

In the Supreme Court of the United States

TERRY BRANDERS,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF FOR PETITIONER

Team QC
Counsel for Petitioner

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QUESTIONS PRESENTED

- I. Whether this Court's Second Amendment precedents, from *Heller* through *Hemani*, require that as-applied challenges to 18 U.S.C. § 922(g)(1) remain available to criminal defendants.
- II. Whether 18 U.S.C. § 922(g)(1) violates the Second Amendment as applied to a woman in her late seventies who kept a handgun locked in her home for protection, whose only felony conviction was for child neglect, and whom it disarms for life more than two decades after she received a suspended sentence and probation.

STATEMENT OF THE CASE

1. Factual Background

This case arises from the Government’s prosecution of Ms. Terry Branders for keeping a handgun in her home in Appleton, Newcoastland, more than two decades after she received a suspended sentence for felony child neglect. R. at 3–4. In June 2024, the DEA received a tip about Ms. Branders’ son, Nelson Branders, who lived in her basement. R. at 3. When Nelson left for the day, DEA agents knocked on Ms. Branders’ door and asked to search her home. R. at 4. Agent Stern later testified that, because Ms. Branders was “an older woman in her late 70s,” she was certain Ms. Branders would consent, which would be “way easier” than getting a warrant. R. at 4. Ms. Branders let them in. R. at 4. Agents found no evidence of drug activity, but they located a handgun locked in a drawer in her living room. R. at 3–4. Ms. Branders “proudly” told the agents that she was a responsible gun owner because she kept the gun and its ammunition locked in separate drawers. R. at 4. Ms. Branders was “surprised” when the agents then arrested her for possessing a firearm as a convicted felon. R. at 4.

A Virginia court convicted Ms. Branders and her son of felony child neglect under Virginia Code section 18.2-371.1, and Ms. Branders of a misdemeanor for operating a daycare without a license. R. at 2–3. The convictions stemmed from a child’s death while in their care. R. at 2. In July 2000, Ms. Branders, a retired factory worker, began caring for her former co-workers’ children in her home. R. at 2. Nelson, then eighteen, shuttled the children to and from her home. R. at 2. One morning, after a late night and little sleep, Nelson left eleven-month-old Kenneth Drew in the van, parked it at his apartment, and went to sleep. R. at 2. Because Kenneth usually slept through pick-up and Nelson usually put him straight into a crib, Ms. Branders did not notice he was missing until she went to wake him about two hours later. R. at 2. She spent well over an hour trying unsuccessfully to reach Kenneth’s mother and Nelson before calling

911. R. at 2 & n.2. By the time police found Kenneth, he had suffered “severe heat-related injuries.” R. at 2. Despite being quickly taken to the hospital, he did not survive. R. at 2. On March 5, 2001, the court sentenced Nelson to four years in prison and Ms. Branders to a two-year suspended sentence and probation. R. at 3.

Ms. Branders lost most of her friends after the incident. R. at 3. In 2020, nineteen years after her sentencing, she moved to Appleton, Newcoastland, to “finally create a new start.” R. at 3. There, she became very involved with local charities, volunteering at the food bank and stocking school supplies for children in need. R. at 3. Her only other run-in with the law was a misdemeanor speeding conviction. R. at 3. Nelson recently moved into her basement to help her as she ages. R. at 3. He blames her for everything wrong in his life and frequently has angry outbursts. R. at 3. Ms. Branders has often suspected that Nelson might use or sell drugs, and she found some of his “friends” to be “particularly scary.” R. at 3. After Ms. Branders and a fellow food-bank volunteer, Becky Haskill, commiserated about their respective family issues, Ms. Haskill suggested that Ms. Branders get a gun for protection. R. at 3. When Ms. Branders said she “just didn’t know about that,” Ms. Haskill offered her one of her late husband’s handguns, and Ms. Branders accepted. R. at 3.

2. Proceedings Below

On July 3, 2024, the Government charged Ms. Branders with possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). R. at 4. On December 22, 2025, the United States District Court for the Eastern District of Newcoastland granted her motion to dismiss the indictment, holding § 922(g)(1) unconstitutional as applied to her. R. at 1, 7. Following the Third, Fifth, and Sixth Circuits, the court found that Ms. Branders’ offense “was the result of negligence rather than malice” and did not “predict that Branders is a credible threat to the safety of others.” R. at 1, 6. It therefore concluded that no historical analogue could justify disarming

her permanently. R. at 6. The Government appealed. R. at 8.

On June 10, 2026, the Fourteenth Circuit reversed and remanded. R. at 8, 10. The court noted that Ms. Branders challenged § 922(g)(1) only as applied to her and agreed that the Second Amendment’s plain text covers her conduct. R. at 9. But it held the district court should not have engaged in “case-by-case analysis instead of simply applying the law.” R. at 8. Adopting the Eighth Circuit’s reasoning, the majority concluded that legislatures may categorically disarm those who “deviated from legal norms.” R. at 10. Judge Pinckney dissented, agreeing that the district court should have “conduct[ed] its own historical analysis” but doubting that the founding generation would have permanently disarmed anyone for child neglect. R. at 10–11. On remand, Ms. Branders entered an *Alford* plea, preserving her as-applied challenge, and the Fourteenth Circuit summarily affirmed over Judge Pinckney’s dissent. R. at 12. This Court granted Ms. Branders’ Petition for Writ of Certiorari. R. at 13.

SUMMARY OF THE ARGUMENT

The court below held that a single conviction for a lapse in supervision a quarter century ago permanently strips a woman in her late seventies of the right to keep a handgun in her home, and that no court need ask whether the Nation’s history supports disarming her. The Second Amendment permits neither holding.

I. As-applied challenges to § 922(g)(1) remain available. The Second Amendment’s plain text covers felons who possess firearms, as nearly every court of appeals has recognized, including the court below. When the plain text covers conduct, this Court’s precedents require the Government to justify each application of a disarmament law. The court below read *Heller*’s description of felon-disarmament laws as “presumptively lawful” to foreclose that inquiry, but a presumption can be rebutted. *Hemani* held § 922(g)(3) unconstitutional as applied to the defendant before it, and *Rahimi* sustained § 922(g)(8) on the facts of the defendant’s own case

while leaving other applications open. A felony conviction adjudicates guilt for the predicate offense, not whether the Nation's tradition permits disarming the person convicted.

A categorical rule would also leave the right to keep and bear arms without a judicial remedy. A facial challenge to § 922(g)(1) cannot succeed because the statute has valid applications, so an as-applied challenge is the only way a citizen prosecuted under § 922(g)(1) can raise the Second Amendment in her defense. Discretionary relief under § 925(c) is no substitute, because a right that the Attorney General may restore or withhold at his discretion is only a privilege.

II. Section 922(g)(1) is unconstitutional as applied to Ms. Branders. *Bruen* and *Rahimi* measure a modern law against the Nation's tradition by how and why it burdens the right to keep and bear arms. *Hemani* added a third measure, rejecting analogues that reached different people, for different reasons, in different ways. Together, those decisions ask who historical disarmament laws reached, why they disarmed, and how they burdened the right. The courts of appeals that entertain as-applied challenges have each made one of those questions dispositive, but none has asked all three. Ms. Branders prevails on each.

First, Ms. Branders is not among those the tradition disarmed. Surety and going-armed laws restrained people who menaced others with weapons, and even then, only after a judicial finding. Class-based laws reached those whose allegiance the sovereign distrusted, and an individual regained his arms once he showed he posed no danger. Ms. Branders' offense was an omission, not an act of violence, her loyalty has never been questioned, and in the two decades since, her record shows only a single misdemeanor for speeding. No court has ever found that she poses a threat to anyone.

Second, the tradition did not disarm for offenses of neglect. The founding generation

answered a caretaker's failure to provide care with compelled support and the poor law, never with disarmament, and *Bruen* treats a founding-era response through "materially different means" as evidence that a modern regulation is unconstitutional. Criminal neglect itself is a modern creation. Ms. Branders' conviction rests on an omitted domestic duty of care, an offense with no founding-era counterpart. The Government cannot borrow a tradition of disarming thieves to reach a woman who, at the founding, would not have been a felon at all.

Third, Ms. Branders' disarmament has outlasted any disability the tradition permitted. Every founding-era restraint the Government invokes ended with the sentence, the bond, or an oath of loyalty. That some founding-era felonies carried a death sentence does not make lifetime disarmament a lesser included penalty, and neglect was never among those felonies. Section 922(g)(1) has disarmed Ms. Branders for more than two decades after she completed a suspended sentence, and it will disarm her for life. Recently revived relief under § 925(c) does not change the analysis. A tradition that never took a citizen's arms after her sentence needed no mechanism for handing them back, and the restraints it did impose ended by their own terms or by the disarmed person's own act. Section 925(c) lifts the disability only if the Attorney General chooses to. The Government therefore cannot constitutionally apply § 922(g)(1) to Ms. Branders.

A presumption that can never be tested, applied to a woman the Nation's tradition never would have disarmed and enforced long after any disability the tradition permitted would have ended, is not a presumption the Second Amendment tolerates.

ARGUMENT

I. As-applied Second Amendment challenges to § 922(g)(1) remain available.

Barring as-applied challenges to § 922(g)(1) leaves many Americans without a judicial remedy for violations of their Second Amendment rights. The Second Amendment guarantees that "the right of the people to keep and bear arms, shall not be infringed." U.S. Const. amend. II.

This Court, in *District of Columbia v. Heller*, recognized this preexisting individual natural right. 554 U.S. 570, 592–95 (2008). Section 922(g)(1) strips felons of that right. *Bruen*’s threshold question is whether the Second Amendment’s plain text covers the person and the conduct at issue, and the court below agreed that it covers felons, like Ms. Branders, who possess firearms. R. at 9. Once a challenge crosses that threshold, courts must apply *Bruen*’s historical analogue test.

Heller’s description of felon-disarmament laws as “presumptively lawful” does not close the door to as-applied challenges, because presumptions are rebuttable. This Court’s two most recent disarmament decisions measured neighboring provisions of § 922(g) against the facts of the defendant’s own case. *United States v. Hemani*, 608 U.S. 772, 795 (2026); *United States v. Rahimi*, 602 U.S. 680, 693 (2024). Their logic requires the same as-applied review under § 922(g)(1). As-applied review is the only remedy left. Facial challenges fail because § 922(g)(1) has constitutional applications and discretionary executive relief under § 925(c) treats the right as a privilege. Thus, as-applied challenges must remain available.

A. The Second Amendment’s plain text covers felons possessing firearms.

This Court cannot summarily dispose of an as-applied challenge to § 922(g)(1) because firearm possession by previously convicted felons falls under the plain text of the Second Amendment. Instead of limiting the Second Amendment’s scope to a narrow class of persons or conduct, this Court determined that “the people” includes *all* members of the national community and that an *individual* right to keep and bear arms “belongs to all Americans.” *Heller*, 554 U.S. at 580–81. This broad protection mirrors the First, Fourth, Ninth, and Tenth Amendments’ guarantees of “the people[’s]” rights and reaffirms that “the people” means *all* citizens. *Id.* at 580 (citing *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)); *see also The Federalist* No. 2, at 38 (John Jay) (Clinton Rossiter ed., 1961) (“[W]e have uniformly

been one *people*; each individual *citizen* everywhere enjoying the same national rights, privileges, and protection.”) (emphasis added). The en banc Third Circuit made the same point. *See Range v. Att’y Gen.*, 124 F.4th 218, 226 (3d Cir. 2024) (en banc) (recognizing that those under § 922(g)(1)’s prohibition “are not categorically barred from First . . . or Fourth Amendment protection because of their status”).

Nearly every circuit to review § 922(g)(1)’s constitutionality agrees that felons remain among “the people” protected by the Second Amendment, and “[t]he plain text of the Second Amendment covers the conduct prohibited by § 922(g)(1).” *United States v. Cockerham*, 162 F.4th 500, 505 (5th Cir. 2025) (quoting *United States v. Diaz*, 116 F.4th 458, 467 (5th Cir. 2024)), *cert. denied*, 146 S. Ct. 2705 (2026); *see also Range*, 124 F.4th at 228; *United States v. Watson*, 171 F.4th 1012, 1018 (7th Cir. 2026), *petition for cert. filed*, No. 26-162 (U.S. July 31, 2026).¹ Further, the Second Amendment “guarantee[s] the individual right to possess . . . weapons in case of confrontation,” and felons remain part of the national community it protects. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 32 (2022) (quoting *Heller*, 554 U.S. at 592). To hold otherwise would “devolve[] authority to legislators to decide whom to exclude from ‘the people.’” *Range*, 124 F.4th at 228. That deference would “give[] legislatures unreviewable power to manipulate the Second Amendment by choosing a label,” thereby contravening *Heller*’s central reasoning, which limits legislatures’ discretion to interfere with the right to keep and bear arms. *Id.* (quoting *Folajtar v. Att’y Gen.*, 980 F.3d 897, 912 (3d Cir. 2020) (Bibas, J., dissenting), *abrogated by Range*, 124 F.4th 218). Nor does *Heller*’s reference to “law-abiding,

¹*Accord United States v. Duarte*, 137 F.4th 743, 754–55 (9th Cir. 2025) (en banc), *cert. denied*, 223 L. Ed. 2d 556 (2026); *see also Zherka v. Bondi*, 140 F.4th 68, 77 (2d Cir. 2025), *cert. denied*, 223 L. Ed. 2d 555 (2026). Even the Eighth Circuit, whose categorical rule the Fourteenth Circuit adopted, presumes that felons are among “the people.” *United States v. Jackson*, 110 F.4th 1120, 1126 (8th Cir. 2024).

responsible citizens” (554 U.S. at 635) narrow “the people.” This Court has rejected the argument that a person “may be disarmed simply because he is not ‘responsible,’” explaining that *Heller* and *Bruen* “said nothing about the status of citizens who were not ‘responsible.’” *Rahimi*, 602 U.S. at 701–02.

Below, the Fourteenth Circuit agreed that (1) the Second Amendment applies to disarmed felons and (2) § 922(g)(1) prohibits conduct—possessing a firearm—covered by the Second Amendment’s plain text. R. at 9; *see also Rahimi*, 602 U.S. at 708 (Gorsuch, J., concurring) (stating “no one questions” whether § 922(g)(8)—prohibiting those subject to domestic violence restraining orders from possessing firearms—“addresses individual conduct covered by the text of the Second Amendment”). Thus, the lower courts’ uniformity and this Court’s binding conception of “the people” counsel that § 922(g)(1)’s prohibition triggers *Bruen*’s historical inquiry.

B. This Court’s precedents require the Government to justify each application of a disarmament law.

To enforce the Second Amendment’s guarantees, courts must be able to rule on as-applied challenges. This Court’s precedents, from *Heller* to *Hemani*, make clear that the Government’s reasons for disarming Americans must survive *Bruen*’s historical test. Those cases do not allow a disarmament law to simply skate by unmoored from this “Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. First, § 922(g)(1) receives no stronger presumption of constitutionality than any other statute. In fact, this Court’s comments on the presumptive lawfulness of felon disarmament laws highlight that as-applied challenges to § 922(g)(1) must remain available. This Court reviewed the constitutionality of other disarmament regimes in § 922(g) as applied to the defendants in two recent cases. The logic of both require that as-applied challenges remain available to test the Government’s historical

analogues. Without as-applied challenges, courts could not enforce the Second Amendment’s guarantees. That cannot be so.

1. *Heller*’s reference to “presumptively lawful” felon disarmament laws reflects a rebuttable presumption, not immunity from review.

Heller described “longstanding prohibitions on the possession of firearms by felons” as “presumptively lawful.” 554 U.S. at 626, 627 n.26. But a presumption can be rebutted. *Heller*’s phrase merely restates the “black-letter law that *all* legislation is entitled to a presumption of constitutionality.” *Duarte*, 137 F.4th at 783 (VanDyke, J., concurring in the judgment in part and dissenting in part) (citing *Davis v. Dep’t of Lab. & Indus. of Washington*, 317 U.S. 249, 257 (1942); *O’Gorman & Young, Inc. v. Hartford Fire Ins. Co.*, 282 U.S. 251, 257–58 (1931)). Circuits that read the phrase as a categorical rule eliminate any opportunity to rebut the presumption. *Compare Jackson*, 110 F.4th at 1128–29 (rejecting the reading of “presumptively lawful” as “a presumption of constitutionality that could be rebutted on a case-by-case basis”), *with United States v. Williams*, 113 F.4th 637, 663 (6th Cir. 2024) (agreeing with *Heller* “that felon-in-possession laws are ‘presumptively lawful.’ . . . so long as each member of that disarmed group has an opportunity to make an individualized showing that he himself is not actually dangerous”), and *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010) (O’Connor, J., sitting by designation) (reasoning that, because felon disarmament regimes are only “presumptively lawful,” that “by implication, means that there must exist the possibility that the ban could be unconstitutional in the face of an as-applied challenge”). *Cockerham* further clarified that the Court in *Heller* or *Rahimi* “could have adopted a ‘categorical rule’ of [§ 922(g)(1)’s] validity . . . [b]ut it didn’t.” 162 F.4th at 503–04. Foreclosing as-applied review would convert “presumptively lawful” into “conclusively lawful,” a phrase this Court has never used. Because the Court has not adopted a categorical rule, as-applied challenges must remain

available to test whether the Government’s application of § 922(g)(1) “is ‘consistent with the Nation’s historical tradition of firearm regulation.’” *Cockerham*, 162 F.4th at 504 (quoting *Diaz*, 116 F.4th at 467).

Even if the Court meant more, the statement was not necessary to *Heller*’s holding, because “felon-in-possession laws weren’t before the Court in *Heller*” *Williams*, 113 F.4th at 648. Language that goes beyond the case before the Court “ought not to control the judgment in a subsequent suit when the very point is presented for decision.” *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821); *see also Kastigar v. United States*, 406 U.S. 441, 455 (1972) (explaining that language “unnecessary to the Court’s decision . . . cannot be considered binding authority”); *Duarte*, 137 F.4th at 784 (VanDyke, J., concurring in the judgment in part and dissenting in part) (cautioning courts not to “disregard holdings to embrace dictum”). Because *Heller*’s “presumptively lawful” statement went beyond that case’s facts, it cannot be read as conclusively foreclosing all as-applied challenges to § 922(g)(1).

Without as-applied review, the Government would never have to show that history supports disarming the particular person before the court, which is the showing *Bruen* requires to overcome the Second Amendment’s presumptive protection. Unlike *Heller*’s “presumptively lawful” dicta, *Bruen*’s presumption that the Second Amendment protects conduct that its plain text covers is essential to that case’s precedential test. *Bruen*, 597 U.S. at 24. That presumption, when satisfied, triggers *Bruen*’s centerpiece. The burden shifts to the Government, which must then prove that “its regulation . . . is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* Without as-applied challenges, *Bruen*’s requirement for analogous founding-era disarmament regimes would be a dead letter. Impermissible categorical arguments would instead rule the day, disarming all who fell under their broad sweep.

2. *Hemani* held § 922(g)(3) unconstitutional as applied to the defendant.

This Court held § 922(g)(3)—the prohibition on unlawful controlled substance users possessing firearms—unconstitutional as applied to *Hemani*. *Hemani*, 608 U.S. at 795. “[W]hen the government crosses the line from permissible regulation into unconstitutional infringement, courts have a duty to say so in the cases before them—no less in the Second Amendment context than in any other.” *Id.* at 779 (citing *Bruen*, 597 U.S. at 17; *Heller*, 554 U.S. at 606). A categorical rule forecloses that inquiry. If § 922(g)(3) must answer to the circumstances of the person it disarms, so must § 922(g)(1).

A felony conviction receives the process due for adjudicating guilt for that offense, but disarmament requires its own showing under *Bruen*. The Government cannot substitute the first for the second. In a footnote, *Hemani* noted that while § 922(g)(3)’s lack of a pre-deprivation process contributed to its as-applied unconstitutionality, the Court’s holding did not affect other disarmament statutes that involve some level of process. *Hemani*, 608 U.S. at 791 n.6. However, a conviction triggering § 922(g)(1) is only the predicate fact for disarmament. Although a court adjudicated the defendant’s guilt for the predicate crime, it had no occasion to review historically analogous disarmament laws. Whether the historical tradition permits disarming that person is exactly the question as-applied review exists to answer. Further, footnote 6 borrows *Heller*’s own words, so it carries *Heller*’s meaning: a presumption remains rebuttable as applied. Thus, *Hemani*’s logic reinforces that the only way to rebut a facially constitutional law is with an as-applied challenge.

3. *Rahimi* upheld § 922(g)(8) as applied to the defendant.

In *Rahimi*, this Court rejected a facial challenge to § 922(g)(8) by holding the statute “constitutional as applied to the facts of *Rahimi*’s own case.” 602 U.S. at 693. When a defendant challenges a disarmament statute’s facial constitutionality, courts determine whether the statute

has constitutional applications. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). In *Rahimi*, the Court reviewed whether the Government could constitutionally apply § 922(g)(8)’s prohibition on firearm possession to a defendant subject to a state domestic violence restraining order. *Rahimi*, 602 U.S. at 693, 700. After comparing § 922(g)(8) to the Government’s historical analogues, the Court held the statute facially constitutional. *Id.* Because the statute permissibly restricted the defendant’s own firearm possession, at least *some* of its applications passed constitutional muster. *Id.* However, the Court rested its holding on the narrow facts before it: a defendant who presented “a credible threat to the physical safety” of a romantic partner. *Id.* at 686–87, 702. Thus, *Rahimi* “necessarily leaves open the question whether the statute might be unconstitutional as applied in [other] ‘particular circumstances.’” *Id.* at 713 (Gorsuch, J., concurring) (quoting *Salerno*, 481 U.S. at 751). “Nor d[id this Court] purport to approve in advance other laws denying firearms on a categorical basis.” *Id.* Thus, nothing in *Rahimi* forecloses as-applied challenges to § 922(g)(1).

Rahimi’s logic demands that as-applied challenges to § 922(g)(1)—a close cousin of § 922(g)(8)—remain available. The Court analyzed the specific conditions giving rise to the defendant’s disarmament, identified a throughline to a historical analogue, and held “[§ 922(g)(8) . . . constitutional as applied to *Rahimi*.” *Id.* at 701 (majority opinion). The similarity of these statutes compels that as-applied challenges to § 922(g)(1) remain available. Foreclosing as-applied challenges to § 922(g)(1) would contravene *Rahimi*’s reasoning and free the Government, unhindered by *Bruen*’s requirement for a relevantly similar historical analogue, to disarm with impunity “any group of persons a legislature happens to deem” irresponsible. *Id.* at 713 (Gorsuch, J., concurring). *Rahimi*, *Bruen*, and the Second Amendment forbid that.

C. Categorical disarmament would leave the right to keep and bear arms without a judicial remedy.

The right to keep and bear arms is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Bruen*, 597 U.S. at 70 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality opinion)). The categorical rule would make it one. A citizen disarmed by § 922(g)(1) cannot prevail on a facial challenge. An as-applied challenge is therefore the only means by which a citizen prosecuted under § 922(g)(1) can vindicate the Second Amendment right, and the rule from the court below forbids it. That leaves only discretionary relief from the Attorney General under § 925(c). However, if discretionary relief is the only mechanism for reacquisition, the Second Amendment right would be demoted to a “privilege” for Americans like Ms. Branders.

1. An as-applied challenge is the only means for a citizen prosecuted under § 922(g)(1) to vindicate her Second Amendment right.

Because § 922(g)(1) has constitutional applications, a facial challenge to it “would surely fail,” as both the court below and Ms. Branders acknowledged. R. at 9; *see supra* Part I.B.3. But facial validity has never settled every application of a law that burdens an enumerated right. When this Court upheld a campaign-finance restriction against a facial First Amendment challenge, it “did not purport to resolve future as-applied challenges.” *Wis. Right to Life, Inc. v. FEC*, 546 U.S. 410, 411–12 (2006) (per curiam). The Second Amendment deserves the same treatment.

For a citizen prosecuted under § 922(g)(1), an as-applied challenge is the only way to put the Second Amendment before a court. A defendant who contests the constitutionality of the statute he was convicted under challenges “the Government’s power to criminalize [his] (admitted) conduct,” and even a guilty plea does not waive that claim. *Class v. United States*, 583 U.S. 174, 178, 181 (2018). The defendant in *Class* raised precisely such a claim: that a

federal ban on firearms on the Capitol Grounds violated the Second Amendment. *Id.* at 178. Ms. Branders likewise preserved her as-applied challenge through her *Alford* plea. R. at 12. Yet the courts of appeals that share the Fourteenth Circuit’s view refuse to engage in “felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *United States v. Hunt*, 123 F.4th 697, 708 (4th Cir. 2024) (quoting *Jackson*, 110 F.4th at 1125), *cert. denied*, 145 S. Ct. 2756 (2025). Under that rule, a defendant may admit her conduct, preserve her constitutional defense, and still find no court willing to decide it.

2. Without as-applied review, discretionary relief under § 925(c) demotes the right to keep and bear arms to a privilege.

The Seventh Circuit suggested that § 922(g)(1) might not disarm permanently because a felon may apply to the Attorney General for relief under § 925(c). *Watson*, 171 F.4th at 1025. But § 925(c) does not protect the right; it replaces the right with a permission slip. The Attorney General “may grant such relief if it is established to his satisfaction” that the applicant “will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” 18 U.S.C. § 925(c). The rule reviving that process leaves the discretion where the statute put it. Whether denying relief “would infringe the applicant’s rights under the Second Amendment” is only one of eleven listed considerations the Attorney General “may consider” in deciding whether to grant relief. Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms, 91 Fed. Reg. 54054, 54090–91 (Aug. 20, 2026) (to be codified at 28 C.F.R. § 107.20(a)).

A right held at the Executive’s discretion is a privilege, whatever the Executive decides. Then-Judge Barrett made this point in rejecting the view that felons fall outside the Second Amendment’s protection: such a person “could possess a gun as a matter of legislative grace,”

but “he would lack standing to assert constitutional claims that other citizens could assert.”

Kanter v. Barr, 919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated by Bruen*, 597 U.S. 1. Section 925(c) substitutes executive grace for legislative grace and produces the same result. Whether or not the Attorney General grants relief, the applicant holds her arms by his leave, not by right, and under the Fourteenth Circuit’s rule she has no constitutional claim a court will hear. Nor does the statute’s provision for “judicial review of such denial” change the character of the scheme. 18 U.S.C. § 925(c). That review asks whether the Attorney General properly withheld relief under the statute’s standard, not whether the Constitution entitles the applicant to keep and bear arms.

As Chief Justice Marshall famously stated, “[i]t is emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Whether § 922(g)(1) may be constitutionally applied to Ms. Branders, or any other felon, is a question of law. The Constitution commits that question to the courts, not to the discretion of the Attorney General, the official who prosecuted her.

II. Section 922(g)(1) is unconstitutional as applied to Ms. Branders.

The Government cannot constitutionally apply § 922(g)(1) to Ms. Branders. She is among “the people,” and the Second Amendment’s text covers her possessing a handgun in her home. *See supra* Part I.A; R. at 9. The Constitution therefore “presumptively protects that conduct,” and the Government must affirmatively prove that its regulation “is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Bruen*, 597 U.S. at 19, 24. While the Government need not produce an exact “historical twin,” it bears the burden of identifying “a well-established and representative historical analogue” from at or near the founding. *Id.* at 30. Later evidence will not serve, as “late-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier

evidence,” and this Court has declined to address twentieth-century evidence altogether on the same ground. *Id.* at 66 & n.28.

Bruen requires courts to compare a modern law to its historical analogues by reviewing “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 29. *Rahimi* confirms that “[w]hy and how the regulation burdens the right are central to this inquiry,” and a law enacted “for a permissible reason” still fails “if it does so to an extent beyond what was done at the founding.” 602 U.S. at 692. And in *Hemani*, this Court measured the Government’s analogues along a third dimension, rejecting them because they “targeted different *kinds of people*, did so for different reasons, and operated in different ways.” 608 U.S. at 795 (emphasis added). Taken together, those decisions require a historical analysis of disarmament laws that asks (1) who such laws reached, (2) why they disarmed, and (3) how they burdened the citizen’s right to armed self-defense.

The courts of appeals that permit as-applied challenges to § 922(g)(1) have each undertaken a historical analysis, but none has performed the analysis this Court’s precedents require. Each has made a single dimension dispositive and left the rest unexamined or answered only in passing. The Sixth and Seventh Circuits ask whom the tradition disarmed, and answer that it disarmed the dangerous. *See Williams*, 113 F.4th at 662–63; *see also Watson*, 171 F.4th at 1023–24. The Fifth Circuit asks why disarmament followed, and answers by matching the predicate offense to a founding-era counterpart. *See Diaz*, 116 F.4th at 468–69. The Third Circuit asks how the tradition operated, and answers that it operated only for the length of a sentence. *See Range*, 124 F.4th at 231–32. *Hemani*, by contrast, measured the Government’s analogues along all three. Ms. Branders falls outside the tradition on all three accounts: she is not among the dangerous persons whom the tradition disarmed, the tradition did not disarm those convicted

of offenses of neglect, and her disarmament has outlasted any disability the tradition permitted. Therefore, disarming Ms. Branders under § 922(g)(1) violates the Second Amendment.

A. Ms. Branders is not a dangerous person whom the Nation’s historical tradition of firearm regulation disarmed.

The Nation’s tradition only disarmed those who posed an ongoing threat to the safety of others. No court has ever found that Ms. Branders poses such a threat. “When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed,” and the tradition “distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not.” *Rahimi*, 602 U.S. at 698, 700. Laws that “scarcely focused on protecting the public from a ‘categor[y]’ of ‘unusually dangerous’ persons” supply no analogue. *Hemani*, 608 U.S. at 788. The Sixth and Seventh Circuits each made dangerousness their operative inquiry. Surety and going-armed laws reached only those who threatened others with weapons. Class-based disarmament laws reached only those whose allegiance the sovereign distrusted, and an individual regained his arms once he showed he posed no danger. Under either circuit’s inquiry, Ms. Branders is not dangerous.

1. Ms. Branders has never menaced anyone with a weapon, as surety and going-armed laws required.

Ms. Branders is not the type of person surety and going-armed laws reached. Those regimes, from which *Rahimi* drew the tradition, restrained only individuals who had threatened or menaced others with weapons. Under surety laws, a magistrate could “oblig[e] those persons, [of] whom there is a probable ground to suspect of future misbehaviour,” to post a bond to keep the peace. *Rahimi*, 602 U.S. at 695–96 (quoting 4 William Blackstone, *Commentaries* *251 (1769)). A suspect who could not post the bond was jailed, and one who posted it and then broke the peace forfeited it. *Id.* at 695. “Bonds could not be required for more than six months at a time, and an individual could obtain an exception if he needed his arms for self-defense or some

other legitimate reason.” *Id.* at 697. Going-armed laws punished “riding or going armed, with dangerous or unusual weapons, [to] terrify[] the good people of the land,” with forfeiture of the arms and imprisonment. *Id.* at 697–98 (quoting 4 Blackstone *149). Surety laws secured the peace through the bond itself, and *Rahimi* drew its disarmament principle from the two regimes “[t]aken together.” *Id.* at 698. Both regimes “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.” *Id.* at 699.

Rahimi upheld § 922(g)(8) as applied to a man whom a state court found to pose “a credible threat” to another’s “physical safety.” 602 U.S. at 686–87. This Court found the statute “applies only once a court has found that the defendant ‘represents a credible threat to the physical safety’ of another,” which “matches the surety and going armed laws.” *Id.* at 699. Indeed, *Rahimi* holds “only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” *Id.* at 702. Later in *Hemani*, the Government did not invoke surety laws to justify disarming drug users because those laws “generally required an individual shown to pose a specific threat of violence to post a bond.” *Hemani*, 608 U.S. at 789.

Ms. Branders’ offense involved no weapon and no threats. R. at 2. Surety and going-armed laws only restrained after a judge determined that the defendant had threatened or would likely threaten someone. No court has ever made that determination about Ms. Branders. The tradition no more reached the drunkard, the vagrant, or the merely irresponsible than it reached *Hemani*. *See Hemani*, 608 U.S. at 789. “[J]ust being a habitual drunkard wasn’t usually enough.” *Id.* Indeed, surety laws “provide some analogue.” R. at 11. But that analogue runs against the Government. It identifies whom the tradition permitted the sovereign to disarm. Ms. Branders is

not among them. Because no court has ever found that Ms. Branders menaced anyone with a weapon, the disarmament traditions of surety and going-armed laws do not apply to her.

2. Class-based disarmament turned on disloyalty to the sovereign and lifted upon a showing that the disarmed posed no danger.

Ms. Branders belongs to no class the founding generation distrusted. The colonial laws on which the Fourteenth Circuit relied disarmed only those whose allegiance the sovereign doubted, and an individual regained his arms once he showed he posed no danger. Adopting the Eighth Circuit’s reasoning, the court below held that “legislatures traditionally possessed discretion to disqualify categories of people from possessing firearms to address a danger of misuse by those who deviated from legal norms.” R. at 10 (quoting *Jackson*, 110 F.4th at 1127). Those class-based statutes disarmed Catholics and Loyalists who refused oaths of allegiance, Native Americans, and enslaved persons. *See Jackson*, 110 F.4th at 1126–27; *see also Kanter*, 919 F.3d at 456–58 (Barrett, J., dissenting). While *Rahimi* leaves room for laws disarming “categories of persons thought by a legislature to present a special danger of misuse,” its holding still rests on an individual judicial threat determination. 602 U.S. at 698–99. Moreover, “a court must be careful not to read a principle at such a high level of generality that it waters down the right.” *Id.* at 740 (Barrett, J., concurring); *see also Kanter*, 919 F.3d at 465 (Barrett, J., dissenting) (warning that a “broad power to designate any group as dangerous” could “quickly swallow the right”).

“[F]ounding-era legislatures categorically disarmed groups whom they judged to be a threat to the public safety,” but “no[] historical practice supports a legislative power to categorically disarm felons because of their status as *felons*.” *Kanter*, 919 F.3d at 458 (Barrett, J., dissenting) (emphasis added). “The colonies reasonably feared that Loyalists might take up arms again,” but when “there is no such basis to fear that [the defendant] is disloyal to his country,”

disarmament runs afoul of the historical tradition. *Range*, 124 F.4th at 230. Connecticut disarmed Loyalists only “until they’d demonstrated they were not dangerous to the fledgling revolutionary project.” *Williams*, 113 F.4th at 652–54. Indeed, English and colonial law alike restored arms to members of a disarmed class “once they were deemed not dangerous.” *Id.*

The Fourteenth Circuit’s formulation fails at both points. First, a power to disarm anyone who “deviated from legal norms” is a power to disarm *anyone* convicted of *anything*, including “selling pigs without a license in Massachusetts.” *Kanter*, 919 F.3d at 466 (Barrett, J., dissenting). Statutes disarming based on disloyalty were instruments of state security. The only disarmament proposal that emerged from the ratification debates would have reached citizens who “are or have been in actual rebellion,” a term that then meant “a traitorous taking up arms, or a tumultuous opposing the authority of the king.” *Id.* at 455. The colonies seized arms from those they distrusted specifically “with the intent of preventing social upheavals.” *Id.* at 457.

Ms. Branders is no insurrectionist. She is a retired factory worker who has never refused an oath to the United States and whose allegiance has never been questioned. *See R.* at 2–4. The only category that reaches her is the one Congress defined in 1961 by reference to a term of imprisonment, a definition that “falls well short of ‘longstanding.’” *Range*, 124 F.4th at 229. Moreover, even on the class-based tradition’s own terms, the restriction lifted when the disarmed showed they were not dangerous. Ms. Branders has made that showing continuously for more than two decades since her disarmament began. *R.* at 3. Ms. Branders was not and is not disloyal. Therefore, she should not be disarmed.

3. Ms. Branders’ offense and her record establish no danger of violence.

Under the dangerousness inquiry the Sixth and Seventh Circuits drew from this tradition, Ms. Branders is not dangerous. The Sixth Circuit holds § 922(g)(1) constitutional “as applied to dangerous people.” *Williams*, 113 F.4th at 662–63. A person is dangerous if he has committed

“(1) a crime ‘against the body of another human being,’ including (but not limited to) murder, rape, assault, and robbery, or (2) a crime that inherently poses a significant threat of danger, including (but not limited to) drug trafficking and burglary.” *Id.* at 663. A third category, offenses like mail fraud and false statements, “[o]ften . . . cause[s] no physical harm to another person or the community.” *Id.* at 659. In every case “[t]he dangerousness determination will be fact-specific,” and courts “may evaluate a defendant’s entire criminal record.” *Id.* at 660, 663. The Seventh Circuit asks whether disarming a specific felon is “consistent with the principles that underpin our [Nation’s] regulatory tradition.” *Watson*, 171 F.4th at 1017 (quoting *Rahimi*, 602 U.S. at 692).

The circuits’ examples bear out this distinction. Williams was convicted of aggravated robbery, a crime against the body of another. *Williams*, 113 F.4th at 662–63. In his case, the Sixth Circuit held that a person in that category “will have a very difficult time, to say the least, of showing he is not dangerous.” *Id.* at 663. Watson was convicted of dealing cocaine, and the Seventh Circuit upheld his disarmament. *Watson*, 171 F.4th at 1014, 1025. *Watson* expressly reserved “an as-applied challenge to § 922(g)(1) under the Second Amendment by a felon whose predicate felony offense is not ‘dangerous.’” *Id.* at 1025. Range made a false statement to obtain food stamps. *Range*, 124 F.4th at 222–23. The Government “ha[d] no evidence that he pose[d] a physical danger to others or that food-stamp fraud is closely associated with physical danger.” *Id.* at 230. In each case, the line fell between offenses that threaten the physical safety of others and offenses that do not.

Ms. Branders’ offense fits neither category that establishes dangerousness. The first “was filled with dangerous and violent crimes like murder, rape, assault, and robbery.” *Williams*, 113 F.4th at 658. An omission in the care of a child is not an act directed against another’s body but

rather the absence of an act. Nor does neglect “inherently pose[] a significant threat of danger” in the way drug trafficking and burglary do—offenses which routinely produce armed confrontation. *Id.* at 659. The harm that followed Ms. Branders’ lapse was grievous. But the dangerousness inquiry asks whether an offense shows that the offender threatens others, and a lapse in supervision shows a caretaker’s failure, not a willingness to harm anyone. A drug dealer, by contrast, “is more than just irresponsible; he is a threat to the physical safety of society.” *Watson*, 171 F.4th at 1024. What Ms. Branders did in 2001 was quintessentially irresponsible. It was not willfully threatening to society. Twenty-three years have since confirmed as much.

The specifics of her case bear this out. Her 2001 offense was a failure of supervision, not an act, and the district court found it to be “the result of negligence rather than malice.” R. at 6. Her son drove and parked the van, and she searched for the child and called 911. R. at 2. The sentencing court’s differential judgment—four years’ imprisonment for him and a suspended sentence for her—reflects that distinction. R. at 3. Her entire criminal record in the two decades since is a single misdemeanor for speeding. R. at 3. She kept one handgun locked, with the ammunition secured separately, to defend herself against the men her adult son was bringing around. R. at 3–4. That is the exact purpose *Heller* placed at the core of the Second Amendment. *Heller*, 554 U.S. at 628–29.

Like Range, Ms. Branders has a single old conviction with no evidence that she poses a present danger to anyone. Unlike *Watson*, nothing about her offense connects her to violence. Dangerousness under *Rahimi* is a present inquiry, permitting disarmament only of one who “present[s] a credible threat to the physical safety of others.” 602 U.S. at 700. A woman in her late seventies with two decades of law-abiding life behind her carries the strongest evidence

anyone can offer that she is not a threat. Under the Sixth Circuit’s definition, the Seventh Circuit’s application, and the principle both drew from *Rahimi*, Ms. Branders is not dangerous.

B. The Nation’s historical tradition did not disarm for offenses of neglect.

The founding generation confronted the failure of parents and caretakers to provide for children, but it never answered that failure with disarmament. Thus, the tradition supplies no reason for disarming Ms. Branders.

[W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional.

Bruen, 597 U.S. at 26–27. The Fifth Circuit applied that instruction to § 922(g)(1) by matching the predicate offense to the founding era’s treatment of the same conduct, because “[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny.” *Diaz*, 116 F.4th at 469. At the founding, “felony” was “a term of loose signification,” and the category was “a good deal narrower” than it is today. *Id.* at 468 (quoting *The Federalist* No. 42, at 234 (James Madison) (Clinton Rossiter ed., 1961), and *Lange v. California*, 594 U.S. 295, 311 (2021)). Thus, “[t]he fact that [a defendant] is a felon today, then, does not necessarily mean that he would have been one in the 18th century.” *Id.*

Although *Diaz* upheld § 922(g)(1) as applied to a man convicted of vehicle theft, it emphasized that its “holding is not only premised on the fact that *Diaz* is a felon.” *Id.* at 468–69 (“[T]hose convicted of horse theft—likely the closest colonial-era analogue to vehicle theft—were often subject to the death penalty.”). But in *Cockerham*, the same court reached the opposite result for a man convicted of failing to pay child support, because “our history is very different when it comes to non-violent crimes,” and the founding-era treatment of debtors, who

were released upon discharge of the debt, supplied no tradition for disarming him. *Cockerham*, 162 F.4th at 503–04.

Blackstone described the parental duty of maintenance as “a principle of natural law” that the municipal law enforced by compelling support, not by punishing the parent as a criminal. *See* 1 William Blackstone, *Commentaries* *434–36 (1765). Where the failure to provide left a family chargeable to the parish, the response was the vagrancy regime. *See Hemani*, 608 U.S. at 787–88. Founding-era vagrancy laws reached “any others who would not ‘provide for themselves or the support of their families,’” and the consequence was a workhouse or a short jail term. *Hemani*, 608 U.S. at 788 (citing Act of Oct. 1727, in 7 *Public Records of the Colony of Connecticut* 127–28 (C. Hoadly ed. 1873)). Those who could not manage their own affairs met a similar response. The habitual drunkard could be jailed or confined in a workhouse, placed under a guardian, or committed to an asylum, regimes that, as the Government described them, “allowed governments to detain people in places where they could not bear arms.” *Id.* at 781–82. But those regimes reached only those whose drinking “rendered them practically incapacitated and incapable of managing their affairs,” and they “did not seek to protect the public from violence so much as to protect habitual drunkards from themselves.” *Id.* at 785, 788. Neither regime answered a failure to provide with disarmament.

Criminal neglect itself is a modern creation. The dissent below reasoned that “there were few laws, if any, related to child neglect, at the time of the founders,” and that the first organized effort to protect a neglected child in this country came in 1874, when the neighbors of Mary Ellen Wilson could find no protective society for children and turned to the one for animals. *R.* at 10–11. “At a time when a person would be put to death for stealing another man’s horse, we had protective societies for animals, but not for children.” *R.* at 11. Whatever criminal treatment of

neglect followed that episode arrived, at the earliest, in the late nineteenth century, and evidence from that period “cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence.” *Bruen*, 597 U.S. at 66. The earlier evidence here is the founding generation’s own answer to neglect: compelled support and the poor law. That answer never included disarmament. Virginia’s felony neglect provision is a modern statute, a creature of 1993, not 1791. In fact, the version under which Ms. Branders was convicted was the first to contain a separate felony for reckless disregard of a child’s life. *See* 1993 Va. Acts ch. 628.

Unlike the vehicle theft in *Diaz*, which the founding generation capitally punished under the name of horse theft, Ms. Branders’ offense had no founding-era counterpart of any kind. The closest thing to one—compelled maintenance under the poor law and the workhouse—is a “materially different means” of the sort *Bruen* identified as evidence of unconstitutionality. 597 U.S. at 26. Like the child-support debtor in *Cockerham*, Ms. Branders was convicted of failing to discharge a duty owed to a child, an offense for which the historical punishment was confinement until performance rather than disarmament.

The statute under which Virginia convicted Ms. Branders confirms the mismatch. The version of the statute in force in 2001 reached a caretaker who “by willful act or omission or refusal to provide any necessary care for the child’s health causes or permits serious injury,” or whose “willful act or omission in the care of such child” showed “a reckless disregard for human life.” Va. Code Ann. § 18.2-371.1(A)–(B) (1993) (amended 2003). But it excused treatment “solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination.” *Id.* § 18.2-371.1(C). Section 18.2-371.1 regulates how custodians discharge a duty of care, and its own text shows as much. The statute excuses a caretaker who relies in good faith on “treatment solely by spiritual means through prayer.” *Id.*

§ 18.2-371.1(C). That exemption makes sense only in a statute about providing care. There can be no religious exemption for deliberate, objectively violent conduct. No legislature punishing violence would excuse an assailant because she prayed. The exemption reflects a judgment about what care a custodian owes a child.

Nor may the tradition be restated at a level of principle broad enough to reach any serious offense. *See supra* Part II.A.2. The founding generation answered neglect with the poor law and never with disarmament. The Government may not borrow a tradition of disarming thieves to reach a woman who would not even have been a felon at the founding. The Government cannot invoke the tradition of disarming the neglectful against Ms. Branders. It does not exist.

C. Ms. Branders’ disarmament has outlasted any disability the Nation’s historical tradition permitted.

The “how” of the tradition is tied to the duration of the sentence, but § 922(g)(1) as applied to Ms. Branders outlives her sentence by more than two decades. The Third Circuit made duration the operative inquiry into the “how” prong, and under it the Government may not disarm a citizen long after her sentence has ended. *Range*, 124 F.4th at 231–32. Founding-era felony punishments, whatever their severity, ended when the sentence ended, and no regime in the tradition imposed a prohibition that outlasted the punishment. Neither the severity of founding-era punishment nor relief under § 925(c) justifies disarming Ms. Branders for life.

1. Founding-era disarmament ended with the offender’s sentence.

Founding-era disarmament reached an offender only while his sentence ran. At common law, felony was “generally connected with that of capital punishment,” and conviction could carry forfeiture of the felon’s estate. *Kanter*, 919 F.3d at 458–59 (Barrett, J., dissenting) (quoting 4 Blackstone *98). What the historical punishments shared was not permanence but finality. Forfeiture laws “often prescribed the forfeiture of the specific weapon used to commit a

firearms-related offense without affecting the perpetrator’s right to keep and bear arms generally.” *Range*, 124 F.4th at 231. “[I]n the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society.” *Id.*

The courts of appeals have drawn the analogical line for founding-era disarmament between a running sentence and a completed one. “A convict completing his sentence on supervised release does not have a Second Amendment right to possess a firearm,” because supervised release is “part of the same sentence” as imprisonment. *United States v. Moore*, 111 F.4th 266, 269, 273 (3d Cir. 2024) (quoting *Mont v. United States*, 587 U.S. 514, 524 (2019)). The same holds for state parole and probation, because those offenders likewise “are still serving their sentences.” *United States v. Quail*, 126 F.4th 215, 223 (3d Cir. 2025), *cert. denied*, 146 S. Ct. 127 (2025). On the other side of the line, *Range* held that the Government showed no tradition to support disarming a man who sought to buy a rifle “[m]ore than two decades after he was convicted of food-stamp fraud and completed his sentence.” 124 F.4th at 232. And in *Cockerham*, where the debt underlying the defendant’s conviction was discharged, “there was no historical justification to disarm him at that moment—never mind for the rest of his life.” 162 F.4th at 504. “[I]f imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible.” *Rahimi*, 602 U.S. at 699. *Rahimi* sustained § 922(g)(8) in part because the statute “only prohibits firearm possession so long as the defendant ‘is’ subject to a restraining order.” *Id.* Therefore, the Court only likened a temporary *sentence* to a temporary *disarmament*.

Like *Range* and *Cockerham*, and unlike the defendants in *Moore* and *Quail*, Ms. Branders had long since completed her sentence when agents found her handgun. She was

sentenced on March 5, 2001, to a two-year suspended sentence and probation, both of which ran their course two decades before agents searched her home in 2024. R. at 3–4. Whatever authority the tradition conferred to disarm Ms. Branders while her sentence ran, that authority ended when her sentence did.

Yet § 922(g)(1) forbids Ms. Branders from possessing any firearm anywhere, including a handgun in her home, “where the need for defense of self, family, and property is most acute.” *Heller*, 554 U.S. at 628. She is in her late seventies. R. at 4. The prohibition began in 2001, has run for a quarter century, and will run until she dies, for a suspended sentence she completed before this Court decided *Heller*. Section 922(g)(1) enforces that prohibition with up to fifteen years’ imprisonment. 18 U.S.C. § 924(a)(8). This Court has never held that the Government may disarm an individual permanently. *See Rahimi*, 602 U.S. at 713 (Gorsuch, J., concurring). No founding-era regime supplies an analogue for that burden.

2. Neither the severity of founding-era punishment nor relief under § 925(c) justifies lifetime disarmament.

The Government’s greater-includes-lesser theory cannot carry it from a temporary sentence to a lifetime ban. Some courts have reasoned that because certain felonies were punishable by death or forfeiture of estate, the “lesser” burden of disarmament must be permissible. *See Diaz*, 116 F.4th at 468–69; *see also Watson*, 171 F.4th at 1022–23; *Jackson*, 110 F.4th at 1127–28. But “[t]he Founding-era practice of punishing some nonviolent crimes with death does not suggest that the particular (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors—is rooted in our Nation’s history and tradition.” *Range*, 124 F.4th at 231. Moreover, by the founding, “[d]eath . . . no longer inevitably followed a felony conviction,” and “the consequences of a felony conviction were not as categorically severe” as the theory assumes. *Kanter*, 919 F.3d at 459, 461 (Barrett, J.,

dissenting). And the theory presupposes a predicate that the founding generation punished as a serious felony, which neglect was not. *See supra* Part II.B.

Nor does the recent revival of relief under 18 U.S.C. § 925(c) save the prohibition on the theory that “felon status does not necessarily mean permanent disarmament.” *Watson*, 171 F.4th at 1025. For Ms. Branders, felon status has meant permanent disarmament. The Attorney General did not publish the rule reviving that relief until August 20, 2026, more than two years after the Government charged her. *See* 91 Fed. Reg. at 54054. A tradition that left the right intact needed no mechanism for handing it back. And the availability of relief does not make § 922(g)(1) resemble the class-based laws that lifted upon a showing that the disarmed posed no danger. *See supra* Part II.A.2. Imprisonment ended with the term, a surety bond within six months, and class-based disarmament with an oath or a showing of loyalty. *See Rahimi*, 602 U.S. at 697; *see also Kanter*, 919 F.3d at 457–58 (Barrett, J., dissenting). Each ended by its own terms or by the disarmed person’s own act. Section 925(c) lifts the disability only if the Attorney General chooses to. *See supra* Part I.C.2. A prohibition that runs for life unless the Executive elects to end it burdens the right to an extent the founding generation never did. As applied to Ms. Branders, § 922(g)(1) therefore fails on the “how” just as it fails on the “who” and the “why.”

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

/s/ Team QC
Team QC
Counsel for Petitioner