No. 19-487

In the Supreme Court of the United States

KEVIN W. CULP, ET. AL.,
Petitioners,

v.

KWAME RAOUL, ET. AL.,
Respondents.

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

BRIEF OF MISSOURI, ALABAMA, ARIZONA, ARKANSAS, GEORGIA, IDAHO, INDIANA, KANSAS, MONTANA, NEBRASKA, NORTH DAKOTA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, AND WEST VIRGINIA AS *AMICI CURIAE* SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether the Second Amendment right to keep and bear arms requires that the State of Illinois allow qualified non-residents to apply for an Illinois concealed carry license.

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INTEREST OF AMICI CURIAE

Missouri, Alabama, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, and West Virginia seek to protect their citizens' rights. Missourians frequently travel to Illinois, including many from St. Louis and elsewhere who commute to work in Illinois on a daily basis. Thus, Missouri has a keen interest in the uniform application of constitutional rights across state lines. The same is true of the State *amici*—some border Illinois, and all have residents who travel to Illinois.

Some of those residents are named Plaintiffs in this case. As outlined in their petition, Plaintiffs include residents of Indiana, Missouri, Wisconsin, Colorado, Iowa, and Pennsylvania. Each has a concealed-carry license in his or her home state. Many work in Illinois. Three Plaintiffs are licensed Illinois concealed-carry instructors, including a Missouri resident, an Indiana resident, and Kevin Culp, currently stationed in Ohio. They all sought injunctive relief simply allowing them to *apply* for a concealed-carry license in Illinois.

The Second Amendment right "belongs to all Americans." *District of Columbia* v. *Heller*, 554 U.S. 570, 581 (2008). That right extends to both keeping *and* bearing arms outside the home. *Moore* v. *Madigan*, 702 F.3d 933, 935 (7th Cir. 2012). But for most out-of-state residents, it stops at the Illinois

border. Illinois's refusal to acknowledge constitutional rights should not be sanctioned under the banner of administrative burdens. "[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table." *Heller*, 554 U.S. at 636. The Second Amendment is not a "second-class right." *McDonald* v. *City of Chicago, Ill.*, 561 U.S. 742, 780 (2010) (plurality op.).

SUMMARY OF ARGUMENT

Americans do not lose their constitutional rights when they cross state lines. The right to free speech, for example, has no geographic boundaries. *All* law-abiding Americans have the individual right to keep *and* bear arms. *Heller*, 554 U.S. 581. The Seventh Circuit, however, upheld an Illinois statute depriving Missourians (and residents of most amici states) of this right whenever they cross the border into Illinois, simply because Illinois says it cannot be certain that they are "law-abiding, responsible citizens"—while giving them no process to show otherwise. The Court should grant certiorari and reverse for three reasons.

I. The Seventh Circuit's opinion erred by finding Illinois's scheme "presumptively lawful" before deciding whether the law was in fact closely tailored to the historic prohibition "on the possession of firearms by felons and the mentally ill." *Heller*, 554 U.S. at 626. Cases from this Court and the circuit courts caution that such categorical exclusions must be carefully tailored and well-defined. *United States* v. *Stevens*, 559 U.S. 460, 468 (2010). Illinois's categorical disqualification on public carry in Illinois by any Missourian (or any resident of most other States)—simply because such out-of-state residents

might be a felon or *might* be mentally ill—is anything but tailored and well-defined. The law is "*grossly* underinclusive and overinclusive." App. 29 (Manion, J., dissenting) (emphasis added). Illinois has "utterly failed to show" that banning the "overwhelming majority of the country from even applying for a license" fits its purported goal or historic practice. *Id.*

II. Illinois not only *presumes* that Missourians and other nonresidents are not entitled to exercise their Second Amendment rights, it also offers them no individualized process to prove that they are in fact law-abiding, non-mentally-ill individuals. In related contexts, the circuit courts are deeply divided over whether categorical exclusions from Second-Amendment protection require some individualized process to allow individuals to prove that they were improperly excluded. *Kanter* v. *Barr*, 919 F.3d 437, 442 (7th Cir. 2019) (outlining circuit split). Where a presumptive exclusion is hopelessly overbroad (as here), such an individualized process becomes more imperative. But the Seventh Circuit held that Illinois did not have to give Plaintiffs even an *opportunity* to apply for a license or to show that they are responsible, law-abiding citizens.

III. The Second Amendment applies equally to out-of-state residents and Illinoisans, even within the State of Illinois. Illinois compounds its errors by drawing a constitutionally suspect distinction between residents and nonresidents. Residents may apply for a license; most nonresidents cannot. "'[A] State must accord residents and nonresidents equal treatment'" with "'respect to those 'privileges' and 'immunities' bearing on the vitality of the Nation as a

single entity.'" *Supreme Ct. of Va.* v. *Friedman*, 487 U.S. 59, 64-65 (1988) (citation omitted). Illinois has failed to do so.

ARGUMENT

A decade ago, this Court declared that the Second Amendment right to keep and bear arms "is exercised individually and belongs to all Americans." *District of Columbia* v. *Heller*, 554 U.S. 570, 581 (2008). Illinois, however, categorically denies this right to Americans from forty-five states. The Court should grant certiorari to end this unequal treatment and provide much needed guidance about analyzing categorical exclusions under the Second Amendment and the appropriate process to be given individuals who fall into such categories.

Licensed concealed carry is generally the only legal way to bear a firearm in public in Illinois. 720 ILCS 5/24-1.6(a) (defining the crime of "aggravated unlawful use of a weapon" to include the open carry of a firearm); 430 ILCS 66/10 (governing concealed carry licenses). Illinois bars nonresidents from even applying for a license unless they live in a state with firearm laws "substantially similar" to Illinois's. 430 ILCS 66/40; *see also id.* 66/40(e) (allowing some nonresidents to keep a firearm in their vehicle if they have a concealed-carry license in their home state). Whether a State's laws are "substantially similar" is determined by the Illinois State Police from surveys Illinois purports to send to all other states. But according to Illinois, only Arkansas, Mississippi, Texas, and Virginia currently qualify. Residents of the other 45 States—including every State bordering

Illinois—have no avenue to exercise public-carry in Illinois.

Carrying arms outside of the home is, historically, a vital component of self-defense. Ryan Notarangelo, *Carrying the Second Amendment Outside of the Home: A Critique of the Third Circuit's Decision in* Drake v. Filko, 64 CATH. U.L. REV. 235, 241 (2014). This remains true today. "[D]efensive use of guns by crime victims is a common occurrence . . . with estimates of annual uses ranging from about 500,000 to more than 3 million per year." *Priorities for Research to Reduce the Threat of Firearm-Related Violence*, Washington, DC: The National Academies Press, 15 (2013). Studies have "found consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies." *Id.* at 16. But this right to self-defense is denied to most nonresidents visiting or working in Illinois.

I. The Seventh Circuit's decision conflicts with *Heller* and other cases by upholding a categorical exclusion not closely tailored to any longstanding historical practice.

"Illinois categorically denies the residents of . . . 45 states the ability to exercise the fundamental right to carry a firearm in public in Illinois simply because of the 'ineligible' state in which they reside." App. 25 (Manion, J., dissenting). Yet the Seventh Circuit held that this law was "'presumptively valid'" because of "'longstanding prohibitions on the possession of firearms by felons and the mentally ill.'" App. 14-16 (citation omitted). It erred in doing so, departing from

this Court's prior cases governing the proper scope of such categorical bans.[1]

A. Restrictions on *who* may exercise Second Amendment rights, like content-based restrictions on speech, should be "'presumptively invalid.'" *United States* v. *Playboy Entertainment Grp., Inc.*, 529 U.S. 803, 817 (2000) (citation omitted); *see* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*, 56 UCLA L.R. 1443, 1493 (2009) (distinguishing between regulations governing "who" may exercise rights and other restrictions); *Binderup* v. *Attorney General*, 836 F.3d 336, 348 (3d Cir. 2016) (en banc) (Hardiman, J., concurring in part) ("when a law eviscerates the core of the Second Amendment right to keep and bears arms . . . by criminalizing exercise of the right entirely . . . it is categorically unconstitutional").

Categorical exclusions from the Second Amendment flip this typical presumption because they go to the *scope* of the constitutional right. *See McDonald* v. *City of Chicago, Ill.*, 561 U.S. 742, 802 (2010) (Scalia, J., concurring) ("traditional restrictions go to show the scope of the right, not its lack of fundamental character"). Restrictions of conduct or persons that categorically fall outside the scope of the

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[1] These classifications as to *who* make exercise Second Amendment rights are best analyzed as "scope restrictions" rather than "burden restrictions." Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*, 56 UCLA L.R. 1443, 1453 (2009). They do not purport to simply limit or burden the Second Amendment rights of persons in the defined class; rather, they govern whether those persons may exercise those rights *at all*. *Id*.

right are "presumptively lawful." *Heller*, 554 U.S. at 627 n.26.

Categorical exclusions from constitutional rights, accordingly, must be carefully grounded in our nation's history and tradition. In the speech context, this means that categorical exclusions are generally limited to several well-defined "historic and traditional categories" of speech. *United States* v. *Stevens*, 559 U.S. 460, 468 (2010) (quoting *Simon & Schuster, Inc.* v. *Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 127 (1991) (Kennedy, J., concurring in judgment)). In the Second Amendment context, it means looking at "longstanding prohibitions" and "historical tradition." *Heller*, 554 U.S. at 626. One such traditional prohibition is on the "possession of firearms by felons and the mentally ill." *Id.*

Conversely, categorical exclusions and the boundaries for such exclusions must *not* be based on some "ad hoc calculus of costs and benefits." *Stevens*, 559 U.S. at 471. The Second Amendment, like the First Amendment, already "reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs." *Id.* at 470. State legislatures do not have "freewheeling authority" to declare new categorical exemptions based on their judgment that some form of protected activity "is not worth it." *Id*. at 470-72.

B. Lower courts have come to conflicting results when reviewing laws purporting to fall within a historically valid categorical exclusion, but that arguably fall outside the scope of that exclusion.

This Court's precedent suggests that the proper boundaries for these exclusions must be closely drawn to mirror historic practice. In *Stevens*, the Court refused to extend any categorical exemption without a "long-settled tradition of subjecting that speech to regulation." 559 U.S. at 469. Without that "long history in American law," the Court held that video "depictions of animal cruelty" fell within the First Amendment's scope. *Id.* By contrast, the Court extended a long-established existing ban on "speech integral to criminal conduct" to encompass depictions of child pornography, because the sale of such depictions "was '*intrinsically related*' to the underlying" crime. *Id*. at 471 (discussing *New York* v. *Ferber*, 458 U.S. 747 (1982)) (emphasis added).

In the Second Amendment context, lower courts are divided about the proper historic scope of traditional exclusions. Some courts have found historical support for limiting Second Amendment protections to some "'concept of a virtuous citizenry,'" such that, historically, "the government could disarm 'unvirtuous citizens.'" *Binderup*, 836 F.3d at 348 (plurality opinion) (citation omitted); *see also Medina* v. *Whitaker*, 913 F.3d 152, 158-59 (D.C. Cir. 2019) (suggesting "the public in the founding era understood that the right to bear arms could exclude" not only dangerous persons but also "at least some nonviolent persons"). This "virtuous citizen" theory assumes the founders followed a "classical republican political philosophy," *id.*, that the "'right to arms does not preclude laws disarming the unvirtuous (i.e. criminals) or those who, like children or the mentally imbalanced, or deemed incapable of virtue.'" *United States* v. *Rene E.*, 583 F.3d 8, 15 (1st Cir. 2009)

(quoting Glenn Harlan Reynolds, *A Critical Guide to the Second Amendment*, 62 TENN. L. REV. 461, 480 (1995)).

Other opinions take a less expansive view, suggesting historic prohibitions governing felons and the mentally ill are primarily concerned with dangerousness. *Binderup*, 836 F.3d at 371 (Hardiman, J., concurring). These jurists note that, historically, "virtue exclusions are associated with civil rights." *Kanter* v. *Barr*, 919 F.3d 437, 462 (2019) (Barrett, J., dissenting). *Heller* emphatically found that the Second Amendment is an "individual right" held independent from its exercise in the civil context. *Heller*, 554 U.S. at 595; *Binderup*, 836 F.3d at 371 (Hardiman, J., concurring) ("[T]his virtuous-citizens-only conception of the right to keep and bear arms is closely associated with pre-*Heller* interpretations of the Second Amendment by proponents of the 'sophisticated collective rights model' who *rejected* the view that the Amendment confers an individual right"). Under this view, the scope of the "felons and mentally ill" exclusion must be tied to some showing that a group of individuals is actually or likely dangerous.

Even under the more expansive understanding, a Third Circuit plurality held that 18 U.S.C. § 922(g)(1) was overinclusive as applied to certain non-serious offenders. *Binderup*, 836 F.3d at 353 (plurality op.). And under the more limited "dangerousness" view, § 922(g)(1) has been criticized as "wildly overinclusive" since it applies to *all* nondangerous felons. Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH L. REV. 683, 721 (2007); *see*

also Kanter, 919 F.3d at 466 (Barrett, J., dissenting) (noting that § 922(g)(1) encompasses everything from "mail fraud," to "selling pigs without a license in Massachusetts" to "redeeming large quantities of out-of-state bottle deposits in Michigan"). Under both interpretations, courts have examined whether statutes set overbroad exclusions.

The Seventh Circuit's own prior cases considering § 922(g) have held that a State must make a "substantial showing" that persons subject to a categorical ban are particularly likely to have a mental illness or felony criminal record. *United States* v. *Skoien*, 614 F.3d 638, 643-44 (7th Cir. 2010) (en banc). In one case, that meant showing that domestic-abuse misdemeanants commit acts similar to violent felonies; that firearms are often an instrument of domestic abuse; and that "the recidivism rate is high" among domestic-abuse misdemeanants. *Id.* In another, it meant showing nonviolent felons presented a high recidivism risk for future violent crime. *Kanter*, 919 F.3d at 448.

C. The Seventh Circuit erred—and departed from this precedent—by holding Illinois's law presumptively valid without requiring the State to show its exclusion was properly tailored to reflect historic practice. App. 14-16. Compared to the careful line-drawing debates in the § 922(g) context, Illinois's system is "*grossly* underinclusive and overinclusive," categorically excluding from the exercise of Second Amendment rights not just felons and the mentally ill, but the overwhelming majority of Americans. App. 29 (Manion, J., dissenting).

Illinois has a long history of categorically banning the proper exercise of Second Amendment rights by both residents and nonresidents. *See Moore* v. *Madigan*, 702 F.3d 933 (2012). As of 2012, Illinois was the only state to maintain a "flat ban on carrying ready-to-use guns outside the home." *Id*. at 940. The Seventh Circuit recognized that justifying a flat denial of "the gun rights of the entire law-abiding adult population of Illinois" requires more than balancing costs and benefits. *Id.* *Moore* specifically rejected the kind of speculative arguments relied on by the majority opinion below:

> A blanket prohibition on carrying gun in public prevents a person from defending himself anywhere except inside his home; and so substantial a curtailment of the right of armed self-defense requires a greater showing of justification than merely that the public might benefit on balance from such a curtailment, though there is no proof it would.

Id. The court held that Illinois had not come close to satisfying its burden because it had "lots of options" to achieve its goals short of "eliminat[ing] all possibility of armed self-defense in public." *Id*.

After *Moore*, Illinois's new regime still generally bars anyone from bearing firearms in public. 720 ILCS 5/24-1.6(a). But the State has created an exception for persons who can obtain a concealed-carry license, which "requires an applicant to show, among other things, that he is not a clear and present danger to himself or a threat to public safety and, within the past five years, has not been a patient in a mental hospital, convicted of a violent misdemeanor,"

and so forth. App. 5 (citing 430 ILCS 66/10(a)(4), 66/25(3), 66/25(5); 430 ILCS 65/4, 65/8). It is undisputed, however, that the law "foreclose[s] the law-abiding residents of 45 states from acquiring a license"—or even applying for one. App. 14.

The Seventh Circuit found this scheme "presumptively lawful." App. 14 (quoting *Heller*, 554 U.S. at 626-27 & n.26). Illinois claimed its law fell within "'longstanding prohibitions on the possession of firearms by felons and the mentally ill.'" App. 14 (quoting *Heller*, 554 U.S. at 626-27 & n.26). And that, the court reasoned, was enough to make it presumptively valid. App. 14-16.

The Seventh Circuit's jump to presumptive validity was in error because the court never measured whether Illinois's law *actually* fell within the historic boundaries of the exclusion. It never asked whether the law was "'intrinsically related'" to the historic exclusion. *Stevens*, 559 U.S. at 471. Nor did it require Illinois to make a "substantial showing" that persons subject to a categorical ban are particularly likely to have a mental illness or felony criminal records. *Skoien*, 614 F.3d at 643-44.

Had it done so, the court would have found that "Illinois has utterly failed to show that banning the residents of an overwhelming majority of the country from even applying for a license" is a "close fit" to historic practice. App. 29 (Manion, J., dissenting). Far from making a "substantial showing" that Missourians and other nonresidents are particularly likely to have mental illnesses or felony criminal records, the Seventh Circuit repeatedly emphasized Illinois's *lack* of information about Missourians and

other nonresidents. *E.g.*, App. 2, 7, 8, 11-12, 17 (describing an "information deficit," "shortfall," or "gap"). An "information deficit," of course, is the opposite of the strong showing necessary to establish a presumptive forfeiture of constitutional rights.

Moreover, Illinois's "system is grossly underinclusive and overinclusive," even taking the alleged information deficits into account. App. 29. (Manion, J., dissenting). "An Illinois resident holding a license could cross the Missisippi River to Missouri, check himself into a mental-health clinic, and then return without Illinois ever knowing." *Id*. That person could successfully apply for a license in Illinois, but a Missourian who had never visited a mental-health clinic cannot even apply. *Id*. "Or a person could live in one or more of the 45 dissimilar states for years and then move to a similar state, automatically becoming eligible to apply for a license even though" Illinois would have no detailed records from the prior state. App. 29-30. Yet here, "a colonel in the United States Air Force licensed as a concealed-carry instructor in Illinois cannot apply for a concealed-carry license of his own" simply because he does not live in Illinois. App. 30.

As Judge Manion concluded, "Courts should not allow such slipshod laws to proscribe the exercise of enumerated rights." *Id*.

II. Lower courts disagree about whether persons categorically excluded from the Second Amendment must be given some opportunity or process to show that they are law-abiding, non-mentally-ill persons.

Illinois not only *presumes* that Missourians and other nonresidents are not entitled to exercise their Second Amendment rights, it also offers them no opportunity to prove that they are in fact law-abiding, non-mentally ill individuals. This invokes a widespread "split as to whether *as-applied* Second Amendment challenges" to categorical exclusions "are viable." *Kanter*, 919 F.3d at 442.

The Court views categorical bans skeptically in part because they take away constitutional rights without any individualized consideration—placing conduct in a virtual "[Second] Amendment Free Zone." *Stevens*, 559 U.S. at 469 (citation omitted). Having presumptively placed Plaintiffs in such a zone, Illinois and the Seventh Circuit compound their error by denying Plaintiffs any way to get out.

The "courts of appeals are split as to whether as-applied Second Amendment challenges" to categorical bans "are viable." *Kanter*, 919 F.3d at 442. The Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits have ruled in the § 922(g)(1) context that if a categorical exclusion is constitutional on its face, then it is "always constitutional as applied . . . regardless of . . . individual circumstances." *Kanter*, 919 F.3d at 442; *see Stimmel* v. *Sessions*, 879 F.3d 198, 210 (6th Cir. 2018); *United States* v. *Scroggins*, 599 F.3d 433, 451 (5th Cir. 2010) (upholding dispossession laws even as applied to nonviolent felons); *United States* v. *Rozier*,

598 F.3d 768, 771 (11th Cir. 2010) ("statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment"); *United States* v. *Vongxay*, 594 F.3d 1111, 1115 (9th Cir. 2010) (rejecting nonviolent felon's as-applied challenge because felons' Second Amendment rights are "categorically different"); *In re United States*, 578 F.3d 1195, 1200 (10th Cir. 2009) ("We have already rejected the notion that *Heller* mandates an individualized inquiry concerning felons pursuant to § 922(g)(1)."). If this is the rule, then policing the boundaries of these categorical exclusions (*see* Part I above) becomes even more important.

At least the Third, Fourth, Eighth, and D.C. Circuits are more open to as-applied challenges. *Binderup*, 836 F.3d at 340 (plurality, op.) (granting as-applied challenge); *United States* v. *Pruess*, 703 F.3d 242, 247 (4th Cir. 2012) (denying as-applied challenge but leaving open the possibility); *Medina*, 913 F.3d at 160 (leaving open the possibility); *United States* v. *Woolsey*, 759 F.3d 905, 909 (8th Cir. 2014) (same).

Here, Plaintiffs asked for an injunction allowing them simply to *apply* for a license in Illinois. The Seventh Circuit denied the request even while acknowledging that some individualized process might be required here. App. 18. It even said that a sworn declaration or a cost-shifting mechanism would let Illinois close its information gap at the application stage. *Id.* But, it concluded, Illinois has no "practical way of monitoring the ongoing fitness" of licensed individuals. *Id*. That puts the burden on the wrong party. *See also, e.g.*, *Culp* v. *Madigan*, 840 F.3d 400, 403 (7th Cir. 2016) (requiring Plaintiffs to "offer" a

"solution"). And the majority opinion below does not explain why ongoing sworn declarations or cost-shifting are not equally viable solutions to this monitoring problem. App. 18. Quarterly updates, for example, would advance Illinois's purported interests more than the quarterly checks of national databases that Illinois uses for substantially similar states, which can take "over a year" to update. *See* App. 34 (Manion, J., dissenting). And Plaintiffs do not ask the Court to iron out all these details now, they just want an opportunity to present their case to the state.

The Court should grant review to determine this interplay between facial and as-applied challenges to categorical exclusions in the Second Amendment context. Either categorical exclusions should closely mirror historical practice on their face (so rights are not presumptively denied), or as-applied challenges to such laws should be reviewed carefully (so individuals have the right to prove their entitlement to those rights). Here, the Seventh Circuit erred by not reviewing the scope of the exclusion at all, and denying Plaintiffs any individual process whatsoever. Plaintiffs have demonstrated that they are law-abiding, non-mentally-ill individuals who should at least be given an *opportunity* to apply for a license in Illinois.

III. The Seventh Circuit erred by upholding Illinois's law treating residents and nonresidents unequally.

Illinois's law compounds these error by specifically denying process only to Missourians and other nonresidents.

Missourians and other nonresidents have Second Amendment rights even in Illinois. U.S. Const., art. 4 § 2. "'[A] State must accord residents and nonresidents equal treatment'" with "'respect to those 'privileges' and 'immunities' bearing on the vitality of the Nation as a single entity.'" *Supreme Ct. of Va.* v. *Friedman*, 487 U.S. 59, 64-65 (1988) (citation omitted); *Saenz* v. *Roe*, 526 U.S. 489, 501 (1999) ("[A] citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the 'Privileges and Immunities of Citizens in the several States' that he visits.") (citation omitted).

Yet the constitutional rights of residents of neighboring states are penalized every time they cross the border into Illinois, which offers them no process whatsoever to apply for public carry in Illinois. An Indiana resident with an Indiana concealed-carry license, for example, has no recourse to exercise his Second Amendment right to bear arms when he crosses the border into Illinois for work—where he works as an Illinois State Police certified concealed-carry instructor. Pet. 12. Wisconsin residents who work in Chicago lose their Second Amendment right to bear arms every day they commute to work. Pet. 11. A Missouri resident originally from Illinois—where he is a licensed concealed-carry instructor—has no recourse to exercise his rights when he enters Illinois. *Id*. And Iowa residents living just across the Missisippi River cannot go to dinner in Illinois without jeopardizing their right to carry. Pet. 12-13. In the past, this Court has criticized "any classification which serves to penalize" the right to travel. *Att'y Gen. of New York* v. *Soto-Lopez*, 476 U.S.

898, 903 (1986). That is exactly what Illinois's law does.

The majority opinion below nonetheless insists Illinois's "standards" are "identical for residents and nonresidents alike." App. 5. That is much like "the trick the emperor Nero was said to engage in: posting edicts up on the pillars, so that they could not easily be read." Antonin Scalia, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 17 (1997). Imposing identical standards, where one group of people has no opportunity whatsoever to satisfy those standards, is not equal treatment.

"[T]here is no evidence in the record that Illinois could not pursue its goal in a more targeted way that would respect the fundamental right at stake." App. 31 (Manion, J., dissenting). One option is reciprocity. For example, thirty-six states recognize a Missouri concealed carry permit; Illinois is one of the few exceptions. *See* "Concealed Carry Reciprocity," http://ago.mo.gov/criminal-division/public-safety/concealed-carry-reciprocity (last accessed November 7, 2019). Indeed, Illinois treats a Missouri CCL as a sufficient predictor of law-abidingness for transporting a firearm on Illinois roads, *see* 430 ILCS 66/40(e), but pleads an "information shortfall" once a Missouri driver gets out of his or her car, App. 7. Another option would have been to place the burden of proof on the applicant. Illinois could have required applicants to produce information about their criminal and mental-health history, App. 18, and update this information regularly. Or it could have used the FBI's National Instant Criminal Background Check System (NICS), which would comprehensively

report any criminal history suggesting a violation of state or federal law. App. 45.

Instead of adopting any of these more closely tailored options, Illinois systemically bars Missourians and non-residents from even *applying* for a license. The Court should grant certiorari and hold that this route is not open to them within our republic. "[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table." *Heller*, 554 U.S. at 636.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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