

No. 26-179

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2026

TERRY BRANDERS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the Supreme Court of the United States

BRIEF FOR PETITIONER

Team UJ
Counsel for Petitioner

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	4
QUESTIONS PRESENTED.....	6
STATEMENT OF THE CASE.....	7
SUMMARY OF THE ARGUMENT	9
ARGUMENT	12
I. This Court should reverse the Fourteenth Circuit's decision affirming dismissal because Branders is entitled under the Second Amendment to bring an as-applied challenge to § 922(g)(1).	12
A. <i>Heller</i> does not bar as-applied challenges to § 922(g)(1).	12
B. <i>Bruen</i> and <i>Rahimi</i> require courts to determine whether the government's firearm restriction is consistent with historical tradition rather than assume the constitutionality of a modern restriction.	14
C. <i>Heller</i> 's presumption does not supersede <i>Bruen</i> and <i>Rahimi</i> 's mandate to engage in historical analysis	15
1. <i>Range</i> , <i>Williams</i> , and <i>Diaz</i> properly treat <i>Heller</i> 's presumption as rebuttable.....	16
2. <i>Jackson</i> , <i>Vincent</i> , and <i>Hunt</i> extend <i>Heller</i> beyond what this Court held.....	18
II. Assuming that Branders may bring an as-applied challenge to § 922(g)(1), the statute is an unconstitutional regulation of her Second Amendment rights because there are no historical analogues that support her current disarmament.....	19
A. Section 922(g)(1) burdens Branders' Second Amendment rights by prohibiting her from possessing or using a firearm	20
B. The Government cannot point to a historical analogue that supports disarming Branders for a non-violent felony of neglect.....	23
1. There are no historical analogues for laws disarming individuals for child neglect.....	24

2.	Even under a broader interpretation, other historical analogues lend no support for disarming a non-violent individual that committed an act of omission, rather than an affirmative criminal act	24
3.	Even if historical principles once supported disarming Branders under 922(g)(1), there are no historical principles supporting the current burden of Branders' Second Amendment rights for a twenty-year-old conviction	26
CONCLUSION.....		28

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	<i>passim</i>
<i>New York State Rifle & Pistol Association, Inc. v. Bruen</i> , 597 U.S. 1 (2022).....	<i>passim</i>
<i>Range v. Attorney General United States</i> , 124 F.4th 218 (3d Cir. 2024)	<i>passim</i>
<i>United States v. Cockerham</i> , 162 F.4th 500 (5th Cir. 2025)	22, 26, 27
<i>United States v. Connelly</i> , 117 F.4th 269 (5th Cir. 2024)	11, 19, 20
<i>United States v. Diaz</i> , 116 F.4th 458 (5th Cir. 2024)	16, 17
<i>United States v. Hemani</i> , 608 U.S. 772 (2026).....	22, 24, 26, 27
<i>United States v. Hembree</i> , 165 F.4th 909 (5th Cir. 2026)	25, 27
<i>United States v. Hunt</i> , 123 F.4th 697 (4th Cir. 2024)	15, 18, 19
<i>United States v. Jackson</i> , 110 F.4th 1120 (8th Cir. 2024)	15, 18
<i>United States v. Mitchell</i> , 160 F.4th 169 (5th Cir. 2025)	22
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024).....	<i>passim</i>
<i>United States v. Williams</i> , 113 F.4th 637 (6th Cir. 2024)	15, 16, 17
<i>Vincent v. Bondi</i> , 127 F.4th 1263 (10th Cir. 2025)	15, 18

Statutes

18 U.S.C. § 922(g)(1)	<i>passim</i>
Va. Code § 18.2-371	7

Other Authorities

Laura Savarese, <i>The Origins of Family Rights and Family Regulation: A Dual Legal History</i> , 78 Stan. L. Rev. 63 (2026).....	23
Steven Mintz, <i>Children, Families, and the State: American Family Law in Historical Perspective</i> , 69 Denv. U.L. Rev. 635 (1992).....	23
Diana M. Richett & James R. Hudson, <i>The Soco-Legal History of Child Abuse and Neglect: An Analysis of the Policy of Children's Rights</i> , 6 W. Mich. U.J. Socio. & Soc. Welfare 849 (1979)	24

QUESTIONS PRESENTED

I. Although *Heller* noted that longstanding prohibitions on firearm possession by felons are “presumptively lawful,” this Court requires courts to determine whether a challenged firearm regulation is consistent with the Nation’s historical tradition under *Bruen* and *Rahimi*. Terry Branders, an elderly woman convicted of felony child neglect arising from her teenaged son’s mistake nearly a quarter of a century ago, was charged under 18 U.S.C. § 922(g)(1) after accepting a handgun as a gift from a friend who was concerned for Branders’ safety. Should this Court hold that defendants may bring as-applied Second Amendment challenges to § 922(g)(1), or may courts categorically preclude defendants from asserting such challenges without considering the historical traditions underlying their particular offense?

II. Under this Court’s post-*Heller* precedent of *Bruen* and *Rahimi*, a federal regulation inhibiting a person’s Second Amendment right to firearms, like 18 U.S.C. § 922(g)(1), is only constitutional if the Government establishes that the regulation is consistent with the principles underlying historical analogues. Terry Branders, an elderly woman convicted of felony child neglect over twenty years ago because of her son’s carelessness, was charged under 18 U.S.C. § 922(g)(1) after obtaining a handgun to protect her vulnerable self. Assuming that Branders may bring an as-applied challenge to § 922(g)(1), can the Government meet its burden of pointing to historical analogues that support disarming an elderly person who committed a non-violent act of neglect, was charged over twenty years ago, and poses no threat of physical danger?

STATEMENT OF THE CASE

I. Factual Background

In July 2000, Terry Branders volunteered to operate a day care center at her home in Alexandria, Virginia, to care for the children of her former factory-worker colleagues. R. at 2. She entrusted her 18-year-old son, Nelson, to help in picking up and dropping off the children—but as a recent high school graduate, he held few obligations and focused more on maintaining an active social life. *Id.* One morning after a late night out and running on just a few hours of sleep, Nelson picked up twelve children and dropped them off with his mother before driving back to his apartment and falling asleep. *Id.* Unfortunately, because of his sleep deprivation and the chaotic environment created by the children, Nelson forgot to drop off 11-month-old Kenneth Drew. *Id.* When per the normal routine Terry went to wake up Kenneth from his crib two hours later, she noticed he was missing and immediately attempted to reach both Nelson and Kenneth's mother before calling 911. *Id.* By the time police found Kenneth in Nelson's van, he had suffered fatal heat-related injuries, leading to Nelson and Terry's conviction of felony neglect of a child under Va. Code § 18.2-371. *Id.* Though Terry was also convicted of the misdemeanor of operating a day care center without a license and sentenced on March 5, 2001, she was only given a two-year suspended sentence and placed on probation. *Id.* at 2–3. Nelson, however, was sentenced to imprisonment for four years. *Id.*

In 2020, Terry moved to Appleton, Newcoastland, for a fresh start, volunteering to help with various charities, the local food bank, and even stocking school supplies for children in need. *Id.* at 3. In this time frame, her only other conviction was for speeding in a 65-mph zone and receiving a misdemeanor for reckless driving. *Id.* Because Terry was now in her seventies and aging, Nelson moved back in to help assist her, commandeering Terry's basement for his

personal area. *Id.* Nelson blamed Terry for his struggles and frequently erupted in anger, so Terry complied with all his demands. *Id.* Nelson struggled to keep a job, choosing instead to hang out with “friends” that Terry was fearful of. *Id.* After hearing about Terry’s familial struggles, one of Terry’s own friends from the food bank, Becky Haskill, thought that Terry should obtain a gun for her own protection. *Id.* Becky offered Terry a handgun that her late husband had owned, and after expressing apprehension, Terry accepted the offer and placed it in a locked drawer in her living room. *Id.*

In June 2024, the DEA became suspicious of Nelson’s activities and surveyed Terry’s house, searching both of Terry and Nelson’s records for criminal activity and discovering the prior felony convictions. *Id.* at 3–4. DEA agent Sue Stern, seeing that Terry was an elderly woman in her seventies, knocked on the door and simply asked Terry if she could search the house. *Id.* at 4. Terry was “quite cooperative” and let the agents search her house, whereupon they found her firearm. *Id.* Terry stated that it was gifted to her and she managed it responsibly by keeping the gun and ammunition locked in separate drawers. *Id.* To her surprise, the agents arrested her for possessing the firearm under 18 U.S.C. § 922(g)(1). *Id.*

II. Procedural History

On December 12, 2025, the United States District Court for the Eastern District of Newcoastland granted Terry Branders’ motion to dismiss the indictment, finding that § 922(g)(1), as applied to Branders’, violated her Second Amendment rights. *Id.* at 1–7. However, on June 10, 2026, the United States Court of Appeals for the Fourteenth Circuit reversed the District Court’s order, *Id.* at 8–11, prompting Branders to enter an *Alford* plea and petition the Supreme Court for a writ of certiorari. *Id.* at 12–13.

SUMMARY OF THE ARGUMENT

This Court’s modern Second Amendment decisions do not prevent *Branders* from bringing an as-applied challenge to 18 U.S.C. § 922(g)(1). True enough, in *District of Columbia v. Heller*, this Court noted that longstanding prohibitions on firearm possession by felons are “presumptively lawful.” But, it did not hold that such restrictions are de facto constitutional, and explicitly cautioned that it was not settling the Second Amendment’s every application. Rather, to determine if the Second Amendment applies to a regulation, *Bruen* and *Rahimi* provide the controlling framework: When the constitutionality of a firearm regulation is challenged, the government must demonstrate that the regulation is consistent with the history and traditions of this nation’s firearm regulations. Importantly, neither *Bruen* nor *Rahimi* transformed *Heller*’s presumption into a per se rule against as-applied challenges to § 922(g)(1). Rather, those decisions emphasized that courts have an obligation to engage in the analysis *Bruen* set forth.

While lower courts disagree about when and how to apply *Bruen*, this Court should remain in line with the requirements of *Bruen* and interpret *Heller*’s language as a mere presumption that still warrants historical analysis. This Court should adopt the Third, Fifth, and Sixth Circuit’s approach, which correctly recognizes that *Bruen* and *Rahimi* require courts to conduct a historical inquiry rather than assume the constitutionality of § 922(g)(1). The alternative, categorical approach adopted by the Eighth Circuit and others improperly treats *Heller*’s “presumptively lawful” language as an irrebuttable constitutional rule, barring courts from considering whether applying § 922(g)(1) to a particular defendant is consistent with the nation’s historical tradition. As such, it should not be adopted. This Court has never held that § 922(g)(1) is categorically constitutional, nor has it ever conducted the historical analysis for § 922(g)(1) that *Bruen* requires. Now that the question is in front of the Court, it should faithfully

apply *Bruen* and *Rahimi*. Accordingly, the Court should find that Branders is entitled to bring an as-applied challenge to § 922(g)(1).

Whether a particular application of the statute survives *Bruen*'s history and tradition inquiry is a separate question on the merits and here, historical analysis warrants the conclusion that the statute as applied to Branders violates her constitutional rights. Modern regulations on an individual's Second Amendment rights may only survive if the Government establishes that the modern regulation is sufficiently congruent to the "Nation's tradition of firearm regulation." To satisfy its burden, the Government must point to a similar historical analogue that iterates how the modern regulation is in accord with historical laws.

The first step in analyzing a challenge to a firearm regulation is to determine if the Second Amendment covers the person and their challenged conduct. Under this Court's precedent, the Second Amendment covers all Americans in the political community and covers the act of possessing a handgun within one's own home or in public. Here, Branders is an American and member of the political community, and her act of possessing a handgun within her home for self-defense is squarely covered by the Second Amendment, thereby satisfying the first step.

The second step in analyzing a challenge to a firearm regulation is for the Government to point to similar historical analogues and assert that the modern regulation shares the same principles and traditions. Here, the Government cannot point to a similar historical analogue, as laws regarding child welfare and child neglect only developed post-Civil War in the late 1800s. Even if such a late time period counts as a part of the "Nation's traditions," no survey of American laws governing child neglect reflect that individuals were disarmed and dispossessed from firearms as a consequence of child neglect.

The principles of § 922(g)(1) as applied to a felony conviction of child neglect do not align with other postulated historical statutes even when adopting a broader perspective of historical analogues. Any analogues based on disarming “dangerous” individuals are inherently inapplicable, as the purpose of such statutes was to prevent individuals that posed a physically violent threat from potentially harming others. Here, the felony of neglecting a child is not “violent” and does not automatically entail that the perpetrator is a “physical threat” to others. Furthermore, nonviolent analogues like vagrancy laws, drug use laws, and theft laws do not support the permanent disarmament of a person convicted of child neglect, as such laws either were designed to promote productivity and not suppress dangerousness, did not result in disarmament, or were of a unique nature in the Founding-era that cannot be stretched to other nonviolent crimes.

Finally, even if analogues supported disarming Branders, they do not support her permanent disarmament, as many Founding-era laws supported only temporary disarmament until felons reintegrated into society, or if the crime was not so severe. Here, seventy-year-old Branders poses no physically violent threat to others and has successfully integrated into society after completing her period of probation. Because the Government cannot satisfy its burden of finding a sufficient historical analogue, § 922(g)(1) unconstitutionally burdens her Second Amendment rights.

ARGUMENT

I. This Court should reverse the Fourteenth Circuit's decision affirming dismissal because Branders is entitled under the Second Amendment to bring an as-applied challenge to § 922(g)(1).

After less than two decades worth of decisions defining the modern scope of the Second Amendment, the Government asks this Court to hold that its precedents definitively foreclose an entire category of constitutional challenges that it has never addressed. This Court should decline that request, because when the Court first recognized an individual right under the Second Amendment, it did not purport to settle that right's every application. *See District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (“[S]ince this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field . . . there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.”). Nor did it purport to do so in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 31 (2022) (“Like *Heller*, we ‘do not undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment.’”) (citation omitted). And again—for the third time—this Court made clear that it did not set in stone the entire scope of the Second Amendment. 602 U.S. 680, 701 (2024) (“In *Heller*, *McDonald*, and *Bruen*, this Court did not ‘undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment.’ Nor do we do so today.”) (citing *Bruen*, 597 U.S. at 31). Against that binding backdrop, the Government cannot close what this Court has repeatedly left open: an as-applied challenge to § 922(g)(1).

A. *Heller* does not bar as-applied challenges to § 922(g)(1).

In *Heller*, this Court noted that “nothing in this opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” 554 U.S.

570, 627 (2008). The Court further went on to classify these examples of regulatory measures as “presumptively lawful.” *Id.* at n.26. Yet, what the Court did not hold is that such regulatory measures that disarm felons are conclusively or categorically constitutional. Indeed, the Court deliberately qualified “lawful” with the choice word “presumptively.” *Id.* Such a choice warrants the conclusion that the Court was not foreclosing as-applied challenges to felon-in-possession laws, but instead, pointing to these “longstanding prohibitions” as an example of facially acceptable limitations on the right secured by the Second Amendment. 554 U.S. at 627. This conclusion is further supported by the second clause in footnote 26 that, “our list does not purport to be exhaustive,” *id.* at n.26, because if the Court *were* announcing a categorical rule, it would not have added this cautionary clause.

While respondents may argue that this presumption equates to foreclosure of any as-applied challenges to § 922(g)(1), that argument requires an unwarranted leap from a presumption that felon-in-possession regulations are lawful to a constitutional conclusion that said regulations are categorically constitutional. That is so because *Heller* did not even examine § 922(g)(1)—rather, it examined a District of Columbia law that “generally prohibit[ed] the possession of handguns. 554 U.S. at 574. Importantly, the Court expressly reserved “expound[ing] upon the historical justifications for the exceptions [it] mentioned *if and when* those exceptions” were implicated.” *Id.* at 635 (emphasis added). That “if and when” is now before this Court. As such, the Court should use the framework later established in *Bruen* and *Rahimi* to resolve this case, rather than stop the inquiry at the presumption recognized in *Heller*.

B. *Bruen* and *Rahimi* require courts to determine whether the government's firearm restriction is consistent with historical tradition rather than assume the constitutionality of a modern restriction.

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, this Court further shaded in the contours of its modern Second Amendment doctrine. 597 U.S. 1, 19 (2022) (“[T]he government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”). In effect, the government—not the individual—must shoulder the burden of justifying a modern regulation. *Bruen*, 597 U.S. at 24 (“The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”). The mere fact that a modern regulation is “presumptively lawful” does not satisfy the standard that the Court tirelessly reiterated in *Bruen*: The government must conduct a historical, analogical inquiry that addresses “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” *Id.* at 29. In further reaffirmation of that requirement, the Court examined a facial challenge to § 922(g)(8) in *United States v. Rahimi*. 602 U.S. 680, 693 (2024). It faithfully walked through its history and tradition test by examining surety and going armed laws to conclude that § 922(g)(8) was “relevantly similar to those founding era regimes in both why and how it burdens the Second Amendment right.” *Id.* at 698 (citation omitted). To be sure, § 922(g)(8) does not fall within *Heller*’s identified categories of regulations that are presumptively lawful. *See Rahimi*, 602 U.S. at 684 (noting that the statute “prohibits an individual subject to a domestic violence order from possessing a firearm”); *Heller*, 554 U.S. at 627 (referring to regulation of felons and the mentally ill). But the fact that the presumption did not apply in *Rahimi* does not diminish the significance of the Court’s undertaking of the analogical inquiry *Bruen* prescribed. This undertaking confirms that *Bruen*

supplies the governing methodology that courts must use when the constitutionality of a firearm regulation is challenged: engaging in analogical reasoning to confirm that the regulation comports with history and tradition. To argue that the presumption recognized in *Heller* waives that requirement for § 922(g)(1)—or any statute, for that matter—would fly in the face of what *Bruen* and *Rahimi* demand.

C. *Heller’s* presumption does not supersede *Bruen* and *Rahimi’s* mandate to engage in historical analysis.

In the wake of *Bruen* and *Rahimi*, courts are split on whether prohibitions on firearm possession for felons are constitutional. Compare *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024) (holding that 18 U.S.C. § 922(g)(1) is categorically constitutional under the Second Amendment), with *Range v. Attorney General United States*, 124 F.4th 218, 232 (3d Cir. 2024) (holding that 18 U.S.C. § 922(g)(1) was unconstitutional as applied to a defendant convicted of food-stamp fraud). This split ultimately hinges on whether the court interprets *Heller’s* presumption of lawfulness for firearm regulations pertaining to felons as irrebuttable or rebuttable. See *Jackson*, 110 F.4th at 1128 (“Some [courts] have taken the phrase ‘presumptively lawful’ to mean that the Court was suggesting a presumption of constitutionality that could be rebutted on a case-by-case basis.”). In the Fourth, Eighth, and Tenth Circuits, courts have adopted the former view—that the presumption is effectively irrebuttable and thus, functions as a constitutional rule. *Id.* (“We think it more likely that the Court presumed that the regulations are constitutional because they are constitutional”); see also *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024). In the Third, Fifth, and Sixth Circuits, courts engage with *Bruen’s* mandated historical analogue test as a default approach, relegating the presumption to just that—a presumption. *Range*, 124 F.4th at 230 (refusing to “defer blindly to §922(g)(1) in its present form); see also *United States v. Williams*, 113 F.4th

637, 663 (6th Cir. 2024); *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024). Ultimately, the argument that *Heller*’s language operates as a categorical authorization of § 922(g)(1) requires “such a high level of generality that it waters down the [Second Amendment] right.” *See Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). Accordingly, this Court should side with the Third, Fifth, and Sixth circuits in limiting *Heller*’s language to only create a rebuttable presumption and read *Bruen*’s mandated analysis to be required for as-applied challenges of § 922(g)(1).

1. *Range, Williams, and Diaz* properly treat *Heller*’s presumption as rebuttable.

In *Range*, the Third Circuit declined the government’s invitation to interpret § 922(g)(1) as imposing “de facto permanent disarmament,” instead choosing to analyze *Range*’s as-applied challenge under the *Bruen* history and tradition test. 124 F.4th 218, 230 (3d Cir. 2024). Sure enough, the Third Circuit proceeded exactly as *Bruen* instructed. *Id.* at 228 (“We must determine whether the Government has shown that applying § 922(g)(1) to *Range* would be ‘consistent with the Nation’s historical tradition of firearm regulation.’”) (citing *Bruen*, 597 U.S. at 24). Importantly, the Third Circuit is not alone in its approach—the Fifth and Sixth Circuits also follow *Bruen*’s instruction. In *United States v. Williams*, the Sixth Circuit noted that it saw “things a bit differently than some of our sister circuits” and chose not to interpret § 922(g)(1) as categorically constitutional. 113 F.4th 637, 646 (6th Cir. 2024). The reasoning proceeded in three parts: holding otherwise would (1) “read too much into the Supreme Court’s repeated invocation of ‘law abiding, responsible citizens’”; (2) be “inconsistent with both *Heller* and the individualized nature of the right to keep and bear arms”; and (3) not acknowledge that *Bruen* and *Rahimi* “supersede our circuit’s past decisions on § 922(g).” *Id.* Lastly, the Fifth Circuit adopted the same approach in *United States v. Diaz*. 116 F.4th at 466. When faced with an as-applied challenge to § 922(g)(1) by an individual with prior vehicle theft charges, the court

declined to read *Heller* as establishing a categorical bar for such challenges. *Id.* Instead, it chalked *Heller*'s "presumptively lawful" language up to "mere dicta." *Id.* Critically, the Fifth Circuit noted that the Court in *Heller* (and *Bruen* and *Rahimi*) "did not complete any historical analysis of laws forbidding felons from possessing firearms, *as required by Bruen*." *Id.* (emphasis added). As such, the Fifth Circuit figured that "[w]ithout precedent that conducts *Bruen*'s inquiry," it was obligated to do that analysis itself. *Id.*

The reasoning employed by these three circuits illustrates why the Court should not read *Heller*'s language as a conclusive rule. First, as the Sixth Circuit noted, neither *Bruen* nor *Rahimi* used the "law-abiding, responsible" language to "define the scope of the right to keep and bear arms." 113 F.4th at 646. "Those cases had nothing to say about other citizens"—besides, of course, that their Second Amendment rights would yield to a regulation *only* if the government satisfied the history and tradition test. *Id.* at 647 (citation omitted). Second, "the historical disconnect" between the Second Amendment and other civic rights that were exercised collectively "undermines the virtuous-citizen theory." *Id.* at 646. In other words, there is no historical or traditional support for the claim that Second Amendment rights are exclusively available to law-abiding citizens. *Id.* at 647. This disconnect is exemplified by the very case that the government would seek to invoke in support of virtuous-citizen approach—*Heller*—because it was there that the Court made clear that the Second Amendment right does not belong to the public or a collective group. *See Heller*, 554 U.S. at 581 (recognizing that the Second Amendment is an individual right). And finally, as the Sixth Circuit aptly noted, "applying *Heller*'s dicta uncritically would be at odds with *Heller* itself, which stated courts would need to 'expound upon the historical justifications' for firearm-possession restrictions when the need arose." *Williams*, 113 F.4th at 648 (citation omitted); *see also Diaz*, 116 F.4th at 466 (also

labeling *Heller*'s language as "mere dicta"). Ultimately, the instruction from the trifecta of modern Second Amendment precedent is clear. Courts must do as *Bruen* says and consider whether a regulation is "consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. For this Court to hold otherwise in this case or any case would be an egregious deviation from its own precedents.

2. *Jackson, Vincent, and Hunt* extend *Heller* beyond what this Court held.

Contrary to the approach discussed above, the Eighth Circuit advanced a different approach in *United States v. Jackson* that presumed all felon-in-possession regulations to be constitutional. 110 F.4th at 1129 ("We think it more likely that the Court presumed that the regulations are constitutional because they are constitutional."). There, the Eight Circuit reasoned that because the Court in *Rahimi* failed to suggest that the Second Amendment protects felons, it conclusively waived that protection for felons altogether—and so too, the requirement for courts to engage in any historical analysis. *Id.* Concerningly, other circuit courts have also signed off on this illogical rationale. For example, in *Vincent v. Bondi*, the Tenth Circuit relied on its own precedent to deny an as-applied challenge to § 922(g)(1) by a nonviolent offender. 127 F.4th at 1265. Again, the Tenth Circuit reiterated that under *Heller*, "felon dispossession laws are presumptively valid." *Id.* (citation omitted). But as has already been clarified, the presumption was merely that—a presumption. The Tenth Circuit seemingly had nothing further to say in response to that distinction, nor did the Fourth Circuit in *United States v. Hunt*. 123 F.4th at 700. Citing the Eighth Circuit, it concluded that "there is no need for felony-by-felony litigation regarding the constitutionality of Section 922(g)(1)" and rejected the as-applied challenge—"without regard to the specific conviction that established his inability to lawfully possess firearms." *Id.* (emphasis added). Despite noting that *Bruen* "did not repeat [*Heller*'s] assurances"

and “did not mention felons or section 922(g)(1),” the *Hunt* court reasoned that “nothing in *Bruen* or *Rahimi* undermines . . . this Court’s previous reliance on *Heller*’s [language].” *Id.* at 703–04 (citations omitted). Again, the court has it backwards: it somehow interprets *Bruen* and *Rahimi*’s silence on the constitutionality of § 922(g)(1) as a definitive answer. But the absence of a decision is not a decision. Rather, as the Third, Fifth, and Sixth Circuits exhibit, a presumption does not become irrebuttable merely because subsequent cases decline to address the question. The correct approach is to engage in the historical analysis that *Bruen* and *Rahimi* mandate.

In conclusion, recognizing that defendants may bring as-applied challenges to § 922(g)(1) does not disregard this Court’s statement in *Heller* that longstanding prohibitions on firearm possession by felons are “presumptively lawful.” To the contrary, it gives effect to *Heller*’s own recognition that the Court had not undertaken an exhaustive historical analysis of the Second Amendment. *See Heller*, 554 U.S. at 635. Nearly twenty years later, the time has now come to do what *Heller* expressly reserved for another day: undertake a historical inquiry of felon-in-possession regulations.

II. Assuming that Branders may bring an as-applied challenge to § 922(g)(1), the statute is an unconstitutional regulation of her Second Amendment rights because there are no historical analogues that support her current disarmament.

The Second Amendment guarantees to individuals the general right to keep and bear firearms for self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008). When an individual engages in conduct covered by the Second Amendment, “the Constitution presumptively protects that conduct.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). Any regulation burdening or infringing upon the exercise of a person’s Second Amendment rights is valid only if the regulation is “consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 24. The Government bears the burden of

specifically pointing to historical evidence that demonstrates how the current regulation is based on the same principles underlying the country’s historic regulations of firearms. *See id.* at 33–34 (“[T]he burden falls on [the Government] to show that New York’s proper-cause requirement is consistent with this Nation’s historical tradition of firearm regulation. Only if [the Government] carr[ies] that burden can [it] show that the pre-existing right codified in the Second Amendment, and made applicable to the States through the Fourteenth, does not protect petitioners’ proposed course of conduct.”); *see also United States v. Rahimi*, 602 U.S. 680 (2024) (“[T]he appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. A court must ascertain whether the new law is “relevantly similar” to laws that our tradition is understood to permit.”) (citation omitted). Though the Government need not point to a “historical twin” when using analogical reasoning, it must point to a “well-established” and “relevantly similar” analogue for the regulation to survive. *See Bruen*, 597 U.S. at 28–30.

A. Section 922(g)(1) burdens Branders’ Second Amendment rights by prohibiting her from possessing or using a firearm.

The Supreme Court applies a two-step inquiry to determine whether a regulation infringing on a person’s Second Amendment rights is constitutional. *Bruen*, 597 U.S. at 31–34. The first step is to determine whether the Second Amendment’s plain text covers the individual and their regulated conduct. *Id.*; *see also Range v. Attorney General United States*, 124 F.4th 218, 225 (3d Cir. 2024) (en banc) (“After *Bruen*, we must first decide whether the text of the Second Amendment applies to a person and his proposed conduct.”).

Under the first step, the Second Amendment’s plain text covers “all Americans,” regardless of whether they are a felon or whether they are “responsible.” *Heller*, 554 U.S. at 581; *see also Rahimi*, 602 U.S. at 773 (Thomas, J., dissenting) (“[T]he Government contended that the

Court has already held the Second Amendment protects only “responsible, law-abiding” citizens. The plain text of the Second Amendment quashes this argument. The Amendment recognizes ‘the right of the *people* to keep and bear Arms.’ When the Constitution refers to ‘the people,’ the term ‘unambiguously refers to all members of the political community.’”) (citation omitted); *Range*, 124 F.4th at 228 (“[W]e reject the Government’s contention that ‘felons are not among “the people” protected by the Second Amendment.’ *Heller* and its progeny lead us to conclude that Bryan Range remains among ‘the people’ despite his 1995 [felony].”). The Second Amendment’s plain text also covers the act of keeping and carrying a commonly used weapon for self-defense, whether it be in the home or in public. *See Bruen*, 597 U.S. at 32–33 (discussing how handguns are weapons “in common use” for self-defense, and how the plain text of the Second Amendment covers the keeping and carrying of handguns for self-defense in both the home and public spaces).

Here, the Second Amendment’s plain text clearly covers Branders and her conduct. Branders is a “member of the political community” like other Americans; her decades-old felony conviction does not automatically exclude her from “the people,” as discussed in *Rahimi*. Whether Branders is “responsible” or not is also entirely irrelevant, as the Second Amendment does not melt away simply because a person is not as responsible with firearm operation. And even if “responsibility” mattered, the record reflects that Branders was a responsible firearm owner, keeping the handgun locked in a drawer and ammunition stored separately. R. at 3.

Furthermore, the Second Amendment’s plain text clearly covers Branders’ regulated conduct as well. As iterated in *Bruen*, Branders’ actions of keeping a handgun at home for self-defense fits squarely under the Second Amendment’s scope. And because § 922(g)(1) regulates

this conduct by prohibiting her from possessing a firearm in her own home, the first step of the inquiry is satisfied.

B. The Government cannot point to a historical analogue that supports disarming Branders for a non-violent felony of neglect.

Under the second step of this Court’s two-step inquiry, the Government bears the burden of establishing that the challenged regulation is based on the same principles of prior traditional regulations from the United States’ history. *United States v. Hemani*, 608 U.S. 772, 780 (2026). Although the Government is not necessarily required to point to a similar historical regulation that serves as an “analogue” to the current regulation, this analogical reasoning is the predominant method of doing so. *Cf. Bruen*, 597 U.S. 1 (analyzing the Government’s proposed analogues of state permit laws requiring “proper cause” and surety statutes); *Rahimi*, 602 U.S. 680 (analyzing the Government’s proposed analogues of surety statutes and “going armed” laws); *Hemani*, 608 U.S. 772 (analyzing the Government’s proposed analogues of vagrancy laws and civil-commitment laws); *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025) (analyzing the Government’s proposed analogue of debtors’ prisons); *United States v. Mitchell*, 160 F.4th 169 (5th Cir. 2025) (analyzing the Government’s proposed analogues of going armed laws and founding-era laws punishing theft by death).

The Government’s analogue does not have to be a “twin” to the modern-day regulation; however, it must be well-established, representative, and relevantly similar to the challenged regulation. *Range*, 124 F.4th at 228 (discussing the holdings of *Bruen* and *Rahimi*). In examining whether a historical analogue is sufficiently similar to establish the principles the Government attempts to rely on, courts should look to the “why” and “how” of the analogue, meaning the purpose of the historical regulation and how it operated in practice. *See Hemani*, 608 U.S. at 780–81 (“While we have not yet had cause to “exhaustive[ly] survey” the features that may

render a modern law “relevantly similar” to historical ones, we have said two play a ‘central’ role. Call them the ‘*why*’ and ‘*how*.’ The more closely a contemporary law mirrors a well-established historical analogue in *purpose* and *operation*, the more likely it is to be upheld. Conversely, the more a modern law diverges from traditional laws in *purpose* and *operation*, the less likely it is to survive review.”) (emphasis added).

1. There are no historical analogues for laws disarming individuals for child neglect.

Regarding Branders’ specific felony of neglect of a child, the Government cannot point to any historical analogues because none exist. Though child protection statutes are clearly beneficial to society and important in maintaining the welfare of the youth, the Nation only began recognizing the need for such laws and principles in the late 1800s. *See generally* Sanford N. Katz et al., *Legal Research on Child Abuse and Neglect: Past and Future*, 11 Fam. L.Q. 151 (1977) (surveying the legal development and structure of child neglect and abuse statutes across the country over time, and mentioning how the Society for the Prevention of Cruelty to Children was founded in the late 1800s only after activists convinced the Society for the Prevention of Cruelty to Animals that children deserved similar protections). Even if assuming that the late 1800s is sufficient to be within the Nation’s “historical tradition,” scholarly surveys of historical family and children laws make no mention of firearm disarmament as a consequence of child neglect. *See generally* Laura Savarese, *The Origins of Family Rights and Family Regulation: A Dual Legal History*, 78 Stan. L. Rev. 63 (2026) (discussing the legal development of child welfare and child neglect laws from the post-Civil War era to the Progressive era, yet not once reflecting a policy of disarming individuals for child neglect); Steven Mintz, *Children, Families, and the State: American Family Law in Historical Perspective*, 69 Denv. U.L. Rev. 635 (1992) (covering the development of family and child law from Colonial times to the present day, and

not discussing how disarming individuals was one of the punitive consequences for committing child neglect); Diana M. Richett & James R. Hudson, *The Soco-Legal History of Child Abuse and Neglect: An Analysis of the Policy of Children's Rights*, 6 W. Mich. U.J. Socio. & Soc. Welfare 849 (1979) (discussing ancient practices of child abuse and the policy changes throughout the history of the United States, yet not reflecting that disarming individuals was a practice due to the evolving laws).

Here, the loss of Kenneth's life was tragic, but the Government cannot point to any historical analogue suggesting that if such an event occurred in the founding era, Branders would have been disarmed and prohibited from possessing her firearm. The principles of protecting child welfare did not develop until the late 1800s, and even past this point, there are no similar historical regulations mandating the disarmament of an individual for neglecting a child. Because the Government cannot meet its burden of establishing that the act of neglecting a child was grounds for disarming an individual, § 922(g)(1) is unconstitutional as applied to Branders for her prior conviction of felony neglect of a child.

2. Even under a broader interpretation, other historical analogues lend no support for disarming a non-violent individual that committed an act of omission, rather than an affirmative criminal act.

Even if this Court decides to broaden its interpretation of historical analogues and look to other regulations outside of child neglect, regulations typically offered in this Court and lower courts fail to lend support as well. Historical analogues that involve disarming violent offenders are insufficient to relate to a modern-day regulation, as the Court and other circuits have reaffirmed that regulations on individuals that pose a physical threat are of a unique nature that cannot be extended to situations where the individual did not pose a physical threat to others. *See Hemani*, 608 U.S. 789 (noting that the historical analogue of surety-of-the-peace laws, which

were designed to prevent violence and prevent firearm abuse, would not apply to a modern-day individual that habitually used marijuana); *United States v. Hembree*, 165 F.4th 909 (5th Cir. 2026) (holding that historical analogues of disarming violent, “dangerous” individuals did not apply to a prior felony conviction of possession of methamphetamine); *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024) (holding that historical analogues of disarming individuals with mental health issues and individuals while drunk did not apply to an individual that was not violent and only smoke marijuana); *Range*, 124 F.4th at 231–32 (holding that simply because some historical analogues punished nonviolent crimes with death does not mean that nonviolent crimes, like making a false statement for a food stamp application, warrant permanent disarmament, and analogues targeting dangerous individuals did not apply to the felony at issue).

Here, any analogue that the Government may point to that involves disarming “dangerous” individuals does not apply to Branders. The underlying principle of traditional statutes like those involving surety-of-the-peace, “going armed,” carrying firearms while intoxicated, and possessing a firearm with mental health issues is that the individual presents a potential violent, physical danger to others. But here, the felony of neglecting a child does not involve any component of presenting a violent, physical danger. There is no indication whatsoever in the record that Branders actively posed a physical, violent threat to others. It can hardly be said that trusting one’s adult son, checking for a child after two hours, and taking extensive measures to call the child’s mother and the police constitute a “physical threat.” And it would be an even further stretch to construe Branders as posing a violent threat to children because her son left Kenneth in a van and she failed to check on him.

Other nonviolent analogues are also poor fits for felony neglect of a child. Vagrancy laws, which targeted those who “did not meet the societal expectation of work,” are inapplicable to firearm regulations because their goals were to promote productivity and suppress vices, not protect the public from “dangerous individuals.” *Hemani*, 608 U.S. at 787–88. Historical theft laws also do not apply because theft was treated as a particularly egregious offense that is often too unique to be stretched across other nonviolent crimes. *See Cockerham*, 162 F.4th at 505–07 (discussing how theft was punished severely and permanently at the founding, then declining to stretch the analogy to a felony conviction for failing to pay child support, as debtors were treated differently and often released once debts were paid). Even if the Government pointed to such laws for support, their underlying principles either do not apply to firearm regulation, or they were of a unique nature that child neglect does not encapsulate.

Here, even if the Government stretched vagrancy laws to support that Branders did not meet the “societal expectation of work” through her daycare operation, such analogy would fall flat since vagrancy laws focused on promoting productivity, not suppressing dangerousness. And any analogies to historical theft laws would be null, as theft held its own unique place in this Nation’s history of punitive consequences. Because even a generous reading of historical analogues fails to establish shared principles underlying § 922(g)(1)’s application to a felony conviction for child neglect, the regulation was an unconstitutional burden on Branders’ Second Amendment right to keep a firearm in the home for self-defense.

3. Even if historical principles once supported disarming Branders under 922(g)(1), there are no historical principles supporting the current burden of Branders’ Second Amendment rights for a twenty-year-old conviction.

Assuming *arguendo* that the Government pointed to a historical analogue that supported disarming Branders for her felony conviction of child neglect, there are no such analogues that

support keeping her permanently disarmed despite the decades that have passed since her conviction. Historical analogues that deprived an individual of a firearm often only dispossessed them of the specific firearm used in the offense rather than dispossessed them from firearms permanently. *See Range*, 124 F.4th at 231 (“Founding-era laws that forfeited felons' weapons or estates are not sufficient analogues either. Such laws often prescribed the forfeiture of the specific weapon used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally. So in the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society.”) (citation omitted); *Cockerham*, 162 F.4th at 510 (“[D]uring the Founding era, thieves were treated differently from debtors. Thieves were subject to permanent disarmament. Debtors were not. Debtors could be imprisoned, and thus temporarily disarmed.”).

Here, there are no historical principles that support permanently depriving Branders of her Second Amendment right to possess a handgun for self-defense. The historical principles discussed in *Rahimi*, *Hemani*, *Range*, and *Hembree* discussed regulations on violent individuals because they posed a physical threat to others. Yet here, Branders is a seventy-year-old elderly woman that can hardly be described as a person capable of posing a threat of physical violence. She was not even imprisoned for her felony conviction; she only received a two-year suspended sentence and was placed on probation. Furthermore, she lived with a son that was prone to angry outbursts and brought “friends” around that she was afraid of. No historical analogues support depriving a person that committed a nonviolent crime from their Second Amendment right permanently, much less an elderly woman that fears for her safety when surrounded by strangers she does not trust. Accordingly, even under the most generous interpretation of § 922(g)(1)’s application to Branders, it still lacks any similar historical analogues and is unconstitutional.

CONCLUSION

For the foregoing reasons, this Court should reverse the Fourteenth Circuit's holding, permit Branders to bring an as-applied challenge to § 922(g)(1), and hold that it violates her Second Amendment rights.

Respectfully submitted,

Team UJ

Counsel for Petitioner