No. 24-1435

In the Supreme Court of the United States

DANIEL WELLES,
IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE UNITED STATES,
Petitioner

v.

JOHN DOE,
Respondent

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

BRIEF FOR THE RESPONDENT

The Honorable Judge Constance Baker Motley Memorial Team

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NOVEMBER 19, 2024
7:30 P.M.
THE AMES COURTROOM
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Oral Argument

QUESTIONS PRESENTED

1. Whether John Doe, a longtime inhabitant of the United States who lacks legal immigration status, can be indefinitely excluded from "the people" protected by the Second Amendment?
2. Whether John Doe, a peaceful resident seeking to bear arms for self-defense, can be permanently disarmed solely on the basis of his immigration status?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES v

OPINIONS AND ORDERS 1

STATEMENT OF JURISDICTION 1

RELEVANT PROVISIONS 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 4

ARGUMENT 7

I. MR. DOE IS ONE OF "THE PEOPLE" PROTECTED BY THE SECOND AMENDMENT. 7

A. Individuals with sufficient connections to the country, including undocumented immigrants, are part of "the people." 8

1. *Verdugo-Urquidez*'s definition of "the people" controls. 9

2. *Verdugo-Urquidez*'s definition of "the people" is not dicta. 10

3. *Heller* did not supersede *Verdugo-Urquidez*'s definition. 12

4. The cases cited by the Attorney General do not equate "the people" with "citizens." 14

B. Text, original meaning, and history support *Verdugo-Urquidez*'s definition of "the people." 16

1. The text of the Constitution demonstrates that "the people" does not mean "citizens." 16

2. Original meaning supports *Verdugo-Urquidez*'s definition. 17

3. Founding-era history confirms *Verdugo-Urquidez*'s definition. 18

C. Mr. Doe has sufficient connections to this country and is part of "the people." 24

1. Mr. Doe comes within *Verdugo-Urquidez*'s definition. 24

2. The Attorney General's policy arguments about sufficient connections lack merit. 25

3. The Attorney General's alternative argument regarding lawful status is also incorrect. 28

D. The Attorney General's citizens-only theory endangers longstanding precedents establishing that noncitizens have constitutional rights. 30

II. SECTION 922(g)(5)(A) IS UNCONSTITUTIONAL AS APPLIED TO MR. DOE. 32

A. To meet its burden, the Government must abstract principles from our regulatory tradition that respect the "balance struck by the founding generation." 34

B. The Second Amendment is hostile to class-based disarmament. 36

C. The Attorney General has not provided an analogous tradition that justifies disarming Mr. Doe. 39

1. The Second Amendment requires a credible and specific threat of violence to disarm an individual who has violated the law. 40

2. The Second Amendment permits disarming a group only during active rebellion and war. 46

D. Disarming Mr. Doe, absent a consideration of his individual circumstance, is inconsistent with our regulatory tradition. 52

CONCLUSION 54

APPENDIX 55

U.S. Cons. amend. II 55

18 U.S.C. § 922(g)(5)(A) 55

18 U.S.C. § 922(d)(5)(A) 55

8 U.S.C. § 1325(a) 55

An Act concerning aliens of June 25, 1798, § 1, § 5 56

An Act respecting alien enemies of July 6, 1798, § 1 57

2 Henry 4 ch. 12 (1400–01) 57

4 Henry 5 ch. 39 (1402) 58

The Statute of Northampton, 2 Edw. 3 c. 3 (1328) 58

The Militia Act of 1662, 14 Car. 2 c. 3, § 13 (1662) 59

1 W. & M. c. 15 (1688) 60

The Highland Services Act, 1 Geo. 1 Stat. 2 c. 54 (1715) 60

1631 Va. Acts 173, Act 46 61

1676 Records of the Colony of New Plymouth 178 61
1692 Mass. Acts and Laws, ch. 18, § 6 61
1759 Temp. Acts and Laws of N.H. 1–2 62
1763 Pa. Laws 306–07 62
1768 N.C. Laws 775–76, ch. 13, § 1 62
1775–76 Mass. Acts and Resolves, ch. 21 63
Act of May 5, 1777, ch. 3, in Henning's Laws of Va. 281-82 65
1777 N.J. Laws 90, ch. 40, § 20 65
1777 Penn. Statutes at Large, ch.756 66
1778 S.C. Acts 31 66
1786 Mass. Acts and Resolves, ch. 56 67
1786 Va. Acts 33, ch. 21 68
1797 Del. Laws 104, ch. 46, § 6 68
1837 Mass. Acts and Resolves 273, § 1 68
1839 Me. Laws 421, § 5 68
1881 N.Y. Laws 126–27, § 512 69
1909 Pa. Laws 466, § 1 69
1915 N.J. Laws 662–63 70
1922 Mass. Acts 563, § 8 70
1923 Conn. Pub. Acts 3732 70
1931 Cal. Stat. 2316–17 71

TABLE OF AUTHORITIES

Cases

Almeida-Sanchez v. United States,
413 U.S. 266 (1973) 32
Bridges v. Wixon,
326 U.S. 135 (1945) 30, 31
Cabell v. Chavez-Salido,
454 U.S. 432 (1982) 15
District of Columbia v. Heller,
554 U.S. 570 (2008) ..... *passim*
Fiallo v. Bell,
430 U.S. 787 (1977) 27, 52
Foley v. Connelie,
435 U.S. 291 (1978) 15
Harisiades v. Shaughnessy,
342 U.S. 580 (1952) 27
In re United States,
578 F.3d 1195 (10th Cir. 2009) 53
Kanter v. Barr,
919 F.3d 437 (7th Cir. 2019) 40, 43, 44
Kleindienst v. Mandel,
408 U.S. 753 (1972) 52
Kwong Hai Chew v. Colding,
344 U.S. 590 (1953) 31
Martinez-Aguero v. Gonzalez,
459 F.3d 618 (5th Cir. 2006) 25
Mathews v. Diaz,
426 U.S. 67 (1976) 52
Maxwell v. Dow,
176 U.S. 581 (1900) 15
McDonald v. City of Chicago,
561 U.S. 742 (2010) 15
Medina v. Whitaker,
913 F.3d 152 (D.C. Cir. 2019) 53
Mendez de Leon v. Reno,
No. C 97-02482 CW, 1998 WL 289321 (N.D. Cal. Mar. 26, 1998) 26
New York State Rifle & Pistol Association, Inc. v. Bruen,
597 U.S. 1 (2022) ..... *passim*
Plyler v. Doe,
457 U.S. 202 (1982) 31

Range v. Att'y Gen.,
69 F.4th 96, 105 (3d Cir. 2023), *cert. granted, judgment vacated sub nom. Garland v. Range*, 144 S. Ct. 2706 (2024) 43
Rehaif v. United States,
588 U.S. 225 (2019).....27
Reno v. American-Arab Anti-Discrimination Committee,
525 U.S. 471 (1999).....29
The Civil Rights Cases,
109 U.S. 3 (1883).....15
United States ex rel. Turner v. Williams,
194 U.S. 279 (1904).....29
United States v. Benito,
No. 3:24-CR-26-CWR-ASH, 2024 WL 3296944 (S.D. Miss. July 3, 2024) 25
United States v. Carpio-Leon,
701 F.3d 974 (4th Cir. 2012).....12
United States v. Connelly,
117 F.4th 269 (5th Cir. 2024) 38
United States v. Daniels,
77 F.4th 337 (5th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2707 (2024) 35
United States v. Guitterez,
No. CR 96-40075 SBA, 1997 U.S. Dist. LEXIS 16446 (N.D. Cal. Oct. 14, 1997) 26
United States v. Huitron-Guizar,
678 F.3d 1164 (10th Cir. 2012).....10, 12
United States v. Jackson,
85 F.4th 468 (8th Cir. 2023) 54
United States v. Jimenez-Shilon,
34 F.4th 1042 (11th Cir. 2022) 10
United States v. Meza-Rodriguez,
798 F.3d 664 (7th Cir. 2015).....10, 12, 13, 25
United States v. Portillo-Munoz,
643 F.3d 437 (5th Cir. 2011).....12
United States v. Rahimi,
144 S. Ct. 1889 (2024).....*passim*
United States v. Salerno,
481 U.S. 739 (1987).....53
United States v. Skoien,
614 F.3d 638 (7th Cir. 2010).....53
United States v. Torres,
911 F.3d 1253 (9th Cir. 2019).....10

United States v. Torres-Rosario,
658 F.3d 110 (1st Cir. 2011) 53
United States v. Verdugo-Urquidez,
494 U.S. 259 (1990) ..... *passim*
Wong Wing v. United States,
163 U.S. 228 (1896) 31
Yick Wo v. Hopkins,
118 U.S. 356 (1886) 31

Statutes

United States Code

18 U.S.C. § 922(d)(5)(A) 40
18 U.S.C. § 922(g)(5)(A) ..... *passim*
28 U.S.C. § 1254(1) 1
8 U.S.C. § 1325(a) 40, 45

Federal Statutes

An Act concerning aliens of June 25, 1798, § 1, § 5 50
An Act respecting alien enemies of July 6, 1798, § 1 50

State Statutes

1631 Va. Acts 173, Act 46 48
1676 Records of the Colony of New Plymouth 178 48
1692 Mass. Acts and Laws, ch. 18, § 6 42
1759 Temp. Acts and Laws of N.H. 42
1763 Pa. Laws 306–07 48
1768 N.C. Laws 775, ch. 13 42
1775–76 Mass. Acts and Resolves, ch. 21 48
1777 N.J. Laws 90, ch. 40, § 20 48
1777 Penn. Statutes at Large, ch. 756 48
1778 S.C. Acts 31 48
1786 Mass. Acts and Laws, ch. 56 46
1786 Va. Acts 33, ch. 21 42
1797 Del. Laws 104, ch. 46, § 6 39
1837 Mass. Acts and Resolves 273, § 1 44
1839 Me. Laws 421, § 5 44
1881 N.Y. Laws 126–27, § 512 44
1909 Pa. Laws 466 § 1 50
1915 N.J. Laws 662–63 50
1922 Mass. Acts 563, § 8 50
1923 Conn. Pub. Acts 3732 50

1923 N.Y. Laws 140–141, § 512 50
1931 Cal. Stat. 2316–17 51
Act of May 5, 1777, ch. 3, in Henning's Laws of Va. 281-82 48

Local Ordinances

Ames City Code Ch. 29 § 127 3

English Laws

1 Geo 1 c. 13 (1714) 48
1 Geo. 1 Stat. 2 c. 54 (1715) 47
1 W. & M. c. 15 (1689) 52
1 W. & M. c. 2, § 7 (1689) 37
14 Car. 2 c. 3, § 13 (1662) 37
2 Edw. 3 c. 3 (1328) 41
2 Henry 4 c. 12 (1400–01) 47
4 Henry 5 c. 39 (1402) 47

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Journals of the Continental Congress (Worthington Chauncey Ford ed., 1906).....49
Joyce Lee Malcolm, *To Keep and Bear Arms* (1994).....37, 42
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Proclamation No. 157, August 20, 1866 50
Robert Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America*, 25 L. & Hist. Rev. 139 (2007).....39, 48
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United States Constitutional Provisions

U.S. Const. amend. II 8
U.S. Const. art. 1, § 9 cl. 3 49
U.S. Const. art. I, §§ 2, 3 17
U.S. Const. art. II, § 1 17
U.S. Const. art. III, § 2 17
U.S. Const. art. IV, § 2 17

OPINIONS AND ORDERS

The opinion of the Ames Circuit is published as Case No. 23-3464 (Ames Cir. June 28, 2024) and is reproduced on pp. 3–12 of the Joint Appendix ("JA"). The opinion and order of the district court is published as No. 1:23-cv-00183-VL (D. Ames June 5, 2022) and is reproduced at JA-13–14.

STATEMENT OF JURISDICTION

The Ames Circuit issued its judgment on June 28, 2024. The petition for a writ of certiorari was granted on August 26, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

This case involves the Second Amendment to the U.S. Constitution and 18 U.S.C. § 922(g)(5)(A). These provisions, in addition to other statutes cited in the Argument, are reproduced in the Appendix.

STATEMENT OF THE CASE

John Doe is a dedicated father and active member of his community. He comes before this Court with a simple request: that he may exercise his fundamental right to bear arms in self-defense. In response, the Attorney General has advanced a sweeping theory of governmental power that would eviscerate the Bill of Rights.

Mr. Doe came to the United States fleeing violence. In his search for a brighter future, he entered the country unlawfully. The United States proved to be a refuge for him, as it has for millions of others. Mr. Doe has since spent over a decade building a new home in Ames and has become part of our national community. But he is neither a citizen nor a legal resident. For this reason alone, Section 922(g)(5)(A) deprives Mr. Doe of the ability to defend himself and his children.

Section 922(g)(5)(A), as applied to Mr. Doe, violates the Second Amendment. For years, the courts have sanctioned this statute, stripping those like Mr. Doe of their right to bear arms. But *Bruen* and *Rahimi* have now made clear that the scope of this right must be preserved as it existed at our Founding. Thus, the time has come for this Court to hold what has always been true: John Doe is part of "the people," and no tradition in this nation's history allows the Federal Government to infringe on his right to bear arms in self-defense.

Factual History

Twelve years ago, John Doe immigrated to the United States unlawfully to flee political violence in his home country. JA-16–17. He has since established deep roots in Ames City. JA-21. Mr. Doe became the father of two children, both born and raised in the United States. JA-21. He is a dedicated father, serving as a member of the PTA at his children's public school. JA-22. In addition, Mr. Doe is an active participant in the Ames City community: he is a member of a local church, a first baseman in the local softball league, and a strong supporter of the Ames youth baseball program. JA-17. Mr. Doe is also active politically; he has lawfully voted in every local election since first becoming eligible to vote in Ames eight years ago. JA-22; *see also*, Ames City Code Ch. 29 § 127.

Over the last few years, Ames City has experienced a significant increase in the level of crime, including car jackings, robberies, and home break-ins. JA-18, 22. Mr. Doe, like any father, is worried about the safety of his children. JA-22. Just three months ago, his neighbor's home was robbed in the middle of the night. *Id.* Mr. Doe had previously purchased a firearm from a friend, but upon realizing he was not legally permitted to own one, he immediately sold the firearm to another friend. JA-24. Now, he seeks the means to protect himself and his family through the legal purchase of a firearm. JA-22.

Procedural History

18 U.S.C. § 922(g)(5)(A) prohibits anyone unlawfully present in the United States from possessing a firearm. On January 6, 2022, Mr. Doe brought suit in the United States District Court for the District of Ames, seeking a declaration and corresponding injunction, that Section 922(g)(5)(A) is unconstitutional as applied to him. JA-20. At the time of filing, the law was "clear." JA-5. Thus, the district court simply denied Mr. Doe's motion for summary judgment and granted the Attorney General's motion to dismiss. JA-14. Following Mr. Doe's timely appeal, the Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), marking "a sea change in Second Amendment jurisprudence." JA-5. Accordingly, the United States Court of Appeals for the Ames Circuit reviewed the claim de novo and reversed the district court's order. JA-12. The Attorney General petitioned this Court for a writ of certiorari. JA-2.

SUMMARY OF ARGUMENT

This case bears on the constitutional rights of millions living in this country, including John Doe. The arguments offered by the Attorney General not only undermine established and longstanding constitutional rights but also advance an expansive theory of unchecked governmental power.

Mr. Doe has a right to bear arms because he is part of "the people" protected by the Second Amendment. This case is governed by *United States v. Verdugo-Urquidez*, in which this Court held that the term "the people," as used throughout the Bill of Rights, means 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." 494 U.S. 259, 265 (1990). Undocumented immigrants with deep ties to the country, like Mr. Doe, come within this definition. Nothing in this Court's Second Amendment caselaw detracts from *Verdugo-Urquidez*'s precedential weight.

Original meaning and Founding-era history both support *Verdugo-Urquidez*'s definition and demonstrate that the Founding generation understood "the people" to include noncitizen immigrants. On the other hand, neither the text of the Constitution nor history supports the Attorney General's extreme assertion that "the people" is synonymous with "citizens." This citizens-only theory stands in direct contrast to longstanding precedents establishing that noncitizens have constitutional rights, including those that are granted to "the people." Because it defies the text of the Amendment, history, and precedent, this Court should reject the Attorney General's citizens-only theory.

Under *Verdugo-Urquidez*, Mr. Doe is part of "the people." Twelve years ago, he voluntarily immigrated to the United States. Since then,

he has undertaken societal obligations, has engaged in civic activities, and has developed deep roots in this country. Contrary to the assertion of the Attorney General, "lawful status" is not required to establish sufficient connections. This Court should thus affirm the Ames Circuit's holding that Mr. Doe is covered by the plain text of the Second Amendment.

Further, Section 922(g)(5)(A) deprives Mr. Doe of his fundamental Second Amendment right to "armed self-defense." *Bruen*, 597 U.S. at 29. The Government bears the burden of proving that a firearms regulation is "consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, 144 S. Ct. 1889, 1898 (2024). This requires analogical reasoning that is faithful to our history. The Attorney General cannot claim limitless power from broadly extrapolated ahistorical principles.

To justify Section 922(g)(5)(A), the Attorney General stretches two narrow traditions beyond limit. He contrives principles that permit the Government to (1) disarm anyone who has ever violated a law, regardless of severity or judicial conviction, and (2) disarm anyone who is deemed to lack undivided allegiance. His position would enable Congress to deprive most of the population of a fundamental right. Such a position is untenable, and this Court should reject it.

This Court's jurisprudence protects the "balance struck by the founding generation." *Bruen*, 597 U.S. at 29 n.7. A faithful reading of our history demonstrates that widespread disarmament based on membership in a class is highly suspect. The historical evidence proffered by the Attorney General reveals two far narrower principles: (1) temporary disarmament of an individual after a specific finding of a credible threat to another's safety, and (2) temporary disarmament of a group of active rebels or suspected enemy combatants. Mr. Doe, a peaceful resident of Ames City, does not fall within either tradition.

A ruling in favor of the Attorney General would transform the Bill of Rights—an assurance of liberties carefully crafted by the Founders—into an empty promise. It would license an unprecedented expansion of governmental power. This Court should instead affirm the Ames Circuit's conclusion that Mr. Doe is one of "the people" covered by the Second Amendment and that Section 922(g)(5)(A) cannot permanently strip Mr. Doe of his right to armed self-defense.

ARGUMENT

I. MR. DOE IS ONE OF "THE PEOPLE" PROTECTED BY THE SECOND AMENDMENT.

The Second Amendment guarantees John Doe the fundamental right to bear arms. This Court has held that the term "the people" encompasses those individuals who have sufficient connections with this

country, which includes undocumented immigrants such as Mr. Doe. *See United States v. Verdugo-Urquidez,* 494 U.S. 259, 265 (1990). This interpretation is consistent with constitutional text and history, and faithfully safeguards the Founding generation's belief that noncitizens are protected by the Bill of Rights. This Court should affirm the Ames Circuit and find that Mr. Doe's extensive connections with this country grant him the right to bear arms.

The Attorney General argues that "the people" means "only and exclusively citizens." Pet. Br. 8. This citizens-only theory contravenes constitutional text and history. It is as extreme as it is unjustifiable. It stands in stark contrast to this Court's longstanding precedents establishing that noncitizens living in this country are entitled to constitutional rights. Moreover, adopting the Attorney General's theory would directly threaten noncitizens' rights under the First and Fourth Amendment, which, like the Second Amendment, belong to "the people."

A. Individuals with sufficient connections to the country, including undocumented immigrants, are part of "the people."

The Second Amendment guarantees that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Cons. amend. II. In *Verdugo-Urquidez*, this Court held that "the people" means 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." 494 U.S. at 265. This definition governs the present inquiry. Under it, undocumented immigrants like Mr. Doe are part of "the people."

1. *Verdugo-Urquidez*'s definition of "the people" controls.

Verdugo-Urquidez is the only case in which this Court has ever defined the term "the people" as used in the Bill of Rights. There, it confirmed that "the people" is a phrase used consistently throughout the Bill of Rights and applies to noncitizens who have sufficient connections to this country. This Court also noted that undocumented immigrants can be part of "the people" because they voluntarily entered the country and have accepted societal obligations. Thus, *Verdugo-Urquidez*'s definition of "the people" controls this case.

At issue in *Verdugo-Urquidez* was whether an extradited Mexican citizen was protected by the Fourth Amendment against a search conducted in Mexico. *Id.* at 261–62. In determining whether the defendant was part of "the people" protected by the Fourth Amendment, this Court noted that the term "seems to be a term of art" used in the First, Second, Fourth, Ninth, and Tenth Amendments. *Id*. at 265. It then defined the term as "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." *Id.*

Verdugo-Urquidez went further to comment that undocumented immigrants could be part of "the people" when they have a "voluntary connection" with this country and "presumably ha[ve] accepted some societal obligations." *Id.* at 272–73. In holding that Verdugo-Urquidez himself was not part of "the people," this Court placed significant weight on the fact that he been extradited to the United States and thus had not entered the country voluntarily. *Id.* at 273.

Several circuits, like the Ames Circuit, *see* JA-8–9, have recognized that the *Verdugo-Urquidez* definition applies to the Second Amendment. *See United States v. Meza-Rodriguez,* 798 F.3d 664, 670 (7th Cir. 2015); *United States v. Torres*, 911 F.3d 1253, 1260–61 (9th Cir. 2019); *United States v. Huitron-Guizar*, 678 F.3d 1164, 1167–68 (10th Cir. 2012); *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1044–45 (11th Cir. 2022). Although some of these circuits declined to decide definitively whether "the people" includes undocumented immigrants, they still recognized that undocumented immigrants could be part of "the people" under *Verdugo-Urquidez*.

2. *Verdugo-Urquidez*'s definition of "the people" is not dicta.

Contrary to the Attorney General's assertion, this Court's definition of "the people" in *Verdugo-Urquidez* is not mere dicta. Pet. Br. 23. Rather, the definition was indispensable to this Court's holding

because the extraterritorial nature of the search could not alone resolve the case. This Court explained that individuals who are part of "the people" may be protected by the Fourth Amendment, even when searches occur abroad. *Verdugo-Urquidez*, 494 U.S. at 270. But precisely because Verdugo-Urquidez failed the threshold requirement of having sufficient connections with this country, he was not part of "the people" who could assert such a claim. *Id.* at 272–73. Though this Court noted that its "textual exegesis" was not "conclusive," it still relied on this interpretation to determine the outcome of the case. *Id.* at 265. Importantly, this Court in *Heller* favorably cited this very interpretation, confirming its precedential value. *See District of Columbia v. Heller,* 554 U.S. 570, 580 (2008).

The Attorney General errs in arguing that Justice Kennedy's separate analysis of "the people" in a concurring opinion diminished the precedential value of this Court's opinion. Pet. Br. 23. Justice Kennedy joined the majority opinion in full, giving it five votes. *Verdugo-Urquidez*, 494 U.S. at 275 (Kennedy, J., concurring). In fact, Justice Kennedy stated that his views did not differ "in fundamental respects" from the opinion of this Court. *Id.* He explained that the scope of the Constitution's protections is *not* limited to citizens and that the use of the term "the people" was not necessarily meant to "restrict the category

of persons who may assert" those protections. *Id.* at 276. Justice Kennedy's concurrence only reinforces a broad meaning of "the people."

3. *Heller* did not supersede *Verdugo-Urquidez*'s definition.

Heller did not change the definition of "the people" to members of the "political community" or "citizens," as the Attorney General asserts. Pet. Br. 24.

First, the definition of "the people" was not at issue in *Heller*. The respondent's status as one of "the people" protected by the Second Amendment was uncontested because he was a citizen. *See Heller*, 554 U.S. at 575–76. *Heller* was not attempting to define or redefine the full scope of "the people," a fact that several courts of appeals have recognized. *See, e.g.*, *United States v. Portillo-Munoz*, 643 F.3d 437, 440 (5th Cir. 2011) (noting that *Heller* "was not purporting to 'clarify the entire field' of the Second Amendment"); *Meza-Rodriguez*, 798 F.3d at 669 ("[N]either *Heller* nor any other Supreme Court decision has addressed the issue whether unauthorized noncitizens (or noncitizens at all) are among 'the people.'"); *Huitron-Guizar*, 678 F.3d at 1167–68. *But see United States v. Carpio-Leon*, 701 F.3d 974, 981 (4th Cir. 2012).

Second, *Heller* approvingly cited *Verdugo-Urquidez*'s definition of "the people" in full. *Heller*, 554 U.S. at 580. It would be an odd way for this Court to supersede one of its precedents by favorably citing the case

and fully reciting the relevant passage. Instead, *Heller*'s discussion of *Verdugo-Urquidez* and the "political community" was part of this Court's analysis of why the right to bear arms is an individual, as opposed to collective, right. *Id.* at 579–80. If *Heller* had intended to supersede *Verdugo-Urquidez*, it would have said so outright. *See Meza-Rodriguez*, 798 F.3d at 669 (noting a reluctance to place more weight on a passing reference to the term "political community" than the Court did itself). As the Ames Circuit recognized, *Heller* does not even indicate that "national community" and "political community" have different meanings at all. JA-9.

Third, the Attorney General's argument cannot be squared with the fact that *Heller* used the word "citizens" in different formulations. *Heller* does not reference just "citizens" but also "law-abiding citizens" and "law-abiding, responsible citizens." *Id.* at 625, 635. These two terms have different, undeniably narrower, meanings than "citizens." But the Attorney General does not clarify whether, under his theory, *Heller* redefined "the people" to be "citizens," "law-abiding citizens," or "law-abiding, responsible citizens." It is implausible to suggest that this Court in *Heller* superseded its established definition from *Verdugo-Urquidez* and then replaced it with three different definitions. Rather, this Court was underscoring that the respondent himself was law-abiding, responsible, and a citizen. *Heller*'s references to "citizens"

merely reinforces that such individuals are undoubtedly part of "the people" under *Verdugo-Urquidez*'s framework.

4. The cases cited by the Attorney General do not equate "the people" with "citizens."

The Attorney General also erroneously argues that this Court's precedents equate "citizens" with "the people" and the "political community" with "citizens." Pet. Br. 17–20. They do not.

As an initial matter, *Bruen* and *Rahimi* invariably qualified the word "citizen" to describe the litigants in those cases, not to define "the people." This Court did not "latch[] onto" *Heller*'s supposed definition, nor did it "confidently refer[]" to "the people" as equivalent to "citizens," in those cases. Pet. Br. 19. Instead, *Bruen* described the respondents as (1) "ordinary, law-abiding citizens"; (2) "law-abiding, adult citizens"; (3) "law-abiding, responsible citizens"; (4) "law-abiding citizens"; and (5) "ordinary, law-abiding, adult citizens." *Bruen*, 597 U.S. at 8, 15, 26, 30, 31. In fact, *Bruen* never referred to just "citizens" retaining the right. In *Rahimi*, this Court only used "ordinary citizens" because the respondent in that case was not law-abiding. 144 S. Ct. at 1897.

Each of these different phrases, by nature of their qualifying words, have meanings distinct from "citizens" alone. And these various subsets of individuals cannot all simultaneously mean "the people"—which, the Attorney General argues, has a "fixed meaning." Pet. Br. 12.

Further, like *Heller*, the meaning of "the people" was not even at issue in *Bruen* and *Rahimi*. In these cases, as well as in *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010), the citizens bringing the constitutional claims were uncontestably part of "the people."

The cases the Attorney General cites for the proposition that "the political community" consists only of citizens are also unavailing. The Attorney General first quotes from Justice Harlan's dissent in *The Civil Rights Cases*, erroneously characterizing it as the opinion of the Court. *See* Pet. Br. 18 ("As this Court declared during Reconstruction . . . "); *The Civil Rights Cases*, 109 U.S. 3, 46 (1883) (Harlan, J., dissenting). In any event, this passage, like the one the Attorney General cites from Justice Harlan's dissent in *Maxwell v. Dow*, involved the Fourteenth Amendment—specifically, the state action doctrine and the Privileges and Immunities Clause—and are thus inapposite. *See The Civil Rights Cases*, 109 U.S. at 46 (Harlan, J., dissenting); *Maxwell v. Dow*, 176 U.S. 581, 608 (1900) (Harlan, J., dissenting). Moreover, two other cases the Attorney General cites—*Foley v. Connelie* and *Cabell v. Chavez-Salido*—do reference "the political community" but simply do not state that only citizens are included. *See* 435 U.S. 291, 295–96 (1978); 454 U.S. 432, 438 (1982). Notably, *Heller* itself did not cite any of these cases when it referenced the "political community."

B. Text, original meaning, and history support *Verdugo-Urquidez*'s definition of "the people."

Verdugo-Urquidez's definition of "the people" comports with the text of the Constitution and evidence of the term's original meaning. Historical evidence also confirms the Founding-era understanding that noncitizen immigrants are entitled to the protection of the Constitution.

The Attorney General's main contention is that "the people" and "citizens" are synonymous. *See* Pet. Br. 12. But the plain text of the Constitution clearly delineates between "citizens" and "the people" as two different subsets of individuals. Additionally, none of the historical sources cited by the Attorney General support his citizens-only theory.

1. The text of the Constitution demonstrates that "the people" does not mean "citizens."

Though the Constitution frequently references "citizens," the text of the Second Amendment deliberately uses a different term: "the people." The Constitution is an intentional text, as the Attorney General agrees. *See* Pet. Br. 16. "The people" and "citizens" cannot be synonyms.

The term "the people" is found throughout the Constitution and the Bill of Rights. In contrast, the term "citizen" does not appear in the Bill of Rights at all. In fact, "citizen" does not appear in the text of any constitutional amendment until the Fourteenth Amendment. If the drafters of the Bill of Rights had intended that it apply only to citizens, they would have used the word "citizens" instead of "the people." Indeed,

the use of "citizen" repeatedly in the body of the Constitution indicates that the Founders understood the term to be different from "the people" and knew how to use that word if they wanted. *See* U.S. Const. art. I, §§ 2, 3; U.S. Const. art. II, § 1; U.S. Const. art. III, § 2; and U.S. Const. art. IV, § 2.

Furthermore, this Court specifically held that "the people" is a distinct term of art used consistently throughout the Bill of Rights. *Verdugo-Urquidez*, 494 U.S. at 265. This Court thus recognized the intentionality and intratextualist nature of the Constitution. *See also* Akhil R. Amar, *Intratexualist*, 112 Harv. L. Rev. 748 (1990). To mistake such deliberateness for casualness in drafting is to suppose that our most sacred civic text was not internally consistent.

2. Original meaning supports *Verdugo-Urquidez*'s definition.

Evidence of original meaning supports defining "the people" as members of a national community with sufficient connections to the country. Early American dictionaries defined "the people" quite similarly to *Verdugo-Urquidez*. One dictionary defined "the people" as "[a] nation; those who compose a community." 2 Samuel Johnson, *A Dictionary of the Early English Language* 305 (6th ed. 1785). Another defined "the people" as "[t]he body of persons who compose a community, town, city, or nation." Noah Webster, *American Dictionary of the English*

Language 600 (1st ed. 1828). Importantly, these definitions correspond with one provided by William Blackstone, who wrote that "the people" consists of "aliens and natural-born subjects." 1 *Commentaries* 366 (St. George Tucker ed., 1803) [hereinafter Blackstone's Commentaries].

Influenced by Blackstone, the Founding generation understood the right to bear arms codified in the Second Amendment to be a "fundamental" and "pre-existing right" rooted in the right of self-preservation. *Heller*, 554 U.S. at 592–94. Blackstone emphasized this principle, describing the right of self-preservation as a "natural right." 1 Blackstone's Commentaries at 143. In his commentaries on Blackstone, the Founding-era scholar Henry St. George Tucker noted that natural rights belong to "all men, without distinction" and that all people retain the right of "repelling force by force" in civil society. *Id.* at 145. Tucker specifically distinguished this natural right from "civil rights," which belong to a person "as a citizen or subject." *Id*. at 145. Thus, the right of self-defense was understood to belong to all individuals, including noncitizens.

3. Founding-era history confirms *Verdugo-Urquidez*'s definition.

The prevailing viewpoint in the Founding era was that noncitizen immigrants were protected by the Constitution because they were governed by United States law while living in the country. Given that

many constitutional rights enshrined in the Bill of Rights belong to all "the people," the Founding generation thus understood that "the people" could include noncitizen immigrants.

First, the resounding backlash against the enactment of the Alien and Sedition Acts in 1798 shows that the Founding generation understood that noncitizen immigrants were entitled to constitutional rights. One of these laws, the Alien Act, directly targeted the rights of noncitizen immigrants by allowing the President to deport any such individual for essentially any reason. James Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* 50 (1956).

The Alien Act was widely denounced as unconstitutional by many leading members of the Founding generation. *See id.* at 83. Congressman Edward Livingston argued that because immigrants reside in the country and owe some allegiance to its laws, they "are entitled to the protection of our laws." 8 Annals of Cong. 2012 (Gales and Seaton ed., 1851); *see also* Gerald L. Neuman, *Strangers to the Constitution* 57 (1996). In response to the contention that aliens lack the protection of the Constitution, James Madison, the principal drafter of the Bill of Rights, wrote:

> Aliens are not more parties to the laws, than they are parties to the constitution; yet it will not be disputed, that as they owe on one hand, a temporary obedience, they are entitled in return, to their protection and advantage.

Madison's Report on the Virginia Resolutions (1800), reprinted in 4 Elliot's Debates 583 (2d ed. 1836). Madison's argument closely resembles *Verdugo-Urquidez*'s reasoning that immigrants can be part of "the people" entitled to constitutional rights because they voluntarily subject themselves to United States law while living in the country.

Madison's viewpoint unequivocally won the day: no individual was ever deported under the Alien Act, the statute was allowed to expire two years later, and Madison's position on alien rights became generally accepted. *See* Neuman, *Strangers* at 60–61. The Marshall Court's later interpretations of the Constitution "supported Madison's argument that aliens could claim its benefits." *See id.* This important episode demonstrates that the Founding generation understood noncitizen immigrants were entitled to constitutional rights for reasons mirroring *Verdugo-Urquidez*'s logic.

Second, immigration during the Founding era was considerably more open than it is today. The federal government did not impose any quantitative limitations on immigration until the late 19th century. *See* Pratheepan Gulasekaram, *The Second Amendment's "People" Problem*, 76 Vanderbilt L. Rev. 1437, 1470 (2023). Although some states had laws that limited immigration as a secondary effect, the phrase "illegal alien" would have been unfamiliar to the Founding generation as a legal term of art. *See* Gerald L. Neuman, *The Lost Century of American*

Immigration Law (1776–1875), 93 Colum. L. Rev. 1833, 1899 (1993). Thus, it is implausible to suggest that the Founding generation would have considered immigrants to be excluded from "the people" simply due to unlawful entry.

Third, alien suffrage was prevalent at the time of the Founding and was a "widespread practice" in the 19th century. Neuman, *Strangers* at 63. Many states and territories allowed noncitizen immigrants to vote in elections. *See id.* at 64–66. This practice was a "necessary consequence of democratic theory, because alien residents were as much a part of the community of the governed as citizen residents." *Id.* at 63. The fact that some immigrants were allowed to vote in the Founding era provides further support for *Verdugo-Urquidez*'s definition of "the people."

The sources offered by the Attorney General fail to rebut this historical evidence. The Attorney General's main evidence for his citizens-only theory consists of three quotations from the Founding era, Pet. Br. 13–14, two of which are taken out of context and one of which is misquoted. The first quote, spoken by James Wilson at the Constitutional Convention, was not a statement that "the people" consists only of citizens, but rather was part of an explanation of why he opposed state legislatures electing senators. *See* 1 *Farrand's Records of the Federal Convention of 1787*, at 405–06 (1911). The second quote was

part of a speech by James Madison about fixing the location of the capital. 12 *The Papers of James Madison*, 373–82 (Charles Hobson & Robert Rutland eds., 1979). The third statement, which the Attorney General attributes to Madison, is misquoted: there is no mention of "the people" at all in the cited passage. *See* 1 Annals of Cong. 406 (1789) (Joseph Gales ed., 1834).[1]

The Attorney General's analysis of state constitutions is also flawed. To begin, he incorrectly reasons that various state constitutions used the terms "the people" and "citizens" interchangeably. Pet. Br. 14–15. It is unclear why the fact that some states granted the right to bear arms to "citizens" and others to "the people" indicates that the two terms are synonymous. If anything, this evidence shows that the two terms have different meanings, since local leaders intentionally chose to formulate the scope of the right differently. The same can be said about the Attorney General's quotations from state ratifying conventions. Pet. Br. 15–16. Moreover, the Attorney General ignores the influence of the 1776 Virginia Declaration of Rights. This charter, which framed the right as natural and used "the people," not "citizens," influenced James

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[1] The quotation recited by the Attorney General appears to have instead been a statement made by Congressman John Allen in 1798. 8 Annals of Cong. 2095 (Gales and Seaton ed., 1851) ("The gentleman attempted, in this instance, to persuade the people, the acknowledged citizens and natives of this country . . . ").

Madison when he wrote the Bill of Rights. Saul Cornell & Robert E. Shalhope, *Whose Right to Bear Arms Did the Second Amendment Protect?* 10 (2000). The Attorney General's historical evidence falls far short of supporting his citizens-only theory.

Lacking historical evidence, the Attorney General then cites a "corpus linguistics analysis" as support for the proposition that "the people" and "citizens" are synonyms. Pet. Br. 14. Setting aside the question of whether corpus linguistics is a legitimate source of evidence for this Court to consider,[2] the Attorney General's methodology is seriously flawed. There is no logical basis for concluding that because two words are often found within twelve words of one another, those two words are synonymous. Surely a corpus linguistics analysis of the association between the words "pet" and "dog" in English-language texts would find that those two words are often located near each other. Those words of course do not mean the same thing even though a dog is a type of pet. The Attorney General's corpus linguistics analysis is simply irrelevant.

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[2] *See* Mark Smith & Dan Peterson, *Big Data Comes for Textualism: The Use and Abuse of Corpus Linguistics in Second Amendment Litigation,* 70 Drake L. Rev. 387, 389 (2022) (warning that "courts should be extraordinarily wary of embracing word counts in lieu of sound legal and historical analysis in determining the meaning and scope of constitutional texts").

C. Mr. Doe has sufficient connections to this country and is part of "the people."

Applying *Verdugo-Urquidez*'s definition, the Ames Circuit correctly held that Mr. Doe is part of "the people" who retain the right to bear arms. JA-7–9. The Attorney General's arguments against the Ames Circuit's rationale amount to no more than unavailing policy critiques of *Verdugo-Urquidez* itself. Additionally, the Attorney General's alternative argument that unlawful noncitizens lack sufficient connections, *see* Pet. Br. 29, is contrary to precedent.

1. Mr. Doe comes within *Verdugo-Urquidez*'s definition.

Mr. Doe is a member of the national community and has sufficient connections with this country. Under *Verdugo-Urquidez*, an undocumented immigrant who voluntarily enters the country and accepts societal obligations can be part of "the people." *See* 494 U.S. at 272–73. Twelve years ago, Mr. Doe voluntarily sought refuge in the United States. Gainfully employed since his arrival, he has subsequently developed deep ties with this country. Mr. Doe has embraced the obligations of an active member of the Ames City community. He is a proud father of two children, both of whom are American citizens, serving on their school's PTA and avidly supporting their little league team. He is a committed member of his local church and plays on a local softball team. Notably, Mr. Doe has lawfully voted

in every Ames election in the last eight years. Given his civic engagement, the Ames Circuit correctly held that Mr. Doe's substantial ties to the community also qualify him as a member of the "political community." JA-9.

Mr. Doe's connections are analogous to those that other courts have held to be sufficient under the *Verdugo-Urquidez* test. *See, e.g.*, *Meza-Rodriguez*, 798 F.3d at 670–71 (unlawful noncitizen with twenty years residence and several family connections had "extensive ties" with country); *Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 625 (5th Cir. 2006) (noncitizen with expired visa had developed sufficient connections when voluntarily entering the country to visit family); *United States v. Benito*, No. 3:24-CR-26-CWR-ASH, 2024 WL 3296944 at *5 (S.D. Miss. July 3, 2024) (unlawful noncitizen with three years residence had sufficient connections through family and employment).

2. The Attorney General's policy arguments about sufficient connections lack merit.

The Attorney General raises several unavailing policy critiques in response to the Ames Circuit's correct application of *Verdugo-Urquidez*—a case he does not even ask this Court to overrule.

First, the Attorney General criticizes the workability of the "sufficient connections" test. *See* Pet. Br. 25–28. Yet courts regularly use flexible standards to determine constitutional rights because such

standards accommodate the unique facts of cases. *See also Benito*, 2024 WL 3296944 at *4 (noting that the Supreme Court has "rejected a binary, 'are-you-a-citizen-or-not' approach to Constitutional rights").

This discretion is necessary, and the cases cited by the Attorney General demonstrate exactly why. It is true that one district court in one case found four years to be sufficient while in another it found twelve to be insufficient. *Compare Mendez de Leon v. Reno*, No. C 97-02482 CW, 1998 WL 289321 at *5 (N.D. Cal. Mar. 26, 1998) *with United States v. Guitterez*, No. CR 96-40075 SBA, 1997 U.S. Dist. LEXIS 16446 at *18 (N.D. Cal. Oct. 14, 1997). But that is because length of residence was not the only factor that the court considered. Instead, it conducted a comprehensive analysis of both individuals and reasoned that while one was employed during the four years of his residence, the other operated as a "narcotics supplier involved in a large-scale drug distribution operation," thus undermining any connections he had made with his community over the twelve years he was present. *Guitterez*, 1997 U.S. Dist. LEXIS 16446 at *1. While the *Verdugo-Urquidez* standard allows federal courts to factor in the complexities of individuals' lives, the Attorney General's bright-line approach would force them to make decisions without considering individual facts at all.

Further, the Attorney General's concern about Section 922(g)(5)(A)'s scienter requirement is perplexing. Pet. Br. 26–27. This

Court has explained that the prosecution must simply show that an individual knew they were "illegally or unlawfully in the United States." *Rehaif v. United States*, 588 U.S. 225, 235 (2019). Application of *Verdugo-Urquidez* does not alter the prosecution's burden in any way. That is because knowledge of one's immigration status is distinct from knowledge of the scope of one's constitutional rights. Whether individuals think they have sufficient connections to bring them under the protection of the Second Amendment is entirely separate from their knowledge that they lack legal status. In practice, proving that individuals knew they lacked legal status would not become any more difficult than it currently is. Regardless, the burden of prosecution is never a reason to narrow constitutional rights. *Id.* at 233.

The Attorney General also provides no evidence or examples of how courts evaluating immigrants' constitutional rights would actually interfere with Congress's completely unrelated power to determine legal status. *See* Pet. Br. 28. The cases the Attorney General relies on, *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952) and *Fiallo v. Bell,* 430 U.S. 787 (1977), are inapposite. Neither involved the Second Amendment: one is a deportation case and the other was about the immigration status of children born out of wedlock. It is undisputed that Mr. Doe is subject to Congress's immigration power. This Court,

however, retains authority to determine the scope of his rights while he resides in this country.

3. The Attorney General's alternative argument regarding lawful status is also incorrect.

The Attorney General eventually retreats from his citizens-only theory to argue instead that even if "the people" is broader than citizens, it cannot include those who have entered the country unlawfully. *See* Pet. Br. 29–35. This argument lacks supporting evidence and contravenes *Verdugo-Urquidez*.

The Attorney General begins by arguing that "lawful status was required to assert rights" at the Founding. Pet. Br. 30–32. But the historical evidence he proffers merely establishes the obvious proposition that immigrants had to become citizens in order to gain certain rights only citizens could hold. This tautological argument begs the very question this case is about: whether the right to bear arms is a citizens-only right. It is not. Even if the evidence the Attorney General provides regarding certain rights becoming available upon naturalization is true, he provides no evidence that the right to bear arms was one of those rights.

The main case the Attorney General relies on to support this argument is *United States ex rel. Turner v. Williams,* in which this Court upheld the deportation of an unlawful noncitizen under the 1903

Anarchist Exclusion Act. 194 U.S. 279, 280 (1904). Unlike Mr. Doe, the noncitizen in *Turner* had developed no connections to the country; he had been in the country for only ten days and had explicitly argued for the overthrow of the United States government. *Id.* at 281–82. Furthermore, this antiquated case came long before this Court developed its free speech doctrine, and it was unclear at the time whether the First Amendment was even at issue. *Id.* at 292 ("We are at a loss to understand in what way the act . . . abridge[s] the freedom of speech . . . ."). Even the Executive Branch recognizes this development in First Amendment jurisprudence. *See* U.S. Dep't. of Homeland Sec., *Guidelines for the Enforcement of Civil Immigration Law* (Sept. 30, 2021) ("A noncitizen's exercise of their First Amendment rights also should never be a factor in deciding to take enforcement action.").

Other cases cited by the Attorney General are taken out of context. *Reno v. American-Arab Anti-Discrimination Committee* is a case about Congress's deportation powers—not about the full scope of constitutional rights. *See* 525 U.S. 471, 491–92 (1999). The Attorney General also misquotes Justice Murphy's concurrence in *Bridges v. Wixon*: the justice did not say immigrants "*must* lawfully enter[] and reside[] in this country." Pet. Br. 33 (emphasis added). Justice Murphy instead stated that "*once* an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the

Constitution to all people within our borders." *Bridges v. Wixon*, 326 U.S. 135, 161 (1945) (Murphy, J., concurring) (emphasis added). While Justice Murphy did note that lawful status was sufficient to gain rights, he did not suggest doing so was necessary.

Ultimately, nothing in *Verdugo-Urquidez* suggests that an immigrant must take steps to achieve citizenship in order to have sufficient connections. On the contrary, *Verdugo-Urquidez* observed that undocumented immigrants could have sufficient connections by virtue of their voluntary connection with the country and acceptance of societal obligations. *See* 494 U.S. at 273. The Attorney General's "lawful status" theory contravenes this Court's interpretation of "the people."

D. The Attorney General's citizens-only theory endangers longstanding precedents establishing that noncitizens have constitutional rights.

The Attorney General's citizens-only theory is not only wrong but has extreme consequences. If "the people"—a term of art used consistently throughout the Bill of Rights—means only citizens, the necessary implication is that noncitizens lack First and Fourth Amendment rights as well. This implication is contrary to this Court's existing First and Fourth Amendment case law. Further, the Attorney General's theory stands in stark contrast with other longstanding precedents of this Court.

Noncitizens have long been entitled to constitutional rights. This Court has repeatedly held that a variety of fundamental rights apply to individuals in the United States regardless of citizenship status—including undocumented persons. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (noncitizen is "person" under Fourteenth Amendment); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (noncitizens are entitled to Fifth and Sixth Amendment rights); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953) (noncitizen is "person" within meaning of Fifth Amendment); *Plyler v. Doe*, 457 U.S. 202, 211–12 (1982) (undocumented immigrants are "persons" covered by Equal Protection Clause).

The Attorney General reasons that these rights only apply to noncitizens because the Fifth, Sixth, and Fourteenth Amendments refer to "persons" instead of "the people." Pet. Br. 16. But this Court has held that First and Fourth Amendment rights do extend to noncitizens. In *Bridges v. Wixon*, this Court rejected the government's attempt to deport a noncitizen for affiliation with communists, clearly stating that "freedom of speech and of press is accorded [to] aliens residing in this country." 326 U.S. at 148. Even without citizenship, Bridges could "exercise the freedom that belong[ed] to him as a human being and that [was] guaranteed to him by the Constitution." *Id.* at 157 (Murphy, J., concurring). Later, in *Kwong Hai Chew*, this Court noted that noncitizens are protected by the First Amendment because the text does

not acknowledge "any distinction between citizens and resident aliens." 344 U.S. 590, 596 n.5 (1953). Long before *Verdugo-Urquidez*, which recognized that noncitizens are part of "the people," this Court acknowledged that the Fourth Amendment protects noncitizens in *Almeida-Sanchez v. United States,* where it found a warrantless search of a lawful noncitizen unconstitutional. 413 U.S. 266, 273–75 (1973).

Under the Attorney General's citizens-only theory, nearly forty million noncitizens in our country, both documented and undocumented, would be deprived of the fundamental freedoms that our Founders enshrined in the Bill of Rights. The Attorney General's contention that "the people" is synonymous with "citizens" implies that any noncitizen within our borders can be punished for practicing their religion, that law enforcement can search them or their homes without limitation, and that they cannot bear arms to defend themselves. Such a conclusion defies this Court's long tradition of protecting the constitutional rights of noncitizens in this country. This Court should reject such an outcome.

II. SECTION 922(G)(5)(A) IS UNCONSTITUTIONAL AS APPLIED TO MR. DOE.

Disarming John Doe is inconsistent with this country's regulatory tradition. The Government cannot deprive Mr. Doe, one "the people," of his fundamental Second Amendment right to "armed self-defense." *Bruen*, 597 U.S. at 29. Yet by disarming the entire class of people who

lack legal status, Section 922(g)(5)(A) does just that. Attempting to justify this statute, the Attorney General provides a vision of sweeping governmental authority based on two contrived regulatory traditions: (1) disarmament of lawbreakers regardless of severity or judicial conviction and (2) disarmament of those deemed to lack undivided allegiance. Reading tradition so broadly would enable Congress to strip most of the population of their right to bear arms.

Fortunately, the Second Amendment is not a dead letter. This Court's jurisprudence protects the "balance struck by the founding generation," requiring a faithful reading of history. *Bruen*, 597 U.S. at 29 n.7. This history reflects a hostility to blanket class-based disarmament. In reality, the historical evidence cited by the Attorney General reveals two narrower principles: (1) temporary disarmament after a specific finding of a credible threat to another's safety and (2) disarmament of active rebels and suspected enemy combatants. Neither tradition justifies stripping Mr. Doe of his right to armed self-defense. Thus, this Court should affirm the Ames Circuit's determination "that there is no valid historical justification" for disarming Mr. Doe exclusively based on his immigration status. JA-12.

A. To meet its burden, the Government must abstract principles from our regulatory tradition that respect the "balance struck by the founding generation."

Rahimi requires the Government to demonstrate that a challenged firearms statute is "consistent with the principles that underpin our regulatory tradition." *Rahimi*, 144 S. Ct. at 1898. The Government bears the burden of providing "relevantly similar" analogues, considering both "how and why the regulations burden" the right. *Bruen*, 597 U.S. at 29.

Contrary to the position of the Attorney General, dicta in *Heller* does not shift the burden for "all provisions of § 922(g)." Pet. Br. 36. Addressing Section 922(g)(8), this Court in *Rahimi* was clear: "when the Government regulates arms-bearing conduct . . . [the Government] bears the burden to 'justify its regulation.'" *Rahimi*, 144 S. Ct. at 1897 (quoting *Bruen*, 597 U.S. at 24). The Government bears a heavy burden; two or three isolated historical analogues are not enough. *See Bruen*, 597 U.S. at 46. Here, the Government has not met its burden.

When extracting principles from history, such principles must faithfully reflect the "balance struck by the founding generation." *Id.* at 29 n.7. The Government cannot extrapolate so broadly as to provide itself limitless authority. While the law is not "trapped in amber," *Rahimi*, 144 S. Ct. at 1897, "analogical reasoning" is not a "regulatory blank check," *Bruen*, 597 U.S. at 30. The Attorney General abstracts

"principle[s] at such a high level of generality that it waters down the right." *Rahimi*, 144 S. Ct. at 1926 (Barrett, J., concurring).

The Attorney General cannot justify a broad regulation through a narrow tradition. The Government attempted to do so in *Rahimi* by liberally construing tradition as permitting the disarmament of irresponsible individuals. *See* 144 S. Ct. at 1903. But this Court rejected that construction. *Id.* Instead, it concluded that history demonstrated only a narrow tradition of temporarily disarming "[a]n individual found by a court to pose a credible threat to the physical safety of another." *Id.* In *Bruen*, this Court likewise rejected New York's attempt to portray a broad "proper-cause requirement" as a narrow "sensitive-place" law. 597 U.S. at 30–31. *Bruen* refused to "expand[] the category of 'sensitive places' simply to all places of public congregation that are not isolated from law enforcement." *Id.* at 31.

To permit the Attorney General to extrapolate broad principles is to hand Congress "unchecked power" to eliminate "Second Amendment rights without judicial review." *United States v. Daniels*, 77 F.4th 337, 353 (5th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2707 (2024). Any regulation can be justified under some broad principle. The Second Amendment demands more.

Ultimately, the breadth with which the Attorney General characterizes history resurrects means-end scrutiny under a new guise.

His position would justify any firearm regulation, so long as Congress could provide a plausible public safety rationale. Here, the Attorney General defends Section 922(g)(5)(A), asserting that Congress has judged the class of undocumented immigrants to be persons who might "become dangerous" or "misuse" firearms. Pet. Br. 4 (internal quotation marks omitted). But requiring merely a "rational judgment," Pet. Br. 45, is rational-basis review.

Congress must adhere to the "balance struck by the founding generation." *Bruen*, 597 U.S. 29 n.7. The Second Amendment is "enshrined with the scope [it was] understood to have when the people adopted [it], whether or not future legislatures . . . think that scope too broad." *Heller*, 554 U.S. at 634–35.

B. The Second Amendment is hostile to class-based disarmament.

The Second Amendment rejected the English tradition of widespread disarmament based on generalized judgments about a class. To disarm Mr. Doe solely on the basis of his immigration status is to return to the very tradition that the Founders sought to escape.

The Attorney General errs in assuming the wholesale incorporation of English law into our tradition. *See, e.g.*, Pet. Br. 47. Whereas English practice was marked by widespread disarmament, the Second Amendment right is purposefully broader. In *Bruen*, this Court

underscored that "English common-law practices and understandings . . . cannot be indiscriminately attributed to the Framers." 597 U.S. at 35. Instead, English practice serves as a comparison and highlights where the Framers sought "to depart from rather than adhere to certain pre-ratification laws." *Rahimi*, 144 U.S. at 1914 (Kavanaugh J., concurring).

English history was replete with marked abuses that the Second Amendment rejected. In addition to routinely disarming "political opponents and disfavored religious groups,"[3] the Crown exercised an arbitrary and unilateral power to disarm those judged "dangerous." *Rahimi*, 144 U.S. at 1899 (quoting The Militia Act of 1662, 14 Car. 2 c. 3, § 13 (1662)). The Glorious Revolution of 1688, and the subsequent adoption of the English Bill of Rights, was in part a response to these abuses. Joyce Lee Malcolm, *To Keep and Bear Arms*, 113 (1994). The Militia Act of 1662, cited favorably by the Attorney General, was actually singled out in parliamentary debates as an example of the Crown's tyranny. *Id.* at 115. As the Fifth Circuit recently noted, "the Militia Act, passed to disarm political dissidents and reined in well

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[3] The Attorney General claims "every British government from James I to George I disarmed Catholics." Pet. Br. 47. But James II, a Catholic monarch in the cited period, was overthrown in part for "causing several good subjects being Protestants to be disarmed," while instead, arming Catholics. 1 W. & M. c. 2, § 7, in 3 Eng. Stat. at Large 417 (1689).

before the Founding by the English Bill of Rights, almost certainly does not survive the Second Amendment[]." *United States v. Connelly*, 117 F.4th 269, 278 (5th Cir. 2024).

Though the English right—limited only to Protestants—represented a substantial change, it was "more nominal than real." *Heller*, 554 U.S. at 608 (quoting Joseph Story, 3 *Commentaries on the Constitution of the United States* § 1891 (1833)). In addition to discriminating on the basis of religion, the right was "restrained by an arbitrary system of game laws." Henry St. George Tucker, *Commentaries on the Laws of Virginia* 43 (3rd ed. 1846). These game laws were a form of "class legislation," punishing the possession of guns by lower social classes. P.B. Munsche, *Gentlemen and Poachers: The English Game Laws, 1671-1831* 21 (1981). This arbitrary class-based legislation "disgraced" the English right. William Rawle, *A View of the Constitution of the United States of America* 122–23 (1825). As a result, Founding-era scholars regarded game laws as "violating the right codified in the Second Amendment." *Heller*, 554 U.S. at 607.

The Second Amendment rejected the limits of the English right to secure instead a broad, unqualified right to "the people." Post-ratification history supports this understanding. Despite "ample [English] precedent" for disarming a class, legislatures refused to do so for most of our history. Robert Churchill, *Gun Regulation, the Police*

Power, and the Right to Keep Arms in Early America, 25 L. & Hist. Rev. 139, 164–65 (2007). This suggests that such class-based laws were not considered a "legitimate exercise of police power." *Id.* For the half century following the adoption of the Bill of Rights, there was only one class who was broadly disarmed: free Black people and those enslaved. *See e.g.*, 1797 Del. Laws 104, ch. 46, § 6. As the Attorney General suggests, these "shameful" laws ought not be considered part of this country's enduring regulatory tradition. Pet. Br. 53. Absent compelling evidence otherwise, class-based legislation is inconsistent with our tradition. This Court should not license Section 922(g)(5)(A), a quintessential example of class-based disarmament.

C. The Attorney General has not provided an analogous tradition that justifies disarming Mr. Doe.

A faithful examination of the history invoked by the Attorney General reveals limited principles permitting (1) temporary disarmament after a specific finding that an individual poses a credible threat of violence and (2) disarmament of active rebels and suspected enemy combatants. Properly understood, neither principle justifies disarming Mr. Doe. This Court should reject the Attorney General's improper extrapolation of a sweeping regulatory power.

1. The Second Amendment requires a credible and specific threat of violence to disarm an individual who has violated the law.

Our tradition does not grant legislatures "plenary power" to disarm all individuals who have ever violated any law. Pet. Br. 43. Under the Attorney General's novel theory, not even conviction is required to permanently deprive individuals of their Second Amendment rights. *See id.* This position contravenes *Rahimi*. There, this Court recognized a narrow tradition, permitting temporary disarmament after a specific finding of "a credible threat to the physical safety of another." *Rahimi*, 144 S. Ct. at 1903. Mr. Doe, who committed a nonviolent misdemeanor,[4] does not pose a specific threat of violence.

There is no historical tradition of disarming individuals who have committed nonviolent offenses. Violating the law is not an invention of modern times. Yet, even with respect to felons, "thus far, scholars have not been able to identify any such laws" permanently disarming them. *Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J.,

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[4] 8 U.S.C. § 1325(a) makes "improper entry" into the United States a misdemeanor. The Attorney General also accuses Mr. Doe of unwittingly violating § 922(g)(5)(A)—the very law this action challenges—and "selling an unregistered firearm" in violation of 18 U.S.C. § 922(d)(5)(A). Pet. Br. 44. But § 922(d)(5)(A) criminalizes the sale of firearms to select persons. There is no evidence that the friend to whom Mr. Doe sold his prior firearm fell into a prohibited category. In any case, these hypothetical violations do not demonstrate that Mr. Doe poses any threat of violence.

dissenting). Every law the Attorney General cites either falls into the specific regulatory tradition this Court identified in *Rahimi* or is altogether irrelevant to the question at hand.

English history. English common law embraced a tradition "codified" by the Statute of Northampton punishing individuals for "bearing arms to terrorize the people." *Bruen*, 597 U.S. at 47. The Attorney General broadly characterizes the Statute as permitting the permanent disarmament of all "individuals who committed statutory misdemeanors." Pet. Br. 41. However, the Statute punished individuals exclusively for "misusing weapons to harm or menace others." *Rahimi*, 144 S. Ct. at 1899. And rather than permanently disarm these individuals, the Statute provided only for forfeiture of the arms involved and possibly temporary imprisonment. 2 Edw. 3 c. 3 (1328).

Discussing the Statute of Northampton and its progeny, this Court in *Rahimi* said that "fighting and going armed" proved disruptive to "the public order and led almost necessarily to actual violence." *Rahimi*, 144 S. Ct. at 1901 (cleaned up). But contrary to the Attorney General's suggestion, *see* Pet. Br. 40, this Court never implied *all* types of lawbreaking "le[d] almost necessarily to actual violence." *Rahimi*, 144 S. Ct. at 1901. Further, the Attorney General's reliance upon a single example of disarming those involved in a deadly mob in 1780 London does not suggest broader authority. *See* Malcolm, *To Keep and Bear*

Arms at 130–32. Even then, the legality of this disarmament was heavily debated in Parliament. *Id.*

Colonial. Every colony had "laws requiring all able-bodied males to acquire and possess the arms required for militia duty," with no exemption for lawbreakers. Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 Drexel L. Rev. 1, 71 (2024) [hereinafter *Disarming the Dangerous*]. Thus, not only were lawbreakers generally permitted to own arms, they had a duty to do so. *Id.* The colonies temporarily disarmed a limited category of individuals subject to judicial process. *See* Pet. Br. 41. For example, Massachusetts "codified the existing common-law offense of bearing arms to terrorize the people," permitting forfeiture and temporary imprisonment only following "confession of the party or other legal conviction." *Bruen*, 597 U.S. at 47; 1692 Mass. Acts and Laws, ch. 18, § 6. New Hampshire and Virginia adopted similar statutes prohibiting "going armed" with procedural requirements and limitations on punishment. *See* 1759 Temp. Acts and Laws of N.H. 1–2; 1786 Va. Acts 33, ch. 21. Even the North Carolina statute, an outdated relic of England's game laws cited by the Attorney General, required conviction prior to penalty. *See* 1768 N.C. Laws 775, ch. 13.

Criminal forfeiture laws, *see* Pet. Br. 42, are altogether irrelevant. Forfeiture of property is not permanent disarmament; the individual

can subsequently buy a new gun. As the Third Circuit noted, a firearm can be forfeited "without affecting the perpetrator's right to keep and bear arms generally." *Range v. Att'y Gen.*, 69 F.4th 96, 105 (3d Cir. 2023), *cert. granted, judgment vacated sub nom. Garland v. Range*, 144 S. Ct. 2706 (2024). Moreover, many colonies exempted firearms from forfeiture laws. *Disarming the Dangerous* at 71. No colonial law imposed permanent disarmament on individuals who violated the law.

Pre-ratification. The rejected proposals from the state ratification conventions, *see* Pet. Br. 42, are not germane. Importantly, "none of the relevant limiting language made its way into the Second Amendment." *Kanter*, 919 F.3d at 455 (Barrett, J., dissenting). Neither the Massachusetts proposal nor the Pennsylvania proposal "even carried a majority of its own convention." *Id.* Even New Hampshire's proposal, which carried a majority of its own delegates, *id.*, authorized disarmament only for those who "are or have been in actual rebellion." 1 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 326 (2d ed. 1891).

Even if the rejected proposals cited by the Attorney General warranted consideration, they would not illustrate "the plenary power of the state to disarm all lawbreakers." Pet. Br. 43. First, the Massachusetts proposal limited the right to those who are "peaceable." 2 Bernard Schwartz, *The Bill of Rights: A Documentary History* 681

(1971). Peaceable did not relate to lawbreaking. It was defined as "free from war; free from tumult"; "quiet; undisturbed"; "not violent; not bloody"; "not quarrelsome; not turbulent." 1 Samuel Johnson, *A Dictionary of the English Language* (5th ed. 1773) (cleaned up). Second, the Pennsylvania proposal stated that "no law shall be passed for disarming the people or any of them unless for crimes committed, or real danger of public injury from individuals." Schwartz, *supra*, at 665. But "the only discussion of what conduct the proposal covered noted that it would apply to insurrectionists." *Disarming the Dangerous* at 75. With the exception of the Attorney General, no one has ever read this language to encompass all crimes, regardless of severity. *See Kanter*, 919 F.3d at 456 (Barrett, J., dissenting).

Post-ratification. Laws from more than half a century after the ratification of the Bill of Rights do not salvage the Attorney General's case. *See* Pet. Br. 43–44. The Massachusetts and Maine laws cited did not disarm lawbreakers; they merely excluded "persons convicted of any infamous crime" from their militias. *See* 1837 Mass. Acts and Resolves 273, § 1; 1839 Me. Laws 421, § 5. Even assuming one law from 1881 bears on original public meaning, the New York law cited disarmed only those "who had been adjudged an habitual criminal." 1881 N.Y. Laws 126–27, § 512.

Overall, the historical evidence does not support the Attorney General's sweeping and radical argument. The record displays a narrow tradition: one of temporary disarmament upon conviction of a violent crime. Mr. Doe does not meet that criteria. In an effort to flee political violence, Mr. Doe committed a misdemeanor by unlawfully entering the United States. *See* 8 U.S.C. § 1325(a). But Mr. Doe is worlds apart from those individuals disarmed at the Founding for terrorizing others.

In the absence of historical tradition, the Attorney General appeals to "public safety." Pet. Br. 44. This is an invitation for this Court to return to means-end scrutiny. Under his view, Section 922(g)(5)(A) reflects a "rational judgment" of Congress. *Id.* at 45. But post-*Bruen*, the question is not whether Congress has made a "rational judgment." *Id.* Rather, it is whether the regulation is "consistent with the Nation's historical tradition." *Bruen*, 597 U.S. at 24. None of the reasons provided by the Attorney General, for example "promoting registration,"[5] Pet. Br. 46, resemble the principles underpinning our historical tradition.

Contrary to the Attorney General's argument, the legislature does not possess the expansive power to "disarm all lawbreakers,"

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[5] Contrary to the Attorney General's implication, there is no "federal database to register" a conventional firearm. *See* Pet. Br. 46; National Firearms Act Handbook, Bureau of Alcohol, Tobacco, Firearms, and Explosives (2009).

including those not convicted, "no matter how violent or serious their crimes." Pet. Br. 40, 43. This Court rejected a near-identical argument in *Rahimi*, where it made clear that *Heller*'s reference to "responsible citizens" does not permit the government to disarm those deemed irresponsible. *Rahimi*, 144 S. Ct. at 1903. Likewise, *Heller*'s reference to "law-abiding citizens" does not limit the scope of the right. In light of the Second Amendment's hostility to class-based disarmament, the lack of historical support for the Attorney General's position is unsurprising. An estimated 70 percent of adult Americans have "committed an imprisonable offense at some point in their lives." Douglas Husak, *Overcriminalization* 24 (2009). The Attorney General's novel theory would tolerate the permanent disarmament of most Americans and render the Second Amendment meaningless.

2. The Second Amendment permits disarming a group only during active rebellion and war.

In times of war and rebellion, our regulatory tradition allows for the temporary disarmament of a narrow class: active rebels and suspected enemy combatants. *See, e.g.*, 1786 Mass. Acts and Laws, ch. 56 (temporarily disarming those involved in Shay's Rebellion). The Attorney General extrapolates this tradition to permit the broad disarmament of all those who lack undivided allegiance. *See* Pet. Br. 47.

A faithful reading of our history rejects both this extrapolation and its application to Mr. Doe.

English history. The English Crown disarmed rebel groups as part of a wholesale stripping of rights. During the Glyndŵr Rebellion, England denied an array of rights to Welshmen, including the right to bear arms in select English counties. 2 Henry 4 c. 12 (1400–01); 4 Henry 5 c. 39 (1402). Similarly, the Scots were disarmed by England during periodic civil wars to prevent "rebellion or insurrection." 1 Geo. 1 Stat. 2 c. 54 (1715). Even as part of a wholesale stripping of rights, the law provided an exception for self-defense. *Id.* Assuming arguendo laws disarming Catholics remain part of our tradition, they too sought to "preclude armed insurrections" and contained a near-identical exception for self-defense. Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 259 (2020) [hereinafter *Historical Justification*].

Colonial Era. During the colonial period, the arms trade with Native American Tribes was heavily restricted. However, these laws do not support the Attorney General's argument. Tribes were treated as hostile foreign nations, with these laws aiding colonial expropriation of their land and preventing "Native American attacks." Joseph Blocher & Caitlan Carberry, *Historical Gun Laws Targeting "Dangerous" Groups and Outsiders*, 136–37 (2023). Near-universally, these laws regulated

the conduct of colonists, not the Native Americans. *See e.g.*, 1763 Pa. Laws 306–07 (forbidding unlicensed sale and exchange of arms "with any Indian or Indians whatsoever"); 1631 Va. Acts 173, Act 46 (similar); 1676 Records of the Colony of New Plymouth 178 (similar).

To the extent colonial era laws disarming Catholics remain relevant, they were enacted against the backdrop of the French and Indian War, "perceived by many in the United Kingdom as a war between Protestantism and Catholicism." *Historical Justification* at 263. These laws were faith-based, not allegiance-based as the Attorney General argues. Pet. Br. 49–50. To regain arms, Catholics were required to reject the authority of the Pope, swearing instead that this core tenet of their faith was an "impious and heretical . . . dammable doctrine." 1 Geo 1 c. 13 (1714). *But see* Churchill, *supra*, at 157 (erroneously arguing that the rejection of papal authority was not faith-based).

Pre-ratification. During the Revolutionary War, the fledgling state governments heavily restricted the rights of Loyalists. These laws, *inter alia*, suspended habeas corpus, disarmed and disfranchised Loyalists, limited their political speech, and fined and confiscated their property. *See, e.g.*, 1775–76 Mass. Acts and Resolves, ch. 21; 1777 N.J. Laws 90, ch. 40, § 20; 1778 S.C. Acts 31; 1777 Penn. Statutes at Large, ch. 756; Act of May 5, 1777, ch. 3, in Henning's Laws of Va. 281-82. Additionally, the disarmament of Loyalists was partly motivated by a

need to arm state militias, with the state providing Loyalists compensation for the seized arms. *See, e.g.*, 4 Journals of the Continental Congress 205 (Worthington Chauncey Ford ed., 1906).

Moreover, there is reason to hesitate before embracing these laws as part of our historical tradition. They were temporary measures, passed in "the darkest days of an existential domestic war." C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J. L. & Pub. Pol'y 695, 725 (2009). The laws were undoubtedly violations of numerous rights, punishing Loyalists as "traitor[s] in thought, but not in deed." Thomas Jefferson, *Notes on the State of Virginia* 165 (1783). Also, most anti-Loyalist laws were bills of attainder. Brett Palfreyman, *The Loyalists and the Federal Constitution: The Origins of the Bill of Attainder Clause*, J. Early Republic 451, 452–53 (2015). Post-Revolution, bills of attainder were so reviled that they were expressly prohibited by the Constitution. *See* U.S. Const. art. 1, § 9 cl. 3. In any case, laws disarming Loyalists were repealed before the adoption of the Bill of Rights. Marshall, *supra*, at 725. What is permissible in war is not always constitutional in peace.

Post-ratification. From the adoption of the Second Amendment to the conclusion of the Civil War, there were no laws imposing class-wide disarmament outside of shameful race-based legislation. *See* Marshall, *supra*, 726–27. Even the constitutionally suspect Alien Act

specified that deported noncitizens who were judged "dangerous to the peace and safety" could take with them all "goods, chattels, or other property," including firearms. An Act concerning aliens of June 25, 1798, § 1, § 5. Further, "alien enemies," immigrants from hostile nations, retained their "goods and effects" unless they were specifically charged with a crime. An Act respecting alien enemies of July 6, 1798, § 1.

Following the reentry of the Southern states to the Union, Congress refused to disarm former Confederates out of a concern that such a disarmament would violate the Second Amendment. *Marshall*, *supra*, at 727. The Attorney General, arguing otherwise, cites only a temporary order under martial law disarming those who had "borne arms against the United States." *See* General Order No. 1, § 16, in Edward McPherson, A Handbook of Politics for 1868, at 36, 36–37 (1868); Proclamation No. 157, August 20, 1866.

The Attorney General goes on to cite laws from the early twentieth century. Pet. Br. 52–53. If these late laws can even be considered probative of original public meaning, they support tailored regulations, not a permanent, class-wide ban. *See* 1909 Pa. Laws 466 § 1 (prohibiting hunting by noncitizens "excepting in defense of person or property" and the possession of hunting-related firearms); 1915 N.J. Laws 662–63 (same); 1923 N.Y. Laws 140–141, § 512 (same); 1923 Conn. Pub. Acts 3732 (same); 1922 Mass. Acts 563, § 8 (requiring noncitizens

to obtain licenses); 1931 Cal. Stat. 2316–17 (prohibiting noncitizens from possessing firearms of concealable size).

Read faithfully, our regulatory tradition may tolerate the disarmament of traitors in times of war. But it certainly does not tolerate peacetime disarmament merely because Congress believes a class to lack undivided allegiance. *See* Pet. Br. 47. The Attorney General claims allegiance is necessary for an effective citizen militia. *Id.* Such a framing returns to pre-*Heller* jurisprudence. As *Heller* emphasized, the Second Amendment is an individual right, not merely a right in relation to an "organized militia." 554 U.S. at 580–81.

Further, the Founders' notion of allegiance was entirely distinct from the notion the Attorney General advances. As Blackstone explained, an individual bears allegiance to a sovereign so long as they choose to continue within the sovereign's "dominion and protection." 2 Blackstone's Commentaries 370. In this context, the Founders would have understood Mr. Doe to bear full allegiance to the United States.

Ultimately, the Attorney General's second historical argument is as radical as his first. He proposes that so long as Congress provides "formal procedures to swear allegiance," it may disarm any class. Pet. Br. 54. But this is simply a reiteration of his citizens-only theory, requiring naturalization prior to exercising a fundamental right. The burden imposed by naturalization is substantially heavier than the

burden imposed by loyalty oaths; a loyalty oath was merely a sworn oath. Congress does not have plenary authority to erect procedural roadblocks to the exercise of a constitutional right. Its unchecked power over immigration is limited only to the exclusion of individuals at the border and the restriction of federal public benefits. *See Kleindienst v. Mandel*, 408 U.S. 753, 765–66 (1972); *Fiallo*, 430 U.S. at 792–95 nn. 5–6; *Mathews v. Diaz*, 426 U.S. 67, 82 (1976).

D. Disarming Mr. Doe, absent a consideration of his individual circumstance, is inconsistent with our regulatory tradition.

Assuming arguendo that the Attorney General correctly identified two principles permitting class-wide disarmament, and that Mr. Doe falls within those classes, Section 922(g)(5)(A) remains unconstitutional. The burden imposed by the statute—permanent disarmament absent consideration of individual necessity—far exceeds the burden imposed by any laws in our tradition.

This country's tradition respects an individual's "natural right of resistance and self-preservation." *Heller*, 554 U.S. at 594 (quoting 1 Blackstone's Commentaries 139). Even restrictive English laws permitted disfavored groups to retain arms judged "necessary . . . for the defence of his House or person." 1 W. & M. c. 15 (1689). The Attorney General states that "courts cannot consider individualized circumstances" when assessing historical principles. Pet. Br. 38. But the

need for individualized consideration is itself a core principle of our regulatory tradition. Mr. Doe, a peaceful community member, seeks to purchase a firearm lawfully to defend his children and home. Section 922(g)(5)(A), a blanket prohibition, imposes on Mr. Doe an ahistorical burden.

Further, the Attorney General's position operates to foreclose as-applied challenges, which require consideration of individual circumstances. In *Rahimi*, this Court held Section 922(g)(8) constitutional as applied to the specific facts. 144 S. Ct. at 1898. This "necessarily [left] open the question whether the statute might be unconstitutional as applied in 'particular circumstances.'" *Id.* at 1909 (Gorsuch, J., concurring) (quoting *United States v. Salerno*, 481 U.S. 739, 751 (1987)).[6]

Individualized consideration is necessary, not "nonsensical." Pet. Br. 39. As-applied challenges are a pillar of this Court's jurisprudence

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[6] Four of the five circuits cited by the Attorney General to support the rejection of individualized consideration rely on outdated jurisprudence. *See* Pet. Br. 38–39; *In re United States*, 578 F.3d 1195, 1199–1200 (10th Cir. 2009) (relying on *Heller* dicta); *Medina v. Whitaker*, 913 F.3d 152, 159 (D.C. Cir. 2019) (same); *United States v. Skoien*, 614 F.3d 638, 641–62 (7th Cir. 2010) (conducting means-ends scrutiny); *United States v. Torres-Rosario*, 658 F.3d 110, 112–13 (1st Cir. 2011) (same). Further, the cited First Circuit case explicitly acknowledges the possibility of individual exceptions to a broader ban. *See Torres-Rosario*, 658 F.3d at 113.

and entertaining them would not "unleash widespread uncertainty." *Id.* For instance, the Third Circuit permitted as-applied challenges to Section 922(g) as part of its pre-*Bruen* jurisprudence. *United States v. Jackson*, 85 F.4th 468, 478–79 (8th Cir. 2023) (Stras, J., dissenting from denial of rehearing en banc). District courts entertaining such challenges had "no trouble handling the task." *Id.* at 479.

The Attorney General has the heavy burden of proving that the permanent disarmament of Mr. Doe is consistent with our regulatory tradition. He has not met this burden. The Second Amendment's guarantee is not conditioned on the Attorney General's notion of "common sense." Pet. Br. 55. Rather than embrace a sweeping and unchecked vision of governmental power, this Court should preserve Mr. Doe's right to armed self-defense.

CONCLUSION

This Court should affirm the judgment of the court of appeals.

October 28, 2024 Respectfully submitted,

The Honorable Judge Constance Baker Motley Memorial Team

/s/ Elle Buellesbach
/s/ Vaishalee Chaudhary
/s/ Andrew Cogut
/s/ Alex Fredman
/s/ Sophia Kwende
/s/ Alexandra ("Mac") Taylor

APPENDIX

U.S. Cons. amend. II

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.

18 U.S.C. § 922(g)(5)(A)

It shall be unlawful for any person—
(. . .)
(5) who, being an alien—
(A) is illegally or unlawfully in the United States;
(. . .)
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.

18 U.S.C. § 922(d)(5)(A)

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person, including as a juvenile—
(. . .)
(5) who, being an alien—
(A) is illegally or unlawfully in the United States;
(. . .)

8 U.S.C. § 1325(a)

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

An Act concerning aliens of June 25, 1798, § 1, § 5

SECTION 1. Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the President of the United States at any time during the continuance of this act, to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time as shall be expressed in such order, which order shall be served on such alien by delivering him a copy thereof, or leaving the same at his usual abode, and returned to the office of the Secretary of State, by the marshal or other person to whom the same shall be directed. And in case any alien, so ordered to depart, shall be found at large within the United States after the time limited in such order for his departure, and not having obtained a license from the President to reside therein, or having obtained such license shall not have conformed thereto, every such alien shall, on conviction thereof, be imprisoned for a term not exceeding three years, and shall never after be admitted to become a citizen of the United States. Provided always, and be it further enacted, that if any alien so ordered to depart shall prove to the satisfaction of the President, by evidence to be taken before such person or persons as the President shall direct, who are for that purpose hereby authorized to administer oaths, that no injury or danger to the United States will arise from suffering such alien to reside therein, the President may grant a license to such alien to remain within the United States for such time as he shall judge proper, and at such place as he may designate. And the President may also require of such alien to enter into a bond to the United States, in such penal sum as he may direct, with one or more sufficient sureties to the satisfaction of the per- son authorized by the President to take the same, conditioned for the good behavior of such alien during his residence in the United States, and not violating his license, which license the President may revoke, whenever he shall think proper.

(. . .)

SEC. 5. And be it further enacted, That it shall be lawful for any alien who may be ordered to be removed from the United States, by virtue of this act, to take with him such part of his goods, chattels, or other property, as he may find convenient; and all property left in the United States by any alien, who may be removed, as aforesaid, shall be, and re-

main subject to his order and disposal, in the same manner as if this act had not been passed.

An Act respecting alien enemies of July 6, 1798, § 1

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety: Provided, that aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall not be chargeable with actual hostility, or other crime against the public safety, shall be allowed, for the recovery, disposal, and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, where any shall have been between the United States, and the hostile nation or government, of which they shall be natives, citizens, denizens or subjects: and where no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

2 Henry 4 ch. 12 (1400–01)

It is ordained and established that from henceforth no Welshman wholly born in Wales, and having father and mother born in Wales, shall

purchase lands and tenements within the Towns of Chester, Salop, Bridgenorth, Ludlow, Leominster, Hereford, Gloucester, Worcester, nor other Merchant towns joining to the Marches of Wales, nor in the suburbs of the same upon pain of forfeiture of the same lands and tenements to the Lords of whom such lands or tenements be holden in chief. And also that no such Welshman be from henceforth chosen or received to be citizen or burgess in any City Borough or Merchant Town; and that such Welshmen which now be in any such said City Borough or Franchise Town, being citizens or burgesses, shall find sufficient surety and put a good caution of their good bearing as well towards our Sovereign Lord the King and his Heirs of his Realm of England as for to hold their loyalty to the governance of such Cities Boroughs or towns for the time being in salvation of the same cities Boroughs or towns if the same Welshmen will dwell therein: So that none of them from henceforth be received or accepted to no Office of Mayor, Bailiff, Chamberlain, Constable, or Warden of the ports or of the Gaol, nor to the Common Council of such cities boroughs or towns, nor that he be in no wise made other Occupier or Officer in the same; nor that none of the said Welshmen from henceforth bear any manner armour within such City Borough or Merchant Town, upon pain of forfeiture of the same armour and imprisonment until they have made fine in his behalf.

4 Henry 5 ch. 39 (1402)

"It is ordained and established that from henceforth no Welshman be armed, nor bear defencible armour to Merchant Towns, Churches, nor Congregations in the same, nor in the highways, in a fray of the Peace, or of the King's liege people, upon pain of imprisonment, and to make fine and ransom at the King's Will; except those which be lawful liege people to our Sovereign Lord the King."

The Statute of Northampton, 2 Edw. 3 c. 3 (1328)

Item, it is enacted, that no man great nor small, of what condition soever he be, except the king's servants in his presence, and his ministers in executing of the king's precepts, or of their office, and such as be in their company assisting them, and also [upon a cry made for arms to keep the peace, and the same in such places where such acts happen,] be so hardy to come before the King's justices, or other of the King's ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere, upon pain to forfeit their armour to the King, and their bodies to prison

at the King's pleasure. And that the King's justices in their presence, sheriffs, and other ministers in their bailiwicks, lords of franchises, and their bailiffs in the same, and mayors and bailiffs of cities and boroughs, within the same cities and boroughs, and borough-holders, constables, and wardens of the peace within their wards, shall have power to execute this act. And that the justices assigned, at their coming down into the country, shall have power to enquire how such officers and lords have exercised their offices in this case, and to punish them whom they find that have not done that which pertained to their office.

The Militia Act of 1662, 14 Car. 2 c. 3, § 13 (1662)

(. . .) And for the better securing the Peace of the Kingdome be it further enabled and ordained and the respective Leiutenants or any twoe or more of theire Deputies are hereby enabled & authorized from time to time by Warrant under theire Hands and Seales to employ such Person or Persons as they shall thinke fitt (of which a Commissioned Officer and the Constable or his Deputy or the Tythingman or in the absence of the Constable and his Deputy and Tythingman some other Person bearing Office within the Parish where the Search shall be shall be two) to search for and seize all Armes in the custody or possession of any person or persons whom the said Leiutenants or any two or more of theire Deputies shall judge dangerous to the Peace of the Kingdome and to secure such Armes for the service aforesaid and thereof from time to time to give Accounts to the said respective Leiutenants and in theire absence as aforesaid or otherwise by theire directions to theire Deputies or any two or more of them. [Provided that no such Search be made in any house or houses between Sun setting and Sun rising other then in Cities and theire Suburbs and Townes Corporate Market Townes and houses within the bills of Mortality where it shall and may be lawful to search in the night time by Warrant as aforesaid if the Warrant shall so direct and in case of resistance to enter by force And that no dwelling house of any Peere of this Realme be searched by vertue of this Act but by immediate Warrant from His Majesty under His Sign Manual or in the presence of the Leiutenant or one of the Deputy Leiutenants of the same County or Riding And that in all places and houses whatsoever where search is to be made as aforesaid it shall and may be lawfull in case of resistance to enter by force And that the Armes so seised may bee restored to the Owners againe if the said Leiutenants or in theire absence as aforesaid theire Deputies or any two or more of them shall so thinke fitt.]"

1 W. & M. c. 15 (1688)

"For the better securing of the Government against Papists and reputed Papists bee it enacted by the King and Queens most excellent Majestyes by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parlyament assembled and by authority of the same That it shall and may be lawful for any two or more Justices of the Peace who shall know or suspect any person to be a Papist or shall be informed that any person is or is suspected to be a Papist to tender and they are hereby authorized and required forthwith to tender to such person soe knowne or suspected to be a Papist the Declaration sett downe and expressed in an Act of Parlyament made in the thirtyeth yeare of the Raigne of the late King Charles the Second Intituled An Act for the more effectual Preserving the Kings Person and Government by disabling Papists from sitting in either House of Parlyament to be by him made repeated and subscribed And if such person soe required shall refuse to make repeate and subscribe the said Declaration or shall not make repeate and subscribe the said Declaration or shall refuse or forbeare to appeare before the said Justices for the makeing repeating and subscribing the said Declaration upon notice to him given or left at his usual place of abode by any person authorized in that behalfe by Warrant under the Hands and Seales of the said two Justices such person from thenceforth shall be taken to be and is hereby declared to be lyable and subject to all and every the Penalties Forfeitures and Disabilities hereafter in this Act mentioned... III And for the better securing their Majestyes Persons and Government Bee it further enacted and declared That noe Papist or reputed Papist soe refuseing or makeing default as aforesaid shall or may have or keepe in his House or elsewhere or in the Possession of any other person to his use or at his disposition any Arms Weapons Gunpowder or Ammunition (other then such necessary Weapons as shall be allowed to him by Order of the Justices of the Peace at their General Quarter Sessions for the defence of his House or person)."

The Highland Services Act, 1 Geo. 1 Stat. 2 c. 54 (1715)

(. . .) That from and after the first day of November in the year of our Lord one thousand seven hundred and sixteen, it shall not be lawful for any person or persons within the shires of Dunbartain on the north side of the water of Leven, Sterling on the north side of the river of Forth, Perth, Kincardin, Aberdeeen, Inverness, Nairn, Cromarty, Argyle, Forfar, Bamff, Sutherlan, Caithness, Elgine, and Ross, to have in his or their custody, use or bear broad sword, or target, poynard, whingar, or

durk, side-pistol or side-pistols, or gun, or any other warlike weapons, in the fields, or in the way, coming or going to, from, or at any church, market, fair, burials, huntings, meetings, or any other occasion whatsoever, within the bounds aforesaid, or come into the Low-Countries armed, as aforesaid: and in case any of the said person or persons above described, shall have in his custody, use or bear arms, otherwise than in this act directed, every such person or persons so offending, being thereof lawfully convicted before one or more justices of the peace, or before any other judge competent of the place summarily, shall, for the first offense, forfeit all such arms, and be liable to a fine, not exceeding the sum of forty pounds sterling, and not under the sum of five pounds sterling, and to be imprisoned till payment of the said fine;

1631 Va. Acts 173, Act 46

ALL trade with the Savages prohibited, as well publique as private.

1676 Records of the Colony of New Plymouth 178

Forasmuch as by frequent and sad experience it is found, that selling etc., of arms and ammunition to the Indians is very poisonous and destructive to the English, it is therefore ordered, decreed, and enacted by the council of war for this jurisdiction, that whosoever shall be found to sell, barter, or give, directly or indirectly, any gun or guns, or ammunition of any kind to any Indian or Indians, and the same legally proved against them, every such person or persons shall be put to death, and in defect of full and legal proof there, the printed law to take place.

1692 Mass. Acts and Laws, ch. 18, § 6

That every justice of the peace in the county where the offence is committed, may cause to be staid and arrested all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride, or go armed offensively before any of their majesties' justices or other their officers or ministers doing their office or elsewhere by night or by day, in fear or affray of their majesties' liege people, and such others as shall utter any menaces or threatening speeches; and upon view of such justice or justices, confession of the party or other legal conviction of any such offence, shall commit the offender to prison until he find sureties for the peace and good behaviour, and seize and take away his armour or weapons, and shall cause them to be apprized and answered to the king as forfeited ; xand may further punish the breach of the peace in ; any

person that shall smite or strike another, by fine to the king not exceeding twenty shillings, and require bond with sureties for the peace, or'bind the offender over to answer it at the next sessions of the peace, as the nature or circumstance of the offence may be; and may : make enquiry of forcible entry and detainer, and cause the same to be ; removed, and make out hue and crys after runaway servants, thiefs and other criminals.

1759 Temp. Acts and Laws of N.H. 1–2

"And every justice of the peace within this province, may cause to be stayed and arrested, all affrayers, rioters, disturbers or breakers of the peace, or any other who shall go armed offensively, or put his Majesty's subjects in fear, by menaces or threatening speeches : And upon view of such justice, confession of the offender, or legal proof of any such offence, the justice may commit the offender to prison, until he or she find such sureties for the peace and good behaviour, as is required, according to the aggravations of the offence ; and cause the arms or weapons so used by the offender, to be taken away, which shall be forfeited and sold for his Majesty's use. And may also punish the breach of the peace in any person, who shall smite, or strike another, by fine to the King, not exceeding twenty shillings ; and require bond with sureties for the peace, till the next court of general sessions of the peace, or may bind the offender over to answer for said offence at said court, as the nature and circumstances of the offence may require."

1763 Pa. Laws 306–07

If any person or persons whatsoever shall directly or indirectly give to, sell barter or exchange with any Indian or Indians whatsoever any guns, gunpowder, shot, bullets, lead or other warlike stores without license... every such person or persons so offending, being thereof legally convicted... shall forfeit and pay the sum of five hundred pounds... and shall furthermore be whipt with thirty-nine lashes on his bare back, well laid on, and be committed to the common gaol of the county, there to remain twelve months without bail or mainprise.

1768 N.C. Laws 775–76, ch. 13, § 1

Whereas by the before recited Act, Persons who have no settled Habitation or not tending Five Thousand Corn Hills, are prohibited from Hunting, under the Penalty of Five Pounds, and Forfeiting of his Gun; which by Experience, has been found not to answer the Purposes

intended by said Act; many Disorderly and Dissolute Persons, having no Habitation of their Own, still continue to hunt on the King's Waste, and the Lands of other Persons, and kill Deer, and leave the Carcasses in the Woods; by which Means the Wolves, Bears, and other Vermin, are fed and raised; to the great Damages of many of the Inhabitants of this Province; and the Fines being difficult of Recovery, by Means of Persons, having no property of their Own, assembling in great Numbers, and camping in the Woods, and kill Deer, burn and destroy the Range, burn Fences and commit many other Injuries to the Inhabitants of this Province; and associate for the Mutual Protection and Defence of each other, against any Person or Persons who shall attempt to execute any Precept on any of them; For Remedy whereof;

1775–76 Mass. Acts and Resolves, ch. 21

(. . .) That every male person above sixteen years of age, resident in any town or place in this colony, who shall neglect or refuse to subscribe a printed or written declaration, of the form and tenor hereinafter prescribed, upon being required thereto by the committee of correspondence, inspection and safety, for the town or place in which he dwells, or any one of them, shall be disarmed, and have taken from him, in manner hereafter directed, all such arms, ammunition and warlike implements, as, by the strictest search, can be found in his possession or belonging to him: which declaration shall be in . the form and words following ; (. . .)

[Sect. 2.] That the committee of correspondence, inspection aud safety, in each and every town and place in this colony, or some one member of such committee, shall, without delay, tender the said declaration to every male person in their respective town and places, above the age of sixteen years, requiring them severally to subscribe the same, with his name or sign, in his or their presence ; aud if any one shall refuse or neglect so to do for the space of twenty-four hours after such tender is made, the said committee, or some one of them, shall forthwith give information of such refusal or neglect to some justice of the peace for the county in which such delinquent dwells: and the justice to whom such information is given shall forthwith make his warrant, directed to the sher[r]iff of the same county, or his deputy, or one of the constables of the town in which such supposed delinquent hath his usual place of abode, or any indifferent person, by name, requiring him forthwith to take the body of such delinquent and him bring before the said justice, to answer, to such information, and to shew cause, if any he hath, why he should not be disarmed, aud have taken from him all his arms,

ammunition and warlike implements ; and in case it shall be made to appear to the said justice that the said information is true, and he should not shew any sufficient cause why he should not forthwith be disarmed, &c, then the said justice shall make his warrant, directed to some proper person,-requiring him, without delay, to disarm the said delinquent, and take from him all his arms, ammunition and warlike implements ; and in case such delinquent shall refuse to resign and give up all his arms, ammunition and warlike implements, the person to whom the said warrant is directed shall have power, after demanding admission, to enter the dwelling-house, or any other place belonging to the delinquent, where he may have reason to suspect such arms are concealed, and make strict and diligent search for the articles aforesaid ; and in case he shall find any of the said articles, he shall take them, and immediately carry and deliver them to the justice who made the said warrant; which justice is hereby required to receive them and to appoint some indifferent aud judicious person or persons to appraise the same ; and the said justice shall keep a true account of all such arms, ammunition and accoutrements, the person or persons they were taken from, and the sum or sums they were appraised at, aud shall return a true account thereof into the secretary's office, as soon as may be, and shall keep the said arms, &c, safely to be disposed of aud paid for as the general court shall order ; and if the person to whom the warrant is directed shall meet with resistance, or shall have reason to apprehend that he shall meet with resistance, in the execution of the said warrant, then he shall give information thereof to the justice of the peace who issued the said warrant, who, if he shall judge it needful for carrying such warrant \nto execution, shall go in person to some military officer in the same county and require him immediately to raise such a number of the militia as the said justice shall judge necessary, and the said justice shall proceed in person, with the said militia and the person to whom the said warrant is directed, and in the most prudent way he can, cause the delinquent to be disarmed, and all the articles aforesaid to be taken from him, and appraised and retained in manner as is above directed. [Sect. 3.] And in case it shall be made to appear to any justice of the peace that there is reason to suppose that any of the arms, ammunition, or warlike implements, belonging to any person who shall refuse or delay, as abovesaid, to subscribe the said declaration, are concealed in any dwelling-house or other place not belonging to such delinquent, such justice shall have power and is hereby directed to make his warrant to some proper person, requiring him to make diligent search in such suspected place or places, to be particularly described or mentioned in such warrant, for the articles aforesaid; and in case they shall be found, such proceedings shall be thereupon had, touching the same, as is above

prescribed when they are in the actual possession of the delinquent, aforesaid; and in case of resistance or opposition made to the execution of such warrant, the like proceedings shall thereupon be had as are above directed when resistance is made to the searching for or taking such articles when in the actual possession of such delinquent: and all officers and soldiers of the militia are hereby directed to obey and observe such direction as shall be given by such justice of the peace in the premis[s]es

(. . .)

Act of May 5, 1777, ch. 3, in Henning's Laws of Va. 281-82

An act to oblige the free male inhabitants of this state above a certain age to give assurance of Allegiance to the same, and for other purposes. WHEREAS allegiance and protection are reciprocal, and those who will not bear the former are not entitled to the benefits of the later, Therefore Be it enacted by the General Assembly, that all free born male inhabitants of this state, above the age of sixteen years, except imported servants during the time of their service, shall, on or before the tenth day of October next, take and subscribe the following oath or affirmation before some one of the justices of the peace of the county, city, or borough, where they shall respectively inhabit; and the said justice shall give a certificate thereof to every such person, and the said oath or affirmation shall be as followeth, viz . . . And the justices tendering such oath or affirmation are hereby directed to deliver a list of the names of such recusants to the county lieutenant, or chief commanding officer of the militia, who is hereby authorised and directed forthwith to cause such recusants to be disarmed . . . And be it farther enacted, That every person above the age before mentioned, except as before excepted, refusing or neglected to take and subscribe the oath or affirmation aforesaid, shall, during the time of such neglect or refusal, be incapable to holding any office in this state, serving on juries, suing for any debts, electing or being elected, or buying lands, tenements, or hereditaments.

1777 N.J. Laws 90, ch. 40, § 20

And be it Enacted by the Authority aforesaid, That the President and Council aforesaid be, and they hereby are empowered and directed to deprive and take from such Persons as they shall judge disaffected and dangerous to the present Government, all the Arms, Accoutrements and Ammunition which they own or possess; and the said President and Council are hereby authorized to pay for such Arms, Accoutrements and

Ammunition, or any of them, such Sum as shall be ascertained by two or more Appraisers under Oath, which said Arms, Accoutrements and Ammunition shall be delivered, for the Use of the State, to the Commanding Officer of the Battalion in whose District such disaffected Person resides."

1777 Penn. Statutes at Large, ch.756

(. . .) Therefore, Be it enacted by the representatives of this freemen of Pennsylvania, in general assembly met, and by the authority of the same, That all male white inhabitants of this state, (except of the counties of Bedford, Northumberland and Westmoreland) above the age of eighteen years, shall, on or before the first day of July next, take and subscribe the following oath or affirmation before some one of the justices of the peace of the city or county where they shall respectively inhabit (. . .) Sect. 4. And be it further enacted by the authority aforesaid, That every person above the age aforesaid refusing or neglecting to take and subscribe the said oath or affirmation, shall during the time of such neglect or refusal, be incapable of holding any office or place of trust in this state, serving on juries, suing for any debts, electing or being elected, buying, selling or transferring any lands, tenements or hereditaments, and shall be disarmed by the lieutenant or sublieutenants of the city or countries respectively.

1778 S.C. Acts 31

An Act to oblige every free male inhabitant of the State, above a certain age, to give assurance of fidelity and allegiance to the same, and for other purposes therin mentioned. (. . .) [E]very such person so refusing shall be immediately disarmed: Provided always, That every person so disarmed shall nevertheless be obliged to attend all musters, but be exempted from fines for appearing thereat without arms, ammunitions, or accoutrements.

That all and every person and persons neglecting or refusing to take the Oath within the time prescribed by this act and remaining in the State for more than sixty days thereafter, shall thenceforth incapable of exercising any profession, trade, art or mystery in this State, or buying or selling or acquiring, or conveying any property whatever, and all property so bought or sold, acquired or conveyed, shall be forfeited and disposed of, one half to the informer and the other half to this State

1786 Mass. Acts and Resolves, ch. 56

(. . .) Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That no pardon or indemnity, shall be promised as aforesaid by the Governor, by virtue of any act or resolve of the General Court, that has been or shall be passed,to any person or persons, who have acted in the capacity of non-commissioned Officers or privates, or persons of any other description, who, since the first day of August, seventeen hundred and eighty six, have been, now are, or hereafter may be in arms against the authority and Government of this Commonwealth, or who have given or may hereafter give them counsel, aid, comfort or support, voluntarily, with intent to encourage the opposition to Government, unless they shall on or before such time as the Governor shall limit for that purpose, deliver up their arms to, and take and subscribe the oath of allegiance, before some Justice of the Peace, within some County of this Commonwealth ; and no pardon or indemnity shall be offered or given by the Governor to any of the Offenders aforesaid, who arc not Citizens of this State.

And be it further Enacted by the authority aforesaid, that to whomsoever of the Offenders aforesaid, the Governor shall think fit, by virtue of any Act or resolve of the General Court, to promise a pardon and indemnity, for the Offences aforesaid, it shall be under the following restrictions, conditions and disqualifications, that is to say, That they shall keep the peace for the term of three years, from the time of passing this Act, and that during that term of time, they shall not serve as Jurors, be eligible to any Town-Office, or any other Office under the Government of this Commonwealth, and shall be disqualified from holding or exercising the employments of School masters, Innkeepers or retailers of Spirituous liquors, or either of them, or giving their votes for the same term of time, for any Officer, civil or military, within this Commonwealth, unless such persons, or any of them, shall after the first day of May, seventeen hundred and eighty eight, exhibit plenary evidence of their having returned to their allegiance, and kept the peace, and that they possess an unequivocal attachment to the Government, as shall appear to the General Court a sufficient ground to discharge them, or any of them, from all or any part of the disqualifications aforesaid.

(. . .)

1786 Va. Acts 33, ch. 21

"Be it enacted by the General Assembly, that no man, great nor small, of what condition soever he be, except the Ministers of Justice in executing the precepts of the Courts of Justice, or in executing of their office, and such as be in their company assisting them, be so hardy to come before the justices of any court, or either of their Ministers of Justice, doing their office, with force and arms, on pain, to forfeit their armour to the Commonwealth, and their bodies to prison, at the pleasure of a Court; nor go nor ride armed by night nor by day, in fair or markets, or in other places, in terror of the county, upon pain of being arrested and committed to prison by any Justice on his own view, or proof by others, there to abide for so long a time as a jury, to be sworn for that purpose by the said Justice, shall direct, and in like manner to forfeit his armour to the Commonwealth; but no person shall be imprisoned for such offence by a longer space of time than one month."

1797 Del. Laws 104, ch. 46, § 6

"And be it further enacted by the authority aforesaid, That if any Negro or Mulatto slave shall presume to carry any guns, swords, pistols, fowling pieces, clubs, or other arms and weapons whatsoever, without his master's special license for the same, and be convicted thereof before a magistrate, he shall be whipped with twenty-one lashes, upon his bare back."

1837 Mass. Acts and Resolves 273, § 1

Every able bodied white male citizen resident within this Commonwealth, who is, or shall be, of the age of eighteen, and under the age of forty-five years, excepting idiots, lunatics, common drunkards, vagabonds, paupers and persons convicted of any infamous crime, shall be enrolled in the militia, and be included in the military returns: provided, that nothing herein contained shall be so construed as to render any of the exempts mentioned in the first, second and third sections of the twelfth chapter of the Revised Statutes, liable to do military duty otherwise than is therein provided.

1839 Me. Laws 421, § 5

Be it further enacted, That no idiot, lunatic, common drunkard, vagabond, pauper, nor any person convicted of any infamous crime, nor any other than white, able-bodied, male citizens, shall be eligible to any

office in the Militia; and whenever it shall appear to the Commander-in-Chief, that any person thus ineligible has received a majority of votes cast at any election of Officers, he shall not commission him, but, with the advice and consent of the Council, shall declare said election null and void, and appoint some person to fill the vacancy (. . .)

1881 N.Y. Laws 126–27, § 512

A person who has been adjudged an habitual criminal is liable to arrest summarily with or without warrant, and to punishment as a disorderly person, when he is found without being able to account therefor, to the satisfaction of the court or magistrate, either,

1. In possession of any deadly or dangerous weapon, or of any tool, instrument or material, adapted to, or used by criminals for, the commission of crime, or

2. In any place or situation, under circumstances giving reasonable ground to believe that he is intending or waiting the opportunity to commit some crime.

1909 Pa. Laws 466, § 1

Be it enacted that from and after the passage of this act, it shall be unlawful for any unnaturalized foreign born resident to hunt for or capture or kill, in this Commonwealth, any wild bird or animal, either game or otherwise, of any description excepting in defense of person or property; and to that end it shall be unlawful for any unnaturalized foreign born resident, within this Commonwealth, to either own or be possessed of a shotgun or rifle of any make. Each and every person violating any provision of this section shall, upon conviction thereof, be sentenced to pay a penalty of twenty-five dollars for each offense, or undergo imprisonment in the common jail of the county for the period of one day for each dollar of penalty imposed: Provided, That in addition to the to the before-named penalty, all guns of the before-mentioned kinds found in possession or under control of an unnaturalized foreign born resident shall, upon conviction of such person, or upon his signing a declaration of guilt as prescribed by this act, be declared forfeited to the Commonwealth of Pennsylvania, and shall be sold by the Board of Game Commissioners as hereinafter directed.

1915 N.J. Laws 662–63

From and after the passage of this act it shall be unlawful for any unnaturalized, foreign-born person to hunt for or capture, or kill in this State, any wild bird or animal, either game or otherwise, of any description, excepting in defense of person or property; and to that end it shall be unlawful for any unnaturalized, foreign-born person, within this State, to either own or be possessed of a shotgun or rifle of any make. Each and every person violating any provision of this section shall be liable to a penalty of twenty dollars for each offense; provided, that in addition to the before-named penalty, all guns of the before-mentioned kinds found in possession or under control of an unnaturalized, foreign-born person, shall, upon conviction of such person for such offense, be declared forfeited to the State of New Jersey, and shall be sold by the Board of Fish and Game Commissioners as hereinafter directed; provided, however, that this act shall not apply to any unnaturalized, foreign-born person who is the owner of real estate in this state to the value of two thousand dollars above all encumbrances.

1922 Mass. Acts 563, § 8

Whoever sells or furnishes to a minor under the age of fifteen, or to an unnaturalized foreign born person who has who has not a permit to carry firearms under section one hundred and thirty-one, any firearm, air gun or other dangerous weapon or ammunition therefor shall be punished by a fine of not less than ten nor more than fifty dollars, but instructors and teachers may furnish military weapons to pupils for instruction and drill.

1923 Conn. Pub. Acts 3732

No alien resident in the United States shall hunt, capture or kill, any bird or quadruped and no such alien shall own or be possessed of any shot gun or rifle. The presence of any shot gun or rifle upon any premises or in any building or tent within this state occupied or controlled by any alien resident of the United States, shall be prima facie evidence that such gun is owned or controlled by such alien and any such gun or rifle shall upon conviction of such person, be forfeited to the state and shall be sold (. . .)

1931 Cal. Stat. 2316–17

(. . .)[N]o person who is not a citizen of the United States of America and no person who has been convicted of a felony under the certain laws of the United States, of the State of California, or any state or any other government or county, or who is addicted to the use of any narcotic drug or drugs shall own or have in his possession or under his custody or control any pistol, revolver or other firearm capable of being concealed upon the person (. . .) [a]ny person who shall violate the provisions of this section shall be punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year or by fine not exceeding five hundred dollars, or by both fine and imprisonment.