No. _____

SUPREME COURT OF THE UNITED STATES

PHILIP MARQUIS,

Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

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QUESTION PRESENTED

1. Does Massachusetts' firearms licensing regime, which grants a police colonel the power to deny any nonresident traveler a temporary firearms license based upon that officer's judgment of "unsuitability," violate nonresident travelers' constitutional rights to keep and bear arms and to interstate travel?

PARTIES TO THE PROCEEDINGS

Petitioner is Philip Marquis.

Respondent is the Commonwealth of Massachusetts.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Commonwealth v. Philip J. Marquis*, No. SJC-13562 (Supreme Judicial Court) (opinion reversing allowance of motion to dismiss by the Lowell District Court, issued March 11, 2025); and

- *Commonwealth v. Philip J. Marquis*, No. 2211CR003931 (Lowell District Court, Massachusetts) (order granting motion to dismiss, issued Aug. 23, 2023).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Philip Marquis respectfully petitions for a writ of certiorari to review the judgment of the Massachusetts Supreme Judicial Court in this case, which reversed the allowance of his motion to dismiss and denied his constitutional claims under the Second Amendment and Fourteenth Amendment.

OPINION BELOW

The opinion of the Massachusetts Supreme Judicial Court, reversing the allowance of Petitioner's motion to dismiss, is reported. It is reproduced in the Appendix.

JURISDICTION

The judgment of the Massachusetts Supreme Judicial Court was entered on March 11, 2025. The Honorable Justice Ketanji Brown Jackson allowed the Petitioner's motion to extend the time for filing his petition for a writ of certiorari until August 8, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The texts of the following are in the Appendix: U.S. Const., Amends. II and XIV, § 1; M.G.L. c. 140, § 131, M.G.L. c. 140, § 131F, and M.G.L. c. 269, § 10.

STATEMENT OF THE CASE

A. Lower Court Proceedings

On October 12, 2022, Philip Marquis was charged by complaint in the Lowell District Court with one count of Carrying a Firearm Without a License, in violation of Mass. Gen. Laws Ch. ("M.G.L. c.") 269, § 10(a) and one count of Possession of

Firearm without a Firearms Identification (FID) Card, in violation of M.G.L. c. 269, § 10(h)(1). Appendix (App.) 47-48. On August 4, 2023, a hearing was held on Mr. Marquis's motion to dismiss in the Lowell District Court (Coffey, J., presiding). App. 50,52. The court allowed the motion to dismiss and on August 23, 2023, ordered "all charges to be dismissed forthwith[.]" App. 50. The Commonwealth filed a timely notice of appeal. App. 50.

The Commonwealth's appeal was entered in the Massachusetts Appeals Court on November 6, 2023. App. 45. On December 11, 2023, the Commonwealth filed an Application for Direct Appellate Review in the Supreme Judicial Court. App. 45. On February 16, 2024, the Supreme Judicial Court allowed it. App. 45. The Commonwealth's appeal was argued in that Court on September 9, 2024. App. 44.

The Supreme Judicial Court (SJC) issued its opinion on March 11, 2025, and revised it on March 14, March 21, and April 11, 2025. App. 44. The Court reversed the allowance of the dismissal of the M.G.L. c. 269, § 10(a) charge.[1] *Commonwealth v. Marquis*, 495 Mass. 434 (2025). First, the SJC denied Marquis standing to mount an as-applied challenge to the pertinent licensing statutes because he had not applied for a Massachusetts firearms license. *Marquis*, 495 Mass. at 441. Second, the SJC found that the conduct at issue – carrying an ordinary firearm in a vehicle or in public – squarely fell within the type of conduct presumptively protected by the Second

[1] The Court stated that it was only considering the M.G.L. c. 269, § 10(a) charge on appeal. *Marquis*, 495 Mass. at 438 n.4.

Amendment. *Id*. at 451. Third, it nonetheless held that the Massachusetts licensing scheme as applicable to nonresident travelers survived a facial challenge. *Id*. at 460.

Rationalizing this scheme as a "shall-issue" one, it decided that a police colonel's judgment of "unsuitability" comported with the historical tradition of disarming "demonstrably dangerous" individuals. *Marquis*, 495 Mass. at 455-456. Because it found (among other things) that the suitability determination did not violate the Second Amendment, it rejected on rational basis review Marquis' claims with respect to his right to interstate travel. *Id*. at 461-469. "The Commonwealth's interest in verifying the suitability and prohibition status of nonresidents who seek to publicly carry firearms within its borders is no weaker than its interest in verifying the suitability and prohibition status of residents who seek to publicly carry firearms within its borders." *Id*. at 466.

B. Statement of Facts

Philip Marquis, a New Hampshire resident, was driving on Interstate 495 in Lowell, Massachusetts. App. 4,74. His car got into an accident. App. 4,74. Police officers arrived and spoke with Marquis whose car was in the breakdown lane. *Id*. As an officer approached him, Marquis removed a pistol from his pocket and said: "I just want you to know that I have this." *Id*. The officer asked if it was loaded and Marquis responded that it was not while racking the gun in front of him. *Id*. The officer instructed Marquis to put the gun back in his pocket and sit on the guardrail. *Id*. Soon afterward, he asked Marquis if he had a Massachusetts license to carry the firearm and where he had been headed. App. 4-5,74-75. Marquis responded that he

did not have a Massachusetts license and that he had been driving towards his workplace in Massachusetts from his home in Rochester, New Hampshire. *Id*. After confirming that he had no Massachusetts firearm license, the officer also confirmed that Marquis "was not federally prohibited from carrying a firearm (therefore legally allowed to carry a firearm in his home state of New Hampshire)." *Id*. Now that the SJC has reversed the dismissal of his M.G.L. c. 269, § 10(a) charge, Marquis is vulnerable both to conviction and a mandatory minimum sentence of eighteen-months in jail. M.G.L. c. 269, § 10(a)(5)(6); App. 238.

REASONS FOR GRANTING THE PETITION

I. The Question in this Case Affects the Fundamental Rights of Many Travelers and Firearms License Applicants who Seek to Preserve Both Their Right to Carry Arms and Their Right to Interstate Travel.

A. Because the Colonel May Deny a Firearms License to Any "Unsuitable" Individual, the Colonel has Unbridled Discretion to Determine the Nature and Scope of any Applicant's Potential "Dangerousness."

M.G.L. c. 140, § 131F ¶ 1 provides that the colonel of the state police shall issue any nonresident a temporary firearms license but only if the non-resident is "not a prohibited person" and "not determined unsuitable[.]" The definition of "unsuitability" is open-ended and allows the colonel to declare, without any objective criteria or standard of proof, that an applicant is unsuitable. "A determination of unsuitability shall be based on reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others." M.G.L. c. 140, § 131(d); App. 229-

230. Thus, before a nonresident may enter Massachusetts with a handgun for self-defense purposes, he or she must submit to a vague "suitability" assessment.

In *Bruen*, this Court signaled that a "suitability" standard is unconstitutional given its reliance upon such discretionary determinations. "New York is not alone in requiring a permit to carry a handgun in public. But the vast majority of States—43 by our count—are 'shall issue' jurisdictions, where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1,13 (2022). This Court generally approves "shall-issue" licensing regimes so long as they "contain only 'narrow, objective, and definite standards' guiding licensing officials, *Shuttlesworth v. Birmingham*, 394 U. S. 147, 151 […] (1969), rather than requiring the 'appraisal of facts, the exercise of judgment, and the formation of an opinion,' *Cantwell v. Connecticut*, 310 U. S. 296, 305 […] (1940)—features that typify proper-cause standards like New York's." *Bruen*, 597 U.S. at 38 n.9. *See also Id.* at 79 (Kavanaugh, J., concurring) ("New York's outlier may-issue regime is constitutionally problematic because it grants open-ended discretion to licensing officials and authorizes licenses only to those applicants who can show some special need apart from self-defense.")

Because the legislature's amorphous suitability standard permits (indeed requires) the colonel to appraise "credible" and "reliable" facts and then judge an applicant unsuitable upon mere *suggestion* of *perhaps* a public safety risk, the

standard fails both as a matter of law and as a matter of practice. For example, it is still good law in Massachusetts that a person may be deemed unsuitable simply when he "invoked his constitutional rights and refused to cooperate with the police" in an investigation the police deemed serious. *Godfrey v. Chief of Police of Wellesley*, 35 Mass. App. Ct. 42, 47-48 (1993). Furthermore, the determination about whether one achieves "suitability" before exercising one's Second Amendment rights rests with the Executive Branch. No due process exists at that stage, and the burden apparently remains upon the applicant to show that he or she is not unsuitable.

If denied a license, an applicant must then take on the difficult burden of proving that discretionary call was "arbitrary or capricious." *See Firearms Records Bureau v. Simkin*, 466 Mass. 168, 179-180 (2013). "The [arbitrary and capricious] rule leaves applicants little recourse if their local licensing officer denies a permit." *Bruen,* 597 U.S. at 13. In the First Amendment context, this Court "has recognized that the lodging of such broad discretion in a public official allows him to determine which expressions of view will be permitted and which will not. This thus sanctions a device for the suppression of the communication of ideas and permits the official to act as a censor." *Cox v. Louisiana*, 379 U.S. 536, 557 (1965). Nor may such broad discretion lodge in a colonel to decide which people may keep and bear arms. Despite its enumeration, First Amendment protections are not elevated above Second Amendment protections. The constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules

than the other Bill of Rights guarantees.'" *Bruen*, *supra* at 70, quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

Nor does the SJC's refashioning of "unsuitability" into demonstrable dangerousness, *see Marquis*, 495 Mass. at 436, 454, cure the Second Amendment violation. First, the plain terms of the statutes, which defer this broad judgment call to the colonel, defy that attempt. "This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 673-674 (2020). Second, any "dangerousness" determination vests an Executive Branch official with the power to decide which law-abiding citizens get to exercise their rights and which do not. "In considering whether an applicant should be granted a license or a renewal thereof under [M.G.L. c. 140,] § 131, the licensing authority has been given 'considerable latitude.'" *Godfrey*, 35 Mass. App. at 46, quoting *Ruggiero v. Police Comm'r of Boston*, 18 Mass. App. Ct. 256, 259 (1984). The SJC does not indicate that the licensing authority's discretion has since been meaningfully cabined, only that "[s]ubjective, impressionistic judgments of 'unsuitability' are…proscribed." *Marquis*, 495 Mass. at 456. However, it is the police colonel who makes the decision as to what counts as "sufficient" (according to his or her estimation) evidence of unsuitability, which is, for all practical purposes, the final decision. Justice Kavanaugh warned against such "unchanneled discretion." *Bruen*, *supra* at 79 (Kavanaugh, J., concurring).

A law enforcement official, rather than a neutral arbiter, determines any applicant's "dangerousness" according to that official's own assessment of "credible" and "reliable" information pursuant to M.G.L. c. 140, § 131(d). *Compare* 430 ILCS 66/20(g) (Illinois' establishment of the Concealed Carry Licensing Review Board which must find by a preponderance of the evidence that the "applicant poses a danger to himself or herself or others, or is a threat to public safety" before an applicant may be deemed ineligible for a license.) Massachusetts laws stray far afield from the historical surety and going armed laws which "involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *United States v. Rahimi*, 602 U.S. 680, 699 (2024). This tradition tied to due process of law is likely why this Court emphasized that with respect to the applicability of historical precedent as to "dangerousness", its holding in *Rahimi* was a narrow one. "[W]e conclude only this: An individual *found by a court* to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Rahimi*, 602 U.S. at 702 (emphasis added). *See also Id.* at 713 (Gorsuch, J., concurring): ("we do not decide today whether the government may disarm a person without a judicial finding that he poses a 'credible threat' to another's physical safety. [18 U.S.C.] § 922(g)(8)(C)(i)[.]")

B. By Burdening the Right to Interstate Travel, the Supreme Judicial Court's Decision Forces Gun Owners to Relinquish One Constitutional Right So They May Freely Exercise Another.

"Freedom to travel throughout the United States has long been recognized as a basic right under the Constitution." *Dunn v. Blumstein*, 405 U.S. 330, 338 (1972), quoting *United States v. Guest*, 383 U.S. 745, 758 (1966). "A state law implicates the right to travel when it actually deters such travel, … when impeding travel is its primary objective, … , or when it uses 'any classification which serves to penalize the exercise of that right.'" *Attorney Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986) (citations omitted). "The right to travel is an 'unconditional personal right,' a right whose exercise may not be conditioned." *Dunn*, 405 U.S. at 341 (citation omitted). Nonresidents, who wish to cross the Massachusetts line with their firearm, will find their interstate travel conditioned. Their interstate travel is thus either burdened or deterred.

Nonresidents may not enter Massachusetts with a handgun without a temporary Massachusetts license. Their submission to this unconstitutional licensing regime, *supra* pp. 4-8, is mandatory with no exceptions including for self-defense, emergency, accident, or unknowing crossing of the Massachusetts border. Given the two interlocking constitutional rights, the penalty incurred by the nonresident traveler is two-fold. If an otherwise law-abiding person travels into Massachusetts with a firearm, without a discretionary license, then that person must suffer disarmament, arrest and/or prosecution and become exposed to an eighteen-month mandatory minimum sentence. If that person does not wish to meet

this fate, then the person must relinquish the firearm prior to travel and thereby yield his or her Second Amendment rights.

The unchanneled discretion lodged with a colonel, *supra* pp. 5-7, to which nonresident travelers must submit before they may exercise their "natural" and "pre-existing" Second Amendment rights in Massachusetts, *see District of Columbia v. Heller*, 554 U.S. 570, 599 (2008); *McDonald*, 561 U.S. at 843, deters (if not precludes) nonresident travel into Massachusetts. Given these significant intrusions, the district court's rationale in the companion case, *Commonwealth v. Donnell*, 495 Mass. 471 (2025), stands firm where it "can think of no other constitutional right which a person loses simply by traveling beyond his home state's border into another state continuing to exercise that right and instantaneously becomes a felon subject to mandatory minimum sentence of incarceration." App. 217-218. The Commonwealth thus violates the right of a nonresident "to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State." *Saenz v. Roe*, 526 U.S. 489, 500 (1999).

"Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest." *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969) (emphasis in original). "Where activities or enjoyment, natural and often necessary to the well-being of an American citizen, such as travel, are involved, we will construe narrowly all delegated powers that curtail or dilute

them." *Kent v. Dulles*, 357 U.S. 116, 129 (1958). The Commonwealth may not use the guise of general police powers to temporarily or indefinitely disarm nonresident travelers. *See Bigelow v. Virginia*, 421 U.S. 809, 824-825 (1975) ("But it may not, under the guise of exercising internal police powers, bar a citizen of another State from disseminating information about an activity that is legal in that State.") "Expediency, convenience, or ease of administration or enforcement do not justify constitutional infringement of privileges and immunities." *Connecticut ex rel. Blumenthal v. Crotty*, 346 F.3d 84, 99 (2nd Cir. 2003).

Laws and regulations near the time of the founding also reveal that in at least five states and territories, travelers were generally exempted from gun restrictions imposed upon residents. This liberality ratified for travelers makes sense because if their Second Amendment exercise was not harming residents, there was and is no cause to interfere with their temporary carriage of firearms through or within the state. *See Bigelow,* 421 U.S. at 828 ("[t]here was no possibility that appellant's activity would…infringe on other rights [of Virginia residents].")

Both Kentucky and Indiana prohibited the concealed carry of certain weapons—including pistols, dirks, and sword canes—but both states provided exemptions for travelers. 1813 Ky. Acts 100 (no concealed carry of certain weapons "unless when travelling on a journey"); 1820 Ind. Acts 39 (no concealed carry of certain weapons, "[p]rovided however, that this, act shall not be so construed as to affect travellers"). Tennessee banned all carry, "either public or private," of a "dirk, sword cane, French knife, Spanish stiletto, belt or pocket pistols." 1821 Tenn. Pub.

Acts 15. But the law specified "[t]hat nothing herein contained shall affect . . . any person that may be on a journey to any place out of his county or state." *Id.* at 16.

In 1860, the Territory of New Mexico prohibited the carry of various weapons except by "persons when actually on trips from one town to another in this Territory." N.M. Laws 94, 94-99, § 6 (1860). Travelers were required to disarm, however, "after they shall have arrived at the town or settlement." *Id*.

Finally, Ohio banned the concealed carry of weapons "such as a pistol, bowie knife, dirk, or any other dangerous weapon" but allowed persons found carrying concealed weapons in violation of the law to assert an affirmative defense that he or she was "engaged in the pursuit of any lawful business, calling, or employment, and that the circumstances . . . were such as to justify a prudent man in carrying" a weapon. 1859 Ohio Laws 56–57, § 2. And at least one commentator of the era suggested that one such circumstance that would justify carrying arms was "traveling in a dangerous part of the country." Benjamin L. Oliver, *The Rights Of An American Citizen* 178 (1832).

C. The Supreme Judicial Court's Decision Underscores Nationwide Disparities Among Those States That Permit Law-Abiding Citizens to Freely Travel with Their Firearms and Those States That Do Not.

This Court should take this case to affirm that the Second Amendment sets a floor by which no state may fall below. Law-abiding citizens like Marquis enjoy a presumptive right to keep and carry a firearm unless and until a judge or other neutral arbiter finds them dangerous. *See Rahimi*, 602 U.S. at 702 and *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (any "power to

prohibit dangerous people from possessing guns … extends only to people who are dangerous.") Their right to interstate travel must likewise not be burdened or deterred as a result of an ahistorical licensing scheme. Otherwise, travelers who possess firearms must trade one constitutional right for another before embarking to a state like Massachusetts.

Massachusetts is an outlier in its discretionary licensing regime. *See Bruen*, *supra* at 14 n.2. But the reach of that regime is vast. Tens of millions of domestic tourists visit the state each year. "Tourism Drives Economic Growth In Massachusetts", Press Release, Massachusetts Office of Travel and Tourism (Oct. 30, 2024), available at: https://www.mass.gov/news/tourism-drives-economic-growth-in-massachusetts. Any law-abiding, nonresident travelers who wish to exercise their Second Amendment rights in Massachusetts will encounter the likely unfamiliar and unconstitutional hurdle of suitability. Even if they have authorizations or licenses in their home states, Massachusetts will not honor them. "Transporting Firearms", *Firearms License Frequently Asked Questions*, Massachusetts Department of Criminal Justice Information Services, available at: https://www.mass.gov/info-details/firearms-license-frequently-asked-questions.

If nonresidents travel to New York, another discretionary licensing regime, they will be precluded altogether from lawfully carrying a firearm there unless they are either part-time residents or have a principal business in New York. NY CLS Penal § 400.00(3)(a) & (7). *See also* Bernabei, Leo, "New York and Nonresident Carry"

(Guest Post), Duke Center for Firearms Law (March 19, 2025).[2] Even in Illinois, which is a "shall-issue" regime, many nonresidents are precluded from applying for a license to carry a concealed firearm in that state. In Illinois, currently only nonresidents in Arkansas, Idaho, Mississippi, Nevada, Texas or Virginia may apply for a license which is the only means by which nonresidents may lawfully carry in Illinois. 430 ILCS 66/10(a)(1), 66/40(b) and Ill. Admin. Code tit. 20, § 1231.110.[3] Until recently, nonresidents could not legally carry a concealed firearm in California. Cal. Penal Code § 26155(a)(3). The United States District Court for the Southern District of California issued an injunction against that law pursuant to the plaintiffs' facial challenge to it and rejected the State's argument that nonresidents were not considered part of the "People" whom the Second Amendment protects. *Hoffman v. Bonta*, 2025 U.S. Dist. LEXIS 125285 at *5-16, Case No.: 3:24-cv-664-CAB-MMP (July 1, 2025) (Bencivengo, J.) Paradoxically, any license-holder in Massachusetts will not have their license honored in Colorado, Pennsylvania, or Washington[4],

[2] https://firearmslaw.duke.edu/2025/03/new-york-and-nonresident-carry#:~:text=New%20York%20is%20now%20the,for%20residents%20and%20nonresidents%20alike

[3] *See also* "Illinois Concealed Carry License – 2018 Substantially Similar Survey Results," State of Illinois Firearm Services, available at: https://www.ispfsb.com/Public/SubstantiallySimilarSurvey.pdf

[4] "Concealed Handgun Permit (CHP) Reciprocity", Colorado Bureau of Investigation, available at: https://cbi.colorado.gov/sections/firearms-instacheck-unit/concealed-handgun-permit-chp-reciprocity; "Concealed Carry Reciprocity," Pennsylvania Attorney General, available at: https://www.attorneygeneral.gov/resources/concealed-carry-reciprocity/; and "Concealed Pistol License Reciprocity", Washington State Office of the Attorney General, available at: https://www.atg.wa.gov/concealed-pistol-license-reciprocity.

despite their less onerous eligibility requirements, because Massachusetts will not honor licenses held by those state residents.

The United States Congress could resolve this patchwork of laws burdening gun-owning travelers – some of which also violate the Second Amendment – by passing the House Bill, H.R. 38[5], which would allow any person, who is licensed or authorized by their state to carry a concealed firearm, to lawfully carry it in any other concealed-carry state so long as the person is not federally prohibited from possessing the firearm. However, the Bill is not scheduled for a vote, and it is unclear if such a vote will ever materialize. "H.R. 38 – 119th Congress: Constitutional Concealed Carry Reciprocity Act." www.GovTrack.us 2025. July 24, 2024 https://www.govtrack.us/congress/bills/119/hr38. Until that time comes, travelers are subject to an ahistorical conditioning of their rights to an executive official's judgment of their worthiness to exercise them.

II. Massachusetts Cedes Constitutional Rights to an Executive Authority's Judgment of Suitability and Thereby Vitiates This Court's Historical Tradition Test.

This Court must intervene to prevent states from criminalizing individuals for exercising their Second and Fourteenth Amendment rights under facially unconstitutional licensing statutes. It is never constitutional for a state to disarm all nonresidents whenever they cross its border while a colonel decides if they are "suitable" to qualify for a license and then mandate substantial imprisonment if

[5] H.R. 38, 119th Congress, 1st Session, available at: https://www.govinfo.gov/content/pkg/BILLS-119hr38ih/pdf/BILLS-119hr38ih.pdf

they do not submit to that disarmament. *See Rahimi*, 602 U.S. at 699 (concluding that "the penalty" is "another relevant aspect of the burden" upon the Second Amendment right) and *United States v. Salerno*, 481 U.S. 739, 752 (1987) (reasoning that the Bail Reform Act contained "extensive safeguards" before individuals could be detained for dangerousness and those safeguards "suffice[d] to repel a facial challenge.") Put another way, it is never constitutional to disarm all nonresident travelers unless and until they submit to and succeed in obtaining a license from a colonel. Such conditioning of constitutional rights is especially problematic and ahistorical in a discretionary regime like Massachusetts' and as applied to law-abiding citizens like Marquis. Historical tradition and this Court's precedent establish this.

"[O]ur Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not. The conclusion that focused regulations like the surety laws are not a historical analogue for a broad prohibitory regime like New York's does not mean that they cannot be an appropriate analogue for a narrow one." *Rahimi*, 602 U.S. at 700. Massachusetts, like New York, has a "broad prohibitory regime." *Bruen*'s reasoning about mid-19th century surety laws thus holds here: "These laws were not *bans* on public carry, and they typically targeted only those threatening to do harm." *Bruen*, *supra* at 55 (emphasis in original). "[T]he surety statutes *presumed* that individuals had a right to public carry that could be burdened only if another could make out a specific showing of 'reasonable cause to fear an injury, or breach of

the peace.' Mass. Rev. Stat., ch. 134, § 16 (1836)." *Bruen*, *supra* at 56 (emphasis in original). The Commonwealth cannot fit a square peg (i.e., temporarily disarming only dangerous people) into a round hole (i.e., temporarily disarming all nonresidents).

"Even when a law regulates arms-bearing for a permissible reason, … it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Rahimi*, *supra* at 692. There is no historical law or regulation allowing the government to collectively disarm a broad swath of the public so as to ferret out any individual who could be dangerous or "unsuitable." "In essence, American law recognized a zone of immunity surrounding the privately owned guns of citizens." Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 L. & Hist. Rev. 139, 142 (2007) (reviewing the first fourteen states' codes from 1607 to 1815).

Nor can the Supreme Judicial Court point to any historical law or regulation demonstrating that residents of one colony or state reflexively distrusted armed residents of another colony or state. That absence in the historical record makes sense because Americans had just fought and stood victorious against the British, overthrowing the King, and standing as "one nation." *See Ware v. Hylton*, 3 U.S. 199, *p. 49* (1796) ("The war was waged against all America as one nation, or community; and the peace was concluded on the same principles.") and *The Rapid*, 12 U.S. 155, 161 (1814) ("The whole nation are embarked in one common bottom,

and must be reconciled to summit to one common fate.") The Constitution was "framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Saenz*, 526 U.S. at 511 (citation omitted). The source of the new nation's strength was in its solidarity among the citizenry and a resolute protestation against any curtailment of their freedoms.

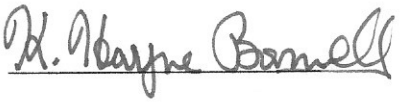
Placing the exercise of one's constitutional rights in the hands of the Executive Branch is antithetical to American tradition. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty," shall delimit our freedoms. *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). Blackstone described the Second Amendment as protecting the "natural right of resistance and self-preservation, when the sanctions of society and law are found insufficient to restrain the violence of oppression." 2 William Blackstone, *Commentaries* *139 (1765). According to founding-era views, "when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny." *Heller*, 554 U.S. at 598. Their experiences as Englishmen caused them "to be extremely wary of concentrated military forces run by the state and to be jealous of their arms." *Id*. at 593. Given their continuing concerns about tyrannical takeover, the Founders would have recoiled at one's Second Amendment rights being conditioned upon a king or a modern-day police force granting them. And the Supreme Judicial Court pointed to no historical laws or regulations that entrusted the grant of one's Second Amendment rights to the Executive Branch. That law-

abiding citizens must bear the burden of proving themselves worthy or "suitable" enough to exercise any constitutional right offends the very basis of the Bill of Rights.

CONCLUSION

For the reasons set forth above, the petitioner respectfully prays this Court to issue a writ of *certiorari* and to grant further relief.

Petitioner
Philip Marquis
By his Attorney



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