

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-3012

UNITED STATES OF AMERICA

v.

DIEGO EDGARDO ALEMAN-LOZANO,
Appellant

Appeal from the United States District Court
For the Middle District of Pennsylvania
(D.C. No. 1:21-cr-323)
District Judge: Jennifer P. Wilson

Argued June 30, 2026

Before: SHWARTZ, PHIPPS, and McKEE, Circuit Judges.

(Filed: September 1, 2026)

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OPINION OF THE COURT

SHWARTZ, Circuit Judge.

Diego Edgardo Aleman-Lozano appeals his conviction under 18 U.S.C. § 922(g)(5)(B), which makes it a crime for nonimmigrant visa holders, with certain nonapplicable

exceptions, to possess a firearm. He argues that the statute violates the Second Amendment. We disagree and will affirm.

I

Aleman-Lozano is a native and citizen of El Salvador. He entered the United States unlawfully but, in 2017, was granted a nonimmigrant temporary visa with work authorization. Since entering the United States, he has resided with his family, attended school, and worked in Washington, D.C.

In September 2021, a Pennsylvania state trooper pulled Aleman-Lozano over for a traffic violation, and Aleman-Lozano provided the trooper with a valid Washington, D.C. driver's permit and a United States employment authorization card. During the stop, the trooper saw a rifle cartridge on the passenger seat. As a result, the trooper obtained a search warrant and found a pistol containing a loaded sixteen-round magazine, which Aleman-Lozano told police he had purchased from an unidentified individual in Maryland. The pistol did not have a serial number.

A grand jury charged Aleman-Lozano with violating 18 U.S.C. § 922(g)(5)(B). Aleman-Lozano moved to dismiss the indictment, arguing that § 922(g)(5)(B) violates the Second Amendment. The District Court disagreed and denied the motion. United States v. Aleman-Lozano, No. 1:21-CR-00323, 2024 WL 1661111, at *1 (M.D. Pa. Apr. 17, 2024). Aleman-Lozano thereafter entered a conditional guilty plea pursuant to which he reserved his right to appeal the Second Amendment ruling. He was sentenced to twenty-four months' imprisonment and one year's supervised release.

Aleman-Lozano appeals.

II¹

A

Aleman-Lozano asserts that 18 U.S.C. § 922(g)(5)(B) is facially unconstitutional under the Second Amendment. Section 922(g)(5)(B) makes it unlawful for:

any person . . . who, being an alien . . . except as provided in subsection (y)(2),^[2] has been admitted to the United States under a nonimmigrant visa (as that term is defined in . . . 8 U.S.C. § 1101(a)(26))^[3] . . . to . . . possess in or affecting commerce, any firearm or ammunition.

¹ The District Court had jurisdiction under 18 U.S.C. § 3231, and this Court has jurisdiction under 28 U.S.C. § 1291. “Our standard of review for a district court’s denial of a motion to dismiss an indictment is mixed. We review de novo a district court’s legal conclusions and a district court’s factual determinations for clear error.” United States v. Reynolds, 710 F.3d 498, 506 (3d Cir. 2013) (italics omitted).

² These exceptions are not relevant here.

³ There is no dispute that Aleman-Lozano was admitted to the United States under such a visa. However, it is unclear the type of nonimmigrant visa Aleman-Lozano holds.

18 U.S.C. § 922(g)(5)(B).⁴ Because Aleman-Lozano brings a facial challenge, we must determine whether this statute “is unconstitutional in all of its applications” under the Second Amendment. United States v. Cuevas-Almonte, 156 F.4th 319, 328 (3d Cir. 2025) (citation omitted).

The Second Amendment provides “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. New York State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1 (2022), established a two-part test to determine whether a law is consistent with the Second Amendment. At Bruen Step One, we determine whether “the Second Amendment’s plain text covers an individual’s conduct.” Id. at 24. Here, this requires us to determine whether the type of person subject to the regulation is among “the people” under the text of the Amendment. Wolford v. Lopez, 146 S. Ct. 2032, 2043 (2026). If a law regulates relevant conduct by persons covered by the Amendment, then “the Constitution presumptively protects that conduct,” Bruen, 597 U.S. at 24, and we then move to Bruen Step Two. There, we ask whether the Government can “justify its” restriction on firearm possession by showing it “is consistent with the Nation’s historical tradition of firearm regulation.” Id. At this step, a court may consider various sources, including scholarship and “old legal rules,” to determine if there is an

⁴ A related provision—§ 922(g)(5)(A)—prohibits an “alien” who “is illegally or unlawfully in the United States” from possessing a firearm in interstate or foreign commerce. 18 U.S.C. § 922(g)(5)(A).

analogue to the challenged law. Wolford, 146 S. Ct. at 2044.⁵ A court must determine if a proposed analogue is relevantly similar to the challenged law,⁶ which involves assessing why those old legal rules were adopted and how they burdened the Second Amendment right to keep and bear arms for self-defense. See id. If the Government cannot produce historical analogues to justify its regulation, then the regulation is unconstitutional. See id.; Bruen, 597 U.S. at 24.

B

Because the challenged law regulates who may possess a firearm, the Bruen Step One inquiry requires us to determine whether the regulated persons—here, nonimmigrant visa holders—are among “the people” referenced in the Second Amendment. The Supreme Court has described “the people” in several ways. The Court has used the terms “citizens,” see District of Columbia v. Heller, 554 U.S. 570, 595 (2008); Bruen, 597 U.S. at 29; United States v. Rahimi, 602 U.S. 680, 701-02 (2024), “law-abiding citizens,” see Heller, 554 U.S. at 625; Bruen, 597 U.S. at 29 (discussing “a law-abiding citizen’s

⁵ Wolford suggests that, in evaluating the proposed analogues, courts should consider the number of jurisdictions that adopted such laws, whether such laws were either expressly or tacitly well-accepted, and whether they are “relevantly similar” to the challenged law. Wolford, 146 S. Ct. at 2044 (quoting Bruen, 597 U.S. at 29).

⁶ The historical analogues need not be “dead ringer[s]” for the challenged modern law, Wolford, 146 S. Ct. at 2044 (quoting Bruen, 597 U.S. at 30), particularly where the modern law “addresses a situation that could not have arisen when the Second or Fourteenth Amendment was adopted,” id.

right to armed self-defense”), and “all Americans,” see Heller, 554 U.S. at 581; Bruen, 597 U.S. at 70; United States v. Hemani, 146 S. Ct. 1677, 1685 (2026). In Heller and Wolford, the Court used the phrase “all members of the political community.”⁷ See Heller, 554 U.S. at 580; Wolford, 146 S. Ct. at 2043 (quoting Heller, 554 U.S. at 580). Heller also defined “the people” as those who are “part of [the] national community or who have otherwise developed sufficient connection with this country.” 554 U.S. at 580 (quoting United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990) (Fourth Amendment context)). Because precedent has employed both definitions, the Supreme Court has not yet settled whether “the people” refers to members of the “political community” and/or the “national community. See United States v. Duque-Ramirez, 161 F.4th 1237, 1245 n.7 (10th Cir. 2025).

In Second Amendment challenges to the related provision 18 U.S.C. § 922(g)(5)(A), which prohibits aliens who are “illegally or unlawfully in the United States” from possessing a firearm, some of our sister Courts of Appeals have adopted the “political community” perspective and concluded that unlawfully present noncitizens are excluded from “the people.” See United States v. Medina-Cantu, 113 F.4th 537, 542 (5th Cir. 2024) (per curiam), cert. denied, 145 S. Ct. 1318 (2025); United States v. Murillo-Lopez, 151 F.4th 584, 591-92 (4th Cir. 2025); United States v. Sitladeen, 64 F.4th 978, 983-85 (8th Cir. 2023). Others have applied the “national community” prism and concluded that at least some noncitizens are among “the people.” See United States v.

⁷ The Supreme Court has not defined “the political community.” Cf. Heller, 554 U.S. at 580; Wolford, 146 S. Ct. at 2043.

Escobar-Temal, 161 F.4th 969, 977-78 (6th Cir. 2025); United States v. Carbajal-Flores, 143 F.4th 877, 881-82 (7th Cir. 2025), cert. denied, 146 S. Ct. 826 (2025); see also United States v. Jimenez-Shilon, 34 F.4th 1042, 1044-45 (11th Cir. 2022) (pre-Bruen, recognizing that it “can’t rule out the possibility that at least some illegal aliens might . . . have otherwise developed sufficient connection with this country to be considered part of [the national] community” but assuming that “Jimenez is among ‘the people’ as a general matter” (citation omitted)). The Court of Appeals for the Second Circuit has relied on both definitions to recognize that some noncitizens may be among “the people” if they can “qualify as being part of the ‘national’ or ‘political’ community” but has assumed that individuals are part of “the people” to avoid resolving this challenging debate. United States v. Perez, 6 F.4th 448, 452 (2d Cir. 2021) (pre-Bruen).⁸ Still others, recognizing this question’s difficulty and other barriers to successful challenges to § 922(g)(5)(A), assumed without deciding that noncitizens are among “the people” and then proceeded to the Bruen Step Two analysis. See United States v. Vizcaino-Peguero, 175 F.4th 34, 40 (1st Cir. 2026); United

⁸ We have not decided the question who is among “the people” for all purposes but, relying on the Supreme Court’s varied terminology and reference to Verdugo-Urquidez in Heller, we have concluded that the phrase “cast[s] a wide net,” Lara v. Comm’r Pa. State Police, 125 F.4th 428, 436-38 (3d Cir. 2025) (“Lara II”), and includes adult citizens, see United States v. Quales, 126 F.4th 215, 220 (3d Cir.) (concluding that “[the defendants], as adult citizens, are among ‘the people’ presumptively protected by the Second Amendment” (citing Range v. Att’y Gen., 124 F.4th 218, 228 (3d Cir. 2024) (en banc) (“Range II”))), cert. denied, 146 S. Ct. 127 (2025).

States v. Vazquez-Ramirez, 163 F.4th 706, 709 (9th Cir. 2026) (per curiam); Duque-Ramirez, 161 F.4th at 1245.

Any court adopting a definition of “the people” in a Second Amendment case must be mindful of its impact on other constitutional Amendments containing the same phrase.⁹ See Lara v. Comm’r Pa. State Police, 125 F.4th 428, 437 (3d Cir. 2025) (“Lara II”) (recognizing that “Heller cautions against the adoption of an inconsistent reading of ‘the people’ across the Constitution” (citing Heller, 554 U.S. at 580)); see, e.g., U.S. Const. amends. I, IV, and IX (containing “the people”).¹⁰ Some of these Amendments have been interpreted

⁹ The statutory interpretation canon of consistent usage, see United States v. Scott, 14 F.4th 190, 197 (3d Cir. 2021) (discussing canon of “consistent usage” regarding the same term used multiple times in a statute), addresses a similar concern. At oral argument, the Government stated he “[thought] the canon of consistent usage would have to apply” to the term “the people” used in the First, Second, and Fourth Amendments. Oral Arg. at 29:40-30:55.

¹⁰ In Heller, the Supreme Court distinguished these provisions, which either expressly codify a “right of the people” (in the case of the First and Fourth Amendments) or “use[] very similar terminology” (in the case of the Ninth Amendment), from the Constitution’s other references to “the people” in the preamble (“We the people”), Article I, Section 2 (providing “the people” will choose members of the House of Representatives), and the Tenth Amendment (providing powers not given to the federal government are reserved to “the States” or “the people”), which refer to “the people” in a context other than the rights of the people. 554 U.S. at 579-80.

to cover noncitizens. See Bridges v. Wixon, 326 U.S. 135, 148 (1945) (noting that the First Amendment “[f]reedom of speech and of press is accorded aliens residing in this country”); see also Verdugo-Urquidez, 494 U.S. at 272 (noting the Supreme Court has assumed without deciding that the Fourth Amendment applies to “illegal aliens in the United States” but stressing that “the question presented . . . was limited to whether the Fourth Amendment’s exclusionary rule should be extended to civil deportation proceedings” (citing INS v. Lopez-Mendoza, 468 U.S. 1032 (1984))).¹¹

Because (1) adopting a definition of “the people” in this Second Amendment case may impact its meaning in other

The only other reference to “the people” in the Constitution is in the Seventeenth Amendment. See U.S. Const. amend. XVII (providing “the people” of each State shall elect two Senators, and that if there is a vacancy, a temporary appointment may be made until “the people” fill it by election).

¹¹ Other constitutional provisions have also been held to cover noncitizens. See Plyler v. Doe, 457 U.S. 202, 210-12 (1982) (noncitizens in the United States without authorization are protected by Equal Protection Clause in the context of public education); Mathews v. Diaz, 426 U.S. 67, 77 (1976) (recognizing that the Fifth and Fourteenth Amendments protect all noncitizens within the jurisdiction of the United States, even those “whose presence in this country is unlawful, involuntary, or transitory,” from “deprivation of life, liberty, or property without due process of law”); Sugarman v. Dougall, 413 U.S. 634, 641-42 (1973) (recognizing that noncitizens are “entitled to the shelter of the Equal Protection Clause” from exclusion from the state civil service); Kwong

contexts, (2) a ruling deciding this point is unnecessary to resolve this case, and (3) although this case involves a facial challenge to the statute, any definition of “the people” we adopt may not capture nuances among nonimmigrant visa holders, the principles of constitutional avoidance and judicial restraint militate against deciding who is among “the people.” See Vizcaino-Peguero, 175 F.4th at 39-40; accord Kajmowicz v. Whitaker, 42 F.4th 138, 153-54 (3d Cir. 2022) (“[T]he principles of constitutional avoidance and judicial restraint guide us . . . to avoid deciding issues, especially constitutional ones, when [we] need not do so in order to resolve cases.”).¹²

Hai Chu v. Colding, 344 U.S. 590, 596 & n.5 (1953) (recognizing that lawful permanent resident noncitizen was protected by the Fifth Amendment in the context of expulsion and deportation); Wong Wing v. United States, 163 U.S. 228, 238 (1896) (holding that “all persons within the territory of the United States are entitled to the protection [guaranteed] by [the Fifth and Sixth Amendments], and that even aliens shall not be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty, or property without due process of law”); Fong Yue Ting v. United States, 149 U.S. 698, 724 (1893) (holding that resident noncitizens are protected by the Constitution “in regard to their rights of person and of property, and to their civil and criminal responsibility”); Yick Wo v. Hopkins, 118 U.S. 356, 368-74 (1886) (holding that resident noncitizens are protected by the Fourteenth Amendment from discriminatory enforcement of public safety ordinances).

¹² At oral argument, counsel for the Government stated it would be “perfectly appropriate” for the Court to assume, without deciding, that a nonimmigrant visa holder is among

Thus, we will join our sister circuit courts that assumed without deciding that at least some noncitizens are among “the people” entitled to Second Amendment rights.

C

At Bruen Step Two, we examine whether there is historical support for the challenged restriction by looking at analogues from before and at the time of the Second Amendment’s ratification.¹³ At this stage, the Government

“the people” and proceed to Bruen Step Two. Oral Arg. at 18:08-18:53.

¹³ Because we are tasked with discerning the meaning of the Second Amendment when it was enacted, and hence must look at the “understandings of those who ratified it,” we may consider laws in effect in 1791, Lara II, 125 F.4th at 441 (quoting Bruen, 597 U.S. at 28), as well as earlier laws because the Second Amendment codified a right that existed before ratification, Bruen, 597 U.S. at 20. Under our precedent, post-enactment laws are useful analogues only insofar as they (1) are “evidence of a historical tradition and shed important light on the meaning of the [Second] Amendment as it was originally understood” such that they show “a regular course of practice,” Lara II, 125 F.4th at 441 (citing Bruen, 597 U.S. at 35-36), or (2) “can confirm a court’s understanding of Founding-era public meaning,” id. (citing Bruen, 597 U.S. at 37). It is worth noting, however, that Wolford seemingly permits consideration of whether there was a “close[ly] match[ing]” historical analogue at the time the Fourteenth Amendment was adopted. See Wolford, 146 S. Ct. at 2044 (stating that “when the modern law addresses a situation that

must “identify a well-established and representative historical analogue, not a historical twin,” Range v. Att’y Gen., 124 F.4th 218, 228 (3d Cir. 2024) (en banc) (“Range II”) (emphases omitted) (quoting Bruen, 597 U.S. at 30), that “is consistent with the principles that underpin our regulatory tradition,” Rahimi, 602 U.S. at 692 (citing Bruen, 597 U.S. at 26-31). To make this determination, we examine why the historical law was enacted (i.e., what problem it was intended to address), and how that law burdened the Second Amendment right. Rahimi, 602 U.S. at 692.

The Government here has carried its burden to show that § 922(g)(5)(B) “is consistent with the principles that underpin our regulatory tradition.” Id. The Government explains the people subject to the challenged law are individuals considered loyal to another sovereign and identifies old legal rules that reflect a principle that individuals considered disloyal to the sovereign could be disarmed.¹⁴ For

could not have arisen when the Second or Fourteenth Amendment was adopted, it is too much to demand” that the historical law be a “twin” or “dead ringer” of the challenged modern law).

¹⁴ The Government need not produce a “dead ringer” here because the modern immigration “framework,” including immigrant categories, “did not exist until the late 19th century . . . well after the Second Amendment’s ratification.” Vizcaino-Peguero, 175 F.4th at 41 (citing Early American Immigration Policies, U.S. Citizenship & Immigr. Servs. (July 30, 2020), <https://www.uscis.gov/about-us/our-history/explore-agency-history/overview-of-agency-history/early-american-immigration-policies>

this proposition, we consider English law, the law of the American colonies, and the laws of the States at the founding. Because these historical analogs demonstrate that disarming those disloyal to the sovereign is consistent with the Second Amendment, we conclude this provision is constitutional.

1

English common law distinguished between “aliens and natural-born subjects. Natural-born subjects are such as are born within the dominions of the crown of England, that is, within the . . . allegiance of the king; and aliens, such as are born out of it.” 1 William Blackstone, *Commentaries* *354. Under the common law, “natural-born subjects [had] a great variety of rights, which they acquire[d] by being born within the king’s ligeance,” while the rights of “aliens . . . [were] much more circumscribed, being acquired only by residence here, and lost whenever they remove[d].” *Id.* at *359. For example, “aliens” could not hold land, *see id.* at *360 (“If an alien could acquire a permanent property in lands, he must own an allegiance, equally permanent with that property, to the king of England; which would probably be inconsistent with that, which he owes [to] his own natural liege lord . . .”), and “land and gun ownership were historically linked,” *Carbajal-Flores*, 143 F.4th at 883. “[T]he right to own guns in eighteenth-century England was statutorily restricted to the landed

[<https://perma.cc/L5WRXFUX>]); *see also Escobar-Temal*, 161 F.4th at 982 (“[F]or the first one hundred years of the United States, the federal government largely did not create immigrant categories or regulate immigrant admissions.” (citing Pratheepan Gulasekaram, *The Second Amendment’s “People” Problem*, 76 Vand. L. Rev. 1437, 1470-71 (2023))).

gentry.” Carbajal-Flores, 143 F.4th at 883 (alteration in original) (quoting Jimenez-Shilon, 34 F.4th at 1046 (citing Patrick J. Charles, *Armed in America: A History of Gun Rights from Colonial Militias to Concealed Carry* 51, 58 (2018))). An alien could own land if he became naturalized by swearing allegiance to the sovereign before Parliament, which “placed [him] in almost ‘exactly the same state as if he had been born in the’ dominions of the Crown.” Id. at 884 (quoting Blackstone, *supra*, at *362; citing Patrick J. Charles, The Plenary Power Doctrine and the Constitutionality of Ideological Exclusions: An Historical Perspective, 15 Tex. L. & Pol. 61, 73 (2010) (“The entire basis of England’s early immigration and naturalization laws were intertwined with the doctrine of allegiance.”)). The English Bill of Rights also limited gun ownership to those loyal to the Crown. It “guarantee[d] that ‘Protestants . . . may have Arms for their Defence suitable to their Conditions, and as allowed by Law.’”¹⁵ Bruen, 597 U.S. at 44 (omission in original) (quoting

¹⁵ In light of Wolford, it may be questionable the extent or even whether courts may consider laws disarming Catholics, Native Americans, and enslaved Black people as historical analogues at Bruen Step Two because, like the “so-called Black Codes” enacted following the Civil War which were dismissed as proffered analogues in Wolford, these laws could be construed as “perpetuat[ing] the subjugation of [B]lack[] [people]” and other racial and religious minorities, Wolford, 146 S. Ct. at 2053; see also id. at 2077 n.16 (Jackson, J., dissenting) (questioning whether “statutes that were prejudiced against Catholics” may be considered at Bruen Step Two (citing Kanter v. Barr, 919 F.3d 437, 457 (7th Cir. 2019) (Barrett, J., dissenting))), rather than restricting firearms. As a

result, we do not consider whether laws disarming Catholics, Native Americans, and enslaved Black people are relevant analogues because it is unnecessary for us to rely upon them to resolve the current matter.

Laws that disarmed Catholics, though they would be unlawful under the First Amendment today, have a better case for being considered at Bruen Step Two because, even when Catholics were disarmed in some of the American colonies, it was “on the basis of allegiance, not on the basis of faith.” Kanter, 919 F.3d at 457 (Barrett, J., dissenting) (quoting Robert H. Churchill, Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment, 25 L. & Hist. Rev. 139, 157 (2007) (citing Virginia’s 1756 “disarmament of all those refusing the test of allegiance”)); see An Act for Disarming Papists, and Reputed Papists, Refusing to Take the Oaths to the Government, ch. 4 (1756), reprinted in 7 The Statutes at Large: Being A Collection of All the Laws of Virginia 35, 35-39 (William Waller Hening ed., 1820); Churchill, *supra*, at 157 (“That [Virginia] statute required all those claiming membership in the British body politic to swear allegiance to the Hanoverian dynasty and to the Protestant succession and to swear an oath abjuring the ecclesiastical authority of the Pope,” which was “consistent with the undivided allegiance to the sovereign that had been the definition of membership in the English body politic since the Reformation.”); Adam Winkler, Gunfight: The Battle over the Right to Bear Arms in America 116 (2011) (citing a similar practice in Maryland); see also United States v. Gould, 163 F.4th 795, 804 (4th Cir. 2026) (on panel rehearing, in Second Amendment challenge to § 922(g)(4), noting that around the time of the French and

1689 English Bill of Rights, 1 W. & M. c. 2, § 7, in 3 Eng. Stat. at Large 417 (1689)).

Before the American Revolution, some “colonial governments prohibited any white person unwilling to affirm his allegiance to the British Crown from collecting firearms.” Adam Winkler, *Gunfight: The Battle over the Right to Bear Arms in America* 116 (2011). For example, Georgia disarmed indentured Acadians, a “group of French settlers and ancestors to the Cajuns, [who] ‘refused to be loyal subjects of the British government’ during the French and Indian War.” Vazquez-Ramirez, 163 F.4th at 719 (Bumatay, J., concurring) (quoting Clayton E. Cramer, Colonial Firearm Regulation, 16 J. on Firearms & Pub. Pol’y 1, 23 (2004)). The disarmament of Acadians “was based solely on loyalty concerns.” *Id.* (citing Cramer, *supra*, at 23).

After the American Revolution began, the states disarmed British loyalists because of their allegiance to the English monarch and not to the American cause. *See Kanter*, 919 F.3d at 457 n.6 (Barrett, J., dissenting); *see also Carbajal-Flores*, 143 F.4th at 885 (citing Robert H. Churchill, Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment, 25 L. & Hist. Rev. 139, 158 (2007)). The Continental Congress called upon the States “immediately to cause all

Indian War, “Maryland, Virginia, and Pennsylvania each passed legislation disarming Catholics on a class-wide basis (citing Joseph G.S. Greenlee, The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms, 20 Wyo. L. Rev. 249, 263 (2020))).

persons to be disarmed . . . who are notoriously disaffected to the cause of America, or who have not associated, and shall refuse to associate, to defend, by arms, these United Colonies, against the hostile attempts of the British fleets and armies.” 4 Journals of the Continental Congress, 1774-1789, at 205 (Worthington Chauncey Ford ed., 1906). The states answered the call and disarmed those who refused to swear allegiance to the state and/or to the American cause.¹⁶

¹⁶ See, e.g., An Act for the Executing in the Colony of Massachusetts-Bay, in New England, One Resolve of Mar. 14, 1776, ch. 7, 1775 Mass. Acts 31, 31-35 (Benjamin Edes ed., 1776) (disarming all persons over sixteen not being Quakers who would not adopt the American cause as their own and swear to assist its defense); An Act Empowering the Members of the Upper and Lower Houses of Assembly, to Tender to Such of the Inhabitants as are Hereinafter Mentioned, a Declaration, or Test, for Subscription (1776), reprinted in 7 Records of the Colony of Rhode Island and Providence Plantations in New England, 1770-1776, at 566-68 (John Russell Bartlett ed., 1862) (same); 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, ch. 3 (May 1777), reprinted in 9 The Statutes at Large: Being a Collection of All the Laws of Virginia 281-82 (William Waller Hening ed., 1821) (disarming all who refused a loyalty oath and were not excepted from taking it); Resolution of Mar. 13, 1776, reprinted in Journal of the Provincial Congress of South Carolina, 1776, at 77-78 (1776) (disarming those who bore arms against the Continental or Colony Congress, or opposed either, and requiring a loyalty oath to be rehabilitated and rearmed); An Ordinance Respecting the Arms of Non-

Associators, ch. 729 (July 19, 1776), reprinted in 9 The Statutes at Large of Pennsylvania from 1682 to 1801, at 11-12 (James T. Mitchell & Henry Flanders, eds., 1903) (ordering the disarmament of “non-associators”); see also Range II, 124 F.4th at 248 n.13 (Phipps, J., concurring) (citing these laws); United States v. Carbajal-Flores, 143 F.4th 877, 886 (7th Cir. 2025) (citing, *inter alia*, An Act, Obliging the Male White Inhabitants of This State to Give Assurance of Allegiance to the Same, ch. 21 (June 13, 1777), reprinted in The Acts of the General Assembly of the Common-Wealth of Pennsylvania 36-37 (John Dunlap ed., 1779) (the Test Act, which “disarmed” any man over the age of eighteen who would not swear “allegiance to the Common-Wealth of Pennsylvania.”); An Act to Amend an Act for Declaring What Crimes and Practices Against the State Shall Be Treason, and What Shall Be Misprision of Treason, and Providing Punishments Adequate to Crimes of Both Classes, and for Preventing the Dangers Which May Arise from Persons Disaffected to the State, ch. 6 (1777), reprinted in The Acts of Assembly of the State of North Carolina 41, 43 (James Davis ed., 1778) (similar law enacted by North Carolina); An Act for Constituting a Council of Safety, ch. 40 (Sept. 20, 1777), reprinted in Acts of the General Assembly of the State of New Jersey 84, 90 (Isaac Collins ed., 1777) (similar law enacted by New Jersey)); see also Vazquez-Ramirez, 163 F.4th at 711 (“After the Revolution, States passed statutes depriving firearms from those who refused to swear allegiance and fidelity to their respective State.” (citing United States v. Duarte, 137 F.4th 743, 765 & n.5 (9th Cir. 2025) (Collins, J. concurring) (compiling State “laws disarming loyalists or those who refused to take loyalty oaths”))).

Thus, from English common law through the Revolutionary period around the time of ratification, there was a historical tradition of disarming those considered disloyal to the sovereign.

2

With this history in mind, we conclude that why and how § 922(g)(5)(B) restricts firearms possession is “consistent with the principles that underpin our regulatory tradition” because it addresses the same allegiance concern as the historical laws and does so in the same way. Rahimi, 602 U.S. at 692.

As to why the restriction exists, “[a]llegiance serves as a mark of trustworthiness,” and it “shows one’s willingness to accede to the terms of social order in exchange for the full benefits of citizenship. [Noncitizens], as a matter of their status, have not yet affirmed their allegiance to the sovereign. That has uniformly served as the basis for disarming them.” Carbajal-Flores, 143 F.4th at 888 (citing Kanter, 919 F.3d at 457-58 (Barrett, J., dissenting)). Section 922(g)(5)(B) disarms noncitizens who bear a “presumptive allegiance to a foreign state,” Vizcaino-Peguero, 175 F.4th at 44, and not to the United States, and thus addresses the same problem as the historical laws.¹⁷

¹⁷ That § 922(g)(5)(B) disarms noncitizens who hold nonimmigrant visas, whereas § 922(g)(5)(A) disarms unlawfully present noncitizens, is not a meaningful distinction between the two provisions for purposes of Bruen Step Two because both groups of noncitizens have not sworn allegiance

As to the “how” inquiry, the historical laws and § 922(g)(5)(B) burden the right in the same way. Historically, governments disarmed individuals “unless and until they swore an oath of allegiance to the sovereign.” Carbajal-Flores, 143 F.4th at 888. An individual could obtain the right to bear arms after swearing an oath of allegiance. See id. at 884; Duque-Ramirez, 161 F.4th at 1248 (“The founding-era laws banned arms-bearing by individuals presumed to be loyal to a foreign sovereign who failed to follow the procedure laid out by the legislature to demonstrate allegiance (then, the loyalty laws).”); Range II, 124 F.4th at 248 n.13 (Phipps, J., concurring) (collecting early state laws regarding those who refused to swear allegiance to the American cause). Today § 922(g)(5)(B) “disarms persons unwilling or unable to swear the oath of allegiance and loyalty to the United States.” Vazquez-Ramirez, 163 F.4th at 711. Noncitizens disarmed under § 922(g)(5)(B) who follow the path prescribed by Congress and undergo the naturalization process, which culminates in taking the oath of renunciation and allegiance “as a demonstration of trustworthiness,”¹⁸ gain the right to bear

to the sovereign. Every Court of Appeals that has addressed the issue has concluded that § 922(g)(5)(A) addresses the same problem as historical laws disarming individuals who lacked allegiance to the sovereign. See Carbajal-Flores, 143 F.4th at 887-88; Vizcaino-Peguero, 175 F.4th at 44; United States v. Vazquez-Ramirez, 163 F.4th 706, 711 (9th Cir. 2026) (per curiam); United States v. Duque-Ramirez, 161 F.4th 1237, 1248 (10th Cir. 2025).

¹⁸ Congress has provided other means for a nonimmigrant visa holder to lawfully possess a firearm. For example, a nonimmigrant visa holder may lawfully possess a

arms. Duque-Ramirez, 161 F.4th at 1248; see 8 U.S.C. § 1448(a) (requiring oath of renunciation and pledge of allegiance to become a naturalized citizen). Section 922(g)(5)(B) addresses the same loyalty concern as the historical laws and does so in the same way.

Because § 922(g)(5)(B) is relevantly similar to the historical laws and our national tradition of firearm regulation, it does not violate the Second Amendment.

III

For the foregoing reasons, we will affirm.

firearm if he secures a waiver from the Attorney General if the Attorney General determines waiver is in the interest of justice and does not jeopardize public safety. 18 U.S.C. § 922(y)(3). Congress also provided exceptions to the ban for those admitted to the United States for lawful hunting or sporting purposes, id. § 922(y)(2)(A), or are representatives or law enforcement officers of a foreign government, id. § 922(y)(2)(B)-(D). That Congress has permitted these noncitizens to lawfully possess firearms in certain circumstances does not bear on whether Congress may constitutionally prohibit noncitizens from possessing firearms generally, which, as discussed, it may do consistent with the Second Amendment.

United States v. Aleman-Lozano, No. 25-3012
PHIPPS, *Circuit Judge*, concurring in the judgment.

The Majority Opinion makes a needless assumption, the breadth of which is staggering, *viz.*, that all nonimmigrant visa holders are part of “the people” and therefore have full Second Amendment rights. U.S. Const. amend. II. A nonimmigrant is a foreign national with a permanent residence abroad who comes to the United States on a temporary basis, such as for tourism, study, business, medical treatment, or transient travel.¹ Whatever are the precise contours of ‘the people,’ that term certainly does not include every such visitor. Applying that principle here allows resolution of this case at *Bruen* step one as opposed to *Bruen* step two, and such a disposition would not be predicated on any legal assumptions.² For those reasons, elaborated below, I respectfully concur in the judgment.

By federal statute, 18 U.S.C. § 922(g)(5)(B), it is generally illegal for nonimmigrant visa holders to possess a firearm or ammunition. *Id.*³ In this case, while Diego Edgardo Aleman-

¹ See generally 8 U.S.C. § 1101(a)(15) (providing classes of nonimmigrant aliens); Jill H. Wilson, Cong. Rsch. Serv., R45938, *Nonimmigrant and Immigrant Visa Categories: Data Brief* 1–6 (2026) (explaining nonimmigrant visa categories).

² See generally *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022) (setting forth a two-step process for evaluating Second Amendment challenges consisting of, first, ascertaining whether the “plain text covers an individual’s conduct”; if not, the challenge fails, but if so, then, the government may only “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation”).

³ See also 8 U.S.C. § 922(y)(2)(A)–(D) (providing exceptions for nonimmigrant visa holders admitted to the United States for hunting or sporting purposes and who are in possession of a hunting license, as well as for certain official representatives

Lozano, a citizen of El Salvador, was in this country on a temporary visa, he was charged with and conditionally pleaded guilty to possession of a firearm in violation of § 922(g)(5)(B). He now facially challenges § 922(g)(5)(B) as violative of the Second Amendment. To succeed, he must negative every conceivable application of the statute, which means that he must demonstrate that each and every nonimmigrant visa holder is part of ‘the people’ whose rights to keep and bear arms are protected by the Second Amendment. *See United States v. Rahimi*, 602 U.S. 680, 693 (2024) (explaining that a facial challenge “requires a defendant to ‘establish that no set of circumstances exists under which the Act would be valid’” (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987))). It takes minimal effort to conclude that he cannot make that “most difficult” showing here. *Id.* (explaining that a facial challenge “is the ‘most difficult challenge to mount successfully’” (quoting *Salerno*, 481 U.S. at 745)).

The term ‘the people’ as used in the Constitution is “a term of art” with consistent meaning. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990). As defined by the Supreme Court, ‘the people’ refers to “a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community,” *id.*, with the understanding that the relevant national community is the national “political community,” *Wolford v. Lopez*, 146 S. Ct. 2032, 2043 (2026) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008)).⁴ While not every contour of the national political

of foreign governments, foreign government officials, distinguished foreign visitors, and foreign law enforcement officers).

⁴ *See also United States v. Vazquez-Ramirez*, 163 F.4th 706, 713–14 (9th Cir. 2026) (Bumatay, J., concurring in the judgment) (explaining that the Founding generation, influenced by Locke and Montesquieu, “spoke of ‘the

community has been identified, adult citizens are part of the people,⁵ and excludable aliens are not.⁶ It may also be that nonimmigrants are, as a class, not part of the national political community as they are citizens of another country with permanent residences abroad, and they cannot vote in federal elections, *see* 18 U.S.C. § 611, or serve on federal juries, *see* 28 U.S.C. § 1865(b)(1). But it is not necessary in this case to determine whether nonimmigrants, as a class, are not part of ‘the people.’

Rather, Aleman-Lozano’s facial challenge to § 922(g)(5)(B) will fail if one nonimmigrant visa holder is outside of the national political community. And if nothing else, receipt of one type of nonimmigrant visa – the C-1 transit visa, *see* 8 U.S.C. § 1101(a)(15)(C)(i) – does not induct foreign nationals into ‘the people.’ A C-1 transit visa allows foreign nationals to pass through this country to reach another foreign country and has a maximum duration of stay of 29 days. *See*

people,’” to mean “the sovereign community that consented to a legitimate government”).

⁵ *See Lara v. Comm’r Pa. State Police*, 125 F.4th 428, 435 (3d Cir. 2025) (holding that ‘the people’ in the Second Amendment refers to “all adult Americans”); *see also United States v. Perez*, 6 F.4th 448, 461 (2d Cir. 2021) (Menashi, J., concurring in the judgment) (explaining that *Heller*’s frequent use of ‘citizens’ is “unsurprising because the Second Amendment, while ‘not limited to the carrying of arms in a militia,’ is rooted in the ‘right of *citizens* to ‘bear arms in defense of themselves and the state’” (quoting *Heller*, 554 U.S. at 584–86)).

⁶ *See Verdugo-Urquidez*, 494 U.S. at 265 (citing *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1904)).

id.; 22 C.F.R. § 41.71.⁷ The limitations on the visa – it is given to foreign nationals with permanent residence abroad who are travelling through this country transiently – prevent C-1 transit visa holders from developing a “sufficient connection” with this country to be considered part of the national political community. *Verdugo-Urquidez*, 494 U.S. at 265; *see Welford*, 146 S. Ct. at 2043. Consequently, C-1 transit visa holders are not part of ‘the people,’ and the Second Amendment does not protect their ability to keep and bear arms.

That conclusion is fatal to Aleman-Lozano’s facial challenge. It is therefore unnecessary for the resolution of this case to broadly assume that each and every nonimmigrant visa holder is part of ‘the people.’

⁷ *See also* U.S. Dep’t of State, *Transit Visa*, <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/transit.html>.