

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CARLOS NINO DE RIVERA LAJOUS, )  
)  
Plaintiffs, )  
)  
v. )  
)  
JON BRUNING, et al, )  
)  
Defendant. )

Case No. 4:13CV3070

**REPLY BRIEF IN SUPPORT OF  
DEFENDANTS' MOTION TO  
DISMISS**

Defendants Jon Bruning and David Sankey in their official capacities and, pursuant to pursuant to Fed. R. Civ. P. 12(b)(6), file this reply brief in support of their motion to dismiss (Filing No. 13).

**ARGUMENT**

**I. ATTORNEY GENERAL JON BRUNING SHOULD BE DISMISSED.**

By and large, Plaintiffs' response simply does not address the crux of Defendants' argument in favor of dismissing Defendant Bruning, i.e., Plaintiffs seek relief from a party, the Attorney General, who cannot provide the requested relief and against whom they do not have standing.

Plaintiffs assert broadly that as the "chief law enforcement officer, attorney and prosecutor in the State" Defendant Bruning is interested in enforcing Neb. Rev. Stat. § 69-2433(10). (Filing No. 18, at 7). Then, Plaintiffs go a step further and claim that because Defendant Bruning is representing Defendants in this litigation, Defendant Bruning is a proper party in this case. *Id.* at 8. But a review of the entirety of the Nebraska Concealed Handgun Permit Act (Neb. Rev. Stat. §§ 69-2427 through 69-2449) ("Act") reveals no responsibility or administrative authority granted to the Attorney

General. Nor does the Nebraska Constitution afford the Attorney General the broad responsibilities which Plaintiffs attribute to him. Defendant Bruning simply has no hand in the issuance or denial of concealed handgun permits. Further, because the Attorney General is in no way responsible for administering Nebraska's concealed carry scheme, the Attorney General cannot redress the alleged injuries suffered by Plaintiffs. Without available relief from the Attorney General, not only do Plaintiffs lack standing as to the Attorney General, they also fail to state a claim upon which relief can be granted. Taking, as the Court must for the purposes of this motion, all the allegations in the Complaint as true, Plaintiffs fail to state a claim against Defendant Bruning upon which the Court can grant relief.

Since there is no action of the Attorney General to be compelled or halted and the Attorney General cannot grant the remedy sought—the ability of non-citizens to carry a concealed handgun—the Court should grant Defendants' Motion to Dismiss.

## **II. STATES CAN REGULATE CONCEALED HANDGUNS UNDER THE SECOND AMENDMENT.**

Defendants have moved to dismiss Plaintiffs' complaint because the protections afforded under the Second Amendment are limited to citizens and the Second Amendment does not create a right to carry concealed weapons. Accordingly, for the following reasons the Court should grant Defendants' Motion to Dismiss.

### **A. United States Supreme Court jurisprudence limits the protections afforded under the Second Amendment to citizens.**

United States Supreme Court jurisprudence limits the protections afforded under the Second Amendment to citizens. As discussed in Defendants original brief, the

Second Amendment protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (emphasis added). The Supreme Court has held that therefore a total “ban on handgun possession in the home violates the Second Amendment, as does [a] prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.” *Id.* The Court reiterated throughout *Heller*, however, that the Second Amendment protects a “not unlimited” right belonging to “citizens.” *Id.* at 584-85 & n.8; 595, 602-3, 607-8, 611-14, 616, 618-19, 625-26, 629-30, 635. As LaJous is not a citizen of the United States, the Second Amendment protections are not afforded to him.

Plaintiffs’ argue that this Court should extend Second Amendment protections to all lawfully admitted aliens, despite not being contemplated by the Court under *Heller*. (Filing No. 1, at ¶¶ 26, 28, 39). While not binding on this Court, the conclusions of two federal district courts in North Carolina are instructive. In the context of constitutional challenges to 18 U.S.C. § 922(g)(5), two federal district courts concluded *Heller* does not extend the Second Amendment to aliens, legal or not. *United States v. Luviano-Vega*, 2010 U.S. Dist. LEXIS 98432 (E.D.N.C. Sept. 19, 2010); *United States v. Solis-Gonzalez*, 2008 U.S. Dist. LEXIS 110133 (W.D.N.C. Sept. 26, 2008); *See also United States v. Guerrero-Leco*, 2008 U.S. Dist. LEXIS 103448 (W.D.N.C. Oct. 6, 2008).

In *Luviano-Vega*, an undocumented alien challenged his indictment for possession of a firearm by an illegal alien under 18 U.S.C. § 922 as violating the Second Amendment. 2010 U.S. Dist. LEXIS 98432 at \*3. The court concluded that *Heller* “in no way identified a specific right of aliens—legal or not—to bear arms. The

*Heller* court answered a much narrower question and did not attempt an exhaustive taxonomy of the specific individuals who can and cannot claim Second Amendment protection. See *Heller*, 128 S. Ct. at 2817 n.26 (“We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive’).” *Id.* at \*5-6. Similarly, in *Solis-Gonzalez*, an undocumented alien challenged his indictment for possession of a firearm by an undocumented alien under 18 U.S.C. § 922 as violating the Second Amendment. 2008 U.S. Dist. LEXIS 110133 at \*1-2. The court found “no persuasive support for Defendant’s argument that the ‘individual right to bear firearms conferred by *Heller* extends to aliens in possession of firearms.’” *Id.* at \*6. In the same way, this Court should decline to interpret *Heller* as extending the Second Amendment to non-citizens.

Plaintiffs cite *United States v. Huitron-Guizar*, 678 F.3d 1164 (10th Cir. 2012) in support of their position that this Court should extend such protections. However, the Tenth Circuit in *Huitron-Guizar*, a criminal case involving the illegal possession of firearms by an undocumented alien, specifically declined to rule on Plaintiffs’ assertion. *Id.* at 1167-69. The Tenth Circuit explicitly stated “Nothing in this opinion purports to express an opinion on the Second Amendment rights of lawfully present aliens . . .” *Id.* at 1170; see also *Fletcher v. Haas*, 851 F. Supp. 2d 287, 301 (D. Mass. 2012) (stating that while there is “no justification for refusing to extend the Second Amendment to lawful permanent residents” the present case does “not require [the court] to decide whether Second Amendment protection applies to *all* lawfully admitted aliens”). Likewise, this Court should not treat *Huitron-Guizar* as expressing an opinion on the Second Amendment rights of all lawfully admitted aliens.

Finally, Plaintiffs attach a copy of an injunction issued by this Court in *Pliego-Gonzalez v. City of Omaha*, following a stipulation entered into by the parties. (Filing No. 18-2). “In the stipulation, the parties agree that individuals have a fundamental right under the Second Amendment to keep firearms, including handguns, in their homes for lawful purposes, most notably for self-defense, the right is enforceable against state and local governments, legal aliens residing in Omaha enjoy fundamental constitutional rights, and legal aliens also enjoy the right of equal protection of the laws under the Fourteenth Amendment of the Constitution.” *Id.*

As a preliminary matter, this Court should not treat the stipulation in *Pliego-Gonzales* as expressing an opinion on the Second Amendment rights of all lawfully admitted non-citizens. This was not a case decided on the merits, but instead involved a stipulation of the parties. Such a stipulation should be binding only on the parties and not considered persuasive authority as to non-parties to the case. In addition, none of the statements, taken independently, as they were in the stipulation, see Case No. 8:11-cv-00335, Doc. 26 (Nov. 20, 2011), provide a “holding” by this Court that “denying a lawful permanent resident the ability to possess a handgun in his home violated his fundamental Second Amendment rights.” (Filing No. 18, at 11). If anything, the stipulation and corresponding order show the care taken by the parties to not take those statements in the conjunctive. Likewise, the parties’ decision to use “individuals” in some statements and “legal aliens” in others signifies a distinction made by the parties to the stipulation.

Accordingly, since LaJous is not a citizen, and Second Amendment rights are limited to citizens under *Heller*, the Second Amendment protections are not afforded to

him.

**B. The concealed carry of a handgun is not a constitutional right.**

Defendants are also entitled to their motion to dismiss because no Second Amendment rights are at issue in this case because the concealed carry of a handgun is not a constitutional right. *See Peterson v. Martinez*, 707 F.3d 1197 (10th Cir. 2013); *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Hightower v. City of Boston*, 693 F.3d 61 (1st Cir. 2012); *United States v. Rene E.*, 583 F.3d 8 (1st Cir. 2009).

At the outset, it is vital to clarify for the Court an aspect of Defendants' reasoning in support of their motion which was mischaracterized in Plaintiffs' response. Plaintiffs claim Defendants argued there is no Second Amendment right to carry a firearm openly in public. (Filing No. 18 at 11). This is a straw man argument. At no point in their original brief did Defendants suggest that there is not a Second Amendment right to carry a firearm openly in public. Having constructed the straw man, Plaintiffs promptly knocked him over by calling "unacceptable" and "discriminatory" an argument *which never existed*.<sup>1</sup>

To the contrary, Defendants embraced Plaintiff's allegation that he can possess and carry firearms in his home and openly in public. (Filing No. 14, at 8; *citing* Filing No. 1, ¶ 9). As noted by Plaintiffs, Defendants previously argued in the Fourth Circuit, in an amicus brief supporting appellees in *Woollard v. Gallagher*, that "the right to bear arms is not limited to the home." 712 F.3d 865 (4th Cir. 2013)(Brief of . . . Nebraska . . . as

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<sup>1</sup> Plaintiffs also incorrectly claim "the State argued so forcefully that concealed carry is a Second Amendment right in the Fourth Circuit . . ." (Filing No. 18, at 15).

Amicus Curiae in Support of Appellees Urging Affirmance, Filing No. 18-1, at 1)(stating “the amici States have an interest in this Court correctly holding that the self-defense interest animating the Second Amendment’s individual right to keep and bear arms applies broadly beyond the confines of an individual’s home.”). For Plaintiffs to suggest that Defendants contended otherwise with regard to the Second Amendment right to carry a firearm openly in public is inaccurate.

However, what the Second Amendment does not create is a right to carry concealed handguns. “Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.” *Heller*, 554 U.S. at 626. Such is the case here. Plaintiffs even seem to affirm this principle by stating, “[o]f course, the State is allowed certain constitutional regulations of the right to carry arms, including the manner of carrying.” (Filing No. 18, at 16).

The Tenth Circuit recently addressed whether the Second Amendment protects the right to keep and bear concealed handguns in *Peterson v. Martinez*, 707 F.3d 1197 (10th Cir. 2013). In *Peterson*, the plaintiff challenged a Colorado statute that required Colorado residency for the issuance of a concealed carry permit. *Id.* However, identical to Nebraska’s law, the statute did “not affect the ability of non-residents to openly carry firearms in the state.” *Id.* at 1209. The court found that the under “The Supreme Court’s

contemporary Second Amendment jurisprudence . . . concealed carry restrictions do not infringe the Second Amendment right to keep and bear arms.” *Id.* at 1210. Accordingly, in light of *Peterson* and *Heller*, “the Second Amendment does not confer a right to carry concealed weapons.” *Id.* at 1211.

Plaintiffs remaining assertion, as it pertains to their claimed “fundamental right to carry a concealed handgun,” is that of self-defense. (Filing No. 18, at 16). Yet, Plaintiffs even point out that Nebraska is one of the few states that allow both concealed and open carry. *Id.* at 17. Therefore, similar to the law in *Plastino v. Koster*, “[n]on-citizens are not prohibited from owning and carrying guns; they are prohibited only from carrying concealed guns.” 2013 U.S. Dist. LEXIS 58544, \*12 (E.D. Mo. Apr. 24, 2013). Here, Plaintiffs fail, just like the plaintiffs in *Plastino*, to show why any non-citizen “would feel more secure carrying his gun concealed, as opposed to carrying his gun in the open.” *Id.*

As the Second Amendment does not create a right to carry concealed weapons, denial of a permit for a concealed weapon cannot violate the Second Amendment. Since the protections afforded under the Second Amendment are limited to citizens and the Second Amendment does not create a right to carry concealed weapons, Plaintiffs have failed to state a claim against Defendants.

**III. Neb. Rev. Stat. § 69-2433(10) is Subject to, and Passes, Rational Basis Review**

As argued above, the concealed carry of a handgun does not implicate any Second Amendment right. Plaintiffs contend they cannot be denied their Second

Amendment rights under the Fourteenth Amendment based on their alienage. Plaintiffs' claim fails because the prohibition of non-citizens from carrying concealed weapons has a rational means to promote the legitimate end of public safety.

"If a legislative classification neither burdens a fundamental right nor targets a suspect class," it is not subject to strict scrutiny and must be upheld so long as the classification rationally relates to a legitimate government end. *Romer v. Evans*, 517 U.S. 620, 631 (1996) citing *Heller v. Doe*, 509 U.S. 312, 319-20 (1993). As argued above, regulation of the concealed carry of a handgun does not implicate a Second Amendment right, and no other fundamental rights are implicated. Further, state laws that discriminate on the basis of alienage are not under strict scrutiny when the State law falls within its traditional constitutional prerogative, public safety. Because the Nebraska law is a public safety measure, Nebraska has acted within its traditional constitutional prerogative and thus the Act must be subjected only to rational basis review. Nebraska's Concealed Handgun Permit Act easily meets this threshold.

**A. Regulation of concealed handguns does not implicate a fundamental right.**

Defendants embraced Plaintiff's allegation that he can possess and carry firearms in his home and openly in public. (Filing No. 14, at 8; *citing* Filing No. 1, at ¶ 9). However, as argued above, regulation of concealed handguns does not implicate a fundamental right. *District of Columbia v. Heller*, 554 U.S. 570 (2008). Instead, as applied to the states, the Second Amendment guarantees LaJous a "not unlimited" right to keep and bear firearms for his own defense. *Id.* at 626. Because regulation of concealed handguns does not violate the Second Amendment, and no other rights have

been asserted by LaJous, the law does not implicate a fundamental right. Because the law also does not target a suspect class, it should be evaluated under rational basis review. *Romer*, 517 U.S. at 631.

**B. Regulation of concealed handguns is firmly within the State's constitutional prerogative of public safety.**

Not all laws that concern alienage are constitutionally suspect under the Equal Protection Clause of the Fourteenth Amendment. *Foley v. Connelie*, 435 U.S. 291, 294 (1978) (“we [have never] held that all limitations on alienage are suspect.”). “State laws discriminating on the basis of alienage are reasonable, and not suspect, when they deal with subject matter ‘firmly within the state’s constitutional prerogatives.’” *Sugarman v. Dougall*, 413 U.S. 634, 648 (1973). Plaintiffs make no attempt to show public safety is not firmly within the state’s constitutional prerogatives. Plaintiffs simply restate their position that the State did not have a legitimate or compelling interest. As addressed below, Plaintiffs’ contention is without merit.

Accordingly, because regulation of concealed handguns does not violate the Second Amendment, and no other rights have been asserted by Plaintiffs, the law does not implicate a fundamental right. Because the law fulfills a “fundamental obligation of the State to its constituency” and falls “firmly within the State’s constitutional prerogatives”, it should be evaluated under rational basis review. *Romer*, 517 U.S. at 631.

**C. The law withstands rational basis review because prohibiting non-citizens from concealing handguns in public is a rational means of ensuring the legitimate end of public safety.**

Public safety is a legitimate, indeed compelling, government interest. See e.g.

*Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989). Laws regulating the concealed carry of handguns in public are legitimate measures aimed at protecting members of the public from harm. *Heller*, 554 U.S. 570. The Nebraska law was enacted to further the compelling government interest in public safety by having state agencies regulate those individuals privileged to conceal handguns on their person outside their homes. Floor Debate on LB 454, 99th Neb. Leg., 1st Sess. 5205 (May 6, 2005) (Comments of Sen. Flood). Subsection (10) of the law contributes to the achievement of this end by excluding from consideration for concealed carry privileges those individuals whose criminal backgrounds cannot be determined by the licensing agency.

As established in section III-A-3 of Defendants' original brief, information on the applicant's criminal history furnished through the Federal Bureau of Investigation's National Crime Information Center ("NCIC") does not include complete criminal histories from outside of the United States. (See Filing No. 14, at 13-14). Plaintiffs attempt to claim NCIC does include complete criminal histories by noting the inclusion of the Foreign Fugitive File and the Immigration Violator File. (Filing No. 18, at 20). Far from a complete criminal history, those two "Files" only include "persons *wanted* by another country for a crime that would be a felony if it were committed in the United States" and "criminal aliens whom immigration authorities have deported *and* aliens with outstanding administrative warrants of removal." See [http://www.fbi.gov/about-us/cjis/ncic/ncic\\_files](http://www.fbi.gov/about-us/cjis/ncic/ncic_files) (emphasis added). With only this information on non-citizens criminal history outside the United States, the Nebraska State Patrol would have no reasonable way of determining if non-citizens otherwise meet all of the requirements of Neb. Rev. Stat. § 69-2433. Although some non-citizens who would have otherwise

qualified for concealed carry permits undoubtedly do not have any criminal history outside of the United States, the investigating authorities cannot know that for certain.

Furthermore, Plaintiffs opine that “Defendants practically come right out and say that lawful resident aliens cannot be trusted with concealed firearms.” (Filing No. 18, at 19). Plaintiffs’ argument, however, is inaccurate and improper. While Plaintiffs themselves repeatedly note the difference between open and concealed carry, including the unregulated versus regulated nature of these two versions of publicly carrying a handgun, Plaintiffs conveniently gloss over the unique public safety concern of allowing an individual whose background cannot be determined by the licensing agency to carry concealed. It is not that non-citizens cannot be trusted with concealed firearms. In fact, as Plaintiffs point out, they are trusted with them in their home. It is that the Legislature recognized the importance of obtaining a complete criminal history and the Nebraska State Patrol would have no reasonable way to evaluate the requisite factors for jurisdictions outside of the United States. As argued above, this is a significant distinction.

Lastly, Plaintiffs raise concerns over why travelling United States citizens are not excluded from obtaining a permit. (Filing No. 18, at 2). However, Plaintiffs overlook the statute also prohibits citizens who have not resided in Nebraska for 180 days prior to applying unless the “applicant is a new Nebraska resident and possesses a valid permit to carry a concealed handgun issued by his or her previous state of residence that is recognized by this state pursuant to section 69-2448 . . .” Neb. Rev. Stat. § 69-2433(7). Further, Plaintiffs have only challenged subsection (10) of Neb. Rev. Stat. § 69-2433, not subsection (7).

Because Neb. Rev. Stat. § 69-2433 is a public safety law, it serves a legitimate government interest. Denying permits to non-citizens who cannot easily be confirmed to meet the other qualifications required for a concealed carry permit under the Act, is a rational means of protecting the public from those individuals carrying concealed handguns whose criminal backgrounds cannot be determined by the licensing agency, and is therefore facially valid.

**IV. Even under Strict Scrutiny, Neb. Rev. Stat. § 69-2433(10) is Constitutionally Sound because Prohibiting Non-citizens from Concealing Handguns in Public is the Least Restrictive Means of Achieving a Compelling Government Interest.**

Even if subjected to strict scrutiny, the law would still pass constitutional muster because it achieves the compelling government interest of protecting the public from those individuals carrying concealed handguns whose criminal backgrounds cannot be determined by the licensing agency, by the least restrictive means available. Laws subjected to strict scrutiny will survive judicial review if they are narrowly tailored to meet a compelling government interest. *Bowman v. White*, 444 F.3d 967, 980 (8th Cir. 2006) citing *Thorburn v. Austin*, 231 F.3d 1114, 1120 (8th Cir. 2000) (“A regulation is narrowly tailored when it furthers a significant government interest that would be achieved less effectively without the regulation”). Even under strict scrutiny, Neb. Rev. Stat. § 69-2433 validly disqualifies non-citizens because it is narrowly tailored to meet the compelling state interest of protecting the public.

**A. Public safety is a compelling government interest.**

Police powers have been reserved to the States by the Tenth Amendment. *U.S. v. Bailey*, 115 F.3d 1222 (5th Cir. 1997). Among those powers is the preservation of

public safety, which is a compelling government interest. See *Heller*, 554 U.S. 570. The regulation of concealed handguns is a valid exercise in furtherance of that compelling interest. *Id.* Because the Act is a legislative measure to protect the public from those individuals carrying concealed handguns whose criminal backgrounds cannot be determined by the licensing agency, it is a law in furtherance of a compelling government interest.

As set forth in section III-C above, states have a compelling governmental interest in protecting the public from those individuals carrying concealed handguns whose criminal backgrounds cannot be determined by the licensing agency. Plaintiffs attempt to use *People v. Rappard*, 28 Cal. App. 3d 302 (Cal. App. 2d Dist. 1972) to show that not only should their claim be analyzed under strict scrutiny, but that alienage classifications have no relationship to public safety. (Filing No. 18, at 21). Plaintiffs attempt fails for two reasons: (1) the statute in *Rappard* prohibited aliens from *possessing* concealable firearms and (2) the government's contention that aliens themselves are inherently dangerous to public safety as a result of their alien status. *Rappard*, 28 Cal. App. 3d at 304. To the contrary, Neb. Rev. Stat. § 69-2433 does not prohibit non-citizens from possessing firearms. Secondly, at no point have Defendants argued aliens are inherently dangerous to public safety as a result of their alien status. Instead, Defendants have asserted the compelling government interest of protecting the public from those individuals carrying concealed handguns whose criminal backgrounds cannot be determined by the licensing agency.

Accordingly, because the Act is a legislative measure to protect the public from those individuals carrying concealed handguns whose criminal backgrounds cannot be

determined by the licensing agency, it is a law in furtherance of a compelling government interest.

**B. Section 69-2433 is narrowly tailored to safeguard the public from unregulated concealed handguns.**

Laws are narrowly tailored to achieve their ends when a compelling interest would be achieved less effectively without the regulation. *Bowman*, 444 F.3d at 980. The Act is properly conceived of as a measure to standardize the process for and increase confidence in the means of qualifying individuals to carry concealed handguns in public. Floor Debate on LB 454, 99th Neb. Leg., 1st Sess. 5200-5201 (May 6, 2005) (Comments of Sens. Flood and Beutler). As such, it is important to note that the Nebraska law prohibits more than non-citizens as a class from licensure under its terms. In addition to barring non-citizens from concealed carry, the law also prohibits: those under the age of 21; those prohibited from possessing firearms under 18 U.S.C § 922<sup>2</sup>; those with eyesight too poor to qualify for a driver's license; those convicted of a felony in any State; those convicted of a misdemeanor crime of violence in any State in the preceding ten years; those who have been found to be mentally incompetent; those who have not resided in Nebraska for 180 days prior to applying; those who have any firearms or drug convictions in the preceding ten years; those on parole, probation, house arrest, and work release; and those who have not completed firearm training from carrying concealed weapons in public. Neb. Rev. Stat. §§ 69-2433(1)-(9), (11).

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<sup>2</sup> 18 U.S.C. § 922(g) makes it unlawful for anyone who: (1) is indicted for or convicted of a crime punishable by imprisonment for more than one year; (2) is a fugitive; (3) is addicted to any controlled substance; (4) is mentally incompetent; (5) is an illegal alien or an alien admitted on a nonimmigrant visa; (6) has been dishonorably discharged from the Armed Forces; (7) has renounced his United States citizenship; (8) is the subject of certain restraining orders; or (9) has been convicted of misdemeanor domestic violence. § 922(d) prohibits the sale or transfer of firearms to those same individuals.

As is evident, a large number of individuals, of which non-citizens are but a subset, are excluded from the privilege of carrying concealed handguns by the law. Plaintiffs fail to even address this point.

The exclusion of non-citizens as a class is permissible even if some of the class may meet the requirements, so long as it is applied equally to all non-citizens. *State v. Garza*, 241 Neb. 934 (1992) citing *Commonwealth v. Acen*, 396 Mass. 472, 482 (1986) (permitting the exclusion of aliens from jury service in Nebraska as a means of ensuring that all jurors are able to speak English). Here, as in *Garza*, although some non-citizens undoubtedly otherwise meet the licensure requirements under the law, because not all will, their exclusion as a class is properly tailored. Thus, the exclusion of all non-citizens as a class is necessarily the narrowest group sufficient to ensure that the public is protected from those individuals carrying concealed handguns whose criminal backgrounds cannot be determined by the licensing agency.

Moreover, because the law doesn't simply aim at non-citizens, but instead aims at ensuring that only the safest possible group of people are carrying concealed handguns, regulation of concealed handgun permits does not infringe upon the Second Amendment. Additionally, since all non-citizens are excluded because licensing agencies are unable to compile a complete background knowledge of non-citizens, the law is as narrowly-tailored as possible in furtherance of the compelling interest of public safety.

### **CONCLUSION**

For the foregoing reasons and those set forth in their original brief at Filing No. 14, Defendants request that this Court dismiss this Complaint for failure to state a claim,

and for such other and further relief as this Court deems just and proper.

JON BRUNING AND DAVID SANKEY,  
Defendants.

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**CERTIFICATE OF SERVICE**

It is hereby certified that on July 25, 2013, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to the Plaintiffs' attorney of record.

s/Stephanie Caldwell  
Stephanie Caldwell, #22994  
Assistant Attorney General