

No. 20-843

IN THE
Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ET
AL.,

Petitioners,

v.

KEVIN P. BRUEN, IN HIS OFFICIAL CAPACITY AS
SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

**BRIEF OF *AMICUS CURIAE* ASIAN PACIFIC
AMERICAN GUN OWNERS ASSOCIATION IN SUPPORT
OF PETITIONERS**

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**INTRODUCTION AND
INTEREST OF *AMICUS CURIAE*¹**

Minority groups cannot always rely on majority institutions to protect them from harm. For Asian Pacific Americans (APA),² this has become particularly evident over the past year. Violence against these groups has spiked despite efforts by the authorities to curb these crimes. Many have turned to purchasing firearms for self-defense, often for the first time.

In doing so, APA are part of a tradition of minority gun ownership going back at least as far as Reconstruction, when African-Americans relied on gun ownership to protect themselves in the tinderbox of post-slavery America. *See McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 771–78 (2010); *id.* at 846–50 (Thomas, J., concurring in part and concurring in judgment). These gun owners come from varied backgrounds and hold varied political beliefs. But they are united in the belief that they have the right to defend themselves, their families, and their communities.

¹ Petitioners have filed a blanket consent to the filing of *amicus curiae* briefs and Respondents have granted their written consent to the filing of this brief. This brief was not authored in whole or in part by counsel for any party. No party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person, other than *amicus curiae*, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

² Some sources included in this brief use the term Asian-American and Pacific Islander (AAPI). This refers to the same groups as APA.

The Asian Pacific American Gun Owners Association (APAGOA) is a community of APA who own guns and advocate for safe and responsible gun ownership. APAGOA has a significant interest in this case as an organization that represents racial groups who have been disproportionately targeted for racial violence over the past year and who have increasingly purchased firearms to defend themselves.

The organization is concerned that if the Court does not reverse the decision below, APA living in New York and states with similarly restrictive laws will be unconstitutionally limited in their ability to defend themselves outside of their homes. APAGOA offers the perspective of its members, a diverse group of gun owners from across the political spectrum, and urges the Court to hold that the Second Amendment protects their right to carry a firearm outside of the home for self-defense.

SUMMARY OF ARGUMENT

The Second Amendment guarantees the right of all Americans to bear arms in their own defense, but it is particularly empowering for members of minority groups.³ When majority institutions fail to protect them, minority individuals must often serve as the first and last line of defense for themselves, their families, and their

³ *Amicus* APAGOA focuses on the APA experience but, as other *amici* explain, the Second Amendment is also important to other minority groups. See Brief of the DC Project Foundation, Operation Blazing Sword – Pink Pistols, and Jews for the Preservation of Firearms Ownership as *Amici Curiae* supporting Petitioners, *New York State Rifle & Pistol Association v. Bruen*, No. 20-843 (filed on July 19, 2021).

communities. The right to bear arms enables them to be effective in that role.

African-Americans felt this need for self-defense acutely during Reconstruction and beyond. *McDonald*, 561 U.S. at 771–78; *id.* at 846–50 (Thomas, J., concurring in part and concurring in judgment). That same need is apparent today to many APA who look around and see others like them targeted by racially motivated violence. Gun ownership in the United States has increased substantially in the past year, and many first-time gun owners are APA who are purchasing firearms in response to the increase in violence against their racial group.

Those APA turning to their Second Amendment rights come from all walks of life. They are diverse individuals who, despite being historically underrepresented among gun owners, recognize both the need to defend themselves and the means to do so that the Second Amendment protects. They are the latest minority individuals—but certainly not the first and unlikely the last—to experience first-hand precisely how significant a role the Second Amendment plays as a guarantor of minority safety.

ARGUMENT

I. The Second Amendment Has Historically Protected the Right and Ability of Minority Groups to Defend Themselves

As the Court and Justice Thomas in particular have well documented, nowhere has the Second Amendment's role in ensuring minority groups a critical means of self-

defense been more apparent than in the experience of African-Americans during Reconstruction. Over 180,000 African-Americans served in the Union armed forces during the Civil War, and many returned to the former Confederate States with their firearms after the war. *McDonald*, 561 U.S. at 771. White southerners who were bent on continuing to oppress African-Americans understood that widespread minority gun ownership would pose an obstacle to their plans. *Id.* at 846–47 (Thomas, J., concurring in part and concurring in judgment).

Many former Confederate States passed laws providing that African-Americans could not possess firearms unless licensed to do so. *Id.* Groups of armed White southerners, “often consisting of ex-Confederate soldiers serving in the state militias,” seized guns from African-Americans “[t]hroughout the South.” *Id.* at 772. Widespread gun ownership became widespread disarmament, leaving African-Americans vulnerable to “murders[,] outrages . . . ,” and other “such abuses.” *Id.* (citing 39th CONG. GLOBE 40 (1865); H.R. REP. NO. 30, 39th Cong., 1st Sess., pt. 2, pp. 219, 229, 272, pt. 3, pp. 46, 140, pt. 4, pp. 49-50 (1866); S. EXEC. DOC. NO. 2, 39th Cong., 1st Sess., 23-24, 26, 36 (1865)). African-Americans could not rely on majority-White institutions to protect them, as it was often these very institutions that oppressed them.

African-Americans understood that to defend themselves, they must be armed. African-Americans living in “the State of South Carolina in convention assembled,” for example, asked the Federal Government for “constitutional protection in keeping arms.” 39th CONG. GLOBE 40 (1865) (statement of Sen. Sumner). The Federal

Government realized this too. Congressional debate surrounding the Freedmen's Bureau Act noted that the Founders favored personal firearm ownership for self-defense, and understood that this right extended to African-Americans. *District of Columbia. v. Heller*, 554 U.S. 570, 615–16 (2008) (citing Cong. Globe, 39th Cong., 1st Sess., 362, 371 (1866) (Sen. Davis)). Military officials entrusted with governing these areas countermanded State legislation stripping African-Americans of their firearms. *Id.* at 847–48 (citing Jan. 17, 1866, order from Major General D.E. Sickles, *reprinted in* E. McPherson, *THE POLITICAL HISTORY OF THE UNITED STATES OF AMERICA DURING THE PERIOD OF RECONSTRUCTION* 37 (1871)). African-American institutions reacted to these measures with approval. *Id.* at 848 (quoting *Right to Bear Arms*, *CHRISTIAN RECORDER* (Phila.), Feb. 24, 1866, pp. 29–30). All understood that African-Americans must have the right to keep and bear arms in order to “defend their homes, families, or themselves” when majority institutions were unwilling or unable to protect them. *Id.*

II. The Second Amendment Continues to Play the Same Role for Minority Groups Today

A. Racially motivated violence against APA has spiked over the past year despite efforts by the authorities to stop it

During the Coronavirus Pandemic, APA have been disproportionately targeted for racially motivated violence. Although hate crimes in general dropped by 6% nationally in 2020, hate crimes against APA spiked by 145%. CENTER FOR THE STUDY OF HATE AND EXTREMISM, CALIFORNIA

STATE UNIVERSITY SAN BERNARDINO, FACT SHEET: ANTI-ASIAN PREJUDICE MARCH 2021 1 (2021). In New York City alone, total hate crimes dropped 38% overall but rose by over 800% where APA were the target. *Id.*

Moreover, these numbers are likely lower than the real number of hate crimes perpetrated against APA. Only a “slight majority” of victims report hate crimes, and “it is likely that there is massive underreporting of hate crime in Asian-American communities.” CENTER FOR THE STUDY OF HATE AND EXTREMISM, CALIFORNIA STATE UNIVERSITY SAN BERNARDINO, REPORT TO THE NATION: ANTI-ASIAN PREJUDICE & HATE CRIME 2 (2021). In an attempt to measure the extent of anti-APA hate crimes, the organization STOP AAPI Hate created a multilingual self-reporting system for individuals to report incidents. Even limiting that data to reports of traditional assault, there were 365 assaults from March 2020 through April 28, 2021. *Id.* That number of cases “would eclipse the previous record for FBI reported hate crimes set in the mid-1990s.” *Id.*

Despite increased efforts by authorities to combat increased hate crime, the trend shows no signs of slowing down. Based on reports from 16 of the nation’s largest cities and counties, anti-APA hate crime *increased* in the first quarter of 2021 by 164% compared to the first quarter of 2020. *Id.* In New York City alone, the NYPD reported 96 hate crime complaints and 48 arrests in the first quarter of 2021, almost half of which were motivated by anti-APA prejudice. N.Y. POLICE DEPT., HATE CRIMES REPORTS: COMPLAINTS AND ARRESTS SUMMARY, FIRST QUARTER 2021 (2021); N.Y. POLICE DEPT., HATE CRIMES REPORTS: COMPLAINTS BY BIAS MOTIVATION, FIRST QUARTER 2021

(2021).⁴ These numbers are “a probable record” for hate crime in a single quarter in New York City. ANTI-ASIAN PREJUDICE & HATE CRIME at 2.

The majority of behavior targeting APA occurs in public and public-facing places, with 44.3% taking place on a public street, in a public park, or on public transit and 35.4% taking place in a business. RUSSELL JEUNG ET. AL., STOP APA HATE, STOP APA HATE NATIONAL REPORT 3 (2021). Perhaps the most widely reported incident in the past year was the shooting in Atlanta on March 16, 2021, when a gunman killed eight spa workers, six of whom were APA.⁵ This event proved to be an inflection point for many in the APA community, as discussed below.

Despite the public nature of these crimes, police are rarely nearby and bystanders are typically unwilling to intervene. Noel Quintana, a Filipino-American, was slashed from ear to ear with a box cutter on a crowded subway in New York City. Yet, “nobody helped, . . . [n]obody moved.”⁶ An unidentified Asian-American woman was brutally beaten in broad daylight in front of multiple

⁴ These reports are available at <https://www1.nyc.gov/site/nypd/stats/reports-analysis/hate-crimes.page>.

⁵ Richard Fausset et. al., *The suspect in the spa attacks has been charged with eight counts of murder*, N.Y. TIMES, March 26, 2021, <https://www.nytimes.com/live/2021/03/17/us/shooting-atlanta-acworth> (last visited July 20, 2021).

⁶ Wendy Grossman Kantor, *Filipino American Man Recounts Brutal Attack With Box Cutter on N.Y.C. Subway: ‘Nobody Helped’*, PEOPLE, February 18, 2021, <https://people.com/crime/filipino-american-man-recounts-brutal-attack-with-box-cutter-on-n-y-c-subway-nobody-helped/> (last visited July 20, 2021).

witnesses, yet nobody intervened and one witness even closed a door to the victim *after* the attacker left.⁷

Some cities have “stepped up [police] patrols”⁸ and created undercover units to deter and arrest offenders.⁹ Authorities have also made arrests in some high-profile cases.¹⁰ Yet “many cases never get that far.”¹¹ The language barrier is an obstacle to crimes being reported in the first place, particularly among older APA and immigrant communities.¹² Others have little faith in the efficacy of law enforcement, believing that the police “are

⁷ Tim Elfrink, *New York man charged with hate crime in Asian American attack that bystanders watched without helping*, WASHINGTON POST, March 31, 2021, <https://www.washingtonpost.com/nation/2021/03/30/asian-american-attack-newyork-condo/> (last visited July 20, 2021).

⁸ Aaron Feis, *Gun sales to Asian Americans surge amid spate of hate crimes*, N.Y. POST, Mar. 18, 2021, <https://nypost.com/2021/03/18/gun-sales-to-asian-americans-surge-amid-spate-of-hate-crimes/> (last visited July 20, 2021).

⁹ *Man threatens to stab undercover Asian officer in the face inside Penn Station*, ABC 7, April 10, 2021, <https://abc7ny.com/undercover-asian-officer-threatened-man-arrested-hate-crime-investigation-nypd/10503092/> (last visited July 20, 2021).

¹⁰ Marian Liu & Rachel Hatzipanagos, “*Nobody came, nobody helped*”: *Fears of anti-Asian violence rattle the community*, WASHINGTON POST, Feb. 25, 2021, <https://www.washingtonpost.com/nation/2021/02/25/asian-hate-crime-attack-patrol/> (last visited July 20, 2021).

¹¹ *Id.*

¹² Catherine Thorbecke, *Why anti-Asian hate incidents often go unreported and how to help*, ABC NEWS, Mar. 18, 2021 <https://abcnews.go.com/US/anti-asian-hate-incidents-unreported/story?id=76509072> (last visited July 20, 2021).

not always there to protect . . . [t]hey're only there to take the report.”¹³

Many APA understand that the combination of law enforcement's limited resources and its duty to protect the public at large, rather than specific people, can leave APA defenseless at times. As the D.C. Court of Appeals explained in *Warren v. District of Columbia*, police usually have no general duty to protect an individual citizen, since their duty is owed to the public at large. 444 A.2d 1, 3 (D.C. 1981). For some, like the Korean-American community of Los Angeles, California, this is well-understood as many remember when, unable to handle civil unrest, “police retreated during the 1992 Rodney King protests” and left Koreatown to its own devices.¹⁴ In others, it is a new realization. M.B.,¹⁵ an APA first-time gun owner, bought a firearm for self-defense after seeing the recent violence and concluding that “no one is responsible for the safety of yourself and your loved ones but you.” Whether motivated by the rise in anti-APA hate crimes generally, recent civil unrest, the Atlanta shootings, or some combination thereof, many APA have come to share M.B.'s understanding that

¹³ Liu & Hatzipanagos, *supra* note 8.

¹⁴ John Ruwitch, *As Asian Americans Seek Safety from a Rise in Attacks, Some Look to Guns*, NPR, Apr. 8, 2021, <https://www.npr.org/2021/04/08/985365621/as-asian-americans-seek-safety-from-a-rise-in-attacks-some-look-to-guns> (last visited July 20, 2021).

¹⁵ APAGOA members have provided their stories for inclusion in this brief. To protect their privacy, these individuals are identified by their initials only.

gun ownership enables individuals to defend themselves at home or in public where help may not be forthcoming.

B. APA have responded by purchasing firearms for self-defense in increasing numbers

APA “have been historically underrepresented among gun owners,”¹⁶ but that has changed in the last year. During the pandemic, gun ownership generally has skyrocketed, leading to an annual record of background checks for gun ownership and over 8.4 million first-time gun owners.¹⁷ And many of these first-time owners are APA buying self-defense weapons in response to the increase in anti-APA hate crimes.¹⁸ Although gun sales are not tracked by race, gun sales to APA are estimated to have increased by 43% in the first half of 2020.¹⁹

¹⁶ Aaron Smith, *More Asian-Americans Are Buying Guns for Protection from Hate Crimes*, FORBES, Mar. 18, 2021, <https://www.forbes.com/sites/aaronsmith/2021/03/18/asian-americans-buy-guns-for-protection-from-hate-crimes/?sh=7fa242c53edd> (last visited July 20, 2021).

¹⁷ *Id.*; see also Sabrina Tavernise, *An Arms Race in America: Gun Buying Spiked During the Pandemic. It’s Still Up*, N.Y. TIMES, May 29, 2021, <https://www.nytimes.com/2021/05/29/us/gun-purchases-owner-ship-pandemic.html> (last visited July 20, 2021) (“about a fifth of all Americans who bought guns last year were first-time gun owners”).

¹⁸ Smith, *supra* note 14.

¹⁹ Liu & Hatzipanagos, *supra* note 8 (citing Jim Curcuruto, *NSSF Survey Reveals Broad Demographic Appeal for Firearm Purchases During Sales Surge of 2020*, July 21, 2020, NATIONAL SHOOTING SPORTS FOUNDATION, <https://www.nssf.org/articles/nssf-survey-reveals-broad-demographic-appeal-for-firearm-purchases-during-sales-surge-of-2020/> (last visited July 20, 2021); see also Theodora Yu, *Some Asian Americans become first-time gun owners for protection amid the coronavirus*, SACRAMENTO BEE, Apr. 8, 2020,

As illustrated in anecdotes from various members of *amicus* APAGOA, the APA who are buying firearms are a diverse group, yet are consistent in their reasons for doing so. S.K., a first-generation American, was “disturbed” by the Atlanta shootings, particularly the long law enforcement response time and language barrier. To her, “even a 20 second wait to get a translator on the line seemed too long.” She thought that if the victims were armed, they could have attempted to defend themselves, but instead they were helpless. Some of her family members had also experienced the 1992 riots and described to her how gun ownership was crucial for self-defense then, when “law enforcement was unavailable.” Despite her “anxiety about guns,” S.K. recently purchased her first firearm for self-defense.

M.B. lives in a state with restrictive gun laws, grew up in a family and community where interest in guns was discouraged, became disgusted with personal firearm ownership after the 2007 Virginia Tech shooting, and marched for more restrictive gun control laws while also voting for anti-gun politicians. Yet, as anti-APA violence increased this past year, M.B. became increasingly concerned. M.B. recounts watching “that poor old man in San Francisco crying as he got beat with a broomstick while a bystander simply yelled that they hate Asians” and

<https://www.sacbee.com/news/coronavirus/article241731276.html> (last visited July 20, 2021); Ewan Palmer, *U.S. Gun Store Owners Say Asian Customers Are Buying Weapons Over Coronavirus Backlash Fears*, NEWSWEEK, Mar. 12, 2020, <https://www.newsweek.com/coronavirus-gun-sales-asian-california-washington-1491891> (last visited July 20, 2021).

realizing how easy it would be to become a victim of such violence.²⁰ After researching the Second Amendment and gun ownership, M.B. recently bought a gun for self-defense, believing now that gun ownership is “the most effective tool for individuals to protect themselves,” whether at home or out in public.

Others have expressed similar sentiments. S.S. became a first-time gun owner after “the whole world changed with the outbreak of the [Coronavirus]” and S.S. realized, “[f]or the first time[,]” that “our institutions . . . can fail too.” S.S. saw that decision vindicated by social unrest and the “rise in xenophobic attacks against people who look like me.” E.R., another first-time gun owner, was also motivated by the “alarming” increase in anti-APA violence over the past year. Having a gun “gives [him] some confidence that he can help protect himself and his family if the need arises.” R.A., an APA business owner who lives in a state with restrictive gun laws, “never considered” owning a gun until after the Atlanta shooting and increase in anti-APA violence. He has since purchased his first gun to have the “option to protect his family and his business if he needs to.” Even APA who have owned guns in the past as collector’s items or for sport shooting, like E.A., are buying guns specifically for self-defense. E.A. has also applied for a concealed carry license, so that he can carry his gun in

²⁰ Clarissa-Jan Lim, *Police Have Arrested A Suspect After An Elderly Asian Man Was Mocked And Filmed While Being Attacked*, BUZZFEED NEWS, March 4, 2020, <https://www.buzzfeednews.com/article/clarissajanlim/elderly-asian-man-attacked-robbed-san-francisco-police> (last visited July 20, 2021).

public and have “the ability to protect [him]self and [his] family if the need arises.”

These individuals, along with many other APA, want nothing more than the ability to defend themselves against hate and violence, both within and outside of their homes. They have realized that law enforcement, despite its best efforts, simply cannot prevent many of these crimes from happening. Like other minority groups have historically done, APA give themselves a better chance of protecting themselves from harm if they exercise their right, protected under the Second Amendment, to bear arms whether at home or in public. This Court should reaffirm that all Americans, “without the distinction of color, have the right to keep arms to defend their homes, families, or themselves.” *McDonald*, 561 U.S. at 848 (Thomas, J. concurring in part and concurring in judgment) (quoting *Right to Bear Arms*, CHRISTIAN RECORDER (Phila.), Feb. 24, 1866, pp. 29–30).

CONCLUSION

The decision below should be reversed.

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