

In the Supreme Court of the United States

TERRY BRANDERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR RESPONDENT

Team SA
Counsel for Respondent

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QUESTIONS PRESENTED

- I. Whether 18 U.S.C. § 922(g)(1), the federal statute that prohibits a person convicted of a crime punishable by imprisonment for a term exceeding one year, applies to all felons.
- II. Whether 18 U.S.C. § 922(g)(1), as applied to a felon convicted of child neglect resulting in death, is constitutional under the Second Amendment.

STATEMENT OF THE CASE

1. Factual Background

This case is about the United States of America attempting to protect the sanctity of the Second Amendment against those who cannot accept the legal consequences of their actions. Terry Branders (“Ms. Branders”) was convicted of a felony and sentenced in March, 2001. R. at 2-3. Ms. Branders ran an unlicensed daycare. R. at 3. Parents entrusted their children with Ms. Branders, unaware that her daycare was unlicensed. *See* R. at 2-3. Ms. Branders had her eighteen year old son, Nelson Branders (“Nelson”), drive the children from their houses to the daycare and back. R. at 2. One night, Nelson, exhausted and barely awake, under Ms. Branders’s direction, picked up twelve young children to drive to the daycare. R. at 2. Without a minutia of care, Nelson dropped the children off at Ms. Branders’s daycare. R. at 2. He drove to his apartment, parked the van, and went to sleep. R. at 2. Nelson left Kenneth Drew (“Kenneth”), an 11-month-old infant, in the van. R. at 2.

Two hours after the drop-off, Ms. Branders had still not noticed that Kenneth was missing. R. at 2. Eventually, Ms. Branders checked on Kenneth’s crib and noticed that he wasn’t there. R. at 2. Before calling 911, Ms. Branders wasted an hour trying to get ahold of Nelson and Kenneth’s mother. R. at 2. Unfortunately, by the time the police located Kenneth in Nelson’s van, Kenneth had sustained major injuries resulting in hospitalization. R. at 2. Kenneth ultimately died due to the severe heat-related injuries from his prolonged time in the van. R. at 2. Ms. Branders was convicted of felony neglect of a child under Va. Code § 18.2-371.1. R. at 2. She received a two-year suspended sentence with probation. R. at 3. Ms. Branders was also convicted of a misdemeanor for operating her daycare without a license. R. at 2-3. Nelson was charged and sentenced to four years in prison. R. at 2-3.

Ms. Branders now lives in Newcoastland with her son Nelson. R. at 3. Nelson is being investigated by the Drug Enforcement Administration (“DEA”) for possession and disitrubtuon of drugs. R. at 3. During her time in Newcoastland she has been convicted of a reckless driving misdemeanor. R. at 3.

Ms. Branders possesses a firearm which she claims she got from a friend. R. at 3. Ms. Branders was approached by the DEA in June 2024 regarding Nelson’s activities. R. at 3-4. The DEA searched her house and found Ms. Branders’s firearm. R. at 4. Ms. Branders was arrested and charged under U.S.C. § 922(g)(1) on July 3, 2024, which resulted in the proceedings below. R. at 4.

2. Proceedings Below

The United States of America filed suit against Ms. Branders for violating 18 U.S.C. § 922(g)(1) by possessing a firearm as a convicted felon. R. at 1. On the Defendant’s motion to dismiss the indictment, the United States District Court for the Eastern District of Newcoastland granted the motion to dismiss holding that § 922(g)(1) was unconstitutional as applied to Ms. Branders because she did not purposefully engage in dangerous behavior. R. at 1, 6. On June 10, 2026, The United States Court of Appeals for the Fourteenth Circuit reversed, emphasizing that felon-in-possession prohibitions are presumptively lawful. R. at 8. The court of appeals held that the district court failed to engage in the proper historical analysis under *New York Rifle and Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). R. at 8, 9. In his dissent, Judge Pinkney noted that there was no historical analogue to felon disarmament for child neglect. R. at 10-11. The Supreme Court of the United States granted Ms. Branders’s Petition for Writ of Certiorari for the October 2026 term. R. at 13.

SUMMARY OF THE ARGUMENT

Today, this Court is asked to change a historically grounded felon-in-possession regulation into an endless series of case-by-case inquiries the Second Amendment does not require.

I. Felons are precluded from asserting as-applied challenges to § 922(g)(1). Time and time again, this Court has affirmed that longstanding prohibitions on firearm ownership by felons are presumptively lawful. Assuming that this Court's repeated affirmations are insufficient to categorically preclude as-applied challenges to § 922(g)(1), the *Bruen* test independently justifies upholding categorical prohibitions. The *Bruen* test requires that the conduct being regulated fall under the plain text of the Second Amendment and that the modern-day firearm regulation principally complies with this nation's historical tradition. Section 922(g)(1) regulates firearm ownership; therefore, it clearly satisfies the first prong.

The statute also satisfies the second prong of the *Bruen* test because there are ample examples in pre- and founding-era history indicating that felonious, dangerous, and non-law-abiding citizens have been categorically disarmed to preserve public safety.

Finally, assuming that the *Bruen* test does not independently justify upholding categorical prohibitions on firearm ownership, the separation of powers principle does. Congress has reserved individualized analyses of dangerousness for itself and the Executive branch. Courts lack the expertise or delegated authority to make such decisions. Any scheme to do so is unworkable.

II. Assuming an as-applied challenge exists, the government correctly applied § 922(g)(1) to Ms. Branders, a dangerous felon. First, Ms. Branders's status as a felon categorically prohibits her from possessing a firearm, regardless of the recency or dangerousness of her predicate felony. Ms. Branders is no longer a law-abiding, responsible citizen. She has not

held that title for over 20 years. Additionally policy dictates those who disrespect legal norms are not entitled to the same rights as law-abiding citizens. Ms. Branders disrespected legal norms which allows the government to prohibit her from owning firearms.

Second, even if this Court rejects a categorical felon-in-possession law, Ms. Branders should remain disarmed according to an individualized assessment of danger. History supports the disarmament of dangerous individuals who threaten public safety. Ms. Branders's willful omission resulted in the death of an infant, thus, making her a dangerous felon. Historical tradition includes both harsher punishments as well as comparable counterparts to modern-day permanent disarmament. Therefore, as applied to Ms. Branders, § 922(g)(1) is constitutional.

ARGUMENT

The government did not violate the Second Amendment when it precluded Ms. Branders from owning a firearm. The Second Amendment, applied to the States through the Fourteenth Amendment, provides the “right of the people to keep and bear arms.” U.S. Const. amend. II. However, an individual's right to keep and bear arms for self-defense is “not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). This Court has repeatedly affirmed that “longstanding prohibitions on the possession of firearms by felons” are presumptively lawful. *Id.* at 626-27; *United States v. Rahimi*, 602 U.S. 680, 699 (2024); *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010). However, even if this is not enough, § 922(g)(1) is constitutional because it meets the two-prong *Bruen* test. See *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). First, “when the Second Amendment's plain text covers an individual's conduct...the government must demonstrate the regulation is consistent with the nation's historical tradition of firearm regulation.” *Id.* Several circuits (including the circuit court in this case) agree that felons fit the category of “the people” protected by the Second Amendment, thus, meeting the first

prong of the *Bruen* test.¹ R. at 9. The second prong of the *Bruen* test is satisfied because the nation's historical tradition supports the categorical disarmament of felons. *See Heller*, 554 U.S. at 627 n.26; *Rahimi*, 602 U.S. at 682. Thus, an as-applied challenge is not available to felons under § 922(g)(1). Even if the *Bruen* test does not justify categorical disarmament of felons, the categorical rule is constitutional because the restoration of firearm rights through individualized assessments of dangerousness is a power reserved for Congress and the Executive. Courts conducting such case-by-case assessments would encroach on these functions and violate the separation of powers.

Additionally, even if Ms. Branders is permitted to bring an as-applied challenge, 18 U.S.C. § 922(g)(1) is constitutional. Ms. Branders is a felon. This status itself precludes her from owning firearms. Even if her status as a felon does not preclude her from owning firearms, this nation's historical tradition of disarming dangerous individuals does. Therefore, Ms. Branders does not have a constitutional claim against 18 U.S.C. § 922(g)(1).

I. Felons are precluded from asserting an as-applied challenge to 18 U.S.C. § 922(g)(1).

Felons cannot assert as-applied challenges to 18 U.S.C. § 922(g)(1) because this Court has repeatedly affirmed that longstanding felon-in-possession prohibitions are presumptively lawful. But even if the Court rejects this presumption of lawfulness, the two-prong test set out in *Bruen*, requiring modern-day firearm regulations to have a founding-era analogue, is satisfied by the felon-in-possession federal statute. *See Bruen*, 597 U.S. at 17. Finally, congressional action makes it clear that executive or legislative branches reserve the right to make individualized evaluations of dangerousness. Courts have neither the delegated authority nor the expertise to

¹ *United States v. Duarte*, 137 F.4th 743, 754-55 (9th Cir. 2025) (en banc); *Range v. Att'y Gen.*, 124 F.4th 218, 228 (3d Cir. 2024) (en banc); *Zherka v. Bondi*, 140 F.4th 68, 77 (2d Cir. 2025); *United States v. Kimble*, 142 F.4th 308, 311 (5th Cir. 2025).

make such nuanced decisions. In fact, judicial overreach into this area will violate the principle of separation of powers.

A. This Court's precedent supports the disarmament of felons.

In its Second Amendment jurisprudence, this Court has made it clear, in no uncertain terms, that felon-in-possession prohibitions enjoy a presumption of lawfulness.

The Second Amendment provides that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. In defining the scope and parameters of the Second Amendment, this Court concluded that an individual’s right to keep and bear arms for self-defense is “not unlimited.” *Heller*, 554 U.S. at 595. In *Heller*, this Court emphatically cautioned subsequent legislators, litigators, and academics against taking its opinion “to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Id.* at 626-27. In closing out the majority opinion, Justice Scalia stated that “whatever else [the opinion] leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Id.* at 635. While leaving further contours of Second Amendment jurisprudence to future cases, the *Heller* Court positively concluded that the Second Amendment is subject to longstanding prohibitions on firearm possession by non-law-abiding felons. *Id.* at 626-27, 635. Consequently, Congress has continued to restrict the possession, receipt, and transportation of firearms by felons. *See* 18 U.S.C. § 922(g)(1).

No contrary authoritative statement has been issued by this Court since. Rather, each of the Supreme Court's later decisions reaffirmed *Heller's* understanding of a confined Second Amendment. In *McDonald v. City of Chicago*, this Court repeated the *Heller* Court's “assurances” that nothing in its holding casts doubt on “such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons.’” *McDonald*, 561 U.S. at 786.

In *Bruen*, this Court did not directly reference § 922(g)(1) or felon-in-possession laws. However, it did state that its holding was “consistent with” and “[in] keeping with” *Heller*. *Bruen*, 597 U.S. at 9, 17; *United States v. Hunt*, 123 F.4th 697, 703-04 (4th Cir. 2024). The *Bruen* decision also reiterated that the Second Amendment only protects “the right of an ordinary, law abiding-citizen.” *Id.* at 9. A felon is not a law-abiding citizen, regardless of how long ago he was convicted and how violent his crime was. *See Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017). And ultimately, a felon cannot return to the status of a responsible, law-abiding citizen for Second Amendment purposes, unless the felony for which he was convicted is pardoned, or the law underlying the conviction is deemed unconstitutional. *Hunt*, 123 F.4th at 703.

Most recently, this Court again affirmed *Heller* in *Rahimi*, asserting that “our opinion [in *Heller*] stated that many such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’” are “presumptively lawful.” *Rahimi*, 602 U.S. at 699.

The court of appeals accurately reads this Court’s Second Amendment jurisprudence and recognizes that restrictions on this right are “presumptively lawful regulatory measures.” *Heller*, 554 U.S. at 627 n.26; *R.* at 9. Consequently, under the American system of stare decisis this Court should uphold *Heller* and affirm the court of appeals.

B. Historical tradition supports the categorical disarmament of those who are not law-abiding citizens.

Even if this Court’s clear and unqualified prohibitions on firearm ownership by felons are not enough, felons are still precluded from asserting as-applied challenges to § 922(g)(1). Historical tradition supports the categorical disarmament of those individuals that fail to abide by the law.

The Second Amendment provides that the right to keep and bear arms “shall not be infringed.” U.S. Const. amend. II. Like the First Amendment, the Second Amendment is not without limits. *Heller*, 554 U.S. at 595. To assess the constitutionality of government-imposed restrictions on the right to keep and bear arms, this Court in *Bruen*, adopted a two-prong test. *Bruen*, 597 U.S. at 17. The first prong considers whether the Second Amendment textually covers the disputed conduct. *Id.* at 24. That is, whether the individual challenging the restriction was acting within the ordinary meaning of “the right to keep and bear arms.” U.S. Const. amend. II. In this case, the first prong is inevitably met because § 922(g)(1) makes it unlawful for any person “convicted in any court of, a crime punishable by imprisonment for a term exceeding one year” to possess a firearm. 18 U.S.C. § 922(g)(1).

To satisfy the second prong, the government must justify its restrictions by showing that they align with the country’s history of firearm regulation. *Bruen*, 597 U.S. at 24. Traditionally, the judiciary looks to history when demarcating limits of constitutional claims, including those relating to the First and Sixth Amendments. *Id.* at 24-25. There is no reason why the scope of the Second Amendment would be entitled to a different inquiry.

This Court has made it clear that just as the Second Amendment is not limited only to those arms that existed at the time of the founding, limitations on the exercise of Second Amendment rights are not limited to regulations found in 1791. *Rahimi*, 602 U.S. at 691-92. Instead, the correct analysis requires the court to compare challenged regulations with the principles underlying the historical regulatory tradition. *Id.* A court must determine *why* and *how* the disputed firearm regulation burdens the Second Amendment rights of individuals. *Id.* The government need not establish a “historical twin” to the disputed modern firearm regulation. *Bruen*, 597 U.S. at 30. Instead, a historical analogue will suffice. *Id.*

1. History shows that legislatures categorically disarmed groups that posed a threat to society.

Pre-enactment history of the Second Amendment is important because “it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right.” *Heller*, 554 U.S. at 592. The Amendment did not lay down a novel principle, instead it formalized a right inherited from the nation’s English ancestors. *Bruen*, 597 U.S. at 20. Therefore, founding-era customs and laws play a central role in helping determine the intent behind the Second Amendment and its expected contours. History shows that the right to bear and keep arms included categorical restrictions on groups of people who did not abide by or were unwilling to obey the law. *United States v. Jackson*, 110 F.4th 1120, 1126 (8th Cir. 2024); *Hunt*, 123 F.4th at 705-06. There are two schools of thought behind this. First, that legislatures have long possessed the discretion to disarm individuals that deviated from legal norms, to address firearm misuse. *Hunt*, 123 F.4th at 706; *Jackson*, 110 F.4th at 1127. Second, that legislatures have long possessed the discretion to disarm individuals who have deviated from the law, to address the risk of dangerousness that attaches to them. *Hunt*, 123 F.4th at 706; *Jackson*, 110 F.4th at 1127.

Under either school of thought, felons are precluded from asserting as-applied challenges to § 922(g)(1). First, felons have deviated from legal norms and are therefore more likely to misuse firearms. *See United States v. Yancey*, 621 F.3d 681, 683 (7th Cir. 2010); *United States v. Williams*, 616 F.3d 685, 693 (7th Cir. 2010). Second, by definition, felons are convicted of crimes punishable by imprisonment, a sanction imposed precisely to separate dangerous individuals from society. *See Barrett v. United States*, 423 U.S. 212, 218 (1976) (noting that in enacting the Gun Control Act of 1968, (which includes § 922(g)(1)) Congress “sought broadly to

keep firearms away from the persons Congress classified as potentially irresponsible and dangerous”).

The historical record provides ample evidence of historical analogues to § 922(g)(1). The government disarmed non-Anglican Protestants who were unwilling to participate in the Church of England. *Jackson*, 110 F.4th at 1126. Later, Catholics who refused to abandon their faith were also forbidden from owning firearms. *Id.* In colonial times, state governments made it impermissible for Native Americans to own and keep arms. *Id.* Additionally, religious minorities in Maryland, Virginia, and Pennsylvania were permanently disarmed. *Id.* During the Revolutionary War, people in North Carolina, Rhode Island, Massachusetts, and Pennsylvania were forbidden from owning firearms if they refused to take an oath of loyalty. *Id.* Early legislatures also required that people who committed nonviolent hunting crimes forfeit their firearms. *Id.* at 1127.

A multitude of laws regulating firearm ownership by categories of people were in place during the founding-era as well. During the American Revolution, many states required the disarmament of people refusing to take an oath of allegiance to their state or the United States. The rationale for confiscating firearms was to neutralize the threat posed by armed Loyalists to the Revolution. The security of the community trumped a citizen’s personal right to own firearms. Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 Fordham L. Rev. 487, 506 (2004). In the state of Pennsylvania, if a person refused to affirm his loyalty to the state, he was required to deliver his firearms to state agents and was prohibited from having any firearms on his person or in his house. *Id.* In Massachusetts, the legislature required every male, over 16 years of age, to promise loyalty to the united colonies of America. The law further stated that “such [p]ersons as who are notoriously

disaffected to the Cause of America, or who refuse to associate to defend by [a]rms the United American Colonies,” would be disarmed by the “strictest [s]earch.” *Id.* at 507. Here again, the state’s interest in maintaining public safety dominated the individual right to bear arms. *Id.* at 507.

What is most notable is that states upheld those laws without requiring a felony-by-felony determination of dangerousness. *See Jackson*, 110 F.4th at 1127-28. In fact, in the eighteenth century, traditional common law felonies included murder, rape, robbery, manslaughter, arson, burglary, sodomy, mayhem, and larceny. This category of offenses was punishable by death. Over time, this list of felonies expanded to encompass around 160 crimes, including nonviolent, “white collar” crimes like counterfeiting currency and embezzlement. *Zherka v. Bondi*, 140 F.4th 68, 81 (2d Cir. 2025). This indicates that historically, American colonies have not differentiated between violent and nonviolent felonies, nor have they employed a felony-by-felony determination of dangerousness to punish criminals.

2. History shows that the right to bear arms is dominated by the government’s public safety concerns.

This Court requires the government to identify a historical analogue whose underlying principles, the how and why, match the modern firearm regulation. *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 691-92. As discussed above, the “how” is evident in the categorical exception of groups that were deemed dangerous or deviant. The “why” is evident in the legislatures’ motivation to keep the community safe.

“[T]he Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others.” *Rahimi*, 602 U.S. at 693. The pre- and founding-era disarmament laws discussed in I.B.1 show that the right to bear arms was historically understood as tied to a citizen’s duty to society. In a well-regulated community, the government can and did

confiscate firearms from those who were disrupting society. Cornell & DeDino, *supra*, at 508. Legislatures typically prohibited firearm ownership by categories of people based on conclusions that the whole category presented a risk to society if armed. *Jackson*, 110 F.4th at 1128. In fact, there has been no demonstrated requirement for individualized determinations of dangerousness for each person within a prohibited category. *Id.* Not all Native Americans, non-Anglican Protestants, Catholics, or those who declined to take an oath of loyalty were violent or dangerous people. *See Id.* However, the entire category of people was precluded from owning firearms based on a generalized conclusion that they were either non-law-abiding or posed an increased threat of dangerousness to society.

Though none of these categorical exclusions, especially race- and religion-based ones apply today, they reflect a historical tradition of significant government authority to preclude groups deemed dangerous or likely to deviate from legal norms from owning firearms.

A 2021 Bureau of Justice Statistics report, surveying 34 states, showed that 62% of persons released from state prisons² in 2012 were arrested again within 3 years, and 71% were arrested again within 5 years. U.S. Bureau of Justice Stat., *Recidivism of Prisoners Released in 34 States in 2012: A 5-Year Follow-Up Period (2012–2017)* (2021). In terms of sheer numbers, in 2012, across 34 states, nearly 0.4 million persons released from state prisons had approximately 1.1 million arrests during the 5-year follow-up period. *Id.*

A 2022 federal level report by the United States Sentencing Commission shows that 49% of federal offenders released in 2010 were rearrested for a new crime or a violation of probation conditions within the following 8-year period. U.S. Sent’g Comm’n, *Recidivism and Federal Sentencing Policy* (2022).

² State prison releases track “time served” which is a good proxy for felons.

The core takeaway from the data is clear: felons exhibit a markedly high likelihood of reoffending after their initial conviction. Data on recidivism shows that felons pose an ongoing threat to public safety. Thus, the government is justified in disqualifying felons from owning firearms under § 922(g)(1).

C. An individualized assessment approach is not a workable standard.

Even if this Court's textual assurances that felon-in-possession restrictions are lawful and *Bruen's* historical showing of categorical disarmament were not enough, a felony-by-felony review of the application of § 922(g)(1) would be practically unworkable.

First, individualized assessments of dangerousness are bound to leave district level judges with never-ending obligations to review felony-by-felony challenges to § 922(g)(1). *Kanter v. Barr*, 919 F.3d 437, 444 (7th Cir. 2019) (citing *Binderup v. Att'y Gen.*, 836 F.3d 336, 380 (3d Cir. 2016)). Such a system is administratively infeasible and likely to be implemented in doctrinally inconsistent ways. *Kanter*, 919 F.3d at 444 (citing *Binderup*, 836 F.3d at 380). When applied to numerous variations in background and circumstances among felons, an individualized approach would present serious issues of fair warning and consistency. *Kanter*, 919 F.3d at 450; *see also Zherka*, 140 F.4th at 94-95. Unlike the state, courts do not have access to the resources to conduct investigations and accurately forecast which felons are more likely to misuse firearms in the future, putting the community at risk. *Kanter*, 919 F.3d at 450-51. The legislature, not the courts, is better equipped to make delicate public policy decisions concerning firearm safety. *Id.* at 451. The Court of Appeals for the Second Circuit aptly puts forth the unworkability of an individualized assessment regime:

“Were we to decide that nonviolent felons are exempt from Section 922(g)(1), we would have to decide what would qualify a felon as violent or nonviolent. Would the sentencing court for a count adjudicating a later prosecution under Section 922(g)(1) look only at the underlying felony conviction, or would it consider other, unadjudicated facts about the individual's background? If the court were to consider

the individual's background, which evidentiary standards would apply to prove those background facts and which background facts are relevant? If only the underlying felony conviction mattered, would the court look only at the elements of the crime to determine whether it qualifies as violent, or would it look at the facts of the underlying offense?"

Zherka, 140 F.4th at 94-95. Evidently, if a court was to determine that based on their background, a felon qualified as nonviolent, and therefore exempt from § 922(g)(1), unavoidable questions about fairness would arise as to other felons. *Id.* at 95.

In a very recent development, the Department of Justice ("DOJ") has begun processing applications under 18 U.S.C. § 925(c) to restore firearm rights to convicted felons. *Federal Firearm Rights Restoration*, U.S. Dep't of Just. (Aug. 17, 2026), <https://www.justice.gov/ffrr>. Historically, under § 925(c), an individual can apply to the Attorney General for relief from firearm disabilities by showing that he is no longer likely to be a danger to the public. 18 U.S.C. § 925(c); *United States v. Watson*, 171 F.4th 1012, 1025 (7th Cir. 2026). Thirty years ago, Congress abandoned this avenue by refusing to allocate funds to the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). *Watson*, 171 F.4th at 1025 (7th Cir. 2026); *Kanter*, 919 F.3d at 450. Congress found that individualized inquiries of dangerousness were time-intensive and inaccurately predicted that felons with restored gun rights would not commit firearm violations. *Watson*, 171 F.4th at 1025 (7th Cir. 2026); *Kanter*, 919 F.3d at 450. The fact that Congress drafted and approved § 925(c) to begin with shows that an individualized inquiry of dangerousness is "best performed by the Executive, which, unlike courts, is institutionally equipped for conducting a neutral, wide-ranging investigation." *United States v. Bean*, 537 U.S. 71, 77 (2002). Congress reserved the dangerousness inquiry for itself when it decided to withhold funding from ATF and pause reviewing § 925(c) applications. With the newly finalized rule, the DOJ has operationalized § 925(c) once again. Charles E. James, et al., *DOJ Finalizes Rule Restoring Federal Firearms Rights for Convicted Individuals*, Williams Mullen, (Aug. 20,

2026), <https://tinyurl.com/4t2f5h74>. This shows that Congress intends to gatekeep this authority and place it within the purview of the Executive, rather than delegate it to the courts. Courts do not possess the resources or the expertise to forecast whether a felon will prove to be a public danger after restoring his firearm rights. *Kanter*, 919 F.3d at 450-51. Consequently, courts should respect the separation of powers and should not overreach into executive or legislative function.

II. Assuming an as-applied challenge exists, the application of 18 U.S.C. § 922(g)(1) to Ms. Branders does not violate the Second Amendment.

As stated, felons are prohibited from bringing as-applied challenges under 18 U.S.C. § 922(g)(1). However, if such a challenge exists, the statute as applied to Ms. Branders does not violate the Second Amendment.

The Second Amendment provides the “right of the people to keep and bear arms.” U.S. Const. amend. II. However, “[l]ike most rights’ though ‘the right secured by the Second Amendment is not unlimited’” *Rahimi*, 602 U.S. at 690-91 (quoting *Heller*, 554 U.S. at 626). In *Bruen*, this Court determined that the Second Amendment was subject to “certain reasonable, well-defined restrictions.” *Bruen*, 597 U.S. at 70. In *Heller*, this Court categorized felon-in-possession bans as “presumptively lawful”. *Heller*, 554 U.S. at 626-27 n.26; see *Rahimi*, 602 U.S. at 682 (affirming *Heller*’s language that felons are a presumptively lawful restricted group). While *Heller* and *Rahimi* support categorical group prohibitions, *Bruen* established a two-prong test requiring the government to demonstrate consistency with the nation’s historical tradition of firearm regulation. See *Bruen*, 597 U.S. at 24.

In this case, Ms. Branders is part of a group recognized by this Court as one that is presumptively lawful to regulate. However, even if this Court rejects the categorical prohibition, Ms. Branders’s disarmament falls within the historical tradition of regulating the Second Amendment.

A. Ms. Branders is a felon; thus, the government may categorically prohibit her from possessing firearms.

Ms. Branders was convicted of a felony; thus, the government may lawfully revoke her right to “keep and bear arms” through § 922(g)(1). U.S. Const. amend. II. This Court recognizes that Second Amendment rights were “never thought to sweep indiscriminately.” *Rahimi*, 602 U.S. at 691. This Court has also consistently held that limiting felons’ right to firearms is presumptively lawful. *See Heller*, 554 U.S. at 627 n.26; *Rahimi*, 602 U.S. at 682. Because the categorical prohibition depends on the individual’s status as a felon, the person must first lose their status as a law-abiding citizen. *See Jackson*, 110 F.4th at 1127. Courts have determined that law-abiding citizens lose their status as such when they are convicted of a felony, regardless of the dangerousness and recency of the felony. *See Hamilton*, 848 F.3d at 626; *Hunt*, 123 F.4th at 707; *Kimble*, 142 F.4th at 318. Additionally, when a person disrespects the legal norms of society, the government can limit their rights as well. *See Jackson*, 110 F.4th at 1127.

1. Ms. Branders’s felony status is not dependent on an individualized assessment of dangerousness.

This Court in *Rahimi* upheld “many such prohibitions on the possession of firearms by ‘felons...’ as ‘presumptively lawful.’” *Rahimi*, 602 U.S. at 699. Supreme Court precedent does not support a felony-by-felony analysis. *See Rahimi*, 602 U.S. at 699; *Jackson*, 110 F.4th at 1125. The only relevant consideration is a prior conviction that is “punishable by imprisonment for a term exceeding one year.” *Jackson*, 110 F.4th at 1127; *Kimble*, 142 F.4th at 318. A felony is a crime punishable by imprisonment for a term exceeding one year. 18 U.S.C. § 3559(a). Once a person is convicted of a felony, they lose their status as a “law-abiding, responsible citizen” *Hamilton*, 848 F.3d at 626. Unless pardoned, a felon cannot return to the category of a law-abiding, responsible citizen. *Hunt*, 123 F.4th at 703. “Evidence of

rehabilitation, likelihood of recidivism and passage of time are not bases for which a challenger might remain in the protected class of ‘law-abiding citizen.’” *Hamilton*, 848 F.3d at 626.

A conviction under Virginia Code § 18.2-371.1 entails imprisonment for a term exceeding one year. Any person “responsible for the care of a child under the age of 18 who by willful act or willful omission... causes or permits serious injury to the life or health of such child is guilty of a Class 4 Felony.” Va. Code § 18.2-371.1(A). “Willful act or willful omission” as defined by the statute includes a “home-based child care system” run “without obtaining a license such person knows is required.” Va. Code § 18.2-371.1(A). According to Virginia law, a class 4 felony is punishable by “a term of imprisonment of not less than two years nor more than 10 years.” Va. Code § 18.2-10.

Accordingly, Ms. Branders is a felon because she was convicted under § 18.2-371.1 of the Virginia Code. She ran a home-based daycare without first acquiring the license she knew she needed. R. at 2-3. As part of her duties at the daycare, Ms. Branders was responsible for the care of Kenneth, an 11-month-old infant. R. at 2. Ms. Branders caused serious injury to Kenneth’s life, resulting in his death. R. at 2. Because Ms. Branders meets the elements of this statute, a court convicted her of a class 4 felony that resulted in a suspended sentence of 2 years. Va. Code § 18.2-371.1(A); R. at 3. Ms. Branders is a felon because she meets the elements of the statute, not because of her dangerousness.

Following this Court’s precedent, several circuits have frequently rejected the idea of individualized assessments of danger. *See e.g., Kimble*, 142 F.4th at 318 (“that conclusion does not depend on an individualized assessment that [the felon] is dangerous.”) In the Tenth Circuit, the court prohibited a felon, convicted of bank fraud, from possessing a gun, regardless of the nonviolent nature of the predicate felony. *See Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir.

2025). In the Ninth Circuit, the predicate felonies included vandalism and drug related offenses. *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025). Despite the nonviolent nature of these felonies, the court upheld the application of § 922(g)(1) to all felons, including Duarte. *Id.* at 761. The Eleventh and Eighth Circuits have also found nonviolent drug related felonies to count as predicate offenses for the categorical ban to apply. *See United States v. Dubois*, 139 F.4th 887, 891 (11th Cir. 2025); *Jackson*, 110 F.4th at 1125. These circuits rely on precedents such as *Rahimi* and *Heller* which continue to emphasize the framework that a categorical ban on felons as group is lawful. *See Rahimi*, 602 U.S. at 699; *Heller*, 554 U.S. at 627 n.26

Ms. Branders falls into this categorical group of felons. Ms. Branders was convicted of felony neglect of a child under § 18.2-371.1. R. at 2. While her felony resulted in the endangerment and death of an infant, the dangerousness of the felony is not a consideration for firearm prohibition. R. at 2. Instead, Ms. Branders was convicted of a crime punishable by imprisonment for a term exceeding one year. R. at 2-3; Va. Code § 18.2-371.1. Thus, her status alone, regardless of the danger she posed, prohibits her from enjoying the same Second Amendment protections as non-felon, law-abiding citizens.

Moreover, the district court incorrectly focused on Ms. Branders's felony being over 20 years old. R. at 6. The recency of the felony is not a factor in determining law-abiding citizen status. *See Hamilton*, 848 F.3d at 627. Instead, the categorical ban on felons focuses on a person's status as a felon, rather than the passage of time since the felony. *Id.*; *Kimble*, 142 F.4th at 318. In fact, the circuits have continued to uphold this ban even with non-recent felonies. In the Tenth Circuit, the predicate felony was a bank fraud conviction from 2008. *See Vincent*, 127 F.4th at 1264. The Tenth Circuit did not discuss recency as a caveat. Instead, the court focused

on the categorical ban on felons owning firearms, as stated in *Heller* and reaffirmed in *Rahimi*. *Id.* at 1266.

In *Jackson*, the predicate felonies fell between 1996 and 2010. *United States v. Jackson*, 2022 U.S. Dist. LEXIS 164604, at *1 (D. Minn. 2022). Once again, the court of appeals did not discuss the recency of the predicate felonies, even though the court decided the § 922(g)(1) case over a decade later. *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024). The district court, in this case, claims that temporal limits play a role in § 922(g)(1) convictions, but they do not. R. at 6.

The passage of time since Ms. Branders felony does not restore Ms. Branders to the status of a law-abiding citizen. Ms. Branders was convicted of a felony and sentenced in 2001. R. at 2-3. She is no longer a law-abiding citizen. *See Hamilton*, 848 F.3d at 626. From the day of her conviction, she has carried the status of a felon and must bear the consequences. No one has pardoned Ms. Branders; thus, felon-in-possession restrictions still apply to her. *See Hunt*, 123 F.4th at 703 (discussing pardons as a way of returning an individual to the law-abiding citizen class).

2. Ms. Branders has violated the social contract.

Policy supports the disarmament of individuals who disrespect the social contract. Law-abiding citizens receive unregulated Second Amendment rights because they respect the legal norms put forth in society. *Jackson*, 110 F.4th at 1127. While people who disrespect legal norms, regardless of the dangerousness of the felony, have their Second Amendment rights to keep and bear arms revoked. *See Id.* When a person is convicted of a felony, they have by default disrespected the legal norms by not adhering to the laws. *See Id.* All felonious criminal behavior violates the basic terms of the social contract. *Zherka*, 140 F.4th at 94. Even with nonviolent

crimes, a felon demonstrates that “[he] lacks the ‘character of temperament necessary to be entrusted with a weapon’” *Id.* (quoting *Bruen*, 597 U.S. at 13 n.1).

Ms. Branders broke Virginia law by neglecting the children in her care resulting in a felony conviction under Virginia Code § 18.2-371.1. She violated the social contract and proved to lack the character or temperament needed to be entrusted with a firearm. This Court and several circuit courts have never performed a felon-by-felony dangerousness analysis before levying the prohibitions warranted under § 922(g)(1). There is no doctrinal reason to start now.

B. Even if this Court finds that a categorical ban for felons does not exist, disarming Ms. Branders is consistent with the historical tradition of the Second Amendment.

Even without a categorical prohibition, historical tradition of the Second Amendment warrants disarming Ms. Branders. *Bruen* adopted two metrics used in *Heller* and *McDonald* to determine whether the regulations on firearm ownership are appropriate. *Bruen*, 597 U.S. at 24, 29. This Court required an analysis of the “why and how” of the historical firearm regulations to determine the validity of the modern counterpart. *Bruen*, 597 U.S. at 20. First, the Court looks at “the why”, the motivation and purpose, for the historical regulation and whether it coincides with the motivation for the modern regulation. *Id.* Then, the Court determines “the how” by looking at whether the burden imposed is justified considering the historical analogue. *Id.*

Bruen requires the government to provide a “well established and representative historical analogue, not a historical twin.” *Id.* at 30. The analysis does not need to be a “dead ringer,” or “[be] identical to the founding era regimes.” *Id.* at 17; *Rahimi*, 602 U.S. at 698. Instead, it must align only with the principles underlying the historical tradition of firearm regulation. *Rahimi*, 602 U.S. at 693. According to this nation’s historical tradition, the prohibition applied to Ms. Branders under 18 U.S.C. § 922(g)(1) is constitutional.

1. Ms. Branders is a danger to the community and history demands firearm regulations for dangerous people.

Historically, legislatures have implemented firearm restrictions to protect the community against harm. The same motivation applies to the application of § 922(g)(1) to Ms. Branders. First, the historical motive to protect society from dangerous individuals may culminate from more than one historical regulation. *See Watson*, 171 F.4th at 1019; *Rahimi*, 602 U.S. at 698. Second, Ms. Branders is a dangerous individual that historical principles intended to regulate.

First, justification for modern regulations may combine more than one historical analogue. *Watson*, 171 F.4th at 1019. The dissent in the court of appeals in this case opined that there is not a similar historical statute criminalizing child neglect. R. at 10-11. However, *Bruen* does not require a historical twin, only that the modern regulation fits within the principles of disarmament under the Second Amendment. *Bruen*, 597 U.S. at 30; *Rahimi*, 602 U.S. at 693. While the justification cannot be highly general, the Court has provided examples of successful analogues. *See Rahimi*, 602 U.S. at 698 (utilizing historical surety and going armed laws as a historical analogue for restrictions on "individuals . . . threaten[ing] the physical safety of another."). Throughout the nations founding-era history, the government's ability to disarm those viewed as dangerous was an "undeniable throughline". *Kimble*, 142 F.4th at 315. The relevant historical analogue in this case is the regulation of dangerous people to protect the community at large.³

³ Among the courts that reject the categorical ban, each circuit, except the First and D.C. Circuits, recognize some variation of disarmament based on dangerousness as an acceptable historical analogue. *See e.g., Range v. Att'y Gen.*, 124 F.4th 218, 230 (3d Cir. 2024); *United States v. Kimble*, 142 F.4th 308, 315 (5th Cir. 2025); *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024); *United States v. Watson*, 171 F.4th 1012, 1019-20 (7th Cir. 2026). *But see United States v. Langston*, 110 F.4th 408, 419 (1st Cir. 2024) (concluding on procedural grounds and not on the merits of the Second Amendment argument); *Bryd v. United States*, 2026 U.S. App. LEXIS 25884, at *6 (D.C. Cir. 2026) (finding § 922(g)(1) constitutional as applied to Bryd because he was on supervised release).

Accordingly, multiple historical laws serve as the justification for the modern Second Amendment restriction against dangerous individuals. In *Rahimi*, this Court found that surety and going armed laws “confirm what common sense suggests” that there is a historical tradition of disarming those that pose a threat of danger. *Rahimi*, 602 U.S. at 698. During the time of the Second Amendment’s enactment, regulations existed to target those who threaten others in society. *Id.* at 694. First, surety laws were created as one route, implementing “preventative justice” by requiring those suspected of misbehavior to post a bond to maintain peace and prevent violence. *Id.* at 681. These laws were widely used to prevent violence against vulnerable groups such as victims of spousal abuse and curb the misuse of firearms. *Id.* at 681. Second, going armed laws reinforced the need to disarm dangerous individuals by prohibiting people from using firearms to threaten the community. *Id.* at 697. These laws recognized a need to protect the “good people of the land” from those who were deemed dangerous. *Id.* at 681-82. Taking these two laws together, it furthers the historic principle of regulating those who threaten the peace and safety of the community. *Id.* at 682.

Second, there are two determined categories of dangerous crimes considered in the context of the § 922(g)(1) analysis. *See United States v. Williams*, 113 F.4th 637, 658 (6th Cir. 2024). The first category includes crimes of violence against a person including murder, rape, assault, and robbery. *Id.* The second category includes crimes that, while not strictly against a person, still pose a significant threat of danger. *Id.* at 659 (explaining that for example, drug trafficking in itself “poses a threat of danger to the community”, regardless of whether it leads to physical violence).

Here, Ms. Branders is dangerous because she poses a threat to the community. The district court incorrectly compares Ms. Branders’s conduct to that of the defendant in *Range*

because she did not “engag[e] in purposefully dangerous behavior.” R. at 6. As the second category in *Williams* points out, the standard for dangerousness includes anything that “creates the possibility of violen[ce]” and not just purposeful violent behavior. *Williams*, 113 F.4th at 659. Ms. Branders did not purposefully kill Kenneth. R. at 2. However, her willful omission caused his death. R. at 2-3. Ms. Branders’s conduct created a possibility of violence, which culminated in death. R. at 2-3. Thus, she is exactly the kind of dangerous individual history has regulated.

Moreover, the plain language of the Virginia child neglect statute fits within the second category of dangerousness discussed in *Williams*. The child neglect statute does not require that violence be directed towards the victim, but it does require a threat of harm. *See* Va. Code § 18.2-371.1. The statute states that a person “caus[ing] or permit[ting] serious injury to the life or health of such child” is guilty. Va. Code § 18.2-371.1. Unlike an offense where dangerousness depends on an inference from the circumstances, the statutory elements of child neglect necessitate a finding of harm. *See* Va. Code § 18.2-371.1. Therefore, the statutory language which convicted Ms. Branders of the predicate felony demonstrates that she is dangerous.

Therefore, § 922(g)(1) is lawful as applied to Ms. Branders according to the historical motivation of disarming dangerous individuals.

2. Disarmament of Ms. Branders is comparable to historically imposed sanctions.

In the second step of the *Bruen* analysis, the Court determines whether § 922(g)(1) burdens Ms. Branders’s right to keep and bear arms “to an extent beyond what was done at the founding.” *Rahimi*, 602 U.S. at 692. Courts, including this Supreme Court in *Rahimi*, may employ the greater-includes-the-lesser framework to justify modern disarmament regulations. *See Watson*, 171 F.4th at 1023; *Rahimi*, 602 U.S. at 682. However at the very least, modern law

must impose a comparable burden on individuals as their historical counterpart. *Bruen*, 597 U.S. at 29. As stated in *Rahimi*, the statute does not need to be identical with the founding-era regimes. *Rahimi*, 602 U.S. at 698. In this analysis, the historical laws considered do not require an explicit connection to firearm regulation. *United States v. Diaz*, 116 F.4th 458, 468. Nor do they need to have the sole purpose of regulating firearms. *Id.*; see e.g., *Rahimi*, 602 U.S. at 681 (recognizing that surety laws regulate all forms of violence, not just misuse of firearms). Section 922(g)(1) as applied to Ms. Branders, while not identical, is comparable to the punishments levied in the past.

First, during the founding-era, a standard punishment for serious crimes was the death penalty, with a set goal of imposing permanent punishment. *Diaz*, 116 F.4th at 467; Stuart Banner, *The Death Penalty: An American History* 23 (2002). Serious crimes included felonies that threatened a person or the community. *Watson*, 171 F.4th at 1023. Executions for felonies occurred frequently, with an estimated 779 executions occurring between 1790 to 1829. *Id.* The public in 1791 would not have viewed someone eligible for the death penalty to be entitled to possess firearms. *Duarte*, 137 F.4th at 756.

The greater historical punishment of execution allows for the lesser regulation of permanent disarmament. See *Id.*; *Watson*, 171 F.4th at 1023. Ms. Branders's actions caused serious danger to an infant, leading to his death. R. at 2. Because serious crimes included conduct that posed danger to others, Ms. Branders fits within this category. See *Watson*, 171 F.4th at 1023. The disarmament of Ms. Branders is less severe than death. See *Diaz*, 116 F.4th at 468. Therefore, the greater punishment of death permits the government's regulation of Ms. Branders through permanent disarmament.

Second, even if the Court rejects the greater-includes-the-lesser theory, historical tradition also supported the comparable punishment of property forfeiture. Starting in the colonial-era through the founding-era, estate forfeiture was habitually used as punishment. *Diaz*, 116 F.4th at 468.

Going armed laws provide a comparable historical regulation applied to dangerous individuals. These laws prevented the carrying of dangerous weapons to “terrify” people. *Rahimi*, 602 U.S. at 697. Therefore, the punishment included the forfeiture of firearms in addition to imprisonment. *Id.*; 4 William Blackstone, *Commentaries on the Laws of England* 149 (1775). This common law principle remained apparent in the founding-era, with states including Massachusetts, North Carolina, and Virginia codifying a version of going armed laws. *See* Patrick J. Charles, *The Faces Of The Second Amendment Outside The Home: History Versus Ahistorical Standards Of Review*, 60 Clev. St. L. Rev. 1, 31-32 (2012).

Ms. Branders’s disarmament for being dangerous is comparable to the disarmament required under historical going armed laws. When an individual threatens a community, as they do in going armed laws, it follows that they will be disarmed as a punishment. *Rahimi*, 602 U.S. at 698. Ms. Branders convicted of felony child neglect and became a threat to the community. R.at 2. The consequence for her actions is the forfeiture of arms under § 922(g)(1).

Even felonies resulting in death from an unlawful act utilized forfeiture of property to remedy disruptive and dangerous conduct. *See* 4 William Blackstone, *Commentaries on the Laws of England* 193 (1775). Punishment for common law involuntary manslaughter is comparable to modern-day regulations on firearms. Under common law, involuntary manslaughter involved: (1) the unlawful killing of another, (2) without malice (3) during the commission of an unlawful act. 4 William Blackstone, *Commentaries on the Laws of England* 193 (1775). Involuntary

manslaughter was punishable by forfeiture of goods and chattels. *Id.* at 193. While created in England, English common law influenced American law-making during the eighteenth century. See Guyora Binder, *The Origins of American Felony Murder Rules*, 57 Stan. L. Rev. 59, 109 (2004). During the founding-era, many states decided to implement either pre-existing laws or common law from English statutes. *Id.* at 113-14. Manslaughter remained a recognized common law felony during the founding-era. *Zherka*, 140 F.4th at 81.

Ms. Branders's permanent disarmament is akin to the punishment for common law involuntary manslaughter. She caused the death of Kenneth, without malice, but in willful omission, while running an unlicensed illegal daycare. R. at 2-3. Though Ms. Branders was not charged with involuntary manslaughter, her actions align with the elements of common law involuntary manslaughter. See 4 William Blackstone, *Commentaries on the Laws of England* 192 (1775). Therefore, like forfeiture of goods under common law for involuntary manslaughter, Ms. Branders is subject to forfeiture of firearms for her felony child neglect conviction.

Thus, under both the greater-includes-the-lessor framework as well as the comparable counterpart analysis, Ms. Branders permanent disarmament is consistent with the historical tradition and purpose of the Second Amendment. See *Rahimi*, 602 U.S. at 682; *Bruen*, 597 U.S. at 29.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

/s/ Team SA

Team SA

Counsel for Respondent