No. 25-___

In The

Supreme Court of the United States

HERIBERTO CARBAJAL-FLORES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Jacob S. Briskman
Counsel of Record
2624 W. Fullerton Ave.
Chicago, IL 60647
(312) 945-6207
jacob.briskman@gmail.com

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QUESTIONS PRESENTED

1) Whether 18 U.S.C. § 922(g)(5)(A), which prohibits firearm possession by all unlawfully present noncitizens, is unconstitutional on its face under the Second Amendment's text and history, particularly in light of this Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

2) Whether 18 U.S.C. § 922(g)(5)(A) is subject to as-applied challenges, and if so, whether the government must demonstrate that the individual is dangerous before disarmament is permissible.

RELATED PROCEEDINGS

N.D.IL., 20 CR 613-1, *United States v. Carbajal-Flores*, Dismissal Order-March 8, 2024.

Seventh Circuit U.S. Court of Appeals, 24-1534, *United States v. Carbajal-Flores*, July 16, 2025.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 2025

HERIBERTO CARBAJAL-FLORES, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Heriberto Carbajal-Flores respectfully petitions this honorable Court for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, which was entered in this case on July 16, 2025.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit in *United States v. Carbajal-Flores*, No. 24-1534 (7th Cir. July 16, 2025), is reprinted in Appendix A. The Order of the United States District Court for the Northern District of

Illinois, *United States v. Carbajal-Flores*, No. 20-CR-613- (N.D. Ill. Mar. 8, 2024), granting Petitioner's motion to dismiss, is reprinted in Appendix B.

JURISDICTION

The United States District Court for the Northern District of Illinois originally had jurisdiction pursuant to 18 U.S.C. § 3231, which provides federal district courts with exclusive jurisdiction over federal offenses. The Seventh Circuit Court of Appeals thereafter exercised jurisdiction under 28 U.S.C. § 1291 and entered judgment on July 16, 2025. This Court's jurisdiction is now properly invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This appeal includes the Second Amendment to the United States Constitution and Title 18, United States Code, Section 922(g)(5)(A). 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. 18 U.S.C. § 922(g)(5)(A) provides:

> It shall be unlawful for any person– . . . 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(g)(5)(A).

STATEMENT OF THE CASE

This case presents both facial and as-applied challenges to the constitutionality of 18 U.S.C. § 922(g)(5)(A), which prohibits firearm possession by noncitizens unlawfully present in the United States. After a grand jury indicted Petitioner under § 922(g)(5)(A), the district court ultimately dismissed the charge under this Court's holding in *New York State Rifle & Pistol Ass'n v. Bruen* and the Seventh Circuit's holding in *Atkinson v. Garland*. 597 U.S. 1 (2022); 70 F.4th 1018 (7th Cir. 2023). The Seventh Circuit reversed, rejecting both facial and as-applied challenges, and deepening an existing circuit conflict.

District Court Proceedings

On March 14, 2022, a grand jury in the Northern District of Illinois returned a one-count indictment charging Petitioner Heriberto Carbajal-Flores (hereinafter, "Petitioner") with possession of a firearm by an alien unlawfully present in the United States, in violation of 18 U.S.C. § 922(g)(5)(A). A longtime Chicagoland resident of nearly two decades, who is now a lawful permanent resident, Petitioner has no violent or felony record, and received a firearm for self-

defense purposes during an infamous night of unrest in Chicago after the murder of George Floyd in 2020.

Following the indictment, Petitioner moved to dismiss the charge, asserting that section 922(g)(5)(A) violates the Second Amendment both facially and as applied to him directly. Citing *Bruen*, Petitioner argued that the Second Amendment's plain text–protecting "the right of the people to keep and bear Arms"–encompasses noncitizens such as himself. 597 U.S. at 1. Petitioner further argued the government could not demonstrate a historical tradition of categorically disarming all persons lacking lawful immigration status.

The district court denied Petitioner's first *Bruen* motion to dismiss. It concluded that, notwithstanding *Bruen*, section 922(g)(5)(A) remained facially valid under binding circuit precedent. Petitioner subsequently filed a renewed motion to dismiss in light of the Seventh Circuit's decision in *Atkinson*. 70 F.4th at 1018.

Atkinson instructed district courts to engage in rigorous text-and-history analysis under *Bruen* and to consider whether modern firearm restrictions are supported by a consistent historical tradition rather than isolated analogues. *Id*. It demanded that courts ask a series of "interrelated and non-exhaustive" questions about whether modern firearm restrictions are supported by a robust and representative historical analogue, not just "isolated facts." *Id*. at 1022-24. Recognizing that *Atkinson*'s framework applied beyond

the felon-in-possession statute addressed there, the district court applied the *Atkinson* framework to carefully examine whether section 922(g)(5)(A) could be squared with historical practice. *See* Appendix B.

Applying that test, the district court concluded that the government failed to demonstrate a historical tradition of categorically and permanently disarming *all* undocumented persons. *Id.* at 36-38. While the court upheld the statute's facial validity, it granted Petitioner's as-applied challenge, reasoning that he presented none of the indicia of "dangerousness" or disloyalty historically associated with disarmament. *Id.* In particular, the court found that Petitioner was employed, had no felony convictions, and maintained longstanding community ties, making him a "trustworthy adherent to the law" not subject to permanent disarmament under the historical record. *Id.*

Proceedings in the Seventh Circuit Court of Appeals

The Government appealed to the United States Court of Appeals for the Seventh Circuit. On review, the Seventh Circuit reversed the district court's dismissal, rejecting the Petitioner's facial challenge of section 922(g)(5)(A) and holding that as-applied challenges are categorically unavailable. *See* Appendix A. In its decision, the Seventh Circuit acknowledged that other courts of appeals have considered similar challenges differently. Appendix A at 9-10, 12-13. By foreclosing all as-applied challenges and upholding the

statute against a facial attack, the decision deepened an existing circuit conflict on the scope of section 922(g)(5)(A) under the Second Amendment.

This case therefore squarely presents two recurring constitutional questions of national importance. First, whether section 922(g)(5)(A) is facially unconstitutional under the Second Amendment. And, second, whether noncitizens may bring as-applied Second Amendment challenges to its enforcement in light of *Bruen* and divergent circuit precedent.

SUMMARY OF THE ARGUMENT

This case asks whether Congress may impose one of the broadest status-based firearm bans in American history without historical grounding or any finding of dangerousness. The Seventh Circuit upheld 18 U.S.C. § 922(g)(5)(A) by foreclosing all as-applied challenges while concluding the statute was valid. This approach conflicts with other circuits, disregards this Court's precedents, and threatens to strip a core constitutional right from hundreds of thousands of peaceable residents.

First, the decision deepens an entrenched circuit conflict. The Fifth and Eighth Circuits permit individualized challenges under *Bruen*, while the Seventh Circuit categorically denies them. Fundamental constitutional protections cannot depend on geography. This conflict alone satisfies Rule 10 and warrants the Court's intervention.

Second, the decision below abandons the framework established in *District of Columbia v. Heller*, *McDonald v. City of Chicago*, and *Bruen*, which all recognize an individual right available under the Second Amendment. 554 U.S. 570 (2008); 561 U.S. 742 (2010); 597 U.S. at 1. Instead of placing the burden on the government to justify such a broad, permanent ban, the Seventh Circuit concluded constitutionality of the statute, prematurely closing the door on individualized review, while effectively dismissing any right to self defense afforded to noncitizens under the Second Amendment. That reasoning effectively reintroduces the means-end balancing test *Bruen* rejected, and departs from the uniform approach this Court has demanded.

Finally, the stakes are profound. Section 922(g)(5)(A) exposes long-term residents–many with no criminal record–to felony prosecution and removal solely based on immigration status. Unlike *United States v. Rahimi*, which involved individuals adjudged dangerous, this statute imposes permanent disarmament untethered from any such finding. 144 S. Ct. 1889 (2024). The question presented is recurring, urgent and of national importance.

For these reasons, this case is a clean and ideal vehicle for adjudication. This petition presents an ideal opportunity for the Court to restore uniformity, reaffirm its Second Amendment framework, and resolve an urgent constitutional question of importance. Furthermore, this case allows the Court to clarify the constitutional limits of Congress' power to

disarm broad classes of individuals.

REASONS FOR GRANTING WRIT OF CERTIORARI

The Seventh Circuit's decision below underscores a compelling and urgent need for this Court's review. By affirming the facial constitutionality of, and categorically foreclosing all as-applied challenges under 18 U.S.C. § 922(g)(5)(A), the Seventh Circuit deepened an acknowledged circuit conflict and adopted reasoning irreconcilable with this Court's Second Amendment jurisprudence. Left uncorrected, that ruling permits one of the broadest status-based firearm prohibitions in American history to stand without historical grounding or individualized assessment. Its reach extends to millions of peaceable residents—many living in mixed-status households—who would otherwise lawfully defend their homes and families from intrusion but are categorically denied that right. The decision thus allows Congress to extinguish a core constitutional right based solely on immigration status—a result that affects hundreds of thousands of peaceable residents nationwide, subjecting them to felony prosecution and removal without any finding of dangerousness or disloyalty.

I. The Decision Below Deepens an Acknowledged Circuit Conflict Concerning 18 U.S.C. § 922(g)(5)(A).

The Seventh Circuit's categorical bar on as-

applied challenges directly conflicts with the approach of other courts of appeals. Across the circuits, courts have reached incompatible conclusions on whether section 922(g)(5)(A) allows individualized review and whether unlawfully present noncitizens fall within "the people" protected by the Second Amendment. This divergence creates an entrenched and outcome-determinative conflict that now warrants this Court's intervention.

The Fifth Circuit, for example, initially upheld section 922(g)(5)(A) in *United States v. Portillo-Muñoz*. 643 F.3d 437 (5th Cir. 2011). More recently, however, in *Rahimi*, the same court applied *Bruen*'s text-and-history framework to a similar firearm restriction—section 922(g)(8)—and reaffirmed generally that firearm restrictions must rest on demonstrated dangerousness rather than categorical status. 61 F.4th at 443, *cert. granted*, 143 S. Ct. at 2688. The Eighth Circuit, addressing section 922(g)(5)(A) directly, likewise conducted individualized review under *Bruen* in *United States v. Sitladeen*, while leaving room for as-applied challenges in future cases. 64 F.4th 978 (8th Cir. 2023). The Eleventh Circuit, meanwhile, upheld section 922(g)(5)(A) before *Bruen* in *United States v. Jimenez-Shilon*, yet acknowledged that the question remains open in light of *Bruen*. 34 F.4th 1042 (11th Cir. 2022). By contrast, the Seventh Circuit held that no unlawfully present noncitizen may ever invoke the Second Amendment, categorically excluding an entire class from constitutional protection. Appendix A.

A federal statute restricting a fundamental right cannot mean one thing in Chicago, another in New Orleans, and another in St. Louis. Such disuniformity in the application of a nationwide criminal statute demands this Court's review. The conflict is now mature, outcome-determinative, and expressly acknowledged by the lower courts, satisfying the Supreme Court Rule 10(a).

Justice Gorsuch recently underscored this very principle in his concurrence in *Rahimi*: "Our resolution of Mr. Rahimi's facial challenge to § 922(g)(8) necessarily leaves open the question whether the statute might be unconstitutional as applied in 'particular circumstances.'" *Rahimi*, 144 S. Ct. at 1907 (Gorsuch, J., concurring). As Justice Gorsuch explained, even where a law survives a facial challenge, courts must still consider whether it violates the Constitution as applied to specific individuals or circumstances. That observation reaffirms what the Seventh Circuit denied here—that § 922(g)(5)(A), like most federal statutes, is susceptible to as-applied challenges.

II. The Seventh Circuit's Decision Also Conflicts With This Court's Second Amendment Precedents.

Separate and apart from the circuit split, the decision below is irreconcilable with this Court's Second Amendment precedents. In *Heller*, *McDonald*, and *Bruen*, this Court confirmed that the Second Amendment protects an individual right and places

the burden on the government to justify modern restrictions through a consistent historical tradition. The district court faithfully applied that framework under *Bruen* and the Seventh circuit's holding in *Atkinson*, and found no founding-era analogue for permanently disarming peaceable, undocumented residents. *See* Appendix B. Guided by this Court's decision in *Bruen* and the Seventh Circuit's own decision in *Atkinson*, which emphasized the need for a "full, proper analysis of historical tradition" through "interrelated and non-exhaustive questions," the district court concluded that the government's evidence was insufficient and dismissed the charge as applied to Petitioner. *Id.*; 597 U.S. at 1; 70 F.4th at 1018.

At the Founding, militia and civic-duty laws required every able-bodied male resident to keep arms, often without regard to citizenship, and disarmament was historically limited to those adjudged dangerous or disloyal. *See* Act of May 10, 1794, § XXV, 1794 S.C. Acts 286, reprinted in DIGEST OF THE LAWS OF THE UNITED STATES & THE STATE OF SOUTH CAROLINA, NOW OF FORCE, RELATING TO THE MILITIA, at 119-20; An Act for . . . Disarming Persons Who Shall Not Have Given Attestations of Allegiance and Fidelity to This State, ch. 836 §§ 4-5, 1779 Pa. Laws 193, reprinted in IX THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801, at 346-47 (James T. Mitchell & Henry Flanders 1903). The Seventh Circuit departed from that tradition by categorically excluding all undocumented persons from "the people," thereby reintroducing the means-end

balancing that *Bruen* explicitly rejected.

Then–Judge Barrett's dissent in *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019), reinforces this historical understanding. Justice Barrett explained that "[h]istory is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns. But that power extends only to people who are *dangerous*." *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting) (original emphasis). Founding-era legislatures, she observed, "did not strip felons of the right to bear arms simply because of their status as felons," but only disarmed "those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety." *Id.* at 451, 454. That reasoning aligns with *Bruen* and *Rahimi*: the constitutional inquiry turns on dangerousness, not categorical status.

No decision of this Court has *ever* approved the wholesale disarmament of an entire class of persons based solely on civil status, without individualized findings of dangerousness. That departure from binding precedent provides an independent and equally sufficient ground for review under Supreme Court Rule 10(c).

III. The Questions Presented Are of Exceptional National Importance.

18 U.S.C. § 922(g)(5)(A) applies nationwide to hundreds of thousands of individuals who, like

Petitioner, have lived peacefully in this country for years, raising families, and contributing to their communities. Many of these households are "mixed-status" families containing both U.S. citizens and non-citizens—parents, spouses, or adult children—who share the same home but face vastly different constitutional treatment. Under the Seventh Circuit's rule, a parent or spouse lacking lawful status cannot possess even a lawfully purchased firearm to protect the household from intrusion, leaving entire families unable to exercise the core right of self-defense recognized in *Heller* and *Bruen*. Unlike section 922(g)(8), which this Court considered in *Rahimi*, and which applies only after judicial findings of dangerousness, section 922(g)(5)(A) imposes a sweeping, status-based prohibition untethered from any such finding. It thereby functions as a pure status offense, criminalizing possession and exposing peaceable residents to imprisonment and deportation without any evidence of threat or misuse.

Whether Congress may permanently deny a fundamental constitutional right to millions of residents based solely on immigration status—without proper historical grounding or individualized inquiry—presents a recurring question of exceptional national significance. The issue arises repeatedly across jurisdictions, affects a large and identifiable population, and implicates both core self-defense rights and the limits of congressional authority under the Second Amendment. For these reasons, only this Court can restore uniformity and provide definitive guidance.

IV. This Case Is An Ideal Vehicle To Resolve The Questions Presented.

This case squarely and cleanly presents both a facial challenge and the viability of as-applied challenges under 18 U.S.C. § 922(g)(5)(A). The district court conducted a full text-and-history analysis under *Bruen* and *Atkinson*, and dismissed the indictment after finding no historical analogue for the statute's categorical disarmament. 597 U.S. at 1; 70 F.4th at 1018; *see* Appendix B. In a precedential opinion, the Seventh Circuit reversed, foreclosing all as-applied challenges and thereby deepening the acknowledged circuit conflict, leaving no procedural or jurisdictional impediment to review. *See* Appendix A. Accordingly, there are no procedural barriers, jurisdictional defects, or alternative grounds for affirmance.

Moreover, Petitioner's circumstances sharpen the constitutional question presented. He is a longtime Chicagoland resident—who is now a lawful permanent resident—with no felony record and no history of violence, who received a firearm for self-defense and to protect a store that had been raided during a night of rioting in Chicago. Petitioner was doing nothing more than utilizing his Second Amendment right to self protection when he was charged. Petitioner's prosecution exemplifies why individualized review matters under *Bruen*'s historical framework and demonstrates how categorical bans sweep far beyond any historical justification. His circumstances mirror those of countless mixed-status families nationwide who share a single household but are divided by law in

their ability to defend it.

CONCLUSION

This case squarely presents an entrenched circuit conflict and a recurring constitutional question of exceptional national importance. The Court should grant certiorari to resolve a deep conflict, reaffirm its Second Amendment jurisprudence, and decide whether Congress may criminalize firearm possession by peaceable residents solely on the basis of immigration status, thereby denying millions of families the ability to exercise the core right of home defense guaranteed by the Second Amendment. Resolving this question will ensure that the fundamental right recognized in *Heller*, *McDonald*, and *Bruen* is applied consistently nationwide and not curtailed by status-based classifications untethered from historical tradition. For these reasons, Petitioner respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered on July 16, 2025.

Respectfully submitted,

/s/Jacob S. Briskman
Jacob S. Briskman
Counsel of Record for Petitioner
2624 W Fullerton Ave
Chicago, IL 60647