

WE THE PEACEFUL: WHY UNLAWFUL ALIENS INHABITING THE UNITED STATES HAVE A SECOND AMENDMENT RIGHT

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ABSTRACT

The Supreme Court defined a new standard for Second Amendment challenges in *New York State Rifle & Pistol Ass’n v. Bruen*. First, only conduct within the plain language of the Second Amendment is protected. Second, the challenged firearm regulation must boast a historical analogue that imposes a comparable burden, and justification for that burden, on the Second Amendment. Applying *Bruen* to 18 U.S.C. § 922(g)(5), which prohibits unlawful aliens from possessing firearms, this Article contends that, first, “the people” in its historical context includes unlawfully present foreign inhabitants. Thus, unlawful aliens who inhabit the national community are members of “the people” under the Second Amendment and have a right to armed self-defense. Second, no historical regulation disarmed foreign inhabiting groups unless they were deemed categorically dangerous to public safety. Because § 922(g)(5)’s legislative history does not support finding inhabiting unlawful aliens categorically dangerous, and empirical evidence supports the contrary, § 922(g)(5) does not share with historical firearm regulation the justification of public safety. As such, § 922(g)(5) boasts no historical analogue. It is therefore unconstitutional as applied to those unlawful aliens who inhabit the national community, and who otherwise enjoy the quintessential right to armed in self-defense—a right that belongs to all peaceful inhabitants of the United States.

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1. INTRODUCTION

In 2022, the Supreme Court established a new test for Second Amend-
ment challenges in *New York State Rifle & Pistol Ass’n v. Bruen*.¹ Rejecting the
application of means-end scrutiny by lower courts, *Bruen* instructed that a
firearm regulation is constitutional under the Second Amendment if, first,
the conduct it encompasses is covered under the plain language of the Sec-
ond Amendment, and second, it boasts a historical analogue that shares both
a comparable burden upon the Second Amendment and justification for that
burden.² Absent satisfying both prongs of *Bruen*’s test, a modern firearm reg-
ulation would not comport with this nation’s historical understanding of the
Second Amendment.³

Before *Bruen*, 18 U.S.C. § 922(g)(5)—which prohibits unlawful aliens
from possessing firearms⁴—was categorically upheld under two competing

¹ 597 U.S. 1, 18 (2022).

² *Id.* at 29.

³ *See id.* at 70.

⁴ This Article refers to undocumented persons as “unlawful aliens” throughout because
this term is used by § 922(g)(5). *See* 18 U.S.C. § 922(g)(5)(A) (“It shall be unlawful
for any person . . . who, being an alien . . . is illegally or unlawfully in the United
States . . . to ship or transport in interstate or foreign commerce, or possess in or

rationales. First, and with limited guidance from the Court,⁵ two circuits held that unlawful aliens are not members of “the people.”⁶ Under this holding, the Second Amendment is not implicated by § 922(g)(5).⁷ Second, one circuit held and three circuits presumed without deciding that unlawful aliens *are* members of “the people,” but § 922(g)(5) is nevertheless constitutional under the Second Amendment because the government interest of public safety outweighs unlawful aliens’ right to armed self-defense.⁸ Such an interest balancing test is improper under *Bruen*. Thus, the constitutionality of § 922(g)(5) has been called into question post *Bruen*.

In Part One, this Article canvasses *Bruen*’s two-part test and its subsequent application by the Court in *United States v. Rahimi*. It further reviews how lower courts have applied *Bruen*’s test to § 922(g)(5) to establish several common, yet competing, analyses. In Part Two, this Article undergoes its own application of *Bruen* to § 922(g)(5) and concludes the following. Under *Bruen*’s first step, analysis of historical sources, application of Court precedent, and adherence to canons of construction support finding that unlawful aliens are members of “the people” as that term applies to the Second Amendment. Under *Bruen*’s second step, scrutinizing the historical analogues for § 922(g)(5) commonly identified by courts reveals that none share a sufficiently comparable justification with § 922(g)(5) to satisfy *Bruen*. Because there is no historical tradition of categorically disarming non-law-abiding foreign inhabitants, § 922(g)(5) is unconstitutional as applied to those unlawful aliens who inhabit the national community.⁹

affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”).

⁵ The Court has never answered whether “the people” includes unlawful aliens in the context of the Second Amendment.

⁶ See *United States v. Portillo-Munoz*, 643 F.3d 437, 442 (5th Cir. 2011); *United States v. Flores*, 663 F.3d 1022, 1023 (8th Cir. 2011) (per curiam).

⁷ See *Portillo-Munoz*, 643 F.3d at 442; *Flores*, 663 F.3d at 1023.

⁸ See *United States v. Perez*, 6 F.4th 448, 453 (2d Cir. 2021); *United States v. Torres*, 911 F.3d 1253, 1261 (9th Cir. 2019); *United States v. Huitron-Guizar*, 678 F.3d 1164, 1169 (10th Cir. 2012); *United States v. Meza-Rodriguez*, 798 F.3d 664, 672 (7th Cir. 2015).

⁹ This Article referring to “inhabiting” unlawful aliens contemplates those unlawful aliens who essentially reside in the United States. Whether an unlawful alien “inhabits” the United States is a question that must be resolved by the courts. A factored test is proposed at the conclusion of this Article. See *infra* Part 4.

2. *BRUEN*'S TEST AND 18 U.S.C. § 922(G)(5)

Before discussing how lower courts have applied *Bruen* to § 922(g)(5), reviewing *Bruen*'s two-part test and the Supreme Court's subsequent application in *Rahimi* highlights the standard that must be adhered to in Second Amendment challenges moving forward.

2.1. *Bruen*'s Two-Part Test

Before *Bruen*, courts invoked a different two-part test for Second Amendment challenges. First, identical to *Bruen*, courts would ask whether the conduct implicated by the challenged firearm regulation was covered by the plain text of the Second Amendment.¹⁰ Second, courts would apply varying levels of means-end scrutiny to balance the government's asserted interest—typically public safety—against the people's interest in keeping and bearing arms under the Second Amendment.¹¹

In 2022, *Bruen* retained the first step but replaced the interest-balancing second step with a “historical analogue” inquiry, which requires the government to proffer “a historical regulation [as] a proper analogue for a distinctly modern firearm regulation.”¹² That is, the challenged firearm regulation and the proffered historical regulation must impose a “comparable burden” upon the Second Amendment that is “comparably justified.”¹³ Such an inquiry ensures modern firearm regulations are commensurate with our historical understanding of the Second Amendment.¹⁴

Importantly, *Bruen* instructed that “analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check.”¹⁵ As such, *Bruen* only demands “a well-established and

¹⁰ See, e.g., *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010) (“First, we ask whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee.”).

¹¹ See, e.g., *id.* at 95 (asking, second, whether the firearm regulation survives “under the appropriate standard of constitutional scrutiny”).

¹² *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 28–30 (2022).

¹³ *Id.* at 29 (citing *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010)).

¹⁴ See *id.* at 26.

¹⁵ *Id.* at 30.

representative historical *analogue*, not a historical *twin*.”¹⁶ Ultimately, *Bruen* found no historical analogue for the challenged regulation.¹⁷ No historical tradition existed requiring “proper cause” to publicly carry arms for self-defense, which was the burden imposed by the challenged firearm regulation.¹⁸ Comparably, this Article contends no historical tradition existed categorically disarming non-law-abiding foreign inhabitants. Thus, inhabiting unlawful aliens, which this Article argues are members of “the people” entitled to Second Amendment protection,¹⁹ cannot be constitutionally disarmed under § 922(g)(5).

2.2. *Bruen’s Test Applied in Rahimi*

The Court has applied *Bruen’s* historical analogue inquiry once in *United States v. Rahimi*, where it identified surety statutes and going-armed laws as the historical analogues for 18 U.S.C. § 922(g)(8), a modern regulation disarming persons subject to a restraining order.²⁰ *Rahimi* acknowledged it was an “easy case” and “common sense.”²¹ Under *Bruen’s* first step, the conduct implicated by § 922(g)(8) was a law-abiding citizen possessing a firearm²²—conduct that clearly falls within the plain text of the Second Amendment. Under *Bruen’s* second step, historical firearm regulations by way of surety statutes and going-armed laws “confirm[ed] what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.”²³ Thus, § 922(g)(8) is commensurate with the historical tradition of disarming those who threaten physical harm. Yet, *Rahimi’s* “common sense” analysis provides little guidance on how to apply *Bruen* when the answer is less clear, such as with the categorical disarmament of unlawful aliens under § 922(g)(5).

¹⁶ *Id.*

¹⁷ *Id.* at 31.

¹⁸ *Id.* at 70.

¹⁹ *See infra* Section 3.1.

²⁰ 602 U.S. 680, 698 (2024).

²¹ *Id.* at 703 (Sotomayor, J., concurring) (citation omitted).

²² The defendant, *Rahimi*, was technically law-abiding. *Id.* at 689 (majority opinion). The facts were not sympathetic, however, and demonstrated his danger to society. *Id.* at 686–87.

²³ *Id.* at 698.

2.3. Lower Courts' Applications of *Bruen* to § 922(g)(5)

Turning to post-*Bruen* Second Amendment challenges to § 922(g)(5), which prohibits unlawful aliens from possessing firearms,²⁴ nine circuits have undertaken this inquiry.²⁵ Litigation continues to burgeon at the district-court level.²⁶ Reviewing both the appellate and district court decisions underscores the unsettled nature of § 922(g)(5)'s constitutionality under *Bruen*.

2.3.1. Circuit Court Decisions Post *Bruen*

Nine circuits have addressed § 922(g)(5)'s constitutionality post *Bruen*. Specifically, the Fourth Circuit,²⁷ Fifth Circuit,²⁸

²⁴ See 18 U.S.C. § 922 (g)(5) (“It shall be unlawful for any person . . . (5) who, being an alien . . . (A) is illegally or unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”).

²⁵ See *infra* Section 2.3.1.

²⁶ See *infra* Section 2.3.2.

²⁷ *United States v. Murillo-Lopez*, 151 F.4th 584, 591 (4th Cir. 2025) (applying pre-*Bruen* precedent, *United States v. Carpio-Leon*, 701 F.3d 974, 979 (4th Cir. 2012), to hold that undocumented persons are not members of the people).

²⁸ *United States v. Medina-Cantu*, 113 F.4th 537, 542 (5th Cir. 2024) (“To summarize, this court held in *Portillo-Munoz* that illegal aliens are not ‘members of the political community’ covered by the plain text of the Second Amendment. The majority opinions in *Bruen* and *Rahimi* did not address this issue, nor did they unequivocally abrogate our holding in *Portillo-Munoz*. Accordingly . . . we are bound to follow *Portillo-Munoz* and uphold the constitutionality of § 922(g)(5) under the Second Amendment.”), *cert. denied*, 145 S. Ct. 1318 (2025) (mem.). Further Second Amendment challenges to § 922(g)(5) in the Fifth Circuit were foreclosed by *Medina-Cantu*. See *United States v. Montano Fuentes*, No. 23-10415, 2024 WL 4971953, at *1 (5th Cir. Dec. 4, 2024) (per curiam); *United States v. Gonzalez Miranda*, No. 24-50196, 2024 WL 5200364, at *1 (5th Cir. Dec. 23, 2024) (per curiam); *United States v. Barahona Tuc*, No. 23-20593, 2024 WL 4927262, at *1 (5th Cir. Dec. 2, 2024); *United States v. Muñoz Benito*, No. 24-60346, 2025 WL 1626170, at *1 (5th Cir. June 9, 2025) (per curiam); *United States v. De La Torre-Barrera*, No. 24-50421, 2025 WL 548267, at *1 (5th Cir. Feb. 19, 2025) (per curiam); *United States v. D’luna-Mendez*, No. 24-50426, 2025 WL 985931, at *1 (5th Cir. Apr. 2, 2025) (per curiam); *United States v. Hernandez-Ramirez*, No. 25-50739, 2026 WL 432176 (5th Cir. Feb. 16, 2026) (per curiam);

Eighth Circuit,²⁹ and Eleventh Circuit held that § 922(g)(5) does not implicate conduct covered under the plain text of the Second Amendment because unlawful aliens are not members of “the people” as per pre-*Bruen* precedent.³⁰

In contrast, five circuits reached the second step of *Bruen*. Four of those circuits resolved *Bruen*’s first step by either assuming without deciding that unlawful aliens are members of “the people” under the Second Amendment, or by declining to resolve the question based on a finding that § 922(g)(5) would be nonetheless upheld under *Bruen*’s step two.³¹ Only the Sixth Circuit conclusively held that unlawful aliens are members of “the people” entitled to Second Amendment protection.³²

From there, under *Bruen*’s second step, the Seventh, Ninth, and Tenth Circuits upheld § 922(g)(5) on the ground that unlawful aliens can be

United States v. Rubio-Castillo, No. 25-10935, 2026 WL 755098 (5th Cir. Mar. 17, 2026) (per curiam).

²⁹ United States v. Sitladeen, 64 F.4th 978, 985 (8th Cir. 2023) (“[W]e must first ask whether § 922(g)(5)(A) governs conduct that falls within the plain text of the Second Amendment. Only if the answer is yes do we proceed to ask whether § 922(g)(5)(A) fits within America’s historical tradition of firearm regulation. In our view, *Flores* already answers the first question, and its answer is no.” (citations and footnote omitted)).

³⁰ United States v. Drummond, No. 24-12848, 2025 WL 1825576, at *2 (11th Cir. July 2, 2025) (per curiam) (applying and quoting pre-*Bruen* precedent, *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1050 (11th Cir. 2022), to hold that “illegal immigrants ‘do not enjoy the right to keep and bear arms’”).

³¹ See *United States v. Vizcaino*, No. 23-1932, 2026 WL 1224063, at *3–4 (1st Cir. May 5, 2026); *United States v. Rebollar-Osorio*, No. 24-2043, 2026 WL 1224054, at *2 (1st Cir. May 5, 2026); *United States v. Carbajal-Flores*, 143 F.4th 877, 882 (7th Cir. 2025), *cert. denied*, 146 S. Ct. 826 (2025); *United States v. Vazquez-Ramirez*, 163 F.4th 706, 709 (9th Cir. 2026); *United States v. Bernabe-Martinez*, No. 24-6604, 2026 WL 788889, at *1 (9th Cir. Mar. 16, 2026); *United States v. Duque-Ramirez*, 161 F.4th 1237, 1239 (10th Cir. 2025); *United States v. Ortiz-Moreno*, No. 25-3162, 2026 WL 480142, at *1 (10th Cir. Feb. 20, 2026).

³² *United States v. Escobar-Temal*, 161 F.4th 969, 977 (6th Cir. 2025) (“Based on history and tradition, then, ‘the people’ encompassed those individuals who voluntarily came to this country, consenting to be governed by the Constitution and its laws, and in turn, received some—but not all—of the Constitution’s protections. . . . [T]he Second Amendment’s reference to ‘the people’ encompasses unlawfully present individuals with sufficient connections to the national community . . .”).

disarmed because there is a historical tradition of disarming non-citizens who have not sworn an oath of allegiance.³³ Under similar but broader rationale, the First Circuit held that unlawful aliens can be disarmed because there is a historical tradition of disarming non-citizens who have a “presumptive allegiance” to a foreign nation and no “regulable relationship” with the government.³⁴ The Sixth Circuit most broadly held that unlawful aliens can be disarmed because there is a historical tradition of disarmament when there is “a lack of relationship between the government and individuals of a group that make that group difficult or impossible to regulate.”³⁵

In sum, four of nine circuits held unlawful aliens are not members of “the people” and upheld § 922(g)(5) at *Bruen*’s first step without reaching the historical analogue inquiry. Five circuits almost exclusively reached *Bruen*’s second step by assuming without deciding that unlawful aliens are members of “the people.” Those circuits nonetheless upheld § 922(g)(5) on the basis that unlawful aliens can be disarmed because there is a historical tradition of disarming those who lack allegiance to the nation or are not sufficiently subject to government regulation.

³³ *Carbajal-Flores*, 143 F.4th at 888 (“[A]liens have historically been disarmed unless and until they swore an oath of allegiance to the sovereign.”); *Vazquez-Ramirez*, 163 F.4th at 711 (“We thus agree with the Seventh Circuit that, [f]rom the common law onward, aliens have historically been disarmed unless and until they swore an oath of allegiance to the sovereign.”) (internal quotation marks omitted); *Bernabe-Martinez*, 2026 WL 788889, at *1 (affirming under *Vazquez-Ramirez*, 163 F.4th 706); *Duque-Ramirez*, 161 F.4th at 1248 (“[A]n ‘alien’ presumed to retain loyalties to a foreign sovereign may be prohibited from bearing arms if he fails to swear allegiance in a process prescribed by law.”); *Ortiz-Moreno*, 2026 WL 480142, at *1 (granting summary affirmance under *Duque-Ramirez*, 161 F.4th 1237).

³⁴ *Vizcaino*, 2026 WL 1224063, at *7 (“[L]ike the groups targeted by the historical analogues on which the government relies, . . . [unlawful] aliens have presumptive allegiance to a foreign state and, precisely because of their failure to have obtained a lawful immigration status, have not established what one of our sister circuits referred to as ‘a regulable relationship to the government’ of this country[.]” (citation omitted)); *Rebollar-Osorio*, 2026 WL 1224054, at *3 (relying on the reasoning in *Vizcaino*, 2026 WL 1224063).

³⁵ *Escobar-Temal*, 161 F.4th at 984 (“[A]llowing unlawfully present individuals to be armed could be dangerous because such individuals can more easily circumvent important firearm safety laws. That rationale is well founded in the nation’s history and tradition of firearms regulation.”).

2.3.2. District Court Decisions Post *Bruen*

Turning to the district courts, a broader range of judicial analyses underscore the indeterminacy of § 922(g)(5)'s constitutionality post *Bruen*. District courts have typically split into three camps when applying *Bruen* to § 922(g)(5): (1) finding unlawful aliens are not members of “the people” and thus not entitled to Second Amendment protection, (2) finding unlawful aliens are members of “the people” but nonetheless upholding § 922(g)(5) based on the existence of a historical analogue, or (3) finding unlawful aliens are members of “the people” and holding § 922(g)(5) unconstitutional based on the absence of a historical analogue.³⁶

Consulting the two competing applications of *Bruen*'s first step, some district courts narrowly read *Bruen* and its predecessor, *District of Columbia v. Heller*,³⁷ to limit the Second Amendment's protection to “law-abiding citizens.”³⁸ Such courts therefore held that unlawful aliens are not members of “the people” under the Second Amendment,³⁹ rendering them without a Second Amendment right. In support of this conclusion, such courts either cite pre-*Bruen* precedent as controlling or otherwise reason that where the language “law-abiding citizen” is frequently used by *Bruen* and implicated in

³⁶ These decisions address both as-applied and facial challenges.

³⁷ 554 U.S. 570, 570 (2008).

³⁸ See, e.g., *United States v. Peralta*, No. 25-10080-JWB, 2025 WL 3550779, at *2 (D. Kan. Dec. 11, 2025) (“As far as this court is concerned, illegal aliens are not part of ‘the people’ included in the Second Amendment’s protections because they are not ‘law-abiding responsible citizens’ who are ‘members of the political community.’” (citation omitted)); *United States v. Gonzalez-Peralta*, 743 F. Supp. 3d 1293, 1298 (D. Kan. 2024) (“[I]t appears logically consistent to conclude that illegally present aliens do not fit into the categories of ‘law-abiding’ or ‘citizens.’” (footnote omitted)); *United States v. Figueroa-Camarillo*, 730 F. Supp. 3d 1137, 1140 (D.N.M. 2024) (“[Defendant] is neither law-abiding nor a citizen. Accordingly, his as-applied constitutional challenge to Section 922(g)(5) should fail at step one. Nevertheless, the Court will assume—without deciding—that the Second Amendment could apply to unlawfully present aliens.” (footnote and citation omitted)); *United States v. Pineda-Guevara*, 685 F. Supp. 3d 380, 386 (S.D. Miss. 2023) (holding “that Defendant, an unlawful alien, is not part of ‘the people’ protected by the Second Amendment” (citing *United States v. Portillo-Munoz*, 643 F.3d 437, 440–42 (5th Cir. 2011))).

³⁹ See, e.g., *Gonzalez-Peralta*, 743 F. Supp. 3d at 1298.

Bruen's test,⁴⁰ then the Second Amendment is apparently limited to that group of persons.⁴¹

Other district courts reached the opposite conclusion under *Bruen*'s first step. Such courts quote *Heller* for the position that the Second Amendment extends to "all members of the political community"⁴² and those who have "substantial" or "sufficient" connections to the nation,⁴³ which presumptively implicates many unlawful aliens.⁴⁴ In further support of finding

⁴⁰ N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 29 (2022) ("*Heller* and *McDonald* point toward at least two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense.>").

⁴¹ See, e.g., *Gonzalez-Peralta*, 743 F. Supp. 3d at 1298; *United States v. Ortiz-Moreno*, No. 24-10079-JWB, 2025 WL 1135437, at *2 (D. Kan. Apr. 17, 2025) (holding "illegally present aliens do not fit into the categories of 'law-abiding, responsible citizens,' or 'members of the political community' which are afforded protection under the Second Amendment" (citing *District of Columbia v. Heller*, 554 U.S. 570, 580, 643 (2008))); *United States v. Moreno-Enriquez*, No. 2:23-CR-466, 2025 WL 833880, at *2 (D.S.C. Mar. 14, 2025) (applying pre-*Bruen* precedent, *United States v. Carpio-Leon*, 701 F.3d 974 (4th Cir. 2012), to hold that undocumented persons are not members of "the people" under the Second Amendment). Alternatively, several courts have applied post-*Bruen* precedent to reach the same conclusion. See, e.g., *United States v. Rebollar-Gonzalez*, No. 25-CR-167, 2025 WL 2646550, at *6 (D. Minn. Sep. 16, 2025) (holding it is bound by *Sitladeen*, and as such, undocumented persons are not members of the people).

⁴² *United States v. Chavira-Ornelas*, 745 F. Supp. 3d 1259, 1264 (D.N.M. 2024) (quoting *Heller*, 554 U.S. at 580) (citing *United States v. Verdugo-Urquidez*, 494 U.S. 259, 266 (1990)).

⁴³ See, e.g., *United States v. Aranda*, No. 5:25-CR-00114-GFVT-EBA-1, 2026 WL 596635, at *2 (E.D. Ky. Mar. 3, 2026) ("A historical analysis of 'the people' confirms that the term includes U.S. citizens as well as those with sufficient connections to the country that they are considered part of the national community." (citation omitted)); *United States v. Benito*, 739 F. Supp. 3d 486, 490 (S.D. Miss. 2024) ("[T]he correct standard, both then and now, requires courts and litigants to look at a person's 'substantial connections' to the country, not whether they are 'Americans.'"), *rev'd and remanded sub nom.*, *United States v. Muñoz Benito*, No. 24-60346, 2025 WL 1626170 (5th Cir. June 9, 2025).

⁴⁴ See, e.g., *Chavira-Ornelas*, 745 F. Supp. 3d at 1264–65 (finding the defendant, an unlawful alien with "significant ties to the United States," was "part of the national community and, therefore, presumptively protected by the Second Amendment"); *Aranda*, 2026 WL 596635, at *3 (finding unlawful alien who "moved to Lexington after his initial detention in Texas, attended a Lexington high school, obtained a job, ha[d] an American citizen minor child, and had no criminal history before his arrest" had

unlawful aliens are members of “the people” under the Second Amendment, such courts noted other individual rights implicating “the people” have been extended to unlawful aliens,⁴⁵ and the Supreme Court has never held that being a “law-abiding citizen” is a prerequisite to Second Amendment protection.⁴⁶

Turning to the applications of *Bruen*’s second step, from those district courts that found unlawful aliens are protected under the Second Amendment’s plain text, a subset identified historical regulations disarming indigenous groups, slaves,⁴⁷ and those who refused to pledge an oath of allegiance

“sufficient connections . . . to establish that [he was] part of ‘the people’ under step one of the *Bruen* analysis”).

⁴⁵ *Chavira-Ornelas*, 745 F. Supp. 3d at 1264 (“There is no textual indication that the population that encompasses ‘the people’ is defined differently in the Second Amendment than it is described elsewhere in the Constitution; undocumented immigrants also receive the protections of the Fifth, Sixth, and Fourteenth Amendments.”).

⁴⁶ *Id.* at 1263–65. Concededly, many of these courts assumed without deciding that unlawful aliens are protected under the Second Amendment to instead foreclose the Second Amendment challenge at the second step of *Bruen*. *See, e.g.*, *United States v. Vizcaino-Peguero*, 671 F. Supp. 3d 124, 128 (D.P.R. 2023) (“[T]he Court will follow the path trod by those circuit courts of appeals and assume without deciding that the Second Amendment applies here and proceed to the next analysis.”), *aff’d sub nom.* *United States v. Vizcaino*, No. 23-1932, 2026 WL 1224063 (1st Cir. May 5, 2026); *United States v. Trinidad-Nova*, 671 F. Supp. 3d 118, 122 (D.P.R. 2023); *United States v. Leveille*, 659 F. Supp. 3d 1279, 1283 (D.N.M. 2023) (“Given the ambiguity in this field, the Court will follow the Tenth Circuit’s lead and assume purely for the sake of argument, but clearly without this Court deciding, that the Second Amendment’s reference to the right of ‘the people’ to bear arms includes ‘at least some aliens unlawfully here.’” (citation omitted)). Note also that some courts instead find that only “conduct,” not “status,” is implicated by the Second Amendment, and as such, that a person is unlawfully present does not frustrate their right to armed self-defense. *See, e.g.*, *United States v. Sing-Ledezma*, 706 F. Supp. 3d 650, 660 (W.D. Tex. 2023) (“[T]he regulated conduct is possession—not possession by an unlawfully present alien. That conduct is plainly protected by the Second Amendment, so the Court proceeds to step two.” (citation omitted)), *rev’d on other grounds*, No. 24-50022, 2024 WL 5318254 (5th Cir. Nov. 6, 2024).

⁴⁷ *See, e.g.*, *United States v. Pierret-Mercedes*, 731 F. Supp. 3d 284, 310–12 (D.P.R. 2024) (discussing historical regulations “aimed at disarming enslaved persons and [b]lack persons,” as well as how “Native Americans up to and through ratification were considered ‘dangerous’ on the basis that they posed a threat to the state” and were thus disarmed).

as historical analogues for § 922(g)(5).⁴⁸ According to these courts, such historical regulations recognize that groups presumed dangerous were

⁴⁸ See, e.g., *United States v. Oghenebrume*, No. CR 25-68-SDD-EWD, 2025 WL 2977055, at *6 (M.D. La. Oct. 21, 2025) (“There is a consensus among the courts that this country has a strong tradition of disarming those who have not expressed allegiance to the United States.”); *Chavira-Ornelas*, 745 F. Supp. 3d at 1266 (“The Court finds that the Government’s historical examples barring those that refused to swear an oath of loyalty to the United States is sufficiently analogous to the restrictions imposed by § 922(g)(5).”); *United States v. Gil-Solano*, 699 F. Supp. 3d 1063, 1069 (D. Nev. 2023) (“[T]he Court finds that the colonial tradition of imposing oath-based restrictions on the possession of firearms is relevantly similar to § 922(g)(5)(A), such that it is consistent with the Second Amendment.”); *United States v. Leveille*, 659 F. Supp. 3d 1279, 1284 (D.N.M. 2023) (“By analogy, the Court does find that the historical restrictions on individuals who did not swear an oath of allegiance . . . is sufficiently similar to Section 922(g)(5) to support the law as it exists today.”); *United States v. Ali*, No. CR-24-7592, 2025 WL 1732852, at *9 (D. Ariz. June 23, 2025) (relying on oath of allegiance statutes to find § 922(g)(5) constitutional as applied); *United States v. Spence*, No. 24-CR-20233, 2025 WL 2156829, at *3, *5 (E.D. Mich. July 29, 2025) (declining to resolve whether undocumented persons are members of the people and holding “loyalty oath laws” are historical analogues for § 922(g)(5)); *United States v. Zamora-Hernandez*, No. 24-CR-00297, 2025 WL 494623, at *4–7 (N.D. Okla. Feb. 13, 2025) (holding § 922(g)(5) facially constitutional because of a “founding-era prohibition of gun possession by those deemed to be a threat to public safety, because of dangerousness or a refusal to swear an oath of loyalty” and where “legislatures restricted firearm rights for groups deemed outside the political community”) (citation omitted); *United States v. Diaz-Hernandez*, No. 24-CR-00411, 2025 WL 494622, at *4–5, *7 (N.D. Okla. Feb. 13, 2025) (same); *United States v. Trinidad-Nova*, 802 F. Supp. 3d 333, 342 (D.P.R. 2025) (recognizing the narrow interpretation—that the Founders only disarmed *dangerous* foreigners—but nonetheless adopting the broader interpretation—that the Founders reserved the right to disarm *any* foreigner because swearing allegiance was a proxy for safety); *United States v. Pineda-Guevara*, 685 F. Supp. 3d 380, 387 (S.D. Miss. 2023) (finding a historical analogue for § 922(g)(5) by way of “colonial era laws that precluded certain groups from gun ownership without first swearing an oath of loyalty to the British crown”). Notably, *Pineda-Guevara* foreclosed the inquiry at *Bruen*’s first step but nonetheless discussed the merits under *Bruen*’s second step. *Id.* Uniquely, and rather summarily, *Pineda-Guevara* also approved of the government argument that the Second Amendment has historically been treated commensurate with suffrage, and as such, does not extend to nonvoting noncitizens. See *id.* This Article rebuts that the right to armed self-defense is a political right akin to suffrage. See *infra* notes 57–62 and accompanying text.

historically disarmed to uphold public safety,⁴⁹ and that because unlawful aliens are also an apparently presumptively dangerous group, they too are subject to disarmament.⁵⁰ Other district courts cited a sweeping historical tradition of disarming law violators that apparently justifies § 922(g)(5)'s disarmament of unlawful aliens for violating immigration laws.⁵¹

In contrast, other district courts that addressed *Bruen*'s second step rejected such historical analogues and held § 922(g)(5) unconstitutional.⁵² This holding was reached through both as-applied and facial challenges to § 922(g)(5). In as-applied challenges, courts reasoned that the particular defendant, an unlawful alien, posed no articulable threat to public safety,⁵³

⁴⁹ See, e.g., *Pierret-Mercedes*, 731 F. Supp. 3d at 312 (“These Founding Era statutes are reflective of a concern among the Framers and their immediate predecessors that allowing firearms in the hands of specific classes of persons was dangerous to the integrity of the political community. Both Catholics in the colonial era as well as Native Americans up to and through ratification were considered ‘dangerous’ on the basis that the[y] posed a threat to the state. This same idea motivated the allegiance statutes enacted during the Revolutionary War”); *Vizcaíno-Peguero*, 671 F. Supp. 3d at 129 (“[I]t is clear that there is a tradition of disarming certain groups seen as threatening or suspect to the colonial social order”); *Trinidad-Nova*, 671 F. Supp. 3d at 124 (“The government has produced sufficient historical analogues that show certain groups who were seen as ‘untrustworthy’ could be disarmed, which is analogous to the disarmament of certain aliens today.”).

⁵⁰ See, e.g., *United States v. Gordon*, No. 25-CR-364, 2026 WL 91493, at *3 (S.D.N.Y. Jan. 13, 2026) (“[S]tatutes that disarm the lawless are well within the history and tradition of firearms regulation. That logic applies with full force in this case. Because Section 922(g)(5)(A) criminalizes firearm possession by those ‘illegally or unlawfully in the United States,’ by its own terms, it is directed at the lawless.”); *Vizcaíno-Peguero*, 671 F. Supp. 3d at 129 (“From the stated purpose of the amendments that included what would become section 922(g)(5), the Court must infer that Congress believed that disarming ‘aliens illegally or unlawfully in the United States’ would enhance law enforcement’s ability to fight violent crime and narcotics trafficking. Congress, thus, to some degree, and without differentiating between them, deemed aliens without legal status to be untrustworthy and in need of disarming, akin to those groups disarmed at the time of the founding.” (citations omitted)).

⁵¹ See, e.g., *United States v. DeBorba*, 713 F. Supp. 3d 1042, 1063 (W.D. Wash. 2024) (“§ 922(g)(5)(A) is . . . constitutional because disarmament of those who circumvent the legal system—including undocumented immigrants—is consistent with this Nation’s historical tradition of firearm regulation.”).

⁵² See *infra* notes 53–55 and accompanying text.

⁵³ See, e.g., *United States v. Benito*, 739 F. Supp. 3d 486, 495 (S.D. Miss. 2024) (explaining the defendant had “never been convicted of a crime, much less a dangerous crime,

which was the justification underlying the proffered historical analogues.⁵⁴ In facial challenges, courts similarly reasoned that unlawful aliens are not categorically dangerous, in contrast to those groups historically disarmed.⁵⁵ Thus, the justification of public safety underlying historical disarmament again did not justify disarmament of unlawful aliens under § 922(g)(5).

In sum, numerous district courts held that unlawful aliens are not members of “the people” under the Second Amendment, thus upholding § 922(g)(5) under *Bruen*’s first step. Alternatively, some courts reached *Bruen*’s second step and held that while unlawful aliens are members of “the people,” there is a historical tradition of disarming foreign groups that pose a threat to public safety, as demonstrated by the historical disarmament of indigenous groups, slaves, and those who refused to swear allegiance. Other courts reasoned that there is a historical tradition of disarming law violators. Under both rationale, § 922(g)(5) was upheld. This Article challenges these outcomes and contends that § 922(g)(5) is unconstitutional as applied to inhabiting unlawful aliens.

3. APPLYING *BRUEN* TO § 922(G)(5)

To demonstrate the unconstitutionality of § 922(g)(5) under *Bruen*, this Article delineates both steps of *Bruen* and contends, first, that unlawful

so he [couldn’t] be disarmed yet”), *rev’d and remanded sub nom.* United States v. Muñoz Benito, No. 24-60346, 2025 WL 1626170 (5th Cir. June 9, 2025); *see also* United States v. Carbajal-Flores, 720 F. Supp. 3d 595, 601 (N.D. Ill. 2024) (“[Defendant’s] criminal record, containing no improper use of a weapon, as well as the non-violent circumstances of his arrest [did] not support a finding that he pose[d] a risk to public safety Thus . . . as applied to [the defendant], Section 922(g)(5) is unconstitutional.”), *rev’d and remanded*, 143 F.4th 877 (7th Cir. 2025), *cert. denied*, 146 S. Ct. 826 (2025).

⁵⁴ While most courts simply refuted any risk of danger by the defendant, some courts identified an exception to oath statutes that permitted a person subject to the statute to remain armed. *See, e.g., Carbajal-Flores*, 720 F. Supp. 3d at 601.

⁵⁵ *See, e.g., United States v. Sing-Ledezma*, 706 F. Supp. 3d 650, 671 (W.D. Tex. 2023) (“Like the other danger-based disarmament laws, the loyalty-oath laws responded to a concrete and particularized threat during a time of war or rebellion. The leap from such laws to a blanket disarmament of all unlawfully present aliens is simply too far under the standards set forth by the Fifth Circuit.” (citations omitted)), *rev’d on other grounds*, No. 24-50022, 2024 WL 5318254 (5th Cir. Nov. 6, 2024).

aliens *inhabiting* the United States are members of “the people.” Second, there is no historical tradition of categorically disarming non-law-abiding foreign inhabitants absent a showing of dangerousness. As such, inhabiting unlawful aliens—a group that is demonstrably not categorically dangerous—have a right to armed self-defense under the Second Amendment, and § 922(g)(5) is unconstitutional as applied to them.

3.1. Under *Bruen*’s first step, unlawful aliens are members of “the people” as that term applies to the Second Amendment.

Resolving *Bruen*’s first step benefits from consulting several interpretive tools, all of which reach the same conclusion. Taken collectively, historical sources, Supreme Court precedent, and canons of construction demonstrate that unlawful aliens are members of “the people” under the Second Amendment.

3.1.1. Historical sources recognize the right to armed self-defense is a natural right that presumptively extends to all persons, including unlawful aliens.

Historical sources recognize armed self-defense is a natural right that presumptively extends to all people. At its core, the right to self-defense, including armed self-defense, is a natural right belonging to all persons.⁵⁶ This much has been firmly acknowledged by the Supreme Court. For example, *McDonald v. City of Chicago* asserted that “[s]elf-defense is a basic right, recognized by many legal systems from ancient times to the present day.”⁵⁷ And *Heller*, citing an annotated *Blackstone Commentaries*, assured that what “may be considered as the true palladium of liberty” is that “[t]he right to self defence is the first law of nature.”⁵⁸ As such, *Heller* urged that armed

⁵⁶ See *infra* notes 57–59 and accompanying text.

⁵⁷ 561 U.S. 742, 767 (2010) (footnote omitted).

⁵⁸ *District of Columbia v. Heller*, 554 U.S. 570, 606 (2008) (quoting 2 WILLIAM BLACKSTONE, COMMENTARIES *143 n.D); see also *id.* at 594 (explaining that there is a “natural right of resistance and self-preservation” (quoting 1 BLACKSTONE *supra*, at *139)).

self-defense “is a natural right which the people have reserved to themselves, confirmed by the Bill of Rights, to keep arms for their own defence.”⁵⁹

In rebuttal, some scholars contend that the Second Amendment codified a political rather than natural right,⁶⁰ which therefore rejects the notion that the right to armed self-defense presumptively extends to all people. But this conclusion ignores the Founding Era tradition of arming groups that were precluded from voting or holding office, such as arming inhabiting foreigners and conditionally arming slaves.⁶¹ Relatedly, the records of the Constitutional Convention instructed that “[e]very freeman has a right to the same protection and security; and a very moderate share of property entitles them to the possession of all the honors and privileges the public can bestow.”⁶² As such, owning property conferred additional political rights *beyond* the universal right to “protection and security” that logically encompasses armed self-defense. Thus, the right to armed self-defense under the Second Amendment codified a natural right separate from political rights, where the latter were typically only extended to property owners.

⁵⁹ *Id.* at 594.

⁶⁰ See, e.g., AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 48 (1998).

⁶¹ While slaves were at times categorically disarmed, many statutes permitted their conditional armament. See, e.g., 1715 Md. Laws 31, ch. 44, § 32 (“[N]o negro or other slave within this province shall be permitted to carry any gun, or any other offensive weapon, from off their master’s land, without license from their said master . . .”); 1740 S.C. Acts 168, § 23 (“It shall not be lawful for any slave, unless in the presence of some white person, to carry or make use of fire-arms, or any offensive weapon whatsoever, unless such negro or slave shall have a ticket or licence in writing from his master, mistress or overseer . . .”).

⁶² JOURNAL OF THE FEDERAL CONVENTION KEPT BY JAMES MADISON 229 (E. H. Scott ed., The Lawbook Exchange, Ltd. 2003) (1840) [hereinafter MADISON’S JOURNAL]. Here, “freeman” historically implicates all persons within the community but slaves. See, e.g., 1 BLACKSTONE, *supra* note 58, at *135 (interchanging between the term “freeman” and “any person”); *id.* at *424 (explaining how “a slave . . . , the instant he lands in England, becomes a freeman; that is, the law will protect him in the enjoyment of his person, his property”). Important, also, is that freemen were a broader group than citizens, which is demonstrated by the inability of freemen to vote in England. See *id.* at 175 (describing a statute that instructed “no freeman . . . shall be intitled to vote therein, unless he hath been admitted to his freedom twelve calendar months before”). This indicates that freemen had natural rights, such as the right to armed self-defense, but not necessarily political rights, which were reserved for citizens.

In sum, history contradicts the right to armed self-defense being a political right and demonstrates that it is a natural right inherent to all people. Where the Second Amendment codified the preexisting natural right to armed self-defense, then it presumptively extends to all persons, including unlawful aliens.

3.1.2. The Founders referred to “the people” and “inhabitants” interchangeably, indicating that “the people” encompasses all inhabitants of the United States, including inhabiting unlawful aliens.

Historical sources also provide insight into the Founders’ intent regarding who are members of “the people.” The Founders interchangeably referred to “the people” and “inhabitants” when discussing who is protected under the Constitution, which indicates that “the people,” as that term applies to the Second Amendment, refers to all inhabitants of the United States, including inhabiting unlawful aliens.

The records of the Constitutional Convention best memorialize the original meaning of “the people.” Those records reveal that the Founders interchangeably referred to “inhabitants” and “the people.” Founder James Madison advised that “sixty-five members was too small a number to represent the *whole inhabitants of the United States*. They would not possess enough of the confidence of *the people*.”⁶³ Another delegate opined that “[t]he people of the United States are perhaps the most singular of any we are acquainted with,” who possess “fewer distinctions of fortune . . . than among the *inhabitants* of any other nation.”⁶⁴ Similarly, another delegate advised that “[t]he people of this country are . . . very different from the *inhabitants* of any state we are acquainted with in the modern world.”⁶⁵ That “the people” and “inhabitants” were interchangeably referenced by the Founders and delegates indicates that the two terms are synonymous in the context of

⁶³ MADISON’S JOURNAL, *supra* note 62, at 318 (emphasis added).

⁶⁴ *Id.* at 229 (emphasis added).

⁶⁵ *Id.* at 233 (emphasis added); *see also id.* at 232 (“We have unwisely considered ourselves as the *inhabitants* of an old, instead of a new, country. We have adopted the maxims of a state full of *people*, and manufactures, and established in credit.” (emphasis added)).

the Constitution. Thus, the Second Amendment “right of the people to keep and bear Arms” presumably extends to all inhabitants of the United States.⁶⁶

Important still, the Founders distinguished “citizens” from “inhabitants,” which indicates the former is a subset of the latter and that the Second Amendment extends beyond citizens. An earlier draft of the Supremacy Clause instructed that United States legislative acts and treaties shall be supreme law “as far as those acts or treaties shall relate to the said States, or their *citizens* and *inhabitants*.”⁶⁷ The distinction between “citizen” and “inhabitant” can also be found in the Constitution’s text. For example, the clauses outlining house representative and senator qualifications instruct that senators must have been for an enumerated number of years “a *Citizen* of the United States, and who shall not, when elected, be an *Inhabitant* of that State for which he shall be chosen.”⁶⁸ Demonstrably, any constitutional reference to “inhabitants” encompasses more than citizens. And where “the people” and “inhabitants” were used interchangeably by the Founders, then “the people” necessarily extends beyond citizens. This conclusion contravenes the argument that the Second Amendment protects only citizens.

The records of the Constitutional Convention also undermine the argument that the Second Amendment protects only the political community. Those records show “the people” extends beyond the political community because groups historically not part of the political community, such as black and enslaved populations, were referred to as “inhabitants” by the Framers, which was itself a term used interchangeably with “the people.” The records reference both black and white persons when discussing “inhabitants,”⁶⁹ or otherwise distinguishes between “black inhabitants” and “white inhabitants”

⁶⁶ U.S. CONST. amend. II.

⁶⁷ MADISON’S JOURNAL, *supra* note 62, at 364 (emphasis added).

⁶⁸ U.S. CONST. art. I § 3, cl. 3 (emphasis added); *id.* § 2 cl. 2. An earlier draft of the provision on senator qualifications also implicated both “citizens” and “inhabitants,” instructing that a senator “shall be of the age of thirty-five years, and a citizen of the United States, and shall have been an inhabitant thereof for twenty-one years.” MADISON’S JOURNAL, *supra* note 62, at 585.

⁶⁹ See MADISON’S JOURNAL, *supra* note 62, at 301–02 (“The value of land had been found, on full investigation, to be an impracticable rule. The contributions of revenue, including imports and exports, must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial States. The number of inhabitants appeared to him the only just and practicable rule. He thought the blacks ought to stand on an equality with the whites . . .”).

or “free inhabitants” and slaves.⁷⁰ Such distinctions indicate that references to solely “inhabitants” encompasses both black and white, free and enslaved inhabitants. Because groups that were historically ostracized from the political community were considered “inhabitants,” then “inhabitants” refers to people beyond not only the citizenry but also the political community. Thus, constitutional rights that reference “the people” necessarily extend to all persons inhabiting the United States, including inhabiting unlawful aliens, irrespective of whether they are considered part of the political community.

A final point of support to conclude “the people” encompasses unlawful aliens is the historical and continued inclusion of all United States inhabitants, including unlawful aliens, in the census. The Founders included the term “inhabitant” in earlier drafts of the house of representatives clause, which read that the House would have “one member for every forty thousand inhabitants.”⁷¹ And, commensurate with this historical use of the term “inhabitant,” since 1790 unlawful aliens are included in census data to determine the number of house representatives for each state.⁷² As such, unlawful aliens are today treated as “inhabitants” as that term was understood by the Founders. Where the Founders interchangeably reference “inhabitants” and “the people,” then unlawful aliens necessarily are members of the people.

⁷⁰ See *id.* at 315 (“He suggested as a proper ground of compromise, that in the first branch the States should be represented according to their number of free inhabitants; and in the second, which had for one of its primary objects the guardianship of property, according to the whole number, including slaves.”); see also *id.* at 331 (distinguishing between white and black inhabitants when discussing the Three Fifths Clause through “remark[ing] that in the temporary allotment of representatives made by the Committee, the Southern States had received more than the number of their white and three-fifths of their black inhabitants entitled them to,” which indicates “inhabitants” includes both white and black persons).

⁷¹ *Id.* at 297.

⁷² Jeffrey S. Passel & D’Vera Cohn, *How Removing Unauthorized Immigrants from Census Statistics Could Affect House Reapportionment*, PEW RSCH. CTR. (July 24, 2020), <https://perma.cc/A3RX-E7P7> (“Since the first census of the United States in 1790, counts that include both citizens and noncitizens have been used to apportion seats in the House of Representatives, with states gaining or losing based on population change over the previous decade.”); *Frequently Asked Questions (FAQs)*, U.S. CENSUS BUREAU, <https://perma.cc/293T-5ERA> (answering in the affirmative that “unauthorized immigrants [are] included in the resident population counts”).

In sum, the Founders referenced “the people” and “inhabitants” interchangeably and expressly included those outside the political community with the latter term. With this historical context in mind, the Second Amendment’s reference to “the people” indicates that the right to armed self-defense is held by all inhabitants of the United States, including non-citizens and those outside the political community, which logically includes inhabiting unlawful aliens.⁷³

3.1.3. Supreme Court precedent demonstrates that “the people” includes all persons within the national community, which logically includes inhabiting unlawful aliens.

The Supreme Court’s commentary also supports finding inhabiting unlawful aliens are members of “the people.” First, *District of Columbia v. Heller* explained that “in all six other provisions of the Constitution that mention ‘the people,’ the term unambiguously refers to *all members of the political community*, not an unspecified subset.”⁷⁴ Second, *United States v. Verdugo-Urquidez* explained that

“the people” protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to *a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community*.⁷⁵

Thus, through *Heller* and *Verdugo-Urquidez*, the Court has instructed that “the people” includes (1) any person who belongs to the political or national community, and (2) any person who otherwise has sufficient connection with the United States to be considered part of the national community.⁷⁶

The Court’s definition supports finding inhabiting unlawful aliens are members of “the people.” First, unlawful aliens inhabiting the United States

⁷³ The concept of “illegal immigration” did not exist during the Founding, so the Founders would never have distinguished between lawful and unlawful aliens.

⁷⁴ 554 U.S. 570, 580 (2008) (emphasis added).

⁷⁵ 494 U.S. 259, 265 (1990) (emphasis added) (citation omitted).

⁷⁶ See *id.*; *Heller*, 554 U.S. at 580.

would at least have “sufficient connection” with the United States to be considered part of its national community. Inhabiting unlawful aliens have various connections with the United States, such as employment, paying taxes, and attending school in the United States; forming relationships with Americans; and raising families with Americans.⁷⁷ These connections recognize inhabiting unlawful aliens as part of the national community that are members of “the people” under the Court’s definition.⁷⁸

Second, inhabiting unlawful aliens arguably belong to the “political community” even without the privilege of suffrage. As discussed earlier, the reapportionment of the House of Representatives is decided by a census of the State populations that has historically included, and continues to include, unlawful aliens inhabiting the United States.⁷⁹ Therefore, states achieve greater political representation when they are densely populated by inhabiting unlawful aliens, and House Representatives secure their seats through consideration of state populations that include inhabiting unlawful aliens. As such, inhabiting unlawful aliens are represented in Congress, which recognizes them as part of the political community that are members of “the people” under the Court’s definition.⁸⁰

⁷⁷ See Carl Davis, Marco Guzman & Emma Sifre, *Tax Payments by Undocumented Immigrants*, INST. ON TAX’N & ECON. POL’Y (July 30, 2024), <https://perma.cc/D84H-U727> (“Undocumented immigrants paid \$25.7 billion in Social Security taxes, \$6.4 billion in Medicare taxes, and \$1.8 billion in unemployment insurance taxes in 2022.”); *Tax Contributions*, AM. IMMIGR. COUNCIL, <https://perma.cc/DE9R-W9FQ> (noting that “[i]n 2023, households led by undocumented immigrants paid \$89.8B in total taxes” and that “approximately 4.9% of the U.S. workforce was undocumented”); *Do Immigrants Pay Taxes?*, TAX POL’Y CTR., <https://perma.cc/VAM4-54FL> (“Contrary to common assumptions, undocumented immigrants . . . also pay federal, state, and local taxes.”); *Undocumented Students in U.S. Higher Education*, PRESIDENTS’ ALL. ON HIGHER EDUC. & IMMIGR. (June 11, 2024), <https://perma.cc/T2RM-WZKW> (“There are approximately 408,000 undocumented students enrolled in U.S. institutions of higher education.”); Jeffrey S. Passel & D’Vera Cohn, 3. *Most Unauthorized Immigrants Live with Family Members*, PEW RSCH. CTR. (Nov. 27, 2018), <https://perma.cc/YHW4-LMF7>.

⁷⁸ See *Verdugo-Urquidez*, 494 U.S. at 265.

⁷⁹ Passel & Cohn, *supra* note 72; *Frequently Asked Questions (FAQs)*, *supra* note 72 (answering in the affirmative that “unauthorized immigrants [are] included in the resident population counts”).

⁸⁰ To be clear, *Heller*’s implication of the “political community” does not render *Verdugo-Urquidez*’s implication of the “national community” obsolete. One could argue that the “political community” referred to in *Heller* is merely a part of the “national

In sum, Supreme Court precedent signals that “the people” includes persons who are part of the national or political community or otherwise have sufficient national connections. Where inhabiting unlawful aliens work, pay taxes, and attend school in America; form relationships and raise families with Americans; and are included in the census for apportioning Congressional seats, they belong to both the national and political community, both of which serve as independent grounds to recognize unlawful aliens as members of “the people” entitled to Second Amendment protection.

3.1.4. Canons of construction instruct consistent usage and adherence to a term’s general meaning, which supports defining “the people” as including inhabiting unlawful aliens.

Fourth, textual construction is a primary tool in constitutional interpretation,⁸¹ as endorsed by *Heller*’s at-length discussion of the operative and prefatory clauses of the Second Amendment.⁸² Application of commonly employed canons of construction recognizes that the term “the people,” when informed by its general meaning and consistent usage, includes all persons inhabiting the national community, including inhabiting unlawful aliens.

First, under the general terms canon, terms are given their general meaning.⁸³ Instructive also, *Heller* advised that defining a constitutional term must be “guided by the principle that ‘[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal

community” that makes up “the people” as identified in *Verdugo-Urquidez*. See 494 U.S. at 265. As such, much like how the “law abiding, responsible citizen” language of *Heller* does not demonstrate the outer limits of the Second Amendment, neither does *Heller*’s “political community” language. See 554 U.S. at 580.

⁸¹ See generally ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012) (discussing canons of construction as applied to constitutional interpretation).

⁸² See *Heller*, 554 U.S. at 579–600.

⁸³ *Canons of Construction (Adapted from Scalia & Garner)*, UNIV. OF HOUS. L. CTR., <https://perma.cc/J9Z8-QKJE> (instructing that “[g]eneral terms are to be given their general meaning”).

and ordinary as distinguished from technical meaning.”⁸⁴ As such, defining the general meaning of the constitutional term “the people” must be informed by Founding Era sources that informed its ordinary usage.

Consulting first Samuel Johnson’s Dictionary of 1773, “people” are defined as “[a] *nation*; those who compose a *community*.”⁸⁵ Similarly, Noah Webster’s Dictionary of 1828 defined “people” as “[t]he body of persons who compose a *community*, town, city or *nation*” and “all classes of *inhabitants*, considered as a collective body.”⁸⁶ Thus, to be consistent with the general terms canon—which instructs to interpret terms as per their general meaning—and consistent with *Heller*—which instructs to consider a constitutional term’s ordinary usage—“the people” must be defined to include all inhabitants of the national community, which logically encompasses inhabiting unlawful aliens.

Second, under the presumption of consistent usage canon, a term is presumed to have a consistent meaning throughout a text.⁸⁷ The Supreme Court has instructed that the term “the people” in the context of both the First and Fourth Amendments includes unlawful aliens that have “sufficient connection with this country to be considered part of that community.”⁸⁸ To achieve consistent usage, “the people” in the context of the Second Amendment must also include similarly situated unlawful aliens—that is, those unlawful aliens with “sufficient connection with this country” must be protected under the Second Amendment, much like they are protected under

⁸⁴ *Heller*, 554 U.S. at 576 (alteration in original) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)) (citing *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 188 (1824)).

⁸⁵ 2 SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (London, W. Strahan, 4th ed. 1773).

⁸⁶ 2 NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (New York, S. Converse 1828) (emphasis added).

⁸⁷ *Canons of Construction*, *supra* note 83, at 2 (instructing that “[a] word or phrase is presumed to bear the same meaning throughout a text,” and only “a material variation in terms suggests a variation in meaning”).

⁸⁸ See *United States v. Verdugo-Urquidez*, 494 U.S. 259, 260, 265 (1990) (indicating that “‘the people’ protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community”).

the First and Fourth Amendments. Such an interpretation is the only way to adhere to the presumption of consistent usage.

In sum, both the general meaning canon and the consistent usage canon obligate “the people” to be defined as including inhabiting unlawful aliens. This interpretation is also consistent with armed self-defense being a natural right held by all people, as well as the Founders’ interchangeable use of “the people” and “inhabitants.” It further comports with the Supreme Court’s own definition of “the people,” which includes anyone within the national or political community. Conclusively, analysis of historical sources, Supreme Court precedent, and canons of construction under *Bruen*’s first step supports finding inhabiting unlawful aliens are members of “the people” that enjoy a right to armed self-defense under the Second Amendment.

3.2. Under *Bruen*’s second step, no historical analogue for § 922(g)(5) exists that shares a comparable burden and justification for that burden upon the Second Amendment.

Having shown that inhabiting unlawful aliens are members of “the people” under *Bruen*’s first step, § 922(g)(5) categorically prohibiting unlawful aliens from possessing firearms therefore implicates conduct protected under the Second Amendment. To withstand constitutional muster under *Bruen*’s second step, § 922(g)(5) must boast a historical analogue that imposes a comparable burden, and justification for that burden, upon the Second Amendment.⁸⁹

As discussed above, courts have cited a range of historical firearm regulations as apparent historical analogues for § 922(g)(5). Most commonly, courts cite regulations disarming indigenous groups, slaves, and those who refused to pledge an oath of allegiance as historical analogues for § 922(g)(5).⁹⁰ They otherwise cite a historical tradition of disarming those without a “regulable” relationship with the nation, and separately, a historical tradition of disarming law violators, to uphold § 922(g)(5).⁹¹ Yet a closer inquiry reveals the Founding Era did not categorically disarm foreign inhabitants or law violators unless they posed a collective threat to public safety.

⁸⁹ N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1, 28–30 (2022).

⁹⁰ See *infra* notes 92–121 and accompanying text.

⁹¹ See *infra* notes 122–135 and accompanying text.

Thus, inhabiting unlawful aliens, who this Article will demonstrate are not a collective threat to public safety, cannot be categorically disarmed under § 922(g)(5) because it boasts no historical analogue under *Bruen*'s second step.

3.2.1. Historical regulations disarming indigenous groups and slaves are not historical analogues for § 922(g)(5) because they were justified by such groups posing a threat to public safety, and unlawful aliens do not pose such a threat as demonstrated by (1) § 922(g)(5)'s legislative history, and (2) empirical evidence.

First, while historical regulations disarming indigenous groups and slaves are readily cited as historical analogues for § 922(g)(5), those regulations can be distinguished based on their disparate justification. As a preliminary matter, courts have used varying language to describe the justification for historically disarming indigenous groups and slaves, including that such groups were “dangerous,” “untrustworthy,”⁹² and “threatening or suspect to the . . . social order.”⁹³ Importantly, the latter two terms are too broadly framed—in the context of the Second Amendment, which implicates firearms, being deemed untrustworthy or a threat to the social order plainly speaks to dangerousness. As such, the perceived dangerousness of indigenous groups and slaves, and thus their threat to public safety, is the true justification for such historical firearm regulations.

Importantly, that justification is not shared by § 922(g)(5). Indigenous groups and slaves historically posed a threat to public safety.⁹⁴

⁹² See, e.g., *United States v. Trinidad-Nova*, 671 F. Supp. 3d 118, 124 (D.P.R. 2023) (“The government has produced sufficient historical analogues that show certain groups who were seen as ‘untrustworthy’ could be disarmed, which is analogous to the disarmament of certain aliens today.”).

⁹³ See, e.g., *United States v. Vizcaino-Peguero*, 671 F. Supp. 3d 124, 129 (D.P.R. 2023) (“Looking at the government’s historical examples, however, it is clear that there is a tradition of disarming certain groups seen as threatening or suspect to the colonial social order . . .”), *aff’d sub nom.* *United States v. Vizcaino*, No. 23-1932, 2026 WL 1224063 (1st Cir. May 5, 2026).

⁹⁴ See *infra* notes 95–96 and accompanying text.

Indigenous groups were a threat in light of ongoing colonial conquest, and slaves threatened uprising against their enslavers.⁹⁵ As such, the disarmament of both indigenous groups and slaves during the Founding Era was justified to ensure public safety.⁹⁶

In contrast, unlawful aliens do not categorically pose a threat to public safety, as demonstrated by both § 922(g)(5)'s legislative history and empirical evidence.⁹⁷ Turning first to legislative history, § 922(g)(5)'s enactment was a knee jerk reaction to several high profile assassinations by immigrants rather than a reasoned response to a widespread public safety concern.⁹⁸ These high profile assassinations were used to elevate one particular senator's "tough on crime" agenda, who spearheaded the hasty enactment of § 922(g)(5) the day after presidential candidate Robert Kennedy was assassinated by an immigrant.⁹⁹ Because of this, § 922(g)(5) was enacted without a record of reasoned deliberation, where the underlying bill was voted upon without a single hearing.¹⁰⁰ The reactive and unreasoned enactment of § 922(g)(5) reveals there was no congressional consensus that armed unlawful aliens posed a categorical threat to public safety.

⁹⁵ See JOYCE LEE MALCOLM, *TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT* 141 (1994) (explaining how indigenous groups and slaves were "regarded as a threat to the established order, and even free blacks were treated with caution"); ADAM WINKLER, *GUNFIGHT: THE BATTLE OVER THE RIGHT TO BEAR ARMS IN AMERICA* 115–16 (2011) (explaining there was a "fear that these groups would use guns to revolt" or threaten "public safety").

⁹⁶ This Article acknowledges the plethora of scholarship demonstrating how the disarmament of indigenous groups and slaves was also an action of disenfranchisement. See, e.g., Adam Winkler, *Racist Gun Laws and the Second Amendment*, 135 HARV. L. REV. F. 537, 537 (2022). However, such groups being dangerous and disenfranchised are not mutually exclusive, so this Article accepts, arguendo, the justification that such groups were dangerous. As an aside, and although cited less frequently, some courts cite historical regulations disarming Catholics as an historical analogue for § 922(g)(5). See, e.g., *United States v. Pierret-Mercedes*, 731 F. Supp. 3d 284, 306 (D.P.R. 2024). However, the disarmament of Catholics was solely a mechanism of disenfranchisement, and as such, cannot justify § 922(g)(5).

⁹⁷ See *infra* notes 98–108 and accompanying text.

⁹⁸ See William J. Vizzard, *The Gun Control Act of 1968*, 18 ST. LOUIS U. PUB. L. REV. 79, 84–85 (1999).

⁹⁹ See *id.* at 83–84.

¹⁰⁰ See *id.* at 84.

To the contrary, empirical evidence shows armed unlawful aliens do not pose a categorical threat to public safety. Data today demonstrates that unlawful aliens are not categorically dangerous and in fact pose a lesser risk to public safety than citizens.¹⁰¹ “Recent peer-reviewed empirical studies on illegal immigrant criminality have found no link between violent crime and the size of the illegal immigration population.”¹⁰² According to a 2024 National Institute of Justice study, “undocumented immigrants are arrested at less than half the rate of native-born U.S. citizens for violent and drug crimes.”¹⁰³ Unlawful aliens have “the lowest offending rates overall” for violent felonies,¹⁰⁴ and “the lowest homicide arrest rates throughout the entire study period, averaging less than half the rate at which U.S.-born citizens were arrested for homicide.”¹⁰⁵ Further, Purdue found that “increased state-level concentrations of undocumented immigrants between 1990 and 2014 were associated with lower rates of drunken driving arrests, drug arrests, drug fatalities, and reports of rape,”¹⁰⁶ and “no association existed between state-level undocumented immigrant concentrations and homicide, robbery, or assault.”¹⁰⁷ Separately, the CATO Institute found that between 2013 and 2022, “the homicide conviction rate in Texas was 2.2 per 100,000 illegal immigrants” but “3.0 per 100,000 native-born Americans.”¹⁰⁸

In sum, where recent data from various sources demonstrates that unlawful aliens pose a lower risk of committing violent crime than citizens, empirical evidence does not support disarming unlawful aliens on the basis of them being a categorical threat to public safety. This is especially true when groups that statistically pose a greater risk to public safety, such as citizens, are *not* categorically disarmed. Because both empirical evidence

¹⁰¹ *Undocumented Immigrant Offending Rate Lower Than U.S.-Born Citizen Rate*, NAT’L INST. JUST. (Sep. 12, 2024), <https://perma.cc/FR6R-EMG8> [hereinafter *NIJ Offending Rate Data*].

¹⁰² ALEX NOWRASTEY, *ILLEGAL IMMIGRANT MURDERERS IN TEXAS, 2013–2022*, at 2 (2024), <https://perma.cc/46XZ-F3S7>.

¹⁰³ *NIJ Offending Rate Data*, *supra* note 101.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ AM. IMMIGR. COUNCIL, *DEBUNKING THE MYTH OF IMMIGRANTS AND CRIME* 5 (2024) (footnotes omitted), <https://perma.cc/VJ6K-C2LZ>.

¹⁰⁷ *Id.* (footnote omitted).

¹⁰⁸ NOWRASTEY, *supra* note 102, at 4.

and § 922(g)(5)'s legislative history cannot support finding unlawful aliens categorically dangerous, § 922(g)(5) does not share a comparable justification with historical regulations disarming indigenous groups and slaves because both posed a threat to public safety, in contrast to unlawful aliens, who pose a lesser risk to public safety than citizens.

3.2.2. Historical regulations disarming those who refused to pledge an oath of allegiance are not historical analogues for § 922(g)(5) because they were justified by non-oath bearers posing a public safety risk by exhibiting interests ulterior to the nation, and where unlawful aliens avoiding lawful immigration do not pose the same public safety risks.

Second, historical regulations disarming those who refused to swear an oath of allegiance have also been cited by courts and primarily relied on by circuit courts as historical analogues for § 922(g)(5). But allegiance statutes can similarly be distinguished based on their disparate justification. A person's refusal to swear an oath of allegiance demonstrates their ulterior interests to that of the nation, which supports a presumption of dangerousness and justifies disarmament. In contrast, unlawful aliens avoiding lawful immigration channels for non-insidious reasons does not support a presumption of dangerousness and therefore does not justify disarmament.

As a preliminary matter, this Article first explains why English allegiance statutes bear no relation to § 922(g)(5) as opposed to colonial allegiance statutes, which have been the focus of the relevant litigation. In England, non-citizens had "fewer rights than those enjoyed by natural-born subjects," and a non-citizen's rights "could be conditioned on his 'allegiance to the laws and government.'"¹⁰⁹ Importantly, the few courts that have discussed English allegiance statutes focus on the intimate link between land ownership, gun ownership, and allegiance to the Crown.¹¹⁰ As explained by

¹⁰⁹ United States v. Carbajal-Flores, 143 F.4th 877, 883 (7th Cir. 2025) (citation omitted).

¹¹⁰ See *id.* at 883–84 ("Relevant here, land and gun ownership were historically linked. '[T]he right to own guns in eighteenth-century England was statutorily restricted to the landed gentry.' This provides early evidence, then, that concerns over an alien's lack of allegiance to the Crown, which justified barring him from holding land, also

the Seventh Circuit, in eighteenth-century England, “concerns over an alien’s lack of allegiance to the Crown, which justified barring him from holding land, also warranted barring him from keeping arms.”¹¹¹ But such conditioning of the right to self-defense upon government allegiance is exactly the type of constriction on liberty that the Founders intended to avoid. As discussed earlier, the Founders considered self-defense to be a natural born right held by all people and not to be conditioned.¹¹² This is supported by the Second Amendment’s reference to “the people,” which the Founders intended to refer to all inhabitants of the nation, not only citizens or the political community.¹¹³ That English allegiance statutes conditioned gun rights on allegiance to the Crown contradicts the Founders’ intent of ensuring all people had the right to self-defense, which in turn negated fears of tyrannical rule. As stated in Madison’s Journal:

Every freeman has a right to the same protection and security; and a very moderate share of property entitles them to the possession of all the honors and privileges the public can bestow. Hence, arises a greater equality than is to be found among the people of any other country¹¹⁴

In the context of the Founding “where every temptation [was] offered to emigration,”¹¹⁵ refusing immigrants the natural right to armed self-defense would counterintuitively penalize immigration. English allegiance statutes and their purpose of fostering allegiance to the Crown therefore bear no relation to § 922(g)(5).

Turning to colonial allegiance statutes—which are primarily relied upon as an apparent historical analogue for § 922(g)(5)—courts rely on the notion that by avoiding lawful channels of immigration, unlawful aliens “would not be presumed to have any allegiance to the United States.”¹¹⁶ As

warranted barring him from keeping arms.” (alteration in original) (citation omitted)); *id.* at 883 (“As Blackstone explained, ‘[i]f an alien could acquire a permanent property in lands,’ he would ‘owe an allegiance, equally permanent with that property, to the king of England.’” (alteration in original) (citation omitted))).

¹¹¹ *Id.* at 883–84 (citation omitted).

¹¹² See *supra* Section 3.1.1.

¹¹³ See *supra* Section 3.1.2.

¹¹⁴ MADISON’S JOURNAL, *supra* note 62, at 229.

¹¹⁵ *Id.*

¹¹⁶ *United States v. Vazquez-Ramirez*, 711 F. Supp. 3d 1249, 1259 (E.D. Wash. 2024).

such, the purported justification for both historical allegiance statutes and § 922(g)(5) is a presumption of non-allegiance that is a proxy for dangerousness.¹¹⁷ But inhabiting unlawful aliens do not avoid lawful immigration channels to avoid swearing allegiance to the United States. Instead, they typically avoid lawful immigration channels because those channels are either extremely arduous or entirely inaccessible.¹¹⁸ In turn, when inhabiting unlawful aliens avoid or are ineligible for lawful immigration channels, they are denied an opportunity to swear allegiance. Refusal to swear allegiance and a lack of opportunity to do so do not bear the same presumption of dangerousness. As such, the presumption of dangerousness that justifies colonial allegiance statutes is not shared by § 922(g)(5).

Further still, the substantial connections that inhabiting unlawful aliens make within the United States demonstrates their national allegiance despite not pledging an oath of allegiance. As discussed earlier, inhabiting unlawful aliens establish various connections within the national community, such as obtaining employment, paying taxes, attending school in America, and raising families with Americans.¹¹⁹ These actions reflect allegiance with the nation's interests. And, while a subset of unlawful aliens have acted contrary to national interests by way of terrorism, multiple sources report that citizens are more statistically likely than unlawful aliens to commit a terrorist act against the United States.¹²⁰ According to the Department of

¹¹⁷ See, e.g., *United States v. Pierret-Mercedes*, 731 F. Supp. 3d 284, 312 (D.P.R. 2024).

¹¹⁸ See AM. IMMIGR. COUNCIL, WHY DON'T IMMIGRANTS APPLY FOR CITIZENSHIP? THERE IS NO LINE FOR MANY UNDOCUMENTED IMMIGRANTS 1 (2021), <https://perma.cc/8CVJ-UYX7> ("Immigration to the United States on a temporary or permanent basis is generally limited to three different routes: employment, family reunification, or humanitarian protection. Each of these legal avenues is highly regulated and subject to numerical limitations and eligibility requirements. . . . This means that no matter how long they have been in the United States, most undocumented immigrants have no way of achieving legal status. Even those who pay taxes, work hard, and contribute to their communities have no way to 'get in line' unless Congress creates a new pathway to legal status.").

¹¹⁹ See sources cited *supra* note 77.

¹²⁰ Out of 122 ISIS terror organization federal cases, 89% of convictions were against U.S. citizens. See Phil Hirschhorn, *Most Convicted Terrorists Are U.S. Citizens. Why Does the White House Say Otherwise?*, PBS NEWS (Mar. 12, 2017, at 11:43 ET), <https://perma.cc/EZ6G-3S32>. Further, the New America Foundation database reported that of 401 United States residents charged with jihadist-related terrorism

Homeland Security, “citizenship is unlikely to be a reliable indicator of potential terrorist activity.”¹²¹ Demonstrably, then, inhabiting unlawful aliens bear no less allegiance to the United States than lawful aliens and citizens.

In sum, colonial allegiance statutes were justified by a presumption of dangerousness that was inferred by a refusal to pledge national allegiance. In contrast, unlawful aliens do not refuse to pledge national allegiance, but instead, are foreclosed an opportunity to do so when avoiding lawful immigration channels that can be practically, if not entirely, inaccessible. Further, the substantial connections that inhabiting unlawful aliens establish within the United States demonstrate their allegiance to national interests. As such, the presumption of dangerousness that justifies disarmament under historical allegiance statutes is not shared by § 922(g)(5).

3.2.3. The historical tradition of disarming those without a “regulable” relationship with the nation does not justify disarming inhabiting unlawful aliens because they are sufficiently regulated by the government and thus bear a “regulable” relationship with the nation.

Third, a few courts have relied on an apparent historical tradition of disarming those groups that have no “regulable” relationship with the nation.¹²² Such courts rely on the rationale that there is an increased risk of dangerousness when a group lacks government regulation.¹²³ For the same

since 2001, “84 percent were U.S. citizens or legal permanent residents, or green card holders.” *Id.* (“The Center on National Security at Fordham has looked at a larger pool of post-9/11 defendants and perpetrators killed during attacks . . . and found 299 of the federal prosecutions, or 60 percent, were brought against U.S. citizens.”).

¹²¹ *Id.* This statement authored by the DHS was contained in a leaked draft report that the DHS commented was “incomplete.” *Leaked DHS Intelligence Report: Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, AM. IMMIGR. LAWS. ASS’N (Feb. 24, 2017), <https://perma.cc/4ZG2-6UJD>.

¹²² See e.g., *United States v. Vizcaino*, No. 23-1932, 2026 WL 1224063, at *7 (1st Cir. May 5, 2026).

¹²³ See *United States v. Escobar-Temal*, 161 F.4th 969, 981 (6th Cir. 2025) (“[N]ot all group disarmaments were the direct result of violence already committed or even a tendency toward violence in a particular group. Both the disarming of Quakers unwilling to take loyalty oaths, and the rapid shift from disarming those who were not loyal to the British Crown to disarming those who were not loyal to the Revolution,

reasons supporting the above conclusion that inhabiting unlawful aliens share allegiance with the nation, this Article rejects the argument that unlawful aliens may be disarmed because they are not subject to sufficient regulation by the government.¹²⁴ The pervasive connections that inhabiting unlawful aliens have with the nation by way of employment, paying taxes, schooling, and raising families within America¹²⁵ requires them to be subject to government regulation. Such connections often require inhabiting unlawful aliens to disclose information to the government, such as through applying for benefits related to raising families or attending school, and undoubtedly through filing taxes, among other examples.¹²⁶

Even still, the simple action of being physically present in the United States subjects inhabiting unlawful aliens to government regulation in a way that did not historically exist. For example, using public roadways requires inhabiting unlawful aliens to be regulated through obtaining a driver's license and being subject to daily regulation by law enforcement for traffic violations.¹²⁷ Inhabiting unlawful aliens are also subject to pervasive government surveillance that is ubiquitous in society today, which is used specifically to monitor unlawful immigrants.¹²⁸ In particular, U.S. Immigration and Customs Enforcement employs various technologies to monitor the location

suggest that dangerousness can lie, not only in an inherent tendency towards violence, but also in the lack of relationship between the sovereign and the disarmed group.”).

¹²⁴ See *id.* at 984; *Vizcaino*, 2026 WL 1224063, at *7.

¹²⁵ See sources cited *supra* note 77.

¹²⁶ See, e.g., *Fact Sheet: Educational Services for Immigrant Children and Those Recently Arrived to the United States*, U.S. DEP'T EDUC., <https://perma.cc/7RH3-LUXN> (last visited May 22, 2026) (explaining “[a]ll children in the United States are entitled to equal access to a public elementary and secondary education, regardless of their or their parents’ actual or perceived . . . immigration status,” and detailing numerous government resources that can be applied for to support such children).

¹²⁷ *States Offering Driver’s Licenses to Immigrants*, NAT’L CONF. OF STATE LEGISLATURES, <https://perma.cc/3LU9-GPV4> (last updated Mar. 13, 2023) (“Nineteen states and the District of Columbia have enacted laws to allow unauthorized immigrants to obtain driver’s licenses.”).

¹²⁸ Jude Joffe-Block, *What We Know About How the U.S. Government Uses Spyware (And What We Don’t)*, NAT’L PUB. RADIO, <https://perma.cc/7H48-P46R> (last updated May 21, 2026) (“Last month, Immigration and Customs Enforcement acknowledged for the first time the agency’s growing arsenal of surveillance technology includes spyware. . . . The latest shifts in U.S. approaches to spyware also come as ICE is expanding its use of surveillance tools and targeting both immigrants and protesters . . .”).

of suspected unlawful aliens, including facial recognition technology, license plate scanning, and an application that aggregates data to disclose their home addresses.¹²⁹

In sum, inhabiting unlawful aliens are subjected to significant government regulation. The heightened risk of dangerousness that has historically resulted from groups not being subject to government regulation does not apply to inhabiting unlawful aliens.

3.2.4. There is no historical tradition of categorically disarming law violators—absent a showing of violence or a firearm regulation violation—to justify disarming unlawful aliens, where neither of these conditions apply to unlawful aliens violating immigration laws.

Finally, several courts have relied on an apparent historical tradition of categorically disarming law violators, which unlawful aliens would presumptively belong to through violation of immigration laws.¹³⁰ But this blanket conclusion fails to account for the historical evidence that reveals only demonstrably dangerous law violators or those violating firearm regulations were disarmed. Where neither category implicates inhabiting unlawful aliens violating immigration laws, their disarmament under this ground cannot be justified.

Specifically, while the Founding Era did impose the punishment of disarmament for many felonies and misdemeanors, disarmament for violating a law typically only occurred when the violation was deemed dangerous to public safety,¹³¹ or if it implicated the violation of a firearm regulation,

¹²⁹ Kat Lonsdorf et al., *ICE Has Spun a Massive Surveillance Web. We Talked to People Caught in It*, NPR, <https://perma.cc/2EME-UNGU> (last updated Mar. 5, 2026).

¹³⁰ See, e.g., *United States v. DeBorba*, 713 F. Supp. 3d 1042, 1061–63 (W.D. Wash. 2024) (explaining that because “there are a great number of analogous statutes prohibiting possession of firearms for those who are not law-abiding,” then “disarmament of those who circumvent the legal system—including undocumented immigrants—is consistent with this Nation’s historical tradition of firearm regulation”).

¹³¹ Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 267, 274–75 (2020) (noting that “every arms prohibition throughout American history . . . had been based—justified or not—

such as illegal hunting.¹³² Further, gun rights were often restored once the law violator was no longer deemed a public safety threat,¹³³ which underscores how disarmament was justified not by the law violation but by the law violator's showing of dangerousness. Therefore, the purported historical tradition of disarming law violators does not justify disarming inhabiting unlawful aliens because their violation of immigration laws (through being present in the United States without proper documentation)¹³⁴ does not implicate dangerousness or the violation of a firearm regulation.

Important still, it is not a novel concept that disarmament was historically only justified upon a showing of dangerousness. Dangerousness was the primary justification for today's federal felons-in-possession ban, which originally only disarmed those who committed a "crime of violence."¹³⁵ Plainly, violation of an immigration law is not a crime of violence. As such, violating an immigration law would not have justified disarmament during the Founding.

In sum, there is no historical tradition of categorically disarming law violators. That only dangerous law violators and those violating firearm regulations were historically disarmed supports finding the disarmament of unlawful aliens for violating immigration laws unjustified. Similarly unpersuasive as a justification for disarming inhabiting unlawful aliens is the

on perceived dangerousness," and that "[e]arly twentieth-century practice reflected the traditions of previous centuries throughout American history: violent or otherwise dangerous persons were sometimes disarmed, but peaceable citizens—even if not necessarily law-abiding—were not" (footnotes omitted)).

¹³² See, e.g., 1710 Mass. Acts 667 §§ 1–2 ("That if any person or persons shall, at any time . . . make use of any boat . . . to approach to and shoot at any water-fowle . . . such offender shall be and hereby is prohibited and restrained from using a gun to shoot at water-fowle for the space of three years . . .").

¹³³ See Greenlee, *supra* note 131, at 269 ("It is inconsistent with history for many nonviolent present-day felons . . . to receive a lifetime firearm prohibition, when prohibited persons in the founding era—including armed insurrectionists—regained their rights once they no longer posed a violent threat." (footnote omitted)).

¹³⁴ See *Unlawful Presence and Inadmissibility*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/2KZB-YFYB>.

¹³⁵ See Federal Firearms Act, ch. 850, §§ 1(6), 2(f), 52 Stat. 1250, 1250–51 (1938) (instructing that the felon-in-possession ban only applied to persons "convicted of a crime of violence," and that a "crime of violence" was limited to an enumerated number of violent offenses).

historical tradition of disarming those without a regulable relationship with the nation. Inhabiting unlawful aliens are subject to significant government regulation through their connections with, and physical presence in, the United States. Nor does a historical regulation exist that categorically disarmed foreign or non-oath bearing inhabitants absent a showing of categorical dangerousness, which is not exhibited by unlawful aliens as demonstrated by § 922(g)(5)'s legislative history and modern empirical evidence. Thus, § 922(g)(5) does not boast a historical analogue under *Bruen*'s second step. Therefore, § 922(g)(5) is unconstitutional as applied to inhabiting unlawful aliens, who are members of "the people" that enjoy a right to armed self-defense under the Second Amendment.

4. CONCLUSION

Faithfully applying *Bruen* to § 922(g)(5) demonstrates that, first, the right to armed self-defense under the Second Amendment extends to all inhabitants of the United States, including inhabiting unlawful aliens. Second, no historical tradition exists disarming non-law-abiding foreign inhabitants absent a showing of categorical dangerousness. Thus, inhabiting unlawful aliens, who have been shown by empirical data to pose a lesser risk to public safety than citizens, cannot be constitutionally disarmed.

This Article does not address the question of how courts should distinguish between inhabiting and non-inhabiting unlawful aliens. A preliminary suggestion is to consult those factors that logically demonstrate habitancy—whether an unlawful alien has worked, paid taxes, attended education, or raised a family in the United States.

To be clear, *non*-inhabiting unlawful aliens would be subject to disarmament because they are not members of "the people" and thus have no right to armed self-defense under the Second Amendment. And inhabiting lawful aliens who have demonstrated dangerousness would be subject to disarmament under alternate statutes.¹³⁶ Those peaceful unlawful aliens who have sufficient connections with the United States, however, are inhabitants who are members of "the people" enjoying protection under the

¹³⁶ See, e.g., 18 U.S.C. § 922(g)(8)–(9) (disarming individuals who are subject to a restraining order or otherwise convicted of a misdemeanor crime of domestic violence).

Second Amendment. To conclude otherwise denies historical evidence, empirical evidence, and the quintessential right to armed self-defense that belongs to all peaceful inhabitants of the United States.