No. 19-487

In the Supreme Court of the United States

KEVIN W. CULP, MARLOW DAVIS, FREDDIE REED-DAVIS, DOUGLAS W. ZYLSTRA, JOHN S. KOLLER, STEVE STEVENSON, PAUL HESLIN, MARLIN MANGELS, JEANELLE WESTROM, SECOND AMENDMENT FOUNDATION, INC., ILLINOIS CARRY, and ILLINOIS STATE RIFLE ASSOCIATION,
Petitioners,

v.

KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, BRENDAN F. KELLY, in his official capacity as Director of the Illinois State Police, and JESSICA TRAME, as Bureau Chief of the Illinois State Police Firearms Services Bureau,
Respondents.

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

BRIEF IN OPPOSITION FOR RESPONDENTS

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QUESTION PRESENTED

Whether the Seventh Circuit correctly concluded that the Illinois Firearm Concealed Carry Act—which requires that nonresident applicants for a concealed carry license reside in a State with possession and carriage laws that are substantially similar to those in Illinois—respects the Second Amendment, where the undisputed evidence shows that Illinois cannot presently determine whether applicants from dissimilar States have a disqualifying criminal or mental health history.

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BRIEF IN OPPOSITION

The Illinois Firearm Concealed Carry Act ("Concealed Carry Act"), 430 ILCS 66/1 *et seq.*, requires the Illinois State Police, prior to issuing a license to carry a concealed firearm in public, to establish that applicants do not have a disqualifying criminal or mental health history, and, in addition, to monitor licensees over the life of the license to confirm ongoing eligibility. In this manner, the Act works to ensure that felons and the mentally ill do not carry firearms in public—prohibitions that are "presumptively lawful" under *District of Columbia v. Heller*, 554 U.S. 570 (2008), and not challenged by petitioners.

For Illinois residents, the Illinois State Police are able to verify and monitor an applicant's eligibility through Illinois's own databases, which contain comprehensive criminal history and mental health information about Illinois residents. The Illinois State Police do not, however, have access to that information for nonresidents. Accordingly, the Act allows nonresidents to apply for a concealed carry license only if their home State's firearm ownership, possession, and carriage laws are substantially similar to those in Illinois. States are substantially similar if they "monitor the same criminal and mental health qualifications Illinois requires under its own laws and report this information to national databases." Pet. App. 9.

At summary judgment, respondents marshaled evidence detailing the difficulties faced by the Illinois State Police when attempting to verify and monitor the eligibility of nonresident applicants who live in dissimilar States. Respondents also explained how the substantial-similarity requirement addresses

these difficulties, as well as its close ties to the longstanding prohibitions on firearm possession by felons and the mentally ill recognized in *Heller*. Petitioners made no attempt to dispute the difficulties caused by this "information deficit" or that Illinois has a public-safety interest in prohibiting felons and the mentally ill from carrying firearms in public. Nor did they offer a historical account in support of their argument that the Second Amendment precluded Illinois from implementing its substantial-similarity requirement. On this record, the district court granted summary judgment to respondents, and the Seventh Circuit affirmed.

The Seventh Circuit's decision, which was based in large part on petitioners' evidentiary and legal shortcomings, was correct. The undisputed evidence showed a direct relationship between the substantial-similarity requirement and Illinois's "weighty interest in preventing the public carrying of firearms by individuals with mental illness and felony criminal records." Pet. App. 17. The court's decision also hewed closely to *Heller*, which recognized a historical predicate for States prohibiting possession of firearms by felons and the mentally ill.

Petitioners do not identify a circuit split implicated by this case or otherwise present any reason for this Court to review the Seventh Circuit's sound decision. Instead, they assert that *Heller* and Seventh Circuit precedent preclude Illinois's process for monitoring public carriage. But this Court's certiorari jurisdiction is not designed to correct a misapplication of the law to the particular facts of a case—which, in any event, did not occur here. The petition should be denied.

STATEMENT

1. Under Illinois's Concealed Carry Act, resident and nonresident licensees are permitted to carry a concealed firearm on or about their person in public, so long as they are not in a prohibited area such as a school or hospital. 430 ILCS 66/10(c), 66/65.[1] The Illinois State Police are responsible for issuing concealed carry licenses to applicants who satisfy the requirements for public carriage, as well as monitoring the continued eligibility of licensees during the life of the license. *Id.* 66/10, 66/40, 66/70(a). The eligibility requirements, which are "identical" for residents and nonresidents, Pet. App. 5, "turn[ ] on the continuing and verifiable absence of a substantial criminal record and mental health history," *id.* at 7. Once issued, licenses are valid for five years, but may be revoked if the licensee later becomes ineligible. 430 ILCS 66/10(c), 66/70(a).

To obtain a concealed carry license, applicants must first show that they are eligible to possess firearms. To satisfy this requirement, applicants must present a valid license to possess firearms in Illinois (issued

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[1] There are exceptions to the requirement that nonresidents who wish to carry or transport their firearms in Illinois obtain a concealed carry license. An unlicensed nonresident may transport a concealed firearm in his or her vehicle in Illinois, so long as the nonresident is not prohibited from owning or possessing a firearm under federal law and is eligible to carry a firearm in public under the laws of his or her State of residence. 430 ILCS 66/40(e). Likewise, a nonresident does not need a concealed carry license when on a firing range; in an area where hunting is permitted; on the nonresident's own land or in his or her abode, legal dwelling, or fixed place of business; and a guest in another's home. *Id.* 65/2(b)(5), (7), 66/10(g)(1).

pursuant to the Illinois Firearm Owners Identification Act, 430 ILCS 65/0.01 *et seq.*, and known as a "FOID card") or in their home State, where applicable. 430 ILCS 66/25(2), 66/40(c)(2). Additionally, applicants must demonstrate that they satisfy the requirements for a FOID card at the time of their application for a concealed carry license. *Id.* 66/25(2), 66/40(c).

Relevant here, applicants are ineligible for a FOID card—and thus a concealed carry license—if they have a disqualifying criminal or mental health history. For example, applicants cannot obtain a concealed carry license if they have been convicted of a felony or a domestic battery, *id.* 65/4(a)(2)(ii), (ix), or if they have an intellectual or developmental disability, have been involuntarily admitted into a mental health facility, or have been adjudicated a person with a mental disability, *id.* 65/4(a)(2)(v), (xv), (xvi), (xvii). Applicants are also ineligible if, within the past five years, they were voluntarily admitted into a mental health facility or have been convicted of an assault in which a firearm was used or possessed. *Id.* 65/4(a)(2)(iv), (viii).

In addition to these underlying FOID card requirements, applicants are ineligible for a concealed carry license if, within the five years preceding the application, they have been convicted or found guilty of a misdemeanor involving the use or threat of physical force or violence, or two or more violations related to driving while under the influence. *Id.* 66/30(b)(5). Applicants must also not be the subject of a pending arrest warrant, prosecution, or other proceeding for an offense that could lead to disqualification from possessing a firearm. *Id.* 66/25(4).

Upon receiving a completed application, the Illinois State Police "conduct a background check of the applicant to ensure compliance with the requirements of [the Concealed Carry Act] and all federal, State, and local laws." *Id.* 66/35. The Illinois State Police are also responsible for monitoring the continued eligibility of licensees during the life of the license. *Id.* 65/8.1, 66/30(b)(3), 66/70(a). However, while the Illinois State Police have direct access to information about the criminal and mental health history of Illinois residents, they lack access to such information about nonresidents. Pet. App. 6-8, 86-87; Resp. App. 15a-17a. To ensure that the Illinois State Police can obtain the information necessary to verify a nonresident's initial and continued eligibility, Pet. App. 8, the Concealed Carry Act requires a nonresident applicant to reside in a "state or territory of the United States with laws related to firearm ownership, possession, and carrying, that are substantially similar to the requirements to obtain a license under [the Concealed Carry Act]," *id.* 66/40(b).

A State is substantially similar when it: (1) "regulates who may carry firearms, concealed or otherwise, in public"; (2) "prohibits all who have involuntary mental health admissions, and those with voluntary admissions within the past 5 years, from carrying firearms, concealed or otherwise, in public"; (3) "reports denied persons to [the National Instant Criminal Background Check System]"; and (4) "participates in reporting persons authorized to carry firearms, concealed or otherwise, in public through [the National Law Enforcement Telecommunications System]." 20 Ill. Admin. Code § 1231.10. The National Instant Criminal Background Check System and the National

Law Enforcement Telecommunications System are federal databases that are made available to States. Resp. App. 4a-5a.

2. Petitioners, who are nonresidents seeking to apply for and obtain a concealed carry license in Illinois and nonprofit organizations whose members seek the same, brought this lawsuit, alleging that Illinois's substantial-similarity requirement violates the Second Amendment, Equal Protection Clause, Due Process Clause, and Privileges and Immunities Clause. R. 1-30. After fact discovery closed, petitioners moved for a preliminary injunction, R. 58-59, attaching only the individual petitioners' declarations as evidentiary support, R. 103-23.

Respondents objected to the motion on both legal and factual grounds. R. 168. With respect to the latter, respondents submitted an affidavit from Illinois Firearms Services Bureau Chief Jessica Trame, who was responsible for administering the FOID and Concealed Carry licensing programs for the Illinois State Police. Resp. App. 1a.[2] In her affidavit, Chief Trame described the application review process and the "information deficit the State faces with vetting and monitoring out-of-state residents." Pet. App. 17; Resp. App. 1a.

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[2] Respondents' appendix contains the full text of Chief Trame's August 31, 2015 affidavit submitted in support of respondents' objection to the preliminary injunction motion, see Resp. App. 1a-11a, as well as the text of her January 13, 2017 and February 17, 2017 affidavits, which were submitted by respondents in support of their motion for summary judgment, see Resp. App. 12a-24a.

Chief Trame explained that the Illinois State Police process for reviewing applications begins with verifying the applicant's identity. *Id.* at 2a. A resident's identity is verified primarily by reviewing the driver's license and identification card system maintained by the Illinois Secretary of State. *Id.* at 3a. This system, however, does not extend to nonresidents, and the Illinois State Police lack direct access to other States' databases. *Ibid.* Accordingly, the Illinois State Police must rely on the National Law Enforcement Telecommunications System, a database that contains records of valid driver's licenses and concealed carry licenses. *Id.* at 3a, 5a. However, that database is limited by the fact that not all States participate in it. *Id.* at 4a.

After the applicant's identity is verified, the Illinois State Police perform a background check, *id.* at 2a, to verify, among other things, that the "applicant's criminal history does not render the applicant ineligible," *id.* at 4a. For Illinois residents, this includes reviewing a number of federal systems and two systems maintained by the Illinois State Police—the Criminal History Record Inquiry System and the Computerized Hot Files System. *Id.* at 2a.

Because the Illinois State Police do not have access to other States' databases, they "rel[y] on federal databases to obtain out-of-state criminal history information." *Id.* at 4a. These federal databases—such as the National Instant Criminal Background Check System, which contains information about persons prohibited from possessing firearms, among other things—are often inadequate because some States do not provide them with complete or uniform information. *Id.* at 5a-6a.

The Illinois State Police must also verify that the applicant does not have a disqualifying mental health history. *Id.* at 6a. For Illinois residents, the Illinois State Police consult a state database to determine whether an individual has been involuntarily admitted into, or has been a patient in, a mental health facility in Illinois. *Id.* at 6a-7a. But this database does not contain records "of out-of-state mental health facility admissions," and the Illinois State Police do not have "access to other states' mental health facility admissions databases" *Id.* at 7a. As for federal databases, only the National Instant Criminal Background Check Index contains information related to mental health history. *Ibid.* That database, however, contains no information on voluntary mental health admissions. *Ibid.*

After an applicant obtains a concealed carry license, the Illinois State Police continue to monitor the licensee in various ways. *Id.* at 7a-9a. They perform daily searches in Illinois's criminal history and mental health databases for any new disqualifying events, and check all licensees "against the federal databases on a quarterly basis." *Id.* at 7a. There is also an extensive system of in-state reporting to alert the Illinois State Police about new disqualifying events, *id.* at 8a, including statutorily required reporting by Illinois physicians, qualified examiners, law enforcement officials, state circuit clerks, and school administrators when, as relevant to their respective purviews, they become aware that a licensee poses a clear and present danger or is rendered ineligible for mental health reasons, 430 ILCS 65/8.1. Because these reporting requirements do not (and cannot) apply outside of Illinois, the Illinois State Police are dependent

on other States to monitor their own residents. *Id.* at 8a-9a. Otherwise, it would be "virtually impossible to effectively conduct this same level of screening and monitoring for nonresident[s]." *Id.* at 9a.

Chief Trame also explained the procedure the Illinois State Police use to determine which States have substantially similar license requirements. *Ibid.* In 2013, when the Concealed Carry Act went into effect, the Illinois State Police sent surveys to other States "requesting information regarding their regulation of firearms use and reporting and tracking mechanisms relative to criminal activity and mental health issues." *Ibid.* In 2014, the Illinois State Police "sent a second survey to those states that did not respond to the first survey." *Ibid.* The results of these surveys reflected that "Hawaii, New Mexico, South Carolina, and Virginia" had substantially similar laws. *Ibid.*

3. Based on the foregoing evidence, the district court denied petitioners' request for a preliminary injunction, concluding that their "likelihood of success on the merits is not strong and the balance of harms favors [respondents] and the public." R. 406-07, 469. The Seventh Circuit affirmed in a 2-1 decision. Pet. App. 88 (Posner, J.). The court held that "the constitutional right to keep and bear arms means that states must permit law-abiding and mentally healthy persons to carry loaded weapons in public," but noted that "'law-abiding,' and 'mentally healthy' are significant limitations on the right of concealed carry." *Id.* at 82-83 (internal quotations omitted). The Concealed Carry Act entitles an individual to carry a firearm in public, but only if he or she "meets the qualifications set forth in the Act," *id.* at 82, which are "mainly about

whether the applicant . . . has a criminal history or a history of mental illness," *id.* at 86.

And "while the Illinois state police have ready access to information about Illinois residents" to assess their eligibility to carry a firearm, "they lack reliable access to the information they need about the qualifications of nonresident applicants other than [those residing in the] 'substantially similar' states." *Ibid.* Therefore, "[t]he critical problem presented by the [petitioners'] demand—for which they offer no solution—is verification" of a nonresident's application and the ability to receive "reliable updates" about their qualifications. *Id.* at 88. The court noted, though, that a "trial in this case may cast the facts in a different light," *ibid.*, due in part to the fact that the record at that point consisted primarily of Chief Trame's "uncontradicted affidavit," *id.* at 86.

4. Shortly thereafter, the parties filed cross motions for summary judgment. R. 532-33, 821, 835, 874. Because fact discovery had closed before petitioners filed their preliminary injunction motion, the record at summary judgment was nearly identical to the record at the preliminary injunction stage. R. 529.[3] In

[3] On remand, petitioners moved to reopen discovery. Dist. Ct. Doc. Nos. 16, 38. Respondents objected, explaining that they had served petitioners with interrogatories, requests for production, and disclosures before the close of discovery, but received no response. R. 496-98. For their part, petitioners had not served any written discovery requests and never requested to depose defense witnesses. *Id.* The magistrate judge sustained the objection, finding that petitioners "made no showing of any diligence in conducting discovery and no good cause for the relief they seek." R. 529. Petitioners did not object to this ruling, and the district court did not address it. R. 1319-20.

particular, the summary judgment record included two additional affidavits from Chief Trame that mirrored her initial affidavit, with the addition of updated information about which States qualified as substantially similar at that time. Resp. App. 12a, 23a. On that point, Chief Trame reported that the Illinois State Police sent out another survey in 2015. *Id.* at 21a. Based on the results of that survey, Arkansas, Mississippi, Texas, and Virginia were deemed substantially similar. *Id.* at 24a.[4] These results, as well as Chief Trame's description of the application process and the difficulties faced by Illinois in obtaining nonresidents' criminal and mental health history, again went uncontroverted by petitioners. Pet. App. 17.

The district court granted respondents' motion for summary judgment. *Id.* at 37. On the Second Amendment claim, the court held that "Illinois has a substantial interest in restricting concealed carry licenses to those persons whose qualifications can be verified and monitored," and that the "restriction barring nonresidents from states without substantially similar laws from applying for an Illinois concealed carry license is substantially related to the strong public interest." *Id.* at 78. Petitioners appealed. R. 1345.[5]

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[4] The Illinois State Police has since sent out another survey, the results of which show that Arkansas, Idaho, Mississippi, Nevada, Texas, and Virginia are substantially similar. See Illinois State Police Firearms Services Bureau, *Frequently Asked Questions*, https://www.ispfsb.com/Public/FAQ.aspx.

[5] The district court also granted of summary judgment to respondents on the petitioners' privileges and immunities, equal protection, and due process claims. Pet. App. 21-25. The Seventh

5. In a 2-1 decision, the Seventh Circuit affirmed. Pet. App. 26 (Scudder, J.). As the court explained, petitioners did not dispute that individuals with the criminal or mental health history that Illinois has identified as disqualifying should not carry firearms in public. *Id.* at 15. And petitioners also did not challenge Chief Trame's affidavits: "[a]t no point in this litigation—not in the district court, during the first appeal, or now in this second appeal—have [petitioners] presented evidence refuting Illinois's showing of [the] information deficit" that prevents it from reliably verifying whether nonresidents from dissimilar States have a disqualifying criminal or mental health history. *Id.* at 7-8. Nor did petitioners dispute that Illinois's licensing standards are identical for nonresident and residents alike, *id.* at 16, or that any "differential licensing impact" on nonresident applicants "is the product of the information deficit the State faces," *id.* at 16-17.

Nonetheless, petitioners argued that the Second Amendment precludes Illinois from declining to make concealed carry licenses available to residents of dissimilar States. *Id.* at 14. But that argument, the Seventh Circuit explained, could not "be squared with" the holding of *Heller*, "that the rights conferred by the Second Amendment are not unlimited." *Ibid.* In fact, *Heller* "underscored the propriety of the 'longstanding prohibitions on the possession of firearms by felons and the mentally ill.'" *Id.* at 14-15 (quoting *Heller*, 554 U.S. at 626). Noting the absence of historical support for petitioners' assertion of a "broad, unfettered right

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Circuit affirmed, and petitioners do not seek this Court's review of those claims. Pet. at i.

to carry a gun in public," the Seventh Circuit held that "the Second Amendment allows Illinois, in the name of important and substantial public-safety interests, to restrict the public carrying of firearms by those most likely to misuse them." *Id.* at 15.

For many of the same reasons, the court also rejected petitioners' argument that the substantial-similarity requirement impermissibly discriminates against nonresidents. *Id.* at 16. Illinois had shown that the "substantial similarity requirement relates directly to the State's important interest in promoting public safety by ensuring the ongoing eligibility of those who carry a firearm in public." *Id.* at 17. So long as "information deficits inhibit the State's ability to monitor the ongoing qualifications of out-of-state residents outside of the substantially similar states," requiring Illinois to issue licenses "despite this information shortfall would thrust upon Illinois a race to the bottom." *Ibid.* Licenses would have to be issued to nonresidents without proper verification, and "[o]nce eligible would risk meaning forever eligible." *Ibid.* Such an outcome would be irreconcilable with *Heller*'s acceptance of laws prohibiting firearm possession by felons and the mentally ill. *Ibid.*

Finally, the Seventh Circuit dismissed petitioners' contention that the impact of the information deficit should fall on Illinois. *Id.* at 19. Petitioners accepted that "Illinois cannot adequately monitor their mental health or potential criminal behavior," but nevertheless asserted that it should be sufficient "for Illinois to ask license holders to self-report any disqualifying criminal history or mental health developments." *Id.* at 19-20. In rejecting this assertion, the court held that "Illinois is not forced to accept the public-safety

risk of relying on individuals to self-report a felony conviction, domestic violence arrest, or mental health crisis," *id.* at 20; "[n]or is the State required to tailor its law so narrowly as to sacrifice its important monitoring interest," *ibid.*

In dissent, Judge Manion agreed with the majority in some respects. He rejected petitioners' argument that strict scrutiny should apply, *id.* at 28, and recognized that Illinois's "goal for its law—to keep guns out of the hands of felons and the mentally ill in public"—was a sufficiently "strong public interest justification," *id.* at 29 (internal quotations omitted). He would have held, however, that the Illinois law was insufficiently narrowly tailored to that goal and that it was "both underinclusive and overinclusive." *Ibid.* In his view, Illinois could overcome the information deficit by employing a variety of "workarounds": it could, for example, increase the cost to nonresidents of a concealed carry license, and/or impose on nonresidents "quarterly reporting and mental-health certification requirements." *Id.* at 31, 34 & n.5. He declined to opine whether such "workarounds" would "independently pass constitutional muster," however. *Id.* at 34-35 n.5.

Petitioners filed a petition for rehearing and rehearing en banc, which was denied with no judges in regular active service requesting a vote for rehearing en banc and all members of the original panel voting to deny panel rehearing. Pet. App. 106.

REASONS FOR DENYING THE PETITION

The undisputed evidence presented at summary judgment shows that the Illinois State Police cannot presently verify or monitor the criminal and mental

health histories of nonresidents who live in dissimilar States. Petitioners accept this reality, but claim that the solution Illinois has crafted—the substantial-similarity requirement—impinges upon their Second Amendment rights. According to petitioners, the Second Amendment requires Illinois to allow nonresidents to carry firearms in public even in circumstances when it is impossible to verify whether those individuals have a disqualifying criminal or mental health history. This theory, as the Seventh Circuit rightly concluded, is misguided. Not only is petitioners' position inconsistent with *Heller*, but it also ignores the undisputed evidentiary showing that the substantial-similarity requirement is directly related to Illinois's public-safety interest in prohibiting potentially dangerous persons from publicly carrying firearms.

Petitioners' theory, moreover, is not suitable for this Court's review. Petitioners make no meaningful effort to identify a split in lower court authority or otherwise satisfy the criteria for certiorari. Instead, they present a request for error correction, arguing that the decision below conflicts with *Heller* and Seventh Circuit precedent. But this Court's certiorari jurisdiction is not designed to determine whether a lower court properly applied settled precedent to the facts of a case. And even if it were, there would be no error to correct here. The Seventh Circuit properly applied *Heller* and own precedent. The petition should be denied.

I. The Petition Does Not Satisfy The Criteria For Certiorari Review.

Petitioners' principal argument is that the decision below conflicts with *Heller*, Pet. 15-17, and with the Seventh Circuit's own precedent, *id.* at 5-6 (contending that the lower court denied petitioners the "right to carry" recognized in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012)); *id.* at 6-7 (asking this Court to consider whether the government interest rejected "in the Seventh Circuit's decisions in *Moore* and *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011)," should have been rejected here).

But whether the Seventh Circuit correctly applied either *Heller* or its own precedent to the evidence presented is not a question suitable for this Court's review. See Sup. Ct. R. 10. This Court's certiorari jurisdiction is not designed to resolve a "possible intracircuit split," *Jones v. Bock*, 549 U.S. 199, 220 n.9 (2007), or to relitigate application of this Court's precedent to the facts of a given case. And, in any event, the decision below is fully consistent with both *Heller* and Seventh Circuit precedent, see *infra* Section II.

Petitioners additionally state that "lower court judges have proposed an array of different approaches and formulations, producing a morass of conflicting lower court opinions regarding the proper analysis to apply in Second Amendment cases." Pet. 29 (internal quotations omitted). They do not, however, articulate an identifiable circuit split on a specific legal question.

Petitioners' amici similarly fail to identify a circuit split on any question presented by this case. They first contend that there is a split in authority on the "proper historic scope of traditional exclusions." Am.

Br. 8. But the decisions they cite address constitutional challenges to the federal ban on possession of firearms by felons and juveniles. See *id.* at 8-10 (discussing *Medina v. Whitaker*, 913 F.3d 152 (D.C. Cir. 2019) (challenge to 18 U.S.C. § 922(g)(1)); *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019) (same); *Binderup v. Attorney General*, 836 F.3d 336 (3d Cir. 2016) (same); *United States v. Rene E.*, 583 F.3d 8 (1st Cir. 2019) (challenge to 18 U.S.C. § 922(x)(2)(A))). The question whether felons (or juveniles) should be allowed to possess firearms, however, is not presented by this case. On the contrary, petitioners state that they "are not challenging the substantive licensing requirements in the Illinois [Concealed Carry Act]." Pet. 28; see also Pet. App. 14-15 (noting that petitioners "admit that they 'do not take issue with [firearm] restrictions on individuals with certain criminal histories or a history of admittance to mental health facilities'") (brackets in original).

The second alleged split proffered by the amici—the availability of as-applied challenges to felons prohibited from possessing firearms under 18 U.S.C. § 922(g)(1), see Am. Br. 14-16—likewise does not relate to this case. In fact, the amici appear to recognize that this question is not presented. See Am. Br. 3 (describing division in authority as existing "[i]n related contexts"). Accordingly, granting certiorari on the question presented by this case—which is limited to whether Illinois's substantial-similarity requirement is constitutional under the Second Amendment—would not resolve whether as-applied challenges are allowed under Section 922(g)(1). All told, neither petitioners nor their amici have articulated a circuit split.

II. The Decision Below Is Correct.

In addition to failing to identify any circuit split implicated by this case, the petition's primary assertion—that the decision below conflicts with *Heller* and prior Seventh Circuit decisions—is incorrect. Thus, not only does this case not satisfy the criteria for certiorari review, the decision below reflects no error to correct.

A. The Seventh Circuit's decision is consistent with *Heller*.

Contrary to petitioners' argument, Pet. 15-16, the Seventh Circuit hewed closely to *Heller*, including its analysis of the relevant history of firearm regulations, Pet. App. 14-15, which make clear that the right conferred under the Second Amendment is "not unlimited," *Heller*, 554 U.S. at 595. The Seventh Circuit noted that even in Blackstone's time, the Second Amendment had not been understood as a right to "'keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.'" Pet. App. 14 (quoting *Heller*, 554 U.S. at 626). In fact, the "'longstanding prohibitions on the possession of firearms by felons and the mentally ill'" are treated as "'presumptively lawful.'" *Id.* at 14 (quoting *Heller*, 554 U.S. at 626-27 n.26). Based on these principles, which petitioners did not dispute, *ibid.*, the Seventh Circuit held that Illinois is able, "in the name of important and substantial public-safety interests, to restrict the public carrying of firearms by those most likely to misuse them," *ibid.* And, here, the mechanism chosen by Illinois—prohibiting carriage based on "criminal and mental health history"—was "expressly recognized in *Heller*." *Ibid.*

The Seventh Circuit also held that the undisputed evidence demonstrated that the process Illinois selected for evaluating nonresident applicants for concealed carry licenses—the substantial-similarity requirement—is directly related to Illinois's "weighty interest in preventing the public carrying of firearms by individuals with mental illness and felony criminal records." Pet. App. 17. Specifically, petitioners did not dispute, *id.* at 8, Chief Trame's description of "the challenges Illinois faces obtaining information about out-of-state applicants' criminal and mental health histories at the application stage," or the "even greater difficulties" confronting Illinois "when it comes to obtaining updated information pertinent to monitoring the ongoing qualifications of nonresidents," *id.* at 11.

Given this information deficit, Illinois allows nonresidents to apply for a license only after it confirms that their home State's possession, ownership, and carriage laws are substantially similar to those in Illinois. 430 ILCS 66/40(b). And the home State must report individuals who have been denied a concealed carry license to the National Instant Criminal Background Check System and individuals who have been authorized (and remain authorized) to possess a concealed carry license to the National Law Enforcement Telecommunications System. 20 Ill. Admin Code § 1231.10; Resp. App. 16a-17a.

As the Seventh Circuit explained, Pet. App. 17, 19, these requirements work together to ensure that the Illinois State Police can establish that nonresident applicants meet Illinois's eligibility requirements for a concealed carry license, and, in addition, that the Illinois State Police have access to up-to-date information about licensees' criminal and mental health history,

so that they can monitor their continued eligibility. See also Pet. App. 86-87 (discussing Illinois's "practical need" for initial information, and "reliable updates," about "the qualifications of nonresident applicants" to determine if they have a disqualifying criminal or mental health history). For example, if a nonresident's license is revoked by his or her home State due to a change in qualifications, the Illinois State Police will have access to that information and can revoke the nonresident's Illinois license as well.

Thus, the substantial-similarity requirement is directly related to Illinois's public-safety goal of verifying and monitoring the credentials of concealed carry licensees, to ensure that nonresident felons and the mentally ill do not carry firearms in public while visiting Illinois. Pet. App. 17. By contrast, "[f]orcing the State" to abandon the substantial-similarity requirement "despite th[e] information shortfall would thrust upon Illinois a race to the bottom." *Ibid.* The Illinois State Police would be required to issue concealed carry licenses based on incomplete information at the outset and with no ability for ongoing monitoring of eligibility. *Ibid.* Once issued a concealed carry license, nonresident felons and the mentally ill could continue to possess that license even though circumstances had changed to render them statutorily ineligible for public carriage. *Ibid.* In other words, "[o]nce eligible would risk meaning forever eligible." *Ibid.* Neither *Heller* nor the historical tradition it espouses requires Illinois to take that risk.

B. Petitioners' arguments to the contrary are incorrect.

Petitioners assert that the decision below departed from *Heller* in several respects. None of these arguments is correct. To begin, petitioners contend that the Seventh Circuit misinterpreted the "*Heller* 'disclaimer,'" Pet. 16, which provides that the Second Amendment was not understood to provide a right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," *Heller*, 554 U.S. at 626. According to petitioners, that disclaimer goes only "to the 'what' and 'why' of firearm possession," but not to the "who." Pet. 16-17. This is incorrect. As explained, that discussion in *Heller* also acknowledges the States' ability to place "prohibitions on the possession of firearms by felons and the mentally ill." 554 U.S. at 626-27 n.26; see also *Tyler v. Hillsdale Cty. Sheriff's Dep't*, 837 F.3d 678, 685 (6th Cir. 2016) (en banc) ("In addition to the *what* and the *where* of the Second Amendment, the *Heller* court also identified *who* the government may presumptively regulate."). And such prohibitions, of course, focus on *who* is prohibited from possessing and carrying firearms.

Petitioners additionally contend that *Heller* required the Seventh Circuit to apply "strict or near-strict scrutiny" because the substantial-similarity requirement burdens a core right. Pet. 15-16, 29. This, too, is incorrect. As an initial matter, petitioners have never offered any "historical support for a broad, unfettered right to carry a gun in public." Pet. App. 15. Nor is one readily found in *Heller*, where this Court characterized the core Second Amendment right as "the right of law-abiding, responsible citizens to use

arms in defense of hearth and home." 554 U.S. at 635. The Concealed Carry Act does not restrict that right; in fact, it expressly allows nonresidents to possess a firearm for self-defense purposes on their own property without a concealed carry license. 430 ILCS 66/10(g)(1).

The only conduct implicated by the substantial-similarity requirement is unverified and unmonitored public carriage of firearms, which is not included in *Heller*'s definition of the core right. 554 U.S. at 635. Public carriage, moreover, is an activity with different parameters and consequences to its exercise than possession in the home. See, *e.g.*, *Gould v. Morgan*, 907 F.3d 659, 672 (1st Cir. 2018) (outlining the "[s]ocietal considerations" differentiating self-defense in the home from public carriage, including that "the availability of firearms inside the home implicates the safety of those who live or visit there, not the general public"); *Kachalsky v. City of Westchester*, 701 F.3d 81, 94 (2d Cir. 2012) (explaining that there is "a critical difference" between possession and carriage because the "state's ability to regulate firearms and, for that matter, conduct, is qualitatively different in public than in the home"). Whatever the outer limits of the core right, it does not encompass public carriage of firearms while visiting another State and under circumstances where a person's mental health and criminal history qualifications cannot be verified or monitored. Thus, petitioners' argument for strict (or "near strict"

scrutiny), Pet. 15, fails, as all three judges below recognized, Pet. App. 14-15; *id.* at 28 (Manion, J., dissenting) (rejecting the application of strict scrutiny).[6]

Relatedly, there is also no merit to petitioners' suggestion that the decision below conflicts with the Seventh Circuit's own precedent identifying a right to public carriage under the Second Amendment. Pet. 5-7. The court acknowledged that it had previously "held that an individual's Second Amendment right to possess a firearm for self-defense extends outside the home," but explained that the "decision in *Moore* did not end there." Pet. App. 15. Indeed, *Moore* "went the added step of reiterating the assurances from *Heller* and *McDonald* [*v. City of Chicago*, 561 U.S. 742 (2010),] that the rights conferred by the Second Amendment are not unlimited and, even more specif-

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[6] Petitioners do not argue that there is a circuit split over the applicable level of scrutiny, and the Seventh Circuit's application of intermediate scrutiny is consistent with decisions of other circuits evaluating state laws regulating public carriage. These decisions either applied intermediate scrutiny, see *Gould*, 907 F.3d at 672; *Kachalsky*, 701 F.3d at 93; *Drake v. Filko*, 724 F.3d 426, 429-30 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865, 878 (4th Cir. 2013), or held that regulation of concealed carry does not implicate the Second Amendment, and thus did not need to decide what level of scrutiny would apply, see *Peruta v. Cty. of San Diego*, 824 F.3d 919, 924 (9th Cir. 2016), *cert. denied sub nom. Peruta v. California*, 137 S. Ct. 1995 (2017); *Peterson v. Martinez*, 707 F.3d 1197, 1201 (10th Cir. 2013). But see *Wrenn v. District of Columbia*, 864 F.3d 650, 655 (D.C. Cir. 2017) (applying strict scrutiny to District of Columbia law limiting issuance of concealed carry licenses to persons who identified a good reason for needing a handgun).

ically, that a state's interest is strong enough to sustain prohibitions on the possession of firearms by felons and the mentally ill." *Ibid.*

In any event, even if the substantial-similarity requirement burdened the core Second Amendment right, application of intermediate scrutiny would be consistent with *Heller* because the requirement does not impose a flat ban on public carriage. See *Heller*, 554 U.S. at 636 (distinguishing between lawful "measures regulating handguns" and an "absolute prohibition of handguns held and used for self-defense in the home"). On the contrary, notwithstanding the undisputed "information deficit," the Illinois legislature chose to "authorize[ ] concealed carry by out-of-state residents" rather than deny licensure across the board. Pet. App. 8.

Illinois, moreover, does not prohibit all public carriage by nonresidents. Even without a concealed carry license, nonresidents may transport firearms in their vehicle in Illinois, so long as they are not prohibited from owning or possessing a firearm under federal law and are eligible to carry a firearm in public under the laws of their State of residence. 430 ILCS 66/40(e). And nonresidents do not need a concealed carry license when on a firing range; in an area where hunting is permitted; on their own land or in their abode, legal dwelling, or fixed place of business; or a guest in another's home. *Id.* 65/2(b)(5), (7), 66/10(g)(1). Describing the substantial-similarity requirement as a "virtual ban," as petitioners do, Pet. 6, thus mischaracterizes the Concealed Carry Act, which does not impose a wholesale restriction on the exercise of a Second Amendment right.

Next, petitioners contend that Illinois's substantial-similarity requirement is not "sufficiently tailored to any public safety goal," Pet. 19, because respondents' evidence, although unrefuted, did not show that Illinois has suffered any "violence problem" as a result of its inability to "vet or monitor" nonresidents, *id.* at 18. But the harm associated with not being able to determine whether an applicant for a concealed carry license, or a licensee, would pose a danger to himself or the public is obvious.

In the same vein, petitioners argue that the substantial-similarity requirement is overinclusive and underinclusive. As to the former, petitioners claim that the requirement unduly prohibits law-abiding citizens from carrying firearms in Illinois. See, *e.g.*, *id.* at 19-21, 29. As to the latter, petitioners argue that the requirement allows unqualified individuals the opportunity to apply for and obtain a concealed carry license; for example, someone who moves from a dissimilar State to Illinois or an approved State "is immediately eligible" to "apply for a [concealed carry license]." Pet. 22. Similarly, petitioners assert, the system does not account for Illinois residents who seek mental health treatment in another State without reporting it to the Illinois State Police. *Ibid.*

But Illinois is not required to enact a system that is perfectly tailored to address every scenario that could arise. Instead, as the Seventh Circuit recognized, its system is sufficiently tailored to address the fact that at this point in time, Illinois cannot verify or "adequately monitor [nonresident applicants'] mental health or potential criminal behavior," Pet. App. 19, a reality that petitioners do not challenge, *ibid.* And, contrary to petitioners' suggestion, the Second

Amendment does not force Illinois "to accept the public-safety risk of relying on individuals to self-report a felony conviction, domestic violence arrest, or mental health crisis," *id.* at 20, or "to tailor its law so narrowly as to sacrifice its important monitoring interest," *ibid.*

Indeed, reaching "[a]ny other conclusion . . . would force Illinois to accept an idiom: what the State does not know cannot hurt it." *Ibid.* But Illinois's "interest in maintaining public safety is too substantial to mandate that result." *Ibid.* The Seventh Circuit's decision, which carefully assessed all relevant considerations in light of the evidentiary record before it, was correct.

* * *

Petitioners have failed to show that this case warrants certiorari review. Petitioners make no attempt to identify a split in lower court authority or otherwise satisfy the criteria for certiorari. Instead, they seek to relitigate whether the lower court properly applied settled precedent to the facts of this case. But this position, in addition to being an improper basis for certiorari, is incorrect: the Seventh Circuit's decision hewed closely to *Heller* and its own precedent. Petitioners' argument, moreover, ignores the fact that they never disputed the historical account articulated in *Heller* or the evidence presented by respondents. The Seventh Circuit's decision, which properly applied these uncontested premises to settled precedent, is not in need of correction. This Court should deny the petition.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JANUARY 2020

APPENDIX

STATE OF ILLINOIS	)	Culp v. Madigan,
	)	14-3320
	)	
COUNTY OF	)	
SANGAMON	)	USDC-CDIL

AFFIDAVIT

I, JESSICA TRAME, upon oath, depose and state that I have personal knowledge of the statements contained in this Affidavit; I understand the contents of this affidavit to be true and correct; I am competent to testify; and if called to testify, I would testify as follows:

1. I am employed as the Bureau Chief of the Firearms Services Bureau (FSB or Bureau) of the Illinois State Police (ISP) and have served in that capacity since February 2012.

2. In my capacity as Bureau Chief, I am responsible for administering the Firearm Owner's Identification (FOID) Program, the Firearms Transfer Inquiry Program, and the Concealed Carry Licensing (CCL) Program, and I am familiar with the protocols and procedures of each program.

3. To qualify for a CCL, an Illinois resident must be eligible for and currently have a valid FOID Card. A non-resident does not need a valid FOID card to qualify for a CCL, but the Bureau is responsible for ensuring that a non-resident CCL applicant would meet the eligibility criteria to obtain a FOID card if he or she was an Illinois resident. The goal is to ensure that residents and non-residents are subject to the same substantive requirements to qualify for a CCL.

CCL Application Processing

4. In processing CCL applications, the Bureau performs an extensive background check on each applicant, as required by the FOID Card Act and Firearm Concealed Carry Act.

5. The first phase of the process is a quality check of the application to ensure the application is complete and not missing any required information. This step also includes verification of identity.

6. If there are no errors and the name, address, and other personal identifying information are validated, the application is moved to the eligibility determination phase. A background check is performed, including queries of national systems such as the National Crime Information Center (NCIC), National Instant Criminal Background Check System (NICS), Interstate Identification Index (III), Immigration and Customs Enforcement (ICE), the National Law Enforcement Telecommunications System (NLETS), and Illinois systems, including the Criminal History Record Information (CHRI) System, driver's license or identification systems maintained by the Secretary of State (SOS) and the Computerized Hot Files system, a central online repository for numerous officer and public safety information repositories, maintained by ISP.

7. In addition to the processes described above, the applicant's information is made available to Illinois law enforcement agencies, which may submit an objection to a CCL applicant based upon a reasonable suspicion that the applicant is a danger to himself, herself, or others, or is a threat to public safety. If a

law enforcement objection is received, the CCL application is referred to the Concealed Carry Licensing Review Board, which reviews information submitted by the objecting law enforcement agency and the applicant. If the Board determines by a preponderance of the evidence that the applicant poses a danger to himself , herself, or others, or is a threat to public safety, then the Board affirms the objection of the law enforcement agency and notifies the Bureau that the applicant is ineligible for a license.

8. These various background check processes are intended to ensure public safety by identifying persons who are unqualified to carry firearms as responsible citizens.

Difficulties Verifying Non-Resident Applicants' Identities

9. As discussed above, the Bureau must verify a CCL applicant's identity while processing the application. For Illinois residents, an applicant's identity is verified through use of the Illinois Secretary of State's (SOS) driver's license or state ID systems to cross-reference the applicant's name, address, photo, and signature.

10. ISP does not have direct access to other states' driver's license, state ID or similar databases. To verify a non-resident's identity, the Bureau must rely on NLETS to check the validity of an out of state driver's license, including personal identifiers of the individual and address. Currently, ISP is not able to receive identifying photographs or signatures from NLETS, but has contracted for development of a system that will allow ISP to access this information from NLETS. Arizona, California, Colorado, Kansas, New York,

New Hampshire, Oklahoma, South Carolina, and the District of Columbia do not currently make images available to NLETS, however.

Difficulties Verifying Non-Resident Criminal History

11. The Bureau must verify that a CCL applicant's criminal history does not render the applicant ineligible for a CCL. For Illinois residents, the Bureau is able to locate criminal history through Illinois' Criminal History Record Inquiry, a system maintained by ISP, from the Computerized Hot Files, and from federal systems.

12. The Firearm Services Bureau does not have direct access to other states' local or state criminal history databases, so the Bureau relies on federal databases to obtain criminal history information. Many states provide the federal databases with only a summary of an arrest, which will often be inadequate to assess the applicant's eligibility for a CCL. If a criminal record from the federal database is incomplete, ISP may request a record from the States' Identification Bureau or from the local jurisdiction, but many jurisdictions, including Los Angeles County, California; Milwaukee County, Wisconsin; and, Jackson County, Mississippi, charge for records, and ISP does not have funds appropriated to pay for the record. As an example, attached hereto as Affidavit Exhibit A is a printout from the III dated August 17, 2015, redacted for identifying information, of an individual arrested in Mississippi in 2005 and charged with looting, a felony. The information does not disclose the disposition of the charge, however. After requesting

criminal history information from Mississippi, ISP received a facsimile transmission, attached hereto as Affidavit Exhibit B, refusing ISP's request for lack of fees. Per the Jackson County Circuit Clerk, Pascagoula, MS, a search of the two criminal courts in Jackson County for the ten-year period (the applicant was arrested in 2005) requires a fee of $20.00. To obtain information from the two civil courts, an additional $20.00 is required. If ISP needed to search information for a twenty-year period in all four courts, a fee of $80.00 is required. This also assumes, of course, that the only relevant information regarding the applicant exists in Jackson County, MS and not other jurisdictions in the state.

13. ISP uses NLETS to determine if the nonresident applicant's state-issued CCL is valid and to check the continued validity of the home-state-issued CCL every 90 days. NCIC is the mechanism criminal justice agencies use to access over 13 million active records. The NCIC database consists of 21 files, including 14 "persons" files including the National Sex Offender Registry, Foreign Fugitives, Immigration Violations, Mission Persons, Orders of Protection, and Wanted Persons. ISP accesses the NICS Index and the III through the NCIC network. The III is the national criminal history record system. When someone purchases a firearm, NICS verifies the validity of the Federal Firearms Licensed dealer and checks the NICS Index or "denied persons" files for persons prohibited from possessing firearms. All CCL applicants are also checked against the NICS Index.

14. The criminal history information available in federal databases may also be insufficient to determine a non-resident's criminal history because states

are not uniform in their reporting of different levels and types of offenses. ISP is unable to obtain accurate and updated information via NLETS and NCIC for those states that do not fully participate in the systems.

15. The information available from the III, a federal criminal history database, also can be very limited. States are not uniform in their reporting of different levels and types of offenses. Only the National Fingerprint File (NFF) provides detailed extracts directly from states' local databases, and as of August 2015, only nineteen states participate as in the NFF. Those states are: Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Maryland, Minnesota, Missouri, Montana, North Carolina, New Jersey, Ohio, Oklahoma, Oregon, Tennessee, West Virginia, and Wyoming.

Difficulties Verifying Non-Resident Mental Health Information

16. Pursuant to the FOID Act and Firearm Concealed Carry Act, an applicant is not eligible for an Illinois CCL if the applicant has been involuntarily admitted into a mental health facility, adjudicated mentally disabled or has been a patient in a mental health facility within the past five years, regardless of the applicant's state of residence. If an applicant has been a patient in a mental health facility more than 5 years ago, a Mental Health Certification must be provided at the time of the application.

17. Through the Illinois Department of Human Services ("DHS") FOID Mental Health System**,** the Bureau can readily access information on Illinois mental health facility admissions and determine

whether an individual has been involuntarily admitted into a mental health facility in Illinois or has been a patient in a mental health facility in Illinois within the past five years or more.

18. The DHS FOID Mental Health System contains no records of out-of-state mental health facility admissions. Further, ISP does not have access to other states' mental health facility admissions databases, if any exist.

19. In my experience as the Bureau Chief of the FSB, I am aware that the federal databases do not contain the voluntary mental health admission information necessary to determine whether an applicant was a patient in a mental health facility. Also, information concerning involuntary mental health admissions or mental disability adjudications is limited.

20. To search for mental health prohibitors for non-residents, ISP is limited to information available through the NICS Index, but not all states participate. NICS contains information from participating states regarding individuals prohibited from firearm possession for mental health reasons under 18 U.S.C. § 922(g)(4), but does not provide any information on voluntary mental health admissions.

Difficulties Obtaining Updated Non-Resident Information to Revoke a CCL

21. On a daily basis, all resident CCL holders are checked against the Illinois CHRI and DHS Mental Health Systems (by virtue of their FOID Card) for any new prohibitors (conditions that would disqualify a person from holding a FOID Card or CCL). All CCL holders, resident and nonresident, are checked against the federal databases on a quarterly basis.

22. Illinois Physicians or qualified examiners, Illinois Law Enforcement Officials, and Illinois School Administrators are required by law to report persons that may be a clear and present danger to themselves or others. Even if out-of-state personnel have reporting requirements in their own states, the ISP does not receive reports from out-of-state physicians, qualified examiners, law enforcement officials, or school administrators concerning out-of-state persons presenting a clear and present danger. Similarly, daily checks of the DHS Mental Health Systems do not reveal information concerning persons treated in other states.

23. Illinois Circuit Clerks are required by statute to report to ISP persons who have been adjudicated as mentally disabled or persons who have had a finding for an involuntary admittance to a mental health facility. I am aware of no other state that is required to, or does, report such cases to the ISP.

24. DHS must report to the ISP all information collected pertaining to mental health treatment admissions, either voluntary or involuntary, as well as reports of patients deemed to be a clear and present danger. The purpose of this reporting is to determine if the patient is disqualified under state or federal law from possessing firearms. Out-of-state mental health facilities are not required by their states to report admissions or persons presenting a clear and present danger to DHS or to the ISP, and do not do so unless ISP makes a request for that information. Many out-of-state mental health entities do not provide this information even after an ISP request.

25. Access to the types of information described in the Illinois databases allows the Bureau to thoroughly

screen for and actively monitor various issues that may be a basis to deny or revoke a FOID or CCL card. ISP's lack of access to this type of data held by other states would make it virtually impossible to effectively conduct this same level of screening and monitoring for nonresident CCL applicants.

Substantially Similar Surveys

26. In 2013, ISP sent surveys to each of the 49 other states and to the District of Columbia requesting information regarding their regulation of firearms use and reporting and tracking mechanisms relative to criminal activity and mental health issues. In 2014, ISP sent a second survey to those states that did not respond to the first survey.

27. True and correct copies of the various states' responses and the response of the District of Columbia received by the ISP are attached hereto as Affidavit Exhibit C. Based on the states' responses to the survey, ISP created a summary, a true and correct copy of which is attached hereto as Affidavit Exhibit D. As noted in the summary, Colorado, Maine, Maryland, Massachusetts, Nevada, Pennsylvania, and Rhode Island did not respond to the ISP's request for information.

28. Of those states responding, only Hawaii, New Mexico, South Carolina, and Virginia had laws, similar to Illinois, regulating who may carry firearms in public, reported persons authorized to carry through the NLETS, reported denied persons through the NICS, prohibited persons voluntarily admitted to a mental health facility in the last five years from pos-

sessing or using firearms, AND prohibited persons involuntarily admitted to mental health facilities from possessing or using firearms.

29. For example, Indiana, Iowa, Missouri, and Wisconsin responded that they did not prohibit use or possession of firearms based on voluntary admissions to mental health facilities in the last five years and did not have a mechanism of tracking that information for its residents. *See* Affidavit Exhibit C. Iowa and Missouri also reported that they do not participate in reporting concealed carry licenses via NLETS. *See id.*

30. The Bureau would not have the time or resources to properly research the necessary information for nonresident applicants if all such applicants could apply for a CCL. The Firearm Concealed Carry Act requires ISP to either approve or deny an application within as few as 90 days from the date received, subject to certain exceptions. To process the applications to this standard, it is likely the out-of-state applicants would not be held to the same standards set forth in the FOID Card Act or Firearm Concealed Carry Act as Illinois residents are held. Applications would have to be approved without a complete and thorough background check. Further, applicants residing in states that lack reporting and eligibility requirements similar to Illinois and who are issued licenses under the Firearm Concealed Carry Act cannot be held to the same monitoring standards necessary to ensure continued eligibility due to the lack of, and inability to obtain—either at all or in a timely manner—, information concerning those nonresidents.

FURTHER AFFIANT SAYETH NOT.

Subscribed and sworn to before me
this 31st day of August, 2015. s/Jessica Trame
s/Tammy L. Miner
Notary Public
Official Seal

STATE OF ILLINOIS	)	Culp v. Madigan,
	)	14-3320
	)	
COUNTY OF	)	
SANGAMON	)	USDC-CDIL

AFFIDAVIT

I, JESSICA TRAME, upon oath, depose and state that I have personal knowledge of the statements contained in this Affidavit; I understand the contents of this affidavit to be true and correct; I am competent to testify; and if called to testify, I would testify as follows:

1. I am employed as the Bureau Chief of the Firearms Services Bureau (FSB or Bureau) of the Illinois State Police (ISP) and have served in that capacity since February 2012.

2. In my capacity as Bureau Chief, I am responsible for administering the Firearm Owner's Identification (FOID) Program, the Firearms Transfer Inquiry Program, and the Concealed Carry Licensing (CCL) Program, and I am familiar with the protocols and procedures of each program.

3. To qualify for a CCL, an Illinois resident must be eligible for and currently have a valid FOID Card. A non-resident does not need a valid FOID card to qualify for a CCL, but the Bureau is responsible for ensuring that a non-resident CCL applicant would meet the eligibility criteria to obtain a FOID card if he or she was an Illinois resident. The goal is to ensure that residents and non-residents are subject to the same substantive requirements to qualify for a CCL.

CCL Application Processing

4. In processing CCL applications, the Bureau performs a background check on each applicant, as required by the FOID Card Act and Firearm Concealed Carry Act.

5. The first phase of the process is a quality check of the application to ensure the application is complete and not missing any required information. This step also includes verification of identity.

6. If there are no errors and the name, address, and other personal identifying information are validated, the application is moved to the eligibility determination phase. A background check is performed, including queries of national systems such as the National Crime Information Center (NCIC), National Instant Criminal Background Check System (NICS), Interstate Identification Index (III), Immigration and Customs Enforcement (ICE), the National Law Enforcement Telecommunications System (NLETS), and Illinois systems, including the Criminal History Record Information (CHRI) System, driver's license or identification systems maintained by the Secretary of State (SOS) and the Computerized Hot Files system, a central online repository for numerous officer and public safety information repositories, maintained by ISP.

7. In addition to the processes described above, the applicant's information is made available to Illinois law enforcement agencies, which may submit an objection to a CCL applicant based upon a reasonable suspicion that the applicant is a danger to himself, herself, or others, or is a threat to public safety. If a

law enforcement objection is received, the CCL application is referred to the Concealed Carry Licensing Review Board, which reviews information submitted by the objecting law enforcement agency and the applicant. If the Board determines by a preponderance of the evidence that the applicant poses a danger to himself, herself, or others, or is a threat to public safety, then the Board affirms the objection of the law enforcement agency and notifies the Bureau that the applicant is ineligible for a license.

8. These various background check processes are intended to ensure public safety by identifying persons who are unqualified to carry firearms.

Difficulties Verifying Non-Resident Applicants' Identities

9. As discussed above, the Bureau must verify a CCL applicant's identity while processing the application. For Illinois residents, an applicant's identity is verified through use of the Illinois Secretary of State's (SOS) driver's license or state ID systems to cross-reference the applicant's name, address, photo, and signature.

10. ISP does not have direct access to other states' driver's license, state ID or similar databases. To verify a non-resident's identity, the Bureau must rely on NLETS to check the validity of an out of state driver's license, including personal identifiers of the individual and address. Currently, ISP is not able to receive identifying photographs or signatures from NLETS, but I have been informed by ISP's LEADS Manager that ISP has contracted for development of a system that will allow ISP to access photographs from NLETS. ISP's NLETS Coordinator has reported to me

that Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Kansas, North Dakota, New Hampshire, Nevada, New York, Oklahoma, Puerto Rico, South Carolina, Virginia, and Vermont do not currently make images available to NLETS, however.

Difficulties Verifying Non-Resident Criminal History

11. The Bureau must verify that a CCL applicant's criminal history does not render the applicant ineligible for a CCL. For Illinois residents, the Bureau is able to locate criminal history through Illinois' Criminal History Record Inquiry, a system maintained by ISP, from the Computerized Hot Files, and from federal systems.

12. The Firearms Services Bureau does not have direct access to other states' local or state criminal history databases, so the Bureau relies on federal databases to obtain out-of-state criminal history information. Many states provide the federal databases with only a summary of an arrest, which will often be inadequate to assess the applicant's eligibility for a CCL. If a criminal record from the federal database is incomplete, ISP may request a record from the States' Identification Bureau or from the local jurisdiction, but many jurisdictions, including Los Angeles County, California; Milwaukee County, Wisconsin; and, Jackson County, Mississippi, charge for records, and ISP does not have funds appropriated to pay for the record. As an example, attached hereto as Affidavit Exhibit A is a printout from the III database, a federal criminal history database, dated August 17, 2015, redacted for identifying information, of an individual arrested in

Mississippi in 2005 and charged with looting, a felony. The information does not disclose the disposition of the charge. After requesting criminal history information from Mississippi, ISP received a facsimile transmission, attached hereto as Affidavit Exhibit B, refusing ISP's request for lack of fees. Per the Jackson County Circuit Clerk, Pascagoula, MS, a search of the two criminal courts in Jackson County for the ten-year period (the applicant was arrested in 2005) requires a fee of $20.00. To obtain information from the two civil courts, an additional $20.00 is required. If ISP needed to search information for a twenty-year period in all four courts, a fee of $80.00 is required. This also assumes, of course, that the only relevant information regarding the applicant exists in Jackson County, MS, and not other jurisdictions in the state.

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14. The criminal history information available in federal databases may also be insufficient to determine a non-resident's criminal history because states are not uniform in their reporting of different levels and types of offenses. ISP is unable to obtain accurate and updated information via NLETS and NCIC for those states that do not fully participate in the systems.

15. The information available from the III, a federal criminal history database, also can be very limited. States are not uniform in their reporting of different levels and types of offenses. Only the National Fingerprint File (NFF) provides detailed extracts directly from states' local databases, and as of December 2016, only twenty states participate as in the NFF. According to fbi.gov, those states are: Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Maryland, Minnesota, Missouri, Montana, North Carolina, New Jersey, New York, Ohio, Oklahoma, Oregon, Tennessee, West Virginia, and Wyoming.

Difficulties Verifying Non-Resident Mental Health Information

16. Pursuant to the FOID Act and Firearm Concealed Carry Act, an applicant is not eligible for an Illinois CCL if the applicant has been involuntarily admitted into a mental health facility, adjudicated mentally disabled or has been a patient in a mental health facility within the past five years, regardless of the applicant's state of residence. If an applicant has been a patient in a mental health facility more than 5 years ago, a Mental Health Certification must be provided at the time of the application.

17. Through the Illinois Department of Human Services ("DHS") FOID Mental Health System**,** the Bureau can readily access information on Illinois mental health facility admissions and determine whether an individual has been involuntarily admitted into a mental health facility in Illinois or has been a patient in a mental health facility in Illinois within the past five years or more.

18. The DHS FOID Mental Health System contains no records of out-of-state mental health facility admissions. Further, ISP does not have access to other states' mental health facility admissions databases, if any exist.

19. In my experience as the Bureau Chief of the FSB, I am aware that the federal databases do not contain the voluntary mental health admission information necessary to determine whether an applicant was a patient in a mental health facility. Also, information concerning involuntary mental health admissions or mental disability adjudications is limited.

20. To search for mental health prohibitors for non-residents, ISP is limited to information available through the NICS Index. NICS contains some information regarding individuals prohibited from firearm possession for mental health reasons under 18 U.S.C. § 922(g)(4). Some states report to NICS only limited information on formal mental health adjudications. NICS does not provide any information on voluntary mental health admissions.

Difficulties Obtaining Updated Non-Resident Information to Revoke a CCL

21. On a daily basis, all resident CCL holders are checked against the Illinois CHRI and DHS Mental

Health Systems (by virtue of their FOID Card) for any new prohibitors (conditions that would disqualify a person from holding a FOID Card or CCL). All CCL holders, resident and nonresident, are checked against the federal databases on a quarterly basis.

22. Illinois Physicians or qualified examiners, Illinois Law Enforcement Officials, and Illinois School Administrators are required by law to report persons that may be a clear and present danger to themselves or others. Even if out-of-state personnel have reporting requirements in their own states, the ISP does not receive reports from out-of-state physicians, qualified examiners, law enforcement officials, or school administrators concerning out-of-state persons presenting a clear and present danger. Similarly, daily checks of the DHS Mental Health Systems do not reveal information concerning persons treated in other states.

23. Illinois Circuit Clerks are required by statute to report to ISP persons who have been adjudicated as mentally disabled or persons who have had a finding for an involuntary admittance to a mental health facility. I am aware of no other state that is required to, or does, report such cases to the ISP.

24. DHS must report to the ISP information collected pertaining to mental health treatment admissions, either voluntary or involuntary, as well as reports of patients with intellectual or developmental disabilities, or who have been deemed to be a clear and present danger. The purpose of this reporting is to determine if the patient is disqualified under state or federal law from possessing firearms. Out-of-state mental health facilities are not required by their states to report admissions or persons presenting a

clear and present danger to DHS or to the ISP, and do not do so unless ISP makes a request for that information. Many out-of-state mental health entities do not provide this information even after an ISP request.

25. Access to the types of information described in the Illinois databases allows the Bureau to thoroughly screen for and actively monitor various issues that may be a basis to deny or revoke a FOID or CCL card. ISP's lack of access to this type of data held by other states would make it virtually impossible to effectively conduct this same level of screening and monitoring for nonresident CCL applicants.

Substantially Similar Surveys

26. In 2013, ISP sent surveys to each of the 49 other states and to the District of Columbia requesting information regarding their regulation of firearms use and reporting and tracking mechanisms relative to criminal activity and mental health issues. In 2014, ISP sent a second survey to those states that did not respond to the first survey.

27. True and correct copies of the various states' responses to the 2013 survey and the response of the District of Columbia received by the ISP are attached hereto as Affidavit Exhibit C. Based on the states' responses to the survey, ISP created a summary, a true and correct copy of which is attached hereto as Affidavit Exhibit D. As noted in the summary, Colorado, Maine, Maryland, Massachusetts, Nevada, Pennsylvania, and Rhode Island did not respond to the ISP's 2013 or 2014 requests for information.

28. The Illinois Administrative Code requires that the Department post on its website a list of all states

determined to be substantially similar. 20 Ill. Admin. Code 1231.1109(b). Of those states responding to the 2013 survey, only Hawaii, New Mexico, South Carolina, and Virginia were listed on the Department's website as having laws, similar to Illinois, regulating who may carry firearms in public, reported persons authorized to carry through the NLETS, reported denied persons through the NICS, prohibited persons voluntarily admitted to a mental health facility in the last five years from possessing or using firearms, and prohibited persons involuntarily admitted to mental health facilities from possessing or using firearms.

29. In 2015, ISP again sent surveys to each of the 49 other states and to the District of Columbia requesting information regarding their regulation of firearms use and reporting and tracking mechanisms relative to criminal activity and mental health issues. My staff telephoned states that did not respond to the 2015 survey to follow up on the status of the states' responses.

30. True and correct copies of the various states' responses to the 2015 survey are attached hereto as Affidavit Exhibit E. Colorado and Maryland again did not respond to the 2015 survey. Although Maine, Massachusetts, Nevada, and Pennsylvania did not submit responses to the 2013 or 2014 requests for information, they did submit responses to the 2015 survey. The Department's website does not currently reflect the responses to the 2015 survey, but I have been notified that it will be updated in the coming weeks.

31. If the Court required ISP to accept nonresident applications from states that lack reporting and eligibility requirements similar to Illinois, the background

check process would be jeopardized because ISP is unable to verify those nonresidents' credentials to the same standards as Illinois residents are held. The Bureau does not have the time or resources to properly research their credentials. The Firearm Concealed Carry Act requires ISP to either approve or deny an application within as few as 90 days from the date received, subject to certain exceptions. Requests to other states for information on specific individuals can take a long time to be completed, compromising timely processing of applications. Further, if ISP were required to accept all nonresident applications, individuals from states without substantially similar gun laws could not be held to the same monitoring standards necessary to ensure continued eligibility due to the lack of, and inability to obtain—either at all or in a timely manner—, information concerning those nonresidents.

FURTHER AFFIANT SAYETH NOT.

Subscribed and sworn to before me

this 13th day of January, 2017. s/Jessica L. Trame

s/Sheree D. McKane

Notary Public

Official Seal

STATE OF ILLINOIS	)	Culp v. Madigan,
	)	14-3320
	)	
COUNTY OF	)	
SANGAMON	)	USDC-CDIL

AFFIDAVIT

I, JESSICA TRAME, upon oath, depose and state that I have personal knowledge of the statements contained in this Affidavit; I understand the contents of this affidavit to be true and correct; I am competent to testify; and if called to testify, I would testify as follows:

1. I am employed as the Bureau Chief of the Firearms Services Bureau (FSB or Bureau) of the Illinois State Police (ISP) and have served in that capacity since February 2012.

2. In my capacity as Bureau Chief, I am responsible for administering the Firearm Owner's Identification (FOID) Program, the Firearms Transfer Inquiry Program, and the Concealed Carry Licensing (CCL) Program, and I am familiar with the protocols and procedures of each program.

3. In a previous affidavit I signed January 13, 2017, I attested that, as of that date, only Hawaii, New Mexico, South Carolina, and Virginia were listed on the Department's website as having laws, substantially similar to Illinois, regulating who may carry firearms in public. *See* 20 Ill. Admin. Code 1231.110(b). I further attested that the Illinois State

Police had received responses by the various jurisdictions to a 2015 survey but that the Department's website did not yet reflect those responses.

4. The Illinois State Police has since reviewed responses to the 2015 survey and, based on those responses, has determined that Arkansas, Mississippi, Texas, and Virginia meet the requirements listed in 20 Ill. Admin. Code 1231.10 to constitute having "substantially similar" laws. Hawaii, New Mexico, and South Carolina have been determined to no longer meet those requirements, based on the 2015 survey responses. Accordingly, the Department's website has been updated to reflect Arkansas, Mississippi, Texas, and Virginia are deemed "substantially similar." *See* 20 Ill. Admin. Code 1231.110(b).

FURTHER AFFIANT SAYETH NOT.

Subscribed and sworn to before me

this 17 day of February, 2017. s/Jessica Trame

s/Sheree D. McKane

Notary Public

Official Seal