

**In the Supreme Court of the
United States**

TERRY BRANDERS, PETITIONER

V.

UNITED STATES, RESPONDENT

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

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

- I. Whether felons are precluded from asserting an as-applied challenge to 18 U.S.C. § 922(g)(1) under the Second Amendment, or whether an as-applied Second Amendment challenge to section 922(g)(1) remains available to felons?
- II. Does 18 U.S.C. § 922(g)(1) violate the Second Amendment for an offender with a felony conviction of child neglect?

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

In July 2000, Petitioner Terry Branders ("Petitioner") began operating an unlicensed home daycare. R. at 2. Petitioner unlawfully cared for ten or more children at a time. *Id.* Petitioner's 18-year-old son, Nelson, assisted in the unlicensed operation by shuttling the children between their homes and Petitioner's home. *Id.*

One morning, Nelson picked up twelve children, one of whom was eleven-month-old Kenneth Drew. *Id.* After believing he dropped off all the children with Petitioner, Nelson drove back home to his apartment and fell asleep. *Id.* However, Nelson failed to ensure he unloaded all of the children from his vehicle before he drove home. *Id.* Consequently, Nelson left Kenneth in his vehicle. *Id.* After more than two hours, Petitioner, for the first time, went to find and check on baby Kenneth. *Id.* Petitioner searched for Kenneth and called Nelson who missed Petitioner's calls. *Id.* After another full hour elapsed, Petitioner called 911 to report the missing baby. *Id.* By the time the police found Kenneth, he had suffered severe heat-related injuries. *Id.* Shortly after, he tragically passed away at the hospital. *Id.* Petitioner was convicted of a misdemeanor for operating a daycare without a license. *Id.* at 3. Additionally, both Petitioner and Nelson were convicted of felony child neglect under Va. Code § 18.2-371. *Id.* at 2. Petitioner was given a two-year suspended sentence and placed on probation. *Id.* at 3.

After Petitioner's felony conviction, Petitioner moved to Appleton, Newcoastland in 2020 during the Covid-19 pandemic. *Id.* She used the pandemic as an opportunity to start over and get involved with community groups. *Id.* While in Appleton, Petitioner was convicted of reckless driving, her second misdemeanor. *Id.* Nelson moved into Petitioner's basement, which exposed a fraught relationship between the pair because Nelson blames Petitioner for everything

wrong with his life. R. at 3. Nelson failed to maintain a job, and Petitioner became suspicious that he was selling drugs out of her basement. *Id.* Nelson exhibited aggressive outburst towards Petitioner and demanded Petitioner stay out of her basement where he was living. *Id.* Petitioner observed “scary” figures coming and going from her home. *Id.*

In Appleton, Petitioner made a friend, Becky, through a community group. *Id.* One day, after Petitioner told Becky about her home life with Nelson, Becky suggested she obtain a firearm for protection and offered Petitioner one of her firearms. *Id.* Without asking any questions, Petitioner accepted the gift. *Id.* Petitioner placed the firearm and ammunition in locked drawers in her living room. *Id.*

In June 2024, the Drug Enforcement Agency received a tip and opened an investigation into Nelson's suspected drug activities. *Id.* at 3–4. During the investigation, the agents discovered that both Petitioner and Nelson were convicted felons. *Id.* at 4. The agents went to Petitioner's home and asked Petitioner if they could search the premises. *Id.* Petitioner consented to the search, and the agents combed through the home searching for evidence of Nelson’s unlawful activity. *Id.* However, the search revealed Petitioner, a convicted felon, unlawfully possessed a firearm. Thus, the agents arrested Petitioner and charged her for a second felony under 18 U.S.C. § 922(g)(1). *Id.*

II. PROCEDURAL HISTORY

On July 3, 2024, Petitioner, a convicted felon, was charged with unlawful possession of a firearm under 18 U.S.C. § 922(g)(1). *Id.* at 4. Petitioner moved to dismiss the indictment, arguing that section 922(g)(1) was unconstitutional as applied to her because it violated her Second Amendment right to possess a firearm for self-defense. *Id.* at 1. The district court granted Petitioner’s motion, dismissed the indictment, and prohibited enforcement of section 922(g)(1)

against Petitioner. R. at 7. In doing so, the court declined to join the circuits that uphold section 922(g)(1) as a categorical ban on firearm possession by qualifying felons. *Id.* at 6. Instead, the court assessed Petitioner's circumstances individually, applying the case-by-case approach used by other circuits. *Id.*¹ Additionally, the court addressed the *Bruen* test to determine whether Petitioner could successfully overcome an as-applied challenge to section 922(g)(1). *Id.* The Court found no historical analogs that justified permanently disarming Petitioner. *Id.*

Respondent appealed the district court's decision to the Fourteenth Circuit. *Id.* at 8. On May 15, 2026, the Fourteenth Circuit reversed, holding that section 922(g)(1) applies categorically to all felons, and the court remanded for further proceedings consistent with its opinion. *Id.* at 10. On remand, the district court denied Petitioner's motion to dismiss. *Id.* at 12. Petitioner then entered an *Alford*² plea, preserving her right to appeal the district court's denial of her motion. *Id.* On June 1, 2026, on appeal to the Fourteenth Circuit, the court summarily affirmed the district court decision. *Id.* Following the Fourteenth Circuit's decision, this Court granted certiorari. *Id.* at 13.

SUMMARY OF THE ARGUMENT

The Fourteenth Circuit correctly held that Petitioner cannot possess a firearm under 18 U.S.C. § 922(g)(1) because she is a convicted felon. Respondent respectfully requests this Court affirm the judgement of the Fourteenth Circuit.

¹ The Fourteenth Circuit had yet to address this issue. R. at 1.

² An *Alford* plea allows an individual to accept and consent to a sentence without admitting guilt. Vincent Aprile II, *Understanding the Alford Plea*, Crim. Just., Winter 2025, at 45. An individual may seek an *Alford* plea because they believe they are not guilty, but know the prosecution likely has sufficient evidence which would result in a jury returning a guilty verdict. *Id.*

I.

Petitioner cannot assert an as-applied Second Amendment challenge to section 922(g)(1) because the statute categorically bans all qualifying felons from possessing a firearm. Congress wrote this act in a very particular manner by creating carveouts in certain provisions, but not others, including section 922(g)(1). Based on the plain text and statutory structure, Congress did not intend to create a carveout to section 922(g)(1). Allowing Petitioner to assert an as-applied challenge to section 922(g)(1) will create devastating consequences: as-applied judicial reviews would create inconsistencies and confusion in the lower courts and expend unnecessary judicial and taxpayer resources. Lastly, this Court, in *Heller*, *Bruen*, and *Rahimi* has consistently supported categorically disarming qualifying felons. Thus, this Court should prohibit Petitioner from asserting an as-applied challenge to section 922(g)(1) because the statute imposes a categorical bar on Petitioner's right to bear arms.

II.

Petitioner cannot overcome an as-applied challenge because historical traditions support disarming felons. If an as-applied challenge were permitted, an analysis under the *Bruen* two-step framework is necessary to determine the constitutionality of the statute. The first step is to determine whether the individual's conduct is covered under the scope of the Second Amendment. Here, Petitioner is included in "the people" under the Second Amendment; however, her rights can still be limited. The second step is to determine if historical customs support categorical bars. Spanning from early common law to today, history has routinely disarmed violent and non-violent felons and groups of people from religious groups to political opponents to non-violent felons to dangerous felons. Petitioner falls under these prohibited categories. Finally, this Court's recent decision in *Hemani* has no bearing on Petitioner because

the cases are too distinguishable and address different provisions of the statute. Therefore, this Court should hold Petitioner cannot possess a firearm under section 922(g)(1) because historical traditions support disarmament of felons regardless of the number of offenses the felon has.

ARUGMENT

I. THIS COURT SHOULD HOLD THAT FELONS ARE PRECLUDED FROM ASSERTING AN AS-APPLIED CHALLENGE TO 18 U.S.C. § 922(g)(1) BECAUSE THE STATUTE CATEGORICALLY DISARMS ALL FELONS.

Respondent requests this Court affirm the Court of Appeals decision holding that all qualifying felons cannot assert an as-applied challenge to 18 U.S.C. § 922(g)(1). The statute bars *every* felon from possessing a firearm, *without* an individualized inquiry into the particular circumstances of the felony. Petitioner is a felon regardless of what crime she committed. The following analysis illustrates why Petitioner cannot possess a firearm. First, the text, structure, and practical consequences of section 922(g)(1) illustrate Congress’s intent to preclude Petitioner from an as-applied challenge. Second, this Court has consistently supported a categorical bar on a felon's right to bear arms. Therefore, Petitioner cannot assert an as-applied challenge to section 922(g)(1).

A. Petitioner Cannot Assert an As-Applied Challenge to 18 U.S.C. § 922(g)(1) Because Congress Intended for Felons to Lose the Right to Bear Arms Upon a Felony Conviction.

Petitioner forfeits her right to bear arms because Congress intended to categorically bar felons. Section 922(g)(1) prohibits firearm possession by a person “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.” 18 U.S.C § 922(g)(1). The plain text and structure of section 922(g)(1) and the broader statutory scheme of Chapter 44 of Title 18 demonstrate Congress’s intent to categorically disarm felons.

Additionally, the practical consequences of allowing an as-applied Second Amendment challenge confirm Congress's categorical bar. Accordingly, this Court should reject an as-applied challenge to section 922(g)(1) and hold that the statute applies to all felons as a class.

1. The Plain Text of Section 922(g)(1) Unambiguously Prohibits All Convicted Felons from Possessing a Firearm Without Individualized Exceptions.

This Court should not ignore Congress's categorical language and carve out an as-applied challenge exception to section 922(g)(1) that *does not exist*. Allowing Petitioner to proceed with an as-applied challenge would create an unintended carveout. The plain language of section 922(g)(1) contains no such carve out, and therefore, Petitioner is categorically barred from possessing a firearm.

To interpret congressional intent, this Court begins with the existing statutory text. *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002). Should the language have a plain and unambiguous meaning, “the inquiry ceases.” *Id.* at 439. This Court must recognize that Congress is presumed to “say what it means and mean what it says in a statute.” *Id.* at 451–52.

Here, applying section 922(g)(1)'s textual contours, or lack thereof, is not complicated. Petitioner was convicted of felony child neglect under Va. Code §§ 18.2-371.1 which carries a prison sentence from two to ten years. Va. Code Ann. § 18.2-371.1 (2026). Petitioner's actual sentence is irrelevant because section 922(g)(1) relies on what punishment a felony carries, not the sentence imposed. The text of the statute contains no language authorizing this Court to perform an individualized, case-by-case review. Moreover, the statute draws no distinction to the nature of the underlying felony. Therefore, Petitioner's conviction unequivocally triggers section 922(g)(1), and Petitioner cannot assert an as-applied challenge.

2. *The Structural Scheme of Section 922(g) Confirms Congress’s Intent to Impose a Categorical Bar on Felons Possessing Firearms.*

Section 922(g)(1)’s text is unambiguous and that alone should end the statutory analysis. *Bond v. United States*, 572 U.S. 844, 868 (2014) (Scalia, J., concurring) (“End of analysis, I would have thought.”). Even if this Court chooses to look beyond the text, the structure of sections 921–931 emphatically bars Petitioner from possessing a firearm. When Congress includes specific language “in one section but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983).³ Therefore, Congress’s deliberate structural choices confirm Petitioner is categorically barred from possessing a firearm.

- a. Congress’s inclusion of procedural safeguards in section 922(g)(8) and omission of any comparable requirement in section 922(g)(1) confirms that Congress chose to categorically bar felons from possessing firearms.

Congress wrote section 922(g) as a carefully differentiated scheme, reinforcing its intent to categorically bar felons from possessing a firearm under section 922(g)(1). *See* 18 U.S.C. §§ 922(g)(1)–(9). Section 922(g) has two distinct categories: (1) categorical status-based bars and (2) bars requiring an as-applied showing. *See* 18 U.S.C. §§ 922(g)(1)–(9). Congress did not intend for every section to fall into one category; if Congress did, it would have drafted the subsections identically. *See Russello*, 464 U.S. 16, 23 (1983). These sections are *far* from identical. *Compare* § 922(g)(1), *with* § 922(g)(8).

To illustrate, Section 922(g)(8) disarms individuals who are subjected to a court order; however, Congress wrote in four conditions that can exempt an individual from losing their right

³ The principle in *Russello* is formally known as the *casus omissus pro omisso habendus est* or *casus omissus* canon of statutory construction. 73 Am. Jur. 2d Statutes § 106 (2026). This prohibits courts from inserting language into a statute “to conform to an assumed intention that does not appear from [the statute’s] language.” *Id.* The only exception that allows courts to insert language is to prevent a statute from being “absurd.” *Id.*

to bear arms. § 922(g)(8)(A)–(C). In contrast, section 922 (g)(1) is triggered by one event: a conviction punishable by imprisonment for a term exceeding one year. § 922(g)(1). As soon as an individual is convicted as felon, section 922(g)(1) attaches and the felon is disarmed. *Id.* Congress requires no further inquiry beyond the conviction. *Id.*

Section 922(g)(1) and 922(g)(8) exist under the same provision and impose the same consequence, yet Congress intentionally chose two *radically* different triggering mechanisms. §§ 922(g)(1), (8). Congress knew how to create procedural safeguards when it wrote 922(g) and deliberately chose not to impose those safeguards in 922(g)(1). Congress’s choice to allow a felony conviction, *by itself*, to trigger disarmament shows Congress intended to categorically bar Petitioner from bearing arms. Therefore, this Court should not override Congress’s intent and move 922(g)(1) into a category it was *never* intended to be in.

- b. Congress specified which individuals are exempt from section 922(g)(1), and Congress’s statutory carve out does not include Petitioner.

Even though the statutory mechanism for disarming felons has evolved, Congress has consistently paired the categorical ban on felony firearm possession with explicit exclusions to the ban. Although the statutory mechanisms for disarming felons has evolved, Congress never waived on its original intent and felons are still categorically banned from possessing firearms.

Congress passed the Omnibus Crime Control and Safe Streets Act in 1968 which created Chapter 44 of the U.S. Code, in response to an increase in crime throughout the United States. Pub. L. No. 90–351, tit. I, 82 Stat. 197, 197 (1968) (codified as 18 U.S.C. §§ 921–928). The Act established the following: (1) prohibited felons from possessing a firearm, (2) carved out criminal offenses that were not subject to the firearm ban, and (3) established a process for the Secretary of the Treasury to restore firearm rights. Pub. L. No. 90–351, § 1201, 82 Stat. at 228–

32. Congress stated the purpose of the Act was not to “eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes” rather, Congress aimed to provide support to enforcement officials to better combat crime and violence in the United States. *Id.* at 226.

Four months later, Congress amended Chapter 44 in the Gun Control Act to add a second express carveout to the ban on firearm possession by felons. Pub. L. No. 90–618, § 101, 82 Stat. 1213 (1968). The amendment broadened the process for felons to restore their rights. *Id.* Congress reiterated its goal was *not* to place firearm restrictions on law-abiding citizens. *Id.* § 101, 82 Stat. at 1213–14 (1968).

In the Firearms Owners’ Protection Act of 1986, Congress again revised a felon’s right to bear arms. Pub. L. No. 99–308, §§ 101–102, 100 Stat. 449–59 (1986). Congress created the modern-day felon firearm ban under section 922(g)(1), rewrote the statutory exclusions in 18 U.S.C. § 921(a)(20), and expanded eligibility for firearm right restoration in section 925(c). *Id.*

The current framework of section 921(a)(20) carves out two explicit categories out of section 922(g)(1)’s reach: (1) federal and state financial trade crimes; and (2) state misdemeanors. *See* §§ 921(a)(20)(A)–(B). Also, section 922(g)(1) does not reach felons who could have their rights restored by having their conviction set aside, expunged, or pardoned. Pub. L. No. 99–308, § 101, 100 Stat. at 450.

Here, the statutory history confirms that Congress created explicit carveouts, and Petitioner’s felony child neglect falls outside the exceptions. By choosing to exclude specific categories of offenses, Congress made a deliberate choice to categorically bar all other offenses not specifically addressed. Congress took a firm stance that anything falling outside the enumerated exclusions listed in section 922(a)(20) *does not achieve their goal* of increasing access to unrestricted firearm rights for law-abiding citizens while promoting public safety and

detering crime. Pub. L. No. 90–618, § 101, 82 Stat. at 1213–14. Congress created an opportunity for relief for Petitioner under section 921(a)(20), but unfortunately for Petitioner, she is ineligible. Thus, Congress’s express inclusion of enumerated carveouts to section 922(g)(1) through section 921(a)(20) demonstrates that Congress intended to categorically ban Petitioner from possessing a firearm. This Court should refrain from creating a judicially created carveout where Congress explicitly chose not to create one.

- c. Section 925(c) creates a robust process for the Attorney General to review applications for relief from section 922(g)(1).

Congress created a clear path for convicted felons to receive individualized relief from section 922(g)(1). Under section 925(c), an individual who lost their right to possess a firearm can apply to the Attorney General for relief. Congress has the power to eliminate or amend section 925(c) at any time. *See Robertson v. Seattle Audubon Soc.*, 503 U.S. 429 (1992). Congress’s choice to keep this statute and never amend the allocation of firearm restoration power demonstrates that Congress intended to keep this sweeping power out of the hands of the Judiciary. Hence why this Court should prohibit case-by-case review under section 922(g)(1).

Section 925(c) gives the Attorney General the authority to grant relief from section 922(g)(1)’s categorical bar. 18 U.S.C § 925(c). Felons who lost their right to bear arms may submit an application to the Attorney General. *Id.* Should the Attorney General deny the application, the felon can file petition for review in a district court. *Id.* This statute gives district courts power to choose whether to hear additional evidence to avoid a miscarriage of justice. *Id.* Unfortunately, the Bureau of Alcohol, Tobacco, and Firearms (“ATF”) lacked funding to effectuate the relief process. 142 CONG. REC. S12164 (1996) (statement of Sen. Paul Simon). The ATF estimated that each application granted would cost taxpayers \$10,000. *Id.* For this reason, ATF was unable to provide relief to felons under section 925(c).

Regardless, Congress, shown through the enactment of section 925(c), did not intend courts to review felons' applications for relief. 142 CONG. REC. S12164 (“It was never our intent, nor is it now, for the courts to review a convicted felon’s application for firearm privilege restoration.”). This Court likewise agreed with Congress’s intent in *United States v. Bean*, holding that the actual denial of relief under section 925(c) was a “prerequisite to judicial review.” 537 U.S. 71, 71–72 (2002) (reasoning that the “very use in §925(c) of the word ‘review’ to describe a court’s responsibility in this statutory scheme signifies that [the court] cannot grant relief on its own.”).

Even more, in August 2026, the Department of Justice (“DOJ”), created a process to execute section 925(c). In doing so, the DOJ reinforced that the Judiciary does not decide which felons should be relieved of the categorical firearm ban under section 922(g)(1). OFF. OF PUB. AFF., *Attorney General Blanche Launches New Process to Restore Federal Firearm Rights* (Aug. 17, 2026), <https://www.justice.gov/opa/pr/attorney-general-blanche-launches-new-process-restore-federal-firearm-rights>. The current U.S. Attorney General, Todd Blanche, recognized the categorical ban section 922(g)(1) imposed on felons, stating “The Second Amendment is not a second-class right, and the federal government should not permanently deprive Americans of a constitutional right without regard to whether they pose a danger to public safety.” *Id.* However, this right can only be restored through proper channels, such as a section 925(c) waiver.

Here, even though the DOJ’s relief process was unavailable to Petitioner when she obtained a firearm, that has *no bearing* on whether Petitioner is subjected to the categorical bar on felons bearing arms. Petitioner is a felon, and felons are subjected to section 922(g)(1). Congress did not intend for this Court to determine on an individualized basis if Petitioner could

bear arms. Congress made this clear by limiting the court’s role to reviewing denied section 925(c) applications. Congress did not intend to give the courts further roles because the courts have limited resources and lack specialized knowledge to make these decisions. This Court should refrain from judicial overstepping and hold that Petitioner is categorically barred from possessing a firearm.

3. *Overstepping Congress’s Intent to Categorically Bar Felons from Possessing Firearms Will Create Inconsistency and Overwhelm the Judiciary.*

Requiring courts to make a judgement on a case-by case basis would produce inconsistent outcomes and overwhelm judicial resources. Therefore, this Court should hold Petitioner is categorically barred by section 922(g)(1).

- a. Judicially created case-by-case adjudication will produce inconsistent outcomes and create confusion among the lower courts.

This Court should reject an as-applied challenge to section 922(g)(1) because it will produce the same unpredictable, inconsistent outcomes this Court already repudiated in *Bruen*. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). In *Bruen*, this Court rejected the means-end scrutiny test reasoning that the test invited the Courts to weight government interests differently from case to case. *Id* at 19. Government interests change overtime, creating further inconsistency. *Id*. An ad hoc approach “forces judges to act more like legislators who decide what the law should be, rather than judges who say what the law is.” *United States v. Rahimi*, 602 U.S. 680, 732 (2024). (Kavanaugh, J., concurring) (citation

modified). Predictability and consistency are the foundational goals of a workable judicial system. *Id.* at 746.⁴

Lower courts are already grappling with how to apply case-by-case guidance, or lack thereof, as demonstrated by the Sixth Circuit. In *Williams*, the Sixth Circuit instructed district courts to make fact-specific determinations on the dangerousness of a felon by evaluating the details of the conviction and the individual’s entire criminal record. *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024).

Two district courts in the Sixth Circuit attempted to apply this guidance, and as expected, the guidance fell short of a workable rule that would provide consistent outcomes. One court reasoned the guidance was difficult in practice because the “judicially noticeable information” on the docket provides no way “to determine the underlying facts” of the felony conviction. *United States v. Hines*, No. 3:22-CR-157, 2024 WL 4252569, at *2 (N.D. Ohio Sept. 12, 2024). Another court struggled with this guidance because the facts dealt with a child, “*Williams* does not indicate how a court should weigh a defendant's age at the time they committed an offense.” *United States v. Green*, No. 23-CR-20506, 2024 WL 4469090, at *5 (E.D. Mich. Oct. 10, 2024).⁵

In addition, case-by-case adjudication also risks distributing Second Amendment rights unequally among felons based on resources rather than merit. For example, the Sixth Circuit’s case-by-case approach places the burden on the felon to prove they are not dangerous. *Williams*, 113 F.4th at 662. Overcoming that burden requires a vast amount of resources that not all felons

⁴ An individualized approach is a “very difficult and subjective task” that “could have devastating consequences for innocent citizens if the wrong decision is made.” S. Rep. No 102-353, at 19 (1992).

⁵ Unclear guidance is not confined to judicial chambers; it also extends to the officers who must enforce section 922(g)(1). The National Instant Criminal Background Check System allows police to instantaneously check whether a felony conviction disqualifies an individual from possessing a firearm. Under an individualized approach, an officer cannot know if a felon should or should not be arrested if they are found with a firearm. This risks either a wrongful arrest of someone whose Second Amendment rights have not been taken away from them, or failure to enforce § 922(g)(1). *Green*, 2024 WL 4469090, at *4.

have equal access to. Consequently, two identical felons would undoubtedly end up with different determinations over their right to bear arms. Simply put, rich defendants have a systemic advantage over poor defendants.

Here, the categorical rule requires one inquiry: was Petitioner convicted of a qualifying felony under section 922(g)(1)? Clearly, Petitioner was convicted of felony child neglect. Therefore, Petitioner, based on this one simple question, cannot possess a firearm. A case-by-case approach would require this court to evaluate Petitioner's felony against a standard that does not exist or create a standard that every federal court must adopt.

- b. Judicially created case-by-case adjudication for 30 million felons will drain judicial resources.

The court should reject an individualized approach and hold Petitioner is categorically barred by section 922(g)(1) because the judiciary lacks the capacity to adjudicate millions of cases.

The DOJ estimates 30 million Americans may have a pathway to restore their Second Amendment rights under section 925(c). *Attorney General Blanche Launches New Process to Restore Federal Firearm Rights, supra*. Respectfully, the federal judiciary should not be transformed into an alternative forum for potentially millions of Americans seeking individualized adjudication, nor should taxpayers be required to bear the burden.

In 2025, the federal district courts and Court of Appeals had approximately 540,602 civil and criminal cases pending. Jud. Caseload Indicators – Fed. Jud. Caseload Statistics 2025, <https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/judicial-caseload-indicators-federal-judicial-caseload-statistics-2025>. The judicial system is backlogged, and it would harm courts and civilians if the courts were burdened with hearing individual challenges to section 922(g)(1). The general population will, *yet should not*,

have their other matters further delayed because felons such as Petitioner want to bear a firearm. Therefore, to avoid an unfair burden on the judiciary, Petitioner requests that this Court reject an as-applied Second Amendment challenge to section 922(g)(1).

B. The Majority of Circuits Correctly Hold That Section 922(g)(1) Imposes a Categorical Bar On Firearm Possession, and This Court Should Resolve the Circuit Split By Affirming Their Well-Reasoned Consensus.

Even though this Court has *consistently* implied that under section 922(g)(1) categorical bars on felons possessing firearms are constitutional, a circuit split remains. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Bruen*, 597 U.S. 1; *Rahimi*, 602 U.S. 680. In 2008, this Court issued a landmark ruling allowing individuals to keep a firearm in their home for self-defense. *Heller*, 554 U.S. at 635. This Court clearly stated that longstanding categorical bars on groups of individuals would not be affected by the decision: “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons” *Id.* 626. In *Bruen* and *Rahimi*, this court continued to imply categorical bans under section 922(g)(1) are constitutional, and as-applied challenges are *not* available to felons. See *Bruen* 597 U.S. 1; see also *Rahimi*, 602 U.S. 680.

This Court’s presumptively lawful ban on felons possessing firearms has been erroneously misconstrued by the Third and Sixth’s Circuits. However, the Fourth, Eighth, Tenth, and Eleventh Circuits correctly hold that section 922(g)(1) categorically bars felons from possessing a firearm. Therefore, this Court should continue to hold categorical bars under section 922(g)(1) are presumptively lawful, and an as-applied challenge is unavailable to Petitioner.

I. *The Court of Appeals Below, Along with the Fourth, Eighth, And Tenth Circuits Correctly Hold That Felons Are Categorically Barred from Bearing Arms Because the Circumstance of a Crime Have No Relevance on the Status of a Felony Charge.*

Section 922(g)(1) bars Petitioner from possessing a firearm because of her status as felon, regardless of whether her conviction constituted a dangerous felony or not. Therefore, Respondent requests this Court affirm the Fourteenth Circuit’s decision and hold that all felons cannot assert an as-applied challenge to section 922(g)(1) because the statute categorically bars felons from possessing a firearm. The preceding analysis illustrates that multiple circuits have correctly applied the categorical bar under section 922(g)(1) implied by this Court in *Heller*, *Bruen*, and *Rahimi*.

Three critical decisions in the Fourth, Eighth, and Tenth Circuits correctly ban felons under the *Heller*’s principle that a ban on a felon’s right to bear arms is presumptively lawful. In both *Vincent* and *Hunt*, the courts evaluated section 922(g)(1) before and after this Court’s ruling in *Bruen* and *Rahimi*. *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), cert. denied, 145 S. Ct. 2756, 222 L. Ed. 2d 1046 (2025).

First, in *Vincent*, the court stated the felon’s as-applied “argument [was] unavailable” and reiterated what this Court established in *Heller* and *Rahimi*. 127 F.4th at 1266 (stating they “reject[] the notion that *Heller* mandates an individualized inquiry concerning felons pursuant to § 922(g)(1)”). The court held that section 922(g)(1) barred a nonviolent felon from possessing a firearm. *Id.* The court reasoned (1) its precedent was not abrogated by *Rahimi*, and (2) the categorical bar imposed under section 922(g)(1) does not violate the Second Amendment regardless of the type of felony. *Id.*

Second, in *Hunt*, the court rejected appellant’s as-applied challenge because neither *Bruen* nor *Rahimi* abrogated the precedent it set before those decisions. *Hunt*, 123 F.4th 697 at 704 (stating “people who have been convicted of felonies are outside the group of law-abiding [individuals] that the Second Amendment protects”) (citation modified). Even more, the Eighth

Circuit, in *Jackson*, also found section 922(g)(1) categorically bars felons, and “that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *United States v. Jackson*, 110 F.4th 1120, 1127 (8th Cir. 2024).

Here, like in the circuit courts, Petitioner is a felon. Therefore, the inquiry into Petitioner’s as-applied challenge to section 922(g)(1) simply ends here. Nothing in *Heller*, *Bruen*, or *Rahimi* abrogates the principle that felons, regardless of the type of felony, are categorically banned from possessing a firearm and cannot assert an as-applied challenge to section 922(g)(1). This Court should adopt the well-reasoned approach of the Fourth, Eighth, and Tenth Circuit and refrain from creating a need for felony-by-felony litigation where none exists.

2. *This Court Should Reject the Erroneous Case-by-Case Approach from the Third and Sixth Circuits Because This Court’s Precedent Treats Section 922(g)(1) as Presumptively Lawful.*

The Third and Sixth Circuits incorrectly apply this Court’s holdings in *Heller*, *Bruen*, and *Rahimi*. This Court held that the prohibition of possession of firearms by felons is presumptively lawful. *Heller*, at 628. The Second Amendment is a necessary and fundamental right, *but it is not unlimited*. *Rahimi*, at 690.

The Third Circuit applied the *Bruen* framework, but the government failed to overcome its burden because the analogs it provided fell “short of ‘longstanding’” tradition and historic offenses were distinguishable from *Range*. *Range v. Att’y Gen. U.S.*, 124 F.4th 218, 229–30 (3d Cir. 2024) (the analogs were from legislation enacted in 1938 and 1961). The court noted *Bruen* and *Rahimi* stressed founding-era comparisons. *Id.* Therefore, the court erroneously concluded an as-applied challenge to section 922(g)(1) was available because the government provided the wrong analogs.

This Sixth Circuit erroneously holds that the constitutionality of section 922(g)(1) as applied to nondangerous felons is an unsettled question. *United States v. Williams*, 113 F.4th 637, 658 (6th Cir. 2024). As this Court held in *Bruen* and *Rahimi* the prohibition on the possession of firearms by felons is presumptively lawful. The Sixth Circuit is mistaken. This Court has emphatically established that felons are barred from possessing firearms regardless of being dangerous or not.

Therefore, this Court should reaffirm that a categorical bar on felons is constitutional, regardless of whether the felony conviction was violent or non-violent.

II. PETITIONER CANNOT SUCCESSFULLY OVERCOME AN AS-APPLIED CHALLENGE TO 18 U.S.C § 922(G)(1) BECAUSE PETITIONER IS A FELON AND HISTORY SUPPORTS DISARMING FELONS.

Petitioner cannot win an as-applied challenge to section 922(g) because Petitioner is a felon, and history supports disarmament of felons without care of the severity or how many offenses the felon committed. According to this Court’s landmark decision overhauling firearm rights,⁶ courts must perform a two-step test to determine whether a firearm regulation is constitutional under the Second Amendment. *Bruen*, 597 U.S. at 26–31. Both of the following two elements of the *Bruen* test must be met. *Id.* at 24. Step one of the *Bruen* test places the burden on the individual to prove their conduct is covered under the scope of the plain text of the Second Amendment. *Id.* at 17. In step two, the burden shifts to the government who must show the challenged firearm regulation is consistent with historical firearm customs. *Id.* at 24.

⁶ Historically, courts assessed firearm rights by evaluating two-prongs: history and means-end scrutiny. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 17 (2022) However, this Court held that historical traditions of disarming individuals should be the primary focus of the test, and that governments cannot simply argue that regulations support or oppose public interests. *Id. Gould v. Morgan* illustrates how the pre-Bruen prongs were applied. 907 F.3d 659 (1st Cir. 2018).

Under the first step, it is important to remember that the Second Amendment is a right afforded to all Americans. *Heller*, 54 U.S. at 581. However, this right is not unlimited and is subject to regulations including section 922(g)(1). *Id.* at 626.

Under step two, historical traditions must show that the United States has a long history of disarming felons and various categories of people regardless of whether they are violent or not. A firearm regulation needs to be consistent with the principles that “underpin our regulatory tradition” where the “why and how” of the regulation is central to the analysis. *Rahimi*, 602 U.S. at 692. Regulations that existed at the time of founding are most persuasive because these regulations show how the framers understood the Second Amendment at its adoption. *Bruen*, 597 U.S. at 26.

Here, the plain text of the Second Amendment includes Petitioner as part of “the people,” but, as this Court has held time and time again, if Petitioner is part of “the people,” her rights can still be restricted. Additionally, historical customs show that offenders similar to Petitioner have historically been barred from possessing a firearm.

In sum, modern regulations are constitutional and an as-applied challenge will fail if the individual's conduct falls within the scope of the second amendment and there is a historic tradition that supports the modern regulation. *Id.* at 24. Therefore, this Court should affirm the Court of Appeals decision because section 922(g)(1) is constitutional as applied to Petitioner.

A. Petitioner is Included as Part of “The People” and Possesses Second Amendment Rights Because Petitioner is an American Citizen, but Those Rights are Not Unlimited.

Respondent does not dispute that Petitioner is part of “the people” the Second Amendment grants rights to, nor does Respondent argue against the Second Amendment in its entirety. However, Petitioner’s rights are not unlimited.

At its founding, the Second Amendment codified “the right of the people to keep and bear Arms.” U.S. Const. amend II. Together *Heller* and *McDonald* began to define who is included in scope of “the people.” See *Heller*, 554 U.S. at 579-581; *see also McDonald v. City of Chicago*, 561 U.S. at 759 (expanding the rights established under *Heller* to the states via the Fourteenth Amendment). This Court in *Heller* clarified “the people” under the Second Amendment are “all members of the political community.” *Heller*, 554 U.S. at 580.

In *Rahimi*, this Court applied the *Bruen* test and recognized the right the Second Amendment establishes. *Rahimi*, 602 U.S. at 691. Similarly, this Court in *Hemani* held that the Second Amendment right belongs to all Americans. *Hemani*, 608 at 779. Other courts have ruled similarly.⁷

Petitioner is an American citizen and is considered part of the political community, but this Court in *Heller* made clear that the rights “the people” hold are not unfettered. *Id.* at 626 (stating the opinion should not “cast doubt on longstanding prohibitions on the possession of firearms in sensitive places”); *see McDonald*, 561 U.S. at 786 (holding the same sentiment as *Heller*).

If an individual is part of “the people,” they can still be subjected to limitations. For example, Congress intended to limit felons’ ability to possess firearms under section 922(g)(1), but Congress had no intention to restrict the rights of law-abiding citizens. Pub. L. No. 90–618, § 101, 82 Stat. at 1213-1214. Petitioner is not a law-abiding citizen.

⁷ See *United States v. Diaz*, 116 F.4th 458 (5th cir. 2024). (held that Diaz was part of “the people” under the Second Amendment, but his prior convictions barred him from possessing a firearm); *see also United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024). (held that Jackson was barred from possessing a firearm because of his past crimes despite having other civil rights restored after completing his sentence); *see also United States v. Williams*, 113 F.4th 637 (6th Cir. 2024). (held both that Williams was not excluded from “the people” and disarming him was constitutional); *see also Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025). (held Zherka, a non-violent felon, was part of “the people” under the Second Amendment and § 922(g)(1) was constitutional as-applied to Zherka).

In dealing with firearm regulations, courts have evaluated the idea of law-abiding. In *Heller*, this Court’s dicta raised that historically the government did not “significantly regulate the possession of firearms by law-abiding citizens.” *Heller*, 554 U.S. at 625. This Court drew an analogy between the First and Second Amendments noting that freedom of speech is guaranteed, but there are exceptions such as obscenity and libel. *Id.* at 635. This Court followed with “[t]he Second Amendment is no different” and it protects “above all other interests the right of *law-abiding, responsible citizens.*” *Id.* (emphasis added). In *Bruen*, this Court carried forward this specific language. In regard to the second step of the *Bruen* test, this Court was concerned with “how and why regulations burden a *law-abiding* citizen’s right to armed self-defense.” *Bruen*, 597 U.S. at 29 (emphasis added).

Since *Bruen*, the circuit courts have also integrated and grappled with the “law-abiding” language. In *Hunt*, the court held a “felon cannot be returned to the category of ‘law-abiding, responsible citizen[.]’ for the purposes of the Second Amendment . . . unless the felony conviction is pardoned.” *Hunt*, 123 F.4th at 703.

Here, Petitioner is not a law-abiding citizen and felons are not law-abiding under the Second Amendment, as the *Hunt* court commented. Petitioner broke the law when she operated an unlicensed daycare and was convicted of felony child neglect after a child tragically died. R. at 2-3. And now, Petitioner illegally possessed a firearm. R. at 4.

If Petitioner was truly concerned about her safety and wanted a weapon for self-defense, Petitioner had other lawful options to exhaust. For example, Petitioner could have obtained a different non-lethal weapon that, as a felon, she could legally possess. Additionally, if she felt threatened by her son, she could have legally sought protections, such as a restraining or protective order, as a victim of child-parent domestic violence.

The Petitioner overcomes her burden in the first step of the *Bruen* test by showing she is part of “the people” under the Second Amendment. However, Respondent asks this Court to uphold its longstanding principle that limitations can still be imposed on “the people.”

B. Respondent Meets its Burden Under the Second Step of the *Bruen* Test and Therefore Petitioner is Barred from Possessing a Firearm Because Disarming Felons and Non-Violent Individuals is Consistent with Historical Traditions.

Respondent respectfully requests this Court affirm the Fourteenth Circuit's decision to disarm Petitioner because historical traditional and customs support categorical disarmament. The circuit courts evaluate numerous cases where felons have committed violent and non-violent offenses.⁸ The following analysis of the second step of the *Bruen* test outlines historical analogs that show both felons and non-violent groups have historically been disarmed. The second step in *Bruen* requires the government to show that history supports disarming an individual. *Bruen*, 597 U.S. at 20. This Court highlighted that the rights covered under the scope of the Second Amendment were “*pre-existing right[s]*,” so the intention of the second step was not to reinvent the wheel, but to compare current regulations to rights “inherited from our English ancestors.” *Id.* at 20. To compare a current regulation, the court does not require an exact historical twin; however, the resemblance to the analogs cannot be too remote and attenuated. *Id.* at 22. To establish sufficiently similar analogs, this Court weighs specific metrics such as the volume of historical examples to ensure no outliers exist and the proximity of the examples to the founding era. *Id.* at 30. Additionally, courts weigh how the effect of the regulation mirrors historical

⁸ The circuit courts barred non-violent felons convicted of bank and income tax fraud from possessing a firearm under section 922(g)(1) noting that the statute is constitutional applied to that category of felons. *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025).; *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025). The courts also concluded violent felons convicted of aggravated robberies, possession of controlled substances, and vandalism are also barred from firearm possession under section 922(g)(1). *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024).; *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024).; *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025).

tradition and why the regulation burdens “the people” under the Second Amendment.⁹ *Id.* at 29. If a challenged regulation aligns closely enough with historical tradition or custom, it is lawful under the Second Amendment. *Rahimi*, 602 U.S. at 691.

Historic traditions support regulating Second Amendment rights of felons and non-violent groups at the time of the founding. Therefore, this Court should find section 922(g)(1) constitutional as applied to Petitioner.

1. Convicted Criminals Were Historically Subject to Estate Forfeiture and Capital Punishment Amounting to a Complete Bar to Firearm Possession.

At the time of the founding and adoption of the Second Amendment, laws existed that banned convicted criminals from possessing firearms. At the founding, “the death penalty was ‘the standard penalty for all serious crimes.’” *United States v. Diaz*, 116 F.4th 458, 467 (5th Cir. 2024) (quoting *Baze v. Rees*, 553 U.S. 35, 94 (2008) (Thomas, J., concurring in the judgement)). In 1788, New York passed legislation which imposed the death sentence on felons who committed various crimes including: forgery, counterfeiting, robbery, treason, rape, and murder. 2 Laws of the State of New York Passed at the Sessions of the Legislature (1785-1788) at 664-65 (1886). The court in *Jackson* commented that barring non-violent felons demonstrates legislation categorically barred people who “deviated from legal norms, not merely to address a . . . propensity for violence.” *Jackson*, 110 F.4th at 1127.

Lower courts have conducted historical analyses in accordance with the second step of the *Bruen* test to analogize modern regulations with laws from the common law through colonial times and the adoption of the Second Amendment. Historic examples at the common law include

⁹ The Court explained in plain language why *how and why metrics* are important: “[f]or instance, a green truck and a green hat are relevantly similar if one’s metric is things that are green. They are not relevantly similar if the applicable metric is things you can wear.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 29 (2022).

capital punishment for serious crimes and estate forfeiture for property crimes. During the colonial period and adoption of the Second Amendment, this tradition carried through where serious crimes were punished by death. Thus, the lower courts have found that disarming criminals is well within the historical tradition of legislative power. *See Zherka v. Bondi*, 140 F.4th 68, 81–85 (2d Cir. 2025); *see also United States v. Duarte*, 137 F.4th 743, 756–758 (9th Cir. 2025); *see also United States v. Watson*, 171 F.4th 1012, 1020–1024 (7th Cir. 2026); *see also Hunt*, 123 F.4th at 706. These laws and circuit decisions show that there is sufficient evidence to overcome the government’s burden in the second step of the *Bruen* test.

First, the circuit court decisions illustrate that there is a high volume of historic examples that show estate forfeiture and capital punishment are not merely outliers. Therefore, this country has a longstanding tradition of disarming criminals through even more extreme measures.

Second, the cited historical traditions are incredibly proximate to the founding of the United States. The New York and Pennsylvania laws existed at the time of founding, so the Framers would have been aware of such punishments as a restriction on firearm possession. Further, the circuit court decisions make clear that there is a long tradition that existed at the time of the founding of similar laws. Therefore, this tradition was deeply rooted at the time of the adoption of the Second Amendment.

Third, how the historic examples burden the Second Amendment rights of individuals is similar to that of section 922(g)(1) because both sets of law completely restrict firearm possession. Where the historic examples proscribe the death penalty or estate forfeiture on felons, the modern regulation places statutory punishment such as imprisonment. In both instances, possessing a firearm becomes virtually impossible. The circuit courts have also adopted the principal of greater-includes-lesser where the operation of the modern regulation can

be analogized to the historic laws. Under such principal, the lesser punishment under section 922(g)(1) can be analogized to the greater punishment of capital punishment and estate forfeiture because by operation, both sets of laws restrict firearm possession.

Fourth, why the historic examples burden the Second Amendment rights of the people is similar to section 922(g)(1) because the historic laws aimed to enforce “deterrence, retribution, and penitence” among the populace. *Diaz*, 116 F.4th at 469. Congress passed section 922(g)(1) to “keep firearms out of the hands of those who are ‘a hazard to law-abiding citizens’ and who had demonstrated that ‘they may not be trusted to possess a firearm without becoming a threat to society.’” *Id.* (quoting, 114 Cong. Rec. 14773 (daily ed. May 23, 1968) (statement of Sen. Russell Long of Louisiana)). While the modern regulation does not sentence people to death or forfeiture for being a felon, modern legislatures passing section 922(g)(1) understood that felons should not have access to firearms because they have shown they cannot be trusted.

The founding era history demonstrates that individuals were subjected to harsher punishments than section 922(g)(1) and that the framers were aware of these punishments when they adopted the Second Amendment. Thus, Respondents have shown that there is a tradition of restricting firearm possession on criminals and this Court should find that the burden under the second step of the *Bruen* test is lower for Respondents.

2. *The United States Has Deeply-Rooted Historical Traditions Excluding Non-Violent Felons and Groups From Firearm Possession.*

By the eighteenth century the list of felonies subjected to the death penalty included non-violent crimes such as “counterfeiting currency, embezzlement, and desertion from the army.” *Zherka v. Bondi*, 140 F.4th 68, 81 (2d Cir. 2025), cert. denied, 223 L. Ed. 2d 555 (Jan. 20, 2026) (quoting, *Medina v. Whitaker*, 913 F.3d 152, 158 (D.C. Cir. 2019)). Early legislatures in the colonies passed laws that prohibited Catholics from possessing firearms unless they took an oath.

Id. at 86. Similarly, the colonial legislature of Pennsylvania passed laws that required officials "to take firearms from and papist or reputed papist." *Id.* (citation modified). During the revolution, legislatures passed prohibitions on firearm possession from groups such as "Native Americans, people of African descent, and mixed-race people." *Id.* at 87. These restrictions would continue after the American Revolution where, "complete bans on gun ownership by free blacks, slaves, Native Americans, and those of mixed race." *Zherka*, 140 F.4th at 88.

Here, the historic analogs are sufficient to show that the categorical approach to section 922(g)(1) is constitutional because Respondent overcomes the burden set by this Court in *Bruen*. First, there is a vast body of examples that shows this country has a longstanding tradition of disarming nonviolent groups; this is not merely an outlier. The history of barring non-violent groups from firearm possession is steeped in bigotry, but the examples still illustrate a historic tradition. Fortunately, modern legislatures have rejected this ideology, but legislation continues to impose categorical bars. Second, as with disarming violent felons, this historical tradition can be tracked back to the founding. Third, how these sets of laws operate is to simply bar groups that legislatures deem untrustworthy and present an ongoing danger to the public. Historically, it has been racial and religious groups, and today it consists of felons. Fourth, why these laws exist is to prevent untrustworthy individuals from possessing lethal means that could cause harm to themselves or the public. While historic legislatures were concerned with racial and religious groups using lethal means, modern legislatures aim to prevent public harm from those who have shown a propensity to cause such harm.

Thus, since Respondents have shown that a historic tradition of barring firearm possession of non-violent felons exists, this Court should find that Respondent's burden to show that section 922(g)(1) is constitutional under the second step of *Bruen* is further lowered.

The historic record illustrates criminals were barred from firearms possession by capital punishment and estate forfeiture, and categories of non-violent people were disqualified from firearm possession. Section 922(g)(1) similarly restricts firearms by imprisonment of nonviolent or non-violent felons. Thus, taken together these two historic legal frameworks establish that the modern regulation is a part of this Nation's historic tradition of firearm regulation. Therefore, this Court should find that Respondent met its burden under the second step of the *Bruen* test.

C. This Court's Decision in *Hemani* Does Not Control This Case Because *Hemani* fell Outside the Scope of 18 U.S.C § 922(g)(3) and Petitioner Squarely Falls Within the Scope of 18 U.S.C § 922(g)(1).

This Court's decision in *Hemani* does not bare any consequence for a question of constitutionality of section 922(g)(1) because the facts of that case are distinguished. *United States v. Hemani*, 608 U.S. 772, 795 (2026). This Court correctly identified that the government's historic examples were disanalogous to section 922(g)(3) concluding that the modern statute was too dissimilar and therefore unconstitutional as applied. *Id.* Further, this Court clearly identified that *Hemani* does not "address 18 U.S.C. § 922(g)(1)'s provision disarming individuals convicted of felonies." *Id.* at 807.

This Court analyzed section 922(g)(3) under the two-step *Bruen* test. In step one, this Court found the defendant's conduct was covered under the scope of the Second Amendment. *Id.* at 781. Consequently, the burden shifted to the government to establish historical analogs to Hemani's conduct. *Id.* Under step two, this Court found the analogs too dissimilar to overcome the burden. *Id.* at 782. This Court upheld the Fifth Circuit's order and found section 922(g)(3) did not apply to Hemani. *Id.* at 795.

3. *The Facts and Historical Analogs in Hemani Are Dissimilar to Petitioner's Case and Should Not Guide This Court's Decision.*

In *Hemani*, the defendant was being investigated for terrorism-related activity which prompted a search of his home. *Id.* at 778. The search yielded a firearm, marijuana, and a small amount of cocaine. *Id.* The defendant admitted he possessed the firearm and drugs, but he asserted that he only smoked marijuana every other day and had not used cocaine in approximately six months. *Id.* Six months later, the government charged the defendant under section 922(g)(3) which states that unlawful users of controlled substances cannot possess firearms. *Id.*

To justify section 922(g)(3)'s application to *Hemani*, the government had to show that there is a historic tradition similar to the modern regulation under *Bruen* step two. *Id.* at 780. The government presented historical examples that were close in proximity to the time of the founding. *Id.* at 781. This Court conducted a how and why analysis of the modern regulation where it weighed the similarities between how the regulation burdens the Second Amendment right and why the burden existed when compared to the historic laws. *Id.* This Court reviewed the government's historical analog, habitual drunkard laws, and found that the laws "differ dramatically from § 922(g)(3)'s unlawful user provision on every single metric the government invited [this Court] to consider: [The habitual drunkard laws] targeted different kinds of people, did so for different purposes, and operated in different ways." *Id.* at 783. Specifically, this Court found that the historic definition of drunkard is vastly different than section 922(g)(3)'s definition of an unlawful user because a drunkard was generally someone who could not control his own affairs, was incapacitated, or had no self-control whereas unlawful user was someone who merely used unlawful substances. *Id.* at 785–786. This Court then found that the government failed to analogize section 922(g)(3) to certain surety laws that detain habitual drunkards because there is nowhere in the text of the modern regulation that similarly limits individuals. *Id.* at 788–

790. Continuing with the how and why analysis, this Court found that the historic laws and section 922(g)(3) were not similar in how they burdened the Second Amendment right because the historic examples remedied the loss of rights for offenders whereas the modern law does not. *Id.* at 790. Additionally, this Court found that the government’s historic laws that analogized to a category of violent and dangerous individuals did not match modern marijuana use and thus could not be similar to section 922(g)(3). *Id.* at 793–94.

Petitioner unlawfully operated a daycare without a license. R. at 3. While she was engaging in caretaker responsibilities, she negligently waited multiple hours to search for a child that was missing and did not call emergency services until even more time elapsed. R. at 2. During those crucial hours, a child that she took responsibility for died. R. at 2. She was *convicted* for felony child neglect under a Virginia statute that imposes a minimum two-year sentence. R. at 3. Petitioner was then charged under section 922(g)(1) which states that it is unlawful for any person to possess a firearm when they have been convicted in any court of a crime punishable by imprisonment for term exceeding one year. R. at 4.

Petitioner’s facts are dissimilar to those stated in *Hemani* because she was convicted for a felony before she was found in violation of section 922(g)(1), she was found culpable in the death of a child, and she committed a second misdemeanor after she was convicted of her felony. Whereas *Hemani* was never convicted of crime, was merely under investigation for allegations surrounding him and his family, was never alleged or convicted of a death, and was not found to be covered under section 922(g)(3) in the Fifth Circuit and this Court. Petitioner’s clear criminal record is critical with respect to the section 922(g)(1) because the function of the regulation is to keep untrustworthy people away from firearms once they prove to be untrustworthy. The facts show that petitioner time and time again has done just that with her decades long streak of

unlawfulness. The facts in *Hemani* are distinguished as compared to Petitioner and so are the historic analogs.

In *Hemani*, the government had a tough burden to show that this country has a historic tradition similar to that of section 922(g)(3) whereas Respondent in the present matter do not for section 922(g)(1). This Court in *Heller*, *Bruen*, and *Rahimi* have held that categorical bars on felons possessing firearms are presumptively lawful. The circuit courts have held that a regulation on felons and non-dangerous groups are a part of this country's historic tradition citing laws from the common law, through the founding and to modern times. See *Watson*, 171 F.4th at 1022; *see also Hunt*, 123 F.4th at 708; *see also Duarte*, 137 F.4th at 761; *see also Jackson*, 110 F.4th at 1127. The tradition of restricting firearms on felons like Petitioner is long established. Additionally, Respondents have shown that there is a historic tradition similar to that of section 922(g)(1) when taking together estate forfeiture and capital punishment of crimes and restricting firearm possession of non-violent groups. These two frameworks are accurately analogized to the modern regulation that sufficiently allows for success at the second step of *Bruen*, further distinguishing the holding in *Hemani* from the present matter.

Therefore, this Court should find that *Hemani* is distinguished and controls very little because the facts and the historical analogs in *Hemani* are too dissimilar compared to the those in the present matter.

CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to affirm the decision of the appellate court and hold that Petitioner, *who was convicted of felony child neglect*, is (1) categorically barred from possessing a firearm under § 922(g)(1), and (2) 18 U.S.C. § 922(g)(1) is constitutional as applied to Petitioner because historical analogs supports disarming felons.

Dated: September 30, 2026

Respectfully Submitted,

s/ Team PD

Team PD
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