No. 24-1234

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

ALI DANIAL HEMANI,
Respondent.

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

BRIEF OF BRADY CENTER TO PREVENT GUN VIOLENCE AND GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

The Brady Center to Prevent Gun Violence ("Brady") and Giffords Law Center to Prevent Gun Violence ("Giffords Law Center") submit this brief as *amici curiae* in support of the United States.

Amici work to reduce gun violence through education, research, legal advocacy, and political action. Founded in 1974, Brady is the nation's most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence. Brady works to free America from gun violence by passing and defending gun violence prevention laws, reforming the gun industry, and educating the public about responsible gun ownership. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans' fundamental right to live and to recognize the authority of democratically elected officials to address the nation's gun violence epidemic.

Giffords Law Center is a nonprofit law and policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities. Through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. Together with its partner organization, Giffords, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amici or their counsel made a monetary contribution to this brief's preparation and submission.

understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

Brady and Giffords Law Center have filed amicus briefs in many cases involving the regulation of firearms. *See, e.g.*, *Bondi v. VanDerStok*, 604 U.S. 458 (2025); *United States v. Rahimi*, 602 U.S. 680 (2024); *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *United States v. Hayes*, 555 U.S. 415 (2009); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

INTRODUCTION AND SUMMARY OF ARGUMENT

Since the Founding, legislatures have exercised their power to protect against potential threats to public safety by restricting certain categories of people from accessing firearms. Courts have routinely upheld these categorical restrictions, recognizing that the individual right to bear arms is not absolute and that these reasonable public safety regulations are entirely consistent with this Nation's historical regulatory tradition.

Such prohibitions serve important purposes in the broader framework of modern gun safety regulations. Through enacting categorical prohibitions, legislatures provide clear lines to effectively mitigate potential risks. And today's regulatory systems, such as the federal Brady background check system, depend on these prohibitions for clear and timely determinations on firearm eligibility. Were the background check system to be compromised—as it would be without categorical

prohibitions—more individuals who should not be permitted to possess firearms would be given access to them, a demonstrated direct threat to public safety. In resolving this appeal, the Court need not, and should not, call into question the centuries-old national practice of allowing legislatures to enact such prohibitions and regulators to rely on them to advance public safety.

ARGUMENT

I. Legislatures May Enact Categorical Limitations on Firearm Possession.

For centuries, legislatures in this Nation have permissibly imposed categorical limitations on the possession of firearms. This is illustrated both by the longstanding history of such regulations and by consistent judicial approval of such an approach.

A. History and Tradition Support Laws That Categorically Limit Firearm Possession to Protect Against Threats to Public Safety.

As this Court has explained, "[l]ike most rights, . . . the right secured by the Second Amendment is not unlimited," *United States v. Rahimi*, 602 U.S. 680, 690 (2024) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (internal marks omitted)), and "was never thought to sweep indiscriminately," *id.* at 691. To the contrary, the historical record confirms that "[f]rom Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 21 (2022) (quoting *Heller*, 554 U.S. at 626). Because the Second Amendment

"codified a pre-existing right, . . . pre-existing *limits* on that right are part and parcel" of our regulatory tradition. *Rahimi*, 602 U.S. at 737 (Barrett, J., concurring) (emphasis added).

Those "pre-existing limits" include legislative and constitutional restrictions on the possession of firearms by certain groups. Consider, for example, England in the late 1600s, when the English Bill of Rights set forth the authority of Parliament to determine which citizens could "have arms . . . by law." An Act Declaring the Rights & Liberties of the Subject & Settling the Succession of the Crown, 1 W. & M., Sess. 2, c. 2, § 7 (1689). Under English law, restrictions on firearm possession included government disarmament of those who were "dangerous to the Peace of the Kingdom." *United States v. Jackson*, 110 F.4th 1120, 1126 (8th Cir. 2024) (citing Militia Act of 1662, 13 & 14 Car. 2 c. 3, § 13), *cert. denied*, 145 S. Ct. 2708 (2025).

In drafting our foundational documents, the Framers embraced this longstanding historical tradition of restricting access to firearms to promote public safety. During the Revolutionary War era, the Continental Congress "prohibited possession of firearms by people who refused to declare an oath of loyalty." *Id.* At the same time, states—including Massachusetts, Virginia, Pennsylvania, Rhode Island, North Carolina, and New Jersey—affirmatively confiscated weapons from those who would not swear loyalty to the United States.[2] Under the Constitution,

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[2] *See* Saul Cornell & Nathan DeDino, *A Well Regulated Right: the Early American Origins of Gun Control*, 73 Fordham L. Rev. 487, 506 (2004) ("During the American Revolution, several states passed laws providing for the confiscation of weapons owned by

"[i]n 1791—and for well more than a century afterward—legislatures disqualified categories of people from the right to bear arms" when those legislatures "judged that doing so was necessary to protect the public safety." *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). For example, Massachusetts required rebels or those "who have been or may be guilty of Treason" to surrender their firearms. *See* Act of Feb. 16, 1787, §§ 1-3, 1 *Private & Special Statutes of the Commonwealth of Mass.* 145-47 (Wright & Potter, State Printers 1805). And, in 1867, Kansas likewise restricted the sale of firearms to "any person who has ever borne arms against the Government of the United States." Act of Feb. 23, 1867, ch. 12, § 1, 1867 Kan. Sess. Laws 25; *see also* Act of June 10, 1798, ch. DCCCVI, § 2, 1798 N.J. Laws 561, 562 (punishing disorderly persons who were apprehended while carrying offensive weapons such as pistols); Act of Feb. 24, 1796, ch. DCXXXVII, § 1, 1796 N.J. Laws 179, 179 (punishing rioters who were armed with "guns . . . or other weapons"). As this record shows, the Nation's history and tradition is replete with restrictions that include "prohibitions on possession by certain groups of people." *Jackson*, 110 F.4th at 1126.

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persons refusing to swear an oath of allegiance to the state or the United States"); *4 Journals of the Continental Congress*, 1774-1789, at 205 (Worthington Chauncey Ford ed., 1906); Act of Mar. 14, 1776, ch. 21, 1775-76 Mass. Acts 479; Act of May 1777, ch. III, 9 *The Statutes at Large; Being a Collection of all the Laws of Va.* 281-82 (1821); Act of June 13, 1777, ch. 756 §§ 2-4, 1777 Pa. Laws 110, 111-13; Act of June 1776, 7 *Records of the Colony of R.I. & Providence Plantations in New England* 567 (1862); Act of Nov. 15, 1777, ch. 6, 1777 N.C. Sess. Laws 231; Act of Sep. 20, 1777, ch. XL, 1777 N.J. Laws 90.

Notably, the historical tradition confirms that regulations may restrict a *category* of individuals from possessing firearms. A potential or proclivity for future dangerousness by a particular category of persons has long been deemed a sufficient basis for disarmament, without any individualized determination of dangerousness. *See Rahimi*, 602 U.S. at 695-96 (recognizing that founding-era surety laws were a form of "preventive justice," which "targeted the misuse of firearms," and applied to "those persons, [of] whom there is a probable ground to suspect of future misbehavior" (alterations in original) (quoting 4 W. Blackstone, Commentaries on the Laws of England 251 (10th ed. 1787))).

Accordingly, categorical prohibitions on firearms possession, including those based on future dangerousness, are well-supported by historical tradition and the pre-existing rights that the Second Amendment is understood to codify. That historical practice is "consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring) (citation omitted).

B. Courts Have Consistently Upheld Legislatures' Ability to Define Certain Categorical Limitations on Gun Possession.

Federal courts have repeatedly upheld these categorical restrictions on firearm possession, *see, e.g.*, *United States v. VanDyke*, 157 F.4th 1082, 1088 (9th Cir. 2025) (collecting cases), and have made clear that "statutory prohibitions on the possession of weapons by some persons are proper—and, importantly for

current purposes, that the legislative role did not end in 1791." *United States v. Skoien*, 614 F.3d 638, 640-41 (7th Cir. 2010).

That includes this Court, which has affirmed that legislatures have the authority to define categorical circumstances under which Second Amendment rights may be limited. In *Heller*, for instance, this Court made clear that "longstanding prohibitions on the possession of firearms" by certain groups were "presumptively lawful regulatory measures." 554 U.S. at 626, 627 n.26. *Heller* also emphasized that Second Amendment exceptions were only "examples" of "presumptively lawful" regulations, not an exclusive catalog. *Id.* at 627 n.26.

Post-*Heller*, this Court has reaffirmed that the Second Amendment permits legislative enactment of a "variety" of gun regulations. *Bruen*, 597 U.S. at 80 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 636). As this Court recognized in *Rahimi*, for example, "[f]rom the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others." 602 U.S. at 693. Thus, in *Rahimi*, this Court relied on *Heller* and *Bruen*, upholding the categorical prohibition found in 18 U.S.C. § 922(g)(8), which prohibits individuals subject to a qualifying domestic violence restraining order from possessing a firearm. *See id.* at 690 (explaining that "Section 922(g)(8) fits comfortably within this [nation's history and] tradition" of gun regulation). And, in *Bruen*, this Court did not disturb the "shall-issue" licensing regimes employed in 43 states, which often require applicants to undergo, *inter alia*, fingerprinting, a background check, a mental health records check, and

training in firearms handling prior to being issued a license. 597 U.S. at 79-80 (Kavanaugh, J., concurring).[3]

Categorical prohibitions also have been repeatedly upheld by Courts of Appeals. *See, e.g.*, *VanDyke*, 157 F.4th at 1088 ("Detention and disarmament were within the power of the legislature even when the group in question was not defined by past violence."); *United States v. Gailes*, 118 F.4th 822, 828 (6th Cir. 2024) (holding that "Section 922(g)(9), which categorically disarms individuals with valid, domestic-violence convictions, fits well within this historical tradition"); *Jackson*, 110 F.4th at 1128 ("Legislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed."); *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting) ("*Heller*'s reference endorses the proposition that the legislature can impose some categorical bans on the possession of firearms."); *Skoien*, 614 F.3d at 640 ("That some categorical limits

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[3] These cases did not raise constitutional questions beyond the Second Amendment or present any arguments that the categorical determinations at issue implicated protected expression or race, religion, or other protected classes—situations in which courts rightfully engage in a "more searching judicial inquiry" and do not defer to categorical legislative judgments. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938); *see also, e.g.*, *United States v. Alvarez*, 567 U.S. 709, 717 (2012) (noting that categorical "content-based restrictions on speech have been permitted, as a general matter, only when confined to the few historic and traditional categories of expression long familiar to the bar" (cleaned up)); *Kanter*, 919 F.3d at 458 n.7 (Barrett, J., dissenting) ("It should go without saying that such race-based exclusions would be unconstitutional today.").

are proper is part of the original meaning, leaving to the people's elected representatives the filling in of details.").

As these decisions reflect, and as this Court has made clear, legislators—in contrast to courts—are accountable to the voters and are therefore in the best position to deliberate on public policy decisions. *See Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963) ("Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation."). This principle has been recognized in the context of the Second Amendment in particular. *See, e.g.*, *Heller*, 554 U.S. at 624 (rejecting any reading of the Second Amendment that "would mean that the National Firearms Act's restrictions on machineguns . . . might be unconstitutional"); *Schrader v. Holder*, 704 F.3d 980, 989-91 (D.C. Cir. 2013) ("In the context of firearm regulation, the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks.") (cleaned up), *cert. denied*, 571 U.S. 989 (2013). In short, legislatures necessarily and lawfully may enact categorical rules to protect public safety.

II. Categorical Limitations on Firearms Possession Significantly Advance Public Safety.

In addition to their historical pedigree, categorical prohibitions undergird many of the modern-day mechanisms used to mitigate the risk that firearms will be wielded by those who would pose a threat to public safety. These mechanisms include, most notably, the congressionally mandated federal

background check system, which has been in place for over thirty years. Absent categorical prohibitions, the background check system could not operate successfully, which would severely threaten public safety.

A. The Brady Act and the Modern-Day Background Check System.

Since its enactment in 1993, the Brady Handgun Violence Prevention Act ("Brady Act") has required federally licensed firearm importers, manufacturers, and dealers to conduct background checks on would-be firearm purchasers. 18 U.S.C. § 922(t). As Congress recognized, background checks block illegal gun sales and keep deadly weapons out of the hands of people who are more likely to pose a heightened risk with access to firearms. *See* H.R. Rep. No. 103-344, at 7 (1993) ("The purpose of [the Brady Act] is to prevent . . . persons who are barred by law from purchasing guns from licensed gun dealers, manufacturers or importers."); *see also Bondi v. VanDerStok*, 604 U.S. 458, 462 (2025) ("The background-check requirement seeks to keep 'guns out of the hands of criminals.'" (quoting *Abramski v. United States*, 573 U.S. 169, 180 (2014))); *Bruen*, 597 U.S. at 38 n.9 ("[I]t appears that . . . shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" (quoting *Heller*, 554 U.S. at 635)).

The congressionally mandated background check system is a fundamental part of modern gun safety regulation—and has been for over three

decades. Since the federal background check requirement was adopted, more than 5.1 million people who are legally prohibited from possessing a gun have been either prevented from purchasing a gun or denied a permit to purchase one.[4] At least a third of the denials since 1998 involved people convicted of felony offenses.[5]

The federal background check system has proven workable, among other reasons, because officials rely on legislatively imposed categorical restrictions to quickly assess whether a buyer or transferee can legally possess a firearm. In particular,

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[4] U.S. Dep't of Just., Bureau of Just. Stat., *Background Checks for Firearm Transfers, 2021*, 1 (2025), https://perma.cc/59F5-LWF4 ("2021 Background Checks Report"); Fed. Bureau of Investigation, Crim. Just. Info. Servs. Div., *National Instant Criminal Background Check System 2022 Operations Report*, 14-15, https://perma.cc/UD5A-WEF3 (last visited Dec. 19, 2025); Fed. Bureau of Investigation, Crim. Just. Info. Servs. Div., *National Instant Criminal Background Check System (NICS) 2023 Operations Report*, 9, https://perma.cc/JB84-EGHQ (last visited Dec. 19, 2025); Fed. Bureau of Investigation, Crim. Just. Info. Servs. Div., *National Instant Criminal Background Check System (NICS) 2024 Operations Report*, 8, https://perma.cc/BZB5-4JVM (last visited Dec. 19, 2025) ("2024 NICS Operational Report").

[5] U.S. Dep't of Just., Bureau of Just. Stat., *Background Checks for Firearm Transfers, 2016-2017*, 10-11 (2021), https://perma.cc/MGJ6-QDT4; U.S. Dep't of Just., Bureau of Just. Stat., *Background Checks for Firearm Transfers, 2018*, 8 (2021), https://perma.cc/7NSE-B6EF; U.S. Dep't of Just., Bureau of Just. Stat., *Background Checks for Firearm Transfers, 2019-2020*, 7-8 (2023), https://perma.cc/EE7C-7NEP; 2021 Background Checks Report, *supra* note 4, at 7; Fed. Bureau of Investigation, *Federal Denials*, https://perma.cc/PGT8-P7GW (last visited Dec. 19, 2025).

for a licensed dealer to transfer a firearm, the process proceeds as follows.

First, a potential purchaser ("transferee") completes a Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") Firearms Transaction Record, also referred to as ATF Form 4473. This form details the transferee's name, address, and identifying information to compare against records in the National Instant Criminal Background Check System ("NICS"), a centralized catalog of records comprising three separate national databases maintained by the FBI to facilitate these background checks.[6] NICS includes information from local and state law enforcement entities and federal agencies, which share disqualifying information to be entered into the systems, including information about individuals' criminal and mental health histories, and any civil orders entered against them that might affect their eligibility to purchase or possess a gun, such as domestic violence restraining orders.[7] Law enforcement entities providing information to NICS enter an ineligible individual's name, date of birth, and sex, as well as, in certain circumstances, codes indicating the applicable prohibition, submitting agency, and type of agency record supporting the prohibition to create an entry.[8] This centralized and

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[6] *Background Checks: NICS & Reporting Procedures*, Giffords L. Ctr. to Prevent Gun Violence, https://perma.cc/RL7C-DCFJ (last visited Dec. 19, 2025) ("NICS & Reporting Procedures").

[7] *Id.*

[8] Health Insurance Portability & Accountability Act (HIPAA) Privacy Rule & the National Instant Criminal Background Check System (NICS), 81 Fed. Reg. 382, 383 (Jan. 6, 2016). While not required to enter the documentation underlying each entry into NICS, the law enforcement entity must maintain the

streamlined data in NICS allows law enforcement to quickly ascertain whether a potential purchaser is legally eligible to buy a gun and relay that information back to the licensed dealer.[9]

Once the licensed dealer has a potential transferee's ATF Form 4473, it contacts the FBI's NICS Operation Center to determine whether the purchaser's information matches any records in the NICS databases.[10] If no matches are found, the dealer can proceed with the transfer of the firearm.[11]

If a potential match is returned, however, a NICS examiner will conduct a more thorough search of the records and will instruct the dealer to take one of three actions: (1) proceed with the transfer because either the hit was not a valid match to the transferee, or there was no disqualifying record; (2) deny the transfer because there was information found that indicated the transferee is prohibited from possessing the firearm under federal or state law; or (3) delay the transfer for further inquiry.[12] In the case of a delayed determination, the NICS examiner has, in most cases, three business days to further investigate the transferee and come to a determination regarding the

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documentation in the event of further inquiries. U.S. Dep't of Just., Crim. Just. Info. Servs. Div., *National Instant Criminal Background Check System (NICS) Law Enforcement Guide*, 8, https://perma.cc/LB8W-KXJE (last visited Dec. 19, 2025).

[9] NICS & Reporting Procedures, *supra* note 6. Nineteen states rely on state or local authorities to conduct background checks in local databases, as well as the NICS database, for firearm transfers. *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

transferee's eligibility.[13] If the dealer has not been notified after those three business days that the transfer would violate federal or state law, the transfer can proceed by default.[14]

B. Public Safety Would Be Severely Compromised Without Categorical Prohibitions.

As noted above, the background check system protects public safety by relying upon categorical prohibitions to quickly determine whether a firearms purchase would be unlawful and should be disallowed. Indeed, Congress required the establishment of a background check system against the backdrop of the longstanding use and legality of categorical prohibitions. *See, e.g.*, Brady Handgun Violence Prevention Act, Pub. L. No. 103–159, 107 Stat. 1536, 1540 (1993) (providing that the background check system shall "assign a unique identification number to the transfer" (*e.g.*, authorize the transfer) only if "receipt of a firearm would not violate section 922(g)," among other laws); *id.* at 1536, 1538 (requiring, for any firearm transfer, confirmation that the transferor has received a statement by the transferee confirming that the transferee does not meet descriptions similar to those used in 18 U.S.C. § 922(g)(1)-(7)).[15]

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[13] *Id.* If the transferee is less than twenty-one years old and has a potentially disqualifying record, the examiner has ten business days rather than three to make a determination. *Id.* Individuals under twenty-one comprised less than one percent of background checks conducted in 2024. *See* 2024 NICS Operational Report, *supra* note 4, at iii, 13.

[14] NICS & Reporting Procedures, *supra* note 6.

[15] Sections 922(g)(8) and (9) were added to this list of prohibitions after the Brady Act's enactment in 1993. *See* Violent Crime

Absent these prohibitions, the system would be unworkable and thus fail to advance the public safety interests that the background check system was enacted to protect. Notably, the NICS system returns a search "within seconds to minutes" of the initial request from the dealer.[16] The use of categories enables an efficient means of determining which individuals are prohibited from possessing firearms.

Absent reliance on categorical prohibitions, the background check system would fail to function effectively and as Congress required. For example, in lieu of categorical determinations, presumably individual determinations would be required. This raises many questions, including what the standard would be to determine an individual's eligibility, who would be charged with making such individual determinations, how they could be made efficiently and effectively, and what information would be needed to make them. One theoretical option would be for NICS examiners to make determinations on a case-by-case basis, given their proximity to the initial request and access to the databases of information. But this would involve wading through judicial opinions, court orders, and other voluminous law enforcement materials. Even assuming NICS examiners were qualified to engage in such analysis (which is highly questionable), it would result in a quagmire of delays of indeterminate and unpredictable length in the background check process.

Control & Law Enforcement Act of 1994, Pub. L. No. 103–322, § 110401, 108 Stat. 1796, 2014-15 (adding Section 922(g)(8)); Omnibus Consolidated Appropriations Act, Pub. L. No. 104–208, § 658, 110 Stat. 3009, 3009–372 (1996) (adding Section 922(g)(9)).

[16] 2024 NICS Operational Report, *supra* note 4, at 6.

Such a quagmire would be simply untenable for a system that, in 2024 alone, involved more than 28 million background checks—almost 77,000 per day.[17] And these kinds of delays would be highly problematic because in the current system, most firearms transfers can occur by default if a determination is not made within three business days. Requiring case-by-case examination of individual records by NICS investigators under this timeline would all but guarantee a massive increase in the number of transfers allowed by default—*i.e.*, without a determination that transfer is consistent with federal law and public safety. Any increase in defaults would almost certainly allow prohibited individuals to unlawfully possess firearms, which is a direct threat to public safety. For example, the shooter who killed nine people in the 2015 Charleston church massacre obtained the weapon he used by way of a default transfer.[18]

And delay would not be the only destructive consequence of a background check system that did not rely on categorical prohibitions. Among other things, requiring NICS examiners (for example) to make case-by-case determinations regarding whether a transferee should be eligible for a transfer would inject subjectivity into the process, thereby increasing the possibility of inaccurate or disparate eligibility determinations. Such a system would also substitute individual examiners' determinations about firearm eligibility for the considered judgment of legislatures

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[17] *Id.* at iii.

[18] Pete Williams & Halimah Abdullah, *FBI Says Dylann Roof Should Not Have Been Sold Gun*, NBC News (July 10, 2015, 19:12 ET), https://perma.cc/SN65-FPG3.

as represented by categorical prohibitions. This is directly contrary to the widespread understanding that the legislature is the proper branch of government to make such important policy decisions. *See infra*, Section I.B.

Were categorical prohibitions no longer the backbone of the background check system, there would also be the need for a comprehensive central repository or easily accessible network of information to which examiners had access for case-by-case determinations. Absent the ability to rely on categorical prohibitions, states would need to provide, for each submitted individual, voluminous information needed for those case-by-case determinations—a stark contrast to the current minimal burden of providing an individual's identifying information and a code for which category makes the individual's purchase of a firearm illegal.[19] Such an increased burden also could lead to increased mistakes—which can have fatal consequences. For example, the U.S. Air Force's failure to transmit information to NICS allowed an otherwise prohibited individual to purchase a firearm and kill twenty-six individuals and injure another twenty-two people in a Texas church in 2017.[20]

Even if NICS could instead rely on courts to make individualized determinations of eligibility to possess a firearm at the time of adjudication, state courts could not be compelled to make such determinations. *See, e.g.*, *Printz v. United States*, 521

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[19] *See* 81 Fed. Reg. 382, *supra* note 8, at 383.

[20] Press Release, *Justice Department Reaches Multimillion Dollar Civil Settlement in Principle in Sutherland Springs Mass Shooting*, U.S. Dep't of Just., Off. of Pub. Affs. (Feb. 6, 2025), https://perma.cc/54KN-F2G7.

U.S. 898, 926 (1997) ("'The Federal Government,' we held, 'may not compel the States to enact or administer a federal regulatory program.'" (quoting *New York v. United States,* 505 U.S. 144, 188 (1992)). Moreover, setting aside any variations among states, at a minimum, any transformation of the background check system from the current foundation on categorical prohibitions would require massive new investment, including in technology, data transfers, processes, and personnel. This itself could prove cost prohibitive, casting significant doubt on this alternative.

CONCLUSION

Legislatures have long made categorical policy determinations about what groups of people may be prohibited from possessing firearms, consistent with the Second Amendment, and nothing in the Second Amendment bars such determinations. Such determinations are essential to public safety, including under the federal Brady background check system that Congress enacted to ensure that prohibited individuals do not have access to firearms. The judgment below should be reversed.

Respectfully submitted,

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