

No. 26-179

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2026

TERRY BRANDERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR PETITIONER

TERRY BRANDERS

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QUESTIONS PRESENTED

1. Under the Second Amendment of the United States Constitution and the historical-tradition framework established in *Bruen*, may the government permanently disarm an individual based solely on a felony conviction without considering the nature of the offense, the passage of time, or whether the individual poses a danger to public safety?
2. Does the Second Amendment permit the government to permanently disarm an individual who seeks to possess a firearm for self-defense in the home based on a twenty-five-year-old, nonviolent conviction for child neglect, where the conviction does not establish that the individual poses a danger to public safety?

STATEMENT OF THE CASE

A. Statement of the Facts

Terry Branders (“Branders”) is a woman in her late seventies who has devoted her retirement to caring for others. R. at 2. Over twenty-five years ago, in July 2000, Branders began operating an informal childcare service out of her home after retiring from a career as a factory worker. *Id.* Nelson (“Nelson”), Branders’ eighteen-year-old son, assisted in her care with the children by providing pick-up and drop-off services in his passenger van. *Id.* After a late evening, Nelson got up with only a few hours of sleep and picked up twelve children, most of whom were preschoolers. *Id.* Nelson dropped off all of the children except eleven-month-old Kenneth Drew (“Kenneth”) at Branders’ home, then drove to his apartment, parked the van, and went to sleep. *Id.* Nelson later stated that he thought he had taken all of the children inside but admitted that he was tired and could have missed something. *Id.* Because Kenneth usually slept through the pick-up routine and was placed in a crib, Branders did not notice that he was missing until she went to wake him approximately two hours later. *Id.* Branders spent well over an hour trying to reach Nelson and Kenneth’s mother and called 911. *Id.* Police found Kenneth in Nelson’s van, where he had suffered severe heat-related injuries. *Id.* Despite being quickly taken to the hospital, Kenneth did not survive. *Id.*

Branders was convicted of child neglect, a non-violent felony, under Va. Code § 18.2-371.1 for her role in the tragedy, as well as a misdemeanor for operating an unlicensed daycare. R. at 2-3. That conviction is now over twenty-five years old. R. at 3. Ultimately, Branders completed a suspended two-year sentence and probation without issue. *Id.* Nelson was sentenced to a four-year term of imprisonment. *Id.*

Twenty-two years later, in 2020, Branders moved to Appleton, Newcoastland, for a fresh start. *Id.* Branders became very involved in charitable and community work, including

volunteering at a local food bank and stocking supplies for local elementary schools. *Id.* Her only subsequent encounter with the criminal justice system was a misdemeanor reckless driving conviction for speeding, and her license was suspended for six months. *Id.*

Nelson's anger toward Branders surfaces frequently, and he blames her for everything that has gone wrong in his life. *Id.* Nelson recently moved into Branders' basement and insisted that his mother never enter his space, and that he be free to enter and leave the home on his own terms. *Id.* Because of Nelson's frequent angry outbursts, Branders complies with his demands. *Id.* Nelson has trouble maintaining a job, and Branders suspects that he uses or sells drugs. *Id.* Branders also finds some of Nelson's friends particularly frightening. *Id.* Though she has had no involvement in his affairs, Branders suspects that her son sells or uses drugs. *Id.*

Branders' friend Becky Haskill ("Becky") suggested that Branders obtain a firearm for protection. *Id.* Becky made the suggestion after the two discussed their respective family problems, but Branders was reluctant and told Haskill that she didn't know about that. *Id.* Haskill nevertheless offered Branders one of the handguns that had belonged to her late husband, and Branders ultimately accepted it. *Id.* Branders kept the firearm with the safety on, in a locked drawer in her living room, and stored its ammunition separately. *Id.*

In June 2024, DEA agents investigating suspicions about Nelson approached Branders' home. R. at 3-4. The lead agent targeted Branders for a consent search, and Branders was quite cooperative in telling agents that Nelson lived in the basement. R. at 4. When DEA agents found the gun in the living room, Branders explained that it had been given to her and that she maintained it responsibly by storing the firearm and ammunition separately. *Id.* Branders was then arrested for possessing a firearm after being convicted of a felony. *Id.*

B. Procedural History

On July 3, 2024, Branders was indicted for violating 18 U.S.C. § 922(g)(1). R. at 4. Branders then moved to dismiss the indictment, arguing a violation of the Second Amendment as applied to her. *Id.* The District Court granted her motion to dismiss on December 22, 2025, holding that Branders' twenty-five-year-old, non-violent felony conviction bears no relationship to any historical tradition of firearm regulation. R. at 6. The Government appealed the dismissal, and judgment was entered on June 10, 2026, in which the Fourteenth Circuit vacated and remanded the order of the District Court. R. at 8-10. Branders entered a conditional Alford plea preserving her right to appeal, and the Court summarily affirmed her conviction on remand on June 1, 2026. R. at 12. This Court granted certiorari to resolve whether as-applied challenges remain available and, if so, whether § 922(g)(1) is constitutional as applied to Branders. R. at 13.

SUMMARY OF THE ARGUMENT

The Fourteenth Circuit erred in reversing the District Court's dismissal of Branders' indictment under 18 U.S.C. § 922(g)(1) both because an as-applied challenge remains available, and because the statute is unconstitutional as-applied to her. Under *N.Y. State Rifle & Pistol Ass'n v. Bruen* and *United States v. Rahimi*, the Second Amendment inquiry begins with the Amendment's text. Once that text covers an individual and her conduct, the burden shifts to the Government to demonstrate that the challenged restriction is consistent with the Nation's historical tradition of firearm regulation. Here, the Fourteenth Circuit agreed that Branders is among "the people" protected by the Second Amendment and that her conduct falls within the Amendment's text. R. at 9-10. The dispute therefore arises at the historical-tradition stage. Branders' felony status alone cannot end that inquiry, and because the Government cannot identify a historical tradition sufficiently analogous to permanently disarming someone based on Branders' predicate offense and circumstances, § 922(g)(1) is unconstitutional as applied to her.

First, the Government must satisfy *Bruen*'s historical-tradition inquiry even when § 922(g)(1) applies to a person convicted of a felony. That inquiry examines whether historical regulations burdened the right to armed self-defense in a comparable manner and for comparable reasons. The Fourteenth Circuit instead reasoned that because legislatures historically disarmed certain categories of persons, the Government may categorically disarm everyone who falls within the modern classification of "felon." However, the historical regulations relied upon to support such reasoning do not establish a tradition of permanently disarming every person convicted of any felony. Some arose in response to perceived threats of armed rebellion or disloyalty, while others rested on racial or religious classifications that would be constitutionally impermissible today. Nor has federal law historically imposed a lifetime firearm prohibition on

every person convicted of a crime punishable by more than one year. These traditions therefore do not establish that modern felony status, standing alone, is sufficient to satisfy the Government's historical burden.

The Third Circuit and its progeny therefore permit as-applied challenges to § 922(g)(1). Although they differ in how to evaluate an as-applied challenge, a person's felony conviction is not treated as the end of constitutional review. These Circuits examine the offense and the circumstances relevant to the proposed historical justification. The Fourteenth Circuit's rule forecloses that examination and prevents a court from considering whether the nature of the offense, the passage of time, or the person's subsequent conduct calls into question the reason for continued disarmament. Permitting review does not require restoring firearms rights to everyone with a felony conviction, but requires a historical justification to be considered before the conviction is made conclusive.

Second, § 922(g)(1) is unconstitutional as applied to Branders because no historical tradition supports permanently disarming a person convicted of a twenty-five-year old, non-violent, negligent offense. Early laws addressing a caregiver's failure of care focused on protecting the child through removal or placement, while criminal prosecution addressed intentional cruelty. The Government has identified no corresponding tradition of permanently disarming caregivers for negligent omissions. Historical punishment of other offenses, including theft, cannot supply that missing connection merely because modern law classifies Branders' offense as a felony.

Further, her decades-old conviction does not establish that she poses a credible threat to the safety of others. Branders' conviction did not involve violence, firearms, or an intentional threat against another person. Branders completed her sentence and probation without issue, and

has not since been convicted of a felony, violent crime, or firearm-related offense. When Branders possessed the firearm, she responsibly kept it secured in a locked drawer with the ammunition stored separately and obtained it for protection in her home. Unlike the defendant in *Rahimi*, Branders was never subject to a restraining order or judicial finding that she posed a particularized threat to another person. Therefore, her circumstances do not resemble the individuals historically subject to firearm restrictions based on demonstrated dangerousness.

The Government cannot identify a historical tradition supporting the permanent disarmament of such a broad, modern category as “felon,” nor an individual in Branders’ circumstances. Thus, § 922(g)(1) is unconstitutional as-applied to her, and the judgment of the Fourteenth Circuit should be reversed.

ARGUMENT

I. AS-APPLIED SECOND AMENDMENT CHALLENGES TO § 922(g)(1) REMAIN AVAILABLE BECAUSE THE GOVERNMENT CANNOT SHOW A HISTORICAL TRADITION OF PERMANENTLY DISARMING EVERY PERSON WITHIN THE MODERN, EXPANSIVE CATEGORY OF “FELON.”

The United States Court of Appeals for the Fourteenth Circuit erred in reversing the District Court’s dismissal of Branders’ indictment because as-applied Second Amendment challenges to 18 U.S.C. § 922(g)(1) remain available. When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects it, and the Government must demonstrate that the challenged restriction is consistent with the Nation’s historical tradition of firearm regulation. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17, 24 (2022). Here, the Fourteenth Circuit agreed that Branders’ conduct is covered by the text but concluded that there was “no need to revisit the underpinnings of every felony conviction.” R. at 9. Therefore, it improperly treated her felony status as sufficient to end her constitutional claim.

This ruling relieved the Government of its burden under *Bruen*. Historical laws disarming particular groups do not establish that every person within the modern category of “felon” may be permanently disarmed without further inquiry. Thus, under *Bruen*, the Third Circuit and its progeny have permitted as-applied challenges that examine the basis for disarming the person before the court. *See Range v. Att’y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 467 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 663 (6th Cir. 2024), *United States v. Watson*, 171 F.4th 1012, 1013 (7th Cir. 2026). This approach allows courts to consider the nature of the predicate offense and the person’s circumstances, including the time that has passed since conviction and showings of danger. The Fourteenth Circuit’s categorical rule prevents that inquiry altogether. Accordingly, this Court should hold that Branders’ conviction does not foreclose her as-applied challenge to § 922(g)(1).

A. *Bruen* and *Rahimi* Require the Government to Justify Disarmament with a Tradition That Fits the Person Before the Court, and the Fourteenth Circuit Relieved the Government of That Burden.

The right to keep and bear arms for self-defense is an individual liberty protected under the Second Amendment. U.S. Const. amend. II. This Court has long recognized that the “central component” of the Second Amendment right is an individual’s self-defense, an inherent right that predates the Founding itself. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 628 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010). That right belongs to “all Americans.” *Heller*, 554 U.S. at 581.

Further, this Court has affirmed that where the Second Amendment’s plain text covers an individual’s conduct, “the Constitution presumptively protects that conduct,” and the Government bears the burden of demonstrating that its regulation “is consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 17, 24 (2022). Branders seeks to possess a firearm for self-defense in the home, and the Government contends that § 922(g)(1) forbids her from asserting her Second Amendment right on the basis that she is a convicted felon. The Fourteenth Circuit itself agreed that Branders’ “conduct here is covered by the text of the Second Amendment.” R. at 9. Once textual coverage is established, the burden then shifts to the Government to identify how “the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *United States v. Rahimi*, 602 U.S. 680, 703 (2024).

The Fourteenth Circuit did not hold the Government to that burden. Instead, the court concluded there was “no need to revisit the underpinnings of every felony conviction,” R. at 9, and adopted the Eighth Circuit’s view that “legislatures traditionally possessed discretion to disqualify categories of people from possessing firearms.” R. at 10 (quoting *United States v. Jackson*, 110 F.4th 1120, 1125-27 (8th Cir. 2024)). The court conducted no historical analysis of

its own, even as it faulted the district court for failing to conduct one. R. at 8, 10. The court relied instead on this Court’s description of felon prohibitions as “presumptively lawful regulatory measures.” R. at 9 (quoting *Heller*, 554 U.S. at 627 n.26); see *Rahimi*, 602 U.S. at 699. But a presumption is, by definition, rebuttable. *Heller* made that observation in a case that did not involve § 922(g)(1), expressly declined to “undertake an exhaustive historical analysis,” and promised, “time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.” 554 U.S. at 626, 635. *Rahimi* likewise addressed only a facial challenge to a different statute, § 922(g)(8). Neither decision relieved the Government of its burden to justify § 922(g)(1) as applied.

This Court has explicitly affirmed that the historical-tradition inquiry requires more than a showing of a generally similar historical regulation; rather, courts must examine whether the modern and traditional regulation are “relevantly similar” in “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Bruen*, 597 U.S. at 29. The Government asserts that a categorical approach should be applied in barring Branders from possessing a weapon because history and tradition support the disarming of any and all people convicted of a felony without any further showing of danger. However, any analogue the Government attempts to provide must be “well-established and representative” of this nation’s regulatory tradition. *Id.*; *Rahimi*, 602 U.S. at 692. “The more a modern law diverges from traditional laws in purpose and operation, the less likely it is to survive review.” *United States v. Hemani*, 146 S. Ct. 1677, 1686 (2026).

Bruen itself rejected an attempt to expand a historically recognized category beyond what the historical record supported. *Bruen*, 597 U.S. at 31. The Court explained that “expanding the category of ‘sensitive places’” to all places of public congregation defined that category “far too

broadly,” and concluded that there was “no historical basis” for treating all of Manhattan as a sensitive place merely because it was crowded. *Id.* Here, the Government cannot expand the historical category of persons subject to disarmament to encompass all convicted felons merely by virtue of their felony status without demonstrating a historical basis for disarming persons who engaged in conduct like Branders’. Thus, a categorical approach to § 922(g)(1) challenges does not satisfy *Bruen* where it disregards the individual’s predicate conduct, because the Government must show that the historical analogue imposed a comparable burden for a comparable reason.

In *Rahimi*, the defendant was indicted under 18 U.S.C. § 922(g)(8), a statute prohibiting individuals subject to a domestic violence restraining order from owning guns, for his possession of a firearm after a series of attacks against his ex-girlfriend. *Id.* at 687. The restraining order he was subject to cited his involvement in multiple violent assaults and shootings, and stated that he was a continuing threat to the physical safety of others. *Id.* As its founding-era analogues, the Government identified surety laws and “going armed” laws. *Id.* at 699. Surety laws permitted a magistrate to require an individual shown to pose a specific threat of violence to post a bond, which he would forfeit if he broke the peace. *Id.* “Going armed” laws punished individuals who had actually gone about in public armed in a manner that terrorized others. *Id.* at 699-700.

This Court found these laws “relevantly similar” to 18 U.S.C. § 922(g)(8) because both shared the same “why”: protecting an identifiable person from a demonstrated threat, and the same “how”: a targeted, individualized remedy imposed after a specific finding of danger. *Id.* at 698. Thus, a categorical restriction was permissible only because the Government identified historical analogues that likewise imposed firearm restrictions on persons whose conduct demonstrated a specific danger to others. *Id.*

Branders' case presents no comparable analogue. Here, the Government has failed to identify any historical practice of permanently disarming an individual based on such a broad class as "felon." Furthermore, in contrast to *Rahimi*, the Government cannot identify a historical tradition of disarming persons based on conduct meaningfully analogous to Branders' own. Branders' conviction was based on negligent conduct occurring more than twenty years ago and contains no comparable indication that she is likely to misuse a firearm or threaten another person. The Government has therefore failed to identify a historical tradition supporting the permanent disarmament of a person based solely on felony status where the predicate offense neither involved violence nor established that the individual posed a threat if armed. Accordingly, *Rahimi* does not support treating all felons as a single category and this Court should not disarm a broad class based on status alone.

This Court's most recent Second Amendment decision confirms that the Government cannot satisfy its burden with a label. In *Hemani*, the Government prosecuted the respondent under 18 U.S.C. § 922(g)(3), which prohibits unlawful drug users from possessing firearms, based solely on his admitted use of marijuana about every other day. *Hemani*, 146 S. Ct. at 1684. The Government argued that marijuana users may be disarmed because they are "categorically violent and dangerous without any further showing." *Id.* at 1693. This Court declined such a presumption and reasoned that granting the Government a "broad power to designate any group as dangerous and thereby disqualify its members from having a gun" would risk allowing that authority to "quickly swallow" the Second Amendment. *Id.* (quoting *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting)).

Further, the Government analogized to historical laws regulating "habitual drunkards," arguing that both those laws and § 922(g)(3) had the same purpose of targeting individuals who

regularly used intoxicants. *Id.* at 1701. This Court rejected that argument. *Id.* The “habitual drunkard” laws historically targeted individuals whose repeated, pervasive drunkenness rendered them incapacitated and incapable of managing their affairs. *Id.* However, the record revealed nothing as to how much marijuana *Hemani* used, in what potency, or to what effect. *Id.* The Court also doubted that § 922(g)(3) reached only dangerous persons at all, because it borrows its category from the Controlled Substances Act, a statute adopted for reasons “having little or nothing to do with” a drug’s potential to induce violence. *Id.* at 1693.

§ 922(g)(1) suffers from the same defect. It does not define its own category of dangerous persons; it disarms anyone convicted of a crime “punishable by imprisonment for a term exceeding one year,” 18 U.S.C. § 922(g)(1). This is a line drawn by legislatures for reasons unrelated to the risk of firearm misuse. Branders falls within that category not because any legislature judged negligent caregivers too dangerous to be armed, but because of the sentence Virginia authorized for child neglect.

Just as the Government in *Hemani* could not equate ordinary marijuana use with the pervasive incapacitation that “habitual drunkard” laws targeted, the Government here cannot equate a decades-old, non-violent felony conviction with the demonstrated dangerousness that historical disarmament laws addressed. Moreover, just as the *Hemani* record was silent as to the frequency, degree, and effect of the petitioner’s marijuana use, the record here is silent as to any finding that Branders poses a danger of misusing a weapon. Treating Branders’ decades-old, non-violent felony status alone as sufficient would give the Government precisely the kind of broad authority *Hemani* warned could “quickly swallow” the Second Amendment. *Id.* If a categorical presumption of dangerousness could not survive this Court’s scrutiny in *Hemani*, the

Government's identical presumption cannot survive it here. Accordingly, the Government must justify disarming Branders herself, and the Fourteenth Circuit erred in relieving it of that burden.

Further, the development of federal firearm law undermines the claim that all felons have long been subject to the same restriction. C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 698-99 (2009). *Id.* The 1938 federal law restricted receipt of firearms by persons convicted of specified "crimes of violence," including murder, manslaughter, rape, kidnapping, burglary, and aggravated assault. *Id.* Congress did not broaden the covered convictions until 1961, and extended that restriction to possession in only 1968.

Earlier categorical restrictions arose in markedly different circumstances. Some colonies prohibited firearm transfers to Native Americans amid armed conflict; other colonial laws barred Black people from possessing arms based on white fears of revolt, while restrictions on Catholics reflected fears that they would support France during the French and Indian War. Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 Drexel L. Rev. 1, 27-30, 35-41 (2024). These analogies cannot be reduced to the proposition that legislatures may disarm any group they designate. Their purposes, their burdens, and their constitutional defects must be confronted before they can support a modern restriction.

Thus, history does not support the Fourteenth Circuit's conclusion that the Government may disarm Branders simply because she belongs to the modern category of "felons." R. at 9-10. The colonial restrictions responded to particular perceived threats and imposed different burdens; the federal prohibition on possession by all felons arose much later. Neither establishes that every felony conviction supplies the same historical justification for permanent disarmament. Branders' conviction for child neglect brings her within § 922(g)(1), but it does not resolve whether history and tradition support her disarmament.

Accordingly, an as-applied Second Amendment challenge is available under this Court's history and tradition framework, and the judgment of the Fourteenth Circuit should be reversed.

B. This Court Should Adopt the Approach of the Third Circuit and Its Progeny, Which Permit As-Applied Challenges and Examine Whether History Supports Disarming a Person with the Defendant's Predicate Offense.

The Third Circuit and its progeny have recognized that as-applied challenges to § 922(g)(1) remain available. *See, e.g., Range*, 124 F.4th at 232 (3d Cir. 2024) (en banc); *Diaz*, 116 F.4th at 467 (5th Cir. 2024); *Williams*, 113 F.4th at 649-50 (6th Cir. 2024); *Watson*, 171 F.4th at 232. Although these Circuits differ as to how the as-applied inquiry should be conducted, each circuit holds that conviction of an offense falling within § 922(g)(1) does not itself foreclose further constitutional review.

In *Range*, the Third Circuit considered an as-applied challenge by a man whose only disqualifying conviction was for making a false statement to obtain food stamps. *Range*, 124 F.4th at 232. (3d Cir. 2024). Rather than treating that conviction as the end of the inquiry, the court required the Government to demonstrate “that our Nation’s history and tradition of firearm regulation support disarming *Range*” himself. *Id.* at 230. The Government’s historical showing failed because the 1938 federal prohibition covered specified violent crimes, its broader 1961 successor was too recent to establish a longstanding tradition, and founding-era capital punishment did not justify permanently disarming anyone with a qualifying conviction. *Id.* at 229-31. *Range*’s false-statement offense, the court observed, might instead resemble offenses punished by imprisonment or a fine. *Id.* at 231.

Range thus demonstrates that a conviction may bring a person within § 922(g)(1) without foreclosing the as-applied inquiry. Therefore, Branders’ felony status cannot preclude her ability to assert an as-applied challenge, and the Government’s historical showing fails for the same

reasons here as in *Range*. This Court should so follow *Range* and reject the Government's attempt to bar Branders' Second Amendment claim on the mere basis of her felon status.

The Fifth Circuit has likewise held that "simply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny" because "not all felons today would have been considered felons at the founding." *Diaz*, 116 F.4th at 469. Rather than adopting a categorical rule barring all felons from possessing a weapon, the court requires the Government to demonstrate a "tradition of disarming someone with a criminal history analogous to" the defendant's own. *Id.* at 467. The Government analogized Diaz's vehicle theft conviction to horse theft, which at the founding was punishable by estate forfeiture and death. *Id.* at 470. The court made clear that its conclusion was not "premised on the fact that Diaz is a felon," but rather on the historical treatment of the particular offense he had committed. *Id.* at 469.

The Fifth Circuit has continued to apply the history-and-tradition inquiry across a range of underlying convictions. *See United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025) (rejecting the Government's attempt to analogize failure to pay child support to theft and permanent disarmament); *United States v. Hembree*, 165 F.4th 909, 915-18 (5th Cir. 2026) (rejecting the Government's proposed analogues for a predicate conviction of simple possession of methamphetamine). In each case, the Fifth Circuit looked beyond the felony label and asked whether the Government's historical evidence actually corresponded to the conduct underlying the conviction.

Applied to Branders, these holdings show why her felony conviction cannot preclude an as-applied inquiry. Branders' felony status alone is no more sufficient to bar an as-applied challenge here than it was in *Diaz*, *Cockerham*, or *Hembree* because there exists no traditional analogue of permanently disarming every person who falls within the modern category of

“felon.” The Government must therefore justify Branders’ disarmament by reference to the conduct underlying her conviction, rather than her status as a felon alone.

The D.C. Circuit has also left room for as-applied review based on the nature of the predicate offense. In *Medina v. Whitaker*, the court recognized that a felon may be able to show that his offense was “so minor or regulatory that he did not forfeit his right to bear arms by committing it.” 913 F.3d 152, 160 (D.C. Cir. 2019). *United States v. Johnson* continued to apply that guidance after *Bruen*, rejecting Johnson’s challenge because his predicate felonies were violent. 158 F.4th 200, 218-19 (D.C. Cir. 2025). Branders’ non-violent conviction for child neglect presents a materially different predicate offense, and therefore further supports permitting an as-applied inquiry.

The Sixth and Seventh Circuits likewise permits as-applied review. In *Williams*, the Sixth Circuit held that “our nation’s history and tradition demonstrate that Congress may disarm individuals they believe are dangerous,” reasoning that the same history did not render a legislature’s judgment about a class conclusive as to every individual within it. 113 F.4th at 657. Historical disarmament laws commonly authorized the official doing the disarming to determine whether the individual was in fact dangerous. *Id.* The court therefore held that § 922(g)(1) is constitutional “on its face and as applied to dangerous people,” *Id.* at 662-63, and that courts evaluating as-applied challenges “must focus on each individual’s specific characteristics,” *Id.* at 657. The Seventh Circuit adopts a similar approach in examining the nature of an individual’s offense and circumstances, holding that “historical disarmament laws support disarming...dangerous felons.” *United States v. Watson*, 171 F.4th 1012, 1024 (7th Cir. 2026). Accordingly, even if legislatures may disarm categories of people believed to be dangerous,

history still requires that an individual have the opportunity to demonstrate that the category does not apply to her.

The Eighth Circuit and its progeny reject this approach. In *Jackson*, the Eighth Circuit offered two rationales for upholding § 922(g)(1). First, it concluded 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.” 110 F.4th at 1125-27. Second, it reasoned that the felon prohibition “still passes muster” even under a dangerousness framework, because legislatures historically disarmed categories of persons whose members, “as a whole,” presented “an unacceptable risk of danger if armed.” *Id.* at 1127-28. On that view, there is “no need for felony-by-felony litigation.” *Id.* at 1125. The Fourth, Ninth, and Tenth Circuits have reached similar conclusions. See *United States v. Hunt*, 123 F.4th 697, 707-08 (4th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 761-62 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1269 (10th Cir. 2025). The Fourteenth Circuit adopted *Jackson*’s first rationale. R. at 10.

Neither rationale withstands this Court’s framework. The first has no foundation in the historical record: founding-era restrictions based on lawbreaking “applied to civic rights like voting and jury service, not to individual rights like the right to possess a gun.” *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting). Nor does the rationale contain any limiting principle. If deviation from legal norms is itself sufficient to justify disarmament, then the theory extends beyond persons whose offenses bear any demonstrated relationship to dangerousness and could encompass individuals convicted of relatively minor crimes simply because they violated the law. Taken at its word, *Jackson*’s reasoning would permit a legislature to disarm a person who once shoplifted as a young adult, leaving her unable to defend herself even in her own home. A

power to disarm on that basis would permit the Government to designate virtually any group as unfit to bear arms, precisely the power this Court has warned would “swallow” the Second Amendment. *See supra* Part I.A.

Jackson’s second rationale fails because the modern felon category is not historically comparable to the categories on which *Jackson* relied. *See supra* Part I.A. The disarmament of Catholics in England and of “early Americans who declined to swear an oath of loyalty” targeted groups perceived to threaten armed resistance to the Government. *Jackson*, 110 F.4th at 1128. § 922(g)(1), by contrast, turns on the duration of the sentence a legislature authorizes, and it therefore reaches fraud, murder, and omissions alike. A tradition premised on the threat of armed rebellion cannot justify disarming every person within so broad a category as a modern felon.

The individualized approach adopted by the Third Circuit and its progeny therefore avoids this defect because it does not ask whether a person belongs to a broad modern category, but whether the Government can identify a historical tradition comparably tied to the person’s own conduct. Such an approach gives effect to the differences among modern offenses, and avoids treating the felony label itself as a substitute for historical analysis.

This Court should adopt the approach of the Third Circuit and its progeny, hold that felony status alone does not end the Second Amendment inquiry, and require the Government to demonstrate that history supports disarming a person with Branders’ criminal history.

C. A Categorical Rule Foreclosing As-Applied Review Would Permanently Disarm Individuals Regardless of Rehabilitation, Time Elapsed, or the Nature of Their Conduct

Beyond its inconsistency with history, a categorical rule produces results that cannot be reconciled with the purpose disarmament is meant to serve. Historical disarmament laws were directed at persons whose possession of firearms presented a danger of misuse. *See Rahimi*, 602

U.S. at 693, 698. A categorical rule, however, does not ask whether a person is likely to misuse a firearm; it asks only whether the person was once convicted of an offense that a legislature chose to make punishable by more than one year. Once that fact is established, the disarmament is permanent, and no court may consider the nature of the underlying conduct, how much time has passed, or who that person is today. A rule that ignores every fact bearing on the risk of misuse cannot be justified as a means of preventing it.

The felony label now reaches a vast range of conduct, from violent crimes against the person to regulatory violations, fraud, and offenses of negligence. Those offenses share no characteristics except the maximum sentence a legislature attached to them. Under a categorical rule, a person convicted of armed robbery and a person convicted of a negligent omission suffer the identical, permanent loss of the right to armed self-defense. An opportunity for review also need not mean automatic restoration. Ayres and Vars propose an individualized determination of whether a firearm restriction remains warranted, allowing continued disarmament where the facts support it. Ian Ayres & Fredrick E. Vars, *The Coming Assault on Categorical Gun Prohibitions*, 77 Stan. L. Rev. Online 31, 34 (2025).

The Fourteenth Circuit's rule would prevent a court from considering any such facts. Rather, a categorical rule would make any felony conviction carrying a qualifying sentence a sufficient answer to a Second Amendment claim for life, regardless of what the Government can show about the reason for continuing to disarm that person. Branders' case shows where this opportunity is relevant; a decades-old negligent offense that resulted only in a suspended sentence and probation says little about whether a person presents a risk of misusing a firearm today, especially where the record contains no violent or firearm-related conduct. R. at 2-3, 6.

Further, research on reoffending reinforces why time and subsequent conduct cannot simply be ignored. Studies show that the risk of rearrest generally declines as a person goes longer without another offense, and that the relevance of a past record varies with the earlier offense and the person's age. Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 *Criminology* 327, 327-28 (2009). Because the risks a person may pose can change over time, the consideration of a person's predicate offense and later behavior cannot be overlooked in assessing the danger of misusing a firearm.

Therefore, in applying a categorical framework to the history and tradition analysis under 922 (g)(1), "it is difficult to see the justification for disarming a 60-year-old who was convicted of a crime of violence at age 20, and was not punished capitally or with life in prison (classes that present no issue for an arms disability), but instead was released at age 40, and has stayed clean for 20 years." C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 *Harv. J.L. & Pub. Pol'y* 695, 735 (2009). The passage of time does not automatically restore a right to possess arms, but it can change what an old conviction tells a court about the person before it. A rule that bars review gives the conviction the same force at age sixty that it had at age twenty, without permitting that question to be examined.

Branders' case would surpass even the dilemma that Marshall describes if this Court applies a categorical approach. Like Marshall's comparison, Branders' conviction is decades old, and she was not punished with capital punishment or life in prison. Branders has had no other criminal history in twenty-five years, and presents no current issue for an arms disability. Nothing about Branders' felony label suggests that she, as an individual, would misuse a weapon.

This Court should therefore reject a categorical rule that permanently disarms individuals without regard to the nature of their conduct, the time that has elapsed, or their rehabilitation, and should hold that as-applied challenges to § 922(g)(1) remain available.

II. § 922(g)(1) IS UNCONSTITUTIONAL AS APPLIED TO BRANDERS BECAUSE NO HISTORICAL TRADITION SUPPORTS PERMANENTLY DISARMING A PERSON BASED ON A SINGLE, TWENTY-FIVE-YEAR-OLD CONVICTION FOR CHILD NEGLECT.

The United States Court of Appeals for the Fourteenth Circuit erred in reversing the District Court’s dismissal of Branders’ indictment because her twenty-five-year-old conviction for felony child neglect does not establish that she is a credible threat to the safety of others. Under *Bruen*, the Government must affirmatively prove that the challenged regulation is consistent with our Nation’s historical tradition of firearm regulation. Here, the Fourteenth Circuit treated Branders’ status as a felon as sufficient to justify her permanent disarmament, without considering whether her individual circumstances demonstrated that she posed a credible threat to others. R. at 10. Branders’ conviction resulted from nonviolent negligence, occurred over twenty-five years before her firearm possession, and was not related to violence or any possession of firearms. Her conviction therefore does not establish the type of continuing danger that would justify permanently depriving her of her Second Amendment rights.

A. The Government Cannot Identify a Founding-Era Tradition of Disarming People for Conduct Analogous to Branders’ Offense.

The Government also cannot satisfy its burden under *Bruen* and *Rahimi* because it cannot identify a well-established and representative historical analogue supporting Branders’ permanent disarmament. Under *Bruen*, once the Second Amendment’s plain text covers an individual’s conduct, the Government must affirmatively demonstrate that the challenged restriction is consistent with the Nation’s historical tradition of firearm regulation. *Bruen*, 597 U.S. at 24. The historical analogue must be relevantly similar in both “how” and “why” it burdens the right to armed self-defense. *Id.* at 29; *Rahimi*, 602 U.S. at 692.

Because as-applied review is available, the Government must identify a “tradition of disarming someone with a criminal history analogous to” the defendant’s own. *Diaz*, 116 F.4th at 467. The relevant question under *Bruen* and *Diaz* is not whether the Government has historically disarmed some people who were considered dangerous, but whether the Nation’s historical tradition supports permanent disarmament as a consequence for individuals who negligently failed to supervise a child in their care. It did not.

Historically, where a parent failed to care for a child, the response was civil. Massachusetts authorized magistrates to remove children from parents who failed to “train up” their children properly beginning in 1682, but did not seek to criminally punish the guardian. John E.B. Myers, *A Short History of Child Protection in America*, 42 Fam. L.Q. 449, 450 (2008). Early American law likewise addressed children in need by placing them in apprenticeships or institutions, rather than addressing the caregiver. Mason P. Thomas, Jr., *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. Rev. 293, 295-297 (1972). Neither remedy imposed criminal punishment, and neither imposed disarmament. Rather, criminal prosecution reached parents only for intentional cruelty, such as “wanton and needless cruelty” or “inhuman beating.” Myers, *supra*, at 450 (2008).

In 1874, the case of Mary Ellen Wilson, a ten-year-old girl who had been severely beaten with a whip and scissors, exposed the absence of an established legal framework specifically protecting children from abuse and neglect. Lois A. Weithorn, *Protecting Children From Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes*, 53 Hastings L.J. 1, 48 (2001). Because no comparable child protection system yet existed, a charity worker and her husband advocated for the Society for the Prevention of Cruelty to Animals to secure Mary Ellen’s removal from the home. *Id.* As Judge Pinckney observed, “there were few laws, if

any, related to child neglect, at the time of the founders,” and “[a]t 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 10-11 (Pinckney, J., dissenting).

History therefore confirms that no comparable tradition of firearm regulation could have targeted Branders, because the conduct underlying her conviction did not carry the same criminal significance. Had Branders’ conduct occurred at the founding, it would have gone entirely unpunished because the law did not yet reach it. The Government’s historical analogy therefore fails at the threshold; it cannot justify Branders’ permanent disarmament by reference to a historical category that would never have reached her underlying conduct. History and tradition cannot be used to disarm Branders for conduct that history and tradition would have exonerated until 1875.

The Circuits that permit as-applied review confirm that the absence of a founding-era analogue for the predicate offense defeats the Government’s burden. *See, e.g., Range*, 124 F.4th at 231-32; *Cockerham*, 162 F.4th at 504; *Hembree*, 165 F.4th at 915-18. In *Diaz*, the Government carried its burden only because it identified a direct founding-era analogue, which reflected “a historical tradition of severely punishing people...who had been convicted of theft,” including by death and forfeiture of the offender’s estate. 116 F.4th at 468-69. Because the founding generation imposed those severe and permanent consequences on thieves, the Fifth Circuit concluded that permanently disarming a person convicted of an analogous theft offense was consistent with the Nation’s historical tradition. *Id.* The analogue succeeded because it matched both the nature of the defendant’s conduct and the severity of the historical response to it. *Id.*

As shown above, the historical response to a caregiver's failure to care for a child was to protect the child through removal, apprenticeship, or placement; the caregiver did not face estate forfeiture, death, or any criminal consequence. *See Myers, supra*, at 451. The Government can make no comparable showing here because no founding-era analogue disarmed people convicted of a crime of omission, such as child neglect. The analogue that sustained disarmament in *Diaz* therefore has no parallel in Branders' case.

In *Range*, by contrast, the Government failed. The Government pointed out that "founding-era practice" was to punish some "felony offenses with death." 124 F.4th at 231. The Third Circuit held that this tradition did not justify disarming Range, because his offense, making a false statement to obtain food stamps, "may be more analogous" to offenses "punishable by a term of imprisonment." *Id.* at 231.

Branders' offense, however, falls far outside any tradition of severe punishment. Just as the founding generation's harsh punishment of other felonies could not justify disarming Range for an offense historically punished only by imprisonment, it cannot justify disarming Branders for conduct the founding generation addressed through civil measures designed to protect children.

In *Cockerham*, the Fifth Circuit rejected the Government's historical justification for disarming a defendant convicted of failing to pay child support, because the founding generation treated debtors differently from those whose crimes warranted permanent consequences. 162 F.4th at 504. A debtor faced imprisonment that ended upon repayment, not a lifelong forfeiture of rights. *Id.* Just as the *Cockerham* analogues sought repayment, historical analogues to Branders' offense were directed at the child's welfare, not at permanently punishing the

caregiver. Like the founding-era treatment of debtors in *Cockerham*, the historical response to a caregiver's failure was remedial.

Branders' conviction does not establish that she falls within the historical tradition of individuals who may be permanently disarmed. The Government may argue that Branders' conviction was classified as a felony and was therefore sufficiently serious to justify permanent disarmament. However, the historical inquiry cannot end with the classification assigned by modern legislation. It must consider the nature of the underlying conduct and whether the person resembles the individuals historically subject to firearm restrictions. The district court found that her offense "was the result of negligence rather than malice." R. at 6. In *Williams*, the defendant robbed two people at gunpoint and had an attempted-murder conviction, and the Sixth Circuit held that courts must assess dangerousness in light of the person's actual circumstances. 113 F.4th at 662-63. Branders' conviction was not a violent felony, it was not intentional, did not involve a firearm, and does not establish that she is presently dangerous.

In *Rahimi*, this Court held that "when an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Rahimi*, 602 U.S. at 698. That principle rested on surety laws, which were directed at individuals shown to pose a specific threat of violence, and on "going armed" laws, which punished those who had armed themselves to terrify others. *Id.* at 695-98. The restriction in *Rahimi* was directed at an individual who had been found to pose a particularized threat to another person. Branders, by contrast, has never been found to pose a similar threat.

Although Judge Pinckney acknowledged that surety laws "provide some analogue," R. at 11 (Pinckney, J., dissenting), the analogy fails on its own terms. Branders' conviction arose from a failure of supervision, not from any threat of violence against anyone. The dangerousness

tradition *Rahimi* recognized therefore does not reach her offense. Whether the Government invokes founding-era felony punishment or the dangerousness tradition recognized in *Rahimi*, no historical analogue reaches conduct like Branders'. As Judge Pinckney concluded, "I find it unlikely that neglect would have resulted in permanent disarmament." R. at 11 (Pinckney, J., dissenting).

Thus, the Government's argument fails because the historical tradition underlying the Second Amendment supports disarming individuals who pose a threat of violence, not permanently disarming individuals based solely on a nonviolent felony conviction. Branders does not fall within the historical category of individuals who may be constitutionally disarmed because her conviction arises from an act of omission, and does not demonstrate that she poses a continuing threat to the safety of others.

B. Permanently Disarming Branders Based Solely on Her Decades-Old Conviction Impermissibly Burdens Her Inherent Right of Self-Defense.

Applying § 922(g)(1) to Branders also imposes a substantial burden on the innate Second Amendment right recognized in *District of Columbia v. Heller*. The Second Amendment protects an individual's right to possess a firearm for the traditionally lawful purpose of self-defense, particularly within the home. *Heller*, 554 U.S. (2008). Branders possessed the handgun for precisely that purpose, and obtained the firearm after becoming concerned about her son's increasingly threatening behavior while he was living in her home. R at. 4. The record does not indicate that Branders intended to use the firearm for any unlawful purpose, rather, Branders suspected that Nelson used or sold drugs and found some of his friends particularly frightening. *Id.*

The Government nevertheless seeks to permanently prohibit Branders from possessing a firearm based solely on a conviction that occurred over twenty-five years earlier. Such a

restriction fails to account for the substantial distinction between Branders' past conduct and her present exercise of the Second Amendment right. Branders' decades-old conviction did not involve a firearm, violence, or an intentional threat to another person, and the record contains no evidence that she has engaged in violent or firearm-related conduct since completing her sentence.

Permitting § 922(g)(1) to permanently disarm Branders under these circumstances would effectively make her Second Amendment rights depend entirely on the existence of a decades-old felony conviction, regardless of the nature of the offense or whether that conviction demonstrates any continuing danger. The Second Amendment's protection of individual self-defense cannot be reduced to a permanent prohibition based solely on a historical conviction where the Government has not established that the individual falls within the Nation's historical tradition of persons who may be disarmed.

Branders therefore should not be permanently deprived of her right to possess a firearm for self-defense where the Government has failed to establish that her particular circumstances place her within the historical category of individuals who may constitutionally be disarmed.

C. Branders' Twenty-Five-Year-Old, Nonviolent Conviction Does Not Establish That She Poses a Credible Threat to the Safety of Others; Thus, She Should Not Be Denied the Opportunity to Assert Her Constitutional Rights.

Nothing in the record suggests that Branders currently poses a danger to society sufficient to justify permanently depriving her of her Second Amendment rights. In *District of Columbia v. Heller*, this Court recognized that the Second Amendment protects an individual right to possess firearms for lawful purposes, including self-defense. *See Heller*, 554 U.S. (2008). Although *Heller* acknowledged that the right is not unlimited, *United States v. Rahimi* clarified that the Government may disarm individuals who pose a credible threat to others' physical safety. *See*

also Rahimi, 602 U.S. (2024). Here, it is clear that Branders did not pose a credible threat to the general public, as she only possessed the weapon to ensure her personal safety from a reasonable fear of harm from her delinquent son, who resided with her at the time the weapon was discovered.

Branders' sole felony conviction resulted from a tragic incident involving child neglect. The conviction did not involve intentional violence, the use of a firearm, or an attempt to threaten or harm another person. Although the consequences of the incident were serious, the nature of the offense does not demonstrate that Branders has a continuing propensity for violence, as there have been no subsequent convictions of Branders after the initial incident instigated by her son. The District Court recognized this distinction when it found that Branders' offense involved negligence rather than malice or purposeful dangerous conduct. R. at 6. The Government cannot rely on the tragic result of a single negligent act to establish that Branders remains dangerous more than two decades later.

The age of Branders' conviction further weakens the Government's argument for permanent disarmament. Branders was convicted in 2001 and completed her suspended sentence and probation without issue. R. at 3. Since then, she moved to Newcoastland, became involved in charitable work, volunteered at a food bank, and helped stock supplies for local elementary schools. *Id.* Although she recieved a misdemeanor reckless-driving conviction, she has not been convicted of a violent offense, a firearm-related offense, or any other felony. *Id.* These facts do not establish that Branders presents a continuing threat to the public, which is what is clearly required by the history and tradition of the Second Amendment.

Branders' conduct when she possessed the firearm also demonstrates that she was not using it to threaten or harm others. Branders obtained the handgun for protection in her own

home after expressing concern about her son and the individuals who came in and out of the residence. R. at 3. She kept the firearm in a locked drawer and stored the ammunition separately. R. at 3-4. When DEA agents arrived, she cooperated with the search and explained that the firearm had been given to her. *Id.* The record contains no allegation that Branders brandished the firearm, threatened anyone, or used it in connection with criminal activity.

This case is therefore distinguishable from *Rahimi*, where the defendant had been subject to a domestic-violence restraining order supported by allegations of repeated assaults, threats, and shootings. *Rahimi* at 687. The restriction in *Rahimi* was directed at an individual who had been found to pose a particularized threat to another person. Branders, by contrast, has never been found to pose a similar threat. *Id.* Her possession was for lawful self-defense, and her decades-old conviction does not establish present dangerousness or a continuous pattern of violence. Accordingly, § 922(g)(1) cannot constitutionally be applied to Branders merely because she falls within the Government's broad statutory definition of a felon when the history and tradition behind the Second Amendment dictates otherwise. The Constitution of the United States is the supreme law of the land, and conflicting state laws must yield to its protections.

CONCLUSION

For the reasons stated herein, the Petitioner respectfully requests that the Court reverse the judgment of the United States Court of Appeals for the Fourteenth Circuit.

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