

No. _____

In the
Supreme Court of the United States

Javier Rubio-Castillo,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether 18 U.S.C. §922(g)(5)(B), which prohibits the possession of firearms by aliens lawfully present in the United States, comports with the Second Amendment.

PARTIES TO THE PROCEEDING

Petitioner is Javier Rubio-Castillo, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Javier Rubio-Castillo seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The unpublished opinion of the court of appeals is reported at *United States v. Rubio-Castillo*, No. 25-10935, 2026 WL 755098 (5th Cir. Mar. 17, 2026) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence entered in *United States v. Rubio-Castillo*, No. 4:25-cr-00037-1 (July 31, 2025), is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on Mar. 17, 2026. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Section 922(g)(5)(B) of Title 18 reads:

It shall be unlawful for any person . . . who, being an alien. . . has been admitted to the United States under a nonimmigrant visa. . . to . . . possess in or affecting commerce, any firearm or ammunition. . . .

8 U.S.C. § 1101(a)(3) states:

The term “alien” means any person not a citizen or national of the United States.

8 U.S.C. § 1101(a)(22) states:

The term “national of the United States” means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

The Second Amendment to the United States Constitution provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

Javier Rubio Castillo was a non-immigrant visa holder who entered the United States lawfully in December 2024. He was arrested shortly thereafter in Fort Worth, Texas, after purchasing 37 firearms at a gun show. He pled guilty to an indictment charging a violation of 18 U.S.C. § 922(g)(5)(B). At the plea, the court advised Mr. Castillo that § 922(g)(5)(B) required the government to prove that he knowingly possessed a firearm, at the time of possession he was “an alien, having been admitted to the United States under a nonimmigrant visa,” and that the possession of the firearm was in or affecting interstate commerce. *See Rubio-Castillo*, No. 4:25-cr-00037-1 (N.D. Tx.), Factual Resume, D.E. 28. The court accepted the plea.

II. Appellate Proceedings

Petitioner appealed, arguing that he had a Second Amendment right to possess arms and that following this Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), Section 922(g)(5)(B) violates the Second Amendment. Mr. Rubio-Castillo acknowledged that he could not meet the ‘plain’ requirement under the plain error standard for reversal on the issue as this is an unsettled area of law. The court of appeals affirmed. *See* Pet.App.A.

REASONS FOR GRANTING THE PETITION

This Court should decide the constitutionality of 18 U.S.C. §922(g)(5)(B) under the Second Amendment. It should hold the instant Petition pending resolution of any merits cases presenting that issue.

The Second Amendment guarantees “the right of the people to keep and bear arms.” Yet 18 U.S.C. § 922(g)(5)(B) denies that right, on pain of 15 years imprisonment, to anyone “who, being an alien . . . has been admitted to the United States under a nonimmigrant visa.”

Following *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), courts have grappled with applying *Bruen* and *Rahimi* to various subsections of 18 U.S.C. § 922(g) and have adopted different approaches to testing the statute against Second Amendment challenges. With respect to § 922(g)(5), courts have reached differing outcomes on whether aliens, both lawfully and unlawfully present, are amongst “the people” to whom Second Amendment protection applies. Further, circuits that have reached the second prong of the *Bruen* test in looking at § 922(g)(5), the historical analysis, rely on considerations that would be unconstitutional under any rational legal analysis today and do not meet the “why” requirement of *Bruen*.

For these reasons, this Court should address the constitutionality of 18 U.S.C. § 922(g)(5)(B). While Mr. Rubio-Castillo’s challenge to 18 U.S.C. § 922(g)(5)(B) is a challenge to the statute on its face, that fact has little bearing on the outcome of his challenge. He asserts that a proper analysis of this issue leads to the conclusion that aliens may not be disarmed as a class.

a. The legal framework of *Bruen* and *Rahimi*

In *Bruen*, the Court established a two-step framework “for applying the Second Amendment.” *Id.* at 24. First, “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* This inquiry involves answering a “threshold question”: who is among “‘the people’ who have Second Amendment rights.” *Range v. Att’y Gen. United States*, 124 F.4th 218, 226 (3d Cir. 2024) (*en banc*) (*Range II*); *United States v. Medina-Cantu*, 113 F.4th 537, 541 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 1318 (2025) (applying *Bruen* framework to Section 922(g)(5)(A)). For *Bruen*’s second step, if a regulation burdens such conduct, “[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*

In *Rahimi*, this Court held that 18 U.S.C. §922(g)(8)(C)(i), which prohibits possession of a firearm based on the existence of a restraining order issued after a state court has found one poses “a credible threat to the physical safety” of another person, comports with the Second Amendment. 602 U.S. at 690. The Court resolved Mr. Rahimi’s claim by comparing “the tradition the surety and going armed laws represent” to § 922(g)(8)(C)(i). *Id.* at 699. All three, this Court explained, “restrict[] gun use to mitigate demonstrated threats of physical violence.” *Id.* All three “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.” *Id.* All three were also temporary. *Id.* at 698. The Court explained Step Two of the *Bruen* analysis: “The appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Id.* at 692. “Why and how the

regulation burdens the right are central to this inquiry.” *Id.* Where laws at the founding were designed to address a specific problem, that serves as “a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations.” *Id.* On the other hand, even where a law might regulate firearms for permissible reasons, “it may not be compatible with the right if it does so to an extent beyond what was done at the founding.” *Id.*

b. The right to bear arms and the people

Section 922(g)(5) makes it “unlawful for any person” “who, being an alien--(A) is illegally or unlawfully in the United States; or (B) . . . has been admitted to the United States under a nonimmigrant visa” to possess a firearm or ammunition. In the subsection (A) context, the Fifth Circuit has held that non-citizens unlawfully present in the United States do not enjoy Second Amendment protection at all. *See United States v. Medina-Cantu*, 113 F.4th 537, 539 & 541 (2024) (applying pre-*Bruen* precedent and holding that illegal aliens are not among “the people” and therefore the *Bruen* analysis does not apply to their possession of firearms). Section 922(g)(5)(B) presents a different group, it applies only to those who “ha[ve] been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26))).” In turn, that statute defines “nonimmigrant visa” to mean “a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.” 8 U.S.C. § 1101(a)(26).

Petitioner has not identified any circuit precedent addressing whether aliens lawfully present in the United States enjoy Second Amendment protection. And even

circuit cases addressing whether unlawful aliens are among the people protected by the Second Amendment are not consistent. *Compare Medina-Cantu*, 113 F.4th at 539 & 541 (not among “the people” protected by the Second Amendment); *United States v. Sitladeen*, 64 F.4th 978, 984-85 (8th Cir. 2023) (same); and *United States v. Carpio-Leon*, 701 F.3d 974, 979, 981 (4th Cir. 2012) same) with *United States v. Escobar-Temal*, 161 F.4th 969, 977 (6th Cir. 2025) (“[T]he Second Amendment’s reference to ‘the people’ encompasses unlawfully present individuals with sufficient connections to the national community ...”); *United States v. Carbajal-Flores*, 143 F.4th 877, 882 (7th Cir.) (same), cert. denied, - - U.S. - - , 146 S. Ct. 826, 223 L.Ed.2d 244 (2025) (mem.); *United States v. Perez*, 6 F.4th 448, 453 (2d Cir. 2021) (assuming without deciding that aliens unlawfully in the United States are part of “the people”); *United States v. Vazquez-Ramirez*, 163 F.4th 706, 709 (9th Cir. 2026) (per curiam) (same); *United States v. Duque-Ramirez*, 161 F.4th 1237, 1245 (10th Cir. 2025) (same); *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1045-46 (11th Cir. 2022) (same).

But the Constitution uses the term “the people” to mean “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.” *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008) (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)). In other words, authorized noncitizens are entitled to Constitutional protection “when they have come within the territory of the United States and developed substantial connections with this country.” *Verdugo-Urquidez*, 494 U.S. at 271. Persons have “developed substantial connections with the

country” when they “are in this country voluntarily and presumably have accepted some societal obligations.” *Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 625 (5th Cir. 2006) (cleaned up) (finding Mexican citizen who visited the United States once a month, had substantial connections and therefore enjoyed Constitutional protection).

Mr. Castillo lawfully entered the United States, thereby “acquiesc[ing] in the U.S. system of immigration” and “accept[ing] of societal obligations” of being present in the United States. *Id.* at 625 & n.8. This Court should decide that lawfully present aliens such as Mr. Rubio-Castillo, who lawfully entered the United States and also held employment there from 2021 to 2024, are protected under the Second Amendment.

c. The historical circumstances commonly cited to disarm illegal aliens as a class are constitutionally suspect and do not meet the “why” requirement of *Bruen*

When courts have reviewed the constitutionality of 18 U.S.C. § 922(g)(5)(A), they often rely upon two lines of reasoning. The first relies upon the disarmament of certain discrete groups in both English and American history, often because they were perceived as lacking loyalty to the sovereign. The other takes a broader view, focusing on the bundles of rights granted to “citizens” as opposed to “aliens,” but it too focuses on the concept of loyalty to the sovereign. Often, these two lines of reasoning are blended together.

Bruen’s historical tradition analysis has led some courts to adopt a troubling approach to analyzing the limits the Second Amendment imposes upon Congress’s authority. This approach has been most common in cases challenging the

constitutionality of 18 U.S.C. § 922(g)(5)(A) to conclude that illegal aliens may, as a class, be disarmed. For these cases, courts have often found that the most analogous historical limitations on the right to bear arms are limitations that, if implemented today, would be egregious violations of the Constitution.

For example, the Seventh Circuit’s analysis in *Carbajal-Flores* relied upon the historical disarmament of Catholics in England and the colonies, as well as bans on firearm possession by slaves and Native Americans to justify its conclusion that those perceived as lacking loyalty to the sovereign (whether the Crown or the United States) were prohibited from possessing firearms.

First, such historical practices are plainly unconstitutional. See *Ortega v. Grisham*, 148 F.4th 1134, 1154 (10th Cir. 2025) (“Relying on these analogues would commit us to consider a law trapped in amber-amber formed in an era when blatant racism escaped constitutional scrutiny.”) (internal quotation marks omitted). Moreover, “[c]omparing the Second Amendment rights of a citizen today with the Second Amendment rights of a slave before emancipation and reconstruction tells us nothing.” *Id.* Second, the “why.” For black people, the regulations lay in the fear of rebellion due to the American practice of slavery. Catholics were distrusted not only because of their perceived allegiance to the Pope, but because of the power struggles between Protestant and Catholic factions that each supported their own claimants to the throne of England. See C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?*, 32 Harv. J. L. & Pub. Pol’y 695, 721–23 (2009). The disarmament of Native Americans derived from colonists and later the westward-pushing American

migrants actively displacing Native Americans from their ancestral, leading to their “near-annihilation.” Benjamin Madley, “Reexamining the American genocide Debate: Meaning, Historiography, and New Methods,” 120 *The American Historical Review* 98, 98–99 (2015). It goes without saying that the colonies and the young Republic would have found it vital to disarm groups that it was forcibly (and violently) displacing from their homes to ensure they could not oppose the Republic’s expansion or harm the American migrants seeking new lands. In each of these cases, these groups were not disarmed merely because of their perceived disloyalty. The danger they posed would not have been mere inconveniences or trifles. As a group, their being armed created an existential threat to the ruling governments and the social orders of the time.

Aliens, lawfully or unlawfully present, pose no such threat. Their status, on its own, says nothing about their loyalties or their motives. Thus, when courts rely upon these historical laws to disarm illegal aliens, they deviate too far from the true historical purpose behind the laws. They do not properly analogize because they divorce these laws from their historical reality and context. They give greater deference to the fact that the laws existed than they do to why the laws existed. And in doing so, they invite this Nation’s most repugnant historical practices and antiquated laws to guide modern constitutional jurisprudence.

Second, some courts have relied upon the premise that “subjects” to the Crown (i.e., English citizens) were given a larger basket of rights than those of “aliens” whose allegiance may lie with another sovereign, and those courts have determined that

these same principles flowed to the colonies and the eventual States in their new laws and constitutions. *See, e.g., Vazquez-Ramirez*, 163 F.4th at 710–711; *Duque-Ramirez*, 161 F.4th at 1247; *Carbajal-Flores*, 143 F.4th at 883–84. This rationale treats the right to bear arms as a “civic” right, rather than an “individual” right, that belongs to a select group of “citizens.” This Court has already rejected the premise that the Second Amendment’s right to bear arms is a “civic” right; it has held beyond any shadow of a doubt that the right to bear arms is an individual right. *Heller*, 554 U.S. at 592–95. Finally, this reasoning disregards the plain text and meaning of the Constitution and the Second Amendment. The Second Amendment conspicuously protects the right of “the people” to bear arms. The Constitution and its Amendments consciously distinguish between “citizens” and “the people,” using those words to mean different things. Had the Founders meant to limit the Second Amendment’s reach to “citizens,” it would have used that word. And so reliance upon historical laws that treated the right as belonging to “citizens” (or “subjects”) narrows the scope of the Second Amendment in a way not intended by the Founders.

When these laws, and those unconstitutional practices of the past, are removed from the analysis, the historical analogues justifying the disarmament of illegal aliens as a class disappear.

d. The Court should hold the instant petition pending the outcome in *United States v. Hemani*, No. 24-1234 (U.S. argued Mar. 2, 2026)

Very soon, the Court will decide whether the government may constitutionally prosecute Ali Danial Hemani under 18 U.S.C. § 922(g)(3) based on proof of habitual or regular marijuana use. *See generally* Pet. for Cert., *United States v. Hemani*, No.

24-1234 (U.S. June 2, 2025), 2025 WL 1593262. According to the government, Hemani’s prosecution falls within a historical principle that allows for the temporary disarmament of categories of people based on the legislature’s judgment that the disarmed category poses a “special danger” of firearm misuse. *See* Br. for the United States, *United States v. Hemani*, No. 24-1234 (U.S. Dec. 12, 2025), 2025 WL 3708950, at *10, at *37–40; Reply Br. for the United States, *United States v. Hemani*, No. 24-1234 (U.S. Feb. 19, 2026), 2026 WL 499787, at *1, at *5–8; Tr. Oral Argument 3:11–18, *United States v. Hemani*, No. 24-1234 (U.S. Mar. 2, 2026). If the Court accepts that analytical approach for drawing the boundaries of Second Amendment protection, there exists a “reasonable probability” that the Fifth Circuit would reconsider its *Bruen* methodolog. *See Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167 (1996). *See also* Pet. for Cert., *United States v. Cockerham*, No. 25-1029 (U.S. Feb. 27, 2026), 2026 WL 596482, at *4 (also citing *Lawrence* for proposition that Hemani could affect the Fifth Circuit’s analysis on the constitutionality of § 922(g)(1) prosecutions). *See also Stutson v. United States*, 516 U.S. 163, 181(1996) (“We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be ‘GVR’d’ when the case is decided.”) (Scalia, J., dissenting) (emphasis in original).

CONCLUSION

Petitioner asks this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit or should hold the instant Petition pending the outcome of *Hemani* or any case that will address the above issue.

Respectfully submitted this 15th day of June, 2026.

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