determined from her felony status alone and this Court must consider the nature and circumstances of her conviction.

III. THIS COURT SHOULD FIND THAT § 922(g)(1) VIOLATES THE SECOND AMENDMENT AS APPLIED TO BRANDERS BECAUSE THE GOVERNMENT CANNOT ESTABLISH A HISTORICAL TRADITION SUPPORTING HER PERMANENT DISARMAMENT.

It is axiomatic that the Second Amendment guarantees individuals “the right of the people to keep and bear arms”. U.S. Const. amend. II. We start, therefore, with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans. *Heller*, 554 U.S. at 581. The inherent right of self-defense has been central to the Second Amendment Right. *Id.* at 628. The prohibition extends, moreover, to the home where the need for defense of self, family, and property is most acute. *Id.* Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home “the most preferred firearm in the nation to ‘keep’ and use for protection of one's home and family,” would fail constitutional muster. *Id.* at 628-9.

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 Government must then justify its regulation by demonstrating that it is consistent with the nation’s historical tradition of firearm regulation. *Id.* The Government need not identify a “historical twin,” but it must identify a “historical analogue” demonstrating that the modern restriction is analogous to historical precursors to pass constitutional muster. *Id.* A felony classification alone does not establish that permanently disarming an individual is consistent with the nation's historical tradition of firearm regulation. Rather, courts conducting an as-applied inquiry must consider the defendant's actual criminal history and assess whether a historical tradition supports the

disarmament of persons with an analogous criminal history. *Diaz*, 116 F.4th at 467. When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed. *Rahimi*, 602 U.S. at 698.

This Court should reverse the Fourteenth Circuit’s holding that section 922(g)(1) is constitutional as applied to Branders because the government failed to meet its burden of demonstrating that this restriction comported with history and tradition. Further, the government has failed to identify particularized facts demonstrating that Branders is a clear threat to other individuals.

A. The Government Cannot Establish a Historical Tradition Supporting Branders' Permanent Disarmament Because Her Isolated Child Neglect Offense Does Not Demonstrate the Dangerousness Historically Associated with Firearm Disarmament.

The Fourteenth Circuit erred in holding that the Government had met its burden that permanently disarming Branders for a single child neglect conviction from over two decades ago is consistent with the nation’s historical tradition of firearm regulation. This Court has held that the right to keep and bear arms is among the “fundamental rights necessary to our system of ordered liberty.” *Rahimi*, 602 U.S. at 690 (citing *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010)). The right secures for Americans a means of self-defense. *Bruen*, 597 U.S. at 64. To “[d]isarm a community and you rob them of the means of defending life. Take away their weapons of defense, and you take away the inalienable right of defending liberty.” *Rahimi*, 602 U.S. at 690 (quoting Cong. Globe, 40th Cong., 2d Sess., 1967 (1868) (statement of Rep. Stevens)).

Under *Bruen*, historical tradition defines the permissible boundaries of the Second Amendment. 597 U.S. at 17, 24. The Government therefore cannot satisfy its burden merely by emphasizing that Branders was convicted of an offense classified as a felony. Rather, because Branders brings an as-applied challenge, the relevant inquiry is whether this nation’s historical

tradition supports permanently disarming a person with a criminal history analogous to hers. *See Diaz*, 116 F.4th at 467-72.

Here, Branders does not contend that the Government lacks the authority to disarm individuals who have demonstrated that they pose a threat to others. Instead, Branders contends that the historical justification opined in *Rahimi* does not extend to her, an individual whose sole felony conviction resulted from neglectful conduct more than two decades prior and whose history does not presently pose a credible threat to the physical safety of others. This Court should hold that the Court of Appeals' erred in finding section 922(g)(1) constitutional as applied to Branders because her status as a convicted felon infringes her Second Amendment right as the Government cannot justify the disarmament under the history and tradition inquiry.

1. This Court's Precedent Establishes a Historical Tradition of Disarming Individuals Who Pose a Credible Threat to the Physical Safety of Others.

This Court should find that the relevant historical tradition permits firearm restrictions against individuals whose conduct demonstrates a credible threat to the physical safety of others, rather than individuals who have merely violated a legal norm. Under *Bruen*, once the Second Amendment's plain text covers an individual's conduct, the Government bears the burden of demonstrating that the challenged firearm restriction is consistent with this nation's historical tradition of firearm regulation. 597 U.S. at 17, 24. In determining whether a historical analogue is sufficiently similar, courts consider how and why the historical and modern regulations burden the right to armed self-defense. *Bruen*, at 29. This Court identified one such historical principle in *Rahimi*: "[w]hen an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment." 602 U.S. at 702. Notably, the court recognized a historical tradition of *temporary* disarmament, not the permanent deprivation of one's Second Amendment rights;

nothing in this nation's tradition demonstrates that the Framers understood such restrictions to justify lifetime disarmament.

In *Rahimi*, this Court examined two historical traditions, surety laws and prohibitions against going armed to the terror of the people to determine whether section 922(g)(8) was consistent with the Second Amendment. *Id.* at 693-700. Surety laws permitted magistrates to require individuals reasonably accused of threatening another to post a bond before carrying weapons. *Id.* at 695-97. Those laws were directed toward individuals who threatened future harm and imposed restrictions responsive to that demonstrated threat. *Id.*

The Court concluded that these historical regulations reflected a common principle: the Government historically possessed authority to restrict firearm possession where an individual's conduct demonstrated a credible threat to another's physical safety. *Id.* at 698-700. *Rahimi* fell within that tradition because a court had specifically found that he posed a credible threat to another person's physical safety. *Id.* His conduct also involved violence and firearm misuse. *Id.* Thus, the historical analogues justified the restriction because the reason for *Rahimi*'s disarmament corresponded to the reason underlying historical firearm restrictions, protecting others from an identified threat of physical violence.

Post-*Bruen* decisions applying section 922(g)(1) similarly demonstrate the importance of identifying the historical justification for disarming the individual. In *Diaz*, the Fifth Circuit did not rely solely upon *Diaz*'s status as a convicted felon. 116 F.4th at 467-72. Instead, the court examined his predicate vehicle-theft conviction and identified a historical tradition of severely punishing analogous theft offenses at the Founding. *Id.* at 469-72. Because *Diaz*'s criminal history corresponded to that historical tradition, the court upheld the disarmament. *Id.* at 472.

Likewise, in *Williams* (6th Cir. 2024), the Sixth Circuit considered whether the defendant's particular criminal history demonstrated dangerousness sufficient to justify disarmament. 113 F.4th at 657-63. Williams's criminal history included aggravated robbery and attempted murder, offenses involving intentional threats to the physical safety of others. *Id.* The court therefore concluded that his conduct demonstrated the dangerousness historically associated with firearm disarmament. *Id.*

The same historical principle controls here. Once Branders is permitted to assert an as-applied challenge, the Government cannot satisfy its burden merely by identifying her as a convicted felon. Rather, it must demonstrate that the historical reasons for firearm disarmament apply to a person with a criminal history analogous to Branders'. *Rahimi* establishes that a credible threat to another's physical safety can supply such a historical justification. *Diaz* and *Williams* (6th Cir. 2024) likewise demonstrate that courts applying section 922(g)(1) examine the historical significance of the defendant's actual predicate conduct.

Accordingly, the relevant inquiry is not simply whether Branders previously violated a legal norm or whether Virginia classified her offense as a felony. The inquiry is whether the nature of her predicate conduct places her within a historically recognized class of individuals whose conduct justified firearm disarmament. Unlike *Rahimi*, who was judicially determined to pose a credible threat to another's safety, or *Williams* (6th Cir. 2024), whose convictions included aggravated robbery and attempted murder, Branders' predicate conviction resulted from neglect rather than intentional violence or threats. The Government must therefore establish a historical tradition extending firearm disarmament to an individual whose circumstances resemble Branders'.

The Government's burden fails constitutional muster. This Court has recognized and shown support for historical firearm restrictions on temporarily disarming individuals who posed a credible threat to the physical safety of others. Branders does not fit within that historical context. Her predicate conviction arises from neglect for a failure of supervision more than two decades prior to her firearm charge. This charge is not a form of intentional violence or a threat to the physical safety of others. Accordingly, permanently depriving Branders of a core constitutional right cannot be substantiated by the historical tradition recognized in *Rahimi*. Therefore, the Fourteenth Circuit is not justified in the permanent disarmament of Branders.

2. Branders' Isolated, Twenty-Year-Old Conviction for Child Neglect Does Not Establish the Type of Dangerousness Historically Sufficient to Justify Her Permanent Disarmament.

Branders' conviction for child neglect does not demonstrate the type of dangerousness historically sufficient to justify her permanent disarmament because her offense arose from an isolated failure of supervision rather than violence, or the threat to the physical safety of others. Under *Rahimi*, firearm disarmament is consistent with historical tradition when an individual poses a credible threat to another person's physical safety. 602 U.S. at 698-702. When determining whether section 922(g)(1) may constitutionally be applied to a particular defendant, courts examining individualized challenges consider the nature of the defendant's criminal history rather than relying exclusively upon the modern felony classification. *See Diaz*, 116 F.4th at 467-72; *Williams*, 113 F.4th at 657-63 (6th Cir. 2024). Thus, the relevant inquiry is whether the nature and circumstances of Branders' predicate conduct make her analogous to those historically subject to firearm restrictions.

The distinction between a conviction's serious consequences and conduct demonstrating dangerousness is illustrated by *Rahimi* and *Williams*. *Rahimi* had been judicially found to pose a

credible threat to another's physical safety and subsequently engaged in repeated firearm violence. *Rahimi*, 602 U.S. at 686-87, 699-700. Likewise, Williams' convictions for aggravated robbery and attempted murder involved intentional conduct directed toward the physical safety of others. *Williams*, 113 F.4th at 657-63 (6th Cir. 2024). In both cases, the nature of the defendants' conduct supplied evidence of the dangerousness supporting firearm disarmament. By contrast, an offense does not become analogous to those historical circumstances merely because its consequences were grave. The historical inquiry focuses on whether the reasons underlying the modern restriction correspond to the reasons underlying historical firearm restrictions. *Bruen*, 597 U.S. at 29. Accordingly, where dangerousness supplies the asserted justification for disarmament, the Government must connect the defendant's conduct to the historical concern with protecting others from credible threats of physical harm.

Here, Branders' conviction does not establish that connection. Branders' prior conviction resulted in the death of a child that was unquestionably a devastating consequence of Branders' neglect. However, the severity of that consequence does not transform the underlying conduct into the type of intentional or threatening behavior historically associated with firearm disarmament. Branders' conduct following her conviction further distinguishes her from individuals whose dangerousness historically justified firearm restrictions. Branders received a two-year suspended sentence and probation in 2001. More than two decades passed before the firearm at issue was discovered. During that period, Branders accumulated no additional felony convictions. Her only subsequent encounter with the criminal law identified in the record was misdemeanor reckless driving. She also became involved in charitable activities, including volunteering at a local food bank and stocking school supplies for children in need. *Rahimi* did not hold that anyone whose prior conduct caused serious injury may permanently lose the right

to possess a firearm. Rather, it upheld disarmament where an individual had been found to pose a credible threat to another's physical safety. Branders' offense, while tragic, resulted from neglect, rather than an intentional threat, violent conduct, or firearm misuse. Branders' non-violent felony provides no evidence that the neglect underlined in her isolated offense reflects an ongoing propensity to threaten the physical safety of others.

Further, the remoteness of Branders' conviction weakens its ability to justify her permanent disarmament. More than two-decades separate Branders' predicate conviction from her possession of the firearm at issue. Such a significant passage of time is relevant when determining what a prior offense demonstrates about an individual's present dangerousness. Indeed, federal sentencing laws recognize this principle by generally excluding sufficiently remote convictions from a defendant's criminal score sheet. *See* U.S.S.G. § 4A1.2(e). Although those sentencing rules do not control the Second Amendment inquiry at bar, they reflect the broader principle that the significance of a prior conviction may diminish with time. If federal law recognizes that a conviction may become too remote to bear the same weight when assessing an individual's criminal history, the Government should not be permitted to treat the mere existence of that same decades-old conviction as conclusive evidence that the individual remains subject to permanent disarmament. The passage of time is also significant under *Bruen*, which considers whether modern firearm restrictions impose a burden comparable to their historical analogues. *See Bruen*, 597 U.S. at 29. Where historical restrictions on firearm possession were temporary, they provide a poor analogue for permanently disarming Branders based on a conviction so remote that, under modern sentencing principles, it would no longer bear the same weight in assessing her criminal history.

Branders accepted the firearm from a friend after expressing concerns about her son's angry outbursts and the individuals with whom he associated. She possessed the firearm for protection in her home and kept the firearm and ammunition locked in separate drawers. When DEA agents initially searched her home, they were operating an investigation based on the son's conduct not her own. As such, Branders cooperated and openly disclosed her possession of the firearm. The agents discovered no evidence of the suspected drug activity. These facts sharply distinguish Branders from *Rahimi*. Rahimi's firearm restriction responded to a judicial determination that he posed a credible threat to another person and was reinforced by his repeated violent conduct. The legal question posed was whether Rahimi was entitled to be in possession of his firearms after it was determined that he was a credible threat. By contrast, Branders' firearm restriction rests on a single neglect offense committed more than two decades earlier. The legal question is whether her felony automatically rescinded her Second Amendment right. Nothing about her subsequent history or her possession of the firearm demonstrates that her conviction reflects a continuing propensity for violence or a present credible threat to another's physical safety. Rather, Branders' possession of a firearm is a means of self-defense within her home; exactly what the Framers intended to protect.

The Government may nevertheless argue that Branders' offense demonstrates dangerousness because of her prior offense that resulted in the death of a child. But that argument improperly substitutes the gravity of the resulting harm for the historical inquiry required by *Bruen* and *Rahimi*. The question is not whether Branders' offense was serious; it unquestionably was. The question is whether the Government has established a historical tradition supporting permanent firearm disarmament based on conduct analogous to hers. *Rahimi*

establishes a tradition tied to credible threats to physical safety, not a general rule permanently disarming every individual whose prior neglectful act produced grave consequences.

The Government may also rely on *Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) (held section 922(g)(1) is consistent with the nation's tradition of firearm regulation as applied to convicted felonies and that courts are not obligated to execute felony-by-felony litigation to determine constitutionality), *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025) (held that the disarmament as applied to Vincent was constitutional despite her non-violent conviction), and *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024) (emphasizing *Jackson*, that there is no need for felony-by-felony litigation regarding the constitutionality of section 922(g)(1)) to argue that legislatures historically possessed authority to categorically disarm individuals who deviated from legal norms. But those cases principally reject the availability of individualized felony-by-felony review. That argument concerns the threshold question addressed in Issue One. Once this Court concludes that an as-applied challenge exists, the Government cannot answer the merits of that challenge by returning to the categorical proposition that Branders is a felon. Doing so would eliminate the very individualized inquiry the Court has assumed is available. Nor does *United States v. Watson*, 117 F.4th 1012 (7th Cir. 2026) establish that Branders' disarmament is historically justified. Although *Watson* concluded that persons convicted of dangerous felonies may be subject to section 922(g)(1), the Court of Appeals recognized that the Seventh Circuit had not definitively resolved whether individuals convicted of nondangerous felonies may likewise be disarmed. The absence of a holding protecting every person convicted of a nondangerous felony does not satisfy the Government's burden under *Bruen*. Branders does not bear the burden of proving that all nondangerous felons retain Second Amendment rights.

The Government bears the burden of establishing a historical tradition supporting the permanent disarmament of a person with a criminal history analogous to Branders'.

The Government fails to identify a historical tradition supporting the permanent disarmament of an individual based on a single, decades-old offense that does not demonstrate the type of dangerousness historically associated with firearm restrictions. Thus section 922(g)(1) is unconstitutional as applied to Branders. This Court should therefore reverse the judgment below, pursuant to stare decisis consistent with its Second Amendment Jurisprudence.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Fourteenth Circuit should be reversed and the District Court's order dismissing the indictment should be reinstated.

CERTIFICATE OF COMPLIANCE

Petitioner, Terry Branders, by and through her undersigned attorney, hereby certifies to this Court that the font size and type style of the print used in this brief is Times New Roman, twelve point, and complies with the Hassell Competition Rules. It is further certified that the brief complies with Rule 3, and contains a page count of thirty, pursuant to Rule 3.5.

Dated: September 30, 2026

Respectfully submitted,

/s/ Team OE

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was submitted to the Leroy R. Hassell, Sr.
National Moot Court Competition chair of the Regent University School of Law on this 30th day
of September, 2026.

Dated: September 30, 2026

Respectfully submitted,

/s/ Team OE

Counsel for Petitioner