

No. 26-179

IN THE

Supreme Court of the United States

TERRY BRANDERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

- (1) Whether this Court’s description of felon-disarmament as only “presumptively lawful” permits an individual to bring an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1), in which the government bears the burden to justify a lifetime disarmament by this Nation’s historical tradition, or instead bars them from contesting the disarmament at all.
- (2) Whether 18 U.S.C. § 922(g)(1), as applied to a single non-violent felony conviction, is consistent with this Nation’s historical tradition of firearm regulation, as required by this Court’s Second Amendment jurisprudence.

STATEMENT OF THE CASE

The Accident and Ms. Branders' Sentence

In July 2000, Terry Branders, a retired factory worker, began caring for her former colleagues' children at her home in Virginia. R. at 2. She had no daycare license and sometimes cared for ten or more children at a time. *Id.* Her eighteen-year-old son, Nelson, handled pick-ups and drop-offs in a large passenger van. *Id.*

One morning, after only a few hours of sleep, Nelson collected twelve children. *Id.* He dropped all of them off with Ms. Branders except for one, Kenneth Drew. After the drop-off, he drove to his own apartment, parked the van, and then went to sleep inside. *Id.* Nelson believed he had taken every child inside but admitted he was tired and could have missed one since they were rambunctious that day. *Id.* Kenneth, who was eleven months old, remained in the van in his car seat. *Id.*

Because Nelson normally put Kenneth directly into his crib and Kenneth normally slept through the morning routine, Ms. Branders did not realize there was a problem. *Id.* When Ms. Branders did go to check on Kenneth two hours later, she realized he was missing. *Id.* She spent over an hour trying to reach Nelson and Kenneth's mother, neither of whom could be reached, and then called 911. *Id.* Police found Kenneth in the van; he was then taken to the hospital quickly but tragically died of heat-related injuries. *Id.*

Ms. Branders and Nelson were both convicted of felony neglect of a child under Va. Code § 18.2-371. R. at 2. Ms. Branders was also convicted of misdemeanor operation of an unlicensed daycare. *Id.* at 2-3. Both were sentenced on March 5, 2001. *Id.* at 3. Nelson received a four-year imprisonment sentence while Ms. Branders received a two-year suspended sentence and probation. *Id.*

The Following Two Decades

In 2020, Ms. Branders moved to Appleton, Newcoastland, to start over. *Id.* There she became deeply involved in local charities, volunteering at the food bank, and stocking school supplies for children in need. *Id.* In the more than twenty years since her conviction, her only other contact with the law was a misdemeanor reckless driving conviction for going 83 in a 65-mph zone. *Id.*

Nelson Moves In

Nelson recently moved in with his mother, now in her late 70s, in Appleton to help her as she ages. R. at 3-4. He insisted on living in the basement, coming and going as he pleased, and forbade her from entering the basement. *Id.* He blames her for everything wrong in his life and has frequent angry outbursts, so Ms. Branders complies with his demands. *Id.* He struggled to keep a job and Ms. Branders has often suspected that he uses or sells drugs. *Id.* In addition, Ms. Branders finds some of his “friends” frightening. *Id.*

Becky Haskill, a fellow food-bank volunteer, heard about Ms. Branders’ troubles and gifted her a gun for her protection. *Id.* Ms. Branders was hesitant about taking the gun, but after Becky’s offer, she accepted the gift. *Id.* Ms. Branders stored the gun in a locked drawer in her living room and kept the ammunition locked in a separate drawer. R. at 3-4.

The Search and Arrest

In June 2024, the DEA received a tip about Nelson’s activities. R. at 3. A database search of the address turned up both Nelson’s and Ms. Branders’ 2001 convictions. Agents waited until Nelson left for the day and knocked on the door. R. at 3-4. Agent Sue Stern testified that she was certain she could get Ms. Branders to consent to a search because of her age and that it would be “way easier” than getting a warrant. R. at 4. Ms. Branders was “quite cooperative” and told the agents that Nelson lived in the basement and gave them consent to search the home. *Id.*

The agents found no evidence of drug activity in the home. *Id.* They did however find Ms. Branders' gun. She told them how it had been given to her and that she was a responsible gun owner since she kept her ammunition stored away. *Id.* Agent Stern laughed as she recounted this to the district court. *Id.* Ms. Branders was "surprised" when the agents arrested her. *Id.*

Proceedings Below

The government charged Ms. Branders with violating 18 U.S.C. § 922(g)(1), and she moved to dismiss on the ground that the statute violates the Second Amendment as applied to her. R. at 4. The district court granted the motion. It found that her offense, though it "resulted in the most horrific outcome possible," was "the result of negligence rather than malice" and does not indicate that she is "a credible threat to the safety of others." R. at 6-7. A divided Fourteenth Circuit panel vacated. It called the district court's findings "unnecessarily inclusive," relied on *Heller*'s "presumptively lawful" language, and adopted the Eighth Circuit's categorical ban on as-applied challenges. R. at 8-10. Judge Pinckney dissented, finding it "unlikely that neglect would have resulted in permanent disarmament" at the founding. R. at 10-11.

Upon remand, Ms. Branders entered an *Alford* plea reserving her Second Amendment challenge. The Fourteenth Circuit held the challenge preserved but summarily affirmed, over Judge Pinckney's dissent. R. at 12. This Court granted certiorari. R. at 13.

SUMMARY OF THE ARGUMENT

The Government has convicted Terry Branders of a federal felony for keeping a handgun locked in a drawer in her own home for self-defense, based solely on a negligence conviction more than two decades old. It asks this Court to hold that her felony label both bars her from challenging the law as applied to her and permanently strips her of her right to armed self-defense. The Second Amendment does not permit the Government to do either.

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

The Fourteenth Circuit refused even to hear Ms. Branders' challenge. It held that a felony label alone forecloses any as-applied challenge to § 922(g)(1). That rule is outside what this Court has allowed. *Bruen*'s framework is inherently as-applied. It begins with asking whether the plain text of the Second Amendment covers "an individual's conduct." It then asks whether the Government can justify disarming *this* person by a relevantly similar historical tradition, a question that turns on who is disarmed and why. This Court has never carved § 922(g)(1) out of that framework. *Rahimi* resolved only a facial challenge, leaving as-applied challenges open. *Hemani* asked whether an as-applied challenge to a parallel status-based prohibition in the very same statute was constitutional. It was. The Government's contrary rule would let legislatures define away a fundamental right simply by attaching a label to people and relegate the Second Amendment right to bear arms to a "second-class right."

Heller's footnote 26 does not support that result either. Its "presumptively lawful" language is only dictum, unsupported by any historical source, and was addressed to an issue that was not before the Court. Even taken at face value, a presumption is rebuttable by definition. It may require a challenger to come forward with facts, but it never relieves the Government of its burden under *Bruen* to show that an individual should be disarmed in line with this Nation's history and tradition. Congress itself made individual dangerousness the test for restoring firearm rights under § 925(c). The Constitution surely permits a court to ask the same question. The burden of conducting individual review is no reason to deny citizens what the Constitution guarantees.

§ 922(g)(1) violates the Second Amendment as applied to Ms. Branders.

The Second Amendment protects the right of all Americans to keep and bear firearms for self-defense, a right that naturally extends to Ms. Branders. As Ms. Branders is one of "the people" the Constitution protects, both courts below correctly agreed that the Second Amendment's plain

text covers her conduct. The burden therefore falls on the Government to demonstrate that permanently disarming Ms. Branders is consistent with this Nation's historical tradition of firearm regulation. A feat the Government cannot accomplish.

Every founding-era disarmament regime served the same purpose of neutralizing a demonstrated, present danger to others or to the political order. But § 922(g)(1) disarms Ms. Branders merely because she was convicted more than twenty years ago for a negligence-based felony. § 922(g)(1), as applied to Ms. Branders, makes no dangerousness finding, draws no distinction between violent and non-violent offenses, and ignores any rehabilitation effect or passage of time. Even the manner in which the statute operates has no historical parallel. Founding-era restrictions preserved the right to self-defense by being temporary and requiring individualized judicial proceedings. Here, § 922(g)(1) is a permanent ban, automatically impacting all American citizens convicted of a felony, with insufficient rights restoration processes. No founding-era regime permanently stripped a non-dangerous person of the right to keep a firearm in her own home based on a decades-old negligence conviction. The Government cannot find a sufficient analogue and cannot carry its burden under current Second Amendment jurisprudence. As such, § 922(g)(1) is unconstitutional as applied to Ms. Branders, and this Court should reverse.

ARGUMENT

Over twenty years ago, Terry Branders was sentenced for felony child neglect, a tragic offense she has dedicated the rest of her life making right. But today, Ms. Branders comes before this Court as an elderly woman who, fearing for her safety, did what the Second Amendment most fundamentally protects: she kept a firearm in her home for self-defense. R. at 3-4. For that act alone, the Government charged her with a federal felony and now asks this Court to treat her decades old negligence conviction as a permanent forfeiture of her core constitutional right. R. at 4-5.

The Second Amendment provides that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. That command has always been understood as "codif[ying] a pre-existing right" that existed before the Constitution itself. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) ("The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed."). At the core of that right stands the act Ms. Branders performed: keeping a firearm in the home for self-defense. *See McDonald v. City of Chi.*, 561 U.S. 742, 780 (2010) ("the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home"); *Heller*, 554 U.S. at 630 (same). It is the Government's burden to show that history already drew the line it now asks this Court to enforce, and it cannot.

The Government seeks to avoid this burden entirely by asking this Court to hold that a felony conviction, standing alone, forecloses any as-applied challenge to U.S.C. § 922(g)(1). But this Court's recent jurisprudence forecloses that position, allowing as-applied challenges to parallel restrictions on Second Amendment rights. *See, e.g., United States v. Hemani*, 146 S. Ct. 1677, 1687 (2026) (undertaking an as-applied challenge to the restrictions imposed under 18 U.S.C.S. § 922(g)). This Court should take the opportunity to further reinforce its precedent: that the Second Amendment is not a "second-class right" subject to lesser protection, prevent categorical class-based bans not rooted in history and tradition, and allow as-applied challenges to vindicate those rights. *McDonald*, 561 U.S. at 780.

The statute at issue, 18 U.S.C.S. § 922(g)(1), is unconstitutional as applied to Ms. Branders, as crimes of negligence lack any historical analogue warranting disarmament of otherwise law-abiding citizens. Ms. Branders should be allowed to exercise her core Second Amendment right to defend herself in her own home.

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

The Fourteenth Circuit incorrectly read precedent from this Court and barred Ms. Branders from showing that § 922(g)(1) is unconstitutional as-applied. To bar Ms. Branders from being heard is irreconcilable with principles this Court has enforced for over two centuries. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (“The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.”) Indeed, as-applied challenges are the core of constitutional litigation, vindicating rights and rectifying injury. *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007) (“as-applied challenges are the basic building blocks of constitutional adjudication.”) (citation modified). Nothing in the Second Amendment suspends these principles.

Under *Bruen*, once the Amendment’s plain text covers a person’s conduct, the Constitution “presumptively protects” it, and the burden shifts to the Government to justify its regulation by this “Nation’s historical tradition.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17, 24 (2022). The framework this Court adopted is inherently as-applied, triggered when the “plain text covers an individual’s conduct.” *Id.* at 17. Nothing in this Court’s decisions exempts § 922(g)(1) from that framework. Even if *Heller*’s observation that felon prohibitions are “presumptively lawful” bore the weight the Fourteenth Circuit placed on it, that observation is dictum and, at most, creates a rebuttable presumption—which requires the personalized inquiry the court below refused to undertake. 554 U.S. at 627 n.26.

A. Bruen’s history and tradition test for firearm regulations is inherently as-applied.

According to the Government, a felony conviction extinguishes any Second Amendment right and inquiry before it begins. However, this Court has said quite the opposite and laid out a clear rule for the Government to follow. When the Second Amendment’s plain text reaches a person’s conduct, “the Constitution presumptively protects” it. *Bruen*, 597 U.S. at 17, 24. The

Government must then prove that its regulation accords with “this Nation’s historical tradition of firearm regulation.” *Id.* The first step is expressly personal, looking at the individual’s own conduct that the Government seeks to restrict. This coverage issue is not in dispute, and both courts below came to the same conclusion. *See* R. at 5-6, 9.

The dispute is over the second step, which is no less individualized than the first. To justify a regulation, the Government must “reason by analogy,” identifying a historical regulation that is “relevantly similar” to the one it defends. *Bruen*, 597 U.S. at 28-29; *see also Range v. AG United States*, 124 F.4th 218, 228 (3d Cir. 2024). (“To preclude [the plaintiff] from possessing firearms, the Government must show that § 922(g)(1), *as applied to him*, is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”) (citation modified) (emphasis added). What matters is “whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition.” *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (citation modified).

To identify those principles, a court looks to “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Bruen*, 597 U.S. at 29. Whether the modern law and its historical counterpart impose a “comparable burden,” and whether that burden is “comparably justified,” are the “central considerations” of the inquiry. *Id.* Whether a burden is “comparably justified” depends on who is being disarmed and why. This is not something that can be decided in the abstract and requires an individualized application.

This Court’s treatment of this framework confirms as much. *Rahimi* arrived as a facial challenge, and the ultimate holding relied on the facial challenge in upholding the ban. 602 U.S. at 693. A holding that a statute has some constitutional applications is not a holding that every application is constitutional. Justice Gorsuch said so directly, explaining that the Court’s resolution

of the facial challenge “necessarily leaves open the question whether the statute might be unconstitutional as applied in particular circumstances.” *Id.* at 713 (Gorsuch, J., concurring) (citation modified). If the analysis ended once a statute’s category matched a historical one, there would have been nothing left to leave open for future cases.

Bruen does not say that once a class-based regulation finds a historical analogue that the individuals within that class lose the ability to challenge it as applied to them. The Government must identify something in this Court’s Second Amendment decisions or in the Nation’s historical tradition that converts a categorical statute into one immune from as-applied review. The ordinary rule is to allow for as applied challenges, since facial challenges are “disfavored.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (explaining that facial challenges rest on speculation, run contrary to principles of judicial restraint, and threaten to short-circuit the democratic process). The Government’s position would make § 922(g)(1) a statute which no citizen may challenge on the facts of their own case, relegating the Second Amendment right to bear arms to a “second-class right,” which this Court has explicitly rejected. *McDonald*, 561 U.S. at 780.

This framework is not restricted to just U.S.C.S. § 922(g)(8). In *Hemani*, this Court looked at another status-based prohibition under § 922(g)(3) barring users of controlled substances from possessing firearms. 146 S. Ct. at 1684. *Hemani* took up an as-applied challenge to that provision and resolved it under *Bruen* measuring the statute’s application against the historical tradition. *Id.* at 1687. If a similar status-based prohibition, in the same statute, is subject to as-applied review, there is no basis to hold § 922(g)(1) to a different set of rules.

Several circuit courts have reached the same conclusion. *See, e.g., Range*, 124 F.4th at 228 (conducting an as-applied challenge to § 922(g)(1) post-*Bruen*). The Sixth Circuit put it directly:

“complete deference to legislative line-drawing would allow legislatures to define away a fundamental right.” *United States v. Williams*, 113 F.4th 637, 660 (6th Cir. 2024). A legislature has authority to decide what conduct to criminalize, and a felony sentence is “purely a matter of legislative prerogative.” *Id.* at 660-61 (quoting *Rummel v. Estelle*, 445 U.S. 263, 274 (1980)). But “when that decision implicates a fundamental, individual right, judicial deference is simply not an option,” because constitutional rights “don’t spring into being at the legislature’s grace.” *Williams*, 113 F.4th at 661. A rule under which a felony label bars bringing a constitutional question to the courts would do precisely what *Williams* warned against. It would let legislatures assign constitutional rights by label and avoid the central inquiry of *Bruen*.¹

The Government may respond that as-applied review invites felony-by-felony litigation. *See United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) (“[W]e conclude that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).”) It does, and that is what the Constitution requires when an enumerated right is at stake. However, the concern is also overstated. Circuits have been conducting as-applied challenges and have upheld the statute’s application once the Government shows a relevantly similar tradition as-applied to the individual. *See, e.g., United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024) (upholding a firearm restriction on an individual convicted of car theft); *United States v. Moore*, 111 F.4th 266, 272 (3d Cir. 2024) (upholding a firearm restriction on a convicted drug dealer). *Bruen*’s framework does not allow the Government to take a shortcut and strip rights without engaging in this process. A right which gives way to docket management isn’t much of a right at all, which is part of the reason

¹ Legislatures are allowed to legislate by class. *See Rahimi*, 602 U.S. at 698 (“we do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse.”) However, members of the class need to “have an opportunity to show they aren’t” dangerous. *Williams*, 113 F.4th at 662. In addition, as Part II demonstrates, the tradition supports disarming the dangerous, not merely the convicted. *See Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (“Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons.”)

why this Court has required more. Accordingly, an as-applied challenge to § 922(g)(1) remains available.

B. Heller’s “presumptively lawful” footnote does not foreclose as-applied challenges or relieve the Government of its burden.

Heller’s footnote 26 establishes, at most, a rebuttable presumption of constitutionality. 554 U.S. at 627 n. 26. In *Heller*, this Court explained a number of prohibitions that were not at issue, which it noted were still “presumptively lawful.” *Id.* (“We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.”). It does not relieve the Government of its burden under *Bruen*, and it does not close the courthouse to individuals who wish to express their right to defend themselves at home. The court below treated the footnote as reason to skip the historical inquiry altogether, converting *Heller*’s cautionary footnote into a categorical rule that foreclosed Ms. Branders’ challenge. 554 U.S. at 627 n. 26; R. at 9-10.² But neither the text of the footnote, the framework this Court has built since *Heller*, nor the logic of constitutional interpretation support that conversion. As such, Ms. Branders does not ask this Court to retreat from footnote 26, but merely to enforce it as written. Footnote 26 establishes, at most, a rebuttable presumption of constitutionality, and certainly should not be read as exempting the Government from meeting its burden under *Bruen*.

Three features of the footnote defeat the Fourteenth Circuit’s categorical reading. First, the passage is merely dictum. No felon was before the Court in *Heller*, and this Court expressly declined to undertake an “exhaustive historical analysis . . . of the full scope of the Second

² The courts of appeals are divided. The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits reject as-applied challenges to § 922(g)(1); the Third, Fifth, and Sixth Circuits entertain them. *See United States v. Hembree*, 165 F.4th 909 (5th Cir. 2026) (collecting cases), *petition for cert. filed*, No. 25-1219 (U.S. Apr. 24, 2026); *see also Recent Case, Constitutional Law—Second Amendment—En Banc Ninth Circuit Upholds Felon-in-Possession Ban Under Rahimi.—United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc), 139 Harv. L. Rev. 831, 833-35 (2026).

Amendment.” 554 U.S. at 626.³ In addition, the *Heller* opinion itself refused to rely on a footnote in *Lewis v. United States*, 445 U.S. 55 (1980), finding it “inconceivable that we would rest our interpretation of the basic meaning of any guarantee of the Bill of Rights upon such a footnoted dictum in a case where the point was not at issue and was not argued.” 554 U.S. at 625, n. 25. Footnote 26 fits that description precisely. Justice Thomas noted as much when he called the felon reference “dicta.” *Rahimi*, 602 U.S. at 773 n.7 (Thomas, J., dissenting). Likewise, then-Judge Barrett was “reluctant to place more weight on these passing references than the Court itself did.” *Kanter*, 919 F.3d at 453 (Barrett, J., dissenting). And because footnote 26 cites no historical source, it cannot itself serve as the “well-established . . . historical analogue” *Bruen* requires. 597 U.S. at 30. A footnote cannot cite itself as a source.

Second, “presumptively” means rebuttable. A presumption is a rule that, “at a minimum, shifts the burden of producing evidence” to the opposing party. *McCormick on Evidence* § 342, at 823 (Robert P. Mosteller ed., 9th ed. 2026). A presumption that no litigant may overcome is an irrebuttable rule, not a presumption. This Court uses that same language in the same framework already, saying that when the text covers conduct, the Constitution “presumptively” protects it, and “[t]o overcome that presumption, the government then bears the burden” of justifying its regulation. *Hemani*, 146 S. Ct. at 1685; *see also United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010) (calling felon bans “‘presumptively lawful’ . . . by implication means that there must exist the possibility that the ban could be unconstitutional in the face of an as-applied challenge”) (citation modified). *Presumptively* does not mean *rebuttable* when it protects citizens and *conclusively* when it protects statutes.

³ The Court acknowledged as much: “[T]here will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.” *Heller*, 554 U.S. at 635.

A presumption does not shift the burden that *Bruen* assigns to the Government. Under the ordinary rule, the party a presumption runs against must come forward with evidence, but the burden of persuasion "remains on the party who had it originally." Fed. R. Evid. 301. Here, footnote 26 may require a citizen to point to facts suggesting that the usual justification for disarming felons does not apply to them. However, it does not require them to disprove historical traditions. That burden stays with the Government, which "must affirmatively prove" that its regulation "is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 19; see *Hembree*, 165 F.4th at 914 (rejecting the Government's argument that the burden shifts to the defendant once the statute survives a facial challenge).⁴

Third, this Court's subsequent decisions confirm that the footnote does not displace the *Bruen* framework. In *Rahimi*, the Court invoked footnote 26 only to rebut the narrow claim that *Heller* categorically barred all regulations of home possession. 602 U.S. at 699 ("*Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. In fact, our opinion stated that many such prohibitions . . . are 'presumptively lawful.'"). Justice Gorsuch warned that the Court does not "purport to approve in advance other laws denying firearms on a categorical basis to any group of persons a legislature happens to deem . . . not 'responsible.'" *Id.* at 713 (Gorsuch, J., concurring). And in *Hemani*, the Court declined to decide § 922(g)(1) since the issue was not before them. 146 S. Ct. at 1693 ("none of those issues is before us and we do not pass on them either way.")

The Government will point to footnote 6 of *Hemani*, which distinguishes § 922(g)(1) because it "involve[s] some manner of pre-deprivation process" and repeats that "nothing in our opinion should be taken to cast doubt" on it. 146 S. Ct. at 1692 n.6 (quoting *Heller*, 554 U.S. at

⁴ The Sixth Circuit places on the challenger the burden of showing that they are not dangerous. *Williams*, 113 F.4th at 657. The Court need not resolve that disagreement here as Ms. Branders prevails under either allocation of the burden.

626). Again, that footnote is dictum of the same kind as footnote 26 because § 922(g)(1) was not before this Court. And even if it was more than dictum, it looks at the criminal proceeding process to justify *how* a restriction is made and then looks to "the historical evidence the government presents" to understand the *why*. *Hemani*, 146 S. Ct. at 1692 n.6. Whether a particular conviction supplies that process is the as-applied question the Government wants to avoid.

At most, footnote 26 places a thumb on the Government's side of the scale but does not relieve the Government of its affirmative burden under *Bruen*. That is how as-applied review has worked in practice. The Government tends to win a majority of the cases but an individual is allowed to bring their claim, nonetheless. *See supra* part I.A. Even the Seventh Circuit, on which the court below relied on, has left open challenges by those "whose felony convictions do not suggest that firearms would be dangerous in their hands." *United States v. Prince*, 171 F.4th 1009, 1011-12 (7th Cir. 2026); *see R.* at 10. The statutory relief mechanism attached by § 922(g)(1) itself grants relief to a person who "will not be likely to act in a manner dangerous to public safety." 18 U.S.C. § 925(c). If the Government's own statute hinges on whether an individual is dangerous, surely the Constitution allows a court to ask whether they are, in fact, dangerous. This Court should hold that as applied challenges to § 922(g)(1) remain available and turn to whether the Government can carry that burden.

II. § 922(g)(1) Violates the Second Amendment as Applied to Ms. Branders' Single, Twenty-Year-Old Negligence-Based Conviction.

The Second Amendment is itself an American tradition, and no tradition in this Nation's history has ever stripped a citizen of it for life without a finding that she is dangerous. As such, this Court should reverse the Fourteenth Circuit's judgment and hold that the federal regulation § 922(g)(1) is unconstitutional as applied to Ms. Branders. The Second Amendment, as applied to the States through the Fourteenth Amendment, "protects the right of 'all Americans' to keep and

bear firearms for self-defense.” *Hemani*, 146 S. Ct. at 1685 (citing *Heller*, 554 U.S. at 581). While not limitless, the government cannot “cross[] the line from permissible regulation into unconstitutional infringement.” *Id.* (citation modified).

Here, the Government crossed that line. Acting under § 922(g)(1), it permanently stripped Ms. Branders of her constitutional right to possess a firearm in her own home for her own protection, based solely on her single felony conviction more than two decades ago. R. at 2-5. The underlying events were tragic, but the offense was rooted in negligence, not violence, and the sentencing court imposed only a two-year suspended sentence and probation. R. at 3-4. In the more than twenty years since, Ms. Branders has committed no further felonies and demonstrated no propensity for the misuse of firearms. R. at 3-4, 6.

Enacted in the Gun Control Act of 1968, 18 U.S.C. § 922(g) “categorically bars certain classes of individuals from possessing firearms.”⁵ Its felon-in-possession provision, § 922(g)(1), considered the “cornerstone” of the federal firearms regulatory system, permanently disqualifies an estimated nineteen to twenty-four million Americans from exercising their Second Amendment right.⁶ The conduct it prohibits—keeping a firearm in the home for self-defense—lies at the very core of the right this Court recognized in *Heller*. See 554 U.S. at 628-29 (identifying “the inherent right of self-defense” as “central to the Second Amendment right”).

The constitutionality of firearms regulation is governed by the framework this Court established in *Bruen*, and later refined in *Rahimi*. The “analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692. Courts first ask whether “the Second Amendment’s plain text covers an

⁵ See Recent Case, *Constitutional Law—Second Amendment—En Banc Ninth Circuit Upholds Felon-in-Possession Ban Under Rahimi*.—*United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc), 139 Harv. L. Rev. 831, 831 (2026).

⁶ *Id.*; see Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 Cardozo L. Rev. 1573, 1574 (2022).

individual's conduct"; if so, "the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 17. The burden then shifts to the Government "to demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* In doing so, the Government must "reason by analogy", showing the "why" and "how" its questioned regulation is "relevantly similar" to well-established historical regulations. *Id.* at 28-30.

As applied to Ms. Branders, the Government cannot satisfy any part of that inquiry. The regulation permanently and automatically disarms a non-dangerous woman for a decades old offense without any individualized finding or historical analogue. The Government's proposed rule cannot distinguish Ms. Branders from someone who demonstrates an active propensity for violence, and a rule that draws no such distinction is no rule at all. The Second Amendment demands more, and this Court should hold as such.

A. The Second Amendment's Plain Text Covers Ms. Branders' Conduct.

Both courts below correctly held that the Second Amendment's plain text covers Ms. Branders' conduct, and this Court should affirm that conclusion. *R.* at 5-6, 9. Under this Court's framework, a firearms regulation triggers constitutional scrutiny whenever "the Second Amendment's plain text covers an individual's conduct," because "the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 17. That inquiry requires a court to ask whether the challenged law applies to one of "the people," restricts the keeping or bearing of "Arms," and burdens conduct protected by the Amendment's text. *Wolford v. Lopez*, 146 S. Ct. 2032, 2043-44 (2026).

Ms. Branders is one of "the people" who the Amendment protects. In *Heller*, this Court held that "the people" is a term of art used throughout the Constitution that "unambiguously refers to all members of the political community, not an unspecified subset." 554 U.S. at 580 (also mentioning that the same phrase appears in the First and Fourth amendment). Unless it carries a

different meaning from one provision to the next—and this Court has indicated it does not—an interpretation that excludes Ms. Branders from the Second Amendment would simultaneously strip her of those guarantees as well. *See id.* A prior conviction may give the Government the power to disarm a person under *certain* historically justified circumstances, but it does not erase her membership in the political community the Second Amendment protects.⁷

As for the regulated conduct, Ms. Branders kept a single handgun locked in a drawer in her home for self-defense. R. at 3-4. § 922(g)(1) prohibits exactly that: possessing any firearm, for any purpose, including in the home for one's own protection. § 922(g)(1). That prohibition strikes at the core of the right *Heller* recognized, where "the inherent right of self-defense has been central to the Second Amendment right." 554 U.S. at 628. Because the Second Amendment's plain text covers Ms. Branders' conduct, the Constitution presumptively protects it, and the burden shifts to the Government to justify their regulation. *See Bruen*, 597 U.S. at 17.

B. The Government Cannot Carry Its Burden of Demonstrating that § 922(g)(1) As Applied to Ms. Branders, Is Consistent with the Nation's Historical Tradition of Firearm Regulation.

Once the Second Amendment's plain text covers an individual's conduct, the 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." *Bruen*, 597 U.S. at 19. That burden requires the Government to identify historical analogues that are "relevantly similar" to the modern regulation. *Id.* at 29. Two inquiries are central to that determination: the "why," asking whether the analogue's rationale was similar to that of the modern law, and the "how," asking whether it

⁷ Then-Judge Barrett has also mentioned this distinction: "It is one thing to say that certain weapons or activities fall outside the scope of the right. . . . It is another thing to say that certain people fall outside the Amendment's scope altogether." *Kanter*, 919 F.3d at 452 (Barrett, J., dissenting); *see also Zherka v. Bondi*, 140 F.4th 68, 76-77 (2d Cir. 2025) (adopting same framework); Ian Ayres & Fredrick E. Vars, *The Coming Assault on Categorical Gun Prohibitions*, 77 Stan. L. Rev. Online 31, 40 (2025) (predicting the Court is "unlikely to accept the Justice Department's argument" that felons fall outside "the people")

imposed a comparable restriction. *Wolford*, 146 S. Ct. at 2044 (citing *Bruen*, 597 U.S. at 29). A historical analogue need not be a “dead ringer” or “historical twin,” but it must be close enough to confirm that the challenged regulation is “consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692. Where the modern statute targets “different kinds of people,” does so “for different purposes,” and “operate[s] in different ways” than any offered analogue, it cannot survive. *Hemani*, 146 S. Ct. at 1694 (invalidating § 922(g)(3) and rejecting the Government's analogy to historical drunkard laws as the statute differed from historical laws in who it targeted, why it targeted them, and how it operated).

§ 922(g)(1), as applied to Ms. Branders, fails both inquiries. The “why” of the statute has no historical analogue, as this Nation’s tradition of disarming individuals was rooted in dangerousness, not in mere conviction status. *See Rahimi*, 602 U.S. at 698 (finding surety and going-armed laws targeted those who posed a credible threat to the physical safety of others). The “how” fares no better: even where historical governments disarmed individuals, they did so through temporary, individualized, judicial proceedings that preserved the right to self-defense. *Id.* at 696-97. Section 922(g)(1) imposes a permanent and automatic prohibition triggered by conviction alone, without any finding of dangerousness, or any meaningful mechanism for relief. The Government cannot offer any analogue to a founding-era regime operating that way, cannot carry its burden, and as such, § 922(g)(1) is unconstitutional as applied to Ms. Branders.

1. The “why” of § 922(g)(1) finds no relevant historical support as applied to Ms. Branders because the Nation's regulatory tradition disarmed the dangerous, not the merely convicted.

§ 922(g)(1) as applied to Ms. Branders serves a fundamentally different purpose than any historical analogue the Government can identify. The “why” analysis asks a specific question: whether the modern statute's rationale is relevantly similar to the rationale underlying the Government's offered historical analogues. *Wolford*, 146 S. Ct. at 2044 (the “why” examines

"whether [the analogue's] rationale was similar to that of the new law"). If founding-era laws "regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Rahimi*, 602 U.S. at 692. This Court has identified one such permissible purpose: "our [Nation's] tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others." *Id.* at 698 (citation modified). But when the modern statute targets "different kinds of people" and does so "for different purposes" than those historical laws, the analogy fails. *Hemani*, 146 S. Ct. at 1694.

Here, § 922(g)(1) specifically targets *all* felons, not just those that pose a "credible threat." 18 U.S.C. § 922(g)(1); *see Rahimi*, 602 U.S. at 698. Congress enacted § 922(g)(1) as part of the Gun Control Act of 1968 to keep firearms from people it classified as "potentially irresponsible" whose past criminal conduct indicated they "may not be trusted to possess a firearm without becoming a threat to society." *Lewis*, 445 U.S. at 65 (describing Congress's purpose in enacting the Gun Control Act's felon-in-possession provision); *Scarborough v. United States*, 431 U.S. 563, 572 (1977) (same). The Act's stated purpose was "to provide support to . . . law enforcement officials in their fight against crime and violence." Gun Control Act of 1968, Pub. L. No. 90-618, § 101, 82 Stat. 1213, 1213. On its face, that purpose sounds like the historical tradition this Court identified in *Rahimi*: disarming those who threaten public safety. 602 U.S. at 698. But the statute's actual operation reveals a different rationale. Section 922(g)(1) operates by disarming individuals by their mere conviction status, rather than if they are dangerous or not. It disarms entire categories of the population based on conviction status alone, a purpose no founding-era disarmament regime shared, or the Government can point to.

Congress's own statutory architecture confirms that § 922(g)(1) is not calibrated for any dangerousness analysis. The Armed Career Criminal Act imposes a mandatory fifteen-year minimum on any person who violates § 922(g) and "has three previous convictions . . . for a violent felony or a serious drug offense." 18 U.S.C. § 924(e)(1). Accordingly, Congress distinguishes between violent and non-violent felons for purposes of sentencing but refuses to draw the same line for the gun prohibition itself. Meanwhile, the scope of the modern "felon" label bears no resemblance to its founding-era counterpart. At common law, felonies comprised a short list of grave offenses closely tied to capital punishment. *See Kanter*, 919 F.3d at 459 (Barrett, J., dissenting) (citing 4 Blackstone, *Commentaries on the Laws of England* 98 (1769)) (tracing the historical evolution of the felon category). Today, an estimated nineteen to twenty-four million Americans carry felony convictions. *See Stevenson, supra*, at 1574. But the federal government did not always cast the net so wide. Before § 922(g)(1) existed, the Federal Firearms Act of 1938 only reached people convicted of a "crime of violence." Federal Firearms Act, ch. 850, § 1(6), 52 Stat. 1250 (1938); S. Rep. No. 75-82, at 2 (1937).⁸ When Congress broadened gun regulations from demonstrated violence to mere conviction status, making the regulation apply to all felons, it severed the statutory purpose from one that historical tradition actually supports.⁹

Against this backdrop, the Government must look to founding-era analogues to justify their regulation's purpose. Here, none of the Government's historical analogues serve the same purpose as § 922(g)(1) applied to Ms. Branders. First, the Government may offer surety and going-armed

⁸ Under the 1938 Act, Ms. Branders would not have been a "prohibited person" at all, as the Federal Firearms Act of 1938 reached only persons convicted of a "crime of violence," defined as "murder, manslaughter, rape, mayhem, kidnapping, burglary, housebreaking," and similar offenses. Federal Firearms Act, ch. 850, § 1(6), 52 Stat. 1250 (1938).

⁹ Research confirms the current statute's overbreadth. A study of more than 27,000 felon-in-possession defendants in California found that only 8.5% had a violent felony conviction under the state's statutory definition, rising to just 28.8% under a broader definition of violence. Ball, *Disarming Data: An Empirical Take on the Loaded Debate About Felon-in-Possession of a Firearm*, 77 UC Law Const. L.Q. 613, 629 (2026) (concluding that "the findings substantiate longstanding concerns that felon-in-possession is overbroad in its application to nonviolent felons").

laws, but both regimes were animated by a single concern: that the individual posed a *present* threat of harm. Surety laws required a complainant with "reasonable cause to fear" that the accused would "do him harm or breach the peace." *Rahimi*, 602 U.S. at 696. Going-armed laws punished those who went "armed offensively." *Rahimi*, 602 U.S. at 696; *see also Bruen*, 597 U.S. at 55 (describing going-armed laws as "typically target[ing] only those threatening to do harm"). These rationales are not analogues that can be applied to Ms. Branders' situation. Her conviction did not arise from any inherent act of aggression or intentional harm, but from her own tragic negligence, that she has since taken ownership of and served her time. R. at 2-3. Ms. Branders never brandished a weapon, threatened anybody, or engaged in conduct that would have warranted a surety complaint or a going-armed prosecution. She kept a single gifted handgun locked in a drawer, with ammunition stored separately, for the sole purpose of protecting herself. R. at 3-4. As such, Ms. Branders has demonstrated no propensity for violence that was the sole purpose of the surety and going-armed laws.

Second, the Government may claim that founding-era status-based disarmaments of groups are adequate analogues, like Loyalists during the American Revolution or Catholics under English law, but these analogues fail because of their fundamental purposes. They were enacted to address threats to the political order, not to respond to criminal convictions. Parliament disarmed Catholics because they were perceived as threats to the Protestant political order. *See Kanter*, 919 F.3d at 456-57 (Barrett, J., dissenting) (examining the English disarmament of Catholics). Colonial governments disarmed Loyalists because they posed an active threat of armed insurrection during wartime. *Id.* at 454-56 (examining Revolutionary-era disarmament laws). These regimes had specific purposes: they targeted groups whose political loyalties made them likely to take up arms against the sovereign. Ms. Branders' conviction for child neglect has nothing to do with political

disloyalty, sedition, or the risk of armed rebellion. *See* R. at 2-3. And the Government can't recast conviction status as a modern proxy for the "untrustworthiness" that motivated these laws. Then-Judge Barrett previously concluded that founding-era virtue-based exclusions applied to civic rights like voting and jury service, not to individual rights like the right to possess a gun for self-defense. *Id.* at 463-64. To hold otherwise would permit the Government to strip the Second Amendment right from anyone it deems insufficiently "virtuous," a standard so malleable that it would, as the *Hemani* majority warned, allow the Government's power to "quickly swallow" the right itself. *Hemani*, 146 S. Ct. at 1683 (quoting *Kanter*, 919 F.3d at 465).

Third, the Government may argue that because founding-era felons could be executed, the "lesser" consequence of disarmament must also be permissible. But the question under the "why" prong is not whether the Government possesses the power to impose consequences on felons; it is whether the purpose of disarming Ms. Branders is relevantly similar to the purpose of founding-era firearms restrictions. *See Bruen*, 597 U.S. at 29 (requiring that the modern regulation's justification be "comparably justified" to the historical analogue). Executing a felon served retribution and incapacitation for the specific crime committed. It did not serve the purpose of categorically disarming an entire class based on a presumption of future dangerousness, without any actual conduct analysis, and it certainly finds no analogue in Ms. Branders' case. Then-Judge Barrett found the premise "shaky," observing that by the time of ratification, "felony" was no longer "very strongly connected with capital punishment." *Kanter*, 919 F.3d at 458-59 (Barrett, J., dissenting).¹⁰

¹⁰ This brief cites extensively to then-Judge Barrett's dissent in *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019). While a dissent, its analysis warrants close attention for three reasons. First, Justice Barrett sits on this Court and has continued to develop the framework she articulated in *Kanter*. *See, e.g., Wolford*, 146 S. Ct. at 2054 n.1 (Barrett, J., concurring). Second, the *Hemani* majority expressly quoted *Kanter's* central warning—that affording the Government "broad power to designate any group as dangerous and thereby disqualify its members from having a gun" would risk allowing

Overall, each of the Government's potential analogues served a purpose that § 922(g)(1), as applied to Ms. Branders, does not: neutralizing a demonstrated, present danger to the physical safety of others or the political order. Ms. Branders' conviction, while tragic, is not rooted in any intent to harm others or threats. *See* R. at 2-3. She completed her suspended sentence and probation, with more than two decades passing without any serious subsequent offense or indication that she poses a risk to anyone. R. at 3-4, 6. As the dissent below observed, there were "few laws, if any, related to child neglect" at the founding, making it "unlikely that neglect would have resulted in permanent disarmament." R. at 10–11 (Pinckney, J., dissenting). No historical analogue supports the permanent disarmament of an elderly woman who kept a single handgun, separate from any ammunition, locked in a drawer in her home for self-defense. R. at 4. As such, the "why" of § 922(g)(1) as applied to Ms. Branders, stripping a non-dangerous woman of her fundamental rights because of a decades-old negligence conviction, targets a "different kind[] of [person]" for a "different purpose[]" than any historical analogue. *Hemani*, 146 S. Ct. at 1694. The Government cannot carry its burden to show otherwise.

2. The "how" of § 922(g)(1) has no historical analogue because no founding-era regime imposed permanent, automatic disarmament without a finding of dangerousness.

Section 922(g)(1) as applied to Ms. Branders imposes a burden on the right to armed self-defense that no historical analogue replicated. The "how" analysis asks whether the challenged law "impose[s] a comparable burden on the right of armed self-defense" as the Government's proposed historical analogues. *Bruen*, 597 U.S. at 29. In *Wolford*, this Court clarified that this inquiry examines "whether [the analogue] imposed a restriction similar to that imposed by the challenged

it to "quickly swallow" the right—and applied it to strike down similar prosecution under § 922(g)(3). 146 S. Ct. at 1683. Finally, other circuits have adopted the *Kanter* dissent framework as its own. *See Zherka v. Bondi*, 140 F.4th 68, 76-77 (2d Cir. 2025) (adopting Barrett's distinction between the scope of the right and the power to disarm).

law." 146 S. Ct. at 2044. Three features are central to the comparison: the duration of the restriction, the process preceding it, and the scope of the burden it imposes. *See Rahimi*, 602 U.S. at 695-99 (sustaining § 922(g)(8) because, like surety laws, it was temporary, preceded by a judicial finding, and limited in scope). Critically, even when a regulation serves a permissible purpose, "it may not be compatible with the right if it [imposes a burden] to an extent beyond what was done at the founding." *Id.* at 692. A regulation that "differs significantly" from any historical analogue cannot survive. *Hemani*, 146 S. Ct. at 1691 (noting that the government's argument in the "how" analysis failed as 922(g)(3) operated in a fundamentally different manner than the offered historical analogues).

Measured against these features, no founding-era disarmament regime operated anything like § 922(g)(1). Every historical analogue the Government could invoke was temporary and individualized. Surety laws constituted an "individualized" regime, lasting no longer than six months, in which the individual could satisfy the bond and retain his arms. *Rahimi*, 602 U.S. at 695-97. The restriction targeted only those who posed a present threat of harm, not all persons with prior convictions.¹¹

Going-armed laws operated similarly. At common law, the offense of "riding or going armed, with dangerous or unusual weapons, [to] terrify[] the good people of the land" was punishable by "forfeiture of the arms" and imprisonment. *Id.* at 697 (citing 4 Blackstone, *Commentaries on the Laws of England* 149 (1769)). These laws "typically targeted only those threatening to do harm," *Bruen*, 597 U.S. at 55, and, like surety laws, operated through

¹¹ The Massachusetts surety statute, which this Court treated as representative in both *Bruen* and *Rahimi*, applied only to those who went "armed with a . . . pistol[] or other offensive and dangerous weapon[]." *Rahimi*, 602 U.S. at 696 (quoting Mass. Rev. Stat., ch. 134, § 16 (1836)); *see Bruen*, 597 U.S. at 55-57. Even then, the statute did not prohibit possession. An accused arms-bearer "could go on carrying without criminal penalty" so long as he "post[ed] money that would be forfeited if he breached the peace or injured others—a requirement from which he was exempt if he needed self-defense." *Bruen*, 597 U.S. at 56-57 (quoting *Wrenn v. District of Columbia*, 864 F.3d 650, 661 (D.C. Cir. 2017)).

individualized judicial proceedings and resulted in forfeiture of the weapon involved in the offense. *See Rahimi*, 602 U.S. at 697; Cornell, *The Persistence of Common Law Limits on Armed Travel in the Early Republic*, 78 SMU L. Rev. 343, 352-54 (2026) (confirming that going-armed laws were directed at "Affrayers, Rioters, Disturbers or Breakers of the Peace").

Loyalty-oath disarmament, while status-based, was tied to wartime emergencies and temporary by design, with firearms returned once the emergency passed or loyalty was demonstrated. *See Kanter*, 919 F.3d at 454-56 (Barrett, J., dissenting) (describing Revolutionary-era disarmament as primarily tied to the risk of "rebellion"). In each instance, the restriction was bounded by some form of time, preceded by some form of individualized process, and limited in scope. These were, as this Court characterized, targeted interventions designed to "mitigate demonstrated threats of physical violence." *Rahimi*, 602 U.S. at 698.

Conversely, § 922(g)(1) shares none of the potential analogue's features. First, it is *permanent*: the ban attaches when a person is convicted of a felony and never expires. Unlike the surety laws this Court examined in *Rahimi*, which lasted no longer than six months, § 922(g)(1) imposes a lifetime ban with no expiration. *See* 602 U.S. at 697. Second, it is *automatic*: felons are automatically disarmed as soon as they are convicted, with no judicial finding that they pose any danger to others. *See* 18 U.S.C. § 922(g)(1) (disqualifying "any person" convicted of a crime "punishable by imprisonment for a term exceeding one year"). The surety and going-armed laws required a complainant, a hearing, and a magistrate's determination of cause before any form of disarmament. *See Rahimi*, 602 U.S. at 695-96. Section 922(g)(1) requires nothing beyond a prior conviction exceeding one year. Third, it is *absolute*: the statute makes no exception for self-defense or possession in the home, and no allowance for the passage of time. *See* 18 U.S.C. § 922(g)(1); *cf.* *Heller*, 554 U.S. at 599 (identifying home possession for self-defense as the "central

component" of the right). Additionally, the sole administrative pathway Congress created for individualized relief, 18 U.S.C. § 925(c), has been defunded by annual appropriations riders since 1992. *See United States v. Bean*, 537 U.S. 71, 74-75 (2002). As such, § 922(g)(1) operates as a permanent, irrevocable deprivation of a constitutional right with no real pathway to restoration.

The Government may claim that founding-era felons could be detained or executed, and that § 922(g)(1)'s disarmament is a lesser burden. But this greater-includes-the-lesser argument fails under the "how" prong for the same reason it fails under the "why." The question is whether the manner in which § 922(g)(1) burdens the right is relevantly similar to the manner in which founding-era laws did so, and it is not. *See Bruen*, 597 U.S. at 29. Founding-era criminal punishments, including execution, were imposed after individualized proceedings with procedural protections. *See Apprendi v. New Jersey*, 530 U.S. 466, 476-84 (2000) (tracing the founding-era understanding that criminal penalties required individualized adjudication). Here, the disarmament imposed by § 922(g)(1) has no individual proceeding, it permanently attaches as soon as the label "felon" is put on a person's record. Where Ms. Branders' criminal trial determined that she was negligent; it never determined that she was dangerous, that she should be disarmed, or that her disarmament should last for life. *See R.* at 2-3. The sentencing court's imposition of only a two-year suspended sentence reflects its own judgment that Ms. Branders posed no continuing threat warranting incarceration. *See R.* at 3-4. Yet, the application of § 922(g)(1) to Ms. Branders treats her conviction as grounds for permanent disarmament.

Section 922(g)(8) survived the "how" inquiry because it was "'relevantly similar' to those founding era regimes in both why and how it burden[ed] the Second Amendment right." *Rahimi*, 602 U.S. at 698. Three features sustained the analogy: (1) the restriction applied "only once a court ha[d] found that the defendant 'represents a credible threat to the physical safety' of another"; (2)

it prohibited possession only "so long as the defendant is subject to a restraining order"; and (3) it left the individual free to petition for removal of the order. *See id.* at 698-99 (citation modified). § 922(g)(1) as applied to Ms. Branders possesses none of these features. No court found that she represents a credible threat to anyone. The prohibition is not tied to any ongoing proceeding or condition. And there is no meaningful mechanism through which Ms. Branders can petition for restoration of her rights.¹² If the features that saved § 922(g)(8) in *Rahimi* are the benchmark for a relevantly similar "how," then § 922(g)(1) as applied to Ms. Branders falls far short.

Ms. Branders was convicted of a single negligence offense more than two decades ago. R. at 2-3. She received a suspended sentence, completed her probation, and poses no threat to anyone. R. at 3-4. Yet § 922(g)(1) permanently prohibits her from possessing any firearm, for any purpose, in any place, including in her own home for her own protection. R. at 4. No founding-era regime would have reached her. Under the surety laws, she could have posted a bond and retained her arms, because no complainant could have demonstrated "reasonable cause to fear" that she would "do [them] harm." *Rahimi*, 602 U.S. at 696. Under the going-armed laws, no prosecution could have been brought, because she never went "armed offensively." *Id.* at 696; *see Bruen*, 597 U.S. at 55. Under the founding-era forfeiture regime, any loss of arms would have been limited to the weapon used in the offense, not extended to all firearms for life. *See Rahimi*, 602 U.S. at 697 (describing forfeiture as incident-specific). The Government's proposed rule would treat Ms.

¹² Congress created such a mechanism in 18 U.S.C. § 925(c), which authorized the Attorney General to grant relief from firearms disabilities upon a showing that the applicant "will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c). But Congress has defunded the program every year since 1992. *See* Treasury, Postal Service, and General Government Appropriations Act of 1993, Pub. L. No. 102-393, 106 Stat. 1729, 1732. This Court has even acknowledged the issue. *See Bean*, 537 U.S. at 74-75 (holding that ATF's inability to act on petitions does not constitute a "denial" subject to judicial review). Congress defunded the program after concluding that individualized dangerousness determinations were "a very difficult and subjective task which could have devastating consequences for innocent citizens if the wrong decision is made." S. Rep. No. 102-353, at 19 (1992). The irony is remarkable: Congress eliminated the only process by which an individual like Ms. Branders could demonstrate she is not dangerous, and now relies on the absence of that very process to maintain her permanent disarmament.

Branders identically to an individual who demonstrates an active propensity for violence. *Bruen* does not demand a "dead ringer," but it does demand a "well-established and representative historical analogue." 597 U.S. at 30. A rule that cannot distinguish between Ms. Branders and a violent offender is not relevantly similar to anything in the founding-era record. It "operate[s] in different ways" than every analogue the Government can offer, and cannot pass constitutional muster. *Hemani*, 146 S. Ct. at 1691.

Overall, the Government's position, if accepted, would establish a rule with no limiting principle. Under the Government's theory, any legislature may permanently extinguish a fundamental constitutional right for any citizen by classifying any offense as a felony, without regard to whether the offense involved violence, whether the individual poses any present danger, or any rehabilitation effort from the individual. This rule would place the Second Amendment's scope entirely within Congress's control, subject only to how legislators choose to classify criminal offenses. But the Framers placed the right to keep and bear arms in the Bill of Rights precisely to prevent future legislatures from making that calculation. *See* Amicus Brief of United States Senator Ted Cruz, and 24 other U.S. Senators, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, No. 20-843, at 2 (U.S. July 20, 2021) ("The inclusion of an individual right in the Constitution reflects the Framers' determination . . . that no future legislature—including Congress—should have the ability to second-guess that determination."). Ms. Branders is not a danger to anyone. She is a citizen of this country, and the Second Amendment does not cease to protect her because Congress has chosen to call her a felon. Because the Government cannot carry its burden under either the 'why' or the 'how' of this Court's framework, § 922(g)(1) is unconstitutional as applied to Ms. Branders.

CONCLUSION

For these reasons, this Court should reverse the judgment of the Court of Appeals and remand with instructions to vacate the conviction and dismiss the indictment.

Respectfully submitted,

/s/ Team WL

Team WL

Counsel of Record