

No. 25-5961

**IN THE
SUPREME COURT OF THE UNITED STATES**

EVA MARIE GARDNER,
Petitioner,

v.

STATE OF MARYLAND,
Respondent,

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

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION

The history of this case reads like a “how to” guide on the way to flout the right to bear arms and this Court’s Second Amendment precedent as thoroughly as possible.

While Petitioner was traveling through Maryland from her home in Virginia to visit her mother in Pennsylvania, she was forced off the road by what she believed was a police-type maneuver. Pet. App. B at 1–3. When the other driver got out of his car and approached Petitioner in a way she perceived as threatening, she “was terrified” and responded by engaging in a common, effective, and non-lethal self-defense measure: simply displaying the firearm that she was licensed by Virginia to carry and that she had brought with her on her journey for self-protection. *Id.* at 3. It is difficult to imagine conduct that falls more squarely within both the Second Amendment’s “plain text” and America’s tradition of legitimate “armed self-defense.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 24, 29 (2022). Yet Maryland responded to this incident by *convicting Petitioner*—not for behaving inappropriately in any way during the encounter, but solely for bringing her firearm with her for her protection as she traveled along Maryland’s interstate highways.

Respondent’s conviction of Petitioner for carrying a firearm without first obtaining a Maryland license goes beyond irony to farce, because even if she had sought to obtain a Maryland license, she would have been *legally barred from obtaining* one under the State’s then-existing regime. At that time, Maryland still enforced a “may issue” licensing regime, under which individuals, like Petitioner,

with merely “ordinary self-defense needs” were entirely “prevent[ed] . . . from exercising their right to keep and bear arms” in public. *Id.* at 71. Respondent does not dispute that this regime was—and under *Bruen*, always has been—patently unconstitutional. BIO at 15 n.4. Yet it convicted Petitioner for carrying a firearm for self-protection on her journey through Maryland without first obtaining a Maryland license that was legally unavailable to her.

But Maryland’s constitutional effrontery does not end there. When Petitioner defended against Respondent’s charge by claiming the protection of the Second Amendment and this Court’s decision interpreting it in *Bruen*, Maryland’s courts dismissed *Bruen* as a sport with no application to any “different question” than the specific one raised in that case: the constitutionality of New York’s “may-issue” licensing scheme. Pet. App. B at 13. And it ignored the patent unconstitutionality of Maryland’s own may-issue regime under even that narrow reading of *Bruen* on the grounds that Petitioner had “not applied” for a discretionary Maryland license. In other words, the court below declined to entertain this aspect of Petitioner’s Second Amendment challenge because she had failed to apply, pursuant to Maryland’s unconstitutional may-issue licensing scheme, for a license that—because of the very unconstitutionality of the scheme—she was *legally barred from obtaining*. *Id.* at 14–15. If it is possible to impinge upon the fundamental rights secured by the Second Amendment in a more comprehensive manner, one struggles to imagine how it could be done.

The decision below is thus clearly inconsistent with this Court’s precedent. The conduct for which Petitioner was convicted—carrying a firearm on her interstate journey for self-protection—falls squarely within the Second Amendment’s plain text. Respondent does not even attempt to identify any “historical tradition of firearm regulation” analogous to its law criminalizing this conduct, *Bruen*, 597 U.S. at 24; to the contrary, the longstanding historical tradition, stretching from before the Founding until after Reconstruction, was to *exempt* travelers from the firearm restrictions that ordinarily applied. This Court should intervene to correct the Maryland courts’ grievous error on this important issue of constitutional law—and to remind the lower courts that whether they agree with it or not, this Court meant in *Bruen* what it said there.

ARGUMENT

I. The Decision Below Directly Conflicts with This Court’s Decision in *Bruen*.

In *Bruen*, this Court set out a definitive framework for resolving Second Amendment challenges or defenses: “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. Petitioner, an out-of-state traveler, was “convicted [for] carrying a loaded handgun on or about her person and knowingly transporting a loaded handgun in a vehicle.” BIO at 14. Travelling from her home State of Virginia through Maryland to visit her mother in Pennsylvania, Petitioner was forced off the road by what she believed to be

a police maneuver and then approached by the other vehicle’s driver in what she perceived as a threatening manner. BIO at 5–7. Her display of a firearm to ward off any threat to her safety in these circumstances falls within the heartland of conduct protected by the Second Amendment’s plain text. *See Bruen*, 597 U.S. at 32–33. Accordingly, the burden falls on Respondent to justify its criminalization of this conduct by pointing to “a well-established and representative historical analogue.” *Id.* at 30 (emphasis omitted).

It cannot do so and does not even try. Respondent identifies no evidence of any historical tradition restricting the right of out-of-state travelers to carry firearms for self-defense while in transit—not from the Founding and not even from the Reconstruction Era. Nor did the Maryland appellate court below point to any such historical evidence. The decision below upholding Petitioner’s conviction for engaging in this conduct despite the State’s total failure to justify it under *Bruen*’s text-and-history framework is irreconcilable with this Court’s precedent.

Far from *supporting* a restriction on bearing arms by interstate travelers, the Nation’s historical tradition in fact conclusively *rejects* any such limitation. In the colonial period, at least four colonies *required* travelers to carry arms with them for their safety. *See Amicus Br. of Virginia et al.* at 12–13. And from before the Founding through the end of the nineteenth century, American jurisdictions routinely exempted travelers from the firearm restrictions otherwise in force, in recognition of the acute importance of armed self-defense while on the road. For example, while “[i]n the early to mid-19th century, some States began enacting laws that proscribed

the concealed carry of pistols and other small weapons,” *Bruen*, 597 U.S. at 52, these laws regularly exempted those “travelling on a journey,” 1813 Ky. Acts 100; *see also* Amicus Br. of Second Amendment Found. at 7–9 (collecting laws). Before the Founding, even the unusually stringent, outlier 1686 East New Jersey colonial restriction on carrying arms contained an exception for “ ‘strangers,’ when traveling through the Province.” *Bruen*, 597 U.S. at 48. This tradition continued through the end of the Reconstruction Era: from 1686 through 1898, amici supporting Petitioner have identified no fewer than 31 distinct historical firearm restrictions containing exemptions for travelers. *See* Amicus Br. of Second Amendment Found. 7–13; Amicus Br. of Sen. Cruz *et al.* 13–18 (collecting laws); Amicus Br. of Virginia *et al.* 13–16.

Respondent seeks to sweep all these laws to the side by claiming that they merely “operated as self-imposed limits on a State’s police power,” not as the result of any constitutional “mandate.” BIO at 36. But the whole premise of the *Bruen* inquiry is that where “this Nation’s historical tradition of firearm regulation” consistently takes a particular shape, the tradition is best understood as “demark[ing] the limits on the exercise of [the Second Amendment] right.” 597 U.S. at 17, 21; *see* J. Joel Alicea, *Bruen Was Right*, 174 U. PA. L. REV. 13, 31–33, 44–48 (2025). Maryland’s insistence that the clear historical tradition of “traveler exceptions” should be understood as a “self-imposed” policy choice without any constitutional significance, BIO at 36, is directly contrary to this Court’s recognition in *Bruen* that “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.” 597 U.S. at 26. And even if there were some ambiguity about the constitutional grounding of these traditional exceptions, “because the Second Amendment’s bare text covers petitioner[’s] public carry,” the Court should “favor the [interpretation] that is more consistent with the Second Amendment’s command.” *Id.* at 44 n.11.

In any event, Respondent ignores that at this stage of the *Bruen* inquiry, *Respondent itself* bears the burden of *justifying* its restriction as consistent with history. Even if it could dismiss the historical tradition of traveler exceptions that *condemns* the challenged law (and it has not come close to doing so), that would still leave the law without any affirmative historical justification—and that alone is fatal under *Bruen*. This also suffices to dispose of the State’s argument that the “traveler exceptions are [not] . . . analogous to the ‘why’ and ‘how’ of [Petitioner’s] proposed” interpretation of the Second Amendment. BIO at 36. Under *Bruen*, the burden is on *the government* to point to an analogous tradition of regulation, not Petitioner. It has utterly failed to identify any such analogous historical evidence. The tradition of exempting travelers from firearm regulations, while not necessary to hold Maryland’s law unconstitutional, conclusively shows that no such historical evidence exists.

To be sure, *Bruen*, in a footnote, disclaimed any intent “to suggest the unconstitutionality of . . . ‘shall-issue’ licensing regimes” that “contain only narrow, objective, and definite standards guiding licensing officials” and “are designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding,

responsible citizens.” 597 U.S. at 38 n.9 (cleaned up). Petitioner also does not dispute the constitutionality of shall-issue licensing regimes in general, because they are of no help to Maryland.

As *Bruen* implicitly recognizes, there are no direct historical analogues to modern firearm licensing restrictions; rather, to the extent such restrictions are constitutional, it is because there is a historical principle that the government may keep arms out of the hands of those who actually pose a risk of danger to others, and objective “shall-issue” licensing regimes are a permissible modern way of implementing that principle. *See id.* But this principle cannot justify Maryland’s conviction of Petitioner for the simple reason that her home State of Virginia has already determined that she may carry a firearm *without* posing a danger to others, through its own licensing regime. The dicta in *Bruen*’s footnote does not bless licensing for licensing’s sake, but rather as a means of determining that an individual does not “pose a credible threat to the physical safety of another.” *United States v. Rahimi*, 602 U.S. 680, 702 (2024). Where one sovereign State has made that judgment, this historical principle of firearm regulation has been exhausted, and there is no remaining, constitutionally permissible justification for a sister State to disregard it—at a minimum when the licensee is merely traveling through the sister State. To the contrary, the basic structure of our Constitution is designed to “weld the independent states into a nation by giving judgments within the jurisdiction of the rendering state the same faith and credit in sister states as they have in the state

of the original forum.” *Johnson v. Muelberger*, 340 U.S. 581, 584 (1951); *see also* U.S. CONST. art. IV, § 1.

That reasoning also disposes of Maryland’s objection that Petitioner’s interpretation of the Second Amendment purportedly “requires States to create a new, previously unheard-of gun control regulation.” BIO at 35. The Second Amendment does not require States to implement a carry licensing regime *at all*. But if a State chooses to do so, as a means of implementing the historical tradition of restricting the firearm rights of people actually found to be dangerous to others, it cannot disregard another sovereign state’s determination that a particular person traveling through the state poses no such danger.

In this case, *Bruen*’s discussion of “shall-issue” licensing regimes does not support Petitioner’s conviction for the additional reason that Maryland *did not have* a permissible “shall-issue” licensing regime when she was convicted. At all relevant times, Respondent acknowledges, the only exception to Maryland’s general ban on carrying firearms in public was a discretionary “may-issue” licensing scheme indistinguishable from the one struck down in *Bruen*. *Id.* at 15 n.4. Respondent surely cannot be heard to justify its conviction of Petitioner for failing to possess a Maryland carry license that, as a mere “ordinary” citizen with “ordinary self-defense needs,” *Bruen*, 597 U.S. at 8, 60, she was *legally unable to obtain*. The point is not, as Respondent supposes, that the court below erred in failing to recognize Petitioner’s “standing to challenge the constitutionality” of Maryland’s may-issue regime, BIO at 16–17, but rather that, quite apart from the question of standing, Maryland cannot

justify its conviction of Petitioner on the basis of the presumed constitutionality of a licensing regime that *it did not have* when it convicted her.

Finally, Respondent effectively argues that everything *Bruen* said about the Second Amendment should be confined to its facts—“the constitutionality of the ‘proper cause’ requirement in New York’s handgun permitting scheme”—and can have no application whatsoever to “a new . . . gun control regulation” that was not at issue in *Bruen* itself, such as one restricting “the rights of nonresidents.” *Id.* at 30, 35. That argument persuaded the court below, *see* Pet. App. B at 13, but it is totally irreconcilable with the language of *Bruen*, which plainly sets out a general framework “for applying the Second Amendment” in all cases going forward. 597 U.S. at 24. It is also totally irreconcilable with the stare decisis principle that inferior courts are bound not only by “the holdings” of this Court’s cases but by “their explications of the governing rules of law.” *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67 (1996) (cleaned up).

II. The Second Amendment Question Presented Is Urgent and Important.

The Second Amendment question presented in this case is highly consequential: the constitutionality of the insurmountable burden imposed by several States on millions of Americans’ “right to carry a handgun for self-defense outside the home.” *Bruen*, 597 U.S. at 10. Approximately 20 million Americans have obtained carry licenses throughout the Nation,¹ and many if not most of them engage in interstate travel. Yet many States, like Respondent, demand that out-of-state

¹ John R. Lott et al., *Concealed Carry Permit Holders Across the United States: 2025* at 3, CRIME PREVENTION RSCH. CTR. (Nov 30, 2025), <https://perma.cc/R36W-D2DY>.

travelers go through the onerous process of obtaining an in-state license if they wish to carry firearms with them for self-protection when traveling through the State. Amicus Br. of Second Amendment Found. at 14; Amicus Br. of Heller Found. at 13–14. That includes States such as New York and Illinois, which contain some of the principal passageways of interstate travel in modern America. Given the inherent hazards of interstate transit, the burden on the Second Amendment right to armed self-defense is immense. *See* Amicus Br. of CATO Inst. at 19–21.

The question presented also implicates fundamental questions concerning the basic federalist structure of our constitutional order. The Constitution was meant “to form a more perfect Union,” U.S. CONST. pmb., out of the conviction that “[a] FIRM Union will be of the utmost moment to the peace and liberty of the States,” THE FEDERALIST No. 9 (Alexander Hamilton). The document furthers this goal in numerous ways, including by requiring “each State” to give “Full Faith and Credit” to one another’s “public Acts,” U.S. CONST. art. IV, § 1, and by guaranteeing “[t]he right of a citizen of one state to pass through . . . any other state, for purposes of trade, agriculture, professional pursuits, or otherwise,” *Corfield v. Coryell*, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823) (Washington, J.). “If in its application local policy must at times be required to give way, such is part of the price of our federal system.” *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948) (quotation marks omitted). Yet the law underlying Petitioner’s conviction tramples these structural principles underfoot—refusing to credit a sister State’s judgments that one of its citizens may carry firearms for self-protection without endangering the safety of others and confronting interstate

travelers with the intolerable choice between effectively forfeiting their fundamental Second Amendment rights or avoiding transit through the State altogether. *See Amicus Br. of Heller Found.* at 4–13.

This Petition thus raises important questions that ought to be decided by this Court. Respondent’s arguments that the Court should deny review anyway are completely unpersuasive. It first complains that Petitioner’s Second Amendment argument was “minimally litigated” in the trial court. BIO at 19. But it ultimately concedes that the argument was sufficiently raised in the trial court “to forestall an argument that Ms. Garnder waived [it],” *id.*, and there is no question that the Second Amendment defense was pressed before the Maryland Court of Appeals and that both that court and the trial court passed upon it, *see id.* at 11, 14–15; Pet. App. B at 9–15. That easily suffices to preserve the issue for this Court’s review. *See Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (“Our practice permits review of an issue not pressed so long as it has been passed upon.” (cleaned up)).

Endeavoring to squeeze some lemonade out of this lemon of an argument, Respondent claims that the lack of “meaningful[] research[] by the parties” or “legal argument per se” in the trial court counsel against this Court’s review as a prudential matter. BIO at 9, 24. But the Second Amendment issue was fully and adequately litigated in the state court of appeals, and more importantly, it will be fully and adequately litigated *in this Court*, completely eliminating any concern that the lack of “full and studied” proceedings in the trial court will somehow “frustrate this Court’s review.” *Id.* at 24. Respondent also intimates that the “trial record” is “undesirably

meager,” but all of the relevant adjudicative facts in this case are undisputed, and the State is thus unable to identify *any tangible aspect* in which the “[r]ecord” is [i]nsufficiently [d]eveloped.” *Id.* at 19, 23.

Next, Respondent points out that there is “no conflict in the lower courts” over the question presented. *Id.* at 24. True enough, but that is not the basis on which Petitioner has urged this Court’s review. Rather, review is necessary so that the Court can resolve this critically important question of federal law and ensure that the lower courts at a minimum *respect and apply* its binding Second Amendment precedent. *See* this Court’s Rule 10(a), (b).

Finally, Respondent says this Court should stay its hand because “legislation that would require States to recognize concealed-carry permits issued by other States” is “currently pending in Congress” and might “obviate the need for this Court” to intervene. BIO at 19, 29. But it acknowledges that while Congress has “considered” such legislation, it has “not enacted” it, *id.* at 29, and it does not—and cannot—suggest that there is any meaningful possibility that the legislation will be enacted in the foreseeable future. If the little-more-than-theoretical possibility of a legislative fix sufficed to render this Court’s review unnecessary, its docket would be empty.

CONCLUSION

The Court should grant the writ.

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