

No. 26-5483

**In The
Supreme Court Of The United States**

STEVEN ERIC WALKER,
Petitioner,

v.

UNITED STATES, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit
(No. 23-55525)

**SUPPLEMENTAL BRIEF OF PETITIONER
PURSUANT TO RULE 15.8**

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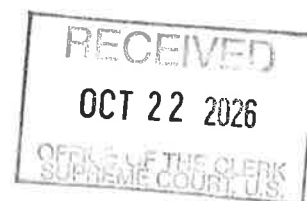


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SUPPLEMENTAL BRIEF OF PETITIONER
PURSUANT TO RULE 15.8

Pursuant to Supreme Court Rule 15.8, Petitioner submits two intervening Third Circuit en banc decisions issued October 13, 2026: *Williams v. Attorney General*, No. 24-1091, and *United States v. Bost*, No. 24-1719. Both apply *Bruen*'s historical framework to 18 U.S.C. § 922(g)(1), exposing methodological questions concerning continuing disarmament, dangerousness, and the evidentiary significance of past convictions. These decisions directly implicate the petition's existing Questions Presented concerning the Government's historical burden and the *sua sponte* dismissal of Petitioner's Second Amendment claim before governmental defendants answered. *See* Pet. iii–iv, 13–22. No new Question Presented is raised.

I.

THE INTERVENING DECISIONS EXPOSE THE RISK OF INTEREST
BALANCING UNDER THE GUISE OF HISTORICAL ANALOGY

In *Williams*, the Third Circuit affirmed relief from § 922(g)(1) for repeated driving-under-the-influence convictions, distinguishing generalized dangerousness from risks associated with firearm misuse. *Williams*, slip op. at 4–6, 12–21. In *Bost*, the en banc majority sustained disarmament for terroristic threats, treating the offense as *prima facie* evidence of a risk of physical violence. *Bost*, slip op. at 11–15.

Although the differing offenses may warrant different outcomes, the decisions expose a fundamental methodological question: whether courts are applying historically established limits on governmental authority or employing historical analogies to justify contemporary assessments of dangerousness.

In *Williams*, the majority invoked Blackstone and Justice Story concerning criminal punishment and prevention of future misconduct. *Williams*, slip op. at 4–6. Those authorities recognize legitimate governmental purposes, but do not establish a representative tradition authorizing indefinite firearm dispossession after completed punishment. Likewise, although *Bost* acknowledged *Bruen*'s rejection of means-end scrutiny and recognized that historical analogy must account for a restriction's nature, procedure, and duration, it sustained disarmament based upon dangerousness inferred from a prior offense. *Bost*, slip op. at 5–7, 11–15. Judge Phipps's dissent questioned whether historical practice supports presumptively permanent disarmament after punishment. *Id.* at 1–6 (Phipps, J., dissenting).¹

The *disguised interest balancing* arises when historical authority to punish and prevent violence becomes justification for continuing disarmament through judicial assessments of prospective danger. Historical sources then establish a governmental interest—public safety—while the judiciary determines how extensively an enumerated right may be restricted to advance it.² That is precisely

¹ Judge Phipps's dissent illustrates this methodological concern: historical authority to punish or temporarily restrain dangerous conduct does not necessarily establish authority for presumptively permanent disarmament after punishment. *Bost*, slip op. at 1–6 (Phipps, J., dissenting). Treating the governmental objective of preventing future violence as sufficient to extend historically limited restraints indefinitely risks substituting contemporary public-safety judgments for the historical *how* inquiry required by *Bruen*.

² The Fifth Circuit's grant of rehearing en banc in *United States v. Cordova*, No. 24-50564 (Sept. 14, 2026), vacated a panel decision applying a conviction-based dangerousness framework under § 922(g)(1). *See Cordova*, 175 F.4th 381 (5th Cir. 2026), vacated pending reh'g en banc. Separate opinions accompanying the vacated decision questioned whether historical authority supports lifetime disarmament. That disagreement illustrates the methodological concern presented here: whether judicial assessments of prospective danger are being used to extend historically limited restrictions beyond their demonstrated scope.

the methodological danger *Bruen* identified: courts may not employ “independent means-end scrutiny under the guise of an analogical inquiry.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 29 n.7 (2022). Historical analogy requires examination of both how and why a restriction burdens the right, not merely whether it advances a legitimate governmental purpose. *Id.* at 29–30; *see also United States v. Rahimi*, 602 U.S. 680, 691–92 (2024); *United States v. Hemani*, 608 U.S. 772, 787–91 (2026). *Bruen* cautioned that historical analogy is neither a regulatory straitjacket nor a regulatory blank check. 597 U.S. at 30. A representative historical tradition must support the modern restriction; generalized similarities cannot justify expanding a historically limited disability into an indefinite deprivation. *Id.* at 30–31. Just as *Bruen* rejected an expansive sensitive-places analogy that would effectively extinguish public carry across broad areas, historical authority to restrain dangerous conduct cannot broadly establish permanent disarmament following completed punishment. The constitutional inquiry concerns the historical limits of governmental authority, not merely the modern objective served by its exercise.

Historical surety laws illustrate the distinction. They addressed threatened breaches of the peace through conditional bonds and judicial proceedings, not permanent disarmament based solely upon a completed conviction. *Rahimi*, 602 U.S. at 695–97. Likewise, historical authority to punish, including restrictions during incarceration and supervision, does not necessarily establish independent authority to continue depriving a free citizen of an enumerated right indefinitely. The

legitimacy of completed punishment and the constitutional justification for a continuing disability are distinct inquiries. *Cf. Hemani*, 608 U.S. at 787-91.

Petitioner does not dispute the Government's authority to punish his underlying offense, for which he has served his sentence and been discharged from supervision. He disputes whether that authority—or the generalized governmental purpose of protecting public safety—establishes the historical justification for his continuing firearm disability. *See* Pet. 23–38; Pet. 8 n.7. The intervening decisions thus reinforce the petition's first Question Presented: whether courts may categorically reject presumptively protected conduct without requiring the Government to demonstrate a representative national historical tradition authorizing the particular restriction imposed.

II.

DANGEROUSNESS REQUIRES A HISTORICALLY GROUNDED RULE AND AN ARTICULATED EVIDENTIARY STANDARD

Although *Williams* and *Bost* adjudicated constitutional challenges rather than applications for administrative relief under 18 U.S.C. § 925(c), both considered factors resembling those governing discretionary restoration: the nature of the offense, individual conduct, and prospective dangerousness. Such considerations may inform a historically justified restriction, but § 925(c) provides discretionary executive relief, whereas *Bruen* requires the Government to establish the historical justification for restricting presumptively protected conduct. 597 U.S. at 24. A constitutional challenge cannot become a restoration proceeding in which the individual must

establish eligibility to exercise an enumerated right while the Government is relieved of its historical burden. *Hemani*, 608 U.S. at 781–82.

The constitutional inquiry must identify the historical rule authorizing disarmament, the facts bringing an individual within that rule, and the justification for its duration. In *Hemani*, this Court examined the Government's reliance upon historical vagrancy, civil-commitment, and surety laws and rejected their use as interchangeable evidence of categorical dangerousness. *Id.* at 787–91. Vagrancy laws commonly addressed unemployment, dependency, and perceived social misconduct; civil-commitment and guardianship laws frequently addressed incapacity, rehabilitation, and protection of individuals and their families; and sureties of good behavior often regulated conduct regarded as scandalous or immoral. *Id.* at 787–90. By contrast, sureties of the peace addressed demonstrated threats of violence and imposed conditional restraints directed toward preventing breaches of the peace. *Id.* at 789–90; *Rahimi*, 602 U.S. at 695–97. These distinctions demonstrate that historical authority to restrain liberty for one purpose does not establish unrestricted authority to disarm individuals based upon a generalized characterization of dangerousness.

The Government's reliance upon historical civil-commitment laws in *Hemani* is particularly instructive. This Court examined their actual *purposes and operation* rather than accepting civil commitment as categorical proof of dangerousness. 608 U.S. at 788–91. The Court also recognized the significance of judicial proceedings preceding historical restraints upon liberty. *Id.* at 790–91. The analogy therefore raises an additional question where the Government *invokes dangerousness* to justify

an indefinite constitutional disability: what evidentiary showing establishes that an individual satisfies the historically recognized condition, and what justifies the restriction's continued duration? Although *Hemani* expressly reserved § 922(g)(1), it did not establish that a conviction necessarily supplies the substantive historical justification for every continuing disability imposed under that provision. *Id.* at 791 n.6. As *Bruen* explains, historical constitutional adjudication is a legal inquiry governed by evidentiary principles and default rules for resolving uncertainty. 597 U.S. at 25–26 n.6. And where the Government seeks involuntary civil commitment based upon mental illness and dangerousness, this Court has required clear-and-convincing evidence to safeguard against erroneous deprivation of liberty. *Addington v. Texas*, 441 U.S. 418, 425–27, 432–33 (1979). Similarly, *Santosky v. Kramer*, 455 U.S. 745, 756 (1982), recognizes that the allocation and degree of proof are fundamental safeguards against erroneous deprivation. These decisions do not themselves prescribe a clear-and-convincing standard for Second Amendment challenges. Nevertheless, their reasoning supports Petitioner's contention that an indefinite restriction of a pre-existing constitutional right, justified by an asserted condition of continuing dangerousness, warrants a heightened evidentiary safeguard rather than an unarticulated judicial presumption.

Petitioner maintained below, and expressly reserved in his petition, that the Government's "considerable" historical burden, *Hemani*, 608 U.S. at 781, requires rigorous judicial examination commensurate with the constitutional right at stake. *See* Pet. 10 n.8; *Williams*, slip op. at 1–2 (recognizing the care and rigor required in

examining historical tradition). Historical evidence establishing governmental authority to disarm must be distinguished from factual evidence establishing that an individual falls within the historically justified restriction based on dangerous or any other similar factor. Petitioner further maintains that, where continuing dangerousness is asserted as the factual justification for a disability extending beyond completed punishment and supervision, the Government must establish that danger by clear and convincing evidence sufficient to justify the disability's duration. *Cf. Addington*, 441 U.S. at 425–27, 432–33. Neither generalized historical references nor an unsupported presumption of dangerousness can substitute for the constitutionally required inquiry.

The distinction is not whether the exercise of an enumerated right can produce dangerous consequences. Speech may incite unlawful violence, assembly may facilitate disorder, and other constitutional liberties may accompany serious criminal misconduct. Yet lawful conviction and punishment for such misconduct do not ordinarily extinguish the individual's underlying constitutional protections upon release. *See Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (distinguishing protected advocacy from incitement to imminent lawless action). The Constitution distinguishes unlawful conduct from the continued existence of the underlying right. If past unlawful conduct involving an enumerated right does not ordinarily establish perpetual constitutional incapacity to exercise that right, the Government must identify the representative historical tradition authorizing such incapacity under the Second Amendment, without relegating it to the second-class status this Court has

rejected. *See McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality opinion); *Bruen*, 597 U.S. at 24.

Conviction supplies an adjudication of criminal guilt and may authorize restrictions incident to punishment and supervision. But the process establishing guilt does not, by itself, resolve the distinct substantive question whether the Government possesses constitutional authority to continue restricting a pre-existing right indefinitely after punishment has ended. *Hemani* recognized conviction as a procedural distinction under § 922(g)(1), while expressly reserving that provision's constitutionality. 608 U.S. at 791 n.6. The issue here is not the validity of Petitioner's conviction or completed punishment, but the historical authority supporting his continuing disability *as a free law-abiding citizen*.

A conviction establishes the statutory predicate under § 922(g)(1); whether that predicate constitutionally justifies indefinite disarmament remains a distinct historical inquiry. Separate from that inquiry is whether Petitioner presently poses a danger sufficient to warrant the continued deprivation of the exercise of his pre-existing Second Amendment right after completing punishment and supervision. Where the Government relies upon continuing dangerousness to justify that deprivation, Petitioner maintains that it must establish such danger by clear and convincing evidence under a historically grounded constitutional standard. Without an articulated historical rule and evidentiary standard, a *prima facie* inference from past criminal conduct risks becoming an effectively irrebuttable determination of lifelong dangerousness, regardless of contrary evidence or the completion of

punishment. *See* Pet. 10 n.8; *Bost*, slip op. at 5–7; *id.* at 5–6 & n.7 (Phipps, J., dissenting). As *Bailey v. Alabama*, 219 U.S. 219, 239 (1911), recognizes, evidentiary presumptions cannot be employed to circumvent constitutional restrictions. A statutory predicate cannot become its own constitutional justification through a judicial presumption of perpetual dangerousness. Neither discretionary relief under § 925(c) nor an inference arising from conviction substitutes for the historical justification required by *Bruen*. 597 U.S. at 24–31.

III.

THE INTERVENING DECISIONS REINFORCE THE NEED FOR REVIEW OF PETITIONER'S PRE-SERVICE DISMISSAL

Petitioner's circumstances differ from those presented in *Williams* and *Bost*. His predicate conviction, involving no resulting physical injury, is undisputed. Nevertheless, Petitioner served approximately twenty-two years of imprisonment, was released in 2012, and completed parole in 2015 following an official determination that he *no longer posed an unreasonable risk of danger to public safety*. Although not dispositive of his entitlement to possess firearms, that determination distinguishes past criminal culpability from the question of continuing dangerousness. Whether his completed conviction constitutionally justifies indefinite disarmament remains a distinct inquiry concerning the historical authority for the restriction's nature and duration.

As *Bruen* explains, the judicial task is not to resolve historical questions in the abstract, but to decide the legal questions presented in particular cases or controversies through established evidentiary principles and default rules. 597 U.S.

at 25–26 n.6. Here, the constitutional question concerned the Government's historical authority to maintain Petitioner's firearm disability after completed punishment and supervision. That question was resolved through categorical precedent without requiring the Government to present historical evidence establishing the justification for the continuing restriction.

The Government was never required to answer that question. Petitioner's civil complaint was dismissed *sua sponte* before service under 28 U.S.C. § 1915(e)(2)(B)(ii), without either governmental defendant answering or presenting historical justification. The United States waived its answering brief on appeal, and the Ninth Circuit affirmed under *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc). *See* Pet. 13–22; App. A-001–A-011. California never appeared. Unlike the adversarial proceedings in *Williams* and *Bost*, Petitioner's claim was terminated without governmental participation in the historical inquiry. The intervening decisions thus underscore Petitioner's existing contention that categorical judicial doctrine displaced the Government's historical burden at the pleading stage, before the constitutional justification for the particular continuing disability was subjected to adversarial examination.

The intervening decisions further reinforce the need for uniform constitutional methodology. The Second Amendment has the same meaning nationwide. *Wolford v. Lopez*, 609 U.S. 185 (2026). Although factual differences may warrant different outcomes, the governing constitutional standard cannot vary according to the circuit in which a free citizen resides. *See* Pet. 38–46. The disagreements reflected in *Bost*

and the en banc reconsideration in *Cordova* underscore the need for a uniform historical methodology, rather than circuit-dependent judicial presumptions concerning the constitutional significance of past convictions. The question is not merely whether Petitioner's continuing disability is constitutional, but whether the courts below applied the required constitutional methodology before sustaining it, notwithstanding the absence of any governmental answer or historical showing.

CONCLUSION

The intervening decisions in *Williams*, *Bost*, and *Cordova* reinforce the need for nationally uniform historical methodology concerning continuing disarmament and the Government's burden under *Bruen*. They further support Petitioner's existing Questions Presented, including the *sua sponte* dismissal of his claim without governmental participation.

Petitioner respectfully requests that the Court grant certiorari or, alternatively, grant, vacate, and remand for reconsideration in light of *Hemani* and *Wolford*, particularly given the intervening appellate disagreement concerning the historical justification for continuing disarmament.

Respectfully submitted,



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Dated: October 18, 2026