

No. 25-5961

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IN THE  
**Supreme Court of the United States**

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EVA MARIE GARDNER,

*Petitioner,*

*v.*

STATE OF MARYLAND,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE APPELLATE COURT OF MARYLAND**

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**BRIEF IN OPPOSITION**

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## **QUESTION PRESENTED**

Must a State that has chosen to incorporate constitutionally permissible conditions into its handgun permitting scheme recognize a handgun permit issued by another State?

## **PARTIES TO THE PROCEEDING**

The caption of the case lists all the parties to the proceeding.

## **RELATED PROCEEDINGS**

Supreme Court of Maryland:

*Eva Marie Gardner v. State of Maryland*, Pet. Docket No. 87, Sept. Term, 2025 (order denying certiorari review on July 29, 2025).

Appellate Court of Maryland:

*Eva Marie Gardner v. State of Maryland*, No. 1496, Sept. Term, 2022 (unreported opinion affirming judgment of conviction on Apr. 18, 2025).

Circuit Court for Montgomery County, Maryland:

*State of Maryland v. Eva Marie Gardner*, Case No. 138914C (judgment of conviction entered on Oct. 12, 2022).

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## **OPINIONS BELOW**

The order of the Supreme Court of Maryland denying certiorari, App. A, is reported at 491 Md. 637, 340 A.3d 690 (table). The opinion of the Appellate Court of Maryland, App. B, is unreported, but available electronically on Westlaw at 2025 WL 1144644.

## **JURISDICTION**

Ms. Gardner invokes jurisdiction under 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Second Amendment to the United States Constitution:

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II.

At all times relevant to this proceeding, Maryland’s criminal prohibition against carrying a handgun without a license (or other valid legal excuse) provided in relevant part:

**§ 4-203. Wearing, carrying, or transporting handgun.**

(a) *Prohibited.* — (1) Except as provided in subsection (b) of this section, a person may not:

(i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;

(ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;

....

(v) violate item (i) or (ii) of this paragraph with a handgun loaded with ammunition.

....

(b) *Exceptions.* — This section does not prohibit:

....

(2) the wearing, carrying, or transporting of a handgun, in compliance with any limitations imposed under § 5-307 of the Public Safety Article, by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article[.]

Md. Code Ann., Crim. Law § 4-203(a)(1)(i), (ii), (v) (LexisNexis 2021 Repl. Vol.).

At all times relevant to this proceeding, Maryland's handgun-permit qualification statute provided in relevant part:

**§ 5-306. Qualifications for permit.**

(a) *In general.* — Subject to subsection (c) of this section, the Secretary shall issue a permit within a reasonable time to a person who the Secretary finds:

(1) is an adult;

(2)(i) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than 1 year has been imposed; or

(ii) if convicted of a crime described in item (i) of this item, has been pardoned or has been granted relief under 18 U.S.C. § 925(c);

(3) has not been convicted of a crime involving the possession, use, or distribution of a controlled dangerous substance;

(4) is not presently an alcoholic, addict, or habitual user of a controlled dangerous substance unless the habitual use of the controlled dangerous substance is under legitimate medical direction;

(5) except as provided in subsection (b) of this section, has successfully completed prior to application and each renewal, a firearms training course approved by the Secretary that includes:

(i) 1. for an initial application, a minimum of 16 hours of instruction by a qualified handgun instructor; or

2. for a renewal application, 8 hours of instruction by a qualified handgun instructor;

(ii) classroom instruction on:

1. State firearm law;

2. home firearm safety; and

3. handgun mechanisms and operation; and

(iii) a firearms qualification component that demonstrates the applicant's proficiency and use of the firearm; and

(6) based on an investigation:

(i) has not exhibited a propensity for violence or instability that may reasonably render the person's possession of a handgun a danger to the person or to another; and

(ii) has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.

....

Md. Code Ann., Pub. Safety § 5-306 (LexisNexis 2018 Repl. Vol.).

## STATEMENT

### **The Traffic Incident**

In January 2021, Petitioner Eva Marie Gardner, a resident of Virginia, was traveling from her home to that of her mother in Pennsylvania. App. B at 1.<sup>1</sup> Among other personal belongings, she was carrying a holstered Beretta Px4 Storm semiautomatic pistol in the locked glove compartment of her Jeep Wrangler. App. B at 1. While she was driving northbound on I-270, a Ford Crown Victoria driven by Khalid Binafif struck her vehicle twice. App. B at 1; *see also* App. F at 4.<sup>2</sup>

Both drivers stopped in the right-hand lane, and Ms. Gardner called 9-1-1; during the call, she told the dispatcher that she had a gun. App. B at 1–2. When Mr. Binafif got out of his car and approached Ms. Gardner’s Jeep, she removed her holstered handgun from the glove compartment, “showed” it to him, and told

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<sup>1</sup> Because Appendix B to the petition is not paginated, the State refers to the native page numbers of its constituent document.

<sup>2</sup> Because Appendix F to the petition is not paginated, the State imputes numbers to the pages in order.

him “in a very loud voice” to return to his car; Mr. Binafif “hesitated” but complied. App. B at 2.

Maryland State Trooper Joseph Ekani responded after the 9-1-1 dispatcher alerted him that “one of the parties was displaying a handgun.” App. B at 2. According to Trooper Ekani, both vehicles had only “[v]ery light damage,” and, absent the weapon, the drivers would have “just exchange[d] information and drive[n] away.” App. B at 2.

Trooper Ekani instructed both drivers to move their cars to the side of the road. Ms. Gardner initially declined to do so because she was unsure if Trooper Ekani was a legitimate law enforcement officer and because she believed he had ordered her to position her car unsafely next to Mr. Binafif. App. B at 2 & n.1.

Trooper Ekani then observed Ms. Gardner reach toward the passenger side of her Jeep. App. B at 2. Upon returning to Ms. Gardner’s car, the trooper saw the handgun, in its holster, sitting on the passenger seat with “the red on her gun ... showing,” indicating that the safety mechanism had been disengaged, and the gun was “in a fire position.” App. B at 2–3. Trooper Ekani

“immediately retrieved [the] gun,” engaged the safety, extracted the magazine, and removed the chambered cartridge. App. B at 3.

Ms. Gardner explained to the trooper her belief that Mr. Binafif had struck her vehicle as if performing “a police maneuver,” and that after stopping, he approached her vehicle “as if he were going to grab ahold of [her] door.” App. B at 3.

The record does not show the factual basis for these subjective characterizations. It does show, however, that Mr. Binafif made an unsafe lane change from the second lane of I-270 into the third lane, and that Mr. Binafif’s car struck the “left side” of Ms. Gardner’s Jeep. App. F at 3. The “contributing circumstances” were Mr. Binafif’s “inattentive[ness]” and “improper lane change.” App. F at 4. No traffic citation was issued. App. F at 4.

Trooper Ekani administered *Miranda* warnings to Ms. Gardner, and she stated, “I’ll talk to you, until I get a lawyer.” App. B at 3. Ms. Gardner explained that she brandished her firearm at Mr. Binafif because she believed he “hit [her] on purpose.” App. B at 3. She told Trooper Ekani she disengaged the safety only when Trooper Ekani first approached because she

“didn’t know what was going on” and “was terrified.” App. B at 3. She showed Trooper Ekani her Virginia handgun carrying permit, which he verified as legally valid; she never showed a Maryland permit, and she did not, in fact, have one. App. B at 3.

### **The Charges and the Motion to Dismiss**

In September 2021, Maryland charged Ms. Gardner with carrying a loaded handgun on or about her person and knowingly transporting a loaded handgun in a vehicle. Md. Code Ann., Crim. Law § 4-203(a)(1)(i), (ii), (v) (LexisNexis 2021 Repl. Vol.) (prohibiting a person from wearing, carrying, or transporting a loaded handgun, open or concealed, on the person or in a vehicle). This conduct is criminal only in the absence of a valid legal excuse, including, among other excuses not relevant here, possession of a handgun permit. *Id.*, Crim. Law § 4-203(b)(2); *see also* Md. Code Ann., Pub. Safety § 5-306 (setting forth the qualifications for a handgun carrying permit). App. B at 3–4.<sup>3</sup>

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<sup>3</sup> The State later nol prossed a third charge for second-degree assault against Mr. Binafif. App. B at 3–4.

In response to the charges, Ms. Gardner filed two form-based, pro se motions that, liberally construed, raised the Second Amendment, even though they did not set forth any legal argument per se. The motions broadly asserted that “no crime ha[d] been committed” under the Second Amendment guarantee to the right to self-defense. App. B at 4. After a hearing on January 6, 2022, which is to say, about five-and-a-half months before the publication of *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022), the trial court denied the motion. App. B at 4.

An attorney subsequently filed on her behalf a supplemental motion to dismiss invoking *Bruen*, arguing that it invalidated Maryland’s “good and substantial reason” prerequisite to a handgun permit, that Ms. Gardner would not have qualified for a Maryland permit solely because of that prerequisite, that Maryland should give “full faith and credit” to her Virginia permit, and that she lawfully possessed the handgun under the Second and Fourteenth Amendments. App. B at 4.

## **The Waiver Finding and Alternative Merits Ruling**

On August 23, 2022, the circuit court denied the supplemental motion. First, the court determined that defense counsel had intentionally violated the trial court's pretrial scheduling order, which left the trial court with only one weekend to digest *Bruen* and its application in this case. Notwithstanding *Bruen's* June 2022 publication, counsel waited until the late afternoon of Friday, August 18, 2022—that is, the Friday before trial on the immediately following Monday—to email the court and prosecutor informal copies of the supplemental motion to dismiss. Counsel waited until the day of trial, Monday, August 22, 2022, to formally file the supplemental motion. R. 586–88.

This filing was made after the circuit court had emailed counsel multiple times in the weeks before trial seeking any in limine motions (as well as other documents, like proposed jury instructions). When counsel responded with some documents (but no motions), and made no mention of any motion to dismiss, the court found on August 23, 2022, that the time for filing in limine motions had closed. Tr. 08/23/22 at 13.

The trial court thus found that defense counsel repeatedly ignored the court's requests for weeks, sporadically answered some email from the court, but not others. When asked, counsel explained that he was out of the office for a few days before trial and would rather not explain to the court what kept him from communicating effectively. Tr. 08/23/22 at 10–29.

Accordingly, the court found “that the defense has waived its right to hear this motion.” Tr. 8/23/22 at 16. Notwithstanding that waiver finding and the court's frustrated declaration that, given the untimeliness of the motion, “I have not the ability to rule,” Tr. 08/23/22 at 20, the court went on to address the merits “in the alternative.” Tr. 08/23/22 at 21. It noted that *Bruen* did not deem handgun permitting statutes, which are “prevalent in the vast majority of the country” to be “presumptively unconstitutional,” and that no law required full faith and credit for the Virginia permit, noting the two States' requirements “don't mirror each other.” App. B at 5.

## **The Trial**

At a one-day jury trial, both Trooper Ekani and Ms. Gardner testified largely in conformity with the facts as recited above, with one exception. Ms. Gardner admitted that Virginia authorities had alerted her to the need to verify interstate reciprocity of her Virginia handgun permit. She admitted she had done so years earlier, knew that Virginia and Maryland did not extend reciprocity then, and had not rechecked the status of reciprocity between the States in eight years:

[PROSECUTOR]: Okay. Do they tell you that Virginia does not have reciprocity with other states?

[MS. GARDNER]: They leave that up to us to do that investigating part. So I—

[PROSECUTOR]: So it's on you—

[MS. GARDNER]: Yes.

[PROSECUTOR]: —with your Virginia permit, to determine what other states you can carry a firearm in?

[MS. GARDNER]: Yes.

[PROSECUTOR]: Okay. Had you ever gone to the Pennsylvania State Police website?

[MS. GARDNER]: Yes.

[PROSECUTOR]: Have you ever clicked on Virginia in their reciprocity information?

[MS. GARDNER]: Not in the last eight years, no.

....

[PROSECUTOR]: Have you, in the—on January 16th, 2021, before you drove to Pennsylvania, did you check to see if you could legally carry your firearm in Pennsylvania?

[MS. GARDNER]: No. Not that day.

[PROSECUTOR]: Okay. So you are aware that there is a website that you can go to. Correct?

[MS. GARDNER]: Yes.

[PROSECUTOR]: And you are aware that the Pennsylvania State Police website has on there all of the reciprocity information. Correct?

[MS. GARDNER]: I'm—well, I can't answer to that, no.

[PROSECUTOR]: Okay.

[MS. GARDNER]: I don't know that. I, like I said, I haven't checked it for eight years.

[PROSECUTOR]: Have you ever checked the Maryland State Police website?

[MS. GARDNER]: Not in the last eight years.

[PROSECUTOR]: Okay. So it's on you, according to Virginia, to determine where you can carry a firearm. Correct?

[MS. GARDNER]: Yes.

[PROSECUTOR]: And you have not checked to see where you can legally carry a firearm. Correct? In the past eight years.

[MS. GARDNER]: Well, the Second Amendment gives me the right to carry a firearm.

Tr. 08/24/22 at 173–75.

After all the evidence had been adduced, a jury convicted Ms. Gardner of carrying a loaded handgun on or about her person and knowingly transporting a loaded handgun in a vehicle. Md. Code Ann., Crim. Law § 4-203(a)(1)(i), (ii) & (v). App. B at 5. On the first conviction, the court imposed a suspended sentence of 30 days' imprisonment in favor of a six-month term of probation; the court merged the second conviction for the purpose of sentencing. App. B at 1.

### **State Appellate Proceedings**

Ms. Gardner timely appealed to the Appellate Court of Maryland. She contended that Maryland's handgun carrying statute was unconstitutional for two reasons. First, argued Ms. Gardner, it lacked "an exception that would permit an out-of-state resident with a valid out-of-state carrying license to travel through Maryland on their way from their home state to another state." App. B at 7. Second, "at the time of the incident in 2021, the licensing scheme to obtain a valid Maryland carrying license was

itself unconstitutional,” as subsequently confirmed by *Bruen*. App. B at 7.<sup>4</sup>

The State countered that *Bruen* “does not speak to” the issue of a State’s authority not to recognize an out-of-state handgun carrying permit in enforcing its own permitting laws. App. B at 8. The State additionally argued that Ms. Gardner’s position “would create a de facto single standard for gun licensing in the United States set by the State with the loosest requirements.” App. B at 8. On the second contention regarding the permitting statute’s *Bruen* defect, the State maintained that Ms. Gardner “lacks

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<sup>4</sup> As this Court recognized in *Bruen*, Maryland was among the few “may issue” jurisdictions whose permit laws contained an “analogue[ ] to the ‘proper cause’ standard” in New York’s permit law that *Bruen* invalidated. *Bruen*, 597 U.S. at 13–15. Reaction to *Bruen* in Maryland thus was swift. On July 5, 2022, two weeks after this Court’s decision in *Bruen* was issued, then-Governor Larry Hogan ordered the Maryland State Police to immediately suspend use of the “good and substantial reason” standard because its continued enforcement would be unconstitutional. Maryland State Police Advisory LD-HPU-22-002, *Suspension of “Good and Substantial Reason” Standard for Md Wear & Carry Permits* (July 5, 2022), archived at <https://perma.cc/Y8U9-NPHY>. Later that month, the Appellate Court of Maryland announced the same judicially. *In re Rounds*, 255 Md. App. 205, 212–13 (2022). And, in the next session of the Maryland General Assembly, the state legislature formally repealed the unenforceable requirement. 2023 Md. Laws ch. 651 (eff. Oct. 1, 2023).

standing to challenge that scheme because she never applied for a Maryland permit.” App. B at 8.

Addressing, first, the handgun carrying statute’s supposed constitutional deficiency for lacking reciprocity, the Appellate Court was crisp: “The short answer to this contention is that *Bruen* expressly noted that ‘nothing in [its] analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes.” App. B at 13. The court accordingly held that “reciprocity is not mandated under *Bruen*” or any other of this Court’s Second Amendment precedents. 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 this State.” App. B at 13.

Regarding the *Bruen* defect within the underlying permitting scheme, the Appellate Court determined that it was bound by the Supreme Court of Maryland’s decision in *Williams v. State*, 417 Md. 479, 488 n.7 (2011), which held that “a person convicted under [Crim. Law § 4-203], who has not applied previously for a Maryland handgun permit pursuant to Public Safety Article, Title 5, Subtitle 3, does not have standing to

challenge the constitutionality of the permit scheme incorporated into” Section 4-203. App. B at 15.

Ms. Gardner filed a timely certiorari petition with the Supreme Court of Maryland. She raised two questions: (1) whether § 4-203 of the Maryland Criminal Law article “violates the Second Amendment by failing to recognize an exception for lawful interstate travel by out-of-state residents holding valid carry permits”; and (2) “whether a defendant convicted under a statute tied to an unconstitutional licensing scheme has standing to challenge her conviction without having applied for a Maryland permit.” Sup. Ct. of Md. Cert. Pet. at 2. On July 29, 2025, the petition was denied.

### **REASONS FOR DENYING THE PETITION**

Ms. Gardner asks the Court to consider taking up three questions. First, whether the right to keep and bear arms under the Second Amendment to the United States Constitution requires each State to legally recognize the handgun permit of an interstate traveler issued by any other State. Pet. at 2. Second, if not, whether the States must do so by dint of the Full Faith and Credit

Clause, U.S. Const. art. IV, § 1, or the Firearms Owners' Protection Act, 18 U.S.C. § 926A. Pet. at 2. And third, whether the trial court violated principles of due process by admitting into evidence Trooper Ekani's dash-camera video. Pet. at 2. She no longer champions the second issue that she presented to the Supreme Court of Maryland, specifically, whether the intermediate appellate court misapplied state standing doctrine to refuse to consider her claim that Crim. Law § 4-203, as premised on the permit qualifications in Pub. Safety § 5-306(a)(6)(ii), was unconstitutional at the time of her arrest because of the later-released decision in *Bruen*.

The petition should be denied. The second and third questions were never litigated in either of Maryland's appellate courts and are, therefore, unpreserved for this Court's review. Indeed, her third claim about the dash-camera video was affirmatively waived in the trial court.

The flagship contention under the Second Amendment, meanwhile, is not worthy of this Court's review for four reasons.

First, the motion to dismiss, while enough to forestall an argument that Ms. Gardner waived her appellate claim, was minimally litigated, leaving an undesirably meager trial record.

Second, the petition does not assert the existence of any split of authority among the federal courts of appeals or among the States' highest courts. Indeed, few judicial authorities have addressed the reciprocity issue, and they all reject nationwide reciprocity as a Second Amendment mandate. This paucity of judicial authority additionally counsels against this Court intervening prematurely, before a critical mass of lower courts has a chance to identify potentially helpful guidelines and principles. That has not happened even in this case; the short opinion at issue here was unreported and is not, therefore, precedential even in Maryland.

Third, legislative action currently pending in Congress may obviate the need for this Court to decide the reciprocity question.

Fourth and finally, Ms. Gardner's claim is not rooted in the rationale or holding of *Bruen*, which is her sole authority. Ms. Gardner's petition asks for new law, the precise underpinnings of

which are not clear, but certainly do not emanate from *Bruen's* express reasoning and holding.

**I. THE SECOND AND THIRD QUESTIONS CONCERNING THE FULL FAITH AND CREDIT CLAUSE AND THE DUE PROCESS CLAUSE, RESPECTIVELY, WERE FORFEITED AND AFFIRMATIVELY WAIVED BELOW.**

Ms. Gardner asks the Court to consider taking up three questions. Two of those questions are raised here for the first time: (1) whether the Full Faith and Credit Clause, U.S. Const. art. IV, § 1, or the Firearms Owners' Protection Act, 18 U.S.C. § 926A, requires each State to legally recognize the handgun permit of an interstate traveler issued by any other State; and (2) whether the trial court violated principles of due process by admitting into evidence, and relying upon, Trooper Ekani's dash-camera video. Pet. at 2. Because these issues were never litigated in either of Maryland's appellate courts, they are unreserved for this Court's review. The latter issue was, additionally, waived in the trial court, leaving in its wake what could only have been the outlines of a

state-law claim of error outside this Court’s jurisdiction.<sup>5</sup> In addition, Ms. Gardner omitted any claim under the Full Faith and Credit Clause from her certiorari petition in the Supreme Court of Maryland.

Under these circumstances, the Court’s intervention is unwarranted. Time and again the Court has cautioned that it is a “court of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). The Court, therefore, “does not ordinarily decide questions that were not passed on below.” *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 609 (2015).

And because Ms. Gardner agreed to the admission of the dash-camera footage, it is doubtful whether her due process complaint even falls within the Court’s jurisdiction. That is because a petitioner may not transform a state-law evidentiary issue into a federal question merely by generically invoking a

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<sup>5</sup> When the prosecutor offered Trooper Ekani’s dash-camera video for admission into evidence, Ms. Gardner informed the trial court that she had come to an agreement with the prosecutor, and she therefore did not “object to the portions that [the prosecutor is] showing.” Tr. 08/24/22 at 126. As a result, she never claimed that the trial court violated due process principles by relying on it.

constitutional guarantee, such as the right to due process, after-the-fact. *Gray v. Netherland*, 518 U.S. 152, 163 (1996) (“[I]t is not enough to make a general appeal to a constitutional guarantee as broad as due process to present the ‘substance’ of such a claim to a state court.”). Alleged errors of state evidentiary law, framed as such, are not reviewable in this Court. *Powell v. Alabama*, 287 U.S. 45, 52 (1932) (“With any error of the state court involving alleged contravention of the state statutes or Constitution we, of course, have nothing to do.”). Without an objection in state court expressly based on federal due process, Ms. Gardner’s current complaint about the dash-camera video, raised here for the first time, presents only as a complaint of state evidentiary law outside the Court’s jurisdiction.

**II. THE COURT SHOULD DECLINE TO CONSIDER THE SECOND AMENDMENT CLAIM BECAUSE IT SUFFERS FROM MULTIPLE PROCEDURAL AND SUBSTANTIVE OBSTACLES TO REVIEW.**

Ms. Gardner challenges the denial of her motion to dismiss the Section 4-203 handgun charges under the Second Amendment as explicated in *Bruen*. Pet. at 2. As she put it to the Appellate

Court of Maryland, Section 4-203 is unconstitutional under the Second Amendment because it does not “contain an exception that would permit an out-of-state resident with a valid out-of-state carrying license to travel through Maryland on their way from their home state to another state.” App. B at 7.

But nothing in *Bruen* implies a mandatory, constitutional exception to every State’s handgun carrying prohibition for those bearing a valid out-of-state license. *Bruen* does not speak to the matter, and Ms. Gardner marshals no other authority supporting her position. This raises a host of obstacles, any one of which blocks this Court’s ability to meaningfully review her claim.

**A. The Record Is Insufficiently Developed for This Court’s Review Because the Second Amendment Claim Was Litigated Perfunctorily Below.**

As previewed above, the trial court found, first and foremost, that Ms. Gardner’s defense counsel had waived the opportunity to file the supplemental motion to dismiss based on *Bruen* because counsel had flouted the court’s pretrial scheduling order. Although the trial court went on to rule alternatively on the merits—thus, together with Ms. Gardner’s own pro se, form-based motions,

technically saving her from formally waiving the issue—the court noted, “I have not the ability to rule,” Tr. 08/23/22 at 20, after having only one weekend to consider *Bruen*’s application to the facts of the case. The ruling took the form of a summary of *Bruen*’s facts and holding, followed by a one-paragraph denial. App. B at 5.

If this Court were going to take up the reciprocity issue, it ought to expect a vehicle in which the question of reciprocity was meaningfully researched by the parties, in which evidence was presented to the motion court, and in which the motion court provided a full and studied rationale for its ruling, truly applying the law to the facts. That did not happen here. The consequent lack of a well-developed record promises to frustrate this Court’s review.

**B. There Is No Split of Authority Among the Federal Courts of Appeals or Among the States’ Highest Courts.**

The petition alludes to no conflict in the lower courts that this Court could resolve. Indeed, there are few judicial authorities addressing reciprocity at all, and none in the federal courts of appeals or state courts of last resort. And among the scant lower-

court decisions that exist, none has held that reciprocity is constitutionally required of all the States.

For example, in *California Rifle & Pistol Ass'n, Inc. v. Los Angeles County Sheriff's Department*, 745 F. Supp. 3d 1037 (C.D. Cal. 2024), the court was asked for a preliminary injunction from firearms-advocacy organizations and individuals who wished to possess concealed carry weapons (“CCW”) in California. They alleged that the Second Amendment required California to recognize CCW permits from out-of-state. *Id.* at 1063. To satisfy the first prong of *Bruen*, the plaintiffs asserted that their “proposed course of conduct clearly meets the plain text of the Second Amendment,” namely, “a desire to carry firearms for self-defense when they visit California.” *Id.* at 1063–64. California, by contrast, argued that the proper definition of the proposed conduct was “a traveler’s right to rely on a foreign license to carry within the State of California.” *Id.* at 1064.

Implicitly adopting how California framed the proposed conduct, the court observed that the plaintiffs had “not presented any argument that CCW license reciprocity for out-of-state residents is conduct that falls within the text of the Second

Amendment.” *Id.* Rather, “the Supreme Court has recognized in the CCW licensing context that each state may engage in some regulation of firearms.” *Id.* at 1064 (citing *Bruen*, 597 U.S. at 13). For this reason, the court declined to grant a preliminary injunction mandating California to accept out-of-state handgun permits.

To similar effect is *State v. Tavaréz-Rodríguez*, No. A-0713-23, 2025 WL 1922334, at \*1 (N.J. Super. Ct. App. Div. July 14, 2025), *cert. denied*, 345 A.3d 601 (N.J. 2025) (unreported).<sup>6</sup> In that case, the defendant appealed from an order refusing, among other relief, to dismiss the indictment that charged her with second-degree unlawful possession of a handgun in New Jersey. The defendant lived in Pennsylvania and had a permit to carry a handgun there; however, she did not have a similar permit in New Jersey, nor had she ever applied for one. *Id.* at \*1. The defendant

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<sup>6</sup> The New Jersey Rules of Court specify that “[n]o unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel.” N.J. Rule 1:36-3 (Westlaw thru Sept. 12, 2022). The State is unaware of any contrary unpublished opinions and provides a copy of *Tavaréz-Rodríguez* in the appendix to this brief.

argued “that New Jersey’s prosecution of [her] is unconstitutional because it violates the Second Amendment to the United States Constitution and the rule established by the United States Supreme Court in *Bruen*.” *Id.* at \*3.

The Appellate Division did not agree. It echoed Justice Kavanaugh, saying, “Properly interpreted, the Second Amendment allows a ‘variety’ of gun regulations.” *Id.* at \*4 (quoting *Bruen*, 597 U.S. at 80 (Kavanaugh, J., concurring)). The Appellate Division rejected the defendant’s claim, reasoning that despite the defendant’s argument to the contrary,

*Bruen* only permits the possession of a weapon—subject to an individual state’s licensing requirements—that ensures “that those bearing arms in the jurisdiction are ... ‘law-abiding, responsible citizens.’” *Bruen*, 597 U.S. at 38 n.9 (quoting [*District of Columbia, et al., v. Heller*, 554 U.S. 570, 635 2008]). Defendant failed to comply with New Jersey’s firearm statutes, regulations, and mandate regarding the proper substance and procedure to carry a weapon in this State. Since defendant failed to follow those requirements, her prosecution is constitutional.

*Id.* at \*5.

Another example is *Johnson v. Jacobson*, \_\_ F. Supp. 3d \_\_, No. CV 25-54 (JRT/DTS), 2025 WL 2624380, at \*7 (D. Minn. Sept. 11, 2025), in which a professional truck driver—a Georgia resident

with firearm permits from States not granted reciprocity under Minnesota law—brought a legal action against the Commissioner of the Minnesota Department of Public Safety, alleging that Minnesota’s refusal to recognize firearm permits from all other States violated the Second Amendment. The driver argued that Minnesota’s highly limited reciprocity provision was not historically supported. But the court stopped at an antecedent step. In the court’s view, “this provision does not independently burden Second Amendment rights. Instead, it merely establishes the scope of recognition of out-of-state permits.” *Id.* at \*7. The court reasoned, “Nothing in *Bruen* or the Constitution requires states to adopt or defer to the licensing standards of other States. Indeed, States retain authority under their police powers to regulate who may carry firearms within their borders.” *Id.* at \*7 (citing *Heller*, 554 U.S. at 620).

The State is not aware of any case adopting Ms. Gardner’s reciprocity argument. Rather, every case the State could find holds that the act of publicly carrying a handgun *without a permit for the*

*specific State that person enters* is not conduct that the Second Amendment's text plainly covers.<sup>7</sup>

This state of the law raises an additional point: The paucity of judicial authority on reciprocity counsels against this Court intervening prematurely, before a critical mass of lower courts has a chance to identify potentially helpful guidelines and principles. Indeed, the short opinion in this case is unreported and, therefore, not binding even in Maryland. Md. Rule 1-104(a) (LexisNexis 2026).

**C. Legislative Action Currently Pending in Congress May Obviate the Need for This Court to Decide the Reciprocity Question.**

Congress has considered, but not enacted, legislation that would require States to recognize concealed-carry permits issued by other States. Constitutional Concealed Carry Reciprocity Act,

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<sup>7</sup> Although not on all fours with this case, the Supreme Judicial Court of Massachusetts held in *Commonwealth v. Marquis*, 252 N.E.3d 991, 997 (Mass. 2025), *cert. denied*, \_\_\_ U.S. \_\_\_, No. 25-5280, 2026 WL 79628 (Jan. 12, 2026), that Massachusetts's separate statutory firearm licensing scheme for nonresidents violates neither the Second Amendment nor the rights to travel and equal protection under the Fourteenth Amendment.

H.R. 38, 119th Cong. (2025-2026). The existence of this legislative effort underscores that, absent federal statutory action, States retain the authority to set their own standards for public carry and permit recognition.<sup>8</sup>

**D. Whether the Second Amendment Requires the States to Extend Nationwide Reciprocity of Handgun Permits Cannot Be Answered by *Bruen*, Which Is Petitioner’s Sole Authority.**

*Bruen* concerned the constitutionality of the “proper cause” requirement in New York’s handgun permitting scheme for its own residents and did not involve the rights of nonresidents or the recognition of out-of-state permits. The Court did not question the constitutionality of “shall-issue” licensing schemes that apply to all persons within a State’s borders, regardless of residency.

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<sup>8</sup> Ms. Gardner fleetingly refers to the Firearms Owners’ Protection Act, 18 U.S.C. § 926A, which provides an exemption from state or local firearms regulations for a person who is not otherwise prohibited from possession to transport a firearm between locations where the person is lawfully permitted to possess and carry it, so long as the firearm is unloaded and not stored in an accessible part of the vehicle. Pet. at 2, 10. Section 926A did not apply to Ms. Gardner’s conduct because her firearm was loaded and in her Jeep’s glove box, which was accessible to her, and she was not permitted to carry in Maryland.

If anything, *Bruen* implicitly endorsed every State’s sovereign interest in formulating its own “shall-issue” handgun permitting scheme within its own territory. *Bruen*, 597 U.S. at 39 n.9 (“To be clear, 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.”); *id.* (“[S]hall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’”). As Justice Kavanaugh, joined by Chief Justice Roberts, wrote in concurrence: *Bruen* “does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense.... Going forward, ... the 43 States that employ objective shall-issue licensing regimes for carrying handguns for self-defense may continue to do so.” *Bruen*, 597 U.S. at 79–80 (Kavanaugh, J., concurring).

The actual rationale and holding of *Bruen* reinforce these conclusions. The focus of *Bruen* was the may-issue permitting schemes then operating in six different States that delegated

discretion to administrators of handgun permitting schemes. To assess this, and other modern-day gun control regulations, the *Bruen* Court laid out a two-part framework. That framework considers the Second Amendment’s text and the Nation’s history of firearm regulation.

First, courts consider whether “the Second Amendment’s plain text covers an individual’s conduct.” *Bruen*, 597 U.S. at 17. If so, the conduct is presumptively protected. *Id.* Second, the government must then “justify its regulation” by “demonstrat[ing] that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* If the government justifies its regulation, then “a court [may] conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.*

At *Bruen*’s first step, the Court asks three questions to resolve whether the plain text of the Second Amendment “covers an individual’s conduct.” *Bruen*, 597 U.S. at 32. These inquiries are (1) whether the challenger is “part of ‘the people’ whom the Second Amendment protects,” (2) whether the firearms at issue are “weapons ‘in common use’ today for self-defense,” and (3) whether

“the plain text of the Second Amendment protects [the challenger’s] proposed course of conduct.” *Id.* (quoting *Heller*, 554 U.S. at 580).

Under *Bruen*’s second step, courts must assess “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Bruen*, 597 U.S. at 29. This requires examining whether “modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” *Id.*

In *United States v. Rahimi*, the Court clarified that “the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. A court must ascertain whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit, ‘apply[ing] faithfully the balance struck by the founding generation to modern circumstances.’” 602 U.S. 680, 692 (2024) (citation omitted).

Thus, the *Bruen* framework was designed to test the constitutionality of contemporary gun control regulations by assessing whether the Nation’s gun-control history supports the

challenged statute, in both the “how” and “why” it burdens the right to keep and bear arms. If so, the contemporary gun control is constitutional under the Second Amendment; if not, the modern statute is unconstitutional.

That test ill fits the present claim that, although reciprocity has never been the law of the land, the Second Amendment imposes an affirmative duty to now make it so. Ms. Gardner’s petition thus asks for new law, the precise underpinnings of which are not clear, but certainly do not emanate from *Bruen*’s express reasoning and holding. In short, the petition presents an odd duck as if it were a common sheep. This case, with a meager trial record and a short, non-binding unreported opinion of a state intermediate appellate court, is not the vehicle to develop what will need to be a new branch of Second Amendment jurisprudence never countenanced, much less endorsed, by any lower court in the Nation.

**E. The Briefs of Amici Supporting Petitioner Do Not Overcome the Defects of the Petition or Make This Case Worthy of Certiorari Review.**

Ms. Gardner is supported by several amici. As a class, they do little to advance the certworthiness of this case because (1) they advocate for relief under constitutional provisions never argued below, such as the privilege of interstate travel, Br. of Amicus Cato Institute at 3–12, Br. of Amicus The Heller Foundation at 4–9, or substantive due process, Br. of Amici Second Amendment Foundation, et al., at 5–6; (2) they assume without explanation that the *Bruen* framework for assessing the Second Amendment validity of gun control regulations can be applied to a claim that the Second Amendment requires States to create a new, previously unheard-of gun control regulation (or, more accurately, a new exception to gun control regulations), Br. of Amici U.S. Senator Ted Cruz, et al., at 5–12; or (3) they argue the state-law standing question that Ms. Gardner did not raise in her petition before this Court, Br. of Amici of Virginia, et al., at 1, 5–6. No amicus addresses the procedural and substantive obstacles to the Court’s review identified above.

A few words are necessary about the “traveler’s exception” statutes that the Second Amendment Foundation points to as proof that “[t]ravelers from other states were often allowed to carry their firearms concealed.” Br. of Amici Second Amendment Foundation, *et al.*, at 7. Stated at that level of abstraction, it is true enough. But these statutory exceptions operated as self-imposed limits on a State’s police power to restrict carrying a firearm, not as a mandate for a State to recognize other States’ permits. The traveler was exempt from the local prohibition by virtue of a locally enacted exception—not entitled to recognition of his home-state license. Amici’s own brief demonstrates this. Br. of Amici Second Amendment Foundation, *et al.*, at 12–15. These state-by-state traveler exceptions are therefore not useful to Ms. Gardner’s cause because they do not burden (or, perhaps, liberate through exception) the right to carry a handgun in public for self-defense in any way analogous to the “why” and “how” of Ms. Gardner’s proposed constitutional requirement of nationwide reciprocity. Again, the *Bruen* test looks to history and tradition to assess whether a “challenged regulation is inconsistent with the Second

Amendment,” *Bruen*, 597 U.S. at 26—not whether the Second Amendment makes a *desired* regulation somehow imperative.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: March 12, 2026

Respectfully submitted,

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