

In the Supreme Court of the United States

TRACY BRANDERS,

Petitioner,

v.

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR THE RESPONDENT

TEAM TF

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE.....	5
A. Branders was convicted of a felony in connection with an infant’s death.....	5
B. Branders possessed a firearm for protection after her felony conviction	5
C. The Fourteenth Circuit rejected Branders’ constitutional challenge.....	6
SUMMARY OF THE ARGUMENT	7
ARGUMENT	8
I. The statute’s provenance, taken with this Court’s decisions, support felony-conviction-based firearms restrictions.	8
A. Congress deliberately prescribed defined restrictions on firearm possession after committing serious crimes.	8
B. This Court preserved felon-possession restrictions when it recognized an individual right.	9
II. The categorical prohibition on felons possessing firearms is constitutional without felony-by-felony litigation.	10
A. Bruen and Rahimi require historical justification, but preserve the possibility of categorical prohibitions.....	11
B. Punishment for serious crime and categorical disarmament together support the statute.	13
C. Categorical restriction decisions post- <i>Rahimi</i> correctly apply this history.....	14
D. <i>Range</i> , and other individualized approaches do not require relief for Branders.	15
III. Prohibition of firearm possession is constitutional as-applied to Branders even if felony-by-felony challenges are available.	17
A. Any individualized analysis must connect serious danger with historic tradition....	17
B. Branders’ predicate conviction concerns conduct which created grave physical danger.....	18
C. The absence of a Founding-era child neglect statute does not resolve this case.	20
D. Historical analogues establish comparable reasons and burdens for disarming Branders.	21
E. Branders’ favorable circumstances do not require a constitutional carve-out.	25
CONCLUSION.....	26

TABLE OF AUTHORITIES

Cases

<i>United States v. Bullock</i> , 123 F.4th 183 (5th Cir. 2024).....	22
<i>Kanter v. Barr</i> , 146 S. Ct. 1677 (2026).....	18
<i>District of Columbia v. Heller</i> , 544 U.S. 570(2008).....	7-11, 13, 22
<i>United States v. Dunn</i> , 76 F.4th 1062 (8th Cir. 2023).....	12
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010).....	7, 10
<i>New York State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022).....	7, 9-12, 17, 18-20, 22
<i>Range v. Attorney General United States</i> , 124 F.4th 218 (3d Cir. 2024) (en banc).....	6, 11, 15, 16, 19
<i>Rex v. Senior</i> (1832) 168 Eng. Rep. 1298; 1 Mood. C.C. 346	20, 21
<i>United States v. Cameron</i> , 99 F.4th 432, 435 (8th Cir.), <u>cert. denied</u> , 145 S. Ct. 314, 220 L. Ed. 2d 106 (2024).	12
<i>United States v. Diaz</i> , 116 F.4th 458 (5th Cir. 2024).....	16
<i>United States v. Duarte</i> , 137 F.4th 743 (9th Cir. 2025) (en banc).....	11, 13, 14, 16, 26
<i>United States v. Dubois</i> , 139 F.4th 887 (11th Cir. 2025).....	14
<i>United States v. Flute</i> , 929 F.3d 584 (8th Cir. 2019).	20
<i>United States v. Jackson</i> , 110 F.4th 1120 (8 th Cir. 2024).	6, 11, 12-14, 16

<i>United States v. Jordan</i> , 680 F. Supp. 3d 850 (N.D. Ohio 2023).....	15, 16
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024).....	7, 10, 11, 13-15, 17, 20, 22, 26
<i>United States v. Williams</i> , 113 F.4th 637 (6th Cir. 2024).....	17, 18, 21
<i>Vincent v. Bondi</i> , 127 F.4th 1263 (10th Cir. 2025).....	14
<i>Wolford v. Lopez</i> , 146 S. Ct. 2032 (2026).....	20
<i>Statutes</i>	
§ 922(g)(8)	13
§16.1-228	19
18 U.S.C. § 921(a)(20).....	26
18 U.S.C. § 922(g)(1)	6, 8, 10, 12, 15, 16, 17, 21, 22, 24, 25, 27
Virginia Code § 18.2-371	19
<i>Other Authorities</i>	
4 William Blackstone, <i>Commentaries on the Law of England</i> *192.	23-25
Act of Mar. 1, 1783, ch. 13, 1782 Mass. Acts 218–219.....	24-25
ch. 796, § IV, 9 <i>Statutes at Large of Pennsylvania</i> 238, 242 (1778).....	25
<i>Federal Firearms Act</i> , ch. 850, §§ 1(6), 2(d)–(f), 52 Stat. 1250, 1250–51.	8

QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 922(g)(1) constitutionally prohibits convicted felons from possessing firearms without the felony-by-felony approach, or whether the Second Amendment as-applied challenge requires felony-by-felony litigation.
2. Assuming an as-applied challenge exists, whether application of 18 U.S.C. § 922(g)(1) to a person who was convicted of a felony due to child neglect which resulted to the death of an eleven month old.

STATEMENT OF THE CASE

A. Branders was convicted of a felony in connection with an infant's death.

Terry Branders opened an unlicensed day care center in her home in Virginia in July 2000. R. at 2. At the time, she was caring for upwards of ten children with the help of her eighteen-year-old son, Nelson, who transported the children in Branders' van. *Id.*

On one occasion, Nelson, operating on very little sleep, transported twelve children, including eleven-month-old Kenneth Drew. *Id.* Nelson safely transported eleven of the dozen children in his care to his mother, but forgot about little Kenneth. *Id.* Because he would often fall asleep in the vehicle and be placed immediately into a crib, Branders didn't notice Kenneth's absence for hours, and then took over an hour to try to reach Nelson before finally calling for help. *Id.* By the time Kenneth had been located, he suffered severe heat-related injuries, and ultimately died despite lifesaving efforts. *Id.*

Branders and Nelson were each convicted of felony child neglect, and Branders was also convicted of a misdemeanor for operating an unlicensed day care facility. R. at 2–3. Branders received a two-year suspended sentence and probation. R. at 3.

B. Branders possessed a firearm for protection after her felony conviction.

Twenty years after their convictions, Branders and Nelson relocated from Virginia to New coastland. R. at 3. While Branders appears to have been a good neighbor in her community—volunteering with children and the indigent—Nelson was attracting the attention of the Drug Enforcement Agency (“DEA”) for his activities and associations. *Id.* These associations also raised the concern of Branders, who feared for her safety, both due to her son's angry outbursts and the friends he brought around to their shared home. *Id.*

It was these concerns for her safety that made Branders a gun owner. *Id.* Branders related these concerns to a friend of hers, who offered Branders an unlicensed firearm for her protection. *Id.* Branders accepted the firearm and stored it in a drawer in her living room. *Id.*

In June 2024, the DEA obtained Branders' consent to search her home in connection with their investigation into Nelson. R. at 4. While they discovered no evidence of drug activity, agents did find Branders' handgun. *Id.* She was arrested for violating 18 U.S.C. § 922(g)(1) on July 3, 2024. *Id.*

C. The Fourteenth Circuit rejected Branders' constitutional challenge.

The district court dismissed the indictment, under the rationale that the age and negligent nature of Branders' conviction made her case comparable to the Third Circuit's case, *Range v. Attorney General United States*, 124 F.4th 218 (3d Cir. 2024) (en banc). R. at 6. Ultimately, the district court concluded that there could be no finding of any historical analogue that would justify disarming Branders permanently. *Id.*

The Fourteenth Circuit had other opinions and reversed the district court's ruling, remanding the case back to the district court. R. at 10. The court reasoned that while Branders' conduct was covered by the Second Amendment, the categorical approach of *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024). R. at 9–10.

Branders entered an *Alford* plea in the remanded case and this Court granted certiorari. R. at 12–13.

SUMMARY OF THE ARGUMENT

The Fourteenth Circuit’s judgement should be affirmed. This Court has continued to preserve the constitutionality of restricting felons from possessing firearms, even while underscoring the preexisting individual right of armed self-defense. In *Heller*, this Court specifically identified these restrictions as “presumptively lawful,” then repeated that assurance in *McDonald*, and again in *Rahimi*. While these utterances do not dispense with the historical analysis required under *Bruen*, they do evince the constitutional tradition that a *Bruen* analysis requires.

This historical tradition supports Congress’ basis for restricting firearm possession among felons. Laws from the time of the Nation’s founding impose severe—and often, longstanding—consequences for committing certain serious crimes. Both state and federal governments have historically used categorical and permanent disarmament to address real or perceived dangers to the public. Taken together, these historic traditions allow for the disarmament of a class of people dangerous to the public without requiring case-by-case adjudication on the merits of their particular disarmament. This categorical disarmament then stems from the nation’s historic tradition of firearms regulation, rather than from a notion that felons cease to be members of “the people” protected by the Second Amendment.

Branders’ challenge also fails under a narrower approach, should the Court determine that as-applied Second Amendment challenges to the statute exist. Branders predicate conviction arose out of her criminal neglect of an infant; a neglect so grievous that it led to that infant’s death. Even in the absence of malice, Branders’ negligent conduct reveals the serious risk of danger to the community presented by allowing her to own a firearm. Furthermore, the absence of a statute from the Founding-era criminalizing child neglect does not resolve the historical analysis; the government must establish relevantly similar reasons and burdens for disarmament, which it can.

While Branders may have become a contributing member of her community since she was convicted over twenty years ago, and while she may have stored the firearm in a relatively responsible manner, these mitigating factors do not establish that the Second Amendment requires an exception for these circumstances that would abrogate 18 U.S.C. § 922(g)(1). However, if the Court concludes that individualized felony-by-felony review is appropriate, this Court should remand for proceedings pursuant to that finding rather than ordering dismissal.

ARGUMENT

I. The statute’s provenance, taken with this Court’s decisions, support felony-conviction-based firearms restrictions.

This court should affirm the judgement of the United States Court of Appeals for the Fourteenth Circuit because the history and development of section 922(g)(1) assist with the support of the statute’s constitutionality. The following will emphasize that Congress enacted multiple acts which expressly prohibited such persons—with violent and specific crimes—from possessing firearms. With the development of this statute by Congress, this Court has identified the category of individuals to be presumptively lawful.

Additionally, the following will show that the Court adopted the firearm possession as an individual right, this Court adopted that right along with the “longstanding prohibitions on the possession of firearms by felons.” *District of Columbia v. Heller*, 544 U.S. 570, 626-627 (2008).

A. Congress deliberately prescribed defined restrictions on firearm possession after committing serious crimes.

18 U.S.C. 922(g)(1) is the manifestation of concerted and longstanding legislative judgement about how American society treats serious criminal convictions. Prior to its enactment, Congress had passed the Federal Firearms Act of 1938. Here, Congress sought to address the interstate trafficking of firearms among people convicted of violent crimes. Federal Firearms Act, ch. 850,

§§ 1(6), 2(d)–(f), 52 Stat. 1250, 1250–51. They would later expand this category of convictions to include crimes punishable by more than one year imprisonment. Act of Oct. 3, 1961, Pub. L. No. 87-342, §§ 1–2, 75 Stat. 757. In 1968, Congress enacted the Omnibus Crime Control and Safe Streets Act, which expressly prohibited such persons from possessing firearms, incorporated as 18 U.S.C. § 922(g)(1). Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 1202, 82 Stat. 197, 236–37.

What the legislature arrived at is a scheme that utilizes both an adjudicated conviction and an objective punishment threshold to accomplish its regulation, as well as statutory exclusions and specified avenues of relief from the punishment. 18 U.S.C. § 921(a)(20). Congress enacted a regulation that is therefore appropriately defined and narrow.

While democratic enactment does not by itself establish constitutionality, and a twentieth-century tradition does not alone demonstrate eighteenth-century thinking, its relevance here should not go without attention. Congress has deliberately and selectively refined this category of individuals to be disarmed, and this Court has subsequently identified that disarmament to be presumptively lawful. *District of Columbia v. Heller*, 544 U.S. 570, 627 (2008). Whether this disarmament of a category of people determined to be dangerous is consistent with the Second Amendment remains governed by historical tradition, not any particular policy preference. *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24–26 (2022).

B. This Court preserved felon-possession restrictions when it recognized an individual right.

In *District of Columbia v. Heller*, this Court recognized firearm possession as an individual, pre-existing right connected to self-defense. 544 U.S. 570, 635 (2008). When it recognized this right, the Court also specifically preserved “longstanding prohibitions on the possession of

firearms by felons.” *Id.* at 626–627. This was no mere dicta; the Court included this admonition as it discussed the limits of the right protected by the Second Amendment. *Id.*

The government does not argue that *Heller* adjudicated every conceivable application of 18 U.S.C. § 922(g)(1)—it didn’t—but neither is this deliberate assurance irrelevant in the constitutional inquiry. Historical analysis preserves categorical felon disarmament, and this Court has already recognized this fact.

The Court reiterated its assurances of the presumptive lawfulness of the categorical restriction in *McDonald v. City of Chicago* when it incorporated the Second Amendment right against the states through the Fourteenth Amendment. 561 U.S. 742, 786 (2010). Although Branders’ conviction in question concerns federal law, *McDonald* confirms expectations that this Court operates under the presumption that 18 U.S.C. § 922(g)(1) is lawful.

II. The categorical prohibition on felons possessing firearms is constitutional without felony-by-felony litigation.

The United States concedes Petitioner’s contention Branders and her possession of the firearm fall within the Second Amendment’s text. Consequently, the United States bears the burden of proving that the restrictions in 18 U.S.C. § 922(g)(1) are consistent with this Nation’s historic tradition of firearms regulation. *Bruen*, 597 U.S. at 24. Our concession exposes the critical issue at question: the historical scope of permissible regulations on people convicted of serious crimes. Overtime, this Court has introduced the historical tradition through *Bruen*, and established the historical analogue need not be a historical twin. *Bruen*, 597 U.S. at 24, 29, and *Rahimi*, 602 U.S. 680, 690–92, 701–02 (2024). Even though both of these cases establish the historical tradition justification, courts have continued to decline the approach and preserve the categorical approach.

Additionally, punishment for a serious crime and disarmament go hand and hand. Historically, even though someone possessed a constitutional right, does not mean those rights could not be restricted in result of that person committing a serious crime. Serious convictions could lead to a lasting punishments which included death or forfeiture of property. United States v. Jackson, 110 F.4th 1120, 1126-27 (8th Cir. 2024), cert. denied, 145 S. Ct. 2708, 221 L. Ed. 2d 970 (2025); *United States v. Duarte*, 137 F.4th 743, 756 (9th Cir. 2025) (en banc). This shows that committing a serious crime could result in restrictions placed by the government throughout history.

Furthermore, in the case that individualized challenges are allowed, Branders does not automatically receive relief because Range involves no evidence of physical danger and Branders conviction involved a physical danger that resulted in a minor's physical safety being breached and leading to death.

A. Bruen and Rahimi require historical justification, but preserve the possibility of categorical prohibitions.

In *Bruen*, this Court directed lower courts to compare the “how” and “why” of the regulation in question with historic regulations. *Id.* at 29. In assessing historic analogues, the court does not need to find a “historical twin,” but rather a regulation with similar principles in its operation and rationale. *United States v. Rahimi*, 602 U.S. 680, 690–92, 701–02 (2024). This analysis allows room for modern adaptation to evolving circumstances while demanding genuine similarity in both the justification for the regulation and the burden on the regulated. Moreover, this Court reiterated in *Bruen* that it had not disturbed anything said in *Heller* in regard to firearm restrictions. *Bruen*, 597 U.S. at 72. In light of the concurrence with Justice Kavanaugh and Chief Justice Roberts, it has been reiterated that nothing in their opinion “should be taken to cast doubt on the longstanding prohibitions on the possession of firearms by felons” which emphasizes

that even with this Courts requirement of historical justification, this Court does not deem all longstanding prohibitions on the possession of firearms unconstitutional. Furthermore, following *Bruen*, courts have interpreted *Bruen* as introducing another approach to firearm prohibition determination, but also emphasizes that *Bruen* preserved the possibility of categorical prohibitions.

In *United States v. Dunn*, post *Bruen*, the Eighth Circuit continued to uphold the categorical approach deeming the “felon-in-possession statute constitutional.” *United States v. Dunn*, 76 F.4th 1062, 1068 (8th Cir. 2023). *Dunn*, also a convicted felon, argued that the statute, § 922(g)(1) was not only broad, but violated his second amendment even though he was a felon. *Id.* The court referenced *Bruen* and *United States v. Jackson* in order to make their decision. The court emphasized in *Dunn* that even after the Supreme Court established the history and tradition framework in *Bruen*, the court in *Jackson*, still chose to move forward with the categorical approach and held that there is no need for felon-by-felony litigation. *Id.* Additionally, courts have continued to interpret and uphold the categorical approach even after this Court established the historical framework in *Bruen*. In *United States v. Cameron*, the defendant argued that § 922(g)(1) is unconstitutional “as applied to him in light of the Supreme Court’s decision in *Bruen*.” *United States v. Cameron*, 99 F.4th 432, 435 (8th Cir.), cert. denied, 145 S. Ct. 314, 220 L. Ed. 2d 106 (2024). The court relied on the interpretation from *Jackson*. The court had emphasized that after *Bruen* was decided, *Jackson* interpreted the Supreme Court case as still having the ability to “reject the defendant’s as-applied challenge to § 922(g)(1),” *Id.* at 435, as “nothing in *Bruen* ‘cast doubt on longstanding prohibitions on the possession of firearms by felons.’” *Id.* Therefore, because *Jackson* already concluded that there is “no need for the felony-by-felony litigation regarding constitutionality of § 922(g)(1),” *Jackson*. 69 F.4th at 502, after interpreting *Bruen*, the court in *Cameron* followed *Jackson*’s interpretation and found no plain error. *United States v. Cameron*, 99 F.4th 423, 435 (8th Cir.), cert. denied, 145 S. Ct. 314, 220 L. Ed. 2d 106 (2024). Even after *Bruen*,

lower courts continue to acknowledge *Bruen*'s historical traditional justification, but interpret *Bruen* as preserving the possibility of a categorical approach.

Rahimi upheld temporary disarmament pursuant to § 922(g)(8) when a judge finds that the person to be disarmed presents a credible threat to the safety of another. *Id.* at 698. While this temporary disarmament might not support permanent disarmament, this Court nonetheless has preserved the legislative disarmament of a category of people as a result of their special danger of firearm misuse. *Id.* at 699. *Rahimi* further reiterated *Heller*'s admonition that the categorical restriction of felons to possess a firearm was presumptively legal. *Id.* at 698.

B. Punishment for serious crime and categorical disarmament together support the statute.

Two converging historical traditions support the categorical restriction. First, the punishments for serious crimes have historically been far more severe and longstanding than disarmament. *Jackson*, 110 F.4th at 1126–27; See also, *United States v. Duarte*, 137 F.4th 743, 756 (9th Cir. 2025) (en banc). Some historic regulations imposed death or property forfeiture for offenses involving deceit or fraud. *Jackson*, 110 F.4th at 1127.

While these historic punishments do not necessarily establish that felon-based restriction is inherently less severe than death, it does establish that the historical rights to life, liberty, and property do not immunize criminals from enduring restrictions to their rights as a consequence of their crime, including the prohibition on firearm possession.

Second, state and the federal governments have historically disarmed classes of people who were perceived as a threat to public peace and safety. *Id.* at 1126. During the Revolutionary era, several states enacted regulations disarming individuals who refused to swear loyalty to the

colonies. *Id.* at 1127. Likewise, Pennsylvania proposed legislation that contemplated excluding those convicted of crimes of public injury. *Id.* Both examples reflect a Founding-era understanding that a pre-existing right to keep and bear arms can exist in tension with disarming categories of people who present a dangerous risk to the community.

These two traditions reinforce one another. Punishment for serious criminal acts explains why the consequences of the conviction endure, while categorical disarmament of a class explains why the legislature would disarm the entire class rather than a felony-by-felony assessment. This analysis is specifically developed in Judge Collins' concurrence in *Duarte*, and the United States urges this Court to adopt this synthesis, consistent with *Rahimi*'s balancing of multiple historical traditions considered together. *Duarte*, 137 F.4th at 771; *Rahimi*, 602 U.S. at 698.

C. Categorical restriction decisions post-*Rahimi* correctly apply this history.

The Eighth Circuit has brought forward the principal model that the United States urges this Court to adopt. After reconsideration following this Court's decision in *Rahimi*, the Eighth Circuit held that felony-by-felony litigation is unnecessary. *Jackson*, 110 F.4th at 1125–29. Their opinion was predicated on both this Court's previous assurances and historical traditions of firearm regulation. *Id.* Critically, the court did ignore historical analysis in favor of a categorical rule, but rather found that historical analysis *supported* a categorical rule.

The Ninth Circuit reached the same conclusion in *Duarte*. 137 F.4th at 762. There, the court held that though felons decidedly remain among the people protected by the Second Amendment, categorical disarmament is nonetheless among the scope of permissible regulation, historically-speaking. *Id.* at 752–62.

Vincent v. Bondi, 127 F.4th 1263, 1265 (10th Cir. 2025) and *United States v. Dubois* 139 F.4th 887, 890 (11th Cir. 2025) similarly preserved categorical restrictions after *Rahimi*. The

United States therefore relies upon this building circuit-precedent being established as corroboration of this Court’s own opinion on the matter.

Similarly, after remand to by this Court due to the decision of *Rahimi*, the Eighth Circuit in *United States v. Cunningham*, reconsidered the as-applied challenge in which the defendant argued and continued to move forward with the categorical approach. United States v. Cunningham, 114 F.4th 671, 673, 675 (8th Cir. 2024), reh'g denied, No. 22-1080, 2024 WL 4031748 (8th Cir. Aug. 30, 2024). This shows that even after this Court decided *Rahimi*, lower courts have continued to preserve the categorical approach.

D. *Range*, and other individualized approaches do not require relief for Branders.

Petitioner argues that *Range* supports as-applied challenges to 18 U.S.C. § 922(g)(1) and conflicts with the application of a categorical rule. The United States does not minimize the outcome in *Range*, but even that court recognized that its holding was narrow. 124 F.4th at 232. In *Range*, the government had failed to demonstrate an adequate justification for disarming a person who had made false statements to obtain \$2,458 in food stamp benefits. *Id.* at 222–23. The court underscored that there was an absence of any evidence that *Range* posed a physical danger. *Id.* Here, Branders’ predicate conviction demonstrates a grave lack of sound judgement which puts her potential for danger to the community and her risk of firearm misuse in a completely different position than *Range* found himself in.

Additionally, when courts have been asked to follow *Range*, courts have declined to do so. In *United States v. Jordan*, Jordan asserted that the court “should adopt the approach of the Third Circuit in *Range v. Attorney General*, 69 F. 4th 96 (3d. Cir. 2023),” United States v. Jordan, 680 F. Supp. 3d 850, 852 (N.D. Ohio 2023)., in order to determine disarmament. *Jordan* declined to follow *Range* as it found that this Court “has been consistently clear that its Second Amendment

jurisprudence has cast no doubt on the validity of the prohibitions” *Id.* at 853 of convicted felons possessing firearms. Therefore, the court rejected to adopt the as-applied approach as the defendant requested to follow in *Range*.

Similarly, like *Jordan*, Branders is also referring this Court to reference *Range* in terms of the individualized inquiry and focus on the circumstances of Branders’ felony. As the court in *Jordan* shows that when confronted to adopt *Range*’s approach of individualized inquiry, the court may decline to follow it and adhere to the categorical approach, this Court should decline in adopting *Range*’s individualized inquiry approach as emphasized by Branders.

The United States is of the position that *Jackson* and *Duarte* better reconcile the interplay between this Nation’s historical tradition of imposing consequences for serious crimes and categorical disarmament. Should this Court be persuaded to follow the holding in *Range* and find that some challenges exist to 18 U.S.C. § 922(g)(1), Branders would still need to establish entitlement to relief under the Third Circuit’s resulting framework; the mere availability of a challenge is not dispositive here. Branders will be unable to justify her position using *Range*, as her conviction involved the physical safety of a child and a fatal outcome—all facts absent in the *Range* case.

Similarly, while the Fifth and Sixth Circuits agree with the Third that some as-applied challenges to the statute exist, the merits of the challenge are separate from its availability. The Fifth Circuit arrived at a particularly telling outcome to this effect when it declined to accept the constitutionality of the categorical disarmament of felons, yet found that 18 U.S.C. § 922(g)(1) was constitutional as-applied to the defendant. *United States v. Diaz*, 116 F.4th 458, 472 (5th Cir. 2024). There, the court compared the historic tradition of punishment for horse thieves with the modern crime of vehicle theft. *Id.* at 468. In the Sixth Circuit, the court arrived at a similar

determination to the Fifth, holding that the restriction was constitutional as-applied to dangerous persons. *United States v. Williams*, 113 F.4th 637, 653 (6th Cir. 2024). In *Williams*, the court held that the legislature may determine that persons convicted of felonies which are “dangerous to the public” may be disarmed pursuant to 18 U.S.C. § 922(g)(1). *Id.* at 658. Both decisions reflect the burden on the government to address the factual basis for disarmament, but neither decision stands to carve out a constitutional exception for whenever an offender, like Branders, has an old conviction or lacked malice in her predicate conviction.

III. Prohibition of firearm possession is constitutional as-applied to Branders even if felony-by-felony challenges are available.

If this Court agrees with the Petitioner and allows as-applied challenges, the burden remains with the government to establish the historical precedent for the regulation. *Bruen*, 597 U.S. at 24. The United States cannot prevail merely by labeling her conduct irresponsible or characterizing her predicate conviction as an oracle of the future. *Rahimi*, 602 U.S. at 701–02. The correct inquiry connects the underlying circumstances supporting disarmament with the reasons and burdens of an established tradition of regulation. *Id.*

A. Any individualized analysis must connect serious danger with historic tradition.

While serious danger is the critical analysis point, establishing danger does not require a showing of malicious intent. *Williams*, 113 F.4th at 658. *Williams* distinguished between crimes against the person or crimes which posed a serious risk of danger from crimes in which the dangerousness is attenuated. *Id.* This analytical framework allows the court to consider the totality of the circumstances of the defendant’s criminal history and predicate conviction. The government’s position is consistent with the court’s rationale here; Branders’ criminal disregard of

Kenneth's safety is sufficient evidence to establish the relevant danger Branders poses to the community by being allowed to possess a firearm.

Similarly, in then-Judge Barrett's dissent in *Kanter v. Barr*, she located the authority for categorical disarmament in the historic traditions around dangerousness. 919 F.3d 437, 464–65 (7th Cir. 2019) (Barrett, J., dissenting). While this separate argument does not establish a controlling case law, it does supply some of the basis for the historical argument. The United States invokes this principle of predicating disarmament on danger, together with the post-*Bruen* analysis of *Williams*.

B. Branders' predicate conviction concerns conduct which created grave physical danger.

Branders willingly, and presumably for compensation, accepted responsibility for over a dozen children into her unlicensed day care facility. R. at 2. An eleven-month-old child who had been entrusted into her care was misplaced and unaccounted for hours; Branders didn't even notice the child's absence for approximately two hours, and when she did notice that Kenneth was missing, it took her over an hour to notify authorities. *Id.* After having been left in a presumably unventilated vehicle for hours, this eleven-month-old child died from heat-related injuries. *Id.* These facts concretely establish the danger underlying Branders' predicate conviction.

While the government does not impute every action Nelson took on Branders, nor does the government contend that Branders intended to leave Kenneth in the condition that led to his death, the outcome of Branders' conduct is unmistakable: she failed to care for a child that had been entrusted to her day care business and didn't immediately seek help from authorities when she realized that the child was missing. *Id.* This conduct is more easily compared to serious criminal conduct that endangers the safety of others than a harmless regulatory omission.

The government does not ask this Court to recast the Petitioner’s neglect of a child as a murder. While the district court correctly characterizes Branders’ conduct as negligence, it erroneously jumped from the lack of intent to the absence of potential historical justifications for the regulation. R. at 6. This logic does not track. While intent can affect an individual’s culpability, the presence or absence of intent has no bearing on the risk of danger the criminal conduct creates.

Furthermore, the construction of the Virginia law under which Branders was convicted confirms that child neglect implicates the same fundamental interest in protecting children from serious harm that underlies its prohibition of sexual abuse. Virginia Code § 18.2-371 expressly incorporates § 16.1-228’s definition of an “abused or neglected child,” equating a caretaker’s failure to provide care and the commission or allowance of sexual exploitation. Va. Code §§ 18.2-371, 16.1-228. When the Virginia legislature proscribed neglect of a child in the same breath as the willful and grotesque act of child sexual abuse, the General Assembly communicated the legislative intent that a caretaker’s negligence can threaten a child’s safety as gravely as affirmative abuse. Branders’ conviction arose from precisely the kind of grave danger that makes child protection a matter of criminal law: an infant entrusted to her care remained unaccounted for, emergency assistance was delayed, and the child died. R. 2–3. Although the statutory framework does not itself discharge the government’s historical burden under *Bruen*, it confirms why the absence of malicious intent does not reduce Branders’ predicate to a harmless regulatory violation.

Branders’ case is thus materially distinguishable from *Range*. In *Range*, the predicate conviction involved fraudulently obtaining government benefits, and the court there found no evidence of any physical danger presented by the defendant’s conduct. 124 F.4th at 232. Contrastingly, here, a criminal breach of duty by an unlicensed day care operator exposed a child to lethal conditions that ultimately caused his death. R. at 2.

C. The absence of a Founding-era child neglect statute does not resolve this case.

The Petitioner, along with the district court, weighed the absence of a Founding-era child neglect statute as having particular importance. R. at 6. While this observation raises an important question, it does not by itself decide anything. *Bruen* requires the government to show historic analogues of similar regulations, but it allows for extrapolation from historic principles when modern circumstances impossibly differ from historic circumstances. 597 U.S. at 28–30. *Rahimi* further rejects the notion that any historic regulatory analogues must be a “historical twin” to the regulation in question. 602 U.S. at 690–92. Nevertheless, the government must identify a sufficiently similar comparison. *Wolford v. Lopez*, 146 S. Ct. 2032, 2048–53 (2026).

In *Wolford*, this Court underscored that the motivations for legislative enactments matter; the Court found that while the historic regulations pointed to by the government were concerned with bearing arms, they were insufficiently analogous to the regulation in question because the motivation for enactment was different. *Id.* Here, the comparison is concerned with the criminal adjudication of an individual who poses a serious risk of physical danger to the community, and the enduring consequences associated with serious offenses which, when taken together, bear striking resemblance to Founding-era regulations.

Moreover, the absence of an identical offense during the Founding-era in regards to a child-neglect statute should not completely end the historical inquiry. As *Rahimi* reiterates that a “historical twin” is not required, historical law may have crimes that are comparable to the modern child-neglect offense. In *United States v. Flute*, a historical discussion involved the case “*Rex v. Senior* (1832) 168 Eng. Rep. 1298; 1 Mood. C.C. 346” where the court upheld “a manslaughter conviction for a midwife who negligently compressed the head of an infant in the act of birth, thereby causing the child’s death after he was completely born alive.” 929 F.3d 584, 592 (8th Cir.

2019). Although this is not a historical twin, this case shows how negligence resulting in a child's death was treated around the Founding-era—as manslaughter. Here, Branders should not rely on the lack of a child-neglect statute during the Founding-era. *Senior* establishes an example of how the law treated negligent conduct leading to a child's death during the founding-era. Therefore, instead of rely on the location of a child-neglect statute during the Founding-era, this Court should consider how the historical law treated conduct related to Brander's conduct.

D. Historical analogues establish comparable reasons and burdens for disarming Branders.

Assuming *arguendo* that 18 U.S.C. § 922(g)(1) allows individualized Second Amendment challenges, the United States satisfies its burden of establishing historic tradition in this context. Branders' handgun possession is specifically the conduct protected by the text of the Second Amendment; it is therefore the government's burden to establish a relevantly similar historic tradition of firearms regulation. *Bruen*, 597 U.S. at 24. This Court permitted considering multiple converging regulatory regimes, and emphasized the requirement that the historic regulation be consistent with the regulation in question in terms of the reasons behind and the operation of the restriction. *Rahimi*, 602 U.S. at 692, 698. *Hemani* reaffirms that the requirement for a sufficiently similar historic analog extends to both the purpose *and* procedure of regulation and cautions against disarmament of an individual based solely on unsubstantiated claims of dangerousness. 146 S. Ct. 1677, 1689-90 (2026). Three historic examples provide the necessary analog to show that 18 U.S.C. 922(g)(1) is consistent with this Nation's historic tradition of firearms regulation: felony consequences for an unintentional killing, Pennsylvania's restriction of a class from firearm possession, and Boston's forfeiture of firearms to prevent injury arising from an accident.

Turning first to historic consequences for conduct resulting in accidental death, our nation's attitudes toward such consequences are largely based on those of England. In addressing this,

William Blackstone articulated that a lawful act performed in an unlawful manner could constitute involuntary manslaughter. 4 William Blackstone, *Commentaries on the Law of England* *192. Blackstone gave the example of a worker discarding materials into a populated street, thereby accidentally killing a passerby. *Id.* According to Blackstone's example, even a warning of the flying debris would not mitigate the worker's conduct down from manslaughter. *Id.* Such an act was a felony, punishable by branding or even the forfeiture of all property and chattels. *Id.* at *188, *193. These chattels logically would have included any firearms owned by the individual, although admittedly, Blackstone did not envision a firearm-specific offense. The operative principle, though, still stands: when someone is found criminally responsible for exposing another to lethal danger, culpability can support serious deprivation absent proof of malicious intent.

Branders' conviction shares this noteworthy characteristic. Branders voluntarily undertook responsibility for young children, including an eleven-month-old, and as a result of Branders' negligence in caring for the children in her charge, eleven-month-old Kenneth died. R. at 2–3. When a Virginia court found that Branders was criminally responsible for Kenneth's death, her culpability became the basis to support the deprivation of her Second Amendment rights. This answers the Petitioner's erroneous theory that an absence of malice immunizes an individual from criminal culpability; the law at the time of our Nation's founding distinguished a killing for which someone could be criminally culpable from murder without addressing the absence of malice. 4 Blackstone, *192-193.

Similarly, a Boston statute from 1783 provides a firearm-specific analog of protection against accidental injury. The legislature in Boston was dealing with serious urban fire problems, and recognized a serious danger presented by keeping stored firearms loaded during a building fire. Act of Mar. 1, 1783, ch. 13, 1782 Mass. Acts 218–219. The law sought to address this danger

by prohibiting individuals from carrying a loaded firearm into certain buildings and, critically, provided for the seizure of improperly stored firearms. *Id.* Boston's rationale for this law had nothing to do with *purposefully dangerous* conduct, but rather that the conduct created an unreasonable risk of accidental injury to passersby and to the firefighters working to put out the conflagration. *Id.* Taken together with Blackstone's manslaughter rule, Boston's 1783 regulation supports the government's position that the relevant historic danger that legislators were concerned with includes the criminal failure to protect life, and not merely the danger presented by a purposeful infliction of injury.

In Branders' case, she did take steps to mitigate the inherent danger of possessing the firearm by locking it in a drawer, separate from its ammunition. R. at 4. However, this statute is relevant in determining the action at hand because it establishes that accidental injury is among the historical purposes for firearm regulation and that forfeiture of firearms was a remedy contemplated by Founding-era legislatures. Regardless of any mitigating steps Branders took to secure the firearm, her adjudicated criminal neglect which led to the death of young Kenneth is sufficient historic rationale to justify restricting her Second Amendment right; the Boston statute corroborates the protective purpose of 18 U.S.C. § 922(g)(1).

Finally, Pennsylvania's 1778 law offers an even closer comparison in the "how" and "why" of disarmament. It designated persons who had refused (or neglected) to pledge an oath of allegiance and required such individuals to surrender their arms; the law further prohibited such persons from keeping or carrying arms or keeping ammunition. An Act for the Further Security of the Government, ch. 796, § IV, 9 *Statutes at Large of Pennsylvania* 238, 242 (1778). Violations of this law were punishable by monetary penalties, and seizure of the arms. *Id.* Another provision of Pennsylvania's law at the Founding era made these penalties lifelong. *Id.* at 243. Taken together

these two Pennsylvania provisions evince a legislative intent to disarm such individuals indefinitely, not merely to provide for the confiscation of an offending firearm.

Pennsylvania's motivation for this legislation was perceived disloyalty during wartime, but Congress here was specifically motivated by criminal conduct. While the government does not contend that Branders' criminal conduct equated to the actions of an enemy of the State, the statute reflects a defined personal deprivation of the right to keep arms as a consequence for the violation of a law.

Modernly, 18 U.S.C. § 922(g)(1) rests on the determination of criminal adjudication; as such Branders' conviction chronologically preceded her disarmament. That process makes this case readily distinguishable from *Hemani*, where the challenged statute tied disarmament to illegal drug use without a clear process of adjudication. *Hemani*, 146 S. Ct. at 1689-90. Branders' conviction was not concerned with her present dangerousness of possessing a firearm, but it did adjudicate the serious criminal negligence on which the United States relies in disarming her.

Another issue raised by Petitioner is that the duration of her prohibition from firearm possession is unreasonable. Petitioner would be correct in arguing that Blackstone only contemplated the forfeiture of property owned at conviction, not a lifetime prohibition on acquiring new property. 4 Blackstone, *380–381. They would also be correct to point out that Boston's law was targeted at offending firearms, not offending persons. Act of Mar. 1, 1783, ch. 13, 1782 Mass. Acts 218–219. Pennsylvania, however, maintained a lifetime ban on firearm possession. 9 *Statutes at Large of Pennsylvania* 245 editorial note. While Petitioner would be correct in pointing out these differences and emphasizing that such differences preclude an exact historic counterpart, this does not end the analysis. The United States takes these statutes together, as *Rahimi* permits, without assuming that any harsher historical punishment necessarily validates any lesser

punishment. See, *Duarte*, 137 F.4th at 771–773 & 772 n.11 (Collins, J., concurring in the judgment).

The convergence of these statutes supports Branders’ continued disarmament. Her disability is the direct consequence of her conviction for lethal criminal neglect, not on a momentary state of intoxication or a particular storage hazard. Furthermore, 18 U.S.C. § 921(a)(20) recognizes a legal due process for the restoration of Branders’ civil rights, so it is not as though she is without recourse for the rest of her natural life.

Nevertheless, Branders’ subsequent life change—including her charity work, careful storage of the firearm, and nearly twenty years without meaningful run-in’s with the law all favor her position and must be confronted in an individualized felony-by-felony inquiry. R. at 3–4. Importantly, however, these mitigating factors do not change the character of her adjudicated criminal conduct; furthermore, there is no case law that supplies a determinate amount of time of good behavior that will render previous criminal conduct irrelevant. It is the position of the United States that for this conviction involving a fatal breach of responsibility for an infant’s safety, the gravity of the predicate offense and the historical availability of longstanding firearm restrictions justify the continuing disability.

E. Branders’ favorable circumstances do not require a constitutional carve-out.

Petitioner argues that she has only one felony conviction, that this conviction is over two decades old, and that she has since become a contributing member of her community. Under the government’s categorical approach, these circumstances do not remove a qualifying conviction from the historically supported class. Under an individualized approach, they warrant consideration but do not conclusively establish entitlement to relief. The inquiry must account for the serious nature of the predicate as well as subsequent conduct.

The government acknowledges that *Williams* permits an individual to attempt to rebut dangerousness and contemplates consideration of a broader record. 113 F.4th at 661–63. The United States therefore submits to the Court’s consideration of rehabilitation evidence if it decides that this framework governs. The government submits that the elapsed time and charitable work described here do not negate the historical justification for attaching an enduring firearm consequence to a conviction arising from lethal criminal neglect.

The storage evidence is favorable to Branders as well. The record describes a locked handgun and ammunition in a separate locked drawer, not misuse of that firearm. R. 4. 18 U.S.C. § 922(g)(1) however, regulates possession following a qualifying conviction. It does not require a new act of firearm misuse if the preceding conviction constitutionally supports disarmament. Again, *Heller* itself recognized the central importance of home self-defense while preserving felon-possession restrictions. 554 U.S. at 626–27, 635.

Finally, the district-court ruling in *United States v. Bullock* cannot establish that an old conviction involving a death requires relief. 123 F.4th 183 (5th Cir. 2024). The Fifth Circuit reversed and upheld disarmament of Bullock, whose aggravated-assault and manslaughter convictions arose from shootings. *Id.* 184–85. The defendant’s armed violence makes that case materially stronger for the government than this one, so it is not an exact factual analogue. It nonetheless defeats reliance on the superseded district-court disposition and confirms that the age of a serious predicate does not alone decide constitutionality.

CONCLUSION

The Court should affirm the judgment of the United States Court of Appeals for the Fourteenth Circuit. Section 922(g)(1) constitutionally applies to the class of persons with qualifying serious criminal convictions, without felony-by-felony litigation. Alternatively, it is

constitutional as-applied to Branders because her conviction arose from criminal neglect creating lethal danger to an infant and resulting in his death.

If the Court rejects the categorical rule and concludes that individualized review requires additional historical development or factual findings, it should vacate and remand for application of the correct framework rather than direct dismissal of the indictment.

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