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

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

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

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation, founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Toward that end, Cato's Robert A. Levy Center for Constitutional Studies publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs.

This case concerns Cato because the right to armed self-defense, as well as the right to interstate travel, are essential to the American scheme of ordered liberty that our Constitution protects. As such, they must be protected against government infringement.

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[1] Rule 37 statement: All parties were timely notified before the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *Amicus* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In January 2021, Petitioner Eva Marie Gardner, who has a valid Virginia handgun-carry permit, was driving from her Virginia home to visit her mother in Pennsylvania.[2] While driving through Maryland, another driver struck her Jeep twice—she believed he was trying to run her off the road.[3] Ms. Gardner called 911, saying she was afraid and had her gun with her.[4] When the other driver approached, Ms. Gardner displayed her gun and told him to go back to his car.[5] After hesitating, he complied.[6]

Maryland charged Ms. Gardner with carrying and transporting a loaded handgun.[7] She moved to dismiss the charges under the Second Amendment.[8] After the trial court denied that motion, a jury convicted Ms. Gardner.[9] She was given a thirty-day suspended sentence and six months of unsupervised probation.[10] The Appellate Court of Maryland affirmed—though it

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[2] Pet. App'x at 7, 9.

[3] *Id.* at 7.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at 9–10. Ms. Garnder was also charged with assault against the other driver, a charge the State later nol prossed. *Id.* at 9–11.

[8] *Id.* at 10.

[9] *Id.* at 11–12.

[10] *Id.* at 12.

noted that the state's may-issue gun-permitting statute, in effect at the time of Ms. Gardner's arrest, was later held unconstitutional.[11] The Supreme Court of Maryland denied certiorari.[12]

Ms. Gardner now seeks this Court's review. This Court should grant her petition, vindicate the constitutional rights to bear arms and to interstate travel, and reverse the decision below.

ARGUMENT

I. THE RIGHT TO UNENCUMBERED TRAVEL ACROSS STATE LINES IS A PRIVILEGE OF AMERICAN CITIZENSHIP GUARANTEED BY THE CONSTITUTION.

Every American citizen has the right to travel from one state to another. This basic right to engage in interstate travel is the cornerstone of the union that binds the United States together. Without this right, the United States would cease to be united, and the American people would cease to be one people. Accordingly, the Constitution has always protected the right to interstate travel. And this Court has recognized that the right to engage in interstate travel is a privilege of American citizenship that cannot be infringed by the states.

The right to engage in interstate travel without government-imposed burdens is in no way a trivial

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[11] *Id.* at 19 (citing *In re Rounds*, 255 Md. App. 205, 212–13 (2022)).

[12] *Id.* at 2.

right. Obstruction of the right to interstate travel by the Southern states after Reconstruction helped to entrench the subordination of African-Americans during Jim Crow. Conversely, this Court's upholding of the right to interstate travel during the Civil Rights Movement helped to bring Jim Crow to an end and secure equal rights for all Americans.

A. The right of American citizens to unrestricted travel between the states is a fundamental component of the Union that predates—and has always been protected by—the Constitution.

While the Constitution certainly protects the rights of Americans, it did not create those rights. Rather, the Constitution "codified [] *pre-existing* right[s]." *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). These rights include the individual liberties enumerated in the First, Second, and Fourth Amendments. *Id.* The right to interstate travel is also among this category of rights—it is both safeguarded by the Constitution and existed prior to it.

In his 1861 inaugural address, Abraham Lincoln noted that "The Union is much older than the Constitution," pointing to the Articles of Association of 1774, the Declaration of Independence of 1776, and the Articles of Confederation of 1777. President Abraham Lincoln, First Inaugural Address (Mar. 4, 1861). Free movement of American citizens between the states has always been the cornerstone of this union. The Articles of Confederation—America's first constitution—

secured the right of interstate travel explicitly: "[T]he free inhabitants of each of these states[] . . . shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state[.]" ARTICLES OF CONFEDERATION, art. IV.

Americans have always understood that this basic right to interstate travel was carried over into the Constitution of 1789. Justice Bushrod Washington, in his highly influential circuit court opinion listing "the privileges and immunities of citizens in the several states" protected by Article IV of the Constitution, stated that these included: "The right of a citizen of one state *to pass through, or to reside in 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) (emphasis added). Justice Washington described this right to interstate travel as one of the "fundamental" privileges that have "at all times, been enjoyed by the citizens of the several states which compose this Union[.]" *Id.* at 551.

Justice Washington's view that the Constitution protects the right of Americans to engage in interstate travel was shared by this Court. In the 1849 *Passenger Cases*, in which the Court declared that a state-imposed tax on American citizens entering another state's ports was unconstitutional, Chief Justice Taney said in a much-quoted passage: "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." *Passenger Cases*, 48 U.S. (7 How.) 283, 492 (1849) (Taney, C.J., dissenting).

The principle that the free travel of American citizens between the states cannot be interfered with by the states—even slightly—was affirmed in *Crandall v. Nevada*, which struck down a tax on persons leaving the state by railroad. The Court affirmed that a right to free travel between the states is implicit in the Constitution:

> [A U.S. citizen] has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its sea-ports . . . to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several States, and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it.

Crandall v. Nevada, 73 U.S. (6 Wall.) 35, 44 (1868). Having established that American citizens have a constitutional right to travel across state lines, Justice Miller went on to emphasize that *any* state interference with this right—no matter how small—is unacceptable and forbidden by the Constitution:

> But if the State can tax a railroad passenger one dollar, it can tax him one thousand dollars. If one State can do this, so can every

> other State. And thus one or more States . . . may totally prevent or seriously burden all transportation of passengers from one part of the country to the other.

Id. at 46. To Justice Miller—like Chief Justice Taney before him—any state law that penalized interstate travel, even if it only imposed a nominal and trivial cost, was unconstitutional.

Four years later, Justice Miller's view of the importance of the right to interstate travel would become a crucial part of this Court's interpretation of the Fourteenth Amendment in the *Slaughter-House Cases*.

B. The right of American citizens to unrestricted travel between the states is one of the Privileges or Immunities of citizens of the United States protected against state interference by the Fourteenth Amendment.

After the passage of the Fourteenth Amendment in 1868, this Court first interpreted the Amendment's Privileges or Immunities Clause ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . ." U.S. CONST. amend. XIV, § 1) in the *Slaughter-House Cases* of 1873. This case has since become infamous for "ripping out [the] heart" of the Fourteenth Amendment through its extraordinarily narrow interpretation of the Privileges or Immunities Clause. CLARK NEILY, TERMS OF ENGAGEMENT: HOW OUR COURTS SHOULD ENFORCE THE CONSTITUTION'S PROMISE OF

LIMITED GOVERNMENT 85 (2013). Modern scholars are nearly unanimous in their agreement that this Court's interpretation of the Privileges or Immunities Clause in *Slaughter-House* was incorrect. *See* RANDY E. BARNETT & EVAN D. BERNICK, THE ORIGINAL MEANING OF THE FOURTEENTH AMENDMENT: ITS LETTER AND SPIRIT 41–42 (2021). In dissent, Justice Field observed that the majority's extremely narrow reading of the "privileges or immunities of citizens of the United States" made the Fourteenth Amendment "a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage." *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 96 (1873) (Field, J., dissenting).

This Court has thus far declined to revisit its holding in *Slaughter-House*. *McDonald v. City of Chicago*, 561 U.S. 742, 758 (2010). But even under the excessively narrow interpretation in *Slaughter-House*, the Privileges or Immunities Clause still protects certain important rights. Indeed, this Court expressly denied that the Privileges or Immunities Clause did not guarantee any rights against state interference: "But lest it should be said that no such privileges and immunities are to be found if those we have been considering are excluded, we venture to suggest some which owe their existence to the Federal government, its National character, its Constitution, or its laws." *Slaughter-House*, 83 U.S. (16 Wall.) at 79. Citing both *Crandall* and the *Passenger Cases*, the Court listed the right to

interstate travel as first among those rights protected by the Privileges or Immunities Clause. *Id.*

Since the *Slaughter-House Cases*, this Court has repeatedly reaffirmed that the Constitution protects the right of Americans to travel freely between the states without undue burdens.[13] Justices have sometimes differed as to which constitutional provision secures this right. *See Shapiro v. Thompson*, 394 U.S. 618, 630 n.8 (1969) (listing constitutional provisions thought by justices to protect interstate travel).[14] But the Court has never denied the existence of the right, or its importance.

In its most recent discussion of the constitutional right to travel, this Court explained that one of the aspects of the right to interstate travel is "the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State." *Saenz v. Roe*, 526 U.S. 489, 502 (1999). This aspect of the right to travel is protected by the Privileges or Immunities Clause of the Fourteenth Amendment. *Id*. at

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[13] *See, e.g., Williams v. Fears*, 179 U.S. 270, 274 (1900); *Twining v. New Jersey*, 211 U.S. 78, 97 (1908); *Edwards v. California*, 314 U.S. 160, 178 (1941) (Douglas, J., concurring); *United States v. Guest*, 383 U.S. 745, 757 (1966); *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969); *Dunn v. Blumstein*, 405 U.S. 330, 338 (1972); *Atty. Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 901–902 (1986); *Saenz v. Roe*, 526 U.S. 489, 498–505 (1999).

[14] The constitutional provisions that have been cited by justices as protecting a right to interstate travel include the Privileges and Immunities Clause of Article IV, the Privileges or Immunities Clause of the Fourteenth Amendment, and the Commerce Clause in Article I, Section 8.

503. Accordingly, this Court in *Saenz* invalidated a state welfare benefits law that discriminated against recent out-of-state arrivals, calling the purpose of discouraging poor people from coming into the state "invidious." *Id*. at 510–11.

The decision in *Saenz* was consistent with the earlier case of *Shapiro v. Thompson*, in which the Court invalidated a similar state law. In the words of the Court, "the purpose of deterring the in-migration of indigents . . . is constitutionally impermissible. If a law has no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional.'" *Shapiro*, 394 U.S. at 631 (quoting *United States v. Jackson*, 390 U.S. 570, 581 (1968)).

There can be no doubt that the Constitution guarantees the right to engage in interstate travel against interference by the state. And state laws that penalize interstate travel—even if they do not forbid it outright—violate the Constitution.

C. The failure of the courts to uphold the right to interstate travel contributed to the rise of Jim Crow—but the enforcement of that right helped to end it.

After slavery was abolished by the passage of the Thirteenth Amendment, Southern plantation owners found themselves facing a dilemma. Plantation owners could no longer depend on a class of unfree laborers who had no say over who they worked for. Free African-Americans could now, at least in theory, negotiate

for higher wages and improved working conditions—or find better work elsewhere. DAVID E. BERNSTEIN, ONLY ONE PLACE OF REDRESS: AFRICAN-AMERICANS, LABOR REGULATIONS, AND THE COURTS FROM RECONSTRUCTION TO THE NEW DEAL 8 (2001). Since newly free African-Americans were desperately poor, they were often forced to rely on assistance from out-of-state recruiters if they wished to find better work. *Id.* at 10. In response, Southern planters lobbied state governments to make it as difficult as possible for so-called "emigrant agents" to recruit African-American workers across state lines. *Id.* at 8–12.

Emigrant-agent laws did not ban interstate recruitment outright, but they imposed onerous burdens on the practice, such as prohibitively high "license" fees. *Id.* at 12. When Robert "Peg-Leg" Williams, a colorful Civil War veteran known as the "king of labor agents," defiantly continued to help thousands of African-Americans find new jobs in different states, he was thrown into a North Carolina jail on trumped-up charges. *Id.* at 14–15. Williams refused to give in to intimidation, and was able to persuade the North Carolina and Alabama state supreme courts that the emigrant-agent laws were unconstitutional. *Id.* at 23.

Regrettably, this Court upheld Georgia's emigrant-agent law in 1900, depriving millions of African-Americans throughout the South of one of their best—and only—pathways towards economic equality and opportunity. *Id.* at 23–27. Even in that case, however, the Court affirmed that the Constitution protects the right

to interstate travel: "Undoubtedly the right of locomotion . . . is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." *Williams*, 179 U.S. at 274.

Fortunately, the Court eventually came to realize the importance of the constitutional right to travel—and finally committed to safeguarding that right during the Civil Rights Movement. In *United States v. Guest*, the Court held that white supremacists had conspired to use violence and intimidation to prevent African-Americans from exercising their constitutional right to engage in interstate travel. 383 U.S. at 757–59. By protecting the rights of African-Americans and civil-rights activists to engage in interstate travel without interference, the Court helped bring about the end of Jim Crow.

II. THE FOURTEENTH AMENDMENT WAS INTENDED TO SECURE THE FULL RIGHTS OF FREE CITIZENS TO ALL AMERICANS—ESPECIALLY THE RIGHT TO ARMED SELF-DEFENSE.

The belief that the right to bear arms distinguishes a free citizen from a slave was profoundly influential on the Founders. STEPHEN HALBROOK, THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT 33–35 (1984). This idea has roots dating as far back as ancient Greece. In Plato's *Republic*, Plato says that a tyrant will mistreat the people only after he has

disarmed them. *Id.* at 10. In the 17th century, British Whigs embraced the ideal of the free armed citizen in their struggle against the absolute monarchy of the Stuart kings. *Id*. at 40–49. Algernon Sidney, who was immensely influential on the Founders, wrote that "Swords were given to men, that none may be Slaves, but such as know not how to use them." *Id*. at 31 (citation omitted). The influential Scottish Whig Andrew Fletcher summed up this widely accepted principle when he wrote in 1698: "The possession of arms is the distinction between a freeman and a slave." *Id*. at 47 (citation omitted).

After the American Revolution, the right to keep and bear arms was expressly guaranteed by the Constitution as well as by most state constitutions. Yet in a gross contradiction of the spirit of liberty that animated the Revolution, this right—indeed, all fundamental rights—continued to be denied to millions of enslaved African-Americans. "To go abroad without a written permission; to keep or carry a gun, or other weapon; to utter any seditious speech, to be present at any unlawful assembly of slaves; . . . [were] all offenses punishable by whipping." *Id*. at 100 (citation omitted). This denial of the right to bear arms was one of the foremost "badges of slavery or servitude" imposed upon the enslaved population. *Plessy v. Ferguson*, 163 U.S. 537, 555 (1896) (Harlan, J., dissenting). The Fourteenth Amendment was intended to abolish this badge of slavery and to secure the rights of a free citizen to all Americans—including the right to bear arms.

A. The Framers of the Fourteenth Amendment believed that the right to armed self-defense was essential to what it meant to be a free citizen and sought to secure that right to all Americans.

The link between arms, freedom, and American citizenship was well understood by both pro- and anti-slavery individuals prior to and after the Civil War. Indeed, it was precisely because the connection between freedom, citizenship, and the right to bear arms was widely accepted that defenders of slavery insisted that even free Blacks must not be recognized as American citizens. In the infamous case of *Dred Scott v. Sandford*, Chief Justice Taney explained this twisted line of reasoning: "For if [free Blacks] were so received [as U.S. citizens], and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which [the states] considered to be necessary for their own safety." *Scott v. Sandford*, 60 U.S. (19 How.) 393, 416–17 (1857). As a result, said Taney:

> It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, *the right to enter every other State whenever they pleased*, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation . . . *and to keep and carry arms wherever they went*.

Id. at 417 (emphases added). Chief Justice Taney came to the appalling conclusion that free Blacks could never be citizens of the United States because he knew that American citizens had the constitutional right to travel freely among the states while carrying arms for their defense. Because Taney thought it would be unthinkable to allow free Blacks to exercise these rights in states where other Black people remained enslaved, he rejected the possibility of citizenship for Blacks.

While the travesty of slavery was finally abolished in 1865 by the passage of the Thirteenth Amendment, Southern states immediately passed a series of laws known as the Black Codes, which were intended to keep the Freedmen in a state as closely resembling slavery as possible. To that end, Southern states made it a priority to stop African-Americans from possessing weapons. Calvin Holly, a Black soldier working for the Mississippi Freedman's Bureau, reported that "The Rebbles are going about in many places through the State and robbing the colored people of arms[,] money and all they have and in many places killing." STEPHEN HALBROOK, SECURING CIVIL RIGHTS: FREEDMEN, THE FOURTEENTH AMENDMENT, AND THE RIGHT TO BEAR ARMS 2–3 (2010) (citation omitted). A group of African-Americans from South Carolina wrote to Congress, asking "that the late efforts of the Legislature of this State to pass an act to deprive us [of] arms be forbidden, as a plain violation of the Constitution[.]" *Id*. at 10 (citation omitted). Violations of the right to keep

and bear arms were widespread throughout the South. *Id*. at 1–14.

It was the deprivation of the Freedmen's rights—including the right to keep and bear arms—that led the Reconstruction Congress to pass the Second Freedmen's Bureau Act of 1866. In addition to declaring that all citizens in the South were entitled to "full and equal benefit of all laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal," the Act also emphasized that "the constitutional right to bear arms, shall be secured to and enjoyed by all the citizens . . . without respect to race or color or previous condition of slavery." *Id.* at 47 (citation omitted).

Because the Reconstruction Congress understood that a future Congress might undo their attempts to safeguard the rights of African-Americans in the South, they drafted the Fourteenth Amendment. In addition to guaranteeing citizenship for the Freedmen, the Amendment also forbade any state from abridging the "privileges or immunities of citizens of the United States[.]" U.S. CONST. amend. XIV, § 1. In advocating for the Amendment to the Senate, Senator Jacob Howard explained that these privileges and immunities included both the rights listed by Justice Bushrod Washington in *Corfield v. Coryell* as well as "the personal rights guaranteed and secured by the first eight amendments of the Constitution"—and explicitly listed the Second Amendment right to keep and bear

arms. BARNETT & BERNICK, *supra*, at 140 (citation omitted). And shortly after the Fourteenth Amendment's ratification, Representative John Bingham, the principal author of the Fourteenth Amendment, confirmed in a speech to Congress that the Privileges or Immunities Clause protected the rights listed in the first eight Amendments of the Constitution against state infringement—explicitly listing the Second Amendment right to keep and bear arms. HALBROOK, SECURING CIVIL RIGHTS, *supra*, at 110–11.

B. The failure of the courts to protect the right to armed self-defense left the Freedmen unable to defend themselves against the violence and repression of Jim Crow.

Overwhelming evidence exists that the Privileges or Immunities Clause of the Fourteenth Amendment was intended to guarantee all the rights of free citizens to the Freedmen—including the right to keep and bear arms for self-defense. But during Reconstruction, this Court turned a blind eye to this evidence, with horrendous consequences. In 1876, the Court held in *United States v. Cruikshank* that members of a white militia who had brutally killed as many as 165 Black Louisianans for daring to carry arms in public had not violated their privileges or immunities under the Fourteenth Amendment, because the right to keep and bear arms was not a privilege of United States citizenship. *McDonald*, 561 U.S. at 808–09 (Thomas, J., concurring).

This radical dilution of the Fourteenth Amendment led to the disarmament of African-Americans in the South, who had no means of defending themselves against terrorist violence by the Ku Klux Klan. More massacres would follow. In 1876, a white militia led by "Pitchfork" Ben Tillman murdered the members of a Black militia for the "crime" of conducting a parade on the Fourth of July. *Id.* at 856. Between 1882 and 1968, there were at least 3,446 reported lynchings of African-Americans in the South. *Id.* at 857.

For more than a century, the fundamental right of Americans to armed self-defense remained neglected—until the Court breathed new life into the Fourteenth Amendment in *McDonald v. City of Chicago*. While the Court held that the states are required to respect the right to keep and bear arms under the Fourteenth Amendment's Due Process Clause, the historical evidence suggests that the Privileges or Immunities Clause is a better fit. When Justice Thomas recounted the history of the Fourteenth Amendment's Privileges or Immunities Clause in his concurrence, not a single justice expressed disagreement with his historical analysis.

III. THE NEED FOR SELF-DEFENSE IS AT ITS APOGEE WHEN TRAVELING OUTSIDE THE HOME.

Individual self-defense is the "*central component*" of the Second Amendment right. *Id.* at 767 (majority op.) (quoting *Heller*, 554 U.S. at 599). And the need for self-defense is often most acute in the home. *Id.* But

unfortunately, the need for self-defense does not stop at the front door. As this Court has recognized, "Many Americans hazard greater danger outside the home than in it." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 33 (2022).

Accordingly, "[t]he text of the Second Amendment reflects that reality[]" by guaranteeing the right to bear arms in public for self-defense. *Id*. at 34. This is because "the Second Amendment guarantees an 'individual right to possess and carry weapons in case of confrontation,' . . . and confrontation can surely take place outside the home." *Id*. (quoting *Heller*, 554 U.S. at 592). And just as surely as confrontation may take place outside the home, confrontation may take place when a person is traveling from one state to another.

A. Americans often have legitimate self-defense needs when traveling across state lines.

Traveling from one state to another can be dangerous. In 1828, a young Abraham Lincoln was hired along with a friend to take goods from Rockport, Indiana by riverboat to New Orleans, Louisiana. FRED KAPLAN, LINCOLN: THE BIOGRAPHY OF A WRITER 44 (2008). Near Baton Rouge, Lincoln and his friend were attacked by a group of seven men armed with clubs who attempted to kill and rob them. *Id*. at 45–46. Despite being injured, the two men managed to frighten off their attackers by pretending to have firearms—although in fact they were unarmed. *Id*. at 46.

Traveling across state lines can be dangerous even today. In June 2024, 72-year-old Gary Weaver and his 71-year-old wife Mary Weaver were stabbed at an interstate rest stop in a brutal attack that was caught on camera. *Deadly attack on couple at Nebraska interstate rest area partially captured on trucker's dash cam*, CBS NEWS (Jun. 21, 2024).[15] The Missouri couple had been together for 46 years, and were traveling across Nebraska in their RV. *Id*. While Mary survived the attack, tragically, Gary died of his injuries. *Id*.

In May 2019, Army veteran Ron Sanchez, an Oklahoma resident, was fatally stabbed while hiking the Appalachian Trail in Virginia. Kathryn Miles, *Before His Murder, Ron Sanchez Sought Solace on the AT*, OUTDOORS ONLINE (May 17, 2019).[16] Ron was able to send an SOS before the attack, but he was killed before help could arrive. *Id*. Between 1974 and 2021, there have been 13 murders recorded on the Appalachian Trail, which passes through 14 states, including Maryland. Katie Licavoli, *List of Appalachian Trail Murders Since 1974*, GREENBELLY (Jan. 5, 2021)[17].

In 2024, after Hurricane Beryl caused power outages for millions of Texans in the Houston area, large numbers of linemen came from out of state to restore power. Malachi Key, '*Do not take out your anger on them': Local officials condemn threats towards*

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[15] Available at https://tinyurl.com/2sdm24pe.

[16] Available at https://tinyurl.com/4m3br4hn.

[17] Available at https://tinyurl.com/4khk99xz.

CenterPoint workers, CLICK2HOUSTON (July 12, 2024).[18] Some frustrated locals decided to take out their anger on the linemen, pointing guns, throwing rocks, and making threats. Juan Lozano, *Houston linemen face threats as they repair outages caused by Hurricane Beryl*, CBS AUSTIN (July 16, 2024).[19] In the face of these violent threats, over 100 line workers had to be evacuated. *Id*.

When out-of-state travelers face sudden danger, armed self-defense can make all the difference. Theresa Kingsbury was driving alone from Connecticut to New York in the early morning hours when two cars forced her to the shoulder of a deserted road. Br. for Indep. Wom.'s L. Ctr. as Amicus Curiae Supporting Pets. at 1–2, N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022) (No. 20-843). Two men then approached her vehicle, one of whom was brandishing a hammer. *Id*. at 2. But when the attackers saw that Theresa had a gun, they fled. *Id*. If Theresa had been forced to leave her gun at home while traveling from one state to another, her fate might have been very different.

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[18] Available at https://tinyurl.com/5n86t6ht.

[19] Available at https://tinyurl.com/bp872tzf.

B. By imposing draconian punishments on nonresidents who possess guns, states unlawfully deter Americans from exercising their constitutional rights to interstate travel and to armed self-defense outside the home.

Unfortunately, states do not always respect the right of interstate travelers to carry arms for self-defense. Dr. Joseph Racanelli, a physician, was mugged and had his car stolen. Br. of Ass'n of N.J. Rifle & Pistol Clubs, Inc. as Amicus Curiae in Support of Pets. at 9, N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022) (No. 20-843). Dr. Racanelli lived in New Jersey and commuted to New York for work, and he feared that he would be attacked again. *Id*. But despite his upstanding character and demonstrated need for self-defense, New York refused to issue Dr. Racanelli a gun permit. *Id*. at 9–10.

Jasmine Phillips, a decorated combat veteran who lawfully owned a gun in Texas, drove to New York so her children could spend time with their father. Br. of Black Attys. of Legal Aid, et al. as Amici Curiae in Support of Pets. at 17, N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022) (No. 20-843). Acting on a "tip," police officers arrested Jasmine, put her in a chokehold, and handcuffed her. *Id*. at 18. When the police found Jasmine's pistol in her car, she was arrested and charged with a felony for not having a New York gun license. *Id*. Although the charge was eventually dismissed, Jasmine lost her job, her car, her home, and custody of her children. *Id*. at 19.

And while states may reasonably regulate the exercise of fundamental rights like armed self-defense, the Constitution forbids them from preventing Americans—whether residents or nonresidents—from exercising those rights altogether or punishing people for doing so, as Maryland seeks to do in this case. This Court has held that there is "a constitutional right to bear arms in public for self-defense." *Bruen*, 597 U.S. at 70. Furthermore, the constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Id.* (quoting *McDonald*, 561 U.S. at 780). Accordingly, there is zero basis for the proposition that the right to bear arms in public for self-defense abruptly stops at state lines—just as the rights to freedom of speech and freedom of religion do not stop at state lines.

United States v. Rahimi is not to the contrary. The Court held in *Rahimi* that "An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *United States v. Rahimi*, 602 U.S. 680, 702 (2024). But Ms. Gardner has never been found to be dangerous. Nor does Ms. Gardner belong to a group, such as felons or the mentally ill, whose disarmament is "presumptively lawful." *Id.* at 699. And no court has ever held that "nonresidents" are a dangerous class analogous to felons who presumptively may be disarmed consistent with the Constitution.

In light of these facts, it is difficult to see what purpose this law serves—other than to chill the assertion of rights that are firmly protected by the Constitution. Nonresidents who wish to exercise their right to armed self-defense when visiting Maryland are given a stark choice. Either they must give up their right to interstate travel, give up their right to bear arms in public for self-defense, or give up both—on pain of a criminal conviction. If such a law does not chill nonresidents from entering Maryland while bearing arms for self-protection—as they have both a natural and a longstanding constitutional right to do—it is difficult to imagine what would. And if a law has "no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional." *Jackson*, 390 U.S. at 581.

CONCLUSION

The Constitution protects the right of law-abiding Americans to keep and bear arms for the purposes of self-defense while engaged in interstate travel. Maryland's gun laws are an unconstitutional burden on that right. The Appellate Court of Maryland should be reversed.

Respectfully submitted,

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