No. _____

In The
Supreme Court of the United States

JEFFREY T. MAEHR,

Petitioner,

v.

UNITED STATES DEPARTMENT OF STATE, including Secretary of State Antony Blinken, in his official capacity,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Pursuant to a recently enacted federal statute, the State Department revoked Petitioner Jeffrey Maehr's passport, and hence his constitutionally established right to travel internationally, not for reasons of national security or foreign policy, or because he is trying to sneak money out of the country, but simply to pressure him to pay a tax debt.

The question presented is: may the federal government collect tax debts by revoking citizens' constitutional rights until they pay up?

PARTIES TO THE PROCEEDING

Petitioner is Jeffrey T. Maehr, a U.S. citizen and resident of Colorado.

Respondent is the United States Department of State, including current Secretary of State Antony Blinken in his official capacity, because this action seeks equitable relief in the nature of mandamus to reinstate Maehr's passport.

RELATED CASES

There are no related cases. While Petitioner Maehr has filed numerous *pro se* cases challenging his tax assessment (none of which has yet succeeded), he filed the instant case to challenge his passport revocation under 26 U.S.C. § 7345. In undertaking a limited *pro bono* engagement to represent Maehr, undersigned counsel worked with the district court at the outset to clarify and enter all necessary orders so that this action would address only Maehr's constitutional challenge to the passport revocation, and not involve any challenges to the legality, validity or accuracy of his tax assessment, or the IRS's efforts to collect it. As a result, Maehr's other *pro se* actions challenging his tax assessment are not related cases, and are not before this Court.

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Petitioner Jeffrey T. Maehr petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The Tenth Circuit's opinion is reported at 5 F.4th 1100 and is reproduced at App. 1.

The decision of the United States District Court for the District of Colorado dismissing Maehr's complaint for passport reinstatement is reproduced at App. 44.

The decision of the United States Magistrate Judge recommending this dismissal is reproduced at App. 65.

JURISDICTION

The Tenth Circuit entered its judgment July 20, 2021, App. 1, and denied a timely petition for rehearing and *en banc* consideration on September 17, 2021. One of the panel judges voted to grant rehearing. App. 89.

The Tenth Circuit exercised appellate jurisdiction under 28 U.S.C. § 1291. App. 7. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The Tenth Circuit determined that federal jurisdiction was proper under 28 U.S.C. § 1331, and that 5

U.S.C. § 702 of the Administrative Procedure Act provided the required waiver of sovereign immunity. App. 7-8. Maehr maintains that federal jurisdiction and the requisite sovereign immunity waiver can also be grounded on 28 U.S.C. § 1361, because Maehr seeks equitable relief in the nature of mandamus – a court order directing the State Department to reinstate his passport. *See Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 701-02 (1949); *Dugan v. Rank*, 372 U.S. 609, 621-22 (1963).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 26 U.S.C. § 7345 provides, in relevant part:

> **Revocation or denial of passport in case of certain tax delinquencies**
>
> (a) In general
>
> If the [Treasury] Secretary receives certification by the Commissioner of Internal Revenue that an individual has a seriously delinquent tax debt, the Secretary shall transmit such certification to the Secretary of State for action with respect to denial, revocation, or limitation of a passport pursuant to section 32101 of the FAST Act [22 U.S.C. § 2714a(e)].
>
> * * *

Title 22 U.S.C. § 2714a(e) provides, in relevant part:

Revocation or denial of passport in case of certain unpaid taxes

(e)(1)(A) **Authority to deny or revoke passport**

. . . [U]pon receiving a certification described in section 7345 of title 26 from the Secretary of the Treasury, the Secretary of State shall not issue a passport to any individual who has a seriously delinquent tax debt described in such section. . . .

(e)(2)(A) **Revocation**

The Secretary of State may revoke a passport previously issued to any individual described in paragraph (1)(A).

STATEMENT OF THE CASE

Petitioner Jeffrey Maehr is a disabled Navy veteran. He worked briefly as a part-time chiropractor in the 2000s, but did not file tax returns. In 2010, the IRS imputed income to Maehr for tax years 2003 through 2006, and determined that he owed the Government about $250,000 in federal taxes, penalties and interest for these years. App. 6, 45, 67.

Maehr does not concede the validity or accuracy of these tax assessments and deficiency, the legality of the tax assessment process, or the IRS's right to collect this alleged debt from him. Maehr has been challenging these matters *pro se* for the past decade, so far without success.

Maehr has no assets to speak of, so the IRS has been collecting its tax debt by setoff against Maehr's modest Social Security benefits, impoverishing him.

A. The Government revokes Maehr's passport to pressure him to pay the tax debt.

In 2015 Congress enacted the Fixing America's Surface Transportation (FAST) Act, P.L. 114-94. The FAST Act contains a provision, codified at 26 U.S.C. § 7345, that directs the IRS (subject to certain exceptions not relevant here) to notify the State Department of citizens who have a "seriously delinquent tax debt," defined as a debt of $50,000 or more, indexed for inflation. The law then directs the State Department not to issue a passport to citizens on this list of seriously delinquent tax debtors; and to revoke passports previously issued to such citizens. 22 U.S.C. § 2714a(e).[1]

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[1] The provision specifically provides that the Secretary "**may** revoke a passport previously issued" to a seriously delinquent tax debtor. 22 U.S.C. § 2714a(e)(1) and (2) (emphasis added). The purpose of this "may" is not because the Secretary of State needs or wants to exercise discretion over whose passports to revoke for this purpose, but rather to ensure that tax debtors who have secreted their assets and themselves abroad can return to the United States – at which point the IRS can pounce with a writ of *ne exeat*. *See United States v. Barrett*, 2014 WL 321141 (D.Colo. 2014). Revoking such expatriate tax debtors' passports while they are abroad would keep their assets beyond the reach of the Government. The district court's concern over impinging the Secretary of State's discretion was needless. App. 48-52, 62. This challenge to the FAST Act's passport revocation regime does not seek to restrict the Secretary of State's discretion to revoke passports for any germane reason like national security or foreign

In 2018 the State Department revoked Maehr's passport because the IRS certified that he had a seriously delinquent tax debt. App. 45. Maehr surrendered his passport as ordered. *Id.* As the Government acknowledges, since a valid passport is necessary to traverse this nation's borders, this passport revocation prohibits Maehr from traveling internationally.

B. Procedural background.

Maehr filed this *pro se* action against the State Department to, *inter alia*, challenge the legality and constitutionality of this passport revocation.

At the suggestion of the presiding magistrate judge, undersigned counsel undertook a limited *pro bono* engagement to represent Maehr on his constitutional challenge to the passport revocation. Counsel worked with the district court to sort out Maehr's cases so that the instant action would address only passport revocation. Maehr's other *pro se* actions challenging his tax assessment are not before this Court.

This lawsuit does not challenge the IRS's determination that Maehr owes a substantial tax debt. This lawsuit argues: presuming *arguendo* (and without prejudice to Maehr's other challenges) that Maehr owes what the Government says he does, the Government still may not collect this tax debt by suspending Maehr's constitutional rights until he pays up.

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policy, or otherwise ask the courts to tell the Secretary of State how to do his job.

Maehr developed the three constitutional arguments presented in this Petition from the outset: Privileges and Immunities, substantive due process, and *ne exeat*.

The magistrate judge rejected Maehr's arguments and recommended that the district court grant the Government's motion to dismiss. App. 87. The district court accepted the magistrate judge's recommendation and dismissed Maehr's constitutional challenge. App. 63.

The Tenth Circuit affirmed in an unusually divided opinion. The entire panel rejected Maehr's arguments based on Privileges and Immunities and *ne exeat*. App. 8-13. The panel split on the appropriate level of scrutiny to apply to Maehr's substantive due process argument. The majority found the passport revocation regime constitutional on rational basis review. App. 35-43. In an erudite concurrence, Judge Lucero opined that the right to travel internationally merits intermediate scrutiny review, but he declined to consider the question further because neither party had expressly argued for the application of intermediate scrutiny. App. 13-30.

Maehr requested panel and *en banc* rehearing, explaining how he had indeed developed an intermediate scrutiny substantive due process analysis through the *ne exeat* arguments, and addressing other errors in the Tenth Circuit panel's analysis. Judge Lucero voted to grant panel reconsideration. However, the remaining

panel members and Tenth Circuit *en banc* did not. App. 89. This petition followed.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari for three reasons.

1. Privileges and Immunities.

The established constitutional right to travel internationally is a "Privilege" (*i.e.* a constitutionally protected civil right) that stems from national citizenship, and thus fits perfectly into the limited, disused, but still authoritative Privileges and Immunities jurisprudence that survived the *Slaughter-House Cases*, and was recently revived by this Court in *Saenz v. Roe*, 526 U.S. 489, 501 (1999). This case would allow the Court to further develop its Privileges and Immunities jurisprudence without having to reverse the *Slaughter-House Cases* and without impacting the Court's existing substantive due process jurisprudence.

2. Substantive due process – fundamental right.

The right to travel internationally is recognized in the Magna Carta, confirmed by Blackstone, and has been described by this Court using the lexicon reserved for fundamental rights. It just happens that the right of international travel has been more frequently "qualified" than interstate travel due to compelling reasons

like national security and foreign policy. Debt collection may be a legitimate and important government interest, but it is not the sort of compelling reason that can justify suspending a fundamental right.

3. Substantive due process – intermediate scrutiny per *ne exeat.*

While this Court has not yet recognized an intermediate scrutiny tier in its substantive due process framework, Judge Lucero's concurrence suggests that the right to travel internationally is best analyzed this way. As Maehr explained in his briefing below, lower courts have effectively applied an intermediate scrutiny analysis in cases addressing the Government's ability to obtain writs of *ne exeat republica* to prevent tax debtors from leaving the country. These perfectly apposite cases do not discuss whether the right of international travel is a fundamental right, but they still hold that the Government needs a better reason to revoke a debtor's passport than to supply additional leverage for debt collection. *See United States v. Shaheen*, 445 F.2d 6, 10-11 (7th Cir. 1971) (per Stevens, J.) (holding that to obtain a writ of *ne exeat*, the Government must prove that the tax debtor is trying to prevent collection by secreting assets abroad, or is refusing to repatriate assets that could pay his debt).

The Government may be able to collect tax debts many ways, but the Government may not collect such debts by revoking citizens' constitutional rights until they pay up.

I. Constitutional development of the right of international travel.

This Court has recognized that the right to travel internationally is part of the liberty protected by the Fifth Amendment, and that it is "deeply engrained in our history," "part of our heritage," and "basic in our scheme of values." *Kent v. Dulles*, 357 U.S. 116, 125-26 (1958). Yet the right's status in this Court's evolving regimes for recognizing and protecting civil rights has been clouded by the timing of the decisions addressing the right, and dicta in some cases that have been read as suggesting that the right ranks lower than the fundamental right of interstate travel. Determining the constitutionality of the FAST Act's collateral sanction regime thus necessarily starts with an historical review.

A. Pre-constitutional history: Magna Carta and Blackstone.

The right to travel internationally has as impressive an historical pedigree as any other constitutional right. It was first recognized in the ultimate foundational document of substantive due process: the Magna Carta. In addition to establishing various civil rights and articulating the concept of due process of law, section 42 of the 1215 Magna Carta states:

> **It shall be lawful to any person, for the future, to go out of our kingdom, and to return**, safely and securely, by land or by water, saving his allegiance to us, unless it be in

> time of war, for some short space, for the common good of the kingdom: excepting prisoners and outlaws, according to the laws of the land, and of the people of the nation at war against us, and Merchants who shall be treated as it is said above.

See Kent v. Dulles, 357 U.S. at 125 n.12 (emphasis added, quoting Magna Carta).

Blackstone counted the right to travel generally, and in and out of the kingdom specifically, as one of the "absolute" rights of English citizens:

> Next to personal security, the law of England regards, asserts, and preserves the personal liberty of individuals. This personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. . . .
>
> * * *
>
> **A natural and regular consequence of this personal liberty is, that every Englishman may claim a right to abide in his own country so long as he pleases**; and not to be driven from it unless by the sentence of the law.

Sir William Blackstone, Commentaries on the Laws of England, Book I (Of the Rights of Persons), Chapter 1 ("Of the Absolute Rights of Individuals") pp. 134 and 137 (emphasis added); *see also* pp. 265-66 ("By the common law, every man may go out of the realm for

whatever cause he pleaseth, without obtaining the king's leave; provided he is under no injunction of staying at home. . . .").

Blackstone notes that the only permissible basis for preventing a citizen from leaving the country at will was through the king's issuance of a "writ *ne exeat regno*," as "may be necessary for the public service and safeguard of the commonwealth." *Id.* at 137, 266. (More on *ne exeat* later.)

B. Nineteenth century: International travel is a protected Privilege.

Based on this historical pedigree, an early justice of this Court recognized the right to travel as one of the "Privileges and Immunities" of citizenship – an 18th century term of art for what we now call a civil right that is protected from undue government interference. *See Corfield v. Coryell*, 6 F.Cas. 546, 551-52 (No. 3,230) (CCED Pa. 1825) (Washington, J., on circuit) (providing a non-exhaustive list of the civil rights embraced by term "Privileges and Immunities," including the right to travel).

In *Crandall v. Nevada*, this Court struck down a Nevada statute imposing a head tax on persons leaving the state based on the Privilege of interstate travel. 73 U.S. 35, 40 and 43-45 (1868). In the course of explaining why the right to travel is a protected Privilege, this Court used language that went beyond the right of *interstate* travel and unmistakably includes the right to travel *internationally*:

> [T]he 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 seaports, through which all the operations of foreign trade and commerce are conducted**, ...

73 U.S. at 43-44 (emphasis added). If the only constitutional reason to protect the right to travel under the Privileges and Immunities paradigm were to secure interstate mobility, the Court would not have included the right to access seaports for engaging in foreign commerce as a reason the right is constitutionally protected.

However, just a few years after *Crandall*, the *Slaughter-House Cases* deliberately eviscerated the Privileges and Immunities Clauses as a source of civil rights protection by holding that they only protected civil rights stemming from national citizenship, whereas nearly all the civil rights that mattered to African-American citizens stemmed from state citizenship. 83 U.S. (16 Wall.) 36, 75-80 (1873). *See also Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (reviewing Privileges and Immunities jurisprudence in the wake of the *Slaughter-House Cases*).

C. 1960s: This Court describes international travel as a fundamental right.

Substantive due process evolved to fill the void left by the *Slaughter-House Cases*' evisceration of Privileges and Immunities. Thus, when this Court next addressed the right of international travel, it used the language of substantive due process.

The first such occasion came during the Red Scare of the 1950s and 1960s. In the seminal case of *Kent v. Dulles*, this Court held that the Secretary of State could not deny citizens passports and thereby restrict their right to travel internationally because they were communists. The Court reviewed the history of how the United States had restricted international travel in times of war, and also how the ability to travel internationally gradually became dependent on a passport issued exclusively by the Secretary of State. 357 U.S. at 120-25. The Court identified the right to travel internationally as a liberty grounded in the Magna Carta and protected by the Fifth Amendment. *Id*. at 125 and n.12. The Court further described the right as "deeply engrained in our history," "part of our heritage," and "basic in our scheme of values." *Id.* at 125-26.

This was the emerging lexicon for describing a fundamental right in the still-evolving paradigm of substantive due process. Such terminology, especially when coupled with an origin in a foundational document like the Magna Carta, was how this Court described and established fundamental rights. *Twining*, 211 U.S. at 100-08 (describing the rights protected by

substantive due process as those rights established as "law of the land" in such great documents as the Magna Carta (1215), the Petition of Right (1628), and the Bill of Rights (1689)); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) (developing doctrine of substantive due process to protect those "principle[s] of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental").

The Court continued in this vein in *Aptheker v. Secretary of State*, striking down a statute that revoked communists' passports on constitutional grounds, because any legislative restrictions on "**fundamental personal liberties**" must be narrowly tailored. 378 U.S. 500, 508 (1964) (emphasis added).

Next, in *Zemel v. Rusk*, this Court equated the constitutional status of the rights of international and interstate travel (*i.e.* both are fundamental rights), while holding that the right of international travel yielded to the "weightiest considerations of national security" – there, the need to maintain the Cuban trade embargo in light of the recent missile crisis. 381 U.S. 1, 15-16 (1965) (affirming Secretary of State's authority to restrict travel to Cuba).

D. 1970s: The apposite *ne exeat* cases apply the right's substantive due process status in the tax debt collection context.

In 1971 – just as this Court was starting to add an intermediate tier of scrutiny to its equal protection framework – lower courts began to consider the

substantive due process weight of the right to travel internationally in the perfectly apposite *ne exeat* context.

While the FAST Act's passport revocation regime is new, a similar but older provision of the tax code, 26 U.S.C. § 7402(a), authorizes district courts to issue common law writs of *ne exeat republica* in tax collection cases "to compel a citizen to pay his taxes" by revoking his passport and thereby preventing him from leaving the country. *United States v. Shaheen*, 445 F.2d 6, 9-10 (7th Cir. 1971). In the leading decision of *Shaheen*, Judge (later Justice) Stevens discussed how the Government may not obtain a writ of *ne exeat* as a matter of course in tax collection cases. Rather, because the right of international travel is an established constitutional right, per *Kent*, the Government must establish that the tax debtor is attempting to leave the country *with his assets*, or has done so and refuses to repatriate those assets – those are sufficiently strong reasons to restrict a tax debtor's right to travel internationally, whereas merely owing a tax debt is not:

> When the relief impinges upon a constitutionally protected personal liberty, . . . the Government has the burden of demonstrating that the restraint of liberty is a necessary, and not merely coercive and convenient, method of enforcement.

Id. at 10-11. Other courts have consistently followed this holding. *E.g. IRS v. Mathewson*, 1993 WL 113434

(S.D.Fla. 1993); *United States v. Barrett*, 2014 WL 321141 (D.Colo. 2014).[2]

Shaheen did not go so far as to describe the right of international travel as a "fundamental" right, because it was not necessary – this Court's substantive due process jurisprudence at the time did not require courts to categorize rights as either fundamental or less than. But *Shaheen*'s analysis parallels this Court's contemporaneous analysis for sex discrimination in the equal protection context, which produced the new tier of intermediate scrutiny.

E. 1970s–1980s: This Court suggests in dicta that the right to travel internationally may be less than fundamental.

This Court next addressed the right of international travel in a series of cases where it was either not implicated, or the Government had a compelling reason to restrict it.

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[2] While this Court has not addressed *ne exeat* in the tax collection context, it has noted the common law rule that *ne exeat* generally will not lie to compel payment of a debt; rather, a creditor must pursue ordinary legal remedies and collection methods. *McKenzie et al. v. Cowing*, 4 Cranch CC 479, 16 F.Cas. 202, 203 (1834). *Accord Aetna Cas. & Sur. Co. v. Markarian*, 114 F.3d 346, 349 (1st Cir. 1997) (reversing writ of *ne exeat* issued in a non-tax judgment collection proceeding, noting that the ancient writ "hearkens back to the days when debtors were imprisoned for failure to pay their debts. The writ is itself a form of civil arrest."); *Atherton v. Gopin*, 355 P.3d 804, 808-09 (N.M.App. 2015) (reviewing history of *ne exeat*, collecting cases and authorities).

In *Califano v. Torres*, 435 U.S. 1, 4 n.6 (1978), this Court observed in a footnote that a person who lost federal welfare benefits by moving to Puerto Rico (where the benefit program did not apply) was not denied his constitutional right to travel.

Later that same year, in *Califano v. Aznavorian*, 439 U.S. 170 (1978), this Court elaborated on the *Torres* footnote in a case where the welfare recipient lost benefits by traveling outside the country for more than a month. Again, the right of international travel was not implicated in *Aznavorian* – no one tried to stop Grace Aznavorian from traveling to Mexico for medical treatment. *See Aznavorian v. Califano*, 440 F.Supp. 788, 791 (S.D.Cal. 1977). Rather, the question decided by this Court was whether the *incidental* effect of halting her welfare benefits because she had left the country violated her right to travel. The Court held that it did not:

> [T]his case involves legislation providing **governmental payments of monetary benefits that has an *incidental effect* on a protected liberty**, . . .
>
> The statutory provision in issue here does not have nearly so direct an impact on the freedom to travel internationally as occurred in the *Kent*, *Aptheker*, or *Zemel* cases. **It does not limit the availability or validity of passports.**

439 U.S. at 177 (emphases added).

However, in the course of its decision, the *Aznavorian* Court compared the rights of interstate and international travel in the following language:

> The constitutional right of interstate travel is virtually unqualified. By contrast, the right of international travel has been considered to be no more than an aspect of the liberty protected by the Due Process Clause of the Fifth Amendment. As such, this right, the Court has held, can be regulated within the bounds of due process.

439 U.S. at 176. This language was not necessary for the holding in *Aznavorian*, since the right of international travel was not even implicated there. It is therefore dicta.

This Court nonetheless repeated the *Aznavorian* dictum in two later cases where the right was implicated – although in both cases the Government had a compelling reason to restrict international travel. In *Haig v. Agee* this Court affirmed the Secretary of State's revocation of an ex-CIA agent's passport on national security grounds, because the agent intended to expose undercover CIA officers in his travels. 453 U.S. 280, 307 (1981). Whether the right to travel internationally was fundamental or not did not matter in *Agee* because the Government had a truly compelling reason for revoking Philip Agee's passport: national security. *Id.* at 306-07. The *Aznavorian* dictum remained dicta.

This Court quoted the *Aznavorian* dictum again in *Regan v. Wald*, in upholding a federal regulation prohibiting travel to Cuba. 468 U.S. 222, 244 (1984). Like *Agee*, *Wald* offered a compelling reason for qualifying the right to travel internationally: foreign policy. The *Aznavorian* dictum again remained dicta.

F. 1990s: *Glucksberg* constrains further substantive due process development, while *Saenz* revives the Privileges and Immunities paradigm.

In the 1990s, this Court formalized and halted the evolution of its substantive due process paradigm by ruling that rights are either fundamental or not, and by admonishing lower courts not to presume to identify and introduce new fundamental rights in this binary substantive due process framework. *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Washington v. Glucksberg*, 521 U.S. 702, 720-22 (1997).

The right of international travel has all the elements of a fundamental right enumerated in *Glucksberg*: it is established in the Magna Carta; further confirmed as an "absolute" right by Blackstone; and has been described by this Court as "deeply engrained in our history," "part of our heritage," and "basic in our scheme of values." *Kent*, 357 U.S. at 125-26. However, this Court had never used the word "fundamental" to describe the right of international travel, and this Court did not include it in *Glucksberg*'s non-exhaustive list of established fundamental rights. 521 U.S. at

720. These omissions have led lower courts to treat the right as non-fundamental in the binary post-*Glucksberg* substantive due process paradigm.

But shortly after *Glucksberg*, this Court surprised the legal community by reviving the Privileges and Immunities paradigm of civil rights protection in *Saenz v. Roe*, when it struck down California's one-year residency requirement for welfare benefits as unduly restricting the Privilege of interstate travel under the Privileges and Immunities Clauses. 526 U.S. 489, 500-04 (1999). Instead of relying on substantive due process or equal protection, the entire *Saenz* Court (the majority and both dissenters) confirmed that the right to travel is a Privilege, and one of the few meaningful civil rights that survived *Slaughter-House*'s killing floor. Specifically, both the majority and dissents confirmed the common law understanding of the right to travel as "the right to go from one place to another." 526 U.S. at 500; *id.* at 511 (Rehnquist and Thomas, JJ., dissenting). This description encompasses international as well as interstate travel. And the majority and dissenters in *Saenz* also agreed that this right to travel was one of the civil rights protected by the Privileges and Immunities Clauses. *Id.* at 498-503 (majority); and at 512 (Rehnquist and Thomas, JJ., dissenting, explaining that they concurred with the majority's alignment of "the right to travel with the protections afforded by the Privileges and Immunities Clause of Article IV; § 2").[3]

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[3] While the dissenters agreed with the majority's predicate that the right to travel is a "Privilege" stemming from national

Justice Thomas wrote an erudite dissent in *Saenz*, reviewing how "Privileges and Immunities" is an 18th century term of art for what we now call civil rights, and was the analytical framework that the Framers intended for civil rights protection, with specific textual reference in the Constitution. 526 U.S. at 522-28. Justice Thomas suggested that the Court consider overruling the *Slaughter-House Cases* and regrounding the jurisprudence of constitutional civil rights in the original understanding of the textual Privileges and Immunities Clauses, rather than the court-created doctrine of substantive due process that had evolved to fill the gaping hole left by *Slaughter-House*'s deliberate disembowelment of civil rights law. *Id*.

In every major substantive due process case since *Saenz*, Justice Thomas has written separately to further develop the Privileges and Immunities paradigm of civil rights protection, and urge the Court to readopt it to replace the *ad hoc* and oxymoronic framework of substantive due process. *See McDonald v. City of Chicago*, 561 U.S. 742, 805-58 (2010) (individual right to bear arms); *Timbs v. Indiana*, 139 S.Ct. 682,

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citizenship that is protected by the Privileges and Immunities Clauses, they disagreed with the majority's conclusion that this right to travel prevented California from imposing a one-year residency requirement before providing higher welfare benefits. 526 U.S. at 527 (Justice Thomas's dissent, arguing that while right to travel is fundamental, the right to receive welfare benefits is not); and 518 (Chief Justice Rehnquist's dissent, arguing that while right to travel is fundamental, states could still condition access to higher in-state welfare benefits on a minimal durational requirement to establish *bona fide* residence, as they do for in-state tuition rates at state universities).

691-98 (2019) (Eighth Amendment's prohibition on excessive fines applies to the States);[4] *Ramos v. Louisiana*, 140 S.Ct. 1390, 1420-25 (2020) (jury unanimity required for criminal convictions).

G. 2000s: Congress's only other passport revocation regime, aimed at deadbeat parents, survives limited constitutional challenges in the lower courts.

As part of 1990s welfare reform, Congress enacted the only other federal collateral sanction regime involving passport revocation: 42 U.S.C. § 652(k), which authorizes the Secretary of Health and Human Services to certify a list of parents owing child support debts to the Secretary of State to have their passports revoked.

This statute has never been reviewed by this Court. Most challenges were brought by *pro se* parents, and involved *procedural* due process concerns due to parents' inability to challenge their certification as owing child support or seek warranted exceptions. *E.g. Way v. Tulsa East Child Support Services*, 2017 WL 1036129 (N.D.Okla.). Constitutional challenges reached the circuit level in only two cases: *Weinstein v.*

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[4] Justice Gorsuch wrote separately in *Timbs* to concur with Justice Thomas's analysis, but he noted that nothing in that case turned on the question of which analytical vehicle the Court used: substantive due process or Privileges and Immunities. *Timbs*, 139 S.Ct. at 691. This case may well turn on which vehicle is used.

Albright, 261 F.3d 127 (2d Cir. 2001), and *Eunique v. Powell*, 302 F.3d 971 (9th Cir. 2002).

Weinstein was litigated *pro se*. Its substantive due process analysis is summary, affirming on the basis of the district court's equally summary analysis. 261 F.3d at 133, citing 2000 WL 1154310 at *5-6 (citing *Aznavorian*'s and *Agee*'s dicta suggesting that the right of international travel is less than fundamental, with no mention of Magna Carta, Blackstone, *Kent*, *Aptheker*, *Zemel*, or *ne exeat*).

The analysis in *Eunique v. Powell* dug deeper – though not so far as to consider Privileges and Immunities or the apposite *ne exeat* cases; the court considered only substantive due process. The *Eunique* panel issued three separate opinions. The majority analysis applied the rational basis standard for non-fundamental rights to reject Euden Eunique's substantive due process challenge and uphold the collateral sanction regime. 302 F.3d at 974-75. A concurrence argued that the right of international travel is important enough that it should be analyzed under the intermediate scrutiny standard borrowed from equal protection, but concluded that the passport revocation regime met that standard because of the government's exceptionally strong interest in enforcing child support obligations. *Id.* at 976-78. The thorough dissent developed the right to travel (including the right of expatriation) from Socrates, through Magna Carta, to *Kent*, *Aptheker* and *Zemel*; and concluded that the right of international travel should be treated as a fundamental right. *Id.* at 979-85.

Setting the correct dissent aside, the *Eunique* concurrence identifies a sound constitutional basis for distinguishing the prior passport revocation regime for deadbeat parents from the current regime at bar: child support debts are not ordinary debts because the welfare and even lives of *particular children* depend upon payment of child support. This distinction comports with our common law tradition, which is the font of substantive due process. At common law, creditors can collect money judgments through legal means like execution and garnishment; but courts do not enforce money judgments by holding the debtor in contempt for non-payment and imprisoning the debtor until he pays up. *See*, *e.g.*, *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1147 (9th Cir. 1983) ("The proper means . . . to secure compliance with a money judgment is to seek a writ of execution, not to obtain a fine of contempt for the period of nonpayment."); *Ecopetrol S.A. v. Offshore Expl. & Prod. LLC*, 172 F.Supp.3d 691, 698 (S.D.N.Y. 2016) ("[C]ontempt power should not be used to enforce a money judgment. . . ."); *accord McKenzie*, *supra* (*ne exeat* unavailable for ordinary debts).[5] By contrast, our common law tradition permits courts to use their extraordinary equitable powers (such as imprisonment for contempt) to compel deadbeat parents to pay child

[5] Because this is a core common law principle, state authority is naturally similar. *E.g. In re Byrom*, 316 S.W.3d 787, 791 (Tex.App. 2010) ("An order requiring payment of a debt may be enforced through legal processes like execution or attachment, but not by the imprisonment of the adjudicated debtor."); *Carter v. Grace Whitney Properties*, 939 N.E.2d 630, 635 (Ind.App. 2010) (same).

support debts, because children's lives and welfare depend on such payments. *See*, *e.g.*, *Pettit v. Pettit*, 626 N.E.2d 444, 446-47 (Ind. 1993) (while ordinary money judgments are not enforceable by contempt, child support orders are); *United States v. Ballek*, 170 F.3d 871, 874-85 (9th Cir. 1999) (per Kozinski, J.) (upholding constitutionality of the federal Child Support Recovery Act, 18 U.S.C. § 228, which criminalizes willful non-support, based on the Government's exceptionally strong interest in protecting children's welfare).

H. 2020s: The FAST Act broadens the collateral sanction regime of passport revocation from child support debts to tax debts generally.

Congress enacted the FAST Act in 2015. It includes the challenged collateral sanction regime of passport revocation to compel "tax compliance." App. 4-5. Knowledgeable tax lawyers immediately questioned whether this passport revocation regime could pass constitutional muster. *E.g.* https://klasing-associates.com/expats-international-travelers-your-u-s-passport-could-be-canceled/ (11/24/2015 tax blog entry predicting that "due to the well-established U.S. right to both domestic and international travel, it is highly likely that this measure will be challenged on Constitutional grounds."). Yet the FAST Act's legislative history contains no discussion of the legality of pressuring citizens to pay their tax debts by suspending their constitutional rights.

The State Department began revoking passports in 2018. This is the first challenge to generate a circuit court opinion and reach this Court. There are no similar cases in the pipeline.[6]

II. The right to travel internationally is a protected Privilege that Congress may not curtail through a collateral sanction regime.

Approaching civil rights as constitutionally-protected "Privileges" may be unfamiliar to much of the federal judiciary, but the analysis is straightforward and fits perfectly into this Court's disused but now reanimated post-*Slaughter-House* Privileges and Immunities paradigm.

This Court has recognized the right to travel internationally as a protected Privilege in the original Privileges and Immunities paradigm. As discussed, the

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[6] As discussed in more detail below, nearly all other challenges to the passport revocation regime have been procedural rather than constitutional, and have failed due to the FAST Act's improved procedural protections. *See*, *e.g.*, *Rowen v. Comm'r of Internal Revenue*, 2021 WL 1197663, at *11 (T.C. 3/30/2021) (Marvel, J., concurring in decision for IRS, while noting that "the opinion of the Court does not foreclose a constitutional challenge, in a future case with appropriate facts and squarely presented arguments, to the entire tax collection mechanism. . . ."). Most challenges also are brought *pro se*. The only other challenger to raise similar constitutional arguments, including Privileges and Immunities and *ne exeat* (by admittedly borrowing heavily from the briefing in this case) settled with the IRS before the Eleventh Circuit weighed in. *See Jones v. Mnuchin*, 2021 WL 864954 (S.D.Ga. 3/8/2021), *appeal dismissed*, 2021 WL 4166295 (11th Cir. 5/13/2021).

right to travel internationally is protected in the Magna Carta and deemed a fundamental right by Blackstone. *Crandall* addressed interstate travel, but expressly described international travel as a protected Privilege. 73 U.S. at 43-44. *Saenz* also focused on interstate travel, but the decision speaks of travel generally as a protected Privilege. 526 U.S. at 498-503, 512. And in any event, *Saenz* did not reverse, question or qualify this Court's prior pronouncements about the status of international travel.

Under the post-*Slaughter-House* Privileges and Immunities paradigm, Privileges that stem from national citizenship (few though they be) enjoy constitutional protection. The right to travel internationally unquestionably stems from national rather than state citizenship. *E.g. Zschernig v. Miller*, 389 U.S. 429, 441 (1968) (states have no authority to regulate international travel); 8 U.S.C. § 1185(b) (requiring citizens to have a valid U.S. passport, issued by the State Department, to enter or exit the country); 6 U.S.C. § 201 *et seq*. (giving control of travel in and out of the country to the new federal Department of Homeland Security and its Transportation Security Administration).

This Court has not had much occasion to define a government's ability to curtail a protected Privilege, but the analysis would presumably follow the framework developed in modern civil rights jurisprudence of requiring a sufficiently strong governmental interest and appropriately narrow tailoring. *E.g. Flores*, 507 U.S. at 302. The few relevant Privilege cases this Court has decided confirm that a government's interest in

raising or preserving revenue, while certainly legitimate and important, is not a sufficient reason to warrant curtailing an established constitutional Privilege like the right to travel. *Crandall*, *supra*; *Saenz*, *supra*. So too here. The Government may collect tax debts with exceptional powers that make private debt collectors drool, but the Government may not collect tax debts by suspending citizens' constitutionally protected Privileges until they pay up. *Id.*

The lower courts misunderstood or ignored this straightforward analysis, and instead accepted the Government's straw argument that Maehr was trying to improperly invoke the Privileges and Immunities Clauses. Maehr repeatedly explained to the lower courts that he was *not* invoking the Constitution's two Privileges and Immunities Clauses. App. 9; *see Pollack v. Duff*, 793 F.3d 34, 40-41 (D.C.Cir. 2015) (rejecting a job applicant's challenge to a federal residency requirement based on Article IV Section 2 because that provision applies to the States). Maehr argued instead that the *jurisprudence* of Privileges and Immunities, properly understood, prevents even the federal government from abridging an established Privilege without adequate reason because the Privileges and Immunities of citizenship are inalienable rights protected against undue infringement by *all* government actors, local, state and federal, from the lowliest functionary to the king or president. *E.g. Timbs*, 139 S.Ct. at 692-97 (Thomas, J., concurring, explaining how Privileges of citizenship historically operated in the Anglo-American legal tradition).

Nor does Maehr's argument require any sort of "reverse incorporation" of the Privileges and Immunities Clauses against the federal government, as the Tenth Circuit believed. App. 10. When the federal government violates an established constitutional right, an equitable remedy at least is available (which is what Maehr seeks – reinstatement of his passport). *See Dugan*, 372 U.S. at 621-22 (mandamus lies to compel federal officers to conform their conduct to constitutional requirements); *Ziglar v. Abbasi*, 137 S.Ct. 1843, 1861 (2017) (explaining how injunctive relief is generally available in a *Bivens* situation, though a damages remedy may not be).

This Court's recent decision in *United States v. Windsor* is particularly apposite because this Court struck down a **federal** statute (DOMA) as an unconstitutional "deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution." 570 U.S. 744, 774 (2013). Maehr's claims are similarly postured: the FAST Act's passport revocation regime similarly deprives him of an established liberty protected by the Fifth Amendment (international travel, per *Kent*), for a similarly insufficient reason (raising general revenue, per *Crandall* and *Saenz*).

This case presents a rare opportunity to develop how a protected Privilege may be legitimately qualified under the revived Privileges and Immunities paradigm. This Court's substantive due process holdings blaze the way, and suggest a sensible and sound disposition: the right to travel internationally yields to sufficiently apt and compelling Government interests like

national security (*Agee*) and foreign policy (*Wald*), but does not yield to the Government's general interest in collecting or preserving revenue (*Saenz* and *Crandall*).

Additionally, this case presents the perfect vehicle for this Court to further develop the Privileges and Immunities paradigm because it does not require the Court to overrule the *Slaughter-House Cases* or otherwise tear down the existing edifice of substantive due process. *Saenz*, *supra*.

III. The right of international travel is a fundamental right in the post-*Glucksberg* binary substantive due process framework.

Maehr acknowledged below that the right of international travel does not fit neatly into this Court's substantive due process framework because of the way it evolved: the foundational cases of *Kent* and *Aptheker* describe international travel as a fundamental right; but then this Court suggested in dicta in *Aznavorian*, *Haig* and *Wald* that the right was less fundamental (albeit without reversing or limiting *Kent* and *Aptheker*); and the right was not mentioned in *Glucksberg*, when this Court listed some fundamental rights and admonished lower courts not to recognize any more.

This Court's decisions addressing the substantive due process status of the right of international travel are thus in tension with themselves, leading lower courts to resolve the tension by applying a *Glucksberg*-based presumption against fundamental status. But

close reading of and fidelity to this Court's precedents confirms that if the right must be categorized in a binary fundamental-or-not framework, it belongs in the fundamental category. The Court should at least grant certiorari to clarify its own schizophrenic pronouncements in this area.

As discussed, the right to travel internationally is recognized in the Magna Carta and described as an "absolute" right by Blackstone. That is as impressive an historical pedigree as any fundamental right enjoys. *See Twining*, 211 U.S. at 100-08 (substantive due process protects those rights established as "law of the land" in English law through such great documents as the Magna Carta, the Petition of Right, and the Bill of Rights); *District of Columbia v. Heller*, 554 U.S. 570, 593-94 (2008) (grounding the individual right to bear arms in the 1689 Bill of Rights and Blackstone).

In *Kent*, this Court further described the right using the substantive due process paradigm's lexicon for fundamental rights: "deeply engrained in our history," "part of our heritage," and "basic in our scheme of values." 357 U.S. at 125-26. While *Kent* and *Aptheker* had political overtones (involving the freedom to advocate communism), neither decision invoked the First Amendment. *Aptheker* in particular rejected the Government's argument that it could revoke passports for any reason that bore a "reasonable relationship" to national security, and struck down the statute as facially unconstitutional because legislative restrictions on "fundamental personal liberties" must be narrowly tailored. 378 U.S. at 504-05, 508, 514.

The lower courts here nonetheless focused on this Court's later dictum from *Aznavorian* that while the "right of interstate travel is virtually unqualified," the right of international travel "can be regulated within the bounds of due process." 439 U.S. at 176. This language was dicta in every case it appears: in *Aznavorian* because nobody stopped Grace Aznavorian from traveling to Mexico; and in *Agee* and *Wald* because the Government there had compelling reasons to restrict travel: national security and foreign policy.

In any event, a right can be fundamental and still be "qualified" by sufficiently compelling governmental interests, like national security. *Zemel*, *supra* (equating rights of interstate and international travel, but qualifying the latter due to national security concerns); *Agee*, 453 U.S. at 306-07 (employing national security justification before quoting *Aznavorian* dictum). The fact that the right of international travel has been more frequently qualified than the right of interstate travel does not make it less than fundamental.

Similarly, *Aznavorian*'s comment that the right of international travel may be regulated "within the bounds of due process" does not describe it as a less-than-fundamental right. The vague phrase "regulation within the bounds of due process" describes the gamut of due process protections, including for fundamental rights. *See*, *e.g.*, *Haynes v. Washington*, 373 U.S. 503, 515 (1963) (holding "bounds of due process have been exceeded" by the State of Washington's practice of holding suspects incommunicado as long as necessary to coerce a written confession, and then allowing the jury

to determine the voluntariness of the coerced confession at trial).

Thus, this Court should resolve the tension and clarify its own inconsistent caselaw regarding the right of international travel by re-affirming its holdings (*Kent* and *Aptheker*) and putting the later dicta in their place. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 379 (1994) ("It is to the holdings of our cases, rather than their dicta, that we must attend. . . .").

IV. The Court can also apply an intermediate scrutiny analysis.

Per *Glucksberg*, this Court currently employs a binary substantive due process framework: a right is either fundamental or less than. And given *Glucksberg*'s admonition against further innovations in this area, litigants are naturally hesitant to suggest novel approaches.

Yet Tenth Circuit Judge Lucero suggested a novel approach in his concurrence: because the right of international travel doesn't fit neatly into the *Glucksberg* binary, it should be analyzed under an intermediate scrutiny standard. However, Judge Lucero halted his analysis there because neither party had expressly argued for the application of intermediate scrutiny. App. 29-30. That is not surprising given that this Court has never recognized an intermediate scrutiny tier in its substantive due process framework, and *Glucksberg* discourages (*i.e.* effectively forbids) innovation. But there was no waiver. The parties thoroughly and

capably briefed *substantive due process* under the existing binary framework, with Maehr arguing for fundamental status and the Government arguing for rational basis review. Introducing an intermediate level of scrutiny does not change these arguments or require any new arguments – it simply improves the degree of resolution the Court employs in its analysis, allowing the Court to require more precise tailoring between the government's interest and the way the law achieves that interest.

And in any event, Maehr did indeed provide an intermediate scrutiny analysis in his briefing below – in the *ne exeat* analysis.[7]

The *ne exeat* cases do not discuss whether the right of international travel is fundamental or less than, or mention tiers of scrutiny at all. But these cases effectively apply an intermediate scrutiny type of analysis in holding that while the government's interest in collecting tax debts may be legitimate and important, the right to travel internationally has enough constitutional weight that the government may not indiscriminately curtail the right to make collecting tax debts easier. Rather, the government must tailor its use of passport revocation to those situations where traveling internationally might actually impair debt collection, such as where the debtor is trying to secrete assets abroad. *See Shaheen*, 445 F.2d at 11. Judge (later Justice) Stevens' description of the right

[7] Judge Lucero apparently agreed, per his vote to grant reconsideration. App. 89.

of international travel's constitutional weight articulates an intermediate scrutiny standard as well as any of the Supreme Court's contemporaneous sex discrimination cases:

> When the relief impinges upon a constitutionally protected personal liberty, . . . the Government has the burden of demonstrating that the restraint of liberty is a necessary, and not merely coercive and convenient, method of enforcement.

Id. at 10-11.

Indeed, it may be no coincidence that *Shaheen* was decided just a few months before *Reed v. Reed*, 404 U.S. 71 (1971), this Court's first decision in the line of sex discrimination cases that established the intermediate scrutiny tier in equal protection jurisprudence. And *Reed* did not use the terminology of "intermediate scrutiny," "important objectives" or "substantial relationship" – that terminology did not coalesce until later cases like *Craig v. Boren*, 429 U.S. 190, 197 (1976).

This case is where *Reed* was in terms of introducing an intermediate level of scrutiny into the substantive due process framework. The evolution of intermediate scrutiny in the equal protection context provides a model for how this Court can better calibrate and fine tune its substantive due process framework *without expanding it*.

Per Maehr's *ne exeat* analysis and arguments developed below, collecting tax debts may be a legitimate and import governmental objective, but the right to

travel internationally has enough substantive due process weight that the government may not use it as an indiscriminate cudgel to compel compliance – as the FAST Act's passport revocation regime does. App. 4-5. *Some* degree of tailoring is required. National security is a good enough, and hence constitutionally sufficient, reason to revoke a passport. *Agee*. So is foreign policy. *Wald*. And in the tax debt collection context, courts honor substantive due process by imposing the *ne exeat* predicates: requiring proof that the debtor is trying to secrete assets abroad, or has done so and refuses to repatriate them, to justify passport revocation. *Shaheen, supra*.

As a result, this Court can – *without expanding substantive process* – follow the intermediate scrutiny analysis to its logical and constitutionally compelled conclusion to strike down the FAST Act's passport revocation regime, or save the regime by applying the *ne exeat* predicates as a limiting construction.

V. Additional considerations for the Court's certiorari analysis.

Maehr preemptively addresses some of the Government's anticipated arguments against granting certiorari.

A. A circuit split is not needed, and will probably never develop.

The most obvious argument against certiorari is the absence of a circuit split. But while a true circuit split may be a sufficient reason for granting certiorari, it is hardly a necessary condition.

The lack of a circuit split here is more than offset by the many features that make this case an excellent vehicle for developing the Privileges and Immunities and substantive due process issues raised here: it provides a clean presentation of these profound constitutionals issues;[8] is brought by experienced counsel;[9] and no other FAST Act challenge has developed the constitutional issues as thoroughly as Maehr has here, including through Privileges and Immunities and *ne exeat*.[10]

Also, it is unlikely that a split ever will develop over the FAST Act's collateral sanction regime of passport revocation, for several reasons. First, the Government has been cleverly preempting constitutional

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[8] Unlike other challenges, this case separates the passport revocation challenge from the underlying tax dispute.

[9] *See Reichle v. Howards*, 566 U.S. 658 (2012). Most other FAST Act challenges have been brought *pro se*, with predictable results. *E.g. United States v. Hupp*, 2021 WL 4171722 (C.D.Ill. 6/8/2021); *Kaebel v. CIR*, 2021 WL 4101702 (T.C. 9/9/2021); *Wall v. United States*, 2019 WL 7372731 (Fed.Cl. 12/31/2019). Counselled challenges have fared no better. *E.g. Franklin v. United States*, 2021 WL 4458377, *7-10 (N.D.Tex. 9/29/2021).

[10] The only other challenge to raise Privileges and Immunities and *ne exeat* did so by borrowing from Maehr's briefing. *Jones v. Mnuchin*, *supra*.

challenges by leading tax debtors down a garden path of challenging the IRS's certification of their tax debts, based on the position that the only waiver of sovereign immunity in the statutory scheme, and hence the only cognizable challenge, is to the certification under 26 U.S.C. § 7345(e)(1). *See Rowen v. CIR*, 2021 WL 1197663 (T.C. 3/30/2021); *McNeil v. United States*, 2021 WL 1061221 (D.D.C. 3/18/2021). Maehr did not fall for this misdirection, as others have.

Next, if counsel in later cases avoid the misdirection and decide to try the arguments raised here in other circuits, the result will almost certainly be the same. That is the predictable result of *Glucksberg*'s admonition to lower courts to leave substantive due process where it is, no further tinkering permitted. 521 U.S. 720-22. Lower courts can thus be counted on to resolve all substantive due process questions against any development – *i.e.* not just against further expansion, but even against the sort of *refinement* without expansion suggested here. *See* App. 42. *Glucksberg* effectively makes any development in this area the exclusive province of this Court.

Additionally, lower courts' *Glucksberg*-inspired hesitance to touch substantive due process naturally spills over into any development of the recently-revived Privileges and Immunities paradigm. As this case evidences, lower courts may not understand *Saenz*'s revival of the Privileges and Immunities paradigm of civil rights protection. App. 9-11; *see also Jones v. Mnuchin*, 2021 WL 864954 at *3 (similarly misconstruing and rejecting the Privileges and Immunities

arguments borrowed from Maehr's briefing). But even lower courts that do understand this program will likely not dare try to advance the ball themselves in a post-*Glucksberg* environment. If there is to be any consideration and development of the constitutional issues raised in this petition, the Court will have to start that ball rolling itself.

B. This collateral sanction regime is about debt collection, not shared sacrifice.

The Government has suggested below that a collateral sanction regime is appropriate for tax collection, since paying taxes is a type of shared sacrifice for the common good – like participation in the draft.

But just as the Government has powerful tools to compel citizens to perform required military service during war or a draft, the Government has powerful tools to prevent tax *evasion*. The FAST Act's passport revocation regime does not target tax evaders. It applies to all citizens who get $50,000 or more behind in their taxes, regardless of their views of the tax laws, and whether they flouted those laws or just had a bad financial year. And there are many ways that our complex tax laws can result in taxpayers being utterly surprised by massive tax bills, such as owning stock in a company that undergoes a tax inversion. The Government can improve "tax compliance" by increasing prosecutions of and penalties for tax evasion. The FAST Act's passport revocation regime, by contrast,

addresses judgment collection only, regardless of the tax debtor's ability to comply.

C. Differences in the Tax Code's *ne exeat* statute and caselaw are not relevant.

In its efforts below to counter the *ne exeat* analysis, the Government went to great lengths to distinguish the Tax Code's *ne exeat* statute and cases on every available basis. These differences, however, do not diminish the fact that *ne exeat* cases like *Shaheen* explain precisely how the right of international travel may be "regulated within the bounds of due process" by balancing the right's substantive due process weight against the Government's interest in collecting tax debts. *Aznavorian*, 439 U.S. at 176.

CONCLUSION

Depriving citizens of their constitutional rights can be a very effective way of motivating them to pay debts, or do anything else the Government wants them to do. That is why the judicial branch guards established constitutional rights against infringement and overreach by the executive and legislative branches. That is why lawsuits like this one are necessary to maintain a free society.

The Government may be able to collect Maehr's tax debt many ways (including by setting off his modest Social Security benefits), but the Government may

not collect the debt by revoking his constitutional rights until he pays up.

This Court should grant certiorari.

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