No. 25-5961

In the
Supreme Court of the United States

EVA MARIE GARDNER,
*Petitioner*,

*v.*

STATE OF MARYLAND,
*Respondent.*

**On Petition for Writ of Certiorari to the Supreme Court of Maryland**

# BRIEF AMICUS CURIAE OF THE HELLER FOUNDATION IN SUPPORT OF PETITIONER

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## INTEREST OF *AMICUS CURIAE*[1]

*Amicus* Heller Foundation is a nonprofit educational and legal organizations founded, *inter alia*, for the purpose of participating in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

## SUMMARY OF ARGUMENT

Petitioner's case presents a straightforward but nationally significant constitutional problem: whether a State may, consistent with the right to travel and the Second Amendment, condition a nonresident's exercise of the right to bear arms on a months-long licensing process that travelers cannot practically complete. The argument proceeds in three parts. First, the right to travel—as understood in this Court's precedents from the *Passenger Cases* through *Saenz*—permits only modest, ministerial burdens on visitors and forbids the kind of preclearance regime Maryland imposes. Second, Maryland's permitting scheme violates the "unconstitutional condition" doctrine, as it forces travelers to forgo one right for another. Third, Maryland has become an island of uniquely prohibitive regulation in an interconnected

[1] Per Rule 37.2, *amicus* states that counsel of record received timely notice of the intent to file this brief. Per Rule 37.6, *amicus* states that no counsel for any party authored this brief in whole or in part, and no entity or person made any monetary contribution toward the preparation or submission of this brief.

Nation in violation of *Kassel*. Finally, this case warrants review because diverging state regimes and post-*Bruen* resistance legislation have created an untenable national landscape, and the interaction between the right to travel and *Bruen*'s historical-tradition test requires this Court's urgent guidance.

## ARGUMENT

The right to interstate travel is firmly protected thrice over in the Constitution, once in Article I's reservation of the regulation of interstate commerce to Congress, again in Article IV's guarantee of "Privileges and Immunities of Citizens in the several States," and yet again in the Fourteenth Amendment's protection of "privileges [and] immunities of Citizens of the United States." *Shapiro v. Thompson*, 394 U.S. 618, 630 n.8 (1969). Given that triple protection, it could hardly be argued that Maryland could require ordinary interstate travelers to submit passport-style photos, appear for fingerprinting, pay substantial fees, and wait months for bureaucratic approval before knowing whether their travel plans may proceed or must be abandoned. "[T]he nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." *Id.* at 629-30. Yet, Maryland imposes exactly such restrictions on one category of traveler: those who seek to exercise two rights at once—the right to keep and bear arms and the right to travel.

Petitioner was driving from her home in a neighboring state when she was involved in a car accident.[2] When Police arrived, they learned that Petitioner was carrying a pistol, which she legally possessed and could legally carry in her home state. *Id*. Petitioner was then charged with violating the local firearm-carrying statute. *Id*. These facts may sound familiar; this Court is currently considering a case arising from a nearly identical fact pattern from Massachusetts. *See* Petition, *Marquis v. Massachusetts* (No. 25-5280). While that case involves a Massachusetts statute which flagrantly violates Article IV's protections, subjecting non-residents to the "for cause" permitting scheme rejected in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), Maryland's regime nevertheless touches on the same concern but at a deeper level.

Unlike the statute at issue in *Marquis*, here, Maryland makes no distinction between resident and non-resident applicants. Thus, while *Marquis* asks this Court to clarify that *Bruen* applies to non-residents, a relatively straightforward application, this case goes further. The Maryland Court of Appeals erred not by treating non-residents differently than locals, but by subjecting them to the same onerous requirements as residents, leaving travelers with no

[2] Cert. Pet. at 11. Although the narrative events surrounding Petitioner's travel include disputed factual details, none bear on the legal issue. Petitioner was charged only with carrying without a Maryland permit, and her compliance with her home State's laws is undisputed. Thus, the instant case presents a pure legal question about the constitutional limits on nonresident licensing barriers.

*practical* method of exercising their right to arms in those states

When Petitioner chose the most direct and sensible route from her home in Virginia to her mother in Pennsylvania, Maryland forced upon her an untenable dilemma: either subject herself to months-long licensing hurdles for the few hours she would be on Maryland highways, or else surrender her constitutional right to carry a firearm for self-defense. The Constitution does not permit a State to condition the exercise of one right on the sacrifice of another. States do not satisfy the Fourteenth Amendment by allowing citizens to choose among different flavors of infringement. *See Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 545 (1983) ("[T]he government may not deny a benefit to a person because he exercises a constitutional right.").

"[T]he privilege of using the public highways . . . cannot be affected by the unconstitutional condition imposed." *Frost & Frost Trucking Co. v. R.R. Com. of Cal.*, 271 U.S. 583, 599 (1926) (citing *Western Union Telegraph Co. v. Kansas*, 216 U.S. 1 (1910)).

## I. THE RIGHT TO TRAVEL FORBIDS MARYLAND's IMPOSITIONS ON LAW-ABIDING VISITORS.

The right to travel protects three distinct but related rights: (1) the right to enter and leave a State; (2) the right to be treated as a "welcome visitor" while temporarily present; and (3) the right, upon becoming a resident, to be treated equally with all other citizens.

*Saenz v. Roe*, 526 U.S. 489, 500 (1999).[3] This case concerns the second component, which is "expressly protected by the text of the Constitution," the right of a citizen of the United States to move through a sister State on ordinary terms, without being subjected to punitive, exclusionary, or impossible conditions. *Id.* at 501. "[W]ithout some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists. *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869). Thus, restrictions that "impinge[] upon the right of interstate travel," must be grounded on "a *compelling* governmental interest." *Shapiro v. Thompson*, 394 U.S. 618, 644 (1969) (Stewart, J., concurring), and States may not even "deter" interstate travel. *Dunn v. Blumstein*, 405 U.S. 330, 339 (1972).

From the beginning of this Court's right-to-travel jurisprudence, the line between permissible and impermissible burdens has been clear: travelers may be subjected only to ordinary obligations ancillary to the State's police power. They may not be subjected to delays**,** preclearance**,** in-state licensing, or any system that operates as a condition precedent to travel. This principle was articulated as early as the *Passenger Cases*, 48 U.S. (7 How.) 283 (1849), in which this Court held that taxes on the number of incoming aliens was

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[3] There was serious pushback to the attempt to "marry these separate and distinct rights." *Saenz*, 526 U.S. at 514 (Rehnquist, C.J., dissenting). However, the instant case only implicates pure travel, not the right to become a citizen of another State.

unconstitutional. As Justice Taney conceded in his dissent:

> For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.

48 U.S. (7 How.) at 492 (1849) (Taney, C.J., dissenting).

In the right-to-travel context, this Court has consistently struck down burdens far less onerous than Maryland's restriction here. *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1868), invalidated a trivial one dollar exit tax because it operated as a condition on travel itself. Even indirectly deterring interstate migration has been consistently found to violate the Constitution's guarantee of free travel. *Shapiro v. Thompson* invalidated a one-year residency waiting period for welfare benefits because it deterred movement. 392 U.S. 618 (1969). *Dunn v. Blumstein* invalidated a similar requirement placed on the right to vote. 405 U.S. 330 (1972). And *Edwards v. California* held that a State may not criminalize transporting an "indigent person" into the state. 314 U.S. 160 (1941).

## II. MARYLAND CANNOT FORCE TRAVELERS TO SURRENDER ONE RIGHT FOR ANOTHER.

Under the Second Amendment framework articulated in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), Maryland's regime is questionable, at best. This Court reaffirmed that licensing regimes are permissible only when they consist of "narrow, objective, and definite standards" and operate as "shall-issue" systems that do not "deny ordinary citizens their right to public carry." *Id.* at 38 n.9. This Court warned that when permitting processes are "lengthy" or "exorbitant," they "deny citizens their rights." *Id.* The sorts of burdens that Maryland lays upon those seeking to exercise their second amendment rights simply have no analogue in this nation's history and tradition of firearm regulation.[4]

However, even assuming *arguendo* that Maryland's licensing regime satisfied the Second Amendment for a *resident*, the implication on the right to travel requires a different analysis for Petitioner. This Court has consistently held that a State may not deny a benefit, let alone a constitutionally enumerated right, "because he exercises a constitutional right." *Regan v. Taxation With Representation of Wash.*, 461 U. S. 540, 545 (1983). As discussed, *supra*, this has been routinely applied to the right to travel in *Shapiro* and *Dunn*. *See*

[4] *See United States v. Rahimi*, 602 U.S. 680, 694-98 (2024) (discussing the "two distinct legal regimes" addressing firearm regulation, both focused on disarming as a punishment, noting the firm rejection of preemptive disarming "on this side of the Atlantic.").

*also*, *Memorial Hosp. v. Maricopa Cnty.*, 415 U.S. 250 (1974) (invalidating an Arizona statute requiring a year's residence in a county as a condition to an indigent's receiving nonemergency hospitalization or medical care at the county's expense). This applies even if there is otherwise no entitlement to the benefit, *Bd. of Cnty. Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996).

If the unconstitutional conditions doctrine applies to benefits to which Petitioner has no entitlement, it applies to constitutionally guaranteed rights *a fortiori*. If it were not so, "constitutional guaranties, so carefully safeguarded against direct assault, are open to destruction by the indirect but no less effective process of requiring a surrender, which, though in form voluntary, in fact lacks none of the elements of compulsion." *Frost & Frost Trucking Co. v. R.R. Com. of Cal.*, 271 U.S. 583, 593 (1926).

Maryland's system treats Second Amendment rights as though they were subject to their general police power much like a professional regulation, going well beyond recognized police powers. Petitioner must apply months in advance, register, be investigated, be photographed, be fingerprinted, and await discretionary approval from licensing personnel. [5] Indeed, this system is more probing and demanding than admission to the bar, falling far short of this Court's requirement in *Shapiro*, that interstate

[5] *See* Md Public Safety Code §§ 5-304, 305 (2024); *Handgun Wear and Carry Permit*, Maryland Dep't of State Police, (Sept. 2025), https://mdsp.maryland.gov/Organization/Pages/CriminalInvestigationBureau/LicensingDivision/Firearms/WearandCarryPermit.aspx.

travel be "uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." 394 U.S. at 629. Moreover, it acts as an incredible deterrent, if not on interstate travel, then on the exercise of the right to keep and bear arms. Whichever way one looks at the issue, the same problem arises: either the right to bear arms is conditioned on not traveling in Maryland, or the right to travel in Maryland is conditioned on not bearing arms. Neither result is acceptable.

Furthermore, these involved requirements would all have taken place while the firearm was legally possessed in Petitioner's home state. This is not a modest regulation of conduct occurring *in Maryland*. It is a precondition on entering Maryland at all. No right to travel case has ever upheld a barrier remotely resembling this one. The financial penalty *alone* should render this scheme invalid under *Crandall*, 73 U.S. (6 Wall.) 35, and each other additional burden further cements this imposition as repugnant to our national charter and Petitioner's rights as a United States citizen.

## III. MARYLAND HAS BECOME AN ISLAND OF PROHIBITIVE REGULATION.

In *Hendrick v. Maryland*, 235 U.S. 610 (1915), and *Kane v. New Jersey*, 242 U.S. 160 (1916), this Court upheld a State's ability to require the registration of automobiles from out of state. However, there are two crucial distinctions here. First, the Court noted in those cases that the amount charged did not exceed, "the amount required to defray the expense of maintaining the regulation and inspection

department." *Kane*, 242 U.S. at 169. Second, the use of an automobile, or as Justice McReynolds put it, "the operation of dangerous machines," is not a recognized right, travel is. *Hendrick*, 235 U.S. at 624. Certainly, states may engage in the "exercise of the police power uniformly recognized as belonging to the States," *id.* at 622, however the government interest must be compelling and reasonable, *Shapiro*, 394 U.S. at 634. *See also Capitol Greyhound Lines v. Brice*, 339 U.S. 542, 547 (1950) (holding a tax on common carriers may not be "in excess of fair compensation for the privilege of using state roads."); *City of Philadelphia v. New Jersey*, 437 U.S. 617, 436 (1978) (stating the crucial inquiry of an interstate commerce regulation "is basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental").

This Court has never extended those precedents to ordinary travelers moving through a State with their own personal belongings. The right to travel may not protect the unregulated use of a particular mode of transportation, like a car, but it most certainly does protect a *people*. *Saenz*, 526 U.S. at 500–03; *Edwards*, 314 U.S. at 174. It also certainly covers their personal property. More broadly, this Court has long condemned State regimes that, by design or effect, create "islands" of uniquely burdensome regulation that impede the free movement of persons and goods across state lines. *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 671–73 (1981) (plurality op.). Although *Kassel* arose in the commerce context, it reflects the same structural constitutional principle animating the right to travel: a State may not erect

regulatory barriers that, in practice, block or deter passage through these United States. The right to travel would mean little if a single jurisdiction could enforce rules so onerous that ordinary Americans must choose between surrendering liberties they exercise everywhere else or avoiding the State entirely. *See Edwards v. California*, 314 U.S. 160, 172 (1941). Thus, what would normally be a standard exercise of police power in Iowa was scrutinized by the Court, which found that, unlike the taxation scheme in *Kane v. New Jersey*, the regulation had no sufficient connection to the asserted State interest, road safety. *Kassel*, 450 U.S. at 667-68. Further, this Court explained, "When a State ventures excessively into the regulation of these aspects of commerce, it 'trespasses upon national interests.'" *Id*. at 669 (quoting *Great A&P Tea Co. v. Cottrell*, 424 U.S. 366, 373 (1976)).

Maryland's carry-permit regime produces precisely this forbidden fractuirng. While States are free to regulate firearms in a manner consistent with history and tradition, Maryland's onoerous and months-long process results in the same effect as Iowa's truck-length ban in *Kassel*: the State has insulated itself from conduct freely permitted elsewhere, thereby "impos[ing] serious burdens on the interstate movement" of law-abiding citizens. 450 U.S. at 671. Just as Iowa's law forced carriers to reroute around the State, Maryland's law forces firearm-carrying travelers either to detour around Maryland or to disarm solely for the hours they spend crossing its highways. Either outcome is constitutionally impermissible.

This is not mere speculation; the undisputed facts of this case clearly set out precisely this problem. It is irrelevant whether Maryland's policy was not *intended* to have this effect, State policies that are predicated on normal governmental concerns can still violate the right to travel. *See Saenz*, 526 U.S. 489 ("The question is not whether such saving is a legitimate purpose but whether the State may accomplish that end by the discriminatory means it has chosen."). As this Court said in *Crandall*, State may not use their normal taxing power may not "impede or embarrass . . . the rights which its citizens hold under [the Federal Constitution]." 73 U.S. at 45.

It does not matter that Maryland allows nonresidents to apply for permits (*Kassel* made no distinction between local and interestate trucks). What matters is function. A permit system practically accessible only to residents is a direct violation of *Saenz's* "welcome visitor" rule, which forbids States from imposing burdens on nonresidents that residents can satisfy by virtue of proximity, familiarity, or bureaucratic advantage. 526 U.S. at 500. Further, the limitation is without historic analogue as required by *Bruen*. A traveler who merely wishes to pass through Maryland must begin planning months in advance, arrange in-state training, and submit to procedures impossible to satisfy on short notice. This structural problem is even clearer when viewed through the lens of *Kassel*. There, Iowa's law was unconstitutional not because it forbade long trucks *per se*, but because it did so in a way that "disrupted the deep national interest in efficient interstate mobility." 450 U.S. at 671–72. Maryland's regime operates similarly. Not only does this affect Petitioner, who was simply

traveling from Virginia to Pennsylvania, but indeed millions of travelers who must use Interstate 95, the principal route of travel and commerce on the Eastern seaboard.

*Kassel* teaches that a State cannot circumvent constitutional limitations by imposing burdens so heavy that regulated parties have no practical choice but to avoid the State. 450 U.S. at 671. And *Saenz* teaches that nonresidents must be treated as welcome visitors, not presumptive violators. Maryland's regime violates both principles. In a Nation committed to free and equal interstate movement, no State may become an island of prohibitive regulation that travelers cannot realistically enter without surrendering a fundamental right. Maryland has done exactly that.

## IV. THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE QUESTION PRESENTED IS NATIONALLY IMPORTANT, RECURRING, AND CLEANLY PRESENTED FOR REVIEW.

The question presented is not confined to Maryland. It reflects a rapidly developing national problem: States increasingly impose lengthy, nonresident-inaccessible permitting regimes that categorically bar the exercise of constitutional rights by interstate travelers. *See, e.g.,* Petition *Marquis v. Massachusetts* (No. 25-5280). Hawaii, like Massachusetts imposes "for cause" style requirements on non-residents that would fail under *Bruen*. HI Rev. Stat. § 134-3 (2024). Oregon only offers residents of "a contiguous state" the opportunity to apply for such a permit. ORS 166.291 (8). Illinois gives the opportunity to residents of States with gun laws "that are

substantially similar" to those of Illinois. 430 ILCS 66/40. Meanwhile, New Jersey and Connecticut, like Maryland, impose lengthy application requirements on visitors and residents alike. NJ Rev Stat § 2C:58-4 (2024) (up to 120 days); CT Gen Stat § 29-28. (2024) (up to 60 days).

One should not need to consult every State's laws to sense the scope of the problem. Policy institutions across the political spectrum—from the United States Concealed Carry Association to the Giffords Law Center, the RAND Corporation—publish intricate, multistate charts and guides warning travelers of shifting legal barriers.[6] Travelers must now consult more than fifty separate legal regimes, many of which change with little public notice. The consequences are severe, with violations not being simple regulatory fines but criminal violations with possible incarceration. This is untenable. As this Court recognized more than a century ago, the federal union presupposes that citizens may move across State boundaries "uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969). The present landscape is the antithesis of that principle.

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[6] *See, e.g. State Firearm Law Navigator*, RAND, https://www.rand.org/research/gun-policy/law-navigator.html; *Browse State Gun Laws*, Giffords Law Center, https://giffords.org/lawcenter/gun-laws/browse-state-gun-laws/; *Concealed Carry Reciprocity Maps*, Concealed Coalition, https://my.concealedcoalition.com/reciprocity-maps; *USCCA's Concealed Carry Reciprocity Map & Gun Laws by State*, U.S. Concealed Carry Association https://www.usconcealedcarry.com/resources/ccw_reciprocity_map/.

Thus, Maryland's regime is neither unique nor benign; it is symptomatic of a broader trend. But Maryland's nonresident permit process—requiring passport-quality photos, fingerprinting, application to Maryland authorities, and a processing period that can stretch months—is particularly illustrative. The State cannot dispute the inability of a traveler to obtain a Maryland permit in advance of short-notice travel, and that the ordinary visitor crossing the border for a few hours cannot reasonably undergo the required procedures. A resident may complete this process over months; a visitor cannot. The State's licensing structure therefore functions as a categorical bar for millions of nonresidents.

This is not a dispute over whether a State may license firearms; this Court has repeatedly recognized that licensing can coexist with the Second Amendment when the licensing regime is consistent with historical tradition and does not destroy the right. *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. Chicago*, 561 U.S. 742 (2010), and *Bruen*, 597 U.S. 1 (2022), all acknowledge as much. *See also United States v. Rahimi*, 602 U.S. 680, 692 ("[T]he appropriate analysis [for firearm regulations] involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition."). But *Bruen* also emphasizes that licensing systems must be "objective," "reasonable," and not designed to prevent ordinary citizens from exercising their rights. 597 U.S. at 39 n.9. A licensing system that nonresidents cannot physically complete before entering the State crosses that line.

The question presented is therefore clean: whether a State may, consistent with *Saenz*, *Shapiro*, *Crandall*, and *Bruen*, deny law-abiding nonresidents any ability to exercise the right to bear arms for self-defense while traveling, by conditioning the right on a process that practically speaking cannot be completed before the traveler enters the State's borders. That is the entire legal question. The Second Amendment and the right to travel are distinct guarantees, but they converge here in a way this Court has not yet addressed. State and lower courts are already split on how to apply *Bruen*'s historical-tradition test to nonresident carry restrictions, and they lack guidance on how that test interacts with *Saenz*'s "welcome visitor" rule and the constitutional right to travel. *Compare, e.g., Range v. Attorney General*, 124 F.4th 218 (3rd Cir. 2024), and *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024). Some courts treat nonresident-exclusive licensing barriers as subject to rational-basis review under the dormant Commerce Clause, others treat them as routine exercises of police power, and still others apply *Bruen* in a resident-only framework that fails to address nonresident burdens.

This confusion will only deepen. States that disagree with *Bruen*'s substantive holding have adopted increasingly complex, slow, and discretionary licensing procedures—often with unique training, or fingerprinting, or in-person interview requirements that cannot be satisfied by short-term visitors. Without this Court's guidance, more States may emulate this approach, creating the very "islands" of inconsistent regulation that this Court rejected in *Kassel*. The right to travel does not evaporate at State borders, nor may States impose barriers that

functionally prohibit the exercise of another constitutional right by visitors who are otherwise law-abiding.

The need for this Court's review is therefore pressing. The issue is nationally significant, recurs daily, and affects millions of ordinary Americans. The conflict between post-*Bruen* licensing regimes and the constitutional right to interstate travel will not resolve itself; it will intensify. Only this Court can provide the guidance necessary to ensure that the Nation remains, in the words of the *Passenger Cases*, "one people, with one common country," in which all citizens may travel "as freely as in our own States." 48 U.S. at 492.

* * *

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted, and the decision below reversed.

Respectfully submitted,

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