

# Second Amendment Immigration Exceptionalism

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Recently, a federal district court in *United States v. Vazquez-Ramirez* upheld the federal criminal prohibition on firearm possession by unlawfully present noncitizens codified in 18 U.S.C. § 922(g)(5).<sup>1</sup> *Vazquez-Ramirez* is just the latest in a string of post-*New York State Rifle & Pistol Assoc. v. Bruen*<sup>2</sup> rulings from lower federal courts upholding that particular provision against Second Amendment challenges.<sup>3</sup> In *Bruen*, the Court struck down a state discretionary permitting scheme for issuing concealed firearms carrying permits, and prescribed a novel “text, history, and tradition” methodology for evaluating gun regulations. Even in the decade prior to *Bruen*, federal circuit courts uniformly rejected constitutional challenges to § 922(g)(5) using “tiers of scrutiny” analysis.<sup>4</sup> In fact, only one court—

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2. *New York Pistol & Rifle Ass’n v. Bruen*, 597 U.S. 1, 79 (2022) (Kavanaugh, J., concurring) (striking down state discretionary permitting scheme for concealed firearms permit, and prescribing a “text, history, and tradition”-focused methodology.).

3. *United States v. Sitladeen*, 64 F.4th 978 (8th Cir. 2023); *United States v. De Los Santos-Santana*, No. 23-311, 2024 WL 98556 (D.P.R. Jan. 8, 2024); *United States v. Gil-Solano*, No. 3:23-cr-00018, 2023 WL 6810864 (D. Nev. Oct. 16, 2023); *United States v. Leveille*, 659 F. Supp.3d 1279 (D.N.M. 2023); *United States v. Trinidad Nova*, No. 22-419, 2023 WL 3071412 (D.P.R. Apr. 25, 2023); *United States v. Vicaíno-Peguero*, No. 22-168, 2023 WL 3194522 (D.P.R. Apr. 28, 2023); *United States v. DaSilva*, No. 3:21-CR-267, 2022 WL 17242870 (M.D. Penn. Nov. 23, 2022).

4. *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1049–50 (11th Cir. 2022); *United States v. Torres*, 911 F.3d 1253, 1263–65 (9th Cir. 2019); *United States v. Meza-Rodriguez*, 798 F.3d 664, 668–73 (7th Cir. 2015); *United States v. Huitron-Guizar*, 678 F.3d 1164, 1167–70 (10th Cir. 2012); *United States v. Flores*, 663 F.3d 1022, 1023 (8th Cir. 2011); *United States v. Carpio-Leon*, 701 F.3d 974, 976–82 (4th Cir. 2012); *United States v. Portillo-Munoz*, 643 F.3d 437, 439–42 (5th Cir. 2011).

the Western District of Texas in *United States v. Sing-Ledezma*<sup>5</sup>—thus far has struck down the federal “alien-in-possession” ban as violative of the Second Amendment. In short, the result Judge Rosanna Peterson reaches in *Vazquez-Ramirez* is neither surprising nor anomalous.<sup>6</sup>

What distinguishes the *Vazquez-Ramirez* opinion, however, is its explicit immigration exceptionalism.<sup>7</sup> Judge Peterson’s analysis begins by flatly positing that the constitutional test for evaluating § 922(g)(5) is not the same as the standard used for other federal gun restrictions. The dispositive difference, according to the court, was § 922(g)(5)’s focus on immigration status in comparison to the other categorical prohibitions in the federal statute: “*Bruen*’s new test does not apply to §922(g)(5) in the same way that it applies to other 922(g) provisions . . . because the statute focuses on noncitizens.”<sup>8</sup> Having segregated immigrant gun laws from citizen gun laws, the court applied highly deferential scrutiny instead of mainstream constitutional assessment. In that lax inquiry, the court summarily concluded that banning unlawfully present individuals from firearm possession rationally related to the government’s legitimate interest in reducing crime and ensuring public safety.<sup>9</sup>

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5. No. EP-23-CR-823(1), 2023 WL 8587869 (W.D. Tex. Dec. 11, 2023) (striking down § 922(g)(5), finding no constitutionally adequate historical analogues).

6. In other academic writing, I have argued that the analyses and conclusions of these federal courts are mistaken, in light of the interpretation the Court proffered in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and later affirmed and extended in *Bruen*. See Pratheepan Gulasekaram, *The Second Amendment’s “People” Problem*, 76 VAND. L. REV. 1437 (2023) [hereinafter Gulasekaram, *The Second Amendment’s “People” Problem*]. In that article, I explicate the history of noncitizen firearm regulation (including the origins of § 922(g)(5)) and critique judicial interpretations of “the people” that would exclude noncitizens—including unlawfully present ones—from the Second Amendment’s ambit, when it is understood to protect an individual right of self-defense. Although that general critique applies to *Vazquez-Ramirez* as well, this post focuses on a unique aspect of Judge Peterson’s decision that differentiates it from the rationales of prior cases and merits particular attention.

7. Immigration exceptionalism is idea that bespoke constitutional standards apply whenever governments (and especially the federal government) regulate immigration or noncitizens. David S. Rubenstein & Pratheepan Gulasekaram, *Immigration Exceptionalism* 111 N.W. L. REV. 583 (2017). In the context of noncitizens’ individual rights claims—free speech, due process, equal protection—the Court’s invocation of immigration exceptionalism consistently has rounded to the detriment of noncitizens.

8. *Vazquez-Ramirez*, 2024 WL 115224, at \*4.

9. *Id.* As alternative bases for its decision, the remainder of Judge Peterson’s opinion tracks the typical mechanics of post-*Bruen* district court opinions evaluating various § 922(g) possession bans. Specifically, the opinion goes through the now-familiar motions of *Bruen* “step one” (deciding whether the conduct regulated falls within the plain text of the Second Amendment) and “step two” (deciding whether there are sufficiently similar historical analogues to the challenged regulation) analyses. Both steps, the court ruled, provide alternative justifications for rejecting the noncitizen’s constitutional claim.

The district court, unfortunately, failed to grasp the troubling implications of its reasoning or grapple with its logical consequences. In prior work, I cautioned that discrimination based on immigration status in the right to bear arms threatens a broader gap in noncitizens' constitutional protections.<sup>10</sup> By carelessly excising noncitizens from the Second Amendment, *Vazquez-Ramirez's* immigration exceptionalism places that warning in sharp relief.

Judge Peterson correctly notes that the Supreme Court itself has condoned federal discrimination on the basis of immigration status, stating that Congress can make laws regarding noncitizens that would be “unacceptable if applied to citizens.”<sup>11</sup> The plenary immigration authority articulated by the Court in those cases, however, extends only (1) to control the admission and removal of noncitizens, or (2) to restrict federal public benefits in ways that do not implicate constitutional concerns. By cherry-picking a principle of unfettered congressional deference from those cases for import to domestic federal criminal prosecutions with a Bill of Rights guarantee at stake, *Vazquez-Ramirez* risks a dangerous slippery slope for tens of millions of noncitizens subject to the Constitution and federal criminal law.

The limited reach of the deference provided by the Supreme Court is unmistakable from the facts, reasoning, and language of the cases Judge Peterson cites.<sup>12</sup> *Fiallo v. Bell*<sup>13</sup> declined to judicially second guess Congress's construction of immigrant admissions categories, specifically provisions that restricted parent-child relationships based on the marital status of parents and the sex of the unmarried parent. *Kleindienst v. Mandel*<sup>14</sup> declined to overturn the executive branch's decision to deny a waiver to a Marxist-Socialist author deemed to violate then-extant inadmissibility laws excluding advocates of communism and totalitarianism. In both cases, the constitutional challenges (equal protections claims in *Fiallo* and First Amendment claims in *Mandel*) failed to persuade the Court to apply the heightened scrutiny it would have otherwise applied to First and Fourteenth Amendment claims. But, in both cases, the Court stressed the bounded nature of its rulings, emphasizing that its deference to

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10. See Gulasekaram, *The Second Amendment's "People" Problem*, *supra* note 6, at 1443–45, 1519–20; Pratheepan Gulasekaram, “*The People*” of the Second Amendment: Citizenship and the Right to Bear Arms, 85 N.Y.U. L. REV. 1522, 1577–80 (2010).

11. *Mathews v. Diaz*, 426 U.S. 67, 80 (1976).

12. *Vazquez-Ramirez*, 2024 WL 115224, at \*3–4 (citing *Fiallo v. Bell*, 430 U.S. 787 (1977)), *Kleindienst v. Mandel*, 408 U.S. 753 (1972), and *Mathews*, 426 U.S. at 67).

13. 430 U.S. 787 (1977).

14. 408 U.S. 753 (1972).

Congress attached when the federal legislature regulates “the admission of aliens” or exercises “the power to expel or exclude aliens.”<sup>15</sup>

Perhaps to justify extending congressional deference beyond core immigration regulation, Judge Peterson relies on *Mathews v. Diaz*, in which the Court upheld a federal law restricting federal medical benefits eligibility only to citizens and lawful permanent residents who met a durational residency requirement. To be sure, *Mathews* could be read uncritically to suggest that the federal legislature might treat noncitizens differently than citizens (and further, distinguish between classes of noncitizens) in policy areas beyond entry and exit control. Yet, as the *Mathews* Court acknowledges, Congress has “no constitutional duty” to provide welfare benefits to noncitizens at all.<sup>16</sup> This of course accords with pre-*Mathews* decisions holding that Congress has no constitutional duty to provide welfare benefits to citizens either.<sup>17</sup> Accordingly, *Mathews* provides scant guidance when Congress’s singling out of noncitizens violates an express constitutional guarantee.

More pointedly, whatever leeway the Supreme Court has provided Congress with regards to regulation of immigration or immigrants, the Court has not condoned withholding of Bill of Rights protections from noncitizens in domestic criminal settings. Unlawfully present noncitizens charged with crimes may raise the same constitutional claims as other defendants, including due process guarantees,<sup>18</sup> effective assistance of counsel,<sup>19</sup> rights against self-incrimination, and jury and confrontation protections. Indeed, noncitizens have prevailed on a host of other constitutional claims, including equal protection, habeas, and due process claims, even when the regulation categorically applied only to noncitizens.<sup>20</sup> *Vazquez-*

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15. *Id.* at 765–66; *Fiallo*, 430 U.S. at 792–95 nn. 5–6.

16. *Mathews*, 426 U.S. at 82.

17. *Dandridge v. Williams*, 397 U.S. 471 (1970); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

18. *Wong Wing v. United States*, 163 U.S. 228 (1896).

19. *Padilla v. Kentucky*, 559 U.S. 356 (2010) (holding that incorrect advice regarding the immigration consequences of a guilty plea provided by an attorney to a noncitizen-defendant in a criminal trial violated the noncitizen’s Sixth Amendment right to effective assistance of counsel).

20. *See, e.g.*, *Sessions v. Morales-Santana*, 582 U.S. 47 (2017) (striking down a gender-based distinction in citizenship acquisition law on equal protection grounds); *Boumediene v. Bush*, 553 U.S. 723 (2008) (holding that noncitizens detained as enemy combatants were entitled to invoke habeas corpus); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (holding that the Due Process Clause of the Fifth Amendment created a presumptive durational limit to the detention of a permanent resident who was ordered removed); *Wong Wing*, 163 U.S. at 238 (holding that noncitizens’ Fifth Amendment rights were violated by the imposition of hard labor without trial, prior to deportation).

*Ramirez* conspicuously fails to address these protections or this well-established line of cases.

Of course, one might attempt to distinguish many of the cases in which the Court has recognized the rights of noncitizens because the relevant constitutional provisions protect the rights of “persons” or “the accused,” without regard to immigration status. In comparison, the Second Amendment protects the right of “the people” to keep and bear arms. While this phrasing of the Second Amendment certainly is distinct from some other Bill of Rights protections, the distinction fails to make a difference when determining whether noncitizens may invoke the amendment. As I have explored at length, the meaning of “the people” has remained indeterminate and opaque since the ratification of the Constitution.<sup>21</sup> Indeed, despite multiple uses of the phrase in the Constitution,<sup>22</sup> the Court rarely has sought to define or constrict the rightsholders signified by “the people.” Chief Justice Roger Taney’s overtly white supremacist interpretation in *Dred Scott v. Sandford* was the Court’s first and most notorious attempt to do so, restricting Bill of Rights protections—including the Second Amendment—to white citizens.<sup>23</sup> Despite Justice Clarence Thomas’s shocking citation of *Dred Scott* in his *Bruen* concurrence,<sup>24</sup> that case’s teachings otherwise have been discarded in the dustbin of constitutional history.<sup>25</sup>

Further, neither of the other two Bill of Rights protections written in terms of “the people”—the assembly and petition rights of the First Amendment and the right against unreasonable searches and seizures in the Fourth Amendment—have ever been denied based on immigration status alone. As Professors Maggie Blackhawk and Michael Wishnie have shown, several groups who were not considered

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21. Gulasekaram, *The Second Amendment’s “People” Problem*, *supra* note 6, at 1451–55, 1467–68; James Kettner, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608–1870*, 208–10 (Univ. of N.C. Press 1975).

22. See U.S. CONST. pmb. (“We the people of the United States”); U.S. CONST. art. I, § 2 (“the People of the several States”); U.S. CONST. amend. I (“the right the people peaceably to assemble to petition the Government for a redress of grievances”); U.S. CONST. amend. II (“the right of the people to keep and bear arms . . . .”); U.S. CONST. amend. IV (“the right of the people to be secure in their persons . . . .”); U.S. CONST. amend. IX; U.S. CONST. amend. X; U.S. CONST. amend. XVII.

23. 60 U.S. 393, 404 and 416–17 (1856).

24. *Bruen*, 597 U.S. at 59–62 (Thomas, J., concurring); see Saul Cornell, *Cherry-Picked History and Ideology-Driven Outcomes: Bruen’s Originalist Distortions*, SCOTUSBLOG (June 27, 2022, 5:05 PM), <https://perma.cc/5UAU-SHGZ> (critiquing Justice Thomas’s citation of *Dred Scott*).

25. See *Trump v. Hawaii*, 138 S.Ct. 2392, 2423 (2018) (“*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—has no place in law under the Constitution.”) (citations omitted); Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379, 406–12, 436–42 (2011).

citizens in the post-Ratification period exercised those First Amendment rights.<sup>26</sup>

Similarly, in Fourth Amendment cases, noncitizens, including without lawful immigration status, have been able to invoke the guarantee or seek exclusionary remedies to unreasonable searches and seizures occurring in the United States.<sup>27</sup> In fact, other than *Dred Scott*, the Court proffered its only other sustained attempt to interpret “the people” in the Fourth Amendment case, *United States v. Verdugo-Urquidez*.<sup>28</sup> There, all nine Justices avoided categorical exclusion of individuals without lawful immigration status from the Fourth Amendment, with a majority contending that “the people” are to be determined by the quality and quantity of any individual’s ties and connections to the United States.<sup>29</sup> In sum, reading “the people” of the Second Amendment consonant with “the people” of the First and Fourth would support broad inclusiveness regardless of immigration status, at least in the context of domestic criminal prosecutions.<sup>30</sup>

The expansive logic of the *Vazquez-Ramirez* opinion, then, could only be contained if its exceptionalism was cabined to firearms law or to regulations affecting unlawfully present noncitizens. Judge Peterson’s opinion does neither. Instead, the opinion’s exceptional deference would permit Congress to run roughshod over constitutional

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26. Maggie McKinley (Blackhawk), *Lobbying and the Petition Clause*, 68 STAN. L. REV. 1131, 1136–37 (2016) (noting that “Women, African Americans, and Native Americans had all engaged with colonial and state governments through the petition process as a matter of course . . .”); Michael J. Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. REV. 667, 683–84 (2003) (providing evidence that “at the time of the Founding . . . noncitizens, including immigrants, Native Americans, and slaves” exercised the right to petition).

27. See, e.g., *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973) (holding that the search of a noncitizen’s vehicle without probable cause violated the Fourth Amendment).

28. 494 U.S. 259 (1990) (denying Fourth Amendment claim of noncitizen-defendant—who was neither a lawful permanent resident nor a nonimmigrant—apprehended in Mexico and brought to the United States for prosecution, and who was challenging the search of his residence in Mexico by U.S. and Mexican law enforcement officials).

29. *Id.* In *Verdugo*, four justices agreed that the “the people” meant those who were “part of the national community” or had “sufficient connections to the United States,” and held that the noncitizen-defendant failed to meet that criterion. *Id.* at 265. Justice Anthony Kennedy concurred with the majority but wrote separately to reject the majority’s restrictive definition of “the people,” and instead would have decided the case based on the location of the search. *Id.* at 276. Justice John Paul Stevens concurred only in judgment, also rejecting the majority’s restrictive definition of “the people” and similarly would have decided the case based on the location and reasonableness of the search. *Id.* at 279. The three justices in dissent would have permitted the noncitizen-defendant, despite lack of immigration status and minimal ties to the United States, to raise the Fourth Amendment challenge. *Id.* at 283–85 (Brennan, J., joined by Marshall, J., dissenting), and at 297 (Blackmun, J., dissenting); see also D. Carolina Nunez, *Inside the Border, Outside the Law: Undocumented Immigrants the Fourth Amendment*, 85 S. CAL. L. REV. 85 (2011) (compiling post-*Verdugo* district court cases applying *Verdugo*’s “sufficient connections” test).

30. Gulasekaram, *The Second Amendment’s “People” Problem*, *supra* note 6, at 1496–98.

safeguards in all regulatory fields, both civil and criminal, involving any category of noncitizen.

First, nothing in *Vazquez-Ramirez*'s logic limits its application only to firearms regulations. Indeed, Judge Peterson's opinion isolates § 922(g)(5) from other parts of the statute because it is the only provision criminalizing noncitizen possession. Thus, the opinion's special constitutional rule would apply to any federal regulation that turns on immigration status, not just to firearms policies. Further, if it were Judge Peterson's intent to segregate firearms regulations from other regulatory subjects, the lower court decision would conflict with the Supreme Court's view. The Court has repeatedly claimed that the Second Amendment should be read consonant with other amendments. *District of Columbia v. Heller* and other cases posit that "the people" protected by the Second Amendment are the same "the people" protected in the First and Fourth Amendments.<sup>31</sup> Second, the district court's immigration exceptionalism impacts all noncitizens, regardless of immigration status. Although § 922(g)(5)(A) only criminalizes possession by those "illegally present" in the United States, the deference Judge Peterson imports from *Fiallo* and *Mathews* applies to lawful permanent residents, nonimmigrants, and the unlawfully present alike.<sup>32</sup>

Combining both consequences, *Vazquez-Ramirez*'s reasoning would grant Congress the constitutional leeway to create a two-tiered criminal justice system, with laws that criminalized conduct by noncitizens that could not be applied to citizens engaged in the same conduct. Even if rarely invoked, a latent theory advancing such unconstrained federal legislative authority would spell danger and instability for noncitizens. As our history evinces, moments of conflict or existential threat combined with judicial deference to the political branches have produced some of the Court's most notorious decisions, upholding policies that shamefully targeted noncitizens and perceived foreigners for enforcement.<sup>33</sup>

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31. 554 U.S. 570, 579–80 (2008) (relating "the people" used in the Second Amendment to its First and Fourth Amendment uses, interpreting the rightsholders to be the same in all three); *Verdugo-Urquidez*, 494 U.S. at 265–66 (1990) (describing the phrase "the people" as a "term of art" that defines the same rightsholders in the First, Second, and Fourth Amendments).

32. *Fiallo*, 430 U.S. at 787 (rejecting the claims of both citizens and lawful permanent residents who did not fit Congress' restricted definition of the parent-child relationship); *Mathews v. Diaz*, 426 U.S. 67 (1976) (rejecting the claims of permanent residents who did not meet the five-year durational residency requirement).

33. *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding military detention orders against citizens and immigrants of Japanese descent during World War II, purportedly applying strict scrutiny but relying on stereotypes regarding disloyalty and foreign allegiances of Japanese Americans); *Shaughnessy v. Mezei*, 345 U.S. 206 (1953) (excluding and indefinitely detaining long-time permanent resident on the basis of confidential information without due

Judge Peterson’s novel and naked appeal to immigration exceptionalism is especially perplexing because it was unnecessary to reach the case’s result. Courts can easily (and often do) hide their lax review of constitutional claims in immigration-related cases behind a facade of mainstream, conventional judicial doctrine.<sup>34</sup> For example, pre-*Bruen* decisions watered down the ends-means inquiry in their evaluations of § 922(g)(5), while still deploying the rhetoric and analytic moves typical of intermediate scrutiny.<sup>35</sup> Those courts assumed the dangerousness and criminality of unlawfully present noncitizens without demanding the government provide evidence or substantiate the close connections required in other intermediate scrutiny cases.<sup>36</sup> *Bruen* of course jettisoned the tiers of scrutiny approach, but its novel history-focused methodology has proven just as, if not more, indeterminate and unpredictable. Because *Bruen*’s standards and instructions are so malleable,<sup>37</sup> district courts have

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process protections during height of Cold War fears, and stating “[w]hatever the procedure authorized by Congress is, it is due process as far as alien denied entry is concerned.”); *Chae Chan Ping v. United States*, 130 U.S. 581 (1889) (approving plenary federal authority to deny admission to Chinese migrants during a period of heightened anti-Chinese sentiment and an economic downturn); *cf.* *Trump v. Hawaii*, 138 S.Ct. 2392 (2018) (upholding Presidential Proclamation barring noncitizens from predominantly Muslim countries, despite substantial evidence suggesting that policy was based in anti-Muslim animus).

34. Rubenstein & Gulasekaram, *supra* note 7, at 596–97; *cf.* *Nguyen v. I.N.S.*, 533 U.S. 53, 74–80 (2001) (O’Connor, J., dissenting from decision upholding gender distinctions in citizenship acquisition law, stating “[w]hile the Court invokes heightened scrutiny, the manner in which it explains and applies this standard is stranger to our precedents . . . . The Court recites the governing substantive standard for heightened scrutiny of sex-based classifications but departs from the guidance of our precedents concerning such classifications in several ways.”)

35. *See, e.g.*, *United States v. Perez*, 6 F.4th 448 (2d Cir. 2021) (applying intermediate scrutiny to uphold § 922(g)(5), relying on congressional assumptions and findings about the dangerousness of unlawfully present noncitizens); *United States v. Torres*, 911 F.3d 1253, 1263–65 (9th Cir. 2019) (equating unlawfully present noncitizens with felons, fugitives, and those convicted of domestic violence); *United States v. Meza-Rodriguez*, 798 F.3d 664, 668–73 (7th Cir. 2015) (ruling that noncitizens are part of “the people”, but nevertheless upholding § 922(g)(5)); *United States v. Huitron-Guizar*, 678 F.3d 1164, 1167–70 (10th Cir. 2012) (applying heightened scrutiny but crediting interests that Congress “may have concluded”, and permitting Congress to deal in generalities about unlawfully present persons).

36. *See, e.g.*, *Perez*, 6 F.4th at 456 (Menashi, J., concurring in judgment) (critiquing majority for “watering down the intermediate scrutiny the court purportedly applies”); Pratheepan Gulasekaram, “*The People*”, *Citizenship, and Firearms*, DUKE CTR. FOR FIREARMS L. (Jan. 13, 2022), <https://perma.cc/NU47-PV49>.

37. *See* *United States v. Bullock*, No. 3:18-CR-165-CWR-FKB, 2023 WL 4232309, at \*15–17 (S.D. Miss. 2023) (questioning how district courts should go about *Bruen*’s historical inquiry); Oral Argument, *United States v. Quiroz*, No. 22-50834 (5th Cir. Feb. 8, 2023) (Higginson, J., questioning U.S. Att’y, asking how courts should resolve competing historical evidence in Second Amendment cases); *see also* Joseph Blocher & Eric Ruben, *Originalism-by-Analogy and Second Amendment Adjudication*, 133 YALE L.J. 99, 105 (2023) (“Although there is still time for courts to develop workable standards (as they did after *District of Columbia v. Heller*), post-*Bruen* cases reveal an erratic, unprincipled jurisprudence, leading courts to strike down gun laws on the basis of thin historical discussion and no meaningful explanation of historical analogy.”).



been able to engage in all manner of textual, historical, and analogical reasoning to justify or strike down gun regulations, all while claiming fidelity to *Bruen*'s dictates. In the § 922(g)(5) context, for example, several courts—including the *Vazquez-Ramirez* court—have purported to work within *Bruen*'s framework by straining an analogy between the disarmament of present-day migrants who have run afoul of immigration laws enacted in the twentieth century with the loyalty-based disarmament of British sympathizers during the Founding period.<sup>38</sup>

These alternative means of evaluating gun laws based on immigration status also merit interrogation and critique.<sup>39</sup> Whatever their faults, however, they do not depend on excising noncitizens qua noncitizens from the Constitution. Eschewing these analytic offramps, *Vazquez-Ramirez* instead leans headlong into bespoke immigration constitutionalism as its primary rationale for upholding § 922(g)(5). Far from following established precedent, Judge Peterson's reasoning supercharges immigration law's plenary power doctrine.

As I have maintained throughout my scholarly writings on immigrants and guns, I do not focus on the Second Amendment rights of noncitizens to promote a deregulatory agenda with regards to firearms. Rather, my concern is with arbitrary and unjustifiable governmental discrimination on the basis of immigration status in any regulatory arena. Nevertheless, the Second Amendment serves as both an important example of such discrimination, and a prism into judicial interpretations of other constitutional rights. Future federal courts should reject careless appeals to immigration exceptionalism for every public policy concern including gun laws, lest they unwittingly craft a second-class Constitution for tens of millions of noncitizens.

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38. *Vazquez-Ramirez*, 2024 WL 115224, at \*7–8; see also Jimenez-Shilon, 34 F.4th at 1048; Leveille, 659 F. Supp. at 1279. For a critique of these analogies and fuller review of the history of regulating firearms possession by noncitizens, see Gulasekaram, *The Second Amendment's "People" Problem*, *supra* note 6, at 1464–91; see also, Gulasekaram, *Loyalty Disarmament & the Undocumented* (forthcoming, under submission) (critiquing the analogy between Founding-era laws disarming Loyalists and present-day disarmament of unlawfully present noncitizens).

39. *Id.* at 1455–93; Gulasekaram, *"The People", Citizenship, and Firearms*, *supra* note 36.