No. 25-5961

In the Supreme Court of the United States

EVA MARIE GARDNER, *Petitioner,*

v.

MARYLAND

On Petition for a Writ of Certiorari
to the Appellate Court of Maryland

BRIEF FOR U.S. SENATORS TED CRUZ, TED BUDD, JOHN CORNYN, STEVE DAINES, LINDSEY O. GRAHAM, JIM JUSTICE, JAMES LANKFORD, MIKE LEE, CYNTHIA LUMMIS, ASHLEY MOODY, RAND PAUL, AND THOM TILLIS AS *AMICI CURIAE* SUPPORTING PETITIONER

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QUESTION PRESENTED

Amici will address the first question presented in the petition:

> Does Maryland's prohibition on carrying a handgun without a state permit, as applied to an interstate traveler with a valid Virginia concealed carry permit who displayed a loaded firearm in self-defense against an assailant's vehicular assault and physical advance, violate the Second Amendment under *New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1 (2022), by lacking a historical tradition of disarming law-abiding citizens in such circumstances?

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INTRODUCTION, SUMMARY OF ARGUMENT, AND INTEREST OF *AMICI CURIAE*[1]

Over the past two decades, this Court has restored and reaffirmed the Second Amendment's core guarantee that ordinary, law-abiding Americans have a fundamental right to defend themselves—first in the home in *Heller*, then against state infringement in *McDonald*, and finally in public in *Bruen*. This case presents the next essential step in that constitutional arc. It arises from extraordinarily sympathetic facts: an interstate traveler, lawfully permitted in her home State to carry a firearm, suddenly attacked on the highway and forced to choose between protecting her own life or violating an arbitrary state-line restriction. If the Second Amendment means anything, it must protect Americans who act in lawful self-defense while simply traveling on the public roads of the United States. Granting certiorari here would not only vindicate the promise of *Heller*, *McDonald*, and *Bruen*—it would reaffirm that the right of armed self-defense does not evaporate at a State border, but remains the birthright of every American citizen.

This case presents an enormously important Second Amendment question about the self-defense rights of interstate travelers, one that has been given short shrift by federal and state courts. The right to self-defense means little if it ends a short distance

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[1] This brief was not authored in whole or in part by counsel for any party and no person or entity other than *Amici Curiae*, its counsel, or its members has made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of *Amici'* s intent to file this brief.

from your door. And a patchwork of state licensing schemes is an onerous burden on Americans who must travel for work or pleasure and want to defend themselves. The United States has a long history of exempting interstate travelers from gun control laws, and the Maryland Appellate Court failed to recognize this tradition or even conduct a *Bruen* analysis.

Amici are U.S. Senator Ted Cruz of Texas, the Chairman of the Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights of the Senate Committee on the Judiciary, and 11 other U.S. Senators. Members of Congress swear an oath to uphold the U.S. Constitution, with its foundational principle of limited government and its guarantees of fundamental individual rights. One of the most important of these rights is the Second Amendment's guarantee of the right to keep and bear arms. That constitutional right implements the historic right of armed defense of self, family, state, and nation, as well as the right to use arms for other lawful purposes. *Amici* accordingly have a substantial interest in seeing the judiciary protect the Second Amendment for future generations of Americans.

The following is the full list of U.S. Senators who have joined this brief as *Amici Curiae*:

Ted Cruz

Ted Budd	Mike Lee
John Cornyn	Cynthia Lummis
Steve Daines	Ashley Moody
Lindsey O. Graham	Rand Paul
Jim Justice	Thom Tillis
James Lankford	

STATEMENT

In the underlying case, petitioner Eva Marie Gardner was traveling from her home in Virginia to her mother's home in Pennsylvania when her vehicle was struck twice and forced from the road in Maryland. App.B1, B3. When both vehicles came to a stop, the other driver approached her vehicle. *Ibid.*

Gardner holds a concealed carry permit and carried a loaded handgun in her glove box. App.B1. Fearing for her safety, she showed the approaching driver her gun and told him to return to his car. App.B3. He did so. *Ibid.* Following a jury trial, Gardner was convicted of carrying a loaded handgun on or about her person and knowingly transporting a loaded handgun in her vehicle, in violation of Maryland Criminal Law § 4-203. App.B6-7.

On appeal, the Maryland Appellate Court recognized that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." App.B9-10 n.7 (quoting *New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 10 (2022)). But it declined to conduct a *Bruen* analysis for Maryland Criminal Law § 4-203, relying on a footnote in *Bruen* to decide that "shall-issue" permitting schemes are *per se* constitutional. App.B10-11 (quoting *Bruen*, 597 U.S. at 38 n.9 (cleaned up)). The court ignored the end of the footnote that recognized the potential for as-applied challenges to such permitting schemes.

The court then decided that "reciprocity is not mandated under *Bruen*," and that "[u]nless and until the Supreme Court of the United States holds

otherwise, or unless Congress enacts a statute requiring nationwide reciprocity, we hold that Maryland was entitled to require a resident of another state to possess a Maryland handgun permit to legally transport a loaded handgun on the public roads of" Maryland. App.B13. For reasons explained in the petition and herein, this Court should correct this failure to follow *Bruen* and to ignore the self-defense rights of interstate travelers.

ADDITIONAL REASONS FOR GRANTING THE PETITION

The Second Amendment provides an "unqualified command," *Konigsberg* v. *State Bar of Cal.*, 366 U.S. 36, 49 n.10 (1961), that "the right of the people to keep and bear Arms, shall not be infringed," U.S. Const. amend. II. This Court has recognized that this unqualified right to self-defense applies inside the home, *District of Columbia* v. *Heller*, 554 U.S. 570 (2008); *McDonald* v. *City of Chicago*, 561 U.S. 742 (2010), and "outside the home," *Bruen*, 597 U.S. at 10. This Court should now recognize that this right applies not merely near the home but as the person travels. *Amici* write separately to provide this Court with extensive evidence of the United States' historical tradition of exempting travelers from firearms regulations, such as the Maryland concealed carry statute at issue here.

I. This Court Should Grant Review to Disapprove the Lower Court's Failure to Apply *Bruen*.

The Maryland Appellate Court's decision continues the troubling pattern of state and federal courts ignoring the *Bruen* framework. This Court has been clear that "[t]he very enumeration" of the Second Amendment "takes out of the hands of government * * * the power to decide on a case-by-case basis whether" the right to keep and bear arms "is *really worth* insisting upon." *Bruen*, 597 U.S. at 23 (quoting *Heller*, 554 U.S. at 634). "The Second Amendment 'is the very *product* of an interest balancing by the people' and it 'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense." *Id.* at 26 (quoting *Heller*, 554 U.S. at 635). This balance "struck by the traditions of the American people * * * demands * * * unqualified deference." *Ibid.* Instead of giving deference to the American people's constitutional determination, the court below avoided conducting a *Bruen* analysis. Had it done so, it would have held that Maryland Criminal Law § 4-203, as applied to Gardner's circumstances, is unconstitutional. This Court should grant review to clarify that it really meant what it said in *Bruen*.

II. This Nation's Historical Tradition of Firearm Regulation Does Not Include Broad Disarmament, Especially of Interstate Travelers.

A. The Maryland Appellate Court failed to conduct a *Bruen* analysis.

In *Bruen*, this Court instructed state and federal courts to use a two-step framework when evaluating Second Amendment claims. First, a court determines whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 17. If so, "the Constitution presumptively protects that conduct." *Ibid.* The burden then shifts to the government, who "must affirmatively prove that its firearms regulation" is consistent with this Nation's "historical tradition" of firearm regulation that "delimits the outer bounds of the right to keep and bear arms." *Id.* at 19.

The court looks for a "well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 30. But "courts should not 'uphold every modern law that remotely resembles a historical analogue,' because doing so 'risk[s] endorsing outliers that our ancestors would never have accepted.'" *Ibid.* (citation omitted). An analogous statute is one that follows the same "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29.

Instead of conducting a *Bruen* analysis and placing the burden of proof on the government to show a historical analogue that would justify its regulation, the Maryland Appellate Court treated a statement on

"shall-issue" permitting schemes in footnote 9 of *Bruen* as dispositive. See App.B10-11 (citing *Bruen*, 597 U.S. at 38 n.9). In *Bruen*, this Court wrote that "nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes, under which 'a general desire for self-defense is sufficient to obtain a [permit].'" *Bruen*, 597 U.S. at 38 n.9 (quoting *Drake* v. *Filko,*724 F.3d 426, 442 (3d Cir. 2013) (Hardiman, J., dissenting)). But nothing in the *dicta* found in that footnote purports to exempt permitting schemes from *Bruen* analysis. In fact, the footnote says that "because any permitting scheme can be put toward abusive ends," this Court "do[es] not rule out constitutional challenges to shall-issue regimes." *Ibid.* Had the court below conducted a *Bruen* analysis, it would have been forced to admit that no historical analogue exists for depriving interstate drivers of their self-defense rights.

B. Failure to conduct individualized determinations of the right to keep and bear arms is not in keeping with America's historical traditions.

Under the first step of the *Bruen* analysis, no one has disputed that Gardner, an "ordinary, law-abiding, adult citizen[]," is "part of 'the people' whom the Second Amendment protects." *Bruen*, 597 U.S. at 31-32 (quoting *Heller*, 554 U.S. at 580). "Nor does any party dispute that handguns are weapons 'in common use' today for self-defense." *Id.* at 32 (quoting *Heller*, 554 U.S. at 627). And a court should have "little difficulty concluding" that Gardner's "proposed course of conduct," involving "carrying handguns publicly for

self-defense" is protected by "the plain text of the Second Amendment." *Ibid.* As this Court has held, "[n]othing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms." *Ibid.* And nothing the Second Amendment's text draws a distinction between keeping and bearing arms in public outside your home, at the supermarket, or in Gardner's case, on the way home from visiting your mother in another state.

Under the second step of the *Bruen* analysis, the government, not Gardner, bears the burden of showing a historical analogue. The Maryland Appellate Court erred in not requiring the government to meet that burden. But in any event, no historical analogue exists here. And "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id.* at 26.

From the earliest "modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms." *Id.* at 38. Early common law prohibited "the act of 'go[ing] armed to *terrify* the King's subjects," which always involved "evil intent or malice." *Id.* at 44 (quoting *Sir John Knight's Case*, 3 Mod. 117, 118, 87 Eng. Rep. 75, 76 (K.B. 1686) (emphasis in *Bruen*)). This common law

crime was affirmed in the Statute of Northampton. *Ibid*.

Later, some early colonial statutes similarly "authorized justices of the peace to arrest 'all Affrayers, Rioters, Disturbers, or Breakers of the Peace, and such as shall ride or go armed Offensively * * * by Night or by Day, in Fear or Affray of Their Majesties Liege People." *Bruen*, 597 U.S. at 46 (quoting 1692 Mass. Acts and Laws no. 6, pp. 11-12 and citing 1699 N.H. Acts and Laws, ch. 1). Such statutes "merely codified the existing common-law offense of bearing arms to terrorize the people, as had the Statute of Northampton itself." *Id.* at 47.

An early, unique colonial statute "prohibited 'planter[s]' from carrying all pistols unless in military service." *Bruen*, 597 U.S. at 48. "In colonial times, a 'planter' was simply a farmer or plantation owner who settled new territory." *Ibid*.[2] But the statute exempted "all strangers, travelling upon their lawful occasions thro[ugh] this Province, behaving themselves peaceably."[3]

"[G]oing armed" statutes endured in the "late-18th-century and early-19th-century" that

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[2] This Court noted that "[w]hile the reason behind this singular restriction" on planters "is not entirely clear, planters may have been targeted because colonial-era East New Jersey was riven with 'strife and excitement' between planters and the Colony's proprietors 'respecting titles to the soil.'" *Bruen*, 597 U.S. at 48-49.

[3] An Act Against Wearing Swords, ch. 9 (1686), *in The Grants, Concessions, and Original Constitutions of the Province of New Jersey* 289-290 (Aaron Leaming & Jacob Spicer eds., W. Bradford 1881), https://tinyurl.com/mvck2xdv.

"prohibit[ed] bearing arms in a way that spreads 'fear' or 'terror' among the people" and not "merely [for] carrying a firearm in public." *Bruen*, 597 U.S. at 49-50 (citing Collection of All Such Acts of the General Assembly of Virginia, ch. 21, p. 33 (1794); 1795 Mass. Acts and Laws ch. 2, p. 436, *in Laws of the Commonwealth of Massachusetts*; 1801 Tenn. Acts pp. 260-261).

Following ratification, states continued recognizing a common-law prohibition on bearing arms to terrorize the public. *Bruen*, 597 U.S. at 50-51. State statutory prohibitions showed "a consensus that States could *not* ban public carry altogether." *Id.* at 53. At the time, "it was considered beyond the constitutional pale * * * to altogether prohibit public carry." *Id.* at 54. The "consensus view" at the time was "that States could not altogether prohibit the public carry of 'arms' protected by the Second Amendment or state analogues." *Id.* at 55.

The final type of relevant post-ratification statutes were surety statutes "that required certain individuals to post bond before carrying weapons in public." *Id.* at 55. These 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.'" *Id.* at 56 (quoting Mass. Rev. Stat., ch. 134, § 16 (1836)). And "surety laws did not *prohibit* public carry in locations frequented by the general community. Rather, an accused arms-bearer 'could go on carrying without criminal penalty' so long as he 'post[ed] money that would be forfeited if he breached the peace or injured others[.]" *Id.* at 56-57

(citation omitted). And even this requirement was one "from which he was exempt if *he* needed self-defense." *Ibid.* Accordingly, "'[u]nder surety laws * * * everyone started out with robust carrying rights' and only those reasonably accused were required to show a special need in order to avoid posting a bond." *Id.* at 57. These laws did not burden the "responsible," they targeted the "(allegedly) reckless." *Ibid*.

This same pattern continued into antebellum America, where "*the manner* of public carry was subject to reasonable regulation. Under the common law, individuals could not carry deadly weapons in a manner likely to terrorize others. Similarly, although surety statutes did not directly restrict public carry, they did provide financial incentives for responsible arms carrying. Finally, States could lawfully eliminate one kind of public carry—concealed carry—so long as they left open the option to carry openly." *Bruen*, 597 U.S. at 59.

At the time the Fourteenth Amendment was ratified, the Supreme Court wrote that citizens had the right "to keep and carry arms *wherever they went*." *Bruen*, 597 U.S. at 60 (quoting *Dred Scott* v. *Sandford*, 60 U.S. (19 How.) 393, 417 (1857)). The prospect of blacks having that right was one of "a parade of horribles" that the Court used to justify its decision that blacks could not be citizens. *Ibid.* (citing *Dred Scott*, 60 U.S. at 417).

In sum, the history of public carry in America shows that "[t]he Second Amendment guaranteed to 'all Americans' the right to bear commonly used arms in public subject to certain reasonable, well-defined

restrictions." *Bruen*, 597 U.S. at 70 (quoting *Heller*, 554 U.S. at 581). "Those restrictions, for example, limited the intent for which one could carry arms, the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms, such as before justices of the peace and other government officials." *Ibid*. There simply is no history of broad prohibitions on the public carry of commonly used firearms. Accordingly, the government failed to show that Maryland Criminal Law § 4-203 was constitutional as applied to Gardner.

C. Conditioning interstate travelers' self-defense rights on a permit is outside America's historical tradition.

Just as the right to bear arms is not limited to the home, so too is it not limited to one's state of residence. The right to keep and bear arms for self-defense means relatively little if it ends at the state border, especially for people who live near borders and are required to cross state lines for work and daily living, such as those living in the Virginia-Maryland-D.C. area. In fact, the States have long recognized a heightened interest in self-defense for travelers and have accordingly exempted them from gun control laws. Yet today, some States have refused to recognize the self-defense rights of interstate travelers. The resulting patchwork of permitting schemes creates an impractical burden requiring a person to obtain a permit from each state in which she travels.

The English disarmed travelers to oppress and punish Scotsmen for the Jacobite Rising of 1715, following the Acts of Union in 1707. The "Highlanders

of Scotland" were accustomed to "having arms in their custody, and using and bearing them in travelling abroad in the fields, and at publick meetings."[4] The Act prohibited "any person" in certain parts of Scotland from keeping, using or carrying weapons "in the fields, or in the way, coming or going to, from, or at any church, market, fair, burials, huntings, meetings, or any other occasion whatsoever, within the bounds aforesaid, or to come into the *Low-Countries* armed."[5]

American history shows that the practice of disarming travelers was firmly rejected in the United States. States widely exempted travelers from gun control laws.

In Alabama, statutes punished "[a]ny one who carries concealed about his person a pistol," but exempted those who were "travelling, or setting out on a journey."[6]

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[4] An Act for the More Effectual Securing the Peace of the Highlands in Scotland, 1 Geo. ch. 54, §§ 1, 6-10 (1716), *in* 13 *The Statutes at Large, from the Twelfth Year of Queen Anne, to the Fifth Year of King George I*, at 306 *(*Danby Pickering ed., Joseph Bentham 1764), https://tinyurl.com/2zatb29m.

[5] *Id.* at 307.

[6] Ala. Code, tit. 1, ch. 1, art. 6, § 3274 (1852), *in The Code of Alabama* 588 (John J. Ormond et al. eds., Brittan & De Wolf 1852), https://tinyurl.com/yv35n9jx; see also Ala. Code, ch. 7, § 4, *in Acts Passed at the Annual Session of the General Assembly of the State of Alabama* 148-149 (Hale & Phelan 1841) ("Miscellaneous Offences * * *[:] Every one who shall hereafter carry concealed about his person, a * * * pistol * * * unless such person shall be * * * travelling, or setting out on a journey * * * shall be fined[.]"), https://tinyurl.com/yc5vb3zz.

An Arkansas statute similarly provided that it shall not "be so construed as to * * * prohibit any persons traveling through the country, carrying such weapons while on a journey with their baggage."[7]

One Arkansas city set specific time limits on how long travelers could be in transit while carrying a pistol: "[T]ravelers in transit through the city, shall be exempt from the penalties of this Ordinance for three hours from the time of their entrance within the corporation limits, after which if they persist in carrying arms in violation of this ordinance they shall be subject to its penalties."[8]

Many Indiana statutes followed a similar pattern of applying gun control statutes to "every person not being a traveler."[9]

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[7] Act of Feb. 16, 1875, § 1, 1874-75 Ark. Acts 156, https://tinyurl.com/bdeetu47.

[8] Van Buren, Ark. City Ord. of May 1, 1869, § 4, *printed in* The Van Buren Press, May 4, 1869, at 2, https://tinyurl.com/ahxr3aue.

[9] An Act to Prevent Carrying Concealed or Dangerous Weapons, and to Provide Punishment Therefor, 1859 Ind. Acts 129, https://tinyurl.com/ytdvkrk3; see also Town of Bedford, Ind. Ord. No. 1, § 4, Protecting Public Morality, Order and Safety (undated), *reprinted in Ordinances of the Town of Bedford* (1869) ("Every person, not being a traveler, who shall wear or carry any * * * pistol * * * concealed" shall be fined.), https://tinyurl.com/2z6zdfp4; City of New Albany, Ind. Ord. §§ 1-3, An Ordinance to Prohibit the Wearing or Carrying of Concealed Weapons in the City of New Albany (1855), *in Laws, General and Special, of the City of New Albany* 84 (R. J. L. Matthews 1870) ("it shall not be lawful for any person, not being a traveller to wear or carry, within the corporate limits of the city of New Albany, any * * * pistol * * * concealed."), https://tinyurl.com/38hvzh8v; An Act Relative to Crime and Punishment, ch. 26, § 58, 1831 Ind. Acts

Kentucky prohibited "wear[ing] a pocket pistol * * * concealed as a weapon, unless when travelling on a journey."[10]

Tennessee recognized the same right of travelers to self-defense setting forth a fine of "ten dollars" for "[e]very person carrying" a "pocket pistol * * * either openly or concealed" unless "for defense while traveling."[11]

And Tennessee further recognized that this right extended even to minors, who likewise needed to defend themselves when traveling, excluding from misdemeanor criminal charges the "sell[ing], loan[ing] or giv[ing] to any minor a pistol * * * except a gun for hunting or weapon for defence in traveling."[12]

180, 192 ("every person, not being a traveller, who shall wear or carry a * * * pistol * * * concealed"), https://tinyurl.com/25scsu7b; An Act to Prohibit the Wearing of Concealed Weapons, ch. 23, § 1, 1820 Ind. Acts 39, 39 ("this act shall not be so construed as to affect travellers"), https://tinyurl.com/5bn72s7m.

[10] An Act to Prevent Persons in This Commonwealth from Wearing Concealed Arms, Except in Certain Cases, ch. 89, § 1 (1813), 1812-1813 Ky. Acts 1st Sess. 100, 100-101, https://tinyurl.com/8k4kayhu.

[11] See Special Order, Off. of Supt. Metro. Police, Memphis, Tenn., §§ 1700-1702, *printed in* Pub. Ledger, Dec. 30, 1867, at 3, https://tinyurl.com/uexecp6h; see also Tenn. Code § 4864 (1858), *in The Code of Tennessee enacted by the General Assembly 1857-'8,* at 871 (Return J. Meigs & Wm. F. Cooper eds., E.G. Eastman 1858) (misdemeanor for selling, loaning, or giving a minor a gun "except * * * for defence in travelling"), https://tinyurl.com/mw67an35.

[12] See, *e.g.*, Lebanon, Tenn. Ord. ch. 20, § 22, Misdemeanors (1871), *in A Compilation of the Laws and Ordinances of the Corporation of Lebanon* 56 (Wade & White 1871),

And Texas statutes stated that they "shall not be so construed as to * * * prohibit persons traveling in the state from keeping or carrying arms with their baggage[.]"[13]

Even in the more heavily regulated territories of the Old West, see *Bruen*, 597 U.S. at 66-70; *ibid.* at 127-129 (Breyer, J., dissenting), gun control laws recognized the rights of travelers to self-defense.

One New Mexico statute did not apply "to persons when actually on trips from one town to another in this Territory."[14] And the territory allowed a "[p]erson[] traveling * * * to carry arms within settlements or towns of this Territory, for one hour after arriving in such settlements or town, and while going out of such

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https://tinyurl.com/2vjakffd; see also Tenn. Code § 4864 (1873), *in* 2 Seymour D. Thompson & Thomas M. Steger, *A Compilation of the Statute Laws of the State of Tennessee* 125 (W.J. Gilbert 1873) ("Any person who sells, loans, or gives, to any minor a pistol * * * except a gun for hunting or weapon for defense in traveling"), https://tinyurl.com/5n7dspwx.

[13] Tex. Crim. Code, arts. 6512-6515, 6512 (1871), *in* 2 *A Digest of the Laws of Texas, from 1754-1874,* at 1322, 1322 (George W. Paschal ed., W.H. & O.H. Morrison 1874), https://tinyurl.com/9u5wm39w; An Act to Regulate the Keeping and Bearing* of Deadly Weapons, ch. 34, §§ 1-9, § 1, 1871 Tex. Gen. Laws 25, 25 (Gammel Book Co. 1898) (same), https://tinyurl.com/mr48tju7.

[14] Act of February 2, 1860, §§ 1-9, § 6, 1860 N.M. Laws 94, 96 (Prohibiting the Carrying of Weapons, Concealed or Otherwise), https://tinyurl.com/2btnz5r2.

towns or settlements;" but travelers must otherwise "divest themselves of their weapons."[15]

In Nevada, one statute applied to "[e]very person, not being a peace officer or traveler" in preventing them from "wear[ing] or carry[ing] any * * * pistol * * * concealed."[16]

The State of California had an identical statute.[17] And Los Angeles provided that "no persons, *except* * * * *persons actually traveling, and immediately passing through* Los Angeles city, shall wear or carry any * * * pistol * * * concealed or otherwise, within the corporate limits of said city[.]"[18]

On the frontier, the traveler exception for self-defense applied even to groups that were potentially hostile at the time, including Indians: "No person shall sell, exchange, or give to any Indian, any * * * gun * * * unless such Indian shall be traveling through the state[.]"[19]

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[15] An Act Prohibiting the Carrying of Deadly Weapons, Either Concealed or in Any Other Way, ch. 32, §§ 11-12, 1869 N.M. Territory Laws 72, 75, https://tinyurl.com/4v59kp2v.

[16] An Act to Prohibit Carrying of Concealed Weapons, ch. 30, §§ 1-2, 1867 Nev. Stat. 66, https://tinyurl.com/ycycma79.

[17] See An Act to Prohibit the Carrying of Concealed Weapons, ch. 485, §§ 1-2, 1863 Cal. Stat. 748, 748, https://tinyurl.com/y74p3nbc.

[18] *New Advertisements*, L.A. Tri-Weekly News, July 22, 1865, at 2 (emphasis added) (quoting L.A. City Ord. [unnumbered], § 1 (July 17, 1865)), https://tinyurl.com/4rt2xhar.

[19] An Act to Restrain Intercourse with Indians, § 4, Mo. Rev. Stat. (Chambers & Knapp 1845), https://tinyurl.com/ymtaeew4.

This history shows a firmly entrenched and pervasive practice of exempting travelers, like Gardner, from gun control laws. Under the *Bruen* framework, Maryland Criminal Law § 4-203 is unconstitutional as applied to Gardner.

III. Reciprocity Is An Important Question Meriting This Court's Review.

As a practical matter, there is no reason that reciprocity for concealed carry licenses is not feasible. It has been implemented for much more dangerous licenses than concealed carry permits. Reciprocity exists for driver's licenses, even though there is no constitutional right to drive and cars are much more dangerous than firearms.

No other constitutional right requires a license, and 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*, 597 U.S. at 70 (quoting *McDonald*, 561 U.S. at 780 (plurality opinion)). This Court has stated that it "know[s] of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need." *Ibid.* Such would be unimaginable for the other enumerated rights. "That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant's right to confront the witnesses against him." *Id.* at 70-71. Requiring a license to exercise the freedom of speech or to practice one's religion would be abhorrent. Accordingly, restrictive licenses should not

be "how the Second Amendment works when it comes to public carry for self-defense." *Id.* at 71.

If States perceive an actual problem with armed strangers traveling through their borders (and their regulations are not merely pretextual), they could solve this problem by looking to regulations in keeping with American history. They could retain the benefit of concealed carry for their residents, while requiring travelers to open carry. They could condition exemptions on a traveler spending no more than a certain amount of time in the state. But what States cannot do is prohibit open carry and restrict concealed carry to state license holders while rejecting reciprocity. The self-defense rights of the People cannot be thus infringed.

CONCLUSION

The People have a right to self-defense, and that right is not limited to the home or the vicinity of the home. The United States has long recognized the need to exempt travelers from gun control laws. The need for an exemption could not be clearer than for permitting schemes like Maryland's that are outside the American historical tradition. This Court should reaffirm the analysis it required in *Bruen* and restore the right of the People to self-defense in interstate travel.

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