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Harris Institute Report

***The U.S. Gun Violence Crisis:
Human Rights Perspectives and Remedies***

By

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I. EXECUTIVE SUMMARY

1. The Harris Institute has been conducting research on gun violence in the United States and human rights law since fall 2017 in collaboration with the Washington University's Institute for Public Health.¹ We have examined open source information, including federal databases, non-governmental websites, medical and legal research journals, reputable newspaper sources, and other media. Our research revealed a startling and incontrovertible fact: gun violence in the United States has reached crisis proportions. In 2017, the most recent year for which hard data is available, 173,500 people were shot, over 39,700 of which died: 60.0% from suicide, 36.6% from homicide, 1.4% from legal intervention, and 1.2% from unintentional (accidental) deaths.² On average in 2017, nearly 109 people died from guns and another 366 suffered nonfatal firearm injuries every day.³
2. Mass shootings⁴ take place with alarming frequency in schools, in places of worship, at concerts, and in theaters, creating a general climate of fear and uncertainty that interferes with the enjoyment of fundamental human rights and causes psychological stress and mental harm, including post-traumatic stress disorder (PTSD) and depression, for both the direct victims and Americans more broadly.⁵
3. Youth, women, and individuals of color are disproportionately victimized by U.S. gun violence. An overwhelming majority of all child firearm deaths in high-income countries occur in the United States⁶ and firearm injuries are now the second leading cause of death among U.S. youth aged 15-29.⁷ Women in the United States are 16 times more likely to be killed with a gun than in economically-similar countries.⁸ Furthermore, African Americans of all ages are not only more likely to become the victim of firearm homicide than their white counterparts, but are also more likely to be shot by police and by individuals using so-called

¹ See generally Harris Institute Launches an Initiative on Gun Violence and Human Rights, <http://law.wustl.edu/harris/pages.aspx?id=11032>. The Harris Institute and the Institute for Public Health hosted the conference *Interdisciplinary and Human Rights Approaches to the Gun Violence Crisis in the United States* in November 2018. The authors would like to thank the students of the Washington University School of Law Gun Violence and Human Rights research project for their research. We would also like to especially express our appreciation to the Brady Campaign to End Gun Violence, the Center for American Progress, Giffords Law Center to Prevent Gun Violence, and Everytown for Gun Safety. Their research and comprehensive reports were instrumental in our research.

² CTR. FOR DISEASE CONTROL & PREVENTION (CDC), *Web-based Inquiry Statistics Query and Reporting System (WISQARS)*, www.cdc.gov/injury/wisqars/index.html [hereinafter CDC Reporting System].

³ *Id.*

⁴ See Annex 1: Glossary of Terms for a discussion of the various definitions of mass shootings and mass murder. When applicable, this Report will include the definition used in a particular study within the corresponding footnote.

⁵ See *infra* Section II(C).

⁶ See *infra* ¶¶ 14-15.

⁷ Parsons et al., *America's Youth Under Fire*, *infra* note 51.

⁸ See *infra* ¶¶ 18.

“Stand Your Ground” laws⁹ and to witness gun violence, which is accompanied by significant ‘snow-ball’ effects on health, education, and community stability.¹⁰

4. The proliferation of firearms is also of concern. While the percentage of the population owning guns has decreased, the number of civilian firearms in circulation in the United States has grown.¹¹ Indeed, by some estimates, 2009 marked the first year that the number of civilian guns in the United States surpassed the total U.S. population.¹² Moreover, firearms, including assault rifles,¹³ and ammunition are becoming more dangerous and powerful than ever before.¹⁴ These factors have contributed to the export of U.S. gun violence to other countries, most notably to Central and South America and the Caribbean.¹⁵
5. School shootings are especially problematic since they occur with relative frequency and victimize a population that is often young, helpless, and captive, as most children are required to attend school by law, and shootings have repeatedly occurred in public schools that are operated by the state. Students across the country now live in fear of being shot at their schools. Studies clearly demonstrate the serious psychological impact and negative developmental effects of school shootings on students and others across the country, far beyond the school and district immediately affected.¹⁶
6. On February 14, 2018 a nineteen-year-old killed seventeen people in his former high school in Parkland, Florida with a legally purchased AR-15 semi-automatic assault rifle.¹⁷ The Parkland shooting led to a public outcry and to renewed demands for legislative action at both the state and federal levels.¹⁸ Yet government authorities have been generally unresponsive to public demand. At the state level, the Florida legislature refused to consider an assault weapons ban just days after the shooting.¹⁹ At the federal level, President Trump

⁹ See Annex 1: Glossary of Terms.

¹⁰ See *infra* Section II(B).

¹¹ See Lisa M. Hepburn et al., *The U.S. Gun Stock: Results from the 2004 National Firearms Survey*, 13 INJURY PREVENTION 15 (2007).

¹² See, e.g., Christopher Ingraham, *There are now More Guns than People in the United States*, WASH. POST (Oct. 5, 2015), www.washingtonpost.com/news/wonk/wp/2015/10/05/guns-in-the-united-states-one-for-every-man-woman-and-child-and-then-some/.

¹³ See Annex 1: Glossary of Terms.

¹⁴ Tara McKelvey, *Why are US Mass Shootings Getting More Deadly?*, BBC NEWS (Nov. 7, 2017), www.bbc.com/news/world-us-canada-41890277; Anthony A. Braga & Philip J. Cook, *The Association of Firearm Caliber With Likelihood of Death From Gunshot Injury in Criminal Assaults*, JAMA NETWORK OPEN (July 27, 2018), jamanetwork.com/journals/jamanetworkopen/fullarticle/2688536.

¹⁵ See *infra* Section II(C).

¹⁶ See *infra* Section II(C).

¹⁷ Julie Turkewitz, Patricia Mazzei, & Audra D. S. Burch, *Suspect Confessed to Police that He Began Shooting Students ‘in the Hallways’*, N.Y. TIMES (Feb. 15, 2018), www.nytimes.com/2018/02/15/us/florida-shooting.html?emc=edit_na_20180215&nl=breaking-news&nid=66995365&ref=headline.

¹⁸ See *infra* note 187.

¹⁹ *Florida House Declines Debate on Assault Rifles*, NPR (Feb. 21, 2018), www.npr.org/sections/thetwo-way/2018/02/21/587548408/florida-house-declines-debate-on-assault-rifles-calls-porn-a-health-risk. There are similar

initially promised concrete action, including gun control measures,²⁰ but abandoned these commitments less than two weeks later, after meeting privately with the National Rifle Association (the “NRA”),²¹ a powerful lobbying organization.²² The President’s primary suggestion to halt school shootings was to increase armed guards at schools and to arm teachers, a controversial NRA-backed proposal.²³ He affirmed his commitment to this idea at the NRA’s annual convention on May 4, 2018 which both he and Vice-President Mike Pence attended.²⁴ His Secretary of Education, Betsy DeVos, recently proposed allowing schools to use federal education funds for firearms and firearm training.²⁵

7. The non-solutions offered by U.S. leaders have given rise to a feeling of hopelessness and futility in the United States that nothing effective will be done,²⁶ even though gun control

findings from other states. For example, in Kansas, students are demanding stronger gun control. Even though the state passed a law to keep guns away from domestic abusers, calls for an assault weapons ban, stronger background checks, and a ‘red flag’ bill” have been ignored. Instead, a bill prohibiting insurance companies from denying coverage to districts that allow conceal carry for teachers and other employees is being pushed through. See Jim McLean, *Despite Protests, Kansas Gun Control Efforts Stalled*, KCUR (Mar. 26, 2018), <http://kcur.org/post/despote-protests-kansas-gun-control-efforts-stalled#stream/0>; but see *Kansas Governor Signs Bill to Bar Guns From Domestic Abusers*, U.S. NEWS (Apr. 20, 2018), www.usnews.com/news/best-states/kansas/articles/2018-04-20/kansas-governor-signs-bill-to-bar-guns-from-domestic-abusers.

²⁰ Immediately following the Parkland shooting, President Trump proposed specific gun control measures on national television, such as increasing the age limit to purchase assault rifles, and he expressed support for 2013 legislation that would have drastically expanded mandatory background checks, actions that the NRA is opposed to. Michael D. Shear, *Trump Stuns Lawmakers with Seeming Embrace of Comprehensive Gun Control*, N.Y. TIMES (Feb. 2, 2018), www.nytimes.com/2018/02/28/us/politics/trump-gun-control.html.

²¹ Michael D. Shear & Sheryl Gay Stolberg, *Conceding to N.R.A., Trump Abandons Brief Gun Control Promise*, N.Y. TIMES (Mar. 12, 2018), www.nytimes.com/2018/03/12/us/politics/trump-gun-control-national-rifle-association.html.

²² For a brief history of the NRA’s influence in American politics, see Annex 1: Glossary of Terms.

²³ The effectiveness of these measures is in doubt. The presidents of the two largest unions that represent teachers and school staff reject the general proposal to put armed police or security officers in all schools, calling it “ill-conceived, preposterous, and dangerous.” *New NEA National Survey: Educators Overwhelmingly Reject Proposals to Arm Teachers*, National Education Association (2018), <http://www.nea.org/home/72972.htm>. Past incidents indicate that the presence of these armed individuals will not necessarily prevent a shooter from causing harm. Columbine and Parkland schools both had an armed guard and Virginia Tech had a full campus police force. Furthermore, studies have actually found that the presence of armed police on school campuses can have negative consequences for some students, resulting in the criminalization of children at increasingly younger ages, and pushing children – black and Latino children in particular – into the so-called ‘prison-pipeline.’ See *Protect Children, Not Guns, The Truth About Guns*, CHILDREN’S DEFENSE FUND (Mar. 2018), www.childrensdefense.org/wp-content/uploads/2018/07/the-truth-about-guns.pdf.

²⁴ Betsy Klein & Jeremy Diamond, *Trump Reassures NRA: ‘We Will Protect Your Second Amendment,’* CNN (May 4, 2018), www.cnn.com/2018/05/04/politics/trump-nra-convention-dallas/index.html. This was President Trump’s fourth consecutive address to the NRA’s annual meeting.

²⁵ Erica L. Green, *Betsy DeVos Eyes Federal Education Grants to Put Guns in Schools*, N.Y. TIMES, (Aug. 23, 2018), www.nytimes.com/2018/08/23/us/politics/devos-guns-in-schools.html. This would reverse a longstanding federal practice of not paying for weaponry for schools. While a \$50 million school bill in March 2018 expressly prohibited its funds for firearms, the 2015 Every Student Succeeds Act has no such prohibition. The \$1 billion support program this Act created, known as Student Support and Academic Enrichment grants, is aimed at the country’s most impoverished schools and is intended to be used for “three goals: providing a well-rounded education, improving school conditions for learning and improving the use of technology for digital literacy.” *Id.*

²⁶ Allen Rostron, *A New State Ice Age for Gun Policy*, 10 HARV. L. & POL’Y REV. 327, 332-35 (2016) (reviewing the failure of Congress to act following every mass shooting since the 2012 Sandy Hook incident).

laws are clearly constitutional²⁷ and can reduce gun violence.²⁸ Federal gun laws have become increasingly lax, restricting effective oversight of gun owners and dealers and allowing for significant loopholes that allow dangerous or at-risk persons to acquire firearms.²⁹ While some states have implemented stricter gun control laws, others have moved in the opposite direction and loosened theirs considerably.³⁰ However, a majority of Americans support reasonable gun control laws.³¹

8. This Report concludes that the failure of the U.S. government to exercise due diligence with respect to preventing and reducing gun-related violence through the adoption of reasonable and effective domestic measures has limited the ability of Americans to enjoy many fundamental freedoms and guarantees protected by international human rights law. These include the right to life and bodily integrity, the right to an education, the right to health, the rights to freedom of association, opinion, and expression, the right to share in cultural life, and the right to be free from discrimination and ill-treatment. These rights are enshrined in human rights treaties ratified by the United States, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Organization of American States Charter (OAS Charter), and the Constitution of the World Health Organization. They are also found in the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, and customary international law.³² The U.S. failure to respect its conventional obligations as well as customary international law norms has been and may further be addressed by human rights treaty bodies including the Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, as well as the United Nation Human Rights Council, the High Commissioner for Human Rights, the Inter-American Commission on Human Rights (IACHR), and the World Health Organization (WHO).³³
9. This Report analyzes the legal and factual dimensions of the U.S. gun violence crisis and recommends that advocates of gun reform (1) pursue potential avenues of inquiry before international fora to obtain authoritative interpretations of U.S. human rights obligations in respect to the duty to prevent and protect; (2) use those authoritative interpretations to shift the normative discourse in the United States away from a “gun rights rubric;” and (3)

²⁷ See *infra* Section III(A).

²⁸ See *infra* Section IV.

²⁹ See *infra* Section III(B) and (D).

³⁰ See *infra* Section III(C) and (D).

³¹ See, e.g., Colleen L. Barry et al., *After Newtown – Public Opinion on Gun Policy and Mental Illness*, 368 NEW ENG. J. MED. 1077 (2013); Kim Parker et al., *America’s Complex Relationship With Guns*, PEW RESEARCH CTR. (June 22, 2017), www.pewsocialtrends.org/2017/06/22/americas-complex-relationship-with-guns/.

³² See *infra* Section V.

³³ See *infra* Section VI(C).

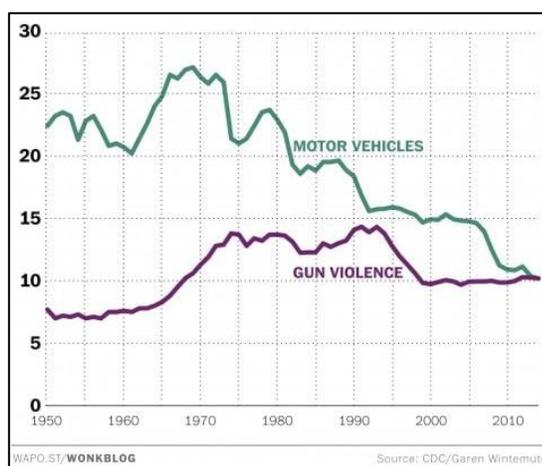
endeavor to integrate international legal interpretations of U.S. human rights obligations into U.S. domestic law at the federal, state, and local levels.³⁴

II. GUN VIOLENCE IN THE UNITED STATES

A. An Overview of U.S. Gun Violence

10. From 2008 to 2017, the most recent years for which data is available from the U.S. Centers for Disease Control and Prevention (CDC), 342,500 people died from firearm-related injuries in the United States.³⁵ That is an average of more than 34,000 annual gun deaths each year. In 2017, more than 173,500 people were shot, 39,700 of which died – the highest annual rate in decades.³⁶ On average in 2017, every day, nearly 109 people died from guns and 366 suffered non-fatal firearm injuries. Given the negative psychological and mental health consequences for those exposed to gun violence and their communities,³⁷ the true number of gun violence victims in the United States is considerably higher, but is difficult to quantify without further research.

Figure 1:
Deaths per 100,000 people from Firearms & Motor Vehicle Traffic Events, 1950 - 2010³⁸



³⁴ See, e.g., Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181 (1996); HAROLD HONGJU KOH, *THE TRUMP ADMINISTRATION AND INTERNATIONAL LAW* (2018); see also, e.g., The U.S. Human Rights Network (USHRN), www.ushrnetwork.org/ (a national network of organizations and individuals with the goal to build a human rights movement within the United States).

³⁵ CTR. FOR DISEASE CONTROL & PREVENTION (CDC), Wide-ranging Online Data for Epidemiologic Research (WONDER), *Underlying Cause of Death, Results: Firearm Deaths by Intent (1999-2017)*, wonder.cdc.gov/controller/datarequest/D76;jsessionid=2FF633EE3805969CB09F14197425EBBB.

³⁶ *Id.* See also CDC Reporting System, *supra* note 2.

³⁷ See *infra* Section II(C).

³⁸ Christopher Ingraham, *Guns are Now Killing as Many People as Cars in the U.S.*, WASH. POST (Dec. 17, 2015), www.washingtonpost.com/news/wonk/wp/2015/12/17/guns-are-now-killing-as-many-people-as-cars-in-the-u-s/?utm_term=.034af6f9ff11.

11. As shown in Figure 1, mortality rates from firearm violence have increased since the 1950s,³⁹ while mortality rates from motor vehicle accidents have continuously declined.⁴⁰ In the 1950s, there were relatively few government restrictions, regulations, or research studies regarding motor vehicle safety, resulting in high rates of death and injury.⁴¹ Following the adoption of seatbelt laws and other safety measures,⁴² motor vehicle deaths and injuries in the United States steadily declined.⁴³ Specifically, mortality rates from motor vehicle related traffic events declined by 59% from 1969 to 2012.⁴⁴
12. In contrast, few government regulations or research studies have focused on firearms, despite the growing public health crisis. Firearms have been exempted from safety regulations by the Consumer Product Safety Act since 1972, making guns one of the only consumer products manufactured in the United States that is *not* subject to federal health and safety regulations.⁴⁵ Gun manufacturers operate without any federal oversight as to how guns are designed or made.⁴⁶ In 1996, Congress adopted the Dickey Amendment,⁴⁷ resulting

³⁹ Garen J. Wintemute, *The Epidemiology of Firearm Violence in the Twenty-First Century United States*, 36 ANN. REV. PUB. HEALTH 5, 6 (2015).

⁴⁰ *Id.*

⁴¹ See CTR. FOR DISEASE CONTROL, *Achievements in Public Health, 1900-1999 Motor-Vehicle Safety: A 20th Century Public Health Achievement*, 48 MMWR 369 (May 14, 1999), www.cdc.gov/mmwr/preview/mmwrhtml/mm4818a1.htm.

⁴² In 1966, the U.S. government adopted the Highway Safety Act and the National Traffic and Motor Vehicle Safety Act, which authorized the federal government to set and regulate standards for motor vehicles and highways. Subsequently, vehicles have been mandated to include safety features, including headrests, seatbelts, energy-absorbing steering wheels, airbags, and shatter-resistant windshields. Research on vehicle safety has led to many advances, including anti-lock brakes and the collapsible steering column. Moreover, the government has focused heavily on implementing and enforcing laws and penalties related to drunk driving and mandatory seat belt use and engaged in public education to encourage safe vehicular behavior. More recently, the government imposed mandates related to electronic stability systems and increased penalties for distracted driving. See generally Ingraham, *supra* note 38. As a result, motor vehicle deaths and injuries have sharply decreased. For example, since the 1980's, new and tougher state laws on drunk driving, public education campaigns on the associated risks, and stricter law enforcement resulted in annual motor-vehicle deaths involving alcohol to have decreased by more than 40% since 1982. Rachel N. Lipari et al., *Driving Under the Influence of Alcohol and Illicit Drugs*, CHHSQ REP. (Dec. 27, 2016), www.samhsa.gov/data/sites/default/files/report_2688/ShortReport-2688.html.

⁴³ See U.S. DEP'T OF HEALTH & HUM. SERV., *Deaths By Motor Vehicle-Related Injuries in the U.S. from 1950 to 2015 (per 100,000 population)*, Statista, (last visited Jun. 20, 2018), www.statista.com/statistics/184607/deaths-by-motor-vehicle-related-injuries-in-the-us-since-1950/.

⁴⁴ Wintemute, *The Epidemiology of Firearm Violence*, *supra* note 39, at 6.

⁴⁵ Olivia Li, *Cars, Toys, and Aspirin Have to Meet Mandatory Safety Standards. Guns Don't. Here's Why*, THE TRACE (Jan. 6, 2016), www.thetrace.org/2016/01/gun-safety-standards/. In the United States, the Consumer Product Safety Commission regulates household and recreational products, the Food and Drug Administration monitors the safety of food, cosmetics, medical devices, and drugs, and the National Highway Traffic Safety Administration regulates motor vehicles, car seats, and tires.

⁴⁶ *Id.*

⁴⁷ In 1996, Congress pushed through language in an annual appropriations bill that prohibited funds allocated for “injury prevention and control” at the Centers for Disease Control to be used “to advocate or promote gun control.” Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-244 (1996). In July 2018, Congress voted again not to fund gun violence prevention research. See Jacqueline Howard, *Gun Violence Research Funding gets Snub from House Appropriations Committee*, CNN (July 12, 2018), www.cnn.com/2018/07/12/health/gun-violence-research-house-gop-bn/index.html.

in a near complete ban on federally-funded research related to firearms and gun violence.⁴⁸ Since the passage of the Dickey Amendment, annual CDC funding for research on gun violence has fallen 96%.⁴⁹ This has limited constructive research on ways that gun possession could be made less dangerous.⁵⁰ The U.S. government is fully capable of and equipped to effectively manage the gun violence crisis and prevent future loss of life if it has the will to do so.

13. America’s gun violence problem has impacted the country’s youth in particular.⁵¹ In 2016, 3,128 children and teens died from guns in the United States; one every 2 hours and 48 minutes.⁵² A further 17,223 children and teens are estimated to have suffered non-fatal gunshot injuries that year.⁵³ Firearm injuries – including from homicide, suicide, and accidental shootings – are the third leading cause of death among all children aged 1-17.⁵⁴ While effective policy and lawmaking have significantly decreased fatalities from vehicle accidents, persistent governmental inaction has led to an increase in gun deaths among young people in the United States. 2014 reversed a seven-year trend of declining child and teen deaths by firearm.⁵⁵ This upward trend continued in 2015 and 2016.⁵⁶ Indeed, the rate of gun deaths among children and teens in 2016 was 41% higher than it was in 1963, when data was first collected from all states.⁵⁷ This is a uniquely American problem – among all

⁴⁸ This provision has been interpreted as a prohibition on any federally-funded research on gun violence. *See also* Arthur L. Kellermann & Frederick P. Rivara, *Silencing the Silence on Gun Research*, 309 J. AM. MED. ASS’N 549 (2013). In 2015, Congressman Dickey who sponsored the bill, spoke with regret about the effect it had, saying that, much like research into making motor vehicles safer occurred without the idea that cars would be taken off the road, research on gun violence and gun control should have been conducted, without having it interfere with the individual right to own a gun. He said, “I wish we had started the proper research and kept it going all this time.” *Ex-Rep. Dickey Regrets Restrictive Law on Gun Violence*, NPR (Oct. 9, 2015), www.npr.org/2015/10/09/447098666/ex-rep-dickey-regrets-restrictive-law-on-gun-violence-research.

⁴⁹ *See Access Denied: How the Gun Lobby is Depriving Police, Policy Makers, and the Public of the Data we Need to Prevent Gun Violence*, EVERYTOWN FOR GUN SAFETY (2013), everytownresearch.org/documents/2015/04/access-denied.pdf.

⁵⁰ There are likely to be many ways to reduce firearms deaths, but innovation in gun safety and oversight of manufacturing is limited. *See* Joseph Sanderson & Norman Silber, *Unsafe at Any Range: Treat Guns Like the Consumer Products That They Are*, HUFFINGTON POST (Jun. 29, 2013), www.huffingtonpost.com/norman-i-silber/guns-consumer-regulation_b_3174972.html (discussing how design rules could help save lives, including integrated personalization technology in guns including fingerprint readers to reduce unintentional deaths and crimes committed with stolen guns, loaded chamber indicators, which researchers have conservatively estimated could prevent 20% of unintentional gun deaths, and heavier trigger-pulls).

⁵¹ *See generally* Chelsea Parsons et al., *America’s Youth Under Fire*, CTR. FOR AMERICAN PROGRESS (May 4, 2018), www.americanprogress.org/issues/guns-crime/reports/2018/05/04/450343/americas-youth-fire/ (analyzing data from the Bureau of Justice Statistics “National Crime Victimization Survey 2012-2016,” available at <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=245>).

⁵² *Protect Children Not Guns Factsheet, 2016 Child Gun Deaths*, CHILDREN’S DEFENSE FUND (Feb. 2018), www.childrensdefense.org/wp-content/uploads/2018/08/cdf-protect-children-not-guns.pdf.

⁵³ CDC Reporting System, *supra* note 2, Nonfatal Injury Reports, 2000 – 2016.

⁵⁴ Katherine Fowler et al., *Childhood Firearm Injuries in the United States*, 140 AM. ACAD. PEDIATRICS (July 2017). This CEDC report analyzed gun-related homicides, suicides, and accidental deaths among U.S. children from 2002-2014.

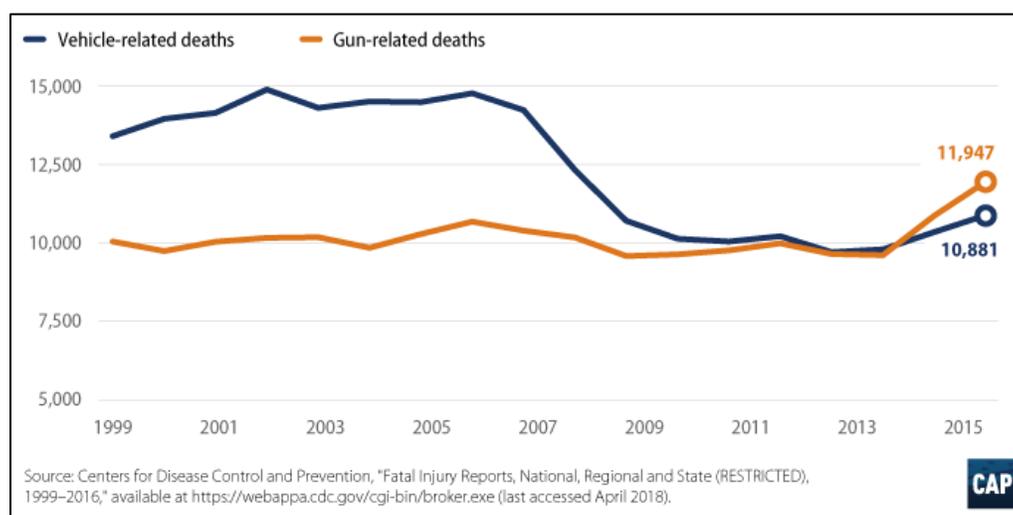
⁵⁵ Children’s Defense Fund, 2016 Child Gun Deaths, *supra* note 52.

⁵⁶ *Id.*

⁵⁷ *Id.*

high-income countries, 91% of firearm deaths among children aged 0-14 occur in the United States.⁵⁸

Figure 2:
Total Gun-Related Deaths versus Vehicle-Related Deaths of Young Americans, 1999-2016⁵⁹



14. The crisis also severely affects youth aged 15-29. Firearm injuries are now the second leading cause of death among this age group, recently overtaking vehicle accidents, as seen in Figure 2, and second only to drug abuse – 11,947 individuals of this age died as the result of firearms in 2016.⁶⁰ While individuals this age only accounted for 2.2% of deaths from all causes in the United States in 2016 (2.7 million deaths), they accounted for 31% of all gun deaths and 57% of all gun-related homicides.⁶¹ This group is also at a heightened risk for becoming the victim of a violent crime involving a gun and is victimized by guns at a rate that is 69% higher than the national average compared to other age groups.⁶²
15. The United States has, by far, the highest number and rate of mass shootings in the world⁶³ and mass shootings are becoming more frequent.⁶⁴ One study found that, as of August 15,

⁵⁸ *Id.*

⁵⁹ See Parsons et al., *America's Youth Under Fire*, *supra* note 51.

⁶⁰ *Id.*

⁶¹ *Id.*

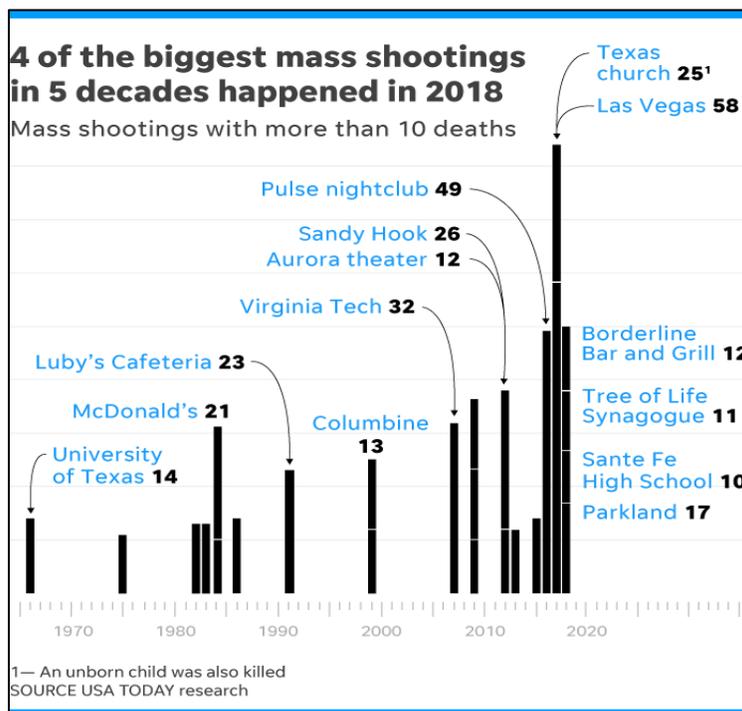
⁶² *Id.*

⁶³ James M. Shultz et al., *Multiple Vantage Points on the Mental Health Effects of Mass Shootings*, 16 CURRENT PSYCHIATRY REP. 469 (2014).

⁶⁴ Researchers from Harvard School of Public Health and Northeastern University found that the rate of mass shootings tripled during the period of 2011 to 2014 when defining mass shooting as: "public attacks in which the shooter and victims were generally unknown to each other and four or more people were killed." *Mass Shootings Becoming More Frequent*, HARV. SCH. PUB. HEALTH (2014), www.hsph.harvard.edu/news/hsph-in-the-news/mass-shootings-becoming-more-frequent/.

2018, there had been 1,810 mass shootings, killing at least 2,031 people and wounding another 7,642⁶⁵ since the December 2012 Sandy Hook Elementary School shooting in Newtown, Connecticut, which killed 20 children and six educators.⁶⁶ Multiple studies and reports have determined that an average of about one mass shooting occurred every day over the last nearly five and a half years.⁶⁷

Figure 3: Mass Shootings in the United States with 10+ Deaths (1960's to Present)⁶⁸



⁶⁵ See German Lopez, Ryan Mark & Soo Oh, *After Sandy Hook We Said Never Again. and Then We Let 1,692 Mass Shootings Happen*, VOX (last updated Aug. 15, 2018), www.vox.com/a/mass-shootings-sandy-hook (this database uses mass shooting to mean “four or more people, excluding the shooter, shot but not necessarily killed at the same general time and location.”); see also GUN VIOLENCE ARCHIVE, *supra* note 4.

⁶⁶ *The Banality of Mass Murder: America's Latest School Slaughter*, THE ECONOMIST (Feb. 15, 2018), www.economist.com/blogs/democracyinamerica/2018/02/banality-mass-murder. The shooter, who committed suicide as first responders arrived at the school, shot and killed his mother at their home before going to the school and committing the mass shooting.

⁶⁷ Lopez et al., *supra* note 65; see also Sharon LaFraniere, *How Often Do Mass Shootings Occur? On Average, Every Day, Records Show*, N.Y. TIMES (Dec. 2, 2015), www.nytimes.com/2015/12/03/us/how-often-do-mass-shootings-occur-on-average-every-day-records-show.html (finding that the United States averaged more than one mass shooting per a day in 2015); John Haltiwanger, *There Have Been More Mass Shootings in the U.S. in 2017 Than Days*, NEWSWEEK (Aug. 29, 2017), www.newsweek.com/there-have-been-more-mass-shootings-days-2017-656681 (finding that there was more than one mass shooting per day more than halfway into 2017).

⁶⁸ Susan Miller & Kevin McCoy, *Thousand Oaks Makes 307 Mass Shootings in 311 Days*, USA TODAY (Nov. 8, 2018), www.usatoday.com/story/news/nation/2018/11/08/thousand-oaks-california-bar-shooting-307th-mass-shooting/1928574002/.

16. School shootings, in particular, have become a common occurrence. More people have died or been injured in mass school shootings in the United States in the last 18 years than in the entire previous century.⁶⁹ Although school shootings occurred sporadically in the past, they have been steadily increasing since 1979.⁷⁰ As of May 25, 2018, 23 school shootings happened in 2018 where someone was hurt or killed (not including the shooter); only 21 weeks into the year, that averaged to more than one per week.⁷¹ Another 18 shootings occurred on school grounds in the first five months of 2018 in which no one was injured.⁷² More than 215,000 children at 217 schools (excluding colleges and universities) have experienced gun violence on their campus since the Columbine shooting in 1999.⁷³ At least 141 individuals – including students, educators, and others – have been killed, with another 287 injured in these incidents.⁷⁴ Taking into account the families of students, the first responders and medical professionals who treat the victims, and other immediate community members, the number of individuals directly impacted by these shootings is even larger.
17. The proliferation of guns in the United States also influences the country’s suicide rates. There are nearly twice as many gun-suicides every year as gun-homicides⁷⁵ and suicide was the tenth leading cause of death for the entire U.S. population in 2016, according to CDC data.⁷⁶ More than half of suicide deaths happen⁷⁷ by gunshots.⁷⁷ The availability of a firearm is

⁶⁹ Antonis Katsiyannis et al., *Historical Examination of United States Intentional Mass School Shootings in the 20th and 21st Centuries: Implications for Students, Schools, and Society*, J. CHILD & FAM. STUD. (Feb. 2018) (defining a mass school shooting as “one or more people intentionally plan and execute the killing or injury of four or more people, not including themselves, using one or more guns . . . on school grounds during the school day or during a school-sponsored event on school grounds.” This study only looked at K-12 schools and excluded organized gang shootings. *Id.* at 2564).

⁷⁰ *Id.* (finding that deaths from *mass* school shootings went from twelve people in the 1980’s, to thirty-six in the 1990’s, fourteen in the 2000’s, and a high of fifty-one in the 2010’s as of February 2018).

⁷¹ Saeed Ahmed & Christina Walker, *There Has Been, on Average 1 School Shooting Every Week This Year*, CNN (last updated May 25, 2018), www.cnn.com/2018/03/02/us/school-shootings-2018-list-trnd/index.html. This database includes a school shooting only if it involves at least one person being shot (not including the shooter) and occurred on school grounds. The count includes grades kindergarten through college/university and includes shootings that are associated with gang violence, fights, and domestic violence. Accidental discharges of a firearm are included in this count, so long as the first two parameters are met.

⁷² *Gunfire on School Grounds in the United States*, EVERYTOWN FOR GUN SAFETY (accessed May 25, 2018), everytownresearch.org/gunfire-in-school/. This methodology counts every time a firearm discharges a live round inside or into a school building, campus, or grounds. It does not include the number of times firearms were brought into a school but not discharged.

⁷³ School Shooting Database, *More Than 215,000 Students Have Experienced Gun Violence at School Since Columbine*, WASH. POST (accessed May 27, 2018), www.washingtonpost.com/graphics/2018/local/school-shootings-database/?utm_term=.6b0520326e58 [hereinafter Washington Post School Shooting Database]. This database only counts school shootings that occurred on campus immediately before, during, or just after classes and excludes accidental discharges that resulted in no injuries to anyone but the person using the gun and suicides that pose no threat to other children.

⁷⁴ *Id.*

⁷⁵ CDC Reporting System, *supra* note 2.

⁷⁶ *Id.*

a crucial factor in whether a suicide will be attempted *and* whether it will be fatal.⁷⁸ Firearms are the most lethal method of suicide – 82.5% of attempted suicides with firearms result in death.⁷⁹ This is compared to a lethality rate of 1.5% for drug/poison ingestion, 61.4% for suffocation/hanging, and 34.5% for jumping.⁸⁰ This efficiency is particularly concerning as previous research indicates that many people who attempt suicide spend 10 minutes or less contemplating their decision.⁸¹ Studies have shown that the presence of a gun in the home increases an individual’s risk of death by suicide between three and five times⁸² and state suicide rates tend to increase in correlation to gun ownership rates.⁸³ In regards to firearms and suicide, children are also impacted greatly. In 2011, 41% of suicide deaths for individuals under age 21 were by firearm.⁸⁴ One study found that more than half of all suicides among children aged 1-17 over a ten year period occurred with a gun.⁸⁵ Child firearm suicide rates *significantly increased* – 60% – between 2007 and 2014.⁸⁶

18. Firearms also have a great impact on the rates and severity of domestic violence in the United States, especially towards women and children. Women in the United States are *sixteen times* more likely to be murdered by a gun than in economically similar countries.⁸⁷ The

⁷⁷ See Madeline Drexler, *Guns & Suicide: The Hidden Toll*, HARV. SCH. PUB. HEALTH MAGAZINE (Spring 2013), www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/ (2013).

⁷⁸ See Rebecca S. Spicer & Ted R. Miller, *Suicide Acts in 8 States: Incidence and Case Fatality Rates by Demographics and Method*, 90 AM. J. PUB. HEALTH 1885 (Dec. 2000).

⁷⁹ *Id.* at 1888.

⁸⁰ *Id.*

⁸¹ See Thomas R. Simon. et al., *Characteristics of Impulsive Suicide Attempts and Attempters*, 32 SUICIDE & LIFE THREAT. BEHAV. 49, 52 (2001) (finding within a sample of suicide survivors that 24% reported spending less than 5 minutes between the decision to attempt suicide and the actual attempt); Eberhard A. Deisenhammer et al., *The Duration of the Suicidal Process: How much Time is Left for Intervention between Consideration and Accomplishment of a Suicide Attempt?* 70 J. CLINICAL PSYCHIATRY 19, 20-1 (2009) (finding that 47.6% of patients surveyed reported that the period between the first ‘current’ thought of suicide and the suicide attempt was 10 minutes or less).

⁸² Douglas J. Wiebe, *Homicide and Suicide Risks Associated With Guns in the Home: A National Case-Control Study*, 41 ANNALS OF EMERGENCY MED. 771, 780 (2003); L. Kellermann et al., *Suicide in the Home in Relation to Gun Ownership*, 327 N. ENGL. J. MED. 467 (1992).

⁸³ M. Miller & David Hemenway, *Guns and Suicide in the United States*, 359 N. ENGL. J. MED. 672 (2008) (finding that for non-firearm suicides, the number of deaths were similar between states with both high and low rates of gun ownership. However, when considering *firearm* suicides, states with the highest rates of gun ownership had over 16,500 firearm suicides, whereas states with the lowest rates of gun ownership had only 4,257.); *see also* Justin Thomas Briggs & Alexander Tabarrok, *Firearms and Suicides in US States*, 37 INT’L REV. OF LAW & ECO. 180 (2014) (for each 1% increase in gun ownership in a state, suicide rates increase between 0.5 and 0.9%).

⁸⁴ CDC Reporting System, *supra* note 2, Injury Mortality Reports, 1999-2014, for National, Regional, and States (Nov. 2014).

⁸⁵ Fowler, *Childhood Firearm Injuries in the United States*, *supra* note 54 (using data from 2003 to 2013).

⁸⁶ *Id.*

⁸⁷ Erin Grinshteyn & David Hemenway, *Violent Death Rates: The US Compared with Other High-Income OECD Countries, 2010*, 129 AM. J. MED. 266 (2016).

majority of these deaths result from domestic violence.⁸⁸ Studies have found that women are five times (or 500%) more likely to be killed if their abuser owns a firearm⁸⁹ and that the use of a gun during a domestic violence assault (as opposed to other weapon or physical harm) makes death twelve times more likely.⁹⁰ In 2015, 55% of intimate partner homicides were committed with a gun.⁹¹ Moreover, homicides of younger children aged 0-12 often involve intimate partner violence or family conflict.⁹²

19. Fatal police shootings are another key area of concern regarding American gun violence. As of July 9, 2018, 613 people had been shot and killed by the police in 2018.⁹³ An estimated 987 people were fatally shot by police in 2017. American youth are overrepresented in this category as well.⁹⁴ Roughly one third of the individuals shot and killed by police are between the ages of 18 and 29,⁹⁵ meaning a young American dies by police gunfire almost every day. Significantly, 34% of these young people are African Americans.⁹⁶ One reporter elaborates on the larger impact of this issue:

Each of these deaths ... has a significant impact on the community and its relationship with law enforcement—particularly in communities of color that have a deep and complicated history with their local police department. These police shootings are a core part of what gun violence looks like in many communities across the country.⁹⁷

Most fatal police shootings are found to be justified as a lawful use of force by the criminal justice system and charges are rarely brought against the officers involved.⁹⁸

20. Within the United States, gun ownership is the leading contributor among the factors strongly associated with the risk of death from gun violence.⁹⁹ Even so, 67% of gun owners

⁸⁸ In 2011, for example, nearly two-thirds of women killed with guns have been killed by their intimate partner. *When Men Murder Women: An Analysis of 2011 Homicide Data*, 6, VIOLENCE POLICY CTR. (Sept. 2013), www.vpc.org/studies/wmmw2013.pdf.

⁸⁹ Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (July 2003).

⁹⁰ Linda E. Saltzman et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 JAMA 3043 (1992).

⁹¹ April Zeoli et al., *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Association with Intimate Partner Homicides*, 187 AM. J. EPIDEMIOLOGY 1449 (2018).

⁹² See Fowler, *Childhood Firearm Injuries in the United States*, *supra* note 54, at 6.

⁹³ *Fatal Force*, WASH. POST (July 9, 2018), www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?noredirect=on&utm_term=.1d6a08acfd2e.

⁹⁴ See generally, Parsons et al., *America's Youth Under Fire*, *supra* note 51.

⁹⁵ Washington Post Police Shootings Database, *supra* note 93; see also Parsons et al., *America's Youth Under Fire*, *supra* note 51 (analyzing data from the Washington Post from January 2015 through April 2018, approximately 31% of the nearly 3,300 victims of fatal police shooting were between the ages of 18 and 29).

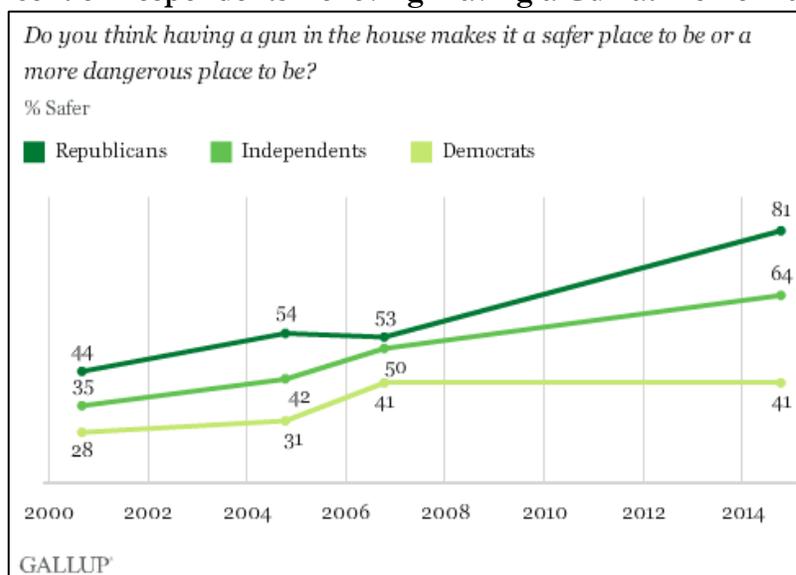
⁹⁶ *Id.* At least 12% of them were unarmed. *Id.*

⁹⁷ Parsons et al., *America's Youth Under Fire*, *supra* note 51.

⁹⁸ See Madison Park, *Police Shootings: Trials, Convictions are Rare for Officers*, CNN (Mar. 27, 2018), www.cnn.com/2017/05/18/us/police-involved-shooting-cases/index.html.

cite protection as a major reason for owning a gun.¹⁰⁰ As seen in Figure 4, an increasing number of Americans believe that having a gun in the home makes their house safer,¹⁰¹ yet research shows that gun ownership actually creates and increases the opportunity for and severity of harm against others or oneself. Indeed, studies have found that having a gun in the home *increases* the probability of homicide by three times,¹⁰² suicide between three and five times,¹⁰³ and accidental death about four times.¹⁰⁴ As previously stated, abused women are 5 times more likely to be killed if their abuser owns a gun.¹⁰⁵ More than 80% of homicides and 60% of suicides in the United States involve firearms.¹⁰⁶

Figure 4: Percent of Respondents Believing Having a Gun at Home Makes it Safer¹⁰⁷



⁹⁹ See Lisa M. Hepburn & David Hemenway, *Firearm Availability and Homicide: A Review of the Literature*, 9 AGGRESSION & VIOLENT BEHAV. 417 (2004) (review of most-cited and representative empirical studies).

¹⁰⁰ Parker et al., *supra* note 31.

¹⁰¹ Only 35% of those polled in 2000 believed that having a gun in the house made it safer; in 2014, more than 60% reported this belief. Similarly, in 2000, 51% of Americans believed that having a gun in the home made that house *more dangerous*. In 2014, only 30% believed this. Justice McCarthy, *More Than Six in 10 Americans Say Guns Make Homes Safer*, GALLUP (Nov. 7, 2014), news.gallup.com/poll/179213/six-americans-say-guns-homes-safer.aspx.

¹⁰² Arthur L. Kellermann et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 NEW ENG. J. OF MED. 1084 (1993).

¹⁰³ Wiebe, *Homicide and Suicide Risks*, *supra* note 82; Kellermann et al., *Suicide in the Home in Relation to Gun Ownership*, *supra* note 82.

¹⁰⁴ Douglas J. Wiebe, *Firearms in US Homes as a Risk Factor for Unintentional Gunshot Fatality*, 35 ACCIDENT ANALYSIS & PREVENTION 711, 713 (2003).

¹⁰⁵ Campbell et al., *supra* note 89.

¹⁰⁶ Corinne A. Riddell et al., *Comparison of Rates in Firearm and Nonfirearm Homicide and Suicide in Black and White Non-Hispanic Men, by U.S. State*, 168 ANNALS OF INTERNAL MED. 712 (2018).

¹⁰⁷ McCarthy, *supra* note 101.

21. While there is a popular belief that mental illness is the chief culprit of gun violence, the relationship is far from clear.¹⁰⁸ Moreover, the United States does not appear to have higher levels of mental illness than other countries, suggesting that it is easy access to guns, not mental illness, which drives the country's high fatality rates.¹⁰⁹ Even assuming mental health issues have a connection to the U.S. gun violence crisis,¹¹⁰ on February 28, 2017 President Trump signed H.J. Res. 40 into law,¹¹¹ which repealed the Implementation of the NICS Improvement Amendments Act of 2007, a law that would have required more stringent background checks for gun purchases by people with severe mental illness.¹¹²

B. The Discriminatory Impact of U.S. Gun Violence

22. African Americans are disproportionately affected by the U.S. gun violence crisis and unduly bear the burden of firearm violence. Although comprising only 14% of the U.S. population, African Americans represent 56.7% of gun homicide victims in the country.¹¹³ The gun-homicide rate is higher for African Americans than other races in all fifty states, yet the disparity is greatly exaggerated in some areas.¹¹⁴ For example, in Wisconsin, an African American was *26 times more likely* to be killed by a gun than a white person in 2015.¹¹⁵ The problem is also particularly prevalent in urban areas. In U.S. cities, black Americans are an average of *8 times more likely* to be killed by firearms than their white counterparts.¹¹⁶ Firearm deaths accounted for more than 11% of all years of potential life lost¹¹⁷ among the black American population, but less than 6% of all years of potential life lost for the country's

¹⁰⁸ See, e.g., GUN VIOLENCE AND MENTAL ILLNESS (Liza H. Gold & Robert I. Simon eds., 2016).

¹⁰⁹ See Jeffrey W. Swanson et al., *Mental Illness and Reduction of Gun Violence and Suicide: Bringing Epidemiologic Research to Policy*, 25 ANNALS EPIDEMIOLOGY 366, 368 (2015).

¹¹⁰ There is evidence that the Parkland shooter exhibited signs of mental health issues. See Richard Fausset & Serge F. Kovalski, *Nikolas Cruz, Florida Shooting Suspect, Shoved 'Every Red Flag'*, N.Y. TIMES (Feb. 15, 2018), www.nytimes.com/2018/02/15/us/nikolas-cruz-florida-shooting.html.

¹¹¹ H.J. Res. 40, Pub. L. No. 115-8, 131 Stat. 15 (2017).

¹¹² Implementation of the NICS Improvement Amendments Act of 2007, 20 C.F.R. pt. 421 (2016); Ashley Killough & Ted Barrett, *Trump Signs Bill Nixing Obama-Era Guns Rule*, CNN (Feb. 28, 2017), www.cnn.com/2017/02/28/politics/guns-mental-health-rule/.

¹¹³ See Michael Siegel, *POV: Gun Control, Another Place Where Race Matters*, BU TODAY (June 17, 2016), www.bu.edu/today/2016/gun-violence-race/.

¹¹⁴ Molly Pahn et al., *Gun Violence in the US Kills More Black People and Urban Dwellers*, THE CONVERSATION (Nov. 8, 2017), theconversation.com/gun-violence-in-the-us-kills-more-black-people-and-urban-dwellers-86825.

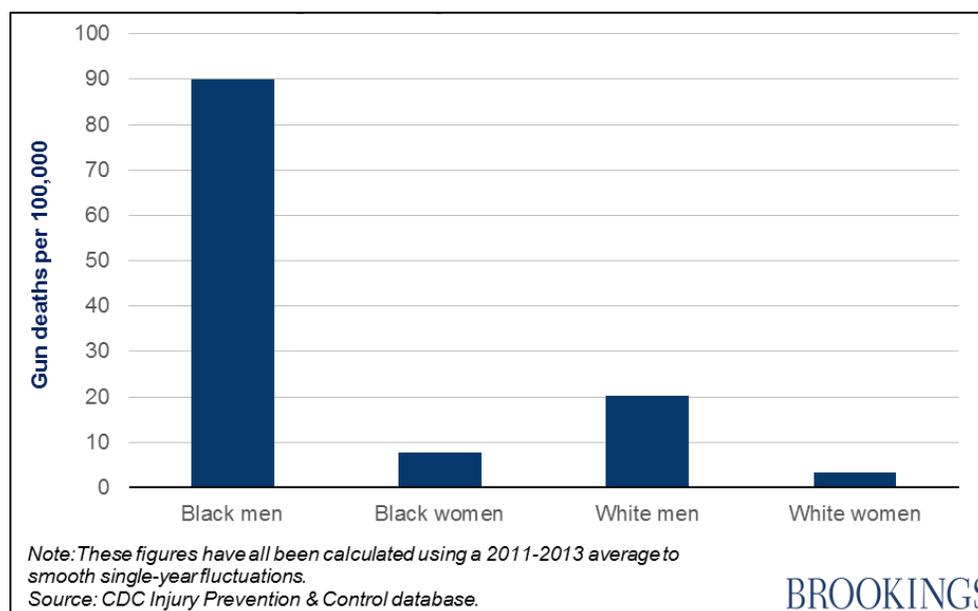
¹¹⁵ *Id.* Significantly, this study found also that differences between states often align with the gap in levels of disadvantages among white and black Americans among states. Notably, Wisconsin, which has the higher disparity between black and white homicide rates, also has the second-highest gap of any state between black and white incarceration rates, and the second highest unemployment rate gap. *Id.* Moreover, in Milwaukee, Wisconsin, black people are nearly 20 times more likely to get shot than white people. *What Caused the Dramatic Tipping Point in Deadly Shootings*, PBS (Aug. 4, 2015), www.pbs.org/newshour/show/caused-dramatic-tipping-point-deadly-shootings/.

¹¹⁶ Pahn, *supra* note 114.

¹¹⁷ Years of potential life lost (YPLL) or potential years of life lost (PYLL) is an estimate of the average years a person would have lived were it not for the premature death. It provides a measure of premature mortality thereby quantifying social or economic loss from premature death. See John W. Gardner & Jill S. Sanborn, *Years of Potential Life Lost (YPLL) – What Does it Measure?*, 1 EPIDEMIOLOGY 321 (1990).

white population.¹¹⁸ Poor black people are also more likely to be violent crime victims, a disparity that has increased over the past decades.¹¹⁹

Figure 5: U.S. Gun Deaths by Race and Gender among 20-29 Year-Olds (2011-2013)¹²⁰



23. Black males in particular are at increased risk and are about 14 times more likely than non-Hispanic white men to be shot and killed with a firearm in the United States.¹²¹ Roughly half of all gun homicides in the country are of black men.¹²² States with the highest rates of firearm homicide among black men also had the largest disparities between black and white individuals.¹²³ Although across the entire United States black men had 27 more homicides

¹¹⁸ Richard V. Reeves & Sarah Holmes, *Gun and Race: The Different Worlds of Black and White Americans*, BROOKINGS (Dec. 15, 2015), www.brookings.edu/blog/social-mobility-memos/2015/12/15/guns-and-race-the-different-worlds-of-black-and-white-americans/.

¹¹⁹ In 1978, poor black individuals over the age of 12 were the victims of violent crimes at a rate of 45/1000 individuals, only marginally more likely than affluent black individuals (38/1000). However, in 2008, poor black Americans were far more likely to be the victim of violent crimes than affluent black Americans – 75/1000 and 23/1000 respectively. Jennifer Hochschild & Vesla Weaver, *Is the Significance of Race Declining in the Political Arena? Yes, and No*, 38 ETHNIC & RACIAL STUD. 1250 (2015); see also William J. Wilson, *The Other Side of Black Lives Matter*, BROOKINGS (Dec. 14, 2015), www.brookings.edu/blog/social-mobility-memos/2015/12/14/the-other-side-of-black-lives-matter/.

¹²⁰ Reeves & Holmes, *supra* note 118.

¹²¹ CTR. FOR DISEASE CONTROL & PREVENTION (CDC), CDC Wide-ranging ONline Data for Epidemiologic Research (CDC WONDER), About underlying cause of death, 1999-2016 (Dec. 2017), wonder.cdc.gov/controller/datarequest/D76; see also Riddell, *supra* note 106.

¹²² Lois Beckett, *How the Gun Control Debate Ignores Black Lives*, PROPUBLICA (Nov. 24, 2015), www.propublica.org/article/how-the-gun-control-debate-ignores-black-lives.

¹²³ Riddell, *supra* note 106. Missouri, Michigan, Illinois, and Indiana had the highest rates.

- per 100,000 people per year than white men, this difference is vastly variable by state, ranging from 9 to 57 per 100,000 per year.¹²⁴
24. African American youth are also victimized at a higher rate than their non-black counterparts. In 2016, 1,335 black children and teenagers were killed by guns – that is nearly four times the number of white Americans the same age who were killed by guns that year and more than 8 times the number of Asian and Pacific Islanders in the United States killed by guns.¹²⁵ The majority of these deaths were homicides.¹²⁶ According to CDC data, black children are *ten times* more likely than white children to die from gun homicide¹²⁷ and the young black population between the ages of 15 and 29 is *18 times more likely* to be the victim of gun homicide than the white population of the same age.¹²⁸ Although African Americans account for only 15% of 15-29 year olds in the United States, they are 64% of gun homicide victims of this age. Young black women represent a small percentage of overall homicides, yet are 6 times more likely than young white women to become gun homicide victims.¹²⁹ Furthermore, black students make up only 16.6% of the school population, and yet experience school shootings at twice that rate.¹³⁰
 25. The different manner in which the black versus white population are dying from guns is also telling. Among white gun deaths, 77% are suicides and fewer than 19% are homicides. However, in the black population, 82% of gun deaths are homicides, whereas only 14% are suicides.¹³¹ These statistics only represent *fatalities*, and do not account for non-fatal gun violence. While 80-90% of firearm suicide attempts are fatal, only about 20% of attempted firearm homicides are deadly.¹³² This suggests that the black population, who suffer more greatly from firearm homicides, also experience greater rates of non-fatal firearm injuries.
 26. There are proven negative mental and psychological effects that come from experiencing, witnessing, or being in the proximity of violent crime¹³³ and gun violence “can have serious

¹²⁴ *Id.* Although the rate of black male homicides varied greatly by state, the firearm homicide rates for white men changed little between states, staying between 1 and 5 per 100,000.

¹²⁵ *Protect Children Not Guns Factsheet*, CHILDREN’S DEFENSE FUND, *supra* note 52.

¹²⁶ *Id.*

¹²⁷ The gun-related homicide rate for black children was 3.5 per 100,000; for white children, it was 0.4 for 100,000. Fowler, *Childhood Firearm Injuries*, *supra* note 54. This report analyzed gun-related homicides, suicides, and accidental deaths among U.S. children from 2002-2014.

¹²⁸ Parsons et al., *America’s Youth Under Fire*, *supra* note 51 (analyzing CDC data, this report found that “[t]he rate of gun homicides for young Hispanics from 2007 to 2016 was 8.79 per every 100,000 people while the rate for young white individuals was 2.29 per every 100,000.”).

¹²⁹ *Id.* (analyzing CDC data, this report found that “[t]he rate gun homicides for young African American women from 2007 to 2016 was 6.71 per every 100,000 while the rate for young white women was 1.12 per every 100,000.”).

¹³⁰ Washington Post School Shooting Database, *supra* note 73.

¹³¹ Reeves & Holmes, *supra* note 118.

¹³² See Jacqueline Howard, *The Disparities in How Black and White Men Die in Gun Violence, State by State*, CNN (Apr. 24, 2018), www.cnn.com/2018/04/23/health/gun-deaths-in-men-by-state-study/index.html.

¹³³ See *infra* Section II(C).

snowball effects in education, health, incarceration, family instability, and social capital.”¹³⁴ Here too, the non-white population is disproportionately impacted.¹³⁵ A recent Pew Research Center report found that 57% of black adults reported that they know someone who had been shot, compared with 43% of whites and 42% of Hispanics.¹³⁶ Moreover, 32% of black individuals surveyed said they or someone else in their family had been threatened or intimidated by someone with a firearm, as opposed to 20% of white respondents.¹³⁷

Figure 6: Percent of Respondents Who Know Someone that has been Shot and Who Report having been Shot Themselves¹³⁸

Experiences with being shot, or knowing someone who has been, differ along key demographic fault lines

% saying they ...

| | Know someone who has been shot | Have been shot themselves |
|----------------|---------------------------------------|----------------------------------|
| All adults | 44 | 3 |
| Gun owners | 51 | 6 |
| Non-gun owners | 40 | 2 |
| Whites | 43 | 3 |
| Blacks | 57 | 6 |
| Hispanics | 42 | 2 |

Note: Respondents were asked if they personally know someone who had been shot, either accidentally or intentionally. Whites and blacks include only those who are not Hispanic. Hispanics are of any race. “Some college” includes those with an associate degree and those who attended college but did not obtain a degree.

Source: Survey of U.S. adults conducted March 13-27 and April 4-18, 2017.

“America’s Complex Relationship With Guns”

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27. People of black, Hispanic, and Native American backgrounds are disproportionately killed by police, and African Americans and Hispanics victims are on average younger than white victims.¹³⁹ American Indians and Alaskan natives have the highest rate of death due to police

¹³⁴ Reeves & Holmes, *supra* note 118; *see also, e.g.*, Douglas Zatzick et al., *A National US Study of Posttraumatic Stress Disorder, Depression, and Work and Functional Outcomes after Hospitalization for Traumatic Injury*, 248 ANN. SURG. 429 (Sept. 2008) (finding in a national study that patients with traumatic injuries who developed post-traumatic stress were less likely to have returned to work a year after their injuries).

¹³⁵ *See generally*, Wilson, *The Other Side of Black Lives Matter*, *supra* note 119. One researcher further explained that “[g]un violence is part of a vicious cycle of race and inequality in the U.S., reflecting existing social inequalities, and also making it even more challenging for young black people, especially young black men, to escape poverty and violence.” Reeves & Holmes, *supra* note 118.

¹³⁶ Parker et al., *supra* note 31.

¹³⁷ *Id.* This compares to 20% of white individuals and 24% of Hispanic individuals.

¹³⁸ *Id.*

¹³⁹ Anthony L. Bui et al., *Years of Life Lost Due to Encounters with Law Enforcement in the USA, 2015–2016*, J. EPIDEMIOL. COMMUNITY HEALTH (May 2018), jech.bmj.com/content/early/2018/04/17/jech-2017-210059; *see also* Maggie Fox,

violence, with a rate of 7.8 per a million, followed by African Americans with a rate of 7.2; Hispanics and whites had a rate of 3.3 and 2.9 respectively.¹⁴⁰ Although not all of these deaths are due to gunshots, firearms make up a majority.¹⁴¹ Furthermore, these numbers do not take into account the burden of such deaths on social networks and families, or stress-related health outcomes. This means that the non-white American population suffers a higher and disproportionate loss due to police shootings, along with gun violence more generally.

28. So-called ‘Stand Your Ground’ (SYG) laws,¹⁴² sometimes called “shoot first” laws, are in force in 28 states¹⁴³ and also play a role in how the black population experiences gun violence in the United States. SYG laws are used as a justification by defendants in criminal cases for killing someone if they perceived threats. A 2017 JAMA study showed that Florida’s SYG law was associated with a 32% increase in firearm homicide.¹⁴⁴ Not only are these laws associated with increased gun deaths, but race is a significant factor in whether an attack is deemed to be justified. According to one study, when the attacker is white and the victim black, the killing is 281% more likely to be found justified under a SYG law than when the victim is white.¹⁴⁵ Another study of SYG cases in Florida found that defendants are two times more likely to be convicted if the victim is white versus if the victim is non-white.¹⁴⁶ This reveals a discriminatory application of the law within in the justice system which results in a certain level of impunity granted to individuals who cause the death, often by firearm, of black and other non-white individuals.
29. Generally, black gun violence victims receive significantly less attention and public policy and legislative results than mass shootings.¹⁴⁷ For example, in 2012, 90 people were killed in mass public shootings such as Newtown and Aurora, and yet, nearly 6,000 black men were murdered by guns that same year.¹⁴⁸ Even though research has shown several promising strategies to prevent murders of black men, these preventative programs struggle to receive

Police Killings Hit People of Color Hardest, Study Finds, NBC NEWS (May 7, 2018), www.nbcnews.com/health/health-news/police-killings-hit-people-color-hardest-study-finds-n872086.

¹⁴⁰ Bui et al., *supra* note 139.

¹⁴¹ See *The Counted*, THE GUARDIAN, www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database (of the 1093 people The Guardian’s methodology determined to be killed by police in 2016, 1011 of them died by gunshot).

¹⁴² See Annex 1: Glossary of Terms.

¹⁴³ “Stand Your Ground” Laws, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/stand-your-ground-laws/.

¹⁴⁴ David K. Humphreys et al., *Evaluating the Impact of Florida’s “Stand Your Ground” Self-Defense Law on Homicide and Suicide by Firearm: an Interrupted Time Series Study*, 177 JAMA INTERN MED. 44 (2017).

¹⁴⁵ John Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, URBAN INSTITUTE (July 2013), www.urban.org/UploadedPDF/412873-stand-your-ground.pdf.

¹⁴⁶ Nicole Ackermann et al., *Race, Law, and Health: Examination of ‘Stand Your Ground’ and Defendant Convictions in Florida*, 142 SOC. SCI. & MED. 194 (2015).

¹⁴⁷ See Beckett, *How the Gun Control Debate Ignores Black Lives*, *supra* note 122.

¹⁴⁸ *Id.*

political support and funding.¹⁴⁹ Moreover, the influence of the NRA in U.S. politics is also troubling given a history of NRA leaders, including board members, making overt racial comments or expressing racist ideas more subtly.¹⁵⁰

C. Mental And Psychological Harm Caused By Gun Violence And Mass Shootings

30. The U.S. gun violence crisis has negative mental health consequences on the direct victims of gun violence, their families and communities, and indirectly exposed populations. This phenomenon is especially evident in the wake of mass shootings, and school shootings in particular. The effect on children is of particular concern.
31. It is well-established that survivors of serious gunshot injury have elevated risks for post-traumatic stress (PTS) symptoms and diminished physical health months after a shooting.¹⁵¹ This combination, of a physical injury of this type and of psychological trauma, is associated with increased levels of post-traumatic stress disorder (PTSD), depression, anxiety, and physical pain.¹⁵² PTSD and other serious mental health conditions have significant ripple effects for the individual sufferer as well as their family and community, all of which impact “the harmony of human relations.” As one researcher explains,

PTSD can negatively affect a patient’s ability to be productive, diminish potential to earn an income, lead to increased substance use and mental health diagnoses, and ultimately produce significant costs to those individuals, their families, and society at large.¹⁵³

Gunshot survivors experience twice the rate of PTSD than those injured in motor vehicle accidents.¹⁵⁴ Yet attention to and funding for this aspect of the crisis is lacking.¹⁵⁵

¹⁴⁹ *Id.* When President Obama signed executive actions to tackle U.S. gun violence in the wake of the Sandy Hook school shooting, his plan included no money for the urban violence strategies his own Justice Department had described as effective. Similarly, Congress has consistently authorized less money than asked for to fund inner-city gun violence prevention programs that have proven effective, such as Ceasefire. *See also* Parsons et al., *America’s Youth Under Fire*, *supra* note 51, ¶ 23.

¹⁵⁰ *See, e.g.*, Morgan Whitaker, *Ted Nugent calls Obama ‘Subhuman Mongrel’*, MSNBC (Jan. 22, 2014), www.msnbc.com/politics/nation/ted-nugent-calls-obama-subhuman-mongrel; Adam Serwer, *The NRA’s Catch-22 for Black Men Shot by Police*, THE ATLANTIC (Sept. 13, 2018), www.theatlantic.com/ideas/archive/2018/09/the-nras-catch-22-for-black-men-shot-by-police/570124/.

¹⁵¹ *See* Arlene I. Greenspan & Arthur L. Kellermann, *Physical and Psychological Outcomes 8 Months after Serious Gunshot Injury*, 53 J. TRAUMA 709 (2002).

¹⁵² Douglas Zatzick, *Interventions for Acutely Injured Survivors of Individual and Mass Trauma*, in TEXTBOOK OF DISASTER PSYCHIATRY, 190 (Robert J. Ursano et al., eds., 2007); Andrew J. Michaels et al., *Posttraumatic Stress Disorder after Injury: Impact on General Health Outcome and Early Risk Assessment*, 47 J. TRAUMA 460 (1999).

¹⁵³ Reese et al., *supra* note 154, *citing* E Halcolomb et al., *Life Beyond Severe Traumatic Injury: An Integrative Review of the Literature*, 18 AUST CRIT CARE 17 (2005); Ronald C. Kessler, *Posttraumatic Stress Disorder: the Burden to the Individual and to Society*, 61 J CLIN PSYCHIATRY 4 (2000).

¹⁵⁴ Carol Reese et al., *Screening for Traumatic Stress Among Survivors of Urban Trauma*, 73 J. TRAUMA ACUTE CARE SURG. 462 (Aug. 2012), www.ncbi.nlm.nih.gov/pubmed/22846957 (finding that more than half of gunshot-wound victims who

32. A number of studies have demonstrated the psychological effect of mass shootings on survivors and related communities.¹⁵⁶ This includes diagnoses of PTSD among elementary school students *and* their parents following the 1998 mass shooting at an elementary school in Winnetka, Illinois¹⁵⁷ and PTSD and major depression among survivors of the 1991 mass shooting at a Luby's Cafeteria in Killeen, Texas, which left 23 dead and another 27 injured.¹⁵⁸ Another study found that after a sniper attack on an elementary school playground in Los Angeles, which killed two students and wounded twelve, a majority of children at the school suffered from PTSD.¹⁵⁹ More recently, a study found that two weeks after shootings at Virginia Tech in 2007, where a student killed 32 individuals on a college campus before taking his own life,¹⁶⁰ and Northern Illinois University in 2008, where 5 students were killed and another 17 injured in a large auditorium-style lecture before the gunman killed himself

were screened for PTSD in 2011 at one of the busiest trauma centers in the United States exhibited signs of it. Patients with gunshot wounds were also 13 times more likely to have a positive PTSD screen than patients with fall injuries).

¹⁵⁵ See Lois Beckett, *The PTSD Crisis That's Being Ignored: Americans Wounded in Their Own Neighborhoods*, PROPUBLICA (Feb. 3, 2014), www.propublica.org/article/the-ptsd-crisis-thats-being-ignored-americans-wounded-in-their-own-neighbor (in a survey of a top-level trauma center in each of the 21 cities with the country's highest homicide rates, only one screened all seriously injured patients for PTSD at the time of the study). Moreover, the federal government, which provides guidance on best practices for patient care and funding, has given no guidance on whether or how hospitals could be reimbursed for the cost of PTSD screening.) *Id.*

¹⁵⁶ See Sarah R. Lowe & Sandro Galea, *The Mental Health Consequences of Mass Shootings*, 18 TRAUMA, VIOLENCE & ABUSE 62 (2017) (review of 49 empirical studies finding that mass shootings are associated with a variety of adverse psychological outcomes in not only survivors and members of affected communities but also indirectly exposed populations. This study defines mass shootings as "events involving one or more persons attempting to kill multiple people, and at least one unrelated person, in an area occupied by multiple unrelated persons."); Shultz, *supra* note 63. (a review of scientific literature from 2010-2014 revealing that mental health effects of mass shootings included psychological distress and clinically significant elevations in posttraumatic stress, depression, and anxiety symptoms, and psychological repercussions extended to the surrounding affected community.)

¹⁵⁷ Eitan D. Schwartz & Janice M. Kowalski, *Malignant Memories: PTSD in Children and Adults after a School Shooting*, 30 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 931 (1991) (finding that 41% of the children and 24% of the parents and school personnel were diagnosed with PTSD using a moderate criteria under DSM-III-R during the 6-14 month period following the incident).

¹⁵⁸ Carol S. North et al., *Posttraumatic Stress Disorder in Survivors of a Mass Shooting*, 151 AM. J. PSYCHIATRY 82, 85 (1994) (finding that in the one month period following the mass shooting in Killeen, Texas, 20% of men and 36% of women among the 136 survivors met the criteria for PTSD; of those with PTSD, 25% of men and 35% of women also presented with major depression. Nearly every subject, even those who did not have PTSD, reported experiencing some posttraumatic symptoms); Carol S. North et al., *One-Year Follow-Up of Survivors of a Mass Shooting*, 155 AM. J. PSYCHIATRY 1696, 1698 (1997) (one year later, 18% continued to suffer from PTSD); Carol S. North et al., *Three-Year Follow-Up of Survivors of a Mass Shooting*, 79 J. URBAN HEALTH 383, 386 (1997) (only about half of the PTSD cases identified at some point over the 3 years since the shooting were in remission at the 3-year follow-up).

¹⁵⁹ Robert Pynoos et al., *Life Threat and Posttraumatic Stress in School Age Children*, 44 ARCH. GEN. PSYCHIATRY 1057 (1987) (finding that 77% of elementary students on the playground and 67% of those in the school building during the attack were found to have moderate to severe levels of PTSD); see also Kathi Nader et al., *Children's PTSD Reactions One Year After a Sniper Attack at Their School*, 147 AM. J. PSYCHIATRY 1526 (1990) (finding that children who were highly exposed to the attack continued to demonstrate symptoms of chronic PTSD up to 14 months later. Fear of recurrence and feelings of horror affected the entire community in the immediate aftermath and remained present in the most directly exposed children over a year later.).

¹⁶⁰ Christine Hauser & Anahad O'Connor, *Virginia Tech Shooting Leaves 33 Dead*, N.Y. TIMES (Apr. 16, 2007), www.nytimes.com/2007/04/16/us/16cnd-shooting.html.

- on stage,¹⁶¹ 71% of the students at those campuses showed symptoms of major depression and 64% exhibited symptoms of PTSD.¹⁶² Mass shootings are found to have a particularly destabilizing effect on young people in the community with a history of trauma, further exacerbating their suffering.¹⁶³
33. Research also shows that even *exposure* to violence, or learning that a friend or loved one has been exposed to violence, is associated with increased negative mental health outcomes such as PTSD and major depression.¹⁶⁴ This is true for gun violence.¹⁶⁵ Yet *nearly 3 million children* in the United States are estimated to witness a shooting each year.¹⁶⁶ Mass shootings have particularly negative psychological effects on populations beyond the directly affected individuals or community.
34. The negative mental health consequences of indirect exposure to violence are particularly true for children. A 2009 report from the U.S. Department of Justice and the Centers for Disease Control explained that “[e]ven if they are not physically present, children may be affected by intentional harm done to another” and that “all too often...children who are exposed to violence undergo lasting physical, mental, and emotional harm. They suffer from difficulties with attachment, regressive behavior, anxiety and depression, and aggression and conduct problems.”¹⁶⁷ Even more generally, anxiety levels rise and cognitive function

¹⁶¹ Steven Gray/DeKalb, *How the NIU Massacre Happened*, TIME (Feb. 16, 2008), content.time.com/time/nation/article/0,8599,1714069,00.html.

¹⁶² Amanda M. Vicary & R. Chris Fraley, *Student Reactions to the Shootings at Virginia Tech and Northern Illinois University: Does Sharing Grief and Support Over the Internet Affect Recovery?* 35 PERSONALITY & SOC. PSYCHOL. BULL. 1555, 1559 (2010); see also Joseph R. Bardeen et al., *Emotion Regulation Difficulty as a Prospective Predictor of Posttraumatic Stress Symptoms Following a Mass Shooting*, 27 J. ANXIETY DISORDERS 188 (2013) (finding that clinically significant levels of post-traumatic stress symptoms among students at Northern Illinois University jumped from 20% before the campus shooting to 49% within the first 30 days following it).

¹⁶³ Nordanger Dø et al., *Prior Adversities Predict Posttraumatic Stress Reactions in Adolescents Following the Oslo Terror Events 2011*, EUR. J. PSYCHOTRAUMATOLOGY (2014), www.ncbi.nlm.nih.gov/pmc/articles/PMC4032508/.

¹⁶⁴ Sarah R. Lowe et al., *Trauma as a Public Health Issue: Epidemiology of Trauma and Trauma-Related Disorder*, in EVIDENCE BASED TREATMENTS FOR TRAUMA-RELATED PSYCHOLOGICAL DISORDERS A PRACTICAL GUIDE FOR CLINICIANS 11 (Ulrich Schnyder & Marylene Cloitre eds., 2015). See, e.g., Christine A. Henriksen et al., *The Psychological Impact of Terrorist Attacks: Examining a Dose-Response Relationship between Exposure to 9/11 And Axis I Mental Disorders*, 27 DEPRESSION & ANXIETY 993 (2010) (showing this phenomenon through the effect of 9/11 on mental health. It has also been observed in the wake of the Oklahoma City bombings and other acts of violence.).

¹⁶⁵ See, e.g., K. Slovak & M. Singer, *Rural Youth Gun Exposure and Trauma*, 16 VIOLENCE & VICTIMS 389, 396 (2001) (finding in a study of rural youth that those exposed to gun violence, defined as being a victim or witness to a gun pointing or shooting, reported significantly higher occurrences of anger, dissociation, posttraumatic stress, and total trauma than youth who were not exposed to gun violence).

¹⁶⁶ A survey of childhood exposure to violence estimates that 4% of children were exposed to a shooting in the year previous to the study. Using the total childhood population (ages 0-17) of the United States in 2015 (~73.6 million), this equates to roughly 2.944 million children. David Finkelhor et al., *Prevalence of Childhood Exposure to Violence, Crime, and Abuse: Results from the National Survey of Children's Exposure to Violence*, 169 JAMA PEDIATRICS 746, 751 (2015).

¹⁶⁷ David Finkelhor et al., *Children's Exposure to Violence: A Comprehensive National Survey*, 2, NAT'L SURV. OF CHILDREN'S EXPOSURE TO VIOLENCE, U.S. DEP'T OF JUSTICE & CTR. FOR DISEASE CONTROL & PREVENTION (2009). Regarding children exposed to violence (defined broadly), the study also found:

They may be more prone to dating violence, delinquency, further victimization, and involvement with the child welfare and juvenile justice systems. Moreover, being exposed to violence may impair a

decreases among school children after a violent crime occurs within a half mile of their home.¹⁶⁸

35. School shootings are especially harmful and have resulted in a generalized fear of school¹⁶⁹ – which most children are nonetheless required to attend. After the 1999 Columbine High School shooting in Littleton, Colorado, a study of students aged twelve to eighteen across the country found that there was increased fear of victimization at school *nationwide*.¹⁷⁰ One researcher elaborated:

Following a school shooting, the illusion of safety within which children have lived their lives becomes unmasked with a new sense of fragility and vulnerability. Children will manifest a stress response characterized by anxiety; fear; feelings of helplessness; mood, anxiety, and behavioral symptoms; and somatic complaints. Many will experience acute stress reactions including recurring intrusive thoughts, images, nightmares, strong emotions, and avoidance of reminders. Children may also experience social withdrawal, hyperarousal symptoms (e.g., hypervigilance, startle reactions), sleep disturbances, irritability, and difficulty concentrating.¹⁷¹

36. The gun violence crisis is causing America’s youth to suffer from the fear that they will be shot.¹⁷² Indeed, following the deadly shooting at Santa Fe High School,¹⁷³ a seventeen-year-old student remarked in an interview that she was not surprised that a shooting occurred on her campus, saying “It’s been happening everywhere. I’ve always felt it would eventually

child’s capacity for partnering and parenting later in life, continuing the cycle of violence into the next generation. *Id.*

¹⁶⁸ Charles McCoy et al., *Children’s Cognitive Performance and Selective Attention Following Recent Community Violence*, 56 J. HEALTH SOC. BEHAV. 19 (2015).

¹⁶⁹ Glenn W. Muschert et al., *The Columbine Effect*, in CONFRONTING THE COLUMBINE EFFECT, 1, 1 (Glenn W. Muschert et al., eds., 2014).

¹⁷⁰ Lynn A. Addington, *Students’ Fear after Columbine: Findings from a Randomized Experiment*, 19 QUANTITATIVE CRIMINOLOGY 367, 379 (2003) (finding that 3.8% more students reported increased level of fear at school following the Columbine school shooting).

¹⁷¹ Shultz, *supra* note 63, at 10.

¹⁷² Elizabeth C Powell et al., *Firearm Violence Among Youth: Public Health Strategies for Prevention*, 28 ANNALS OF EMERGENCY MED. 204 (1996); *see also* Elizabeth Chuck, *Teachers Struggle With New ‘Default Mindset’ After Florida Shooting*, NBC NEWS (Mar. 12, 2018), www.nbcnews.com/news/us-news/teachers-struggle-new-default-mindset-after-florida-shooting-n852796 (describing how students at schools are now hyper-aware of the possibility of more school shootings and that the Parkland shooting has “left an indelible uneasiness among teachers and students across the country.”); U.S. OFF. OF THE PRESS SECRETARY, Press Briefing by Press Secretary Sarah Sanders (May 30, 2018), www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-053018/ (a young boy told the Press Secretary at a White House Press Briefing that he and his peers worry that they, or their friends, might get shot at school).

¹⁷³ *10 Dead, 13 Wounded in Texas School Shooting; Suspect Charged*, NBC N.Y. (last updated May 19, 2018), www.nbcnewyork.com/news/national-international/Active-Shooter-School-Lockdown-Santa-Fe-Texas-483032921.html.

- happen here, too.”¹⁷⁴ It is unsurprising that a recent study found that 57% of teenagers in the United States now fear a school shooting.¹⁷⁵
37. Constant mass-media coverage and social media activity on school shootings exacerbates these fears. After the Virginia Tech shooting, a study found that students at *other* universities who followed news coverage of the shooting experienced increased symptoms of acute stress.¹⁷⁶ These symptoms included “intrusive thoughts, sleep disturbance, distraction, fear, stomach upset, depression, disorganization, replaying of the event, and symptoms of anger.”¹⁷⁷
38. The non-solutions that are typically advanced following school shootings do little to diminish these harmful effects and indeed often exacerbate them. Government responses are often too limited and even produce negative, unintended consequences.¹⁷⁸ In schools across the country, more and more students are required to take part in mandatory active shooter drills,¹⁷⁹ which inflict increased fear on an already vulnerable population, with parents, teachers, and children describing the simulations as “somewhere between upsetting and traumatizing.”¹⁸⁰ These drills are implemented with varied degrees of realism and students

¹⁷⁴ Marwa Eltagouri, *A Santa Fe Shooting Survivor’s Reaction has Shaken People around the Country*, WASH. POST (May 18, 2018), www.washingtonpost.com/news/post-nation/wp/2018/05/18/i-always-felt-it-would-eventually-happen-here-a-santa-fe-high-school-survivors-reaction-to-the-shooting/?utm_term=.fd1004152e69.

¹⁷⁵ Nikki Graf, *A Majority of U.S. Teens Fear a Shooting Could Happen at Their School, and Most Parents Share Their Concern*, PEW RESEARCH CTR. (Apr. 18, 2018), www.pewresearch.org/fact-tank/2018/04/18/a-majority-of-u-s-teens-fear-a-shooting-could-happen-at-their-school-and-most-parents-share-their-concern/?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiospm&stream=top-stories.

¹⁷⁶ Carolyn R. Fallahi & Sally A. Lesik, *The Effects of Vicarious Exposure to the Recent Massacre at Virginia Tech*, 1 PSYCHOL. TRAUMA: THEORY, RES., PRAC. & POL’Y 220 (2009).

¹⁷⁷ *Id.* at 227.

¹⁷⁸ See, e.g., Lynn A. Addington, *Surveillance and Security Approaches Across Public School Levels*, in CONFRONTING THE COLUMBINE EFFECT, *supra* note 169, at 71; Aviva M. Rich-Shea & James Alan Fox, *Zero-Tolerance Policies*, in CONFRONTING THE COLUMBINE EFFECT, *supra* note 169, at 89. See also Valerie Steeves & Gary T. Marx, *Safe Schools Initiatives and the Shifting Climate of Trust*, in CONFRONTING THE COLUMBINE EFFECT, *supra* note 169, at 105, 106 (concluded that policies adopted at two Canadian high schools in response to the Columbine shooting to reduce individual acts of violence have “reshaped the social relationships between administrators, teachers, and students, and inadvertently created a school climate that undermines students’ trust in the ability of school administrators to respond to violent incidents.”).

¹⁷⁹ To date, 20 states have adopted laws requiring all public schools to perform “lockdown” drills, and 30 states have emergency plans that may encompass “lockdowns.” Ed Leefeldt, *Are Active Shooter Drills Too Scary for Schoolchildren?*, CBS NEWS (Nov. 30, 2017), www.cbsnews.com/news/active-shooter-drills-lockdowns-too-scary-for-schoolchildren/. 88% of K-12 students in the United States attend schools with an emergency plan; 96% of those plans include protocols for active shooters. Among schools that performed a preparedness drill during the past year, more than two-thirds had a drill related to active shooters. U.S. GOV’T ACCOUNTABILITY OFF., *Report to Congressional Requesters: Emergency Management – Improved Federal Coordination Could Better Assist K-12 Schools Prepare for Emergencies*, 18, 24, 32 (Mar. 2016), www.gao.gov/products/GAO-16-144.

¹⁸⁰ James Hamblin, *What Are Active-Shooter Drills Doing to Kids? The Psychological Effects of Realistic Simulations Could Be Dangerous*, THE ATLANTIC (Feb. 28, 2018), www.theatlantic.com/health/archive/2018/02/effects-of-active-shooter/554150/.

often do not know whether they are experiencing a drill or a real active shooter.¹⁸¹ Some schools have students barricade themselves in locked classrooms, silently huddled under desks while an administrator jiggles door handles to simulate the attacker trying to enter the classroom. Other schools take the simulation to an even more extreme, and possibly traumatizing, level to make the situation as realistic as possible for the students.¹⁸² One CBS News report describes a particularly disturbing active shooting drill:

Police are invited into schools to act as “perpetrators” wearing black face masks, shooting off blanks that simulate gunshots, stalking students and “shooting” them with air guns to create victims with fake blood. To make the situation as real, and chaotic, as possible, they’re accompanied by emergency teams.¹⁸³

These drills remind children that at any time someone might try to kill them while they are in school.¹⁸⁴ Yet active shooter drills have not been proven to be effective in preventing harm during an actual shooting incident. For example, Santa Fe High School had active shooter drills (and armed police officers on campus) prior to the recent mass shooting that happen on campus and yet a student was able to bring a firearm into a school building and shoot 23 people in his roughly 25 minute rampage.¹⁸⁵ Similarly, Parkland had just completed a schoolwide upgrade to their emergency plans and had trained students on how to response to an active shooter situation only a month before the shooting, and yet it became the deadliest U.S. high school shooting in history.¹⁸⁶

39. Following the Parkland Shooting, the students of Marjory Stoneman Douglas High School began a political campaign that has set off a national movement for effective gun control.¹⁸⁷

¹⁸¹ See, e.g., Phillip Timothy, *Next Week, My School Will Have an ‘Active Shooter’ Drill. Here’s What I’ll Be Thinking*, HUFFINGTON POST (Feb. 19, 2018), www.huffingtonpost.com/entry/teacher-active-shooter-drill_us_5a862079e4b00bc49f426873 (some students inevitably think there is a real active shooter during the drills and are terrified).

¹⁸² *Id.* See also *Alaska High School Simulates Gunfire in Active Shooter Drills*, CNN (Mar. 12, 2018), www.cnn.com/videos/us/2018/03/12/alaska-high-school-simulates-gunfire-in-active-shooter-drills-orig-llr.cnn (during an active shooter drill at a high school in Anchorage, Alaska, a police officer shot blanks in the hallways to create the sound of real gunfire); This American Life, *Episode 659: Before the Next One*, www.thisamericanlife.org/659/transcript. (12:06-13:32).

¹⁸³ Leefeldt, *supra* note 179.

¹⁸⁴ Colleen Derkatch, an associate professor at Ryerson University in Toronto who studies risk assessment and health, notes that “[t]he more prepared we are, the more heightened our sense of risk. And one potential effect we haven’t considered is how these kinds of preparedness activities affect kids psychologically, and could increase a sense of feeling at risk. They really expand the ways in which we feel increasingly under siege.” Hamblin, *supra* note 180.

¹⁸⁵ Holly Yan, *Santa Fe High School had Armed Cops and Active Shooter Drills. Yet 10 People Died*, CNN (May 22, 2018), www.cnn.com/2018/05/21/us/santa-fe-high-school-preparations-trnd/index.html.

¹⁸⁶ See This American Life, *Episode 659: Before the Next One*, www.thisamericanlife.org/659/transcript. See also William Cummings, *Why Active Shooter Training Didn’t Help in the Florida High School Shooting*, USA TODAY (Feb. 16, 2018), www.usatoday.com/story/news/nation/2018/02/16/active-shooter-training-florida/343641002/.

¹⁸⁷ For example, just three days after the Parkland school shooting, many surviving students were present at a gun-control rally in Fort Lauderdale and gave speeches. The next day, they announced a march on Washington and set out the legislation they wanted adopted to help prevent future school shootings. Parkland students have continued to push the national movement for gun control, frequently appearing on news shows, speaking at rallies around the country,

Although this is not the first such effort,¹⁸⁸ it has captured public attention, perhaps because the students are extraordinarily articulate, passionate, and young. Just six days after the shooting at their school, dozens of these students went to the Florida state legislature requesting legislation to ban the AR-15 style assault rifles that were used in the massacre.¹⁸⁹ Yet the Florida House of Representatives refused to even bring the proposed bill to the floor where it could be debated on the merits.¹⁹⁰ Instead, the legislature narrowly passed a school safety bill¹⁹¹ which implemented a three-day waiting period for firearm purchases, bans the sale or possession of bump fire stocks, and raised the legal age limit to purchase guns from 18 to 21, a nearly useless measure given that the median age of school shooters is sixteen-years-old.¹⁹² Meanwhile, district officials responded with regulations requiring students at Parkland High School to use clear backpacks and wear mandatory identification

confronting elected officials on their voting records regarding gun control and ties to the NRA, including at a CNN Town Hall meeting a week after the shooting, and coordinating actions in many cities and states calling for concrete laws and regulations to reduce gun violence. *See, e.g., "39 Days": How Parkland Shooting Survivors Turned Grief into Action*, CBS NEWS (Mar. 24, 2018), www.cbsnews.com/news/march-for-our-lives-39-days-how-parkland-students-turned-grief-into-action/. Their March for Our Lives rally took place on March 24, 2018 in Washington, D.C. with up to an estimated 800,000 people in attendance, and sparked more than 830 sister demonstrations across the globe. Alix Langone, *These Photos Show How Big the March for Our Lives Crowds Were Across the Country*, TIME (Mar. 25, 2018), time.com/5214706/march-for-our-lives-us-photos. They have also coordinated walkouts on school campuses across the country where students are calling on lawmakers to do more to protect them and others from gun violence. One such walkout happen on March 14, 2018, and saw hundreds of thousands of high school students advocate for better gun control. The next month, a second nationwide walkout was held, where students held moments of silence, marched to their lawmakers' offices to demand action, registered voters, and partook in other activist work. *See Emanuella Grinberg & Holly Yan, A Generation Raised on Gun Violence Sends a Loud Message to Adults: Enough*, CNN (Mar. 16, 2018), www.cnn.com/2018/03/14/us/national-school-walkout-gun-violence-protests/index.html; Faith Karimi & Holly Yan, *We Won't Stop: Students Across US Renew Demand For Gun Safety in Second Walkout*, CNN (Apr. 20, 2018), www.cnn.com/2018/04/20/us/national-school-walkout/index.html.

¹⁸⁸ Similar groups have organized in the wake of prominent shootings to promote gun control. Survivors and students from Virginia Tech pushed for stronger gun safety measures across the country following the shooting at their school and young LGBTQ leaders grouped together and demanded action on gun laws following the June 2016 massacre at Pulse nightclub in Orlando, Florida. *See, e.g., Virginia Tech Survivor, Maryland Resident and Everytown Survivor Network Member Colin Goddard Urges Maryland Legislators to Act on Domestic Violence Legislation*, EVERYTOWN FOR GUN SAFETY (Mar. 22, 2017), everytown.org/press/virginia-tech-survivor-maryland-resident-and-everytown-survivor-network-member-colin-goddard-urges-maryland-legislators-to-act-on-domestic-violence-legislation/; Susan Lundine, *LGBTQ PAC to End Gun Violence Launches in Orlando*, ORLANDO BUS. J. (Aug. 15, 2016), www.bizjournals.com/orlando/news/2016/08/15/americas-first-lgbtq-pac-to-end-gun-violence.html. Other noteworthy groups include the Brady Campaign to Prevent Gun Violence, named after Jim Brady, who was permanently disabled from the failed assassination attempt on Ronald Reagan in 1981; Giffords Law Center to Prevent Gun Violence, which was founded by former Congresswoman Gabrielle Giffords, who was shot in the head at a community event with her constituents; and Everytown for Gun Safety, founded in 2014 by Michael Bloomberg. *See generally* BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, <http://www.bradiycampaign.org/>; GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/>; EVERYTOWN FOR GUN SAFETY, <https://everytown.org/>.

¹⁸⁹ *"39 Days": How Parkland Shooting Survivors Turned Grief into Action*, *supra* note 187.

¹⁹⁰ *Florida House Declines Debate on Assault Rifles*, *supra* note 19.

¹⁹¹ FLA. STAT. ANN. § 790.065(13) (West, Westlaw through the 2018 Second Reg. Sess. of the 25th Leg.). The new bill also contains a controversial provision creating a "guardian" program, which would enable some teachers and other school employees to carry handguns on campus.

¹⁹² Washington Post School Shooting Database, *supra* note 73.

badges, and they have plans to introduce the use of metal detectors at school entrances,¹⁹³ much to the consternation and skepticism of many students who want to see the implementation of effective measures, such as gun buyback programs and legislation restricting access to assault-style rifles.¹⁹⁴ Additionally, a group of African-American students from Stoneman Douglas High School stated that having more armed police officers on campus leaves them more fearful and uncomfortable than before.¹⁹⁵

D. U.S. Export of Firearms and Gun Violence

40. U.S. gun laws may also be influencing gun violence elsewhere in the Americas. From 2014 to 2016, 50,133 U.S.-sourced guns were recovered in criminal investigations across fifteen American States.¹⁹⁶ It is estimated that approximately 213,000 guns are smuggled across the United States-Mexico border each year.¹⁹⁷ Over 70% of guns recovered by Mexican law enforcement since 2007 have been traced to the United States, and 80-90% of guns in the Bahamas and Jamaica come from the United States.¹⁹⁸ The gun-related homicide rate in Latin America exceeded the global average by over 30% in 2010, and the United Nations Office on Drugs and Crime reported that easy access to guns is the major contributing factor.¹⁹⁹
41. Yet on May 14, 2018, President Trump's administration proposed reforms that would ease export controls for gun manufactures.²⁰⁰ This proposal has been criticized by many gun-control experts who say it "will likely lead to more US guns getting into the hands of

¹⁹³ Letter from the School Board of Broward County, Florida to Parkland Families (Mar. 21, 2018), <https://assets.documentcloud.org/documents/4418150/pages/Letter-to-Parkland-families-p1-normal.gif>.

¹⁹⁴ *Parkland Students Return to School Skeptical of Clear Backpack*, NPR (Apr. 3, 2018), www.npr.org/sections/thetwo-way/2018/04/03/599112587/parkland-students-return-to-school-skeptical-of-clear-backpacks.

¹⁹⁵ Alex Harris, *Black Marjory Stoneman Douglas Students Want the Movement to Include Their Voices Too*, MIAMI HERALD (Mar. 29, 2018), www.miamiherald.com/news/local/community/broward/article207251449.html.

¹⁹⁶ Chelsea Parsons & Eugenio Weigend, *Beyond Our Borders: How Weak U.S. Gun Laws Contribute to Violent Crime Abroad*, 1, CTR. FOR AMERICAN PROGRESS (Feb. 2, 2018), www.americanprogress.org/issues/guns-crime/reports/2018/02/02/445659/beyond-our-borders/.

¹⁹⁷ *Id.* See also Topher McDougal et al., *The Way of the Gun: Estimating Firearms Traffic Across the U.S.-Mexico Border*, 2, IGARAPÉ INSTITUTE & THE UNIVERSITY OF SAN DIEGO (2013), catcher.sandiego.edu/items/peacestudies/way_of_the_gun.pdf (estimating that 253,000 firearms were purchased in the United States annually over 2010-2012 to be trafficked to Mexico).

¹⁹⁸ Julia E. Sweig, *A Strategy to Reduce Gun Trafficking and Violence in the Americas*, 1-2, COUNCIL ON FOREIGN RELATIONS (July 29, 2013), www.cfr.org/report/strategy-reduce-gun-trafficking-and-violence-americas.

¹⁹⁹ U.N. OFF. ON DRUGS AND CRIME, *Global Study on Homicide* 43-44 (2011), www.unodc.org/documents/congress/background-information/Crime_Statistics/Global_Study_on_Homicide_2011.pdf.

²⁰⁰ U.S. DEP'T COMMERCE, BUREAU OF INDUSTRY & SECURITY, *Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control under the United States Munitions List (USML)* (May 14, 2018), www.bis.doc.gov/index.php/documents/pdfs/2207-05-4-18-signed-commerce-firearms-proposed-rule-delivered-to-ofr-for-publication/file; see also Prepared Remarks of Dolby Goodman, *The Trump Administration's Gun Exports Plan: Implications for National Security and Human Rights*, Security Assistance Monitor (Oct. 10, 2018), www.securityassistance.org/blog/trump-administrations-gun-exports-plan-implications-national-security-and-human-rights.

criminal organizations, human rights abusers, terrorist groups, and others who wreak harm.”²⁰¹ If these rules went into effect, they would likely affect countries throughout Latin America and the Caribbean, as well as Mexico.

42. The United States is one of only three Organization of American State (OAS) member States not to have ratified the 1997 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA),²⁰² the purpose of which is “to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials.”²⁰³
43. Similarly, although President Obama signed the U.N.’s Arms Trade Treaty (ATT) in 2013,²⁰⁴ the Senate has not ratified it, most likely influenced by the NRA.²⁰⁵ Indeed, on March 23, 2013, the Senate voted 53-46 to “uphold Second Amendment rights and prevent the United States from entering into the United Nations Arms Trade Treaty.”²⁰⁶ The ATT entered into force in 2014 and now has 130 signatories and 94 States Parties.²⁰⁷ The treaty has as its aim the establishment of “the highest possible common international standards for regulating or improving the regulation of the international trade in convention arms; and [to] prevent and eradicate the illicit trade in conventional arms and prevent their diversion.”²⁰⁸ These objectives are intended to contribute to “international and regional peace, security and stability; reduc[e] human suffering; [and] promot[e] cooperation, transparency and responsible action . . . in the international trade in conventional arms.”²⁰⁹ U.N. Secretary-

²⁰¹ *Arms Transfer Initiative Would Help U.S. Gun Industry Market its Militarized Firearms Globally*, VIOLENCE POLICY CTR. (May 15, 2018), vpc.org/press/arms-transfer-initiative-would-help-u-s-gun-industry-market-its-militarized-firearms-globally/.

²⁰² OAS, *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (A-63)*, Jul. 1, 1998, www.oas.org/en/sla/dil/inter_american_treaties_A-63_illicit_manufacturing_trafficking_firearms_ammunition_explosives.asp. 31 of the 34 American States have ratified CIFTA, with only the United States, Canada and Jamaica remaining outside the treaty. *See* OAS, *CIFTA Signatories and Ratifications*, www.oas.org/juridico/english/sigs/a-63.html.

²⁰³ CIFTA, *supra* note 202, art. II. The preamble states that the purpose of the treaty is not to “discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting, and other forms of lawful ownership and use recognized by the States Parties.” *Id.* preamble, cl. 11. The Convention also “does not commit States Parties to enact legislation or regulations pertaining to firearms ownership, possession, or trade of a wholly domestic character.” *Id.* preamble, cl. 12.

²⁰⁴ *Id.* ARMS TRADE TREATY, Sept. 25, 2013, U.N.T.S. I-52373, treaties.un.org/doc/Treaties/2013/04/20130410%2012-01%20PM/Ch_XXVI_08.pdf [hereinafter ATT]; *see, e.g., Obama Administration Signs United Nations Arms Trade Treaty*, NRA-ILA (Sept. 25, 2013), www.nraila.org/articles/20130925/obama-administration-signs-united-nations-arms-trade-treaty.

²⁰⁵ Peter Finn, *NRA Opposes U.N. Arms Treaty*, WASH. POST (Mar. 16, 2013), www.washingtonpost.com/world/national-security/us-nra-square-off-over-small-arms-treaty/2013/03/16/ae495dae-8d76-11e2-b63f-f53fb9f2fcb4_story.html?utm_term=.963a2fc62590.

²⁰⁶ *Roll Call Vote 113th Congress - 1st Session*, United States Senate (2013), www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=1&vote=00091.

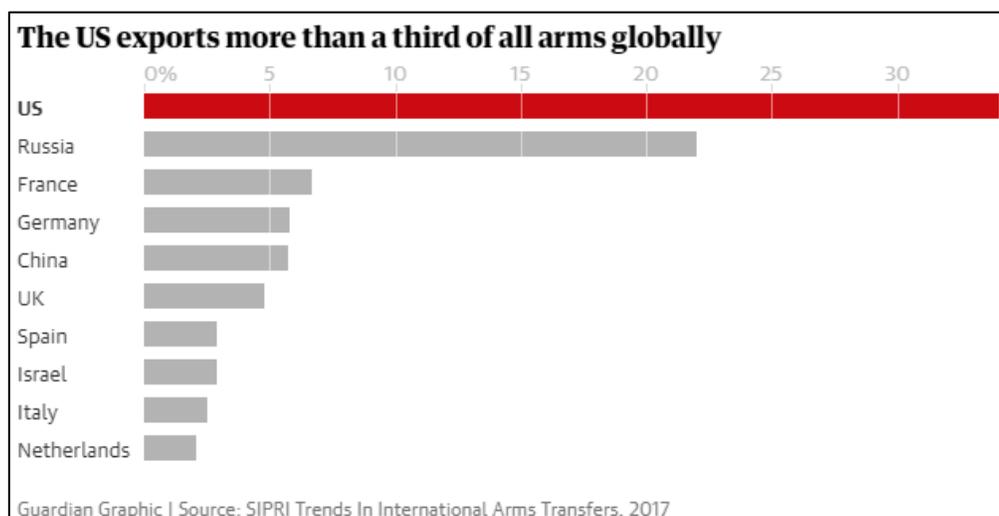
²⁰⁷ *See* UNITED NATIONS TREATY COLLECTION, Status of Treaty, treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&clang=_en.

²⁰⁸ ATT, *supra* note 204, art. 1 (object and purpose).

²⁰⁹ *Id.*

General Ban Ki Moon stated that “it [is] critical that we continue to promote universal participation in the ATT, by encouraging all States, particularly major arms exporters and importers, to join . . .” He “call[ed] on those States who have not yet done so, to accede to it without delay.”²¹⁰

Figure 7: Global Arms Exports, Percent of Market Share by Country (2017)²¹¹



44. The United States is both a major arms importer and exporter.²¹² Indeed, the United States is the world’s *largest* exporter of firearms, supplying arms to at least 98 states.²¹³ U.S. arms account for about one-third of global exports, as seen in Figure 7, and about half of U.S. arms exports go to the Middle East.²¹⁴

III. U.S. FIREARM LAWS

A. U.S. Constitutional Law

45. The Second Amendment of the Constitution states that a “well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”²¹⁵ Until 2008, the second amendment was not interpreted to grant an individual constitutional right to gun ownership.²¹⁶ In 2008, in *District of Columbia v. Heller*, the

²¹⁰ UNITED NATIONS SECRETARY-GENERAL, Statement by the Secretary-General on the entry into force of the Arms Trade Treaty (Dec. 23, 2014), www.un.org/sg/en/content/sg/statement/2014-12-23/statement-secretary-general-entry-force-arms-trade-treaty.

²¹¹ Saeed Kamali Dehghan, *Nearly Half of US Arms Exports go to the Middle East*, THE GUARDIAN (Mar. 11, 2018), www.theguardian.com/world/2018/mar/12/nearly-half-of-us-arms-exports-go-to-the-middle-east.

²¹² See Parsons & Weigend, *supra* note 196, at 3-10.

²¹³ Dehghan, *supra* note 211.

²¹⁴ *Id.*

²¹⁵ U.S. Const. amend. II.

²¹⁶ See Jason M. Larson, *Government Gone Wild: The Real Reason for the 2nd Amendment*, 4 PHOENIX L. REV. 911, 913-914 (2010-2011) (stating no federal appellate court had used the 2nd Amendment to protect gun ownership until 2007); see

U.S. Supreme Court undertook its first ‘in-depth’ examination of the second amendment. In *Heller*, the Court struck down provisions of the District of Columbia’s Firearms Control Regulation Acts of 1975,²¹⁷ holding that “the Second Amendment [of the Constitution] conferred an individual right to keep and bear arms.”²¹⁸ In interpreting that right, the Court held that a total ban on handguns in the home, as well as the requirement that guns be secured with a trigger-lock or disassembled within one’s home, with no exception for self-defense, violated the Second Amendment.²¹⁹

46. Justice Scalia, writing for the Court, noted that this individual right to possess a handgun “is not unlimited.”²²⁰ Indeed, the *Heller* ruling only applies directly to *handguns* that are *in the home* and *for protection*. It does not address other types of firearms, guns in public, or firearms which are owned for other purposes.²²¹ While *Heller* applied the Second Amendment only to the federal government, in a subsequent decision, *McDonald v. City of Chicago*,²²² the Supreme Court incorporated the Second Amendment interpretation of *Heller* into the Fourteenth Amendment Due Process Clause, thereby making *Heller* effective against the states.
47. Because *Heller* left open questions about what regulations now pass muster under the Second Amendment,²²³ many cases have been filed challenging the constitutionality of state and local gun control laws.²²⁴ While most gun laws, including Maryland’s assault weapons ban²²⁵ and

also Jad Abumrad, *Radiolab Presents: More Perfect – the Gun Show*, RADIOLAB, 10:24-13:32; 43:10-43:22 (Oct. 11, 2017) (explaining the “individual rights reading” of the 2nd Amendment was “forced into the mainstream” when the Black Panther Party for Self-Defense used the interpretation to justify arming themselves in public spaces in 1966, but no court would accept the reasoning until *Heller*).

²¹⁷ D.C. Code Ann. §7-2501, *et seq.* (2017). Significantly, this law imposed a total ban on handgun possession in the home and required rifles and shotguns in a home to be “unloaded and disassembled or bound by a trigger lock.” *Id.*

²¹⁸ *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

²¹⁹ *Id.* at 635.

²²⁰ *Id.* at 2786.

²²¹ See Eric Ruben & Joseph Blocher, *From Theory to Doctrine: An Empirical Analysis of the Right to Keep and Bear Arms After Heller*, 67 DUKE L. J. 1433 (2018), scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3938&context=dlij.

²²² *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

²²³ *Heller*, 554 U.S. at 626.

²²⁴ See Adam Liptak, *Supreme Court Gun Ruling Doesn’t Block Proposed Controls*, N.Y. TIMES (Dec. 18, 2012), www.nytimes.com/2012/12/19/us/gun-plans-dont-conflict-with-justices-08-ruling.html.

²²⁵ See *Kolbe v. Hogan*, 849 F.3d 114, 140 (4th Cir. 2017) (upholding Maryland’s Firearm Safety Act of 2013 banning assault weapons and large-capacity magazines as constitutional). Federal courts have upheld challenges to assault weapon bans four times in the past decade, with the Supreme Court rejecting to hear an appeal in all instances. *New York State Rifle and Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015) (upholding assault weapons bans in New York and Connecticut); *Kampfer v. Cuomo*, 579 U.S. _____ (2016) (denial of certiorari); *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (upholding D.C.’s assault weapons ban); *Heller v. District of Columbia*, No. 1:08-cv-01289 (Feb. 26, 2016) (denying petition for rehearing En Banc); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015) (upholding Highland Park’s assault weapons ban); *Friedman v. City of Highland Park*, 577 U.S. _____ (2015) (denial of certiorari).

San Francisco’s safe-storage law,²²⁶ have been upheld by the federal courts, which have generally read *Heller* narrowly,²²⁷ it has led some courts to overturn others, including an Illinois law which banned carrying loaded handguns in public.²²⁸ A study of more than 1,150 Second Amendment challenges to gun control laws brought in state and federal courts in the decade after *Heller* found that the courts rejected the challenge over 90% of the time.²²⁹

B. Federal Legislation on Firearms

48. In the United States, guns are regulated by both federal and state law. The primary federal statutes regulating guns are the National Firearms Act of 1934 (NFA)²³⁰ and the Gun Control Act of 1968.²³¹ These laws are enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).²³²
49. The National Firearms Act (NFA), enacted in 1934 as part of the Internal Revenue Code, was the first federal regulation related to the manufacture and transfer of firearms in the United States. An exercise of the taxing power, the NFA has been amended and revised by subsequent federal acts. In its current form, the NFA imposes an excise tax on and requires registration of a narrow category of firearms. Generally, the NFA applies to machine guns, short-barreled shotguns and rifles, and silencers.²³³ Most handguns are exempted from NFA regulation.²³⁴
50. The Gun Control Act of 1968 (GCA) regulates interstate and foreign commerce in firearms, including importation, “prohibited persons,” and licensing provisions. The GCA revised the NFA and repealed the Federal Firearms Act of 1938. The GCA mandated the licensing of

²²⁶ See *Jackson v. City and County of San Francisco*, 746 F.3d 953 (9th Cir. 2014) (upholding San Francisco’s 2008 law prohibiting any person from keeping a handgun in a residence unless it is stored in a locked container or disabled with a trigger lock unless it is carried on the person).

²²⁷ See *Heller*, 670 F.3d 1244, 1260 (stating the court will determine whether the ban is unconstitutional under *Heller* primarily by assessing whether it impinges on the right to self-defense); see also *United States v. Mazzeo*, 614 F.3d 85, 88 (3d Cir. 2010) (stating the key right protected under *Heller* is “the right to protect the hearth and home,” which allows state limitations); *Hollis v. Lynch*, 827 F.3d 436, 445 (5th Cir. 2016) (finding the Second Amendment’s individual right only applies to weapons in common use for lawful purposes and does not apply to machine guns, and that “self-defense, not revolution” is the essential protected right); *Cf. Fyock v. Sunnyvale*, 779 F.3d 991, 995 (9th Cir. 2015) (stating assault weapon bans are long-standing limitations accepted by *Heller*); *United States v. Reese*, 627 F.3d 792, 801 (10th Cir. 2010) (holding government limitations on gun rights must only be reasonable, not perfect, to be upheld).

²²⁸ See *Moore v. Madigan*, 702 F.3d 933, 939-40 (7th Cir. 2012) (holding that Illinois law banning individuals from carrying loaded guns in public was unconstitutional).

²²⁹ *Post-Heller Litigation Summary*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE (Apr. 2017), lawcenter.giffords.org/wp-content/uploads/2017/04/Post-Heller-Litigation-Summary-2017-April.pdf; see also Ruben & Blocher, *supra* note 221.

²³⁰ 26 U.S.C. § 5801, *et seq.*

²³¹ 18 U.S.C. § 921, *et seq.*

²³² Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), *see generally* www.atf.gov/.

²³³ 26 U.S.C. § 5845(a).

²³⁴ 26 U.S.C. § 5845(a), (e). The NFA includes a category of “any other weapon” which includes certain smooth-bore handguns. *Id.*

individuals and companies engaged “*in the business of*” selling firearms²³⁵ and banned mail order sales of rifles and shotguns. It also established minimum age requirements for firearm purchases, mandated that all firearms be affixed with a serial number, and banned certain categories of persons from owning firearms, including most felons, drug users, and mentally incompetent people.²³⁶

51. The categories of “prohibited persons” in the GCA were expanded by the Brady Handgun Violence Prevention Act of 1993 (the Brady Act).²³⁷ The Brady Act banned from gun ownership anyone who: has been convicted of or is under indictment for a crime punishable for more than one year; is a fugitive; is unlawfully in the United States or is admitted under a nonimmigrant visa; has been dishonorably discharged from the military; renounced his or her U.S. citizenship; has been convicted of a misdemeanor offense of domestic violence; is underage; is an “unlawful user of or addicted to a controlled substance”; or is subject to a court restraining order “from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.”²³⁸
52. The Brady Act also mandates federal background checks on some gun purchasers and implemented the National Instant Criminal Background Check System (NICS). The statute only requires background checks when buying guns from a licensed gun dealer;²³⁹ it does not apply to private transactions such as when guns are purchased at gun shows, over the internet, or through classified advertisements. It initially imposed a five day waiting period on gun purchases to allow law enforcement to review the background of prospective purchasers; this has now been replaced with an instant check system, which can be extended up to three days if the initial results of the check are not viewed as conclusive. If the FBI is unable to complete a background check within three days, the dealer can automatically complete the firearm transfer.²⁴⁰ The Brady Act, as passed, only applied to handgun purchases; it was expanded to apply to shotguns and rifles in 1998.²⁴¹
53. The Firearms Owners’ Protection Act of 1986 (FOPA)²⁴² also amended the GCA, repealing several key provisions and liberalizing restrictions on firearm sellers. Also known as the McClure-Volkmer Act, FOPA loosened the definition of “engaging in the business” of selling firearms for the purposes of requiring a federal firearms license. Under federal law,

²³⁵ See Appendix I: Glossary of Terms.

²³⁶ “Drug users” were any persons convicted of using illegal narcotics and “mental incompetents” were any persons adjudicated as mentally defective or previously assigned to a mental institution. See Nash E. Gilmore, *A Bridge Over Troubled Water: The Second Amendment Guarantee for the Previously Mentally Institutionalized*, 86 MISS. L. REV. 1, 14 (2017).

²³⁷ 18 U.S.C. § 921-22 (2012).

²³⁸ 18 U.S.C. § 922(d).

²³⁹ *Id.* § 922(t)(1) (“[.] a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter...”).

²⁴⁰ 18 U.S.C. § 922(t)(1). See also Adrienne St. Clair, *A Backgrounder On Background Checks*, NPR (Mar. 8, 2018), www.npr.org/2018/03/08/591549278/a-backgrounder-on-background-checks.

²⁴¹ See ATF, *Brady Law*, www.atf.gov/rules-and-regulations/brady-law (last updated April 28, 2017).

²⁴² Firearms Owners’ Protection Act of 1986, 18 U.S.C. § 921 (1986).

this generally requires a person to sell guns “with the principal objective of livelihood and profit” and with the intent being “predominantly one of obtaining livelihood and pecuniary gain.”²⁴³ FOPA also legalizes licensed dealers to sell firearms in places other than the location on their dealer license, such as at a gun show in their state; prevents the federal government from maintaining a centralized database of gun dealer records; and limits how many inspections the ATF can conduct of a firearm dealer’s premises without a warrant. Among the provisions that FOPA repealed from the GCA were the requirement that dealers keep sales records of ammunition transfers,²⁴⁴ that sellers of ammunition be licensed, and that interstate transfers of ammunition to unlicensed purchasers were banned.

54. The 1994 Federal Assault Weapons Ban²⁴⁵ banned certain models of AR-15 style assault rifles²⁴⁶ and high-capacity magazines.²⁴⁷ Specifically, it prohibited the manufacturer, transfer, and possession of semi-automatic assault weapons and the transfer and possession of large-capacity ammunition feeding devices, defined as those capable of holding more than 10 rounds of ammunition. The Assault Weapons Ban only banned the transfer and possession of assault weapons and large-capacity magazines manufactured after the date of the law’s enactment. On September 13, 2004 Congress allowed the Assault Weapons Ban to expire according to its ‘sunset clause’²⁴⁸ as a direct result of NRA-lobbying.²⁴⁹
55. The Domestic Violence Offender Gun Ban of 1996, often called the Lautenberg Amendment,²⁵⁰ is the principal federal law regarding firearm possession and domestic violence. Enacted as an amendment to the Omnibus Consolidated Appropriations Act of 1997, it prohibits individuals who have been convicted of a “misdemeanor crime of domestic violence”²⁵¹ from buying or possessing a firearm or ammunition under certain, limited circumstances. The law only applies if the offender is a current or former spouse, parent, or guardian of the victim; shares a child in common with the victim; currently or formerly lived with the victim as a spouse, parent, or guardian; or was similarly situation to a spouse, parent or guardian.²⁵² The law also bans gun ownership for anyone under a

²⁴³ See U.S. DEP’T JUSTICE, ATF, *Do I Need a License to Buy and Sell Firearms? Guidance to Help You Understand When a Federal Firearms License is Required under Federal Law*, ATF Publication 5310.2 (Jan. 2016), www.atf.gov/file/100871/download.

²⁴⁴ The requirement that dealers keep sales records of *armor-piercing* ammunition transfers remained.

²⁴⁵ Violent Crime Control & Law Enforcement Act of 1994, Pub. L. No 103-322, § 110102, 108 Stat.1796 (1994).

²⁴⁶ See Annex 1: Glossary of Terms.

²⁴⁷ See Annex 1: Glossary of Terms.

²⁴⁸ *Id.* § 110105(2); see also Brad Plumer, *Everything You Need to Know about the Assault Weapons Ban, in One Post*, WASH. POST (Dec. 17, 2012), www.washingtonpost.com/news/wonk/wp/2012/12/17/everything-you-need-to-know-about-banning-assault-weapons-in-one-post/?utm_term=.b444e18979fc.

²⁴⁹ See Elving, *supra* note 22.

²⁵⁰ 18 U.S.C. §922 (g) (9) (1996).

²⁵¹ 18 U.S.C. § 921(a)(33). This is defined as an offense that is a federal, state, or tribal law misdemeanor that involves the use of or attempted use of physical force or threatened use of a deadly weapon.

²⁵² The law only applies if the offender is a current or former spouse, parent or guardian of the victim, shares a child in common with the victim, currently or formerly lived with the victim as a spouse, parent, or guardian, or was similarly situation to a spouse, parent or guardian. *Id.*

restraining (protection) order for domestic abuse *if* the individual falls within specified criteria, including the requirement that the defendant and petitioner are intimate partners;²⁵³ the order must restrain future contact, there must be a credible threat; *and* the defendant must have had the opportunity to be heard at a hearing.²⁵⁴

56. Beginning in 2003, Congress has attached the Tiahrt Amendments²⁵⁵ to the annual U.S. Department of Justice appropriations bill. These Amendments have changed slightly over the years, but generally: prohibit the release of firearms trace data, including to cities and states, academic researchers, litigants, and other members of the public; prohibit gun trace data from being admissible as evidence in civil lawsuits against gun sellers or manufacturers (including in state or local proceedings to revoke a dealer’s license); prohibit the ATF from requiring firearms dealers to submit their inventories to law enforcement agencies; and require the Federal Bureau of Investigation (FBI) to destroy the records of all approved gun purchasers within 24 hours.²⁵⁶ Previously, the Amendments also prohibited ATF from disclosing firearm trace data to law enforcement except in connection with a specific investigation or prosecution or to a federal agency for national security purposes. These restrictions, which also prohibited agencies from sharing aggregated data to determine patterns or identify gun dealers linked to suspicious numbers of gun crimes, have since been loosened.
57. Similarly, Congress passed the Protection of Lawful Commerce in Arms Act (PLCAA)²⁵⁷ in 2005, which protects the gun industry from liability in most tort actions. The PLCAA prohibits a “qualified civil liability action” from being brought in any state or federal court against a manufacturer or seller of firearms or ammunition if the action resulted from the criminal or unlawful misuse of their products, with certain exceptions.²⁵⁸
58. The Child Safety Lock Act of 2005 (CSLA),²⁵⁹ adopted as part of the PLCAA, mandates that licensed importers, manufacturers, or dealers of firearms must provide the transferee with a secure gun storage or safety device for any sale or transfer of a firearm. It also immunizes anyone who uses secure gun storage or a safety device with their handgun from a “qualified civil liability action” if the handgun was accessed by another person who did not have the possessor’s permission and the handgun was made inoperable by the use of either secure gun storage or a safety device. The CSLA does not require the *use* of either safe storage or a

²⁵³ To be considered intimate partners, the defendant and petitioner must have had a sexual relationship and either lived together or share a child in common.

²⁵⁴ 18 U.S.C. § 922(g)(8).

²⁵⁵ Consolidated Appropriations Act 2010, Pub. L. No. 111-117, 123 Stat. 3128-3129 (2009).

²⁵⁶ *Id.*

²⁵⁷ 15 U.S.C. §§ 7901-7903.

²⁵⁸ Actions excluded from coverage of this act include when the transferor has been convicted of knowingly transferring a firearm with the knowledge that it will be used to commit a crime of violence; when the seller or manufacturer knowingly violated a state or federal law; for death or injury directly resulting from a defect in design or manufacture of the product. *Id.*

²⁵⁹ 18 U.S.C. § 922(z).

locking device, nor are there federal regulations on the products' designs.²⁶⁰ There has never been a federal law mandating the use of safe storage or gun locking devices, including in households with minors or other prohibited persons.

C. State and Municipal Legislation on Firearms

59. Despite the failure to adopt sufficient gun control measures at the federal level and the roadblock created by *Heller*,²⁶¹ some states have adopted effective gun control legislation. Several states, including Colorado,²⁶² Connecticut,²⁶³ Delaware,²⁶⁴ New York,²⁶⁵ and Oregon,²⁶⁶ have made background checks a universal requirement for gun purchases, thereby closing the federal law loophole. New York has made significant efforts to regulate ammunition purchases,²⁶⁷ Maryland requires handgun purchasers to be fingerprinted and complete a training class,²⁶⁸ eight states and the District of Colombia have assault weapons bans,²⁶⁹ and Vermont recently banned the possession or transfer of large-capacity ammunition magazines.²⁷⁰ In the past five years, California,²⁷¹ Connecticut,²⁷² and New York²⁷³ have adopted or strengthened laws requiring that firearms be stored with a locking device in place if the owner lives with someone who is ineligible to possess firearms.

²⁶⁰ Safe storage and safety devices are defined under 18 U.S.C. § 921(a)(34).

²⁶¹ *Heller*, 554 U.S. at 570.

²⁶² COLO. REV. STAT. ANN. § 18-12-112 (West, Westlaw through Ch. 273 of the 2nd Reg. Sess. of the 71st Gen. Assemb. (2018)).

²⁶³ CONN. GEN. STAT. ANN. § 29-36(1) (West, Westlaw through enactments of Public Acts enrolled and approved by the Governor on or before June 6, 2018 and effective on or before June 6, 2018).

²⁶⁴ DEL. CODE ANN. tit. 11 § 1448B (West, Westlaw through 81 Laws 2018, Chs. 200-262).

²⁶⁵ N.Y. GEN. BUS. LAWS § 898 (McKinney, Westlaw through L.2018, Chs. 1 to 72).

²⁶⁶ OR. REV. STAT. ANN. §166.433 (West, Westlaw through 2018 Reg. Sess. emergency legis., effective through Apr. 13, 2018, and the ballot measure approved at the Jan. 23, 2018 special election).

²⁶⁷ N.Y. PENAL LAW § 400.03 (McKinney, Westlaw through L.2018, Chs. 1 to 72).

²⁶⁸ MD. CODE ANN., PUB. SAFETY § 5-117.1 (West, Westlaw through legis. effective June 1, 2018, from the 2018 Reg. Sess. of the Gen. Assemb.).

²⁶⁹ California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, and New York. Additionally, Minnesota and Virginia have laws which regulate assault weapons, but do not ban them.

²⁷⁰ VT. STAT. ANN. tit. 13, §§ 4021-4022 (West, Westlaw through the Adjourned Sess. of the 2017-2018 Vt. Gen. Assemb. (2018) effective upon passage through May 25, 2018). Eight other states and the district of Colombia also have laws which ban large. These are the same states which have assault weapons bans, with the addition of Colorado.

²⁷¹ CAL. PENAL CODE § 25135 (West, Westlaw through Ch. 13 of 2018 Reg. Sess.).

²⁷² CONN. GEN. STAT. ANN. § 29-37i (West, Westlaw through enactments of Pub. Acts enrolled and approved by the Governor on or before June 6, 2018 and effective on or before June 6, 2018).

²⁷³ N.Y. PENAL LAW § 265.45 (McKinney, Westlaw through L.2018, Chs. 1 to 72).

Together with Massachusetts,²⁷⁴ that means four states now have a requirement that firearms be locked in some or all situations.²⁷⁵

60. The Parkland school shooting prompted some state legislatures to tighten their gun laws. As of July 2018, 55 gun safety bills were signed into law in 26 states since Parkland.²⁷⁶ Notably, this includes bans on bump stocks²⁷⁷ in eight states,²⁷⁸ extreme risk protection order legislation,²⁷⁹ also known as “red-flag” bills, in eight states,²⁸⁰ and laws designed to keep guns out of the hands of domestic abusers in nine states.²⁸¹ Connecticut, a leader on gun control legislation since the Sandy Hook shooting, adopted legislation in May 2018 banning bump stocks and other firearm enhancements,²⁸² new legislation in New York requires people convicted of domestic abuse to turn over all firearms,²⁸³ a new bill in Oregon aims to prevent convicted stalkers and domestic violence offenders from buying and keeping guns;²⁸⁴ two bills in Rhode Island ban bump stocks and “other rapid-fire gun modifications”²⁸⁵ and permit extreme risk protection orders;²⁸⁶ Vermont banned bump stocks, limited rifle magazines to ten rounds, requires all gun transactions to occur by a licensed dealer, and increased the minimum purchase age to 21;²⁸⁷ Washington passed a law in March to phase

²⁷⁴ MASS. GEN. LAWS ANN. ch. 140, § 131L (West, Westlaw through Chapter 108 of the 2018 2nd Ann. Sess.). The Massachusetts Supreme Judicial Court upheld the constitutionality of the requirement that owners safely secure their firearms in 2010. *Commonwealth v. Runyan*, 922 N.E.2d 794 (Mass. 2010).

²⁷⁵ California’s 2016 law requires all gun owners to keep their firearm in a locked container or secured with a locking device if they live with someone prohibited under California state or federal law from owning a firearm. § 25135. Connecticut’s safe storage law applies only to *loaded* firearms. § 29-37i. New York’s 2013 law requires gun owners to keep their firearm locked if they live with a convicted felon, domestic abuser, or a person with a federally prohibitive mental health history. § 265.45. Massachusetts has the strictest law and requires that *all* firearms be stored with a locking device when they are not in use or when the firearm is not carried “by or under the control of the owner or other lawfully authorized user.” § 131L.

²⁷⁶ *Pressure Leads to Progress*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, giffords.org/pressure-leads-to-progress/ (updated July 2018).

²⁷⁷ See Annex 1: Glossary of Terms.

²⁷⁸ New Jersey, Maryland, Florida, Vermont, Washington, Connecticut, Rhode Island, and Delaware.

²⁷⁹ See Annex 1: Glossary of Terms.

²⁸⁰ Delaware, Florida, Illinois, Massachusetts, Maryland, New Jersey, Rhode Island, and Vermont. The number of red-flag bills has more than doubled since the Parkland shooting. Nick Wing, *With New Illinois Gun Law, ‘Red Flag’ States Have More Than Doubled Since Parkland*, HUFFINGTON POST (July 16, 2018), www.huffingtonpost.com/entry/illinois-gun-laws-red-flag_us_5b11a669e4b010565aabfc12.

²⁸¹ Kansas, Louisiana, Maryland, New York, Ohio, Oregon, Utah, Washington, Vermont.

²⁸² Con. Gen. Stat. § NEW: Added by P.A. 18-29, §1 (Oct. 1, 2018).

²⁸³ N.Y. Penal Law § 400.00 (2013). This is an amendment of the previous state law that only prohibited domestic abusers from owning pistols and revolvers.

²⁸⁴ H.B. 4145, 2018 Leg., 79th Sess. (Or. 2018). Previously, state law had allowed convicted domestic abusers and stalkers to buy firearms so long as they were not married to the victim.

²⁸⁵ H. 7075, 2018 Gen. Assem., Jan. Sess. (Ri. 2018).

²⁸⁶ H. 7688, 2018 Gen. Assem., Jan. Sess. (Ri. 2018).

out bump stocks;²⁸⁸ and New Jersey passed several gun control laws in June, including for extreme risk protection orders, prohibiting armor-piercing ammunition, limiting magazines to 10 rounds (with some exceptions), and requiring people who are not licensed firearm dealers to conduct private gun sales through licensed retail dealers.²⁸⁹

61. Several municipalities have also passed gun control measures following Parkland. Officials in the Chicago suburb of Deerfield, Illinois passed an ordinance in April banning assault weapons and penalizing residents who do not forfeit or secure banned weapons by June 13, 2018. Similarly, the City Council in Lincoln, Nebraska unanimously voted on an ordinance to ban the sale or ownership of bump stocks in March 2018.²⁹⁰
62. Yet some states have moved in the opposite direction, loosening or repealing their gun control laws. Five states – Maine,²⁹¹ Mississippi,²⁹² Missouri,²⁹³ North Dakota,²⁹⁴ and West Virginia²⁹⁵ – have adopted new laws in the last *three* years allowing gun owners to carry loaded firearms in public without a permit or training. This brings the total number of states that allow the unrestricted, permit-less concealed carry of loaded firearms in public spaces to 12.²⁹⁶ Likewise, in 2013, Kansas revised its state laws to allow carrying of concealed guns in any public area of state and municipal buildings, including at public universities,²⁹⁷ a move similar to the bills signed by governors in Arkansas,²⁹⁸ Georgia,²⁹⁹ Idaho,³⁰⁰ and Texas³⁰¹ that

²⁸⁷ VT. STAT. ANN. tit. 13, §§ 4021-4022 (West, Westlaw through the Adjourned Sess. of the 2017-2018 Vt. Gen. Assemb. (2018) effective upon passage through May 25, 2018). Residents who already own larger-capacity magazines will be permitted to keep them. There are also some exceptions for law enforcement, the military, and those who have taken gun safety courses.

²⁸⁸ Act of Mar. 6, 2018, ch. 7, 2018 Wash. Sess. Laws 1. The law makes it a crime to manufacture or sell bump stocks starting in July 2018, and they will be illegal to possess starting in July 2019.

²⁸⁹ N.J. Rev. Stat. § 2C:58-23 (2018); N.J. Rev. Stat. § 2C:39-3 (2018); N.J. Rev. Stat. § 2C:39-19 (2018); N.J. Rev. Stat. § 2C:58-2.2 (2002).

²⁹⁰ Lincoln, Neb., Municipal Code § 2.18.040.

²⁹¹ ME. REV. STAT. ANN. tit. 25, § 2001-A (West, Westlaw through Ch. 317 of the 2017 Second Reg. Sess. of the 128th Leg.).

²⁹² MISS. CODE ANN. § 45-9-101(24) (West, Westlaw through the 2018 Reg. Sess. effective through June 29, 2018).

²⁹³ MO. ANN. STAT. § 571.030 (West, Westlaw through the 2017 First Reg. Sess. and First and Second Extraordinary Sess. of the 99th Gen. Assemb.).

²⁹⁴ N.D. CENT. CODE ANN. § 62.1-04-02 (West, Westlaw through the 2017 Reg. Sess. of the 65th Legis. Assemb.).

²⁹⁵ W. VA. CODE ANN. § 61-7-7(c) (West, Westlaw through the 2018 Reg. Sess.).

²⁹⁶ No concealed carry permit is required by law in Alaska, Arizona, Idaho, Kansas, Maine, Mississippi, Missouri, New Hampshire, North Dakota, Vermont, West Virginia, and Wyoming. *See Concealed Carry*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/concealed-carry/; *see also* Matt Vasilogambros, *NRA has Backed Most State Gun Laws Passed since Sandy Hook*, PBS (Mar. 2, 2018), www.pbs.org/newshour/politics/nra-has-backed-most-state-gun-laws-passed-since-sandy-hook.

²⁹⁷ KAN. STAT. ANN. § 75-7c20 (West, Westlaw through the 2018 Reg. Sess. of the Kan. Leg. effective on or before May 17, 2018). In April 2014, Kansas also passed HB 2578, which removed local authority over firearm control, meaning that all firearm laws are now uniform statewide.

²⁹⁸ ARK. CODE ANN. § 5-73-322 (West, Westlaw through the 2018 Fiscal Sess. and the 2nd Extraordinary Sess. of the 91st Arkansas Gen. Assemb. that are effective June 14).

allowed concealed carry license holders to bring guns onto college campuses. Additionally, eight states have laws which either expressly allow the concealed carry of firearms into K-12 schools or have no law prohibiting it.³⁰²

63. Missouri is a prime example of a state loosening its gun control laws. In 2007, Missouri repealed its 1921 permit-to-purchase (PTP) handgun law which required all handgun purchasers to have a valid PTP license to purchase handguns.³⁰³ The repeal of the PTP law was accompanied by a 25% increase in gun homicide rates in Missouri³⁰⁴ and the share of guns used in crimes in Missouri that were purchased *in-state* grew 23%, suggesting that criminals were more easily able to acquire guns within the state.³⁰⁵ Even given the increase in gun violence, during the 2017-2018 legislative session, Missouri lawmakers expanded the categories of individuals who will be permitted to carry concealed weapons into schools³⁰⁶ and advanced H.B. 1936, which would have allowed guns (with or without a permit) in places that are currently designated as gun-free zones including bars, churches, day-care centers, casinos, stadiums, amusement parks, hospitals, polling locations, and local government buildings, including public universities and colleges.³⁰⁷

D. Gaps in the Legislative Scheme

64. Firearm laws in the United States are insufficient to protect the U.S. population and some regulations actually increase the risk of gun violence and handicap law enforcement. The ATF, which is tasked with enforcing federal guns laws, restricted in its ability to effectively and fully carry out its mandate due to amendments and regulations passed by Congress and

²⁹⁹ GA. CODE ANN. § 16-11-127.1(c)(20) (West, Westlaw through Acts 281 to 284, 287 to 288, and 290 to 292, 294, 309, 339, 345, 346, 352, 372, 373, 381, 387, 389, 409, 423, 439, 442, 443, 445, 447, 454, 459, 461, 462, 472, 476, 481, 492, 546, 550, 562 of the 2018 Legis. Sess.).

³⁰⁰ IDAHO CODE ANN. § 18-3309 (West, Westlaw through all immediately effective legis. of the Second Reg. Sess. of the 64th Leg.).

³⁰¹ TEX. GOV'T CODE ANN. § 411.2031 (West, Westlaw through the 2017 Regular and First Called Sess. of the 85th Legislature).

³⁰² See *Guns in School*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/guns-in-schools/>.

³⁰³ Daniel W. Webster et al., *Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides*, 91 J. URB. HEALTH 293, 294 (2014).

³⁰⁴ *Id.*

³⁰⁵ Mayors Against Illegal Guns, *The Impact of Eliminating Missouri's Background Check Requirement*, libcloud.s3.amazonaws.com/9/bd/e/1720/Background_Checks_-_Lessons_from_Missouri.pdf.

³⁰⁶ This provision was added on May 8th as an amendment to Senate Bill 743, an extensive education bill, which was passed shortly thereafter on May 17th. The amendment allows a school district to designate any employee as a 'school protection officer,' making them eligible to carry a firearm on campus. S. 743, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018).

³⁰⁷ H.R. 1936, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018). This bill passed the Missouri Rules Committee on March 28, 2018. Although it was not put on the legislative calendar for the current session, it could still be introduced during a future session.

significant loopholes exist in federal and state legislation that cause concern and have enabled U.S. gun violence.

i. Gaps in the Regulation and Oversight of Firearm Sellers

65. The Gun Control Act of 1968 (GCA)³⁰⁸ only mandates the licensing of anyone *in the business* of selling firearms and excludes from licensing requirements any “person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”³⁰⁹ The Firearms Owners’ Protection Act of 1986 (FOPA),³¹⁰ which amended the GCA, further loosened the definition of “engaging in the business.” Individuals or “private sellers” who *occasionally* sell guns are exempt from a federal firearms license requirement and are outside the oversight of a regulatory body. It is estimated that 40% of gun sales in the United States occur through private transaction without a federal license.³¹¹
66. The requirements and obligations mandated of licensed gun sellers have also been loosened and oversight is restricted. Federal law does require licensed dealers to indefinitely maintain records of gun sales,³¹² but FOPA prohibits the federal government from compiling these records into a centralized database and repealed provisions from the GCA that required dealers to keep sale records for ammunition. The Tiahrt Amendments, which have been attached to the annual U.S. Department of Justice appropriations bill since 2003, prohibit the ATF from requiring firearms dealers to submit their inventories to law enforcement agencies.³¹³ Moreover, FOPA prevents ATF agents from conducting regular compliance inspections of dealers.³¹⁴ As a result, law enforcement is often not alerted to stolen or illegally sold firearms or suspicious sales that could keep guns out of the hands of criminals and other dangerous persons. This means that every year, thousands of guns from dealers’ inventories are unaccounted for, having either been lost, stolen, or sold illegally without proper documentation.³¹⁵ Many of these guns are diverted to criminal purposes.³¹⁶

³⁰⁸ 18 U.S.C. § 921, *et seq.*

³⁰⁹ 18 U.S.C. § 921(a)(21)(C).

³¹⁰ Firearms Owners’ Protection Act of 1986, 18 U.S.C. § 1921 (1986).

³¹¹ Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Department of Justice, National Institute of Justice Research in Brief 6-7 (May 1997), www.ncjrs.gov/pdffiles/165476.pdf.

³¹² 18 U.S.C. § 923(g)(1)(A).

³¹³ Consolidated Appropriations Act 2010, Pub. L. No. 111-117, 123 Stat. 3128-3129 (2009). The ATF can however request information regarding a particular firearm if the request is made in the course of a specific criminal investigation. 18 U.S.C. § 923(g)(7).

³¹⁴ The ATF is only lawfully able to conduct one unannounced inspection of a gun dealer’s premise each year without a permit. Moreover, a 2010 Washington Post study found that, on average, dealers are inspected only once a decade. Sari Horwitz & James V. Grimaldi, *ATF’s Oversight Limited in Face of Gun Lobby*, WASH. POST (Oct. 26, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505823.html>.

³¹⁵ See Arkadi Gerney & Chelsea Parsons, *Lost and Stolen Guns from Gun Dealers*, CTR. FOR AMERICAN PROGRESS (June 18, 2013), www.americanprogress.org/issues/guns-crime/reports/2013/06/18/66693/lost-and-stolen-guns-from-gun-dealers/ (reporting that between 2004 and 2011, ATF discovered nearly 175,000 firearms missing from dealer inventories just during compliance inspections); *Missing Guns: Lost And Dangerous - Thousands Of Guns Disappear from Gun Manufacturers Without Background Checks or Records of Sale*, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE (Sept. 2011),

Legislation requiring dealers to regularly submit their inventories could help law enforcement identify corrupt dealers who are supplying the illegal market and encourage dealers to maintain better control and records of their weapons. Studies have found that in states where sellers are required to maintain careful inventory records and report sales, the diversion of guns to criminals is less common.³¹⁷

67. The Tiahrt Amendments, coupled with the 2005 Protection of Lawful Commerce in Arms Act (PLCAA),³¹⁸ further weaken the ability of law enforcement agencies to prosecute dishonest firearms dealers and those who engage in fraudulent or dangerous practices or illegal gun sales. The Tiahrt Amendments prohibit gun trace data from being admissible as evidence in civil lawsuits against gun sellers or manufacturers, including in state or local proceedings to revoke a dealer’s license. The PLCAA prohibits a “qualified civil liability action” against firearm and ammunition sellers if the action resulted from the criminal or unlawful misuse of their products, with certain exceptions.³¹⁹
68. The Tiahrt Amendments’ requirement that the FBI destroy records of all approved gun purchases within 24 hours and the prohibition in FOPA against the federal government maintaining a centralized database of gun dealer records further restricts the ability of law enforcement agencies to prevent and investigate crimes committed with guns and allows certain dangerous individuals to possess firearms.³²⁰ It makes it more difficult for ATF to

www.bradycampaign.org/sites/default/files/Missing-Guns-Lost-and-Dangerous.pdf (finding that from 2009 to the middle of 2011, based on ATF data, “an average of at least 18 firearms left licensed gun manufacturers’ plants nationwide without a record of sale”).

³¹⁶ See, e.g., *Death Valley – Profile of a Rogue Gun Dealer: Valley Gun, Baltimore, Maryland*, BRADY CTR. TO PREVENT GUN VIOLENCE (June 2006), www.bradycampaign.org/sites/default/files/Death-Valley.pdf (highlighting a gun shop which ATF discovered had more than one-quarter of their entire firearms inventory unaccounted for, making them untraceable. This gun shop is one of the top suppliers of crime guns in the nation; law enforcement traced nearly 500 guns used in crimes from 1996 to 2000 to this dealer.).

³¹⁷ See Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Guns Trafficking*, 86 J. URBAN HEALTH 525 (2009).

³¹⁸ 15 U.S.C. §§ 7901-7903.

³¹⁹ Actions excluded from coverage of this act include when the transferor has been convicted of knowingly transferring a firearm with the knowledge that it will be used to commit a crime of violence; when the seller or manufacturer knowingly violated a state or federal law; for death or injury directly resulting from a defect in design or manufacture of the product. *Id.*

³²⁰ Those agencies which are tasked with enforcing current gun laws – both at a state and federal level – are also handicapped in their ability to do so effectively due to limited funding, poor support, and a lack of cooperation. See, e.g., Louis Beckett, *Gun Laws that Cost Millions had Little Effect Because They Weren’t Enforced*, THE GUARDIAN (Oct. 13 2017), www.theguardian.com/us-news/2017/oct/13/gun-laws-that-cost-two-state-lawmakers-their-seats-had-little-effect-study-finds (stating non-compliance with gun laws in Colorado and Washington were a matter of pride for some sheriffs). This has arguably contributed to the often poor enforcement of current gun control laws. For example, the shooter in Emanuel AME Church shooting in Charleston, South Carolina was allowed to purchase the pistol he used in the attack even though a previous misdemeanor for drug possession should have barred hi because the F.B.I. examiner who conducted the background check failed to acquire the arrest record. See Larry Buchanan et al., *How They Got Their Guns*, N.Y. TIMES (last updated Feb. 16, 2018), www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html. Similarly, the Sutherland Springs church shooter passed two federal background checks despite a previous conviction for assaulting his wife, fracturing his infant stepson’s skull, and having a “bad conduct” discharge from the Air Force because the Air Force failed to inform the FBI about the criminal conduct. *Id.*

retrieve firearms from gun owners who have become ineligible to possess guns, such as because of a felony conviction. It also limits the agency’s ability to efficiently trace guns used in crimes. When a gun is recovered in a criminal investigation, law enforcement is more quickly able to trace its ownership when permanent, comprehensive records are kept.³²¹ These records could help law enforcement when responding to emergency calls, as they can determine ahead of time whether that person may own a firearm.³²²

ii. Loopholes that Allow Dangerous Individuals to Acquire Firearms – Including Gaps in Background Checks and Licensing Requirements

69. Under the Gun Control Act of 1968 and the Brady Handgun Violence Protection Act, all *licensed* firearms dealers must perform background checks on firearm purchasers through the national instant criminal background check system.³²³ However, there is no federal requirement for *unlicensed* firearms sellers – such as those that sell over the internet, at gun shows, or through classified advertisements – to perform background checks on prospective buyers, which creates a background check loophole. These ‘private transactions’ represent 40% of all gun sales in the United States.³²⁴ The Department of Justice has criticized this loophole and stated that “individuals prohibited by law from possessing guns can easily obtain them from private sellers and do so without any federal records of the transactions.”³²⁵ This “private-party gun market has been “recognized as a leading source of guns used in crimes.”³²⁶ Currently, only eleven states³²⁷ and the District of Columbia mandate comprehensive universal background checks³²⁸ for *all sales and transfers of all classes* of firearms at the point of sale.³²⁹ Many studies have found that states with background check

³²¹ See *Maintaining Records of Gun Sale*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/gun-sales/maintaining-records-of-gun-sales/.

³²² *Id.*

³²³ 18 U.S.C. § 922(t).

³²⁴ *No Check. No Gun. Why Brady Background Checks Should Be Required for All Gun Sales*, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, 12-20 (2009), www.bradycampaign.org/sites/default/files/no-check-no-gun-report.pdf.

³²⁵ U.S. DEPT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, *Review of ATF’s Project Gunrunner 10* (Nov. 2010), at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

³²⁶ Garen J. Wintemute et al., *Private-Party Gun Sales, Regulation, and Public Safety*, 363 NEW ENG. J. MED. 508, 509 (Aug. 5, 2010), www.nejm.org/doi/pdf/10.1056/NEJMp1006326.

³²⁷ These states are: California, Colorado, Connecticut, Delaware, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington.

³²⁸ See Annex 1: Glossary of Terms.

³²⁹ See *Universal Background Checks*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks. Maryland and Pennsylvania require universal background checks for handguns only. Instead of a background check at the point of sale, eight states prohibit private firearms dealers from selling firearms to purchasers without a state license or permit and require a background check for those licenses or permits. Hawaii, Illinois, Massachusetts, and New Jersey require licenses or permits for all classes of firearm purchases while Iowa, Michigan, Nebraska, and North Carolina require them only for handgun purchases. *Id.*

requirements experience less firearm-related violence³³⁰ and a majority of the country – including gun-owners – support background checks for all gun purchases.³³¹

70. Federal law does not require a license to purchase or possess firearms and only thirteen states and the District of Columbia have some form of licensing requirement for gun ownership or purchase.³³² State laws vary widely. In some, licensing involves a mental health records review,³³³ impose safety trainings or exams,³³⁴ and others have waiting periods.³³⁵ Of the fourteen jurisdictions with some form of licensing law, half apply only to handguns,³³⁶ leaving other types of firearms outside the scope of the license or permit requirements.³³⁷ These laws also vary in terms of how many guns can be purchased with each license or permit and its duration of validity. Whereas Massachusetts limits the validity of a permit to purchase a handgun to ten days and one handgun per permit, Connecticut’s permits are valid for five years and do not limit the number or type of firearms that can be purchased by the permit holder. Licensing requirements can reduce gun violence and illegal trafficking in firearms³³⁸ and are supported by a majority of Americans, including gun-owners.³³⁹ Licensing

³³⁰ See *State Background Check Requirements: Mass Shootings*, EVERYTOWN FOR GUN SAFETY (Nov. 12, 2015), everytownresearch.org/state-background-check-requirements-mass-shootings/; Igor Volsky, *This New Study Proves That Background Checks Save Lives*, THINK PROGRESS (Feb. 15, 2014), thinkprogress.org/justice/2014/02/15/3297141/study-proves-background-checks-save-lives/; Michael D. Anestis et al., *Suicide Rates and State Laws Regulating Access and Exposure to Handguns*, 10 AM. J. PUB. HEALTH 105, e1, e3 (2015).

³³¹ Barry et al., *supra* note 31.

³³² See *generally Licensing*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/gun-owner-responsibilities/licensing. The thirteen states are: California, Connecticut, Hawaii, Iowa, Illinois, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, New York, North Carolina, and Rhode Island.

³³³ For example, Hawaii requires applicants to size a waiver allowing access to mental health records. Haw. Rev. Stat. Ann. §§ 134-2, 134-13.

³³⁴ Only seven jurisdictions that license gun owners mandate applicants to take a safety training course or pass an exam. These are: California, Connecticut, the District of Columbia, Hawaii (for handguns only), Maryland, Massachusetts, and Rhode Island.

³³⁵ Nine states and the District of Columbia have waiting periods that apply to the purchase of some or all firearms. The jurisdictions requiring a waiting period for *all* gun sales are: California (10 days), the District of Columbia (10 days), Florida (3 days or longer if the background check requires it), Hawaii (14 days), Illinois (24 hours for long guns, 72 hours for handguns), Rhode Island (7 days). Note that Florida does not have licensing or permitting requirements, but a waiting period is mandated between when the purchase occurs and delivery of the firearm happens. Minnesota has a 5 or 7 day waiting period for the purchase of handguns and assault weapons. Minnesota’s law is not related to a licensing procedure but is mandated between a firearm purchase and transfer of the weapon. Three states have waiting periods for handguns only: Iowa (3 days), Maryland (7 days), and New Jersey (7 days).

³³⁶ The seven jurisdictions whose licensing and permit requirement only apply to handguns are: Iowa, Maryland, Michigan, Nebraska, New York, North Carolina, and Rhode Island.

³³⁷ The seven states are Iowa, Maryland, Michigan, Nebraska, New York, North Carolina, and Rhode Island. Of these states, only Maryland and Rhode Island require safety training to obtain a license or permit for firearms.

³³⁸ See e.g., Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 17 (2010), www.tracehtheguns.org/report.pdf. (find that states with license requirements for handgun sales were the source of fewer guns that were used in crimes when compared to states without license requirements); Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 INJ. PREVENTION 184, 188-89 (2001) (finding in a study of 25 U.S. cities that states with some form of registration and licensing requirement, including concealed carry permits and dealer sales reporting, were less likely to have guns sold by dealers in

requirements, including periodic renewals, also assist law enforcement in removing guns from individuals who have become ineligible to possess firearms and help prevent minors or other ineligible people from purchasing firearms.

71. Connecticut's 1995 implementation of its permit-to-purchase law for handgun purchases was associated with a 40% decrease in the state's firearm homicide.³⁴⁰ In contrast, Missouri's 2007 repeal of its 1921 permit-to-purchase law, which required permits conditioned on background checks for all handgun purchasers, was associated with a 25% increase in firearm homicide through 2012 despite a decline in the national murder rate during this period.³⁴¹
72. The Domestic Violence Offender Gun Ban of 1996,³⁴² often called the Lautenberg Amendment, is intended to prohibit convicted domestic abusers from buying or possessing guns, but contains significant loopholes that allow dangerous persons to purchase and own firearms. The law does not apply to dating partners who aren't married, haven't lived together, or who don't share a child; to abusers who victimize family members other than an intimate partner or child, such as a parent or sibling; or to convicted stalkers or other individuals who are subject to a protective order.³⁴³ Convicted domestic abusers are not required to surrender firearms currently in their possession. This means that many convicted abusers or stalkers are permitted to buy and own firearms, putting others at risk, especially women and children.³⁴⁴ One study found that laws prohibiting any person subject to a domestic violence restraining order from access to firearms were associated with a 19% reduction in the risk of intimate partner homicides.³⁴⁵ A national poll³⁴⁶ demonstrated that a majority of those surveyed, including gun-owners, supported prohibiting gun ownership for

that state be recovered in criminal investigations); *see also* Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking* 14 (Dec. 2008), cdm266901.cdmhost.com/cdm/ref/collection/p266901coll4/id/1769.

³³⁹ Barry, *supra* note 31.

³⁴⁰ Kara E. Rudolph, *Association between Connecticut's Permit-to-Purchase Handgun Law and Homicides*, 105 AM. J. PUB. HEALTH 49 (2015).

³⁴¹ Webster et al., *Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides*, *supra* note 303.

³⁴² 18 U.S.C. §922 (g) (9) (1996).

³⁴³ *Id.*

³⁴⁴ *See supra* ¶ 18.

³⁴⁵ April M. Zeoli & Daniel W. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes, and Police Staffing Levels on Intimate Partner Homicide in Large US Cities*, 16 INJ. PREV. 90 (2010); *see also* Elizabeth Richardson Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 EVALUATION REV. 313, 332 (June 2006); *see also* Campbell et al., *supra* note 89 at 1092 ("our analysis and those of others suggest that ... restricting abusers' access to guns can potentially reduce both overall rates of homicide and rates of intimate partner femicide.").

³⁴⁶ Barry, *supra* note 31.

10 years after a person is convicted of domestic violence³⁴⁷ or of violating a restraining order.³⁴⁸

73. The Gun Control Act of 1968 (GCA), as amended, only prohibits gun possession for reasons of mental illness under two conditions: (1) if that person has been committed to a mental institution, or (2) the person has been “adjudicated as a mental defective” by a court, board, commission, or other lawful authority.³⁴⁹ A diagnosis of mental illness or treatment for such, absent one of the two above requirements, does *not* prohibit an individual from purchasing or owning firearms, even temporarily, under the federal law.³⁵⁰ There are also inconsistencies in states reporting of mental health records to the National Instant Criminal Background Check System (NICS). Part of this is due to confusion over what qualifies as “committed to a mental institution” for the purposes of the Act.³⁵¹ For example, it is suggested that only *inpatient* settings qualify as an “institution” and therefore anyone mandated to receive *outpatient* mental health services may not be prohibited.³⁵² After *Heller*, at least one federal court has suggested that some emergency hospitalization or commitment procedures that previously qualified as “involuntary commitment” under the GCA should now be excluded.³⁵³ Another issue is that this system depends on state courts and

³⁴⁷ Over 80% of all individuals surveyed, including 75.6% of gun-owners, supported this proposal. *Id.*

³⁴⁸ 73.7% of gun owners and 72.4% of non-gun owners surveyed supported this proposal. *Id.*

³⁴⁹ This term has been defined as:

- (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
 - (1) Is a danger to himself or to others; or
 - (2) Lacks the capacity to manage his own affairs.
- (b) The term shall include—(1) a finding of insanity by a court in a criminal case, and (2) those persons found incompetent to stand trial or found not guilty by lack of mental responsibility [under the Uniform Code of Military Justice]. 27 C.F.R. §478.11.

³⁵⁰ *See, e.g.,* U.S. v. Vertz, 102 F. Supp.2d 787, 788 (W.D. Mich. 2000), *aff’d on other grounds*, 40 Fed. Appx. 69 (6th Cir. 2002) (“Despite the extensive evidence of medical illness, for purposes of criminal liability under the federal firearms statute, it is not sufficient that the defendant has been diagnosed as mentally ill by his treating physicians.”).

³⁵¹ This is defined as: “A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.” 27 C.F.R. §478.11.

³⁵² For example, over a year before the Virginia Tech shooting, a special justice ruled at a commitment hearing for involuntary admission that the shooter “presents an imminent danger to himself as a result of mental illness” and issued him to outpatient treatment. At the time Virginia law did not clearly require individuals who were committed to *outpatient* services, but not institutions, to be reported to the NICS. In 2007, the governor issued an Executive Order requiring any involuntary treatment order to be reported to the NICS, a requirement codified by the state legislature in 2008. *See* Virginia Tech Review Panel, *Mass Shootings at Virginia Tech, April 16, 2007: Report of the Virginia Tech Review Panel Presented to Timothy M. Kaine, Governor, Commonwealth of Virginia* (Aug. 16, 2007), cdm16064.contentdm.oclc.org/cdm/ref/collection/p266901coll4/id/904; Va. Exec. Order No. 50 (April 30, 2007).

³⁵³ U.S. v. Rehlander, 666 F.3d 45 (1st Cir. 2012) (holding that a law in Maine that authorized the brief, involuntary, detention in mental institutions of individuals on the basis of a medical provider’s examination and certification that the individual is mentally ill and is poses a likelihood of serious harm should not qualify as “involuntary commitment” under the GCA because, without additional procedural safeguards, this could deprive individuals of the right to bear arms

governmental bodies to report the relevant records to law enforcement or the FBI to be put into the NICS. But federal law “doesn’t require states to make these mental health records part of background check system, and many fail to voluntarily report the records.”³⁵⁴

iii. The Failure to Enact or Maintain Gun Control Laws Proven to Save Lives

74. One study found that over the past three decades, 82% of the weapons used in mass shootings were legally purchased.³⁵⁵ Indeed, the shooters in the Las Vegas massacre³⁵⁶ and the Parkland school shooting had legally purchased and owned the assault rifles used, and in the case of the Las Vegas shooter, the bump stocks used in the attack.
75. The federal government allowed an assault weapon ban to expire in 2003 and there has never been a federal ban on bump stocks. Following the expiry of the federal Assault Weapons Ban in 2003, AR-15 style assault rifles were used by the gunmen in the Sandy Hook shooting, the 2012 Aurora, Colorado movie theater shooting which killed twelve people and injured over 50,³⁵⁷ the 2015 San Bernardino, California attack, which resulted in sixteen deaths, including the two perpetrators,³⁵⁸ the Pulse nightclub shooting in Orlando, Florida where 49 people were killed and another 53 injured, excluding the shooter,³⁵⁹ the 2017 Las Vegas music festival shooting, where a gunman killed 58 people and injured over 500,³⁶⁰ the 2017 Sutherland Springs church shooting in Texas, which left 25 people dead,

without due process.). This type of involuntary denitment had qualified under the GCA pre-*Heller*. See, e.g., *U.S. v. Chamberlain*, 159 F.3d 656 (1st Cir. 1998) and *U.S. v. Holt*, 464 F.3d 101 (1st Cir. 2006).

³⁵⁴ David Shortell, *How do Laws Prevent Mentally Ill People From Buying Guns?*, CNN (Feb. 15, 2018), www.cnn.com/2018/02/15/politics/mental-health-gun-possession-explainer/index.html; see also Jeff Brady, *States Aren't Submitting Records To Gun Database*, NPR (Aug. 16, 2012), www.npr.org/2012/08/16/158932528/states-arent-submitting-records-to-gun-database; U.S. GOVT. ACCOUNTABILITY OFF., *Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks* (July 2012), www.gao.gov/assets/600/592452.pdf.

³⁵⁵ Elizabeth Chuck, *More than 80 Percent of Guns Used in Mass Shooting Obtained Legally*, NBC NEWS (Dec. 5, 2015), www.nbcnews.com/storyline/san-bernardino-shooting/more-80-percent-guns-used-mass-shootings-obtained-legally-n474441 (defining mass shooting as four people killed in a public place); see also Buchanan et al., *supra* note 320.

³⁵⁶ The shooter was able to accumulate more than 30 weapons within 11 months because federal law does not require licensed gun dealers to alert officials to large or suspicious purchases. See Buchanan et al., *supra* note 320; see also Las Vegas Metropolitan Police Department, *Preliminary Investigative Report*, 24, 42 (Jan. 18, 2018) (the shooter was found to have 19 weapons, including and 13 AR-15s outfitted with bump stocks in his possession. All of the weapons recovered from the shooter were legally purchased and with the exception of the revolver, all of them had been bought between September 2016 and the November 2017 shooting).

³⁵⁷ *Colorado Theater Shooting Fast Facts*, CNN (July 16, 2018), www.cnn.com/2013/07/19/us/colorado-theater-shooting-fast-facts/index.html.

³⁵⁸ Adam Nagourney et al., *San Bernardino Shooting Kills at Least 14; Two Suspects are Dead*, N.Y. TIMES (Dec. 2, 2015), www.nytimes.com/2015/12/03/us/san-bernardino-shooting.html.

³⁵⁹ Ariel Zambelich & Alyson Hurt, *3 Hours in Orlando: Piecing Together an Attack & Its Aftermath*, NPR (June 26, 2016), www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update.

³⁶⁰ Alex Horton, *The Las Vegas Shooter Modified a Dozen Rifles to Shoot Like Automatic Weapons*, WASH. POST (Oct. 3, 2017), www.washingtonpost.com/news/checkpoint/wp/2017/10/02/video-from-las-vegas-suggests-automatic-gunfire-heres-what-makes-machine-guns-different/?noredirect=on&utm_term=.88bf63618745.

ranging in age from 18 months to 72 years old,³⁶¹ and the Parkland shooting. High-capacity and assault-style weapons are particularly pernicious as they can fire many rounds and cause wounds that are almost inevitably fatal.³⁶² One review of mass shootings found that when “high-capacity magazines – or assault weapons likely equipped with them” were used by the shooter, 155% more people were shot and 47% more people were killed.³⁶³ Assault rifles were used in 21% of massacres that occurred between 1982 and 2012, and guns with large-capacity magazines were used in more than 50%.³⁶⁴

76. Extreme Risk Protection Orders, also known as “red flag bills,” typically allow law enforcement, or sometimes family members, to petition a court to issue an order to temporarily prohibit an individual from possessing or buying firearms if they see “red flags” that the person could pose a danger to themselves or others.³⁶⁵ There is no federal “red flag law” and only 14 states have some version of it.³⁶⁶ This type of law perhaps could have been applied, for example, to the Aurora movie theatre shooter, who was receiving psychiatric treatment at the time he legally purchasing the weapons used in the mass shooting,³⁶⁷ or to the Parkland shooter, whose caretaker was so concerned about his mental state that she reported him three times to the police but was told they could not do anything to stop him from possessing guns.³⁶⁸ Indeed, an analysis of mass shootings nationwide from 2009-2016 found that at least 42% of the shooters exhibited warning signs before the attack.³⁶⁹
77. The U.S. government has never adopted legislation requiring gun owners to use secure gun storage³⁷⁰ or the type of safety locking devices which are designed specifically to keep guns

³⁶¹ Roxie Bustamante, *Autopsy for Texas Church Gunman Confirms Death by Suicide*, USA TODAY (June 29, 2018), www.usatoday.com/story/news/nation-now/2018/06/29/autopsy-sutherland-springs-texas-church-gunman/745951002/. The shooter died from a self-inflicted gunshot wound to the head after a high-speed chase with police. A pregnant woman was among those killed in the attack, and some reports, including that of Texas, include the unborn child in the death count and calculate it as 26.

³⁶² See, e.g., Heather Sher, *What I Saw Treating the Victims from Parkland Should Change the Debate on Guns*, THE ATLANTIC (Feb. 22, 2018), www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/; see also Jessica Vomiero, *The Difference between an AR-15 and Handgun can be Seen in the Bullet Wounds*, GLOBAL NEWS CANADA (Feb. 23, 2018), globalnews.ca/news/4043345/ar-15-handgun-bullet-wounds-difference/.

³⁶³ *Analysis of Recent Mass Shootings*, EVERYTOWN FOR GUN SAFETY (2015), everytownresearch.org/documents/2015/04/analysis-of-recent-mass-shootings.pdf.

³⁶⁴ See *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017).

³⁶⁵ See generally, *Extreme Risk Protection Orders*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/#state.

³⁶⁶ *Id.*

³⁶⁷ Dan Frosch, *Colorado Shooting Suspect was Getting Psychiatric Care*, N.Y. TIMES (July 22, 2012), www.nytimes.com/2012/07/28/us/colorado-suspect-was-getting-psychiatric-care.html.

³⁶⁸ See Richard Fausset & Serge F. Kovaleski, *supra* note 110. In March 2018, a month after the Parkland shooting, Florida passed a red-flag bill.

³⁶⁹ *Mass Shootings in the United States: 2009-2016*, EVERYTOWN FOR GUN SAFETY (Mar. 2017), everytownresearch.org/wp-content/uploads/2017/04/Analysis_of_Mass_Shooting_062117.pdf (defining mass shootings as incidents in which four or more people were shot and killed, not including the shooter).

³⁷⁰ See Annex 1: Glossary of Terms.

out of the hands of children or dangerous individuals.³⁷¹ Although the Child Safety Lock Act of 2005 (CSLA)³⁷² requires licensed gun dealers to provide a secure gun storage or safety device with any sale or transfer of a firearm, the CSLA does not require the *use* of and there are no federal regulations on the products' designs.³⁷³ The gunman in the Santa Fe High School shooting used guns which were legally owned by his father,³⁷⁴ highlighting the need for this type of regulation, particularly in households with minors.³⁷⁵ A report published by the U.S. Secret Service and U.S. Department of Education found that in 65% of the school shootings surveyed, the gun used was taken from the shooter's home or that of a relative.³⁷⁶ It is estimated that one third of all households with children have a gun in the home and, of those, 45% of those do not store some or all of their guns in a safe manner.³⁷⁷ Another study found that 75% of children between the ages of five and fourteen who live in a gun-owning household know where the guns are kept³⁷⁸ and 22% of those children have handled a gun at home *without* their parents' knowledge.³⁷⁹ It is therefore unsurprising that roughly 75% of

³⁷¹ A 2015 federal law makes it unlawful for “any licensed importer, manufacturer or dealer to sell or transfer any handgun unless the transferee is provided with a secure gun storage or safety device.” However, the law contains numerous exceptions and does not apply to private sales nor does it require the transferees to use the locking device. There are also no federal standards for gun locking devices. *See Safe Storage*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/child-consumer-safety/safe-storage/.

³⁷² 18 U.S.C. § 922(z).

³⁷³ Safe storage and safety devices are defined under 18 U.S.C. § 921(a)(34).

³⁷⁴ *Teen Held in Texas Attack is Said to Have Used Father's Guns*, N.Y. TIMES (May 18, 2018), www.nytimes.com/aponline/2018/05/18/us/ap-us-school-shooting-texas-suspect.html.

³⁷⁵ Texas does not have safe storage laws. It does have a law that aims to keep guns out of the hands of minors by making adults accountable after the fact for irresponsibly storing firearms around children, but it only applies to children under the age of seventeen, and therefore does not apply in this situation. TEX. PENAL CODE ANN. § 46.13 (West, Westlaw through the 2017 Reg. and First Called Sess. of the 85th Leg.). The Texas law is generally considered to be among the weakest of the 27 states with laws designed to prevent children from accessing firearms in the home. *See, e.g.,* Emma Platoff, *The Santa Fe Shooter Used His Father's Guns. But His Parents Aren't Liable Under Texas Law*, TEX. TRIB. (May 21, 2018), www.texastribune.org/2018/05/21/texas-has-law-aimed-keeping-parents-guns-out-kids-hands-its-reactive-n/. Despite this, the parents of two of the victims filed a lawsuit against the shooter's father, claiming, among other things, that he did not store his guns properly. *See* Bradford Betz, *Texas School Shooting Victim's Family Sue Suspect's Parents*, FOX NEWS (May 26, 2018), www.foxnews.com/us/2018/05/26/texas-school-shooting-victims-family-sue-suspects-parents.html; *Dimitrios Pagourtzi's Parents Sued by Second Family of Santa Fe High School Shooting Victim*, ABC (June 5, 2018), abc13.com/second-santa-fe-family-sues-shooting-suspects-parents/3566531/.

³⁷⁶ U.S. SECRET SERV. & U.S. DEP'T OF EDUC., *The Final Report & Findings of the Safe School Initiative – Implications for the Prevention of School Attacks in the United States*, 27 (July 2004), <http://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf>. Moreover, a 1991 U.S. General Accounting Office study estimated that up to 31% of accidental firearm deaths could be prevented by safety devices that were already available at that time, but are still not mandated by federal law. U.S. GEN. ACCOUNTING OFF., *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented* (Mar. 1991), 17, www.gao.gov/assets/160/150353.pdf.

³⁷⁷ Cassandra K. Crifasi et al., *Storage Practices of US Gun Owners in 2016*, 108 AM. J. PUB. HEALTH 532 (2018); *see also* Renee M. Johnson et al., *Are Household Firearms Stored Less Safely in Homes With Adolescents?: Analysis of a National Random Sample of Parents*, 160 ARCHIVES PEDIATR. & ADOLESC. MED. (Aug. 2006).

³⁷⁸ Frances Baxley & Matthew Miller, *Parental Misperceptions about Children and Firearms*, 160 ARCHIVES PEDIATR. ADOLESCENT MED. 542 (2006).

³⁷⁹ *Id.* Although many parents or caretakers (including both gun owners and non-gun owners) say it is essential to talk to their children about handgun safety, research shows that children will touch firearms even when instructed not to. Marjorie S. Hardy et al., *A Firearm Safety Program for Children: They Just Can't Say No*, 17 J DEV. BEHAV. PEDIATR. 216

firearm suicides by adolescents involved a parent's gun.³⁸⁰ Moreover, the majority of unintentional firearm deaths of children occur at home, typically when children are playing with a gun or confuse it as a toy.³⁸¹ Previous studies found that safe storage practices can protect against adolescent suicide by firearms and unintentional childhood deaths³⁸² and that child access prevention laws³⁸³ reduce accidental shootings of children by as much as 23% and reduce suicides of adolescences by 8%.³⁸⁴ Research on how to make guns safer around children³⁸⁵ has been limited due to federal roadblocks, as discussed in the next paragraph.

iv. Other Gaps in Federal Law

78. The Tiahrt Amendments and the 1993 Dickey Amendment have stymied research that could contribute to more effective gun policy and safety regulations.³⁸⁶ The Tiahrt Amendments prohibit the release of ATF firearms trace data, including to cities, states, and academic researchers, while the Dickey Amendment has effectively banned federal funding for gun violence research.³⁸⁷ The Consumer Product Safety Act of 1972³⁸⁸ also makes guns one of the only consumer products manufactured in the United States that is *not* subject to federal

(1996); *see also* Geoffrey Jackson et al., *Seeing is Believing: What do Boys do When They Find a Real Gun?*, 107 PEDIATRICS 1247 (June 2001) (finding in a study where pairs or trios of boys aged 8-12 'accidentally' found a gun that 76% of the groups handled it and one or more member of 48% of the groups pulled the trigger. Among the boys that handled it or pulled the trigger, more than 90% had previously received some sort of gun safety education).

³⁸⁰ Renee M. Johnson et al., *Who Are the Owners of Firearms Used in Adolescent Suicides?*, 40 SUICIDE LIFE THREATENING BEHAV. 609 (2010); *see also* David C. Grossman et al., *Self-Inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of the Firearm*, 153 ARCHIVES PEDIATR. & ADOLESC. MED. 875 (1999).

³⁸¹ The most common surrounding circumstance of unintentional firearm death was the child playing with a gun (60% of younger children and 49% of older children). A gun was confused as a toy in 16% of young children's accidental firearm deaths. Fowler, *Childhood Firearm Injuries in the United States*, *supra* note 54.

³⁸² David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707 (2005).

³⁸³ *See* Annex 1: Glossary of Terms.

³⁸⁴ Daniel W. Webster, *Association between Youth-Focused Firearm Laws and Youth Suicides*, 292 J. AM. MED. ASSN 594 (2004).

³⁸⁵ For example, handguns could be designed so that young children would typically not have the strength required to pull the trigger. One study found that young children are strong enough to pull the trigger and fire many standard handguns in circulation. Sara M. Naureckas, *Children's and Women's Ability to Fire Handguns*, 149 ARCH. PEDIATRIC ADOLESC. MED. 1318 (Dec. 1995).

³⁸⁶ *See supra* note 50.

³⁸⁷ Since the passage of the Dickey Amendment, annual CDC funding for research on gun violence has fallen 96%. *Access Denied: How the Gun Lobby is Depriving Police, Policy Makers, and the Public of the Data we Need to Prevent Gun Violence*, EVERYTOWN FOR GUN SAFETY (2013), everytownresearch.org/documents/2015/04/access-denied.pdf; *see also* Clare Foran, *The Missing Data on Gun Violence*, THE ATLANTIC (Jan. 21 2016), www.theatlantic.com/politics/archive/2016/01/gun-control-laws-research/424956/.

³⁸⁸ 15 U.S.C. ch. 47 § 2051 et seq.

health and safety regulations.³⁸⁹ Consequently, fatality rates from firearm injuries have *increased*, while that of other common injuries and diseases have decreased.³⁹⁰

v. The Fragmentation of State Gun Laws

79. Some states and municipalities have tried to compensate for the failure of federal firearm laws by adopting gun control legislation. Research demonstrates that states with stricter gun control laws have lower rates of gun violence and death,³⁹¹ as seen in Figure 8. However, the inconsistency amongst state, and indeed even local, laws on gun ownership exposes people in the United States to increased chances of gun violence.³⁹² The efforts that one state or city makes to reduce gun violence through measures such as assault weapons bans or background checks are easily circumvented if an individual can cross state lines to a location with fewer laws. For example, Chicago has significantly tightened its gun laws in response to high rates of gun violence and crime, but nearly 60% of guns recovered in the city that were used or suspected of being used in a crime can be traced to out-of-state gun dealers, including 20% from Indiana, where gun laws are considerably more permissive.³⁹³

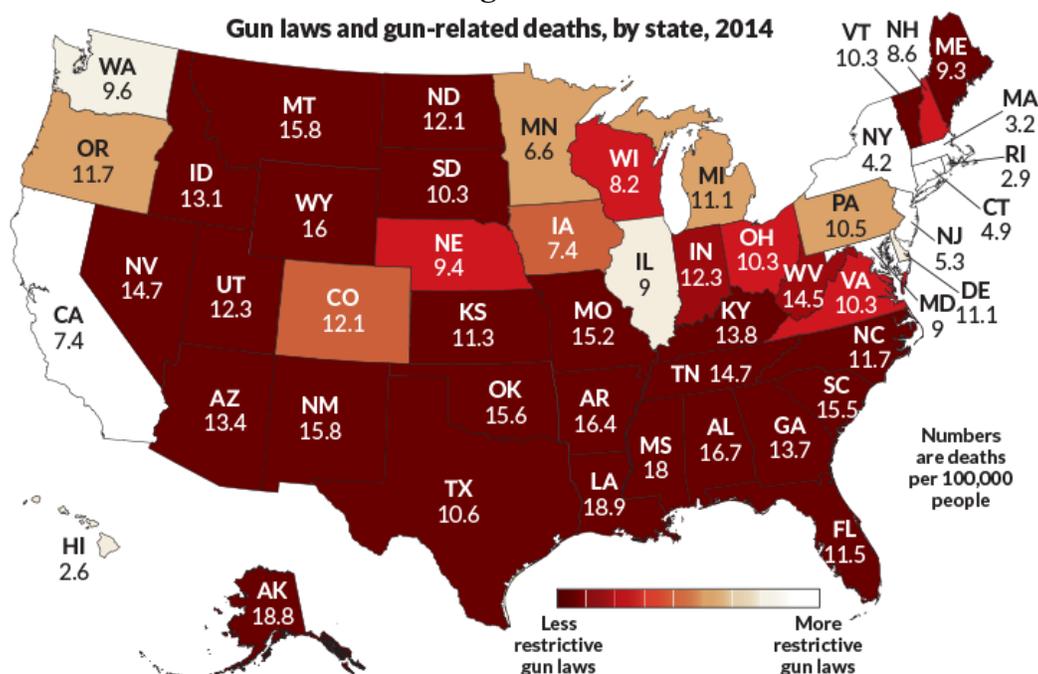
³⁸⁹ See *supra* note 45.

³⁹⁰ See *infra* note 699; see also *supra* ¶¶ 10-12.

³⁹¹ See Eric W. Fleegler et al., *Firearm Legislation and Firearm-Related Fatalities in the United States*, 173 JAMA INTERNAL MED. 732, 734 (2013) (the authors studied the association between gun-related deaths and state-level gun control laws by creating a “legislative strength score” across five categories of gun control laws: those which curb firearm trafficking, strengthen Brady background checks, improve child safety, ban military-style assault weapons, and restrict gun in public places. The study found that states with the higher gun legislative strength scores had less gun-related deaths when compared to states in with lower legislative strength score, before and after controlling for state-specific and socioeconomic factors. This association was the same for both gun-related homicides and suicides.); see also John J. Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis*, NAT’L BUREAU OF ECON. RES.: WORKING PAPER SERIES (issued June 2017, revised Jan. 2018), www.nber.org/papers/w23510.pdf (finding that States that have enacted right-to-carry concealed handgun laws had rates of violent crime that was estimated to be 13-15% higher over a period of ten years than it would have been had the state not adopted the law).

³⁹² See generally Tessa Collins et al., *State Firearm Laws and Interstate Transfer of Guns in the USA, 2006-2016*, 95 J. URB. HEALTH 332 (2018), link.springer.com/content/pdf/10.1007%2Fs11524-018-0251-9.pdf.

³⁹³ Shelby Bremer, *Majority of Guns Used in Chicago Crimes Come From Outside Illinois: Report*, NBC NEWS (Oct. 30, 2017), www.nbcchicago.com/blogs/ward-room/chicago-gun-trace-report-2017-454016983.html (citing the 2017 Gun Trace Report issued by the Chicago Police Department and Mayor Rahm Emanuel’s office, and the University of Chicago Crime Lab).

Figure 8:³⁹⁴

80. Permissive state gun laws are of particular concern as a new “Concealed Carry Reciprocity Act”³⁹⁵ is currently pending in the United States Senate. This legislation, which passed the U.S. House of Representatives on December 6, 2017,³⁹⁶ requires concealed carry permits issued in one state to be honored by all states in the country.
81. Despite broad public support for many reasonable legislative measures that could reduce gun violence, the U.S. government and the states consistently fail to take these steps.³⁹⁷ Following highly publicized gun-related tragedies, significant legislation is proposed at the state level, including many laws which *reduce* gun control, typically supported by the NRA, to preempt and counter-act the national momentum for stronger gun control. Of the roughly 600 new gun laws enacted by states in the nearly six years after the 2012 Sandy Hook shooting, almost two-thirds were supported by the NRA and relaxed gun restrictions.³⁹⁸ One study covering a 25-year period from 1989-2014 showed that mass shootings led to a 75% increase in the number of laws that *loosen* gun restrictions in states with Republican-controlled legislatures,

³⁹⁴ Meghan Rosen, *Gun Research Faces Roadblocks and a Dearth of Data*, 189 SCIENCE NEWS MAGAZINE 16 (May 14, 2016), www.sciencenews.org/article/gun-research-faces-roadblocks-and-dearth-data.

³⁹⁵ Concealed Carry Reciprocity Act of 2017, H.R. 38, 115th Cong. (1st Sess. 2017).

³⁹⁶ *Id.*

³⁹⁷ See generally Parker et al., *supra* note 31; Barry, *supra* note 31.

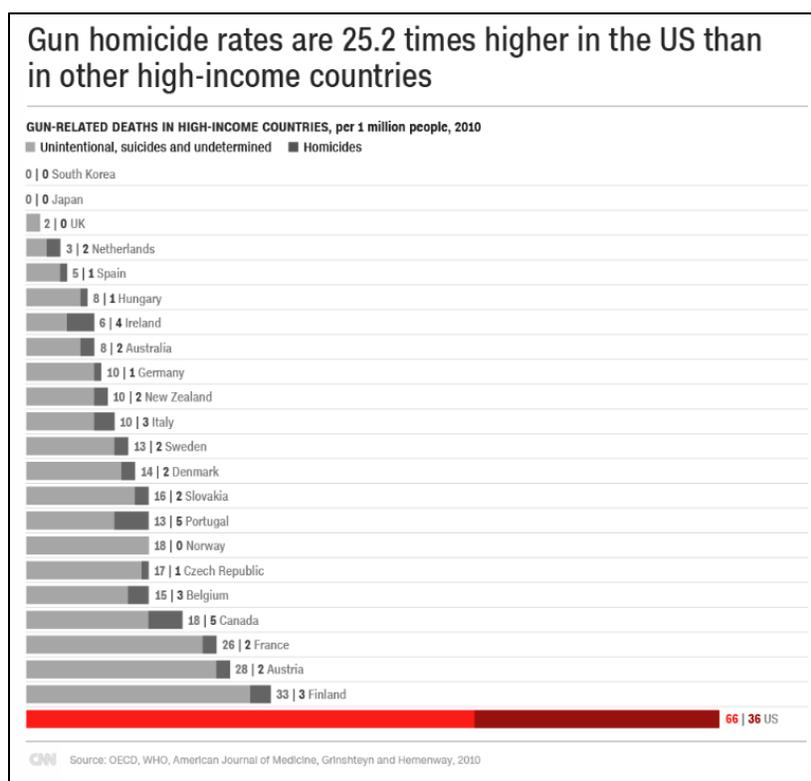
³⁹⁸ See, e.g., Vasilogambros, *supra* note 296.

and had no statistically significant effect on laws enacted in states with Democrat-controlled legislatures.³⁹⁹ It is unclear if this trend will continue after the Parkland shooting.

IV. CAN GUN CONTROL LAWS BE SUCCESSFUL? A COMPARATIVE STUDY

82. The United States is an outlier in terms of gun-related deaths. Rates of gun deaths (both homicide and suicide) are substantially greater compared to other industrialized nations in the Organization for Economic Cooperation and Development (OECD).⁴⁰⁰ Based on data from 2014, the U.S. has nine times as many gun deaths as Germany or Australia per 100,000 persons.⁴⁰¹

Figure 9: Gun-Related Deaths in High-Income Countries per 1 Million People (2010)⁴⁰²



83. Another gun-related statistic in which the United States outnumbers other nations concerns civilian gun ownership. While constituting only 4.3% of the world's population, nearly 46%

³⁹⁹ Michael Luca et al., *The Impact of Mass Shootings on Gun Policy*, HARV. BUS. SCH. (2016), www.hbs.edu/faculty/Publication%20Files/16-126_23dbdd9e-2135-4a5c-9979-cebc6b6492e4.pdf (defining mass shooting as “an incident in which 4 or more people, other than the perpetrator(s), are unlawfully killed with a firearm in a single, continuous incident that is not related to gangs, drugs, or other criminal activity.” *Id.* at 4).

⁴⁰⁰ Philip Alpers et al., *Guns in the United States: Rate of Gun Suicide per 100,000 People*, Sydney Sch. of Pub. Health, GUNPOLICY (Feb. 22, 2018), www.gunpolicy.org/firearms/compare/194/rate_of_gun_suicide/66.

⁴⁰¹ See Wintemute, *The Epidemiology of Firearm Violence*, *supra* note 39, at 15, figure 11.

⁴⁰² Kara Fox, *How US Gun Culture Compares With the World in Five Charts*, CNN (Mar. 9, 2018), www.cnn.com/2017/10/03/americas/us-gun-statistics/index.html.

of civilian-owned guns in the world are found in the United States.⁴⁰³ The United States is estimated to have about 120.5 private firearms for every 100 residents.⁴⁰⁴ The second highest-ranked country in terms of gun ownership was Yemen, with a rate of 52.8 per 100 people.⁴⁰⁵

Figure 10: Estimated rate of civilian firearms holdings in the 25 top-ranked countries and territories, 2017 (firearms per 100 residents)⁴⁰⁶

| | | | | | |
|---------------|-------|------------------------|------|------------|------|
| United States | 120.5 | Iceland | 31.7 | Sweden | 23.1 |
| Yemen | 52.8 | Bosnia and Herzegovina | 31.2 | Pakistan | 22.3 |
| Montenegro | 39.1 | Austria | 30.0 | Portugal | 21.3 |
| Serbia | 39.1 | Macedonia* | 29.8 | France | 19.6 |
| Canada | 34.7 | Norway | 28.8 | Germany | 19.6 |
| Uruguay | 34.7 | Malta | 28.3 | Iraq | 19.6 |
| Cyprus | 34.0 | Switzerland | 27.6 | Luxembourg | 18.9 |
| Finland | 32.4 | New Zealand | 26.3 | | |
| Lebanon | 31.9 | Kosovo** | 23.8 | | |

Notes: This table excludes countries and territories with a population of under 150,000. * Macedonia = the former Yugoslav Republic of Macedonia. ** The designation of Kosovo is without prejudice to positions on status and is in line with UN Security Council Resolution 1244 and the International Court of Justice Opinion on the Kosovo declaration of independence.

Source: Small Arms Survey (2018)

A. The Experience of Other Countries

84. The experience of other countries demonstrates that gun control laws work. A number of countries have implemented strict gun control laws in response to mass shootings and public safety concerns and have uniformly seen reductions in gun violence.⁴⁰⁷
85. For example, the Australian government adopted the National Firearms Agreement (NFA)⁴⁰⁸ in 1996 following the Port Arthur massacre.⁴⁰⁹ Prior to 1996, each state in Australia had its

⁴⁰³ The 2018 Small Arms Survey estimates that there were approximately 857 million civilian-held firearms in the world at the end of 2017, 393.3 million of which were in the United States. Aaron Karp, *Estimating Global Civilian-held Firearms Numbers*, 3-4, Small Arms Survey (June 2018), www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf.

⁴⁰⁴ *Id.* at 4.

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ See generally REDUCING GUN VIOLENCE IN AMERICA: INFORMING POLICY WITH EVIDENCE AND ANALYSIS (Daniel W. Webster & Jon S. Vernick eds., 2013).

⁴⁰⁸ Included in this Agreement were uniform basic license requirements and the requirement to obtain separate permits for the acquisition of firearms, tight controls on semi-automatic and fully automatic weapons (including the destruction of newly prohibited weapons), a gun buy-back provision, required nationwide registration of all firearms and the creation of a national firearm registry, secure storage regulations, and the implementation of a 28-day waiting period for firearm sales. See Rebecca Peters, *Rational Firearm Regulations: Evidence-Based Gun Laws in Australia*, in REDUCING GUN VIOLENCE IN AMERICA, *supra* note 407, at 196-201; Michael J. Dudley et al., *The Port Arthur Massacre and the National Firearms Agreement: 20 Years On, What are the Lessons?*, 204 MED. J. AUSTR. 381, 381-383 (June 6, 2016).

own gun control which varied widely,⁴¹⁰ similar to the current situation in the United States. Following the implementation of NFA, the risk of gun death in Australia fell more than 50% and there were no mass shootings for 20 years, compared to 13 mass shootings in the 18 years preceding.⁴¹¹ Furthermore, it is estimated that the national stock of firearms in Australia was reduced by one-third⁴¹² and Australia's rate of gun homicide is 23 percent times lower than that of the United States.⁴¹³

86. Likewise, in 1997, following the 1996 Dunblane shooting,⁴¹⁴ the United Kingdom adopted two Firearm (Amendment) Acts,⁴¹⁵ banning all handguns. Previously, British law⁴¹⁶ permitted private ownership of guns for a variety of reasons and although handgun and rifle owners were legally required to hold a “firearm certificate” issued by the local police, only 1% of certificate applications were refused and they were rarely revoked.⁴¹⁷ Since the implementation of the new laws, no mass shootings involving handguns have occurred in the United Kingdom and gun violence has continuously decreased.⁴¹⁸ England and Wales now have about 4.6 civilian guns per 100 people, compared to more than 120 per 100 people in the United States.⁴¹⁹ There were 26 fatalities from gun-related crimes in England and

⁴⁰⁹ In April 1996, a young man with assault weapons killed 35 people and injured 19 more at the Port Arthur historic site in Tasmania, Australia. *Australia Gunman Kills at Least 32*, N.Y. TIMES (Apr. 29, 1996), www.nytimes.com/1996/04/29/world/australia-gunman-kills-at-least-32.html.

⁴¹⁰ See Philip Alpers & Zareh Ghazarian, *From Policy Inertia to World Leader: Australia's 'Perfect Storm' of Gun Control*, in SUCCESSFUL PUBLIC POLICY: LESSONS FROM AUSTRALIA AND NEW ZEALAND (Joannah Luetjens, Michael Mintrom & Paul 't Hart (eds), forthcoming 2019).

⁴¹¹ Philip Alpers, *Australian Gun Laws*, in THE PALGRAVE HANDBOOK OF AUSTRALIAN AND NEW ZEALAND CRIMINOLOGY, CRIME AND JUSTICE, 787 (Antje Deckert & Rick Sarre eds., 2017) (defining mass shooting as public shootings with five or more victims).

⁴¹² *Id.* It is also estimated that over a million firearms have been collected and destroyed in Australia since the implementation of NFA.

⁴¹³ Philip Alpers & Amélie Rossetti. *Compare Australia: Rate of Gun Homicide per 100,000 People*, GunPolicy.org (2016).

⁴¹⁴ On March 13, 1996, a man walked into Dunblane Primary School in Scotland carrying two semi-automatic pistols and two revolvers. He shot and killed one teacher and sixteen children who were five- to six-years-old and injured ten more children and three teachers. Michael J. North, *Gun Control in Great Britain after the Dunblane Shootings*, in REDUCING GUN VIOLENCE IN AMERICA, *supra* note 407, 185, 185.

⁴¹⁵ Firearms (Amendment) Act 1997, www.legislation.gov.uk/ukpga/1997/5/pdfs/ukpga_19970005_en.pdf; Firearms (Amendment) (No. 2) Act 1997, www.legislation.gov.uk/ukpga/1997/64/pdfs/ukpga_19970064_en.pdf.

⁴¹⁶ Firearms Act 1968 (Eng.).

⁴¹⁷ See Michael J. North, *Gun Control in Great Britain after the Dunblane Shootings*, in REDUCING GUN VIOLENCE IN AMERICA, *supra* note 407, 186.

⁴¹⁸ *Id.* at 192.

⁴¹⁹ Aaron Karp, *Estimating Global Civilian-held Firearm Numbers – Annex: 2017 Civilian Firearms Holdings Data by Country/Territory*, Small Arms Survey (June 2018), www.smallarmssurvey.org/fileadmin/docs/Weapons_and_Markets/Tools/Firearms_holdings/SAS-BP-Civilian-held-firearms-annexe.pdf.

Wales in a 12 month period during 2015-16,⁴²⁰ compared to 11,004 firearm homicides in the United States in 2016.⁴²¹

87. Japan has one of the strictest gun control laws in the world⁴²² and the rate of both gun violence and gun possession in Japan is close to zero.⁴²³ While Switzerland and Israel are often cited by gun advocates as countries that have low rates of gun violence despite having permissive gun control laws,⁴²⁴ this is misleading. Both Switzerland and Israel have stricter gun control laws and lower civilian gun ownership rates than the United States, as well as much lower rates of gun-related deaths and injuries.⁴²⁵ For example, in Israel, the licensing of firearms is strictly controlled by the State – about 40% of applicants are denied – and the government not only limits what type and how many guns can be owned by a license holder, but closely tracks firearm and ammunition possession and sales.⁴²⁶ Swiss federal law requires

⁴²⁰ U.K. OFF. FOR NAT'L STAT., *Compendium: Focus on Violent Crime and Sexual Offences, England and Wales: Year Ending March 2016* (Feb. 9, 2017), www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2016/homicide.

⁴²¹ FBI, *2016 Crime in the United States, Murder Victims by Weapon, 2012-2016* (accessed June 4, 2018), ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/expanded-homicide-data-table-4.xls.

⁴²² See David B. Kopel, *Japanese Gun Control*, 2 ASIA PAC. L. REV. 26, 26-27 (1993). The only type of firearm that a Japanese civilian can possess is a shotgun, and only for hunting or sport shooting purposes. Japan has strict regulations regarding storage and use of shotguns. Furthermore, the licensing process to possess a shotgun is rigorous:

A prospective gun owner must first attend classes and pass a written test. Shooting range classes and a shooting test follow; 95 per cent pass. After the safety exam, the applicant takes a simple “mental test” at a local hospital, to ensure that the applicant is not suffering from a readily detectable mental illness. The applicant then produces for the police a medical certificate attesting that he or she is mentally healthy and not addicted to drugs. The police investigate the applicant’s background and relatives, ensuring that both are crime free. Membership in “aggressive” political or activist groups disqualifies an applicant. The police have unlimited discretion to deny licenses to any person for whom “there is reasonable cause to suspect may be dangerous to other persons’ lives or properties or to the public peace.” *Id.* at 27.

⁴²³ See Max Fisher, *A Land Without Guns: How Japan Has Virtually Eliminated Shooting Deaths*, THE ATLANTIC (July 23, 2012), www.theatlantic.com/international/archive/2012/07/a-land-without-guns-how-japan-has-virtually-eliminated-shooting-deaths/260189/.

⁴²⁴ See, e.g., David Lampo, *Gun Control: Myths and Realities*, CATO INST. (May 13, 2000), www.cato.org/publications/commentary/gun-control-myths-realities; but see Ezra Klein, *Myth Busting: Israel and Switzerland are not Gun Toting Utopias*, WASH. POST (Dec. 14, 2012), www.washingtonpost.com/news/wonk/wp/2012/12/14/mythbusting-israel-and-switzerland-are-not-gun-toting-utopias/.

⁴²⁵ See generally, Janet E. Rosenbaum, *Gun Utopias? Firearm Access and Ownership in Israel and Switzerland*, 33 J. PUB. HEALTH POL'Y 46 (2012).

⁴²⁶ In Israel, all individuals must acquire a license to own a firearm, which must be renewed at least every three years. Licensing criteria passed in 2011 requires applicants to prove “a cause that presumably justifies issuing a firearm license to an individual.” The type of firearm a license holder is permitted to own is determined by the reason for their license and individuals must obtain proper training for the type of firearm they wish to purchase. Trainings are regulated by the State. Licensing has minimum age requirements (21 years old for citizens who served in the Israel Defense Force or national service and 27 for those who did not serve). Applicants must be in good health and of sound mind, with no criminal background and are excluded if taking psychiatric drugs or if they have been arrested for drug use or domestic violence, even if they were not convicted. The government rejects about 40% of applicants. In 2014, the government passed a law, with no opposition, requiring psychological tests for gun-owners at least every six years. Individuals may

acquisition licenses, valid for a maximum of 9 months, for the purchase of all handguns. Those who wish to own a gun for ‘defensive purposes’ must acquire an additional carrying-license, which requires the applicant to show an existing threat and pass an examination of firearm knowledge and practical skills. Automatic weapons are strictly banned.⁴²⁷ The association between a country enacting stricter gun control laws and reducing violence can also be seen in Brazil,⁴²⁸ Austria,⁴²⁹ New Zealand,⁴³⁰ and South Africa.⁴³¹

own only one gun and have just 50 bullets in their possession at a time and must ask the State permission to sell their firearm. All guns must have an Interior Ministry identifying mark for tracing. *See Criteria for Grant of a License for Personal Possession of a Firearm as Approved by the Minister on Aug. 4, 2011*, ISRAEL MINISTRY OF PUBLIC SECURITY (MOPS) (Aug. 19, 2011), mops.gov.il/Pages/FirearmLicensingCriterion.aspx (in Hebrew); Rosenbaum, *supra* note 425; Haviv Rettig Gur, *Comparing America to Israel on Gun Laws is Dishonest – and Revealing*, TIMES OF ISR. (Mar. 1, 2018), www.timesofisrael.com/comparing-america-to-israel-on-gun-laws-is-dishonest-and-revealing/; Lahav Harkov, *Knesset Tightens Gun Control with No Opposition*, JERUSALEM POST (July 23, 2014), www.jpost.com/Diplomacy-and-Politics/Knesset-tightens-gun-control-with-no-opposition-368584; *see also Firearms-Control Legislation and Policy: Israel*, LIBRARY OF CONGRESS (last updated July 30, 2015), www.loc.gov/law/help/firearms-control/israel.php.

⁴²⁷ In Switzerland, all individuals wishing to purchase a handgun must apply for an acquisition license. Licenses are denied if the individual gives reason for suspicion that they would endanger themselves or others, if they have a conviction for a violent crime, several non-violent criminal convictions, or if they can be shown to have a drug or alcohol problem. Licenses are typically valid for six months (nine at a maximum) and can be used for the purchase of only one weapon. Those wishing to carry a gun for defensive purposes must also apply for a carrying license. The federal government requires these applicants to “demonstrate need for protection against a specific risk and pass weapons safety and firearm use regulation tests,” which includes knowledge-based and practical skills examination. Moreover, Switzerland has mandatory military service for men in which all men deemed “fit for service” are trained to properly use a gun; subsequently, about half of the privately owned guns in the country are former service rifles. With some exceptions, logs of gun sales and owners are kept at the canton level. Switzerland has not had a mass shooting since 2001. *See* Rosenbaum, *supra* note 425; Hilary Brueck, *Switzerland Has a Stunningly High Rate of Gun Ownership — Here’s Why it Doesn’t Have Mass Shootings*, BUS. INSIDER (Mar. 24, 2018), www.businessinsider.com/switzerland-gun-laws-rates-of-gun-deaths-2018-2; *see also Firearms-Control Legislation and Policy: Switzerland*, LIBRARY OF CONGRESS (last updated July 30, 2015), www.loc.gov/law/help/firearms-control/switzerland.php.

⁴²⁸ *See* Antonio Rangel Bandeira, *Brazil: Gun Control and Homicide Reduction*, in REDUCING GUN VIOLENCE IN AMERICA, *supra* note 407, 213, at 215-18 (In 2003, Brazil implemented the Disarmament Statute (Estatuto do Desarmamento) which tightened restrictions regarding possession of guns and requirements to qualify to buy a gun. Since the gun law reform, gun-related deaths dropped by over 70% in Sao Paulo and by 30% in Rio de Janeiro).

⁴²⁹ *See* Nestor D. Kapusta et al., *Firearm Legislation Reform in the European Union: Impact on Firearm Availability, Firearm Suicide and Homicide Rates in Austria*, 191 BRITISH J. PSYCH. 253 (2007) (finding that the 1997 Austrian Firearm Law, which mandated background checks for certain firearms and implemented stricter requirements for purchase of firearms, was associated with a reduction of gun-related homicide and suicide in Austria).

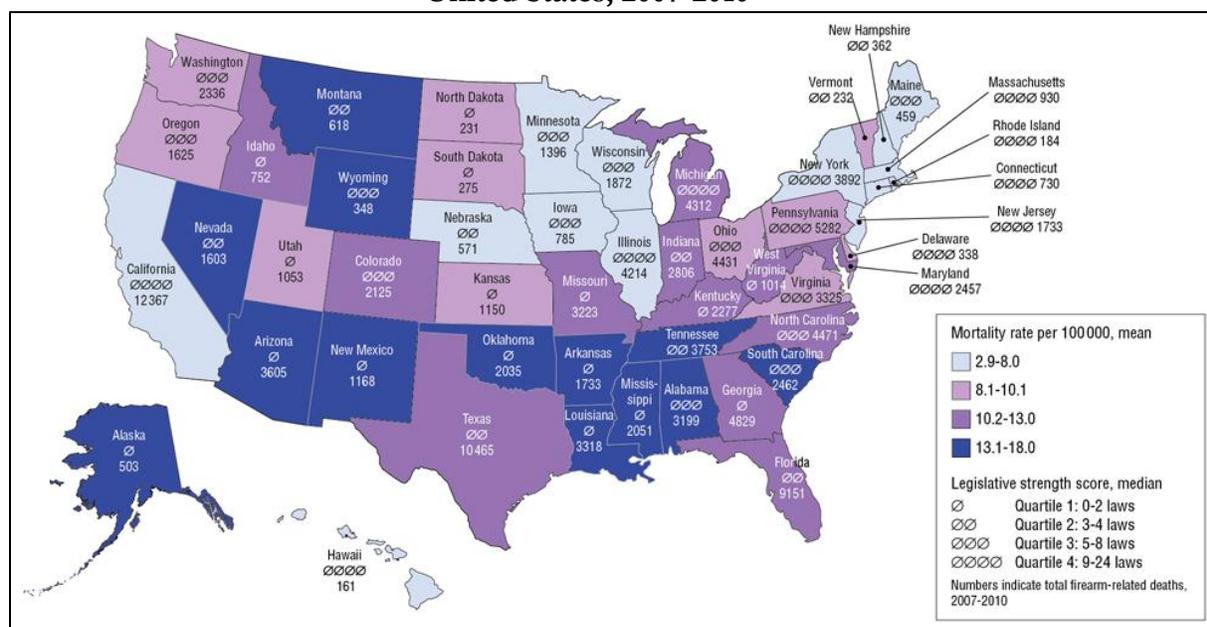
⁴³⁰ *See* Annette L. Beautrais et al., *Firearms Legislation and Reductions in Firearm-Related Suicide Deaths in New Zealand*, 40 AUSTRALIAN & NEW ZEALAND J. PSYCH. 253 (2006) (finding that New Zealand’s 1992 Amendment to the Arms Act, which implemented strict licensing requirements for firearm dealers and gun owners, was associated with a reduction in the rate of gun-related suicides).

⁴³¹ *See* Richard G. Matzopoulos et al., *Firearm and Nonfirearm Homicide in 5 South African Cities: a Retrospective Population-based Study*, 104 AM. J. PUB. HEALTH 455 (2014) (finding that South Africa’s Firearms Control Act of 2000, which instituted a strict licensing process as a requirement for firearm purchase, was associated with a decrease in gun homicides, using data from 2001-2005 in five major South African cities).

B. Comparison between U.S. States

88. Gun laws vary greatly between U.S. states. Differences exist in laws which regulate: the licensing of firearm dealers, license and permit requirements for gun purchasers or owners, background checks, minimum age requirements, the types of weapons permitted, training requirements, storage laws, ammunition limitations, locations where concealed carry is allowed, and more.
89. Likewise, gun violence rates also vary significantly from state to state. For example, Louisiana, Nevada, and Tennessee have the highest rates of gun homicides committed against young women by intimate partners or family members; whereas Illinois, Massachusetts, Hawaii, and Iowa have the lowest rates of the same.⁴³² Indeed, looking collectively at rates of gun homicide, gun-suicide, and gun homicides against women in cases of domestic violence, 11 states rank among the 25-worst states in all three categories, whereas 11 other states are not among the 25 worst in any of the three.⁴³³

Figure 11:
Firearm-related mortality rates, legislative strength scores, and total firearm deaths in the United States, 2007-2010⁴³⁴



90. As seen in Figure 11, one of the most significant factors influencing the rate of gun violence within a state is the strength of the state's gun laws, with research consistently demonstrating that states with stronger gun control laws have reduced levels of gun-related violence and

⁴³² See Parsons et al., *America's Youth Under Fire*, *supra* note 51.

⁴³³ *Id.*

⁴³⁴ Fleegler et al., *supra* note 391.

death.⁴³⁵ This is true for both homicide and suicide rates.⁴³⁶ A study by the Center for American Progress in 2016 found that the 10 states with the weakest gun laws had rates of gun violence that were collectively 3.2 times higher than the 10 states with the strongest gun laws.⁴³⁷ Firearm homicides of young children are higher in many Southern states and parts of the Midwest compared to elsewhere; these regions generally have more lenient gun laws than other regions in the country.⁴³⁸ Several studies have found that changes to state's permit-to-purchase laws are strongly associated with that state's firearm homicide and overall suicide rates.⁴³⁹ Similarly, studies have repeatedly found that gun *ownership* rates are positively correlated with homicide and suicide by firearm rates⁴⁴⁰ and many states with the highest rates of firearm homicide and suicide also had among the highest gun *prevalence* rates.⁴⁴¹ As seen in Figure 11 below, the nine states with the lowest rates of gun prevalence are the same nine that rank lowest for suicide rates, whereas the three states top-ranked for gun prevalence are among the four states with the highest suicide rates.⁴⁴²

⁴³⁵ See generally, *id.*; see, e.g., Ik-Whan G. Kwon & Daniel W. Baack, *The Effectiveness of Legislation Controlling Gun Usage: A Holistic Measure of Gun Control Legislation*, 64 AM. J. ECON. SCO. 533 (2005); Richard Florida, *The Geography of Gun Deaths*, THE ATLANTIC (Jan. 13, 2011), www.theatlantic.com/national/archive/2011/01/the-geography-of-gun-deaths/69354/ (reporting “substantial negative correlations between firearm deaths and states that ban assault weapons (-.45), require trigger locks (-.42), and mandate safe storage requirements for guns (-.48)”).

⁴³⁶ See, e.g., Colin Loftin et al., *Effects of restrictive licensing of handguns on homicide and suicide in the District of Columbia*, 325 NEW ENG. J. MED. 1615 (1991) (The District of Columbia Firearms Control Regulation Acts of 1975 banned residents from owning handguns and automatic or semiautomatic firearms, required registration of all firearms, and placed stricter requirements for firearms kept at home. Using data from 1968 to 1987, Loftin et al. found a reduction in homicide and suicide rates in the D.C. area when compared to adjacent areas of Maryland and Virginia); David McDowall et al., *Using Quasi-Experiments to Evaluate Firearm Laws: Comment on Britt et al.'s Reassessment of the D.C. Gun Law*, 30 L. & SOC. R. 381 (1996). (Finding similar results in suicide rates when comparing D.C to Boston, Memphis, and Baltimore); Steven P. Lanza, *The Effect of Firearm Restrictions on Gun-Related Homicides Across US States*, 21 APPLIED ECON. LETTERS 902 (2014).

⁴³⁷ Chelsea Parsons & Eugenio Weigend, *America Under Fire*, CTR. FOR AMERICAN PROGRESS (2016), cdn.americanprogress.org/wp-content/uploads/2016/10/11100940/AmericaUnderFire-report.pdf.

⁴³⁸ Fowler, *Childhood Firearm Injuries in the United States*, *supra* note 54.

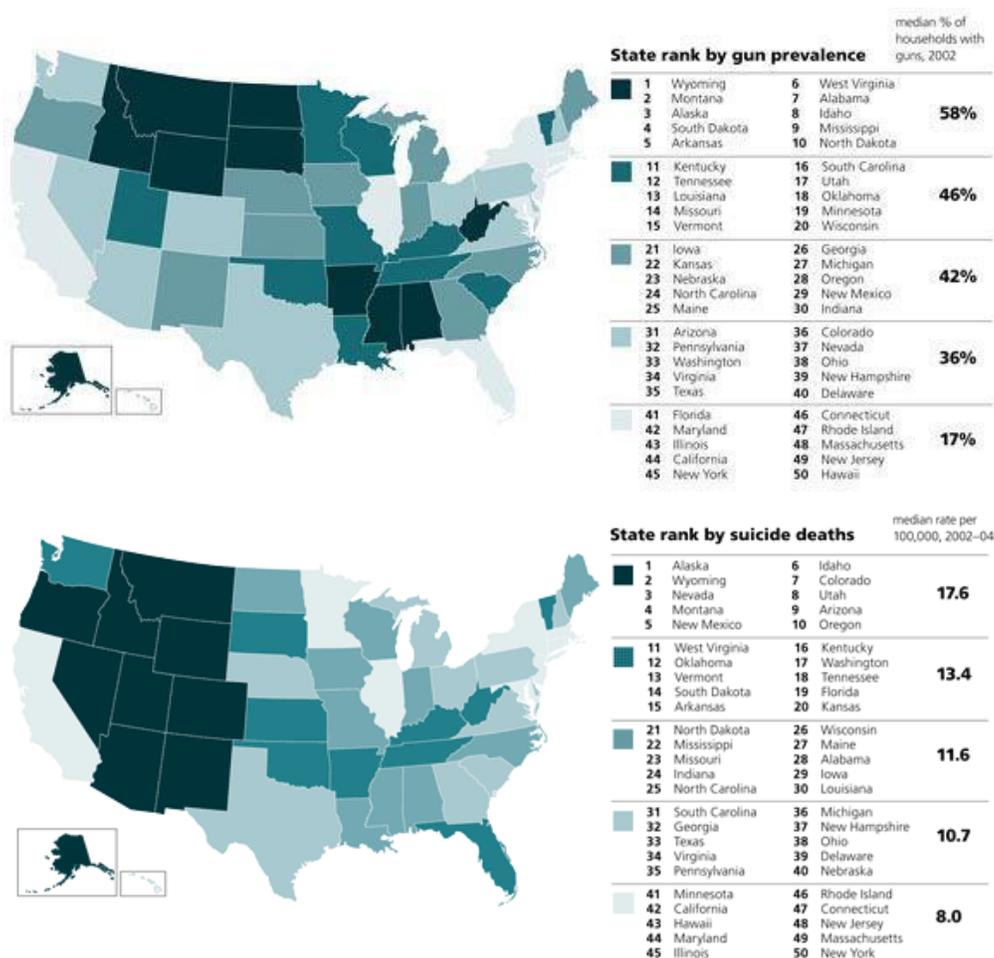
⁴³⁹ See Crifasi CK, *Effects of Changes in Permit-to-Purchase Handgun Laws in Connecticut and Missouri on Suicide Rates*, 79 PREV. MED. 43 (2015); Rudolph, *supra* note 340; Webster et al., *Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides*, *supra* note 303.

⁴⁴⁰ See M. Miller et al., *Rates of Household Firearm Ownership and Homicide Across US Regions and States (1988-1997)*, 92 AM. J. PUB. HEALTH 1988 (2002); M Miller et al., *State-Level Homicide Victimization Rates in the US in Relation to Survey Measures of Household Firearm Ownership, 2001-2003*, 64 SOC. SCI. MED. 656 (2007); Michael Siegel et al., *The Relationship between Gun Ownership and Firearm Homicide Rates in the United States, 1981-2011*, 103 AM. J. PUB. HEALTH 2098 (2013); M. Miller et al., *Firearms and Suicide in the United States: is Risk Independent of Underlying Suicidal Behavior?*, 178 AM. J. EPIDEMIOLOG. 946 (2013); M. Miller et al., *Household Firearm Ownership and Rates of Suicide Across the 50 United States*, 62 J. TRAUMA 1029 (2007). See, e.g., Riddell, *supra* note 106, at 717 (finding that the five states with the lower rates of homicide and suicide among white men also appeared in the lowest category of reported state gun prevalence – Massachusetts, New Jersey, Rhode Island, New York, and Connecticut. These states also generally have some of the strongest gun control laws in the country.)

⁴⁴¹ Riddell, *supra* note 106, at 717.

⁴⁴² *Gun Prevalence and Suicide Rank by State*, HARV. SCH. PUB. HEALTH MAGAZINE (Spring 2008), www.hsph.harvard.edu/news/magazine/spr08gunprevalence/.

Figure 12: Gun prevalence and Suicide Rank by State⁴⁴³



91. While these correlations are largely consistent across states, there are some outliers. Notably, Alabama, Arkansas, Mississippi, and West Virginia are all high gun prevalence states, but have lower rates of suicides compared to other states with both high and low gun prevalence. For instance, Arkansas is ranked fifth for gun prevalence, but only fifteenth for suicides, West Virginia is sixth and eleventh, Alabama is seventh and twenty-eighth, and Mississippi is ninth and twenty-second, respectively.⁴⁴⁴ In contrast, New Mexico is twenty-ninth for gun prevalence and fifth for suicide rates, while Oregon is twenty-eighth and tenth.⁴⁴⁵ One reason for this discrepancy may be how gun prevalence is calculated in most studies, which neglect to account for hunting licenses in households with guns.⁴⁴⁶ Hunting licenses suggest both access to guns and individual gun ownership levels. These studies

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*

⁴⁴⁶ Michael Siegel & Emily F. Rothman, *Firearm Ownership and Suicide Rates Among US Men and Women, 1981–2013*, 106 AM. J. PUBLIC HEALTH 1316 (2016).

overestimate gun ownership in states with low hunting license rates and underestimate gun ownership in states with a high number of hunting licenses.⁴⁴⁷ When hunting licenses are considered, Oregon and New Mexico rank twentieth and twenty-third respectively, closing the correlation gap slightly.⁴⁴⁸ Additionally, while Alabama, Arkansas, Mississippi, and West Virginia may be outliers with lower relative suicide rates, each still ranks highly for overall firearm deaths, with Alabama at second in the nation, Mississippi at third, Arkansas at ninth, and West Virginia at twelfth.⁴⁴⁹ This suggests certain cultural factors, such as high rates of religious membership,⁴⁵⁰ may depress the correlation between suicide and gun ownership in these states, while injuries and other forms of death continue to follow the expected correlation. These cultural factors may also explain why suicide rates are abnormally higher in Oregon and New Mexico.

V. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. International Human Rights Obligations of the United States

92. The United States is legally bound to respect international human rights. The U.S. government has ratified and/or is bound by a variety of international human rights instruments imposing a duty to protect individuals in its territories and to prevent certain harms. These instruments include the Charter of the United Nations (ratified 1945), the Charter of the Organization of American States (ratified 1951), and, as a consequence, the American Declaration of the Rights and Duties of Man,⁴⁵¹ the International Covenant on the Elimination of All Forms of Racial Discrimination (ratified 1994), the International Covenant on Civil and Political Rights (ratified 1992), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified 1994), and the Constitution of the World Health Organization (ratified 1948). Upon ratification, these treaties became the “supreme law of the land” under the Supremacy Clause.⁴⁵² The United States is bound to comply with and implement the provisions on these treaties just as it would any other federal law, subject to any reservations, understandings, and declarations entered at ratification.

⁴⁴⁷ *Id.* at 1319.

⁴⁴⁸ *Id.*

⁴⁴⁹ Thomas C. Frohlich et al., *States with the Most (and Least) Gun Violence. See How Your State Stacks Up*, DETROIT FREE PRESS (Feb. 21, 2018), www.freep.com/story/news/nation/2018/02/21/states-most-and-least-gun-violence-see-where-your-state-stacks-up/359395002/.

⁴⁵⁰ See S.K. GOLDSMITH ET AL., REDUCING SUICIDE: A NATIONAL IMPERATIVE (2002), <https://www.ncbi.nlm.nih.gov/books/NBK220939/> (explaining that states with many Southern Baptists, Catholics, or Evangelicals have lower suicide rates than states with more institutional or mainline Protestants).

⁴⁵¹ As the Commission noted in *Saldaño v. United States*, the United States has been a member of the OAS since June 19, 1951, the date upon which it deposited its instrument of ratification of the Organization of American States (OAS) Charter. For this reason, it is required to respect and guarantee the rights protected in the OAS Charter and the American Declaration of the Rights and Duties of Man. *Victor Saldaño v. United States*, Case 12.254, Inter-Am. Comm’n H.R., Report No. 24/17, OEA/Ser.L/V/161, doc. 31 rev. ¶ 76 (2017).

⁴⁵² U.S. Const. art. VI., cl. 2: “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.”

93. The United States cannot rely upon its federal structure as an excuse for non-performance of its treaty obligations. The Vienna Convention on the Law of Treaties makes clear that once a State has ratified a treaty, international law imposes a duty on it to carry out its treaty obligations in good faith⁴⁵³ and it cannot invoke difficulties presented by its internal law to justify its non-performance.⁴⁵⁴
94. The Supreme Court has also clearly stated that “[i]nternational law is part of our law.”⁴⁵⁵ The United States, like all nations, is bound by customary international law, as the Supreme Court affirmed in the 1900 *Paquete Habana* case. Justice Gray, writing for the Court, explained that in the absence of treaties,
- resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators who by years of labor, research, and experience have made themselves peculiarly well acquainted with the subjects of which they treat.⁴⁵⁶
95. Among the international rules that United States is obligated to respect are *jus cogens* norms. These rights are absolute and non-derogable and a State cannot suspend them under any circumstances, including exceptional circumstances such as a state of emergency. Yet, the gun violence crisis implicates several *jus cogens* norms. Among these non-derogable rights are the right to life and the right to be free from torture or other ill-treatment.⁴⁵⁷ Moreover, there are certain rights that represent customary international law and as such cannot be subject to

⁴⁵³ Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter VCLT] (“every treaty in force is binding upon the parties to it and must be performed by them in good faith.”). Although the United States is not a party to the treaty, the U.S. Department of State considers itself bound by several provisions of the VCLT as matters of customary law. *See* U.S. DEP’T OF STATE, Vienna Convention on the Law of Treaties, <http://www.state.gov/s/l/treaty/faqs/70139.htm>.

⁴⁵⁴ VCLT, *supra* note 453 art. 27 (“[A] party may not invoke . . . its internal law as justification for its failure to perform a treaty.”). The U.S. government has acknowledged this obligation. For example, regarding the “federal-state reservation” the United States made when ratifying the Torture Convention, former State Department Legal Advisor, Judge Sofaer, explained at a Senate Hearing “[i]t is saying to the world we have a constitutional system, and we just want you to know that in implementing this convention we are going to abide by our constitutional system of federalism in doing so. We are still obliged to implement it, but it must be done consistent with the framework of the U.S. Constitution.” *Convention Against Torture: Hearing Before the S. Comm. on Foreign Relations*, 101st Cong. 41 (1990) (statement of Hon. Abraham D. Sofaer, Legal Adviser, Department of State); *see also* United States of America, Initial Report to the Committee on the Elimination of Racial Discrimination, 45 (Sept. 2000), delivered to the U.N. Committee on the Elimination of Racial Discrimination, <http://www1.umn.edu/humanrts/usdocs/cerdinitil.html> (last visited Jul. 2, 2014) (“[T]his understanding is not a reservation. It does not condition or limit the international obligations of the United States. Nor can it serve as an excuse for any failure to comply with those obligations as a matter of domestic or international law.”).

⁴⁵⁵ *The Paquete Habana*, 175 U.S. 677, 700 (1900).

⁴⁵⁶ *Id.*

⁴⁵⁷ ICCPR article 4(2) explicitly provides that no derogation is permitted to a number of rights, including the right to life (ICCPR art. 6) and the prohibition of torture or cruel, inhuman or degrading punishment (ICCPR, art. 7). The UN Human Rights Committee has expanded what rights are non-derogable, stating that “[t]he fact that some of the provisions of the Covenant have been listed in article 4 (para. 2), as not being subject to derogation does not mean that other articles in the Covenant may be subjected to derogations at will, even where a threat to the life of the nation exists.” UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001).

reservations. States may not reserve the right to engage in torture or cruel, inhuman or degrading treatment, to arbitrarily deprive persons of their lives, or to permit the advocacy of racial hatred, among others.⁴⁵⁸

B. The Office of the High Commissioner for Human Rights (OHCHR)

96. The Office of the High Commission for Human Rights (OHCHR) is the main human rights organ of the United Nations. The United States has been a member of the United Nations since it was founded in 1945.⁴⁵⁹ The mandate of the OHCHR is to “promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in international human rights laws and treaties.”⁴⁶⁰ The OHCHR is run by the U.N. High Commissioner for Human Rights, who coordinates human rights activities throughout the United Nations and oversees the Human Rights Council.

i. The Human Rights Council

97. One means by which the OHCHR protects human rights around the world is through the Human Rights Council (HRC), established by the General Assembly in 2006.⁴⁶¹ The HRC is an inter-governmental body mandated with “the protection of human rights around the globe.”⁴⁶² This body, which is a separate entity from OHCHR, functions as a “catch-all” because “[i]t has the ability to discuss all thematic human rights issues”⁴⁶³ and all U.N. countries are under its purview.⁴⁶⁴

98. The Council meets in session three times a year and has multiple avenues available for intervention. It retains the power to appoint a Special Rapporteur, independent expert, or establish a working group to investigate alleged human rights abuses anywhere in the world⁴⁶⁵ and accepts complaints of human rights violations from NGO’s and private individuals.

⁴⁵⁸ U.N. Human Rights Committee, *CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 4, 1994).

⁴⁵⁹ See *The United States and the Founding of the United Nations, August 1941 - October 1945*, OFF. OF THE HISTORIAN & BUREAU OF PUB. AFFAIRS & U.S. DEP’T OF STATE (2005), <https://2001-2009.state.gov/r/pa/ho/pubs/fs/55407.htm>.

⁴⁶⁰ OHCHR, *Who We Are*, www.ohchr.org/EN/ABOUTUS/Pages/Mandate.aspx.

⁴⁶¹ G.A. Res. 60/251: Human Rights Council, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

⁴⁶² OHCHR, *About the Human Rights Council*, www.ohchr.org/en/hrbodies/hrc/pages/aboutcouncil.aspx.

⁴⁶³ *Id.*

⁴⁶⁴ U.N. Doc. A/RES/60/251, *supra* note 461.

⁴⁶⁵ The mandate of these Special Procedures is “to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on human rights issues of particular concern worldwide, known as thematic mandates. . . . [T]hey can address situations in all parts of the world without the requirement for countries to have had ratified a human rights instrument.” OHCHR, *Human Rights Bodies*, www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx.

99. Council resolution 5/1 establishes the procedures to submit suspected human rights violation to the Council.⁴⁶⁶ Complaints can be submitted against any State, irrespective of whether that State has ratified a particular treaty or made reservations under it. Complaints must not be “manifestly politically motivated” and must provide a factual description of the alleged violations and the specific rights allegedly violated.⁴⁶⁷ It must be factually supported through first-hand experience or an empirical study. There is no standing restriction to appear before the Council,⁴⁶⁸ but domestic remedies must be exhausted before recourse to the HRC is permitted.⁴⁶⁹
100. The HRC conducts universal periodic reviews of the human rights records of all U.N. member States to evaluate the fulfillment of each State’s human rights obligations and commitments and to make recommendations.⁴⁷⁰ The Universal Periodic Review (UPR) is a State-driven process which provides the opportunity for each State to declare what actions it has taken to improve its domestic human rights situation and to fulfil its international legal obligations. States are invited to submit a national report, which the HRC considers along with a compilation of United Nations information prepared by the OHCHR and submissions from members of civil society, human rights institutions, regional organizations and other stakeholders.
101. Although historically the United States has supported and even provided the framework for the global human rights system, President Trump withdrew the United States from the Human Rights Council in June 2018, joining North Korea, Iran, and Somalia as the only countries that refuse to participate in Council meetings and deliberations.⁴⁷¹

ii. The 2015 Universal Periodic Review of the United States by the HRC

102. The last UPR of the United States occurred in 2015.⁴⁷² The Report from the U.S. government⁴⁷³ did not reference the gun violence crisis in the United States generally. It mentioned the shooting of Michael Brown in reference to “profiling and excessive use of force by law enforcement”⁴⁷⁴ and, in its discussion of discrimination based on religion and

⁴⁶⁶ HRC Res. 5/1, Institution-Building of the United Nations Human Rights Council, U.N. Doc. A/HRC/RES/5/1 (June 18, 2007).

⁴⁶⁷ *Id.*

⁴⁶⁸ Any person or group claiming to have had their human rights and fundamental freedoms violated may submit a claim, as can a person or group, including non-governmental groups, if acting in good faith and with direct and reliable knowledge of the violation concerns. *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ G.A. Res. 60/251, Annex I.

⁴⁷¹ Gardiner Harris, *Trump Administration Withdraws U.S. From U.N. Human Rights Council*, N.Y. TIMES (June 19, 2018), www.nytimes.com/2018/06/19/us/politics/trump-israel-palestinians-human-rights.html.

⁴⁷² Human Rights Council, Report of the Working Group on the Universal Periodic Review—United States of America, U.N. Doc. A/HRC/30/12 (July 20, 2015).

⁴⁷³ Human Rights Council, Working Group on the Universal Periodic Review, United States of America, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, U.N. Doc. A/HRC/WG.6/USA/1 (Feb. 13, 2015).

⁴⁷⁴ *Id.* at 5.

hate crimes, the fatal shooting at a Kansas City Jewish community center.⁴⁷⁵ Based on an examination of the UNHCHR’s summary of 91 stakeholders’ submissions,⁴⁷⁶ there were no submissions on generalized gun violence during this UPR. The summary did reference Stand Your Ground Laws and fatal police shootings of African Americans.⁴⁷⁷ There were two references to gun violence in the *Advance Questions to the United States* issued by members of the Council. One came from the representative for China, who said

The United Nations High Commissioner for Human Rights, CERD, CAT as well as civil society have repeatedly expressed concerns about excessive use of force by the police and the large number of gun-related deaths and injuries, which disproportionately affected members of racial and ethnic minorities. [...]. To what extent have those steps taken effect eliminating violence based on national, ethical or racial elements? How to analyze and address the root causes?⁴⁷⁸

Similarly, the representative from Azerbaijan noted the concerns of CERD, the Human Rights Committee, and the Special Rapporteur on Violence Against Women regarding “the large number of gun-related deaths and injuries, which disproportionately affected members of racial and ethnic minorities, particularly African Americans” and the recommendation that the United States reduce gun violence by “inter alia, adopting legislation expanding background checks for all private firearms transfers and reviewing the “stand your ground” laws.”” Azerbaijan then asked the United States “[w]hat measures have been taken with regard to these recommendations.”⁴⁷⁹

103. The HRC Working Group issued 343 recommendations to the United States. Several dealt with gun violence and firearms. The United States, under the Obama administration, supported⁴⁸⁰ recommendation 231 from Azerbaijan to “[e]liminate gun violence” and recommendation 232 from Iceland to “[t]ake necessary measures to reduce gun violence, concerned at the large number of gun-related deaths and injuries, which disproportionately affect members of racial and ethnic minorities.”⁴⁸¹

⁴⁷⁵ *Id.* at 6.

⁴⁷⁶ Human Rights Council, Working Group on the Universal Periodic Review, United States of America, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, U.N. Doc. A/HRC/WG.6/22/USA/3, (Feb. 16, 2015).

⁴⁷⁷ *Id.* at 5.

⁴⁷⁸ Human Rights Council, Advance Questions to the United States Of America – ADD. 3, available at www.ohchr.org/EN/HRBodies/UPR/Pages/USindex.aspx.

⁴⁷⁹ Human Rights Council, Advance Questions to the United States Of America – ADD. 4, available at www.ohchr.org/EN/HRBodies/UPR/Pages/USindex.aspx.

⁴⁸⁰ Human Rights Council, Report of the Working Group on the Universal Periodic Review* United States of America, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, ¶ 8, A/HRC/30/12/Add.1 (Sept. 14, 2015) [hereinafter ‘Human Rights Council, UPR 2015 U.S. Reply’].

⁴⁸¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States of America, at 27, U.N. Doc. A/HRC/30/12 (July 20, 2015).

104. However, to the recommendation from Ecuador that the United States “[a]dopt legislation expanding the verification of personal backgrounds for all acquisitions of firearms”⁴⁸² (recommendation 230) and from Peru to “[c]onsider the adoption of legislation to enhance the verification of the records for all fire arms transfers and the revision of the laws that stipulate self-defence without limitations”⁴⁸³ (recommendation 233), the United States agreed “in part.” It replied that it “strongly support[ed] expanding the number of firearms transfers that are subject to background checks but with limited, common-sense exceptions (e.g., certain transfers between family members, temporary transfers for hunting/sporting).”⁴⁸⁴ However, in response to Recommendation 233, the United States said: “[w]e do not support the part of this recommendation asking us to revise laws that permit individuals to defend themselves when violently attacked.”⁴⁸⁵ The United States also agreed with many of the recommendations related to excessive use of force by police.

iii. The OHCHR Addresses Gun Violence & Human Rights

105. In August 2006, the HRC Sub-Commission on the Promotion and Protection of Human Rights issued *Principles on the Prevention of Human Rights Violations Committed with Small Arms*.⁴⁸⁶ Drawing attention specifically to the right to life, liberty and security of person, it notes “the need to promote the human rights, safety and well-being of all persons by preventing foreseeable small arms violence through appropriate measures to regulate small arms possession and use by private actors.”⁴⁸⁷ This document divides recommendations into two categories: (1) “obligations with regards to State agents” and (2) “due diligence to prevent human rights abuses by private actors.”⁴⁸⁸ With regard to the former, the Sub-Commission highlights the close relationship between law enforcement officers and small arms and declares that

Government and State officials, especially enforcement officers, shall not use small arms to violate human rights. All State agents have an obligation to uphold and affirm human rights including the right to life, liberty and security of person. ... the intentional lethal use of small arms may only be made when strictly unavoidable in order to protect life.⁴⁸⁹

106. With regard to the latter category of private actors, the Sub-Commission recommended Principle 10:

⁴⁸² *Id.* at 27.

⁴⁸³ *Id.* at 28.

⁴⁸⁴ Human Rights Council, UPR 2015 U.S. Reply, *supra* note 480, ¶ 9.

⁴⁸⁵ Appendix to the Addendum to the Report of the Second Universal Periodic Review of the United States, at 12, lib.ohchr.org/HRBodies/UPR/Documents/Session22/US/AdditionalInfo_US_22session.pdf.

⁴⁸⁶ Human Rights Council, Principles on the Prevention of Human Rights Violations Committed with Small Arms, U.N. Doc. A/HRC/Sub.1/58/L.11/Add.1 (Aug. 24, 2006).

⁴⁸⁷ *Id.* The document also emphasizes “the responsibility of States to promote public education and awareness about the root causes of violence and to promote alternative forms of dispute resolution.”

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

- In order to ensure the protection of human rights by preventing small arms violence by private actors, Governments shall enact licensing requirements to prevent possession of arms by persons who are at risk of misusing them.
- Possession of small arms shall be authorized for specific purposes only; small arms shall be used strictly for the purpose for which they are authorized.
- Before issuing a licence Governments shall require training in proper use of small arms, and shall take into consideration, at a minimum, the following factors: age, mental fitness, requested purpose, prior criminal record or record of misuse, and prior acts of domestic violence. Governments shall require periodic renewal of licences.

....

- Governments shall ensure the investigation and prosecution of persons responsible for the illegal manufacture, possession, stockpiling or transfer of small arms.⁴⁹⁰

The report also highlighted the need for the government to be able to identify and trace small arms.

107. The U.N. Special Rapporteur on violence against Women, its causes and consequences, appointed by the U.N. Commission on Human Rights,⁴⁹¹ has also addressed firearms and gun violence in the United States, advising the government to:

Enhance gun control measures, by ensuring an adequate background check system to capture all relevant elements that determine an individual's suitability for gun ownership. Background checks for licensed individuals should be revisited periodically to determine continued suitability. States should have clear gun removal policies when intervening in domestic violence cases, including the possibility of removal of guns after the first notification of domestic disputes. Gun dealers should be penalized for illegally selling guns and also for failure to report stolen guns which are subsequently used to commit crimes.⁴⁹²

More generally, the Special Rapporteur has also advised all States to “duly take into account possession of or access to firearms by perpetrators” of violence.⁴⁹³

⁴⁹⁰ *Id.*

⁴⁹¹ U.N. Commission on Human Rights, Resolution 1994/45 (Mar. 4, 1994); U.N. Commission on Human Rights, Resolution 2003/45 (2003).

⁴⁹² U.N. Human Rights Council, Report of the Special Rapporteur on violence against Women, its causes and consequences, Ms. Rashida Manjoo, U.N. Doc. A/HRC/17/26/Add.5, ¶ 115.A(g) (June 6, 2011).

⁴⁹³ Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, U.N. Doc. A/HRC/35/30, ¶ 103 (June 13, 2017).

108. Former U.N. High Commissioner for Human Rights, Prince Zeid Ra’ad al-Hussein, released a report in 2016 detailing the human rights concerns associated with the private purchasing, possession and use of guns,⁴⁹⁴ finding that “[f]irearms-related violence and insecurity [] pose direct risks to the rights to life, security and physical integrity, and also affect other civil, political, social, economic and cultural rights such as the rights to health, education, an adequate standard of living and social security and the right to participate in cultural life.”⁴⁹⁵ The report called for States to protect their citizens from the right-depriving violence associated with the sale and use of guns.⁴⁹⁶
109. The High Commissioner has also separately highlighted the U.S. failure to regulate the sale and use of guns. Following the mass shooting at a night club in Orlando, Florida which killed 49 people and wounded 53 others,⁴⁹⁷ the High Commissioner stated that “[i]t is hard to find a rational justification that explains the ease with which people can buy firearms, including assault rifles, in spite of prior criminal backgrounds, drug use, histories of domestic violence and mental illness, or direct contact with extremists – both domestic and foreign.”⁴⁹⁸ He asked: “How many more mass killings of school-children, of co-workers, of African-American churchgoers . . . will it take before the United States adopts robust gun regulation?”⁴⁹⁹
110. The rights implicated by gun violence that have been highlighted by the HRC and Commissioner include the rights to life, liberty, security of person, education, health, and to participate in cultural life. These fundamental rights are contained in treaties the United States has dutifully ratified and, as such, is obligated to uphold and protect, as explored *infra*.

C. International Covenant on Civil and Political Rights (ICCPR)

111. The International Covenant on Civil and Political Rights (ICCPR) was adopted by the U.N. General Assembly on December 16, 1966⁵⁰⁰ and entered into force on March 23, 1976.⁵⁰¹ Among other rights, the ICCPR safeguards the right to life and security of person, the freedom of religion, the right to education, the right of peaceful assembly, association, and opinion, the right of every child to have measures of protection required by his or her status as a minor, and prohibits discrimination based on sex or race. The United States signed the

⁴⁹⁴ Rep. of the United Nations High Comm’r for Human Rights, Human Rights and the Regulation of Civilian Acquisition, Possession and Use of Firearms, ¶ 10, U.N. Doc. A/HRC/32/21 (Apr. 15, 2016).

⁴⁹⁵ *Id.* ¶ 52.

⁴⁹⁶ *Id.* ¶ 53.

⁴⁹⁷ Ralph Ellis et al., *Orlando Shooting: 49 Killed, Shooter Pledged ISIS Allegiance*, CNN (June 13, 2016), www.cnn.com/2016/06/12/us/orlando-nightclub-shooting/index.html.

⁴⁹⁸ *In Wake of Mass Shooting, UN Rights Chief Urges US to Consider Robust Gun Control*, UN NEWS (June 14, 2016), news.un.org/en/story/2016/06/532022-wake-mass-shooting-un-rights-chief-urges-us-consider-robust-gun-control.

⁴⁹⁹ *Id.*

⁵⁰⁰ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 172 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

⁵⁰¹ *Id.* n. 1.

ICCPR on October 5, 1977 and ratified it on June 8, 1992.⁵⁰² The U.S. Senate attached several reservations, understandings, and declarations (RUDs) to its ratification,⁵⁰³ including a non-self-executing clause and an understanding related to the country's federalist system.⁵⁰⁴

i. The Human Rights Committee

112. Articles 28 to 32 of the International Covenant on Civil and Political Rights created the Human Rights Committee. The Committee monitors the implementation of the Covenant's provisions by States Parties. It generally meets for three, three-week sessions each year, splitting its time between New York and Geneva.⁵⁰⁵
113. Although the Human Rights Committee accepts both interstate and individual complaints of human rights violations,⁵⁰⁶ the United States is not a party to the Optional Protocol⁵⁰⁷ which grants the Committee jurisdiction to hear individual complaints against it. As such, no private party domiciled in the United States will be recognized by the Human Rights Committee with standing to bring a complaint.
114. The United States is subject to the interstate complaint procedure, meaning that another signatory State can bring a complaint against the United States before the Committee.⁵⁰⁸ The State bringing the complaint must first contact the State allegedly in violation of the treaty and allow for that State's response. If the matter is not satisfactorily solved, and all domestic remedies are exhausted, the complaining State may bring the matter in front of the Committee after 6 months.⁵⁰⁹

⁵⁰² See Message from the President Transmitting Four Treaties Pertaining to Human Rights, 14 WEEKLY COMP. PRES. Doc. 395 (Feb. 23, 1978); 138 Cong. Rec. S4781-84 (daily ed. Apr. 2, 1992).

⁵⁰³ U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992). Prominent scholars have criticized these RUDs as illegal under international law or in violation of the United States' moral obligations. See, e.g., M. Cherif Bassiouni, *Reflections on the Ratification of the International Covenant on Civil and Political Rights by the United States Senate*, 42 DEPAUL L. REV. 1169, 1179 (1993) (arguing that the ICCPR RUDs are a violation of the government's good faith obligation).

⁵⁰⁴ U.S. reservations, declarations, and understandings, ICCPR, *supra* note 503. "The United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant." *Id.*

⁵⁰⁵ The Human Rights Committee typically meets in New York March-April, and in Geneva in July and October-November.

⁵⁰⁶ Human Rights Committee, *Introduction*, <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIIntro.aspx>.

⁵⁰⁷ Optional Protocol to the International Covenant on Civil and Political Rights, 16th December 1966 (999 UNTS 171), OXIO 4.

⁵⁰⁸ "The United States declares that it accepts the competence of the Human Rights Committee to receive and consider communications under article 41 in which a State Party claims that another State Party is not fulfilling its obligations under the Covenant." United Nations, *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2004*, Volume 2, Parts 1-2, p. 196 (2005).

⁵⁰⁹ OHCHR, *Individual Complaint Procedures under the United Nations Human Rights Treaties*, Fact Sheet No. 7/Rev.2, 13-14 (2013), www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf.

115. ICCPR article 40 establishes a reporting system for States Parties in which each State must periodically report to the Committee on the progress it has made tackling human rights violations in its territory by implementing legislation and enforcing existing protective measures. The United States is obligated to submit a report to the Human Rights Committee every four years.⁵¹⁰ The Committee examines the State report as well as supplementary information from civil society. At the end of this review, the Committee issues *Concluding Observations*, which States Parties are expected to respond to with additional information as requested. States generally are given one year to respond.

ii. The 2014 U.S. Review by the Human Rights Committee

116. More than two decades ago, during the its first review of the United States in 1995, the Committee stated that it “regrets the easy availability of firearms to the public and the fact that federal and state legislation is not stringent enough in that connection to secure the protection and enjoyment of the right to life and security of the individual guaranteed under the Covenant.”⁵¹¹

117. The fourth and most recent review of the United States before the Committee occurred in March 2014.⁵¹² The United States submitted its report in 2011, which failed to mention gun violence. None of the civil society submissions focused on the general problem of gun violence in the United States, although certain aspects of the crisis – such as police shootings, SYG laws, and intimate partner violence – were included within NGO reports.⁵¹³ Nevertheless, the Committee addressed gun violence in their questions to the United States and in its *Concluding Observations*.

118. Regarding the right to life in article 6, the Committee’s April 2013 *List of Issues Prior to Reporting* asked the United States to provide information on

The number of victims of gun violence, including in the context of domestic violence, and on steps taken to better protect people against the risks associated with proliferation of firearms ... the applicability of “stand your ground” laws, and whether they provide blanket immunity to persons using

⁵¹⁰ See Human Rights Committee, Civil and Political Rights: The Human Rights Committee, Fact Sheet No. 15 (Rev.1), 15 (May 2005) (explaining how after the initial review, subsequent reviews of a State Party are due at a time individually specified by the Committee for each State party).

⁵¹¹ Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Comments of the Human Rights Committee: United States of America, U.N. Doc. CCPR/C/79/Add.50, ¶ 17 (Apr. 7, 1995) (The Committee also stated that it “is concerned at the reportedly large number of persons killed, wounded or subjected to ill-treatment by members of the police in the purported discharge of their duties.” *Id.*)

⁵¹² The review was originally scheduled for October 2013 but was rescheduled due to the U.S. government shutdown.

⁵¹³ For example, one report by Amnesty International highlighted gun deaths caused by police and board patrol agents. Amnesty International, *Submission to the UN Human Rights Committee*, at 17-18 (Sept. 2013), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_15187_E.pdf. Others reports focused on intimate partner violence and highlighted the danger and discriminatory impacts of SYG laws. See, e.g., The Human Rights Clinic at the University of Miami School of Law, Legal Momentum, Women Enabled, Inc., and The Advocates for Human Rights, *Shadow Report on Domestic Violence, Gun Violence, and “Stand Your Ground” Laws in the United States* (2014).

force as defined and permitted by such laws [and] [t]he use of firearms by the police and the number of cases where such use resulted in the death of persons, as well as the investigations and prosecutions in such cases.⁵¹⁴

The United States responded:

[I]n 2011, an estimated 478,400 fatal and nonfatal violent crimes were committed with a firearm. With respect to gun violence in the context of domestic violence, of some 4.7 million nonfatal violent victimizations committed by intimate partners in the 5-year period from 2007 to 2011, offenders used firearms in about 4% of these victimizations. Across the 28-year period, the percentage of homicides committed by intimate partners that involved guns declined from 69% of all intimate homicides in 1980 to 51% in 2008.

With regard to self-defensive gun use, more than half the U.S. states have a form of stand your ground law. In some states, the law provides civil and criminal immunity for a person who uses force as defined and permitted by the law. ... [V]ictims used firearms to threaten or attack an offender in 235,700 (1%) of violent criminal victimization situations from 2007 through 2011, and in 2% of nonfatal violent victimizations from 1993 to 2011.⁵¹⁵

Using FBI data, the United States also replied that there were “393 justified homicides (the killing of a felon by a law enforcement officer) in the United States, down from 397 in 2010 and 414 in 2009”.⁵¹⁶

119. In its *Concluding Observations*, the Committee acknowledged “the measures taken to reduce gun violence” and commended “the investigation by the United States Commission on Civil Rights of the discriminatory effect of the “Stand Your Ground” laws.”⁵¹⁷ However, it remained “concerned about the continuing high numbers of gun-related deaths and injuries and the disparate impact of gun violence on minorities, women and children” and “the proliferation of such laws which are used to circumvent the limits of legitimate self-defence.”⁵¹⁸ The Committee also expressed concern about “the still high number of fatal shootings by certain police forces.”⁵¹⁹ As such, the Committee called on the United States to

Continue its efforts to effectively curb gun violence, including through the continued pursuit of legislation requiring background checks for all private

⁵¹⁴ Human Rights Committee, List of issues in relation to the fourth periodic report of the United States of America, adopted by the Committee at its 107th session, at 2, U.N. Doc. CCPT/C/USA/Q/4 (Apr. 29, 2013).

⁵¹⁵ Human Rights Committee, Replies of the United States of America to the list of issues, ¶¶ 31-33, U.N. Doc. CCPR/C/USA/Q/4/Add.1 (Sept. 13, 2013).

⁵¹⁶ *Id.*

⁵¹⁷ Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, ¶ 10 (Apr. 23, 2014) [hereinafter Human Rights Committee, Concluding Observations 2014].

⁵¹⁸ *Id.* ¶ 10.

⁵¹⁹ *Id.* ¶ 11.

firearm transfers, in order to prevent possession of arms by persons recognized as prohibited individuals under federal law, and ensure strict enforcement of the Domestic Violence Offender Gun Ban of 1996 (the Lautenberg Amendment); and

Review the Stand Your Ground laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when using deadly force in self-defence.

Step up its efforts to prevent the excessive use of force by law enforcement officers by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁵²⁰

120. The government, under the Obama administration responded to these recommendations in its one-year follow up:

The United States acknowledges that gun violence continues to be a serious concern in some communities across the nation. The Administration continues to support common-sense legislation to reduce the incidence of gun crime, including legislation that would close loopholes in the background check system and increase the number of firearms transactions subject to criminal background checks, create a specific firearms trafficking offense under federal law, restore and strengthen a federal assault weapons ban, and crackdown on gun trafficking.⁵²¹

121. In subsequent communication back and forth with the Committee, the United States made some additional comments regarding gun violence, including that

[t]he Obama Administration continues to support common-sense legislation that would reduce the incidence of gun violence in the United States. The Administration, which has made progress on a number of previously announced actions to reduce gun violence, continues to urge the Congress to take a hard look at such legislative proposals.⁵²²

Follow-up information submitted by a group of civil society organizations, however, argued that the U.S. government's response and actions were inadequate, pointing to, for example, the recent proliferation of guns on campus laws.⁵²³ In July 2016, the Committee requested additional follow-up information from the United States, including on the topic of gun

⁵²⁰ *Id.*

⁵²¹ The Permanent Mission of the United States of America, One-Year Follow-up Response of the United States of America to Priority Recommendations of the Human Rights Committee on its Fourth Periodic report on Implementation of the International Covenant on Civil and Political Rights, ¶¶ 15-23 (Apr. 1, 2015).

⁵²² The Permanent Mission of the United States of America, Reply of the United States of America to the Special Rapporteur for Follow-up on Concluding Observations of the Human Rights Committee on its Fourth Periodic Report on Implementation of the International Covenant on Civil and Political Rights, ¶ 10 (Oct. 9, 2015).

⁵²³ Dream Defenders, Community Justice Project, Inc, & Campaign to Keep Guns Off Campus – New York, *Assessing: Paragraph 10 – Gun Violence and Stand Your Ground Laws as of 8 May 2015* (May 8, 2015).

violence.⁵²⁴ As of September 2018, the United States had not transmitted the requested information.

iii. ICCPR Obligations and U.S. Gun Violence

122. Under article 2.2 of the ICCPR, States must “adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”⁵²⁵ In General Comment No. 31, the Committee makes clear that States must protect

not just against violations . . . by its agents, *but also against acts committed by private persons or entities*. . . . There may be circumstances in which a failure to ensure Covenant rights . . . would give rise to violations by States Parties . . . as a result of States Parties’ permitting or *failing to take appropriate measures* or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.⁵²⁶

123. The U.S. federal and state governments have repeatedly failed to adopt reasonable measures to protect their populations from gun violence. In fact, the Human Rights Committee has found in relation to the United States that “the obligation to effectively protect also requires efforts to curb violence that include the continued pursuit of legislation requiring background checks for all private firearm transfers” and “strict enforcement of the Domestic Violence Offender Gun Ban of 1996.”⁵²⁷ Rather than stepping-up legislation to prevent gun violence or providing the resources for effective enforcement of current laws, the U.S. government has deregulated previous attempts to ameliorate this problem and created roadblocks for the agencies tasked with enforcing gun regulations.⁵²⁸ The failure to legislate in this space could, thus, constitute a failure of U.S. obligations under article 2.2.
124. Article 6(1) clearly states that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁵²⁹ This *jus cogens* right is non-derogable. A State’s obligation “extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life.”⁵³⁰ The Committee’s new General Comment No. 36 clarifies that States should “take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. *These general conditions may include high levels of criminal and gun violence.*”⁵³¹ Yet gun violence in the United States takes the lives of more than

⁵²⁴ See Human Rights Committee, *Follow-up Letter Sent to State Party* (Dec. 7, 2016).

⁵²⁵ ICCPR, *supra* note 500.

⁵²⁶ Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

⁵²⁷ Human Rights Committee, Concluding Observations 2014, *supra* note 517, ¶ 10(a).

⁵²⁸ See *supra* Section II(B)(iv).

⁵²⁹ ICCPR *supra* note 500, art. 6(1).

⁵³⁰ Human Rights Committee, General Comment No. 36: on article 6 of the International Covenant on Civil and Political Rights, on the right to life, U.N. Doc. CCPR/C/GC/36, ¶ 7 (2018).

⁵³¹ *Id.* ¶ 26 (emphasis added).

34,000 individuals every year. This level of violence, the almost unrestricted availability of guns in the private sphere, and the refusal of public officials to adopt reasonable measures to keep guns out of the hands of dangerous individuals, such as domestic abusers, and children, evince the failure of the United States to protect its citizens. The Committee has acknowledged that gun violence violates the duty to protect life and directed that the United States “should take all necessary measures to abide by its obligation to effectively protect the right to life.”⁵³²

125. Article 9.1 of the Covenant, which provides for “the right to liberty and security of person”⁵³³ is also implicated by gun violence, as already acknowledged by the Committee in 1995.⁵³⁴ Guns in the United States, by their sheer numbers and ease of obtaining, are endangering the security of individuals, as are SYG laws and police killings.
126. Article 18 of the ICCPR protects the non-derogable “right to freedom of thought, conscience and religion.”⁵³⁵ This right is “far-reaching and profound,” must be “broadly construed,”⁵³⁶ and includes “the right of all persons to worship or assemble in connection with a religion or belief.”⁵³⁷ The U.N. Human Rights Council has urged States “[t]o exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols *are fully respected and protected* and to take additional measures in cases where they are vulnerable to desecration or destruction.”⁵³⁸ Yet mass shootings have occurred at places of worship frequently, including Pittsburgh’s Tree of Life synagogue (2018),⁵³⁹ a church in Sutherland Springs, Texas (2017), the Emanuel African Methodist Episcopal Church, a historically Black church in Charleston, South Carolina (2015),⁵⁴⁰ and a Sikh temple in Wisconsin (2012).⁵⁴¹ The proliferation of firearms and easy access to guns interferes with individual’s freedom of religion because of the well-founded fear that they will become victims to firearm violence as a result of their religious choices.

⁵³² Human Rights Committee, Concluding Observations 2014, *supra* note 517, ¶ 10.

⁵³³ ICCPR *supra* note 500, art. 9(1) (emphasis added).

⁵³⁴ Human Rights Committee, 1995 Concluding Observations, *supra* note 511.

⁵³⁵ ICCPR *supra* note 500, art. 18.

⁵³⁶ Human Rights Committee, General Comment No. 22: Article 18 (Forty-eighth session, 1993), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35, ¶ 1, 2 (1994).

⁵³⁷ U.N. Commission on Human Rights, Resolution 2005/40, U.N. Doc. E/CN.4/RES/2005/40, ¶ 4(d) (Apr. 19, 2005).

⁵³⁸ Human Rights Council, Resolution 6/37, U.N. Doc. A/HRC/RES/6/37, ¶ 9(e) (Dec. 14, 2007) (emphasis added).

⁵³⁹ Dakine Andone et al., *Hate crime charges filed in Pittsburgh synagogue shooting that left 11 dead*, CNN (Oct. 29, 2018), www.cnn.com/2018/10/27/us/pittsburgh-synagogue-active-shooter/index.html.

⁵⁴⁰ *Charleston Church Shooting: Suspected Gunman Arrested*, BBC (June 18, 2015), www.bbc.com/news/world-us-canada-33190735.

⁵⁴¹ Steven Yaccino, Michael Schwartz, & Marc Santora, *Gunman Kills 6 at a Sikh Temple near Milwaukee*, N.Y. TIMES (Aug. 4, 2012), www.nytimes.com/2012/08/06/us/shooting-reported-at-temple-in-wisconsin.html.

127. Article 19 of the Covenant protects the right to hold opinions without interference and the freedom of expression, both vital at the individual level and necessary for a democratic society.⁵⁴² As the Committee explained in General Comment No. 34, article 19(1) is violated by “the harassment [or] intimidation ... of a person ... for reasons of the opinions they may hold” and “[a]ny form of effort to coerce the holding or not holding of any opinion is prohibited.”⁵⁴³ Gun violence in the United States violates these rights when individuals are coerced, whether implicitly or expressly, into not expressing their opinion due to the fear that they will be threatened or harmed with a gun as a result. In 2011, U.S. Representative Gabrielle Giffords and eighteen others were shot during a constituent meeting⁵⁴⁴ and in 2016, a shooter attacked a baseball game of Republican lawmakers, firing more than 70 rounds and critically injuring a congressman. It is not hard to find reports of individuals threatened or shot with firearms as a result of expressing their non-political opinion either, with examples ranging from opinions regarding protests at professional football games⁵⁴⁵ to sexual orientation.⁵⁴⁶ The United States is required under the Covenant “to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression.”⁵⁴⁷ It is arguably failing to fulfil this obligation.
128. Likewise, a free press is “essential . . . to ensure freedom of opinion and expression and the enjoyment of other Covenant rights.” The Committee has called a free and unhindered press “one of the cornerstones of a democratic society.”⁵⁴⁸ Yet in June 2018, five people were shot dead in an attack on the Capital Gazette newsroom in Maryland.⁵⁴⁹ Easy access to firearms enable this kind of attack. Indeed, in 2018, the United States was added to Reporters Without Border’s list of the *top five* deadliest countries for journalists to work.⁵⁵⁰
129. The rights to peaceful assembly and association are protected by ICCPR articles 21 and 22. Like freedom of expression and opinion, these are “essential components of democracy”

⁵⁴² Human Rights Committee, General Comment No. 34: Article 19: Freedoms of opinion and expression, U.N. Doc. CCPR/C/GC/34, ¶¶ 2-3 (2011).

⁵⁴³ *Id.* ¶¶ 9, 10.

⁵⁴⁴ Marc Lacey & David M. Herszenhornjan, *Representative Gabrielle Giffords and 18 Shot Near Tucson*, N.Y. TIMES (Jan. 8, 2011), www.nytimes.com/2011/01/09/us/politics/09giffords.html.

⁵⁴⁵ Des Bieler, *Gunshot Ends Family’s Thanksgiving Argument over NFL Protests During Anthem*, WASH. POST (Nov. 28, 2018), www.washingtonpost.com/sports/2018/11/28/gunshot-ends-familys-thanksgiving-argument-over-nfl-protests-during-anthem/?noredirect=on&utm_term=.9a6b1ce08ce0.

⁵⁴⁶ See, e.g., *Detroit man to Stand Trial for Hate crime Against Transgender Woman*, ABC-DETROIT (Aug. 16, 2018), www.wxyz.com/news/detroit-man-to-stand-trial-for-hate-crime-against-transgender-woman (a man shot a woman at a gas station after they argued about gender identity).

⁵⁴⁷ Human Rights Committee, General Comment No. 34, *supra* note 542, ¶ 7.

⁵⁴⁸ *Id.* ¶ 13.

⁵⁴⁹ Sabrina Tavernise, Amy Harmon, & Maya Salam, *5 People Dead in Shooting at Maryland’s Capital Gazette Newsroom*, N.Y. TIMES (June 28, 2018), www.nytimes.com/2018/06/28/us/capital-gazette-annapolis-shooting.html.

⁵⁵⁰ Reporters Without Borders, *Worldwide Round-Up*, at 10 (Dec. 2018), https://rsf.org/sites/default/files/worldwilde_round-up.pdf.

- and “serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights.”⁵⁵¹ The United States has a “positive obligation to facilitate the exercise of this right” and is responsible for protecting peaceful assemblies.⁵⁵² Gun violence at such assemblies discourages individuals from exercising these rights.
130. ICCPR article 7 prohibits “cruel, inhuman or degrading treatment.”⁵⁵³ As elaborated on more fully in Section V(E) on UNCAT, this too may be violated as a result of U.S. gun violence, and in particular by the frequent mass and school shootings which have fostered a culture of fear and caused widespread trauma. “Acts that cause mental suffering” such as these, may violate the prohibition against ill-treatment contained in article 7.⁵⁵⁴
131. As discussed in Section II(C) and explored further in Section V(D), the U.S. gun violence crisis disproportionately harms people of color. ICCPR article 26 guarantees equality and protection against discrimination while article 2 “obligates each State party to respect and ensure to all persons . . . the rights recognized in the Covenant without distinction of any kind, such as race [or] colour.”⁵⁵⁵ Discrimination includes “any distinction, exclusion, restriction or preference which is based on any ground . . . which has *the purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”⁵⁵⁶ The Committee has already found that U.S. gun violence has a “disparate impact” on minority groups and recommended that the U.S. government “[r]eview the Stand Your Ground laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when using deadly force in self-defence.”⁵⁵⁷ However, SYG laws continue to play a large role in gun violence and are an obstacle to reducing the use of deadly force by firearms, in particular against African Americans.
132. Of particular concern too, in regard to the ICCPR, is the impact U.S. gun violence has on children. Article 24 requires special protection for children given their status as minors.⁵⁵⁸ Not only are children required to attend schools where they are worried about being shot, but children and teenagers in the United States experience troubling high rates of firearm death and injury.⁵⁵⁹ The Committee has directed States Parties that “every possible economic

⁵⁵¹ U.N. Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Assembly and of Association, Maina Kiai, ¶ 12, U.N. Doc. A/HRC/20/27 (May 21, 2012).

⁵⁵² *Id.* ¶¶ 27, 33.

⁵⁵³ ICCPR *supra* note 500, art. 7.

⁵⁵⁴ Human Rights Committee, General Comment 20: Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30, ¶ 5 (1994).

⁵⁵⁵ ICCPR *supra* note 500, arts.2, 26.

⁵⁵⁶ Human Rights Committee, General Comment No. 18: Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26, ¶ 7 (1994).

⁵⁵⁷ Human Rights Committee, Concluding Observations 2014, *supra* note 517, ¶ 10(b).

⁵⁵⁸ ICCPR *supra* note 500, art. 24.

⁵⁵⁹ *See supra* ¶¶ 13-14, 16.

- and social measure should be taken . . . to prevent them [children] from being subjected to acts of violence.”⁵⁶⁰ Children could be better protected against gun violence by common sense gun laws, including safe storage requirements and the elimination of loopholes that allow domestic abusers to possess guns. Indeed, during its last review of the United States, a member of the Human Rights Committee noted “the lack of a preventive approach to domestic violence, [and] regretted that a man who was under a restraining order had been able to legally access a firearm which he had then used to kill his children.”⁵⁶¹
133. Finally, ICCPR Article 2 prohibits discrimination based on sex, while article 3 ensures the equal and full right of men and women to the enjoyment of all rights contained within the Covenant.⁵⁶² States must take steps towards “the removal of obstacles to the equal enjoyment each of such rights . . . and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant.”⁵⁶³ Yet women in the United States are *sixteen times* more likely to be murdered with a firearm, usually in the context of domestic violence. International law recognizes domestic violence as a public concern that requires State action to prevent.⁵⁶⁴ Gaps in federal gun legislation, particularly the Lautenberg Amendment, have enabled this type of gun violence, which disproportionately harms women. This is inconsistent with the States’ duty “to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence [including] . . . victims of domestic and gender-based violence.”⁵⁶⁵
134. Not only has the United States failed to give effect to many ICCPR rights through legislation or other measures to limit gun violence, but the laws it *has* enacted may put its citizens at greater risk. The Human Rights Committee seems to agree with this suggestion, expressing concern in its 2014 *Concluding Observations* “about the proliferation of such laws which are used to circumvent the limits of legitimate self-[defense] in violation of the State party’s duty to protect life (arts. 2, 6, and 26).”⁵⁶⁶ In addition to Stand Your Ground Laws, federal measures such as the Dickey Amendment, Tiahrt Amendments, Firearm Owners’ Protection Act, and the Protection of Legal Commerce in Arms Act, coupled with the federal government willfully allowing the Assault Weapon Ban to expire, have limited its ability to protect its citizen’s rights.

⁵⁶⁰ Human Rights Committee, General Comment No. 17: Article 24 (Thirty-fifth session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 23, ¶ 4 (1994).

⁵⁶¹ Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant (continued) – Fourth periodic report of the United States of America (continued), U.N. Doc. CCPR/C/SR.3045, ¶ 15 (June 11, 2014).

⁵⁶² ICCPR *supra* note 500, arts. 2, 3.

⁵⁶³ Human Rights Committee, General Comment No. 28: Equality of Rights Between Men and Women (Art. 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10, ¶ 3 (2000).

⁵⁶⁴ General Assembly Resolution 48/104, Declaration on the Elimination of Violence against Women, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

⁵⁶⁵ Human Rights Committee, General Comment No. 36, *supra* note 530, ¶ 23.

⁵⁶⁶ Human Rights Committee, Concluding Observations 2014, *supra* note 517, ¶ 10(b).

D. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

135. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted in 1965 and came into force on January 4, 1969.⁵⁶⁷ Its purpose is to eliminate racial discrimination and promote an understanding among races. The United States ratified ICERD in 1994⁵⁶⁸ and attached several reservations, understandings, and declarations to its ratification,⁵⁶⁹ including that the Convention is non self-executing and that “[t]o the extent that state and local governments exercise jurisdiction over such matters [as covered in the Convention], the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.”⁵⁷⁰

i. The Committee on the Elimination of Racial Discrimination (CERD)

136. Articles 8 to 16 of ICERD establish the Committee on the Elimination of Racial Discrimination (CERD) and its work to monitor the implantation of the treaty by States Parties, review States Parties’ compliance, and make recommendations. It consists of eighteen experts elected by States Parties from among their nationals and normally holds three sessions per year in Geneva.

137. The Convention establishes four main mechanisms through which the Committee performs its monitoring functions: (1) reviewing regular reports from States Parties, (2) early warning measures and urgent procedures,⁵⁷¹ (3) the examination of inter-state complaints, and (4) the examination of individual complaints. The Committee can consider individual complaints alleging Convention violations, but only in regards to States Parties who have made the necessary declaration under article 14. The United States has not made an article 14

⁵⁶⁷ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969 [hereinafter ICERD].

⁵⁶⁸ United Nations Treaty Collection, *International Convention on the Elimination of All Forms of Racial Discrimination*, treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-2&chapter=4&clang=_en#EndDec.

⁵⁶⁹ U.S. reservations, declarations, and understandings, Convention on the Elimination of All Forms of Racial Discrimination, 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994).

⁵⁷⁰ *Id.*

⁵⁷¹ The early warning measures and urgent procedures mechanism was adopted in 1993 by the Committee to help prevent and handle violations of the Convention. Efforts to prevent include “[e]arly warning measures to address existing structural problems from escalating into conflicts. These could also include confidence-building measures to identify and support structures to strengthen racial tolerance and solidify peace in order to prevent a relapse into conflict in situations where it has occurred” and “[u]rgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention.” Committee on the Elimination of Racial Discrimination, Prevention of racial discrimination, including early warning and urgent procedures: Working Paper adopted by the Committee on the Elimination of Racial Discrimination, U.N. Doc. A/48/18, Annex III (1993). Under these procedures, the Committee has adopted decisions, issued statements or resolutions, and sent letters to States Parties. Since 1993, the Committee has taken these measures in relation to more than 20 States parties. See Committee on the Elimination of Racial Discrimination, Early-Warning Measures and Urgent Procedures, www.ohchr.org/en/hrbodies/cerd/pages/earlywarningprocedure.aspx; see also Committee on the Elimination of Racial Discrimination, Guidelines for the Early Warning and Urgent Action Procedures, Annual report A/62/18, Annexes, Chapter III (2007).

declaration and as such does not recognize the jurisdiction of the Committee to hear individual complaints.⁵⁷² Similarly, articles 11-13 allows for the establishment of an *ad hoc* Conciliation Commission to resolve disputes between States Parties regarding the alleged non-fulfillment of its obligations under the Convention. Unlike the Torture Committee, CERD may *not* initiate an inquiry on its own initiative regarding serious or systematic treaty violations by a State Party.

138. ICERD article 9(1) requires States Parties to regularly report to the Committee regarding its progress implementing and enforcing ICERD provisions. As a State Party, the United States is obligated to report every two years. States Parties' reports should be "on the legislative, judicial, administrative or other measures which it has adopted, and which give effect to the provisions of the Convention."⁵⁷³ During a review, the Committee reviews the State report and reports from other interested parties, then questions the State during two public meetings in Geneva. At the end of the State's review, the Committee issues *Concluding Observations*, which includes recommendations to improve treaty compliance and, if necessary, request further information from the State.

ii. The 2014 U.S. Review by CERD

139. The United States' fourth and most recent review by CERD took place during the 85th Session of the Committee. The U.S. report was submitted in June 2013⁵⁷⁴ and *Concluding Observations* were issued in August 2014.
140. The U.S. State Report did not mention gun violence, nor have any of its previous reports to CERD. However, numerous submissions by NGOs did. Gun violence was one of eight issues focused on in Amnesty International's submission, which highlighted the disparate homicide rate among African Americans and the proliferation of "Stand Your Ground" laws.⁵⁷⁵ Significantly, Arthur R. Kamm, PhD, along with the Violence Policy Center and Amnesty International, submitted a report entitled *African-American Gun Violence Victimization in the United States*.⁵⁷⁶ It provided the Committee with an issue summary and directed CERD to consider the legal implications of the "failure of the US government to not only address the issue of gunfire and race in America" and the government's enactment of "legislation that helps protect those who engage in illegal firearm sales" in accordance with ICERD article 2.2 (the obligation to take special and concrete measures to protect), article 5(b) (the

⁵⁷² See United Nations Treaty Collection, *supra* note 568.

⁵⁷³ Committee on the Elimination of Racial Discrimination, Guidelines for the CERD-Specific Document to be Submitted by States parties under Article 9, Paragraph 1, of the Convention, ¶ 1, U.N. Doc. CERD/C/2007/1 (June 13, 2008).

⁵⁷⁴ Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination (June 12, 2013).

⁵⁷⁵ Amnesty International, *United States – A Submission to the UN Committee on the Elimination of Racial Discrimination*, at 11-12, AMR 51/043/2014 (July 24, 2014), www.amnestyusa.org/pdfs/CERD_Shadow2014.pdf.

⁵⁷⁶ Arthur R. Kamm, Violence Policy Center, & Amnesty International, *African-American Gun Violence Victimization in the United States – Response to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination* (June 30, 2014), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17803_E.pdf.

- right to “right to security of person and protection by the State against violence or bodily harm,” and article 6 (the right to “effective protection and remedies”).⁵⁷⁷ This 11-page submission (including the Appendixes) appears to be the first and only submission to CERD focused solely on the issue of U.S. gun violence.
141. The July 2014 *List of Themes* issued by the Country Rapporteur to the United States prior to the review opened the door for a discussion on U.S. gun violence in Theme 2(b): “Racial and ethnic disparities in education, poverty, housing, health and exposure to crime and violence.”
142. Throughout the review, CERD expressed concern at the large number of gun-related deaths and injuries in the United States that disproportionately affect members of racial and ethnic minority groups, particularly African Americans, and the impact on the right to life. In its *Concluding Observations*, the Committee stated that it was “concerned at the high number of gun-related deaths and injuries which disproportionately affect members of racial and ethnic minorities, particularly African Americans.”⁵⁷⁸ This was the first *Concluding Observations* to the United States from CERD to mention the disproportionate loss of life and injury to African Americans as a result of gun violence.
143. In order to promote U.S. treaty compliance regarding the discriminatory impact of gun violence, the Committee urged the United States to take “take effective legislative and policy measures to fulfil its obligation to protect the right to life and to reduce gun violence,” including by adopting legislation requiring background checks for all private firearm transfers, prohibiting concealed handgun carry in public places, and reviewing the Stand Your Ground laws.⁵⁷⁹ Similar recommendations have been made by the Human Rights Committee⁵⁸⁰ and the Special Rapporteur on Violence against Women, its Causes and Consequences.⁵⁸¹ The United States was reminded of these recommendations during its Universal Periodic Review before the U.N. Human Rights Council in May 2015.⁵⁸² As of this writing, none of these recommendations have been implemented except a review of SYG laws that has had no effect on the law’s discriminatory application or proliferation amongst states.

⁵⁷⁷ *Id.* at 3.

⁵⁷⁸ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, U.N. Doc. CERD/C/USA/CO/7-9, ¶ 16 (Sept. 25, 2014) [hereinafter CERD, Concluding Observations 2014]. During the hearing Committee member Walter Kälin specifically noted the “staggering figure” of 470,000 crimes committed every year with firearms in the United States, including about 11,000 homicides, and stated that “much more needs to be done to curb gun violence.” See Ed Pilkington, *US Criticised by UN for Human Rights Failings on NSA, Guns and Drones*, THE GUARDIAN (Mar. 13, 2014), www.theguardian.com/world/2014/mar/13/us-un-human-rights-abuses-nsa-drones.

⁵⁷⁹ CERD, Concluding Observations 2014, *supra* note 578, ¶ 16.

⁵⁸⁰ Human Rights Committee, Concluding Observations 2014, *supra* note 517, ¶ 10.

⁵⁸¹ Human Rights Council, Report of the Special Rapporteur on violence against Women, its causes and consequences, Ms. Rashida Manjoo, U.N. Doc. A/HRC/17/26/Add.5, ¶ 115.A(g) (June 6, 2011).

⁵⁸² Human Rights Council, Working Group on the Universal Periodic Review, Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 United States of America, ¶ 21, U.N. Doc. A/HRC/WG.6/22/USA/2 (Mar. 2, 2015).

iii. ICERD Obligations and U.S. Gun Violence

144. ICERD article 1 defines racial discrimination as follows:

In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose *or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms* in the political, economic, social, cultural or any other field of public life.⁵⁸³

145. In addition to the right to life, the discriminatory impact of gun violence violates the enjoyment of additional rights protected by ICERD,⁵⁸⁴ including the right to “security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution” (article 5(b)), “freedom of peaceful assembly and association” (article 5(d)(ix)), public health (article 5(e)(iv)), “education and training” (article 5(d)(e)), and “to equal participation in cultural activities” (article 5(e)(vi)).

146. Under ICERD, the United States must refrain from discriminating against any population based on race and must proactively take steps to protect its populations from harm.⁵⁸⁵ Article 2.2 states, in pertinent part:

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, *special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals* belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.⁵⁸⁶

147. States must not only *prohibit* racial discrimination in the enjoyment of these human rights, but are obligated to “*eliminate* racial discrimination in the enjoyment of such human rights,”⁵⁸⁷ particularly as regards vulnerable populations⁵⁸⁸ like children. When people of

⁵⁸³ ICERD, *supra* note 567, art. 1 (emphasis added).

⁵⁸⁴ *Id.* art. 5:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...].

⁵⁸⁵ See Committee on the Elimination of Racial Discrimination, General recommendation XX on article 5 of the Convention, (Forty-eighth session, 1996), U.N. Doc. A/51/18, annex VIII at 124 (1996), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 208 (2003) [hereinafter CERD General Recommendation XX] (“the rights and freedoms referred to in article 5 of the Convention and any similar right *shall be protected* by the State party.” *Id.* (emphasis added.))

⁵⁸⁶ ICERD, *supra* note 567, art. 2.2 (emphasis added).

⁵⁸⁷ *Id.* (emphasis added); see also ICERD, *supra* note 567, art. 5.

⁵⁸⁸ See Ingrid Nifosi-Sutton, *THE PROTECTION OF VULNERABLE GROUPS UNDER INTERNATIONAL HUMAN RIGHTS LAW* (2017); see also Committee on the Elimination of Racial Discrimination, General Recommendation No. 32, *The*

color in the United States are at greater risk of becoming a victim of gun violence than others, the responsibility of the U.S. government may be engaged. The means by which the government may remedy this violation are varied. They could include gun control legislation, the elimination of laws which put the non-white community at greater risk of gun violence,⁵⁸⁹ and the funding and implementation of community programs to reduce gun violence amongst these minority communities. As the Committee has stated, “[s]uch protection may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions.”⁵⁹⁰

148. Stand Your Ground Laws, which are in force in 28 states,⁵⁹¹ have the effect of perpetuating racial discrimination, resulting in a higher loss of life by gunfire among African Americans. They are also applied in a biased manner that makes African Americans less able to defend themselves against force and perceived threats than their white peers.⁵⁹² As one study found, these laws are an example of “the constitutive presence of racial bias in our society by the determination of whose life is valued, demonstrated through the legal consequences for taking such a life,” and, similar to Jim Crow laws, help to “legalize certain forms of homicide.”⁵⁹³ CERD has explained that State Parties are obligated to ensure that “the implementation of legislation does not have a discriminatory *effect*”⁵⁹⁴ and clarified that

meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination, U.N. Doc. CERD/C/GC/32 (Sept. 24, 2009).

The concept of special measures is based on the principle that laws, policies and practices adopted and implemented in order to fulfil obligations under the Convention require supplementing, when circumstances warrant, by the adoption of temporary special measures designed to secure to *disadvantaged groups* the full and equal enjoyment of human rights and fundamental freedoms. *Id.* ¶ 11 (emphasis added).

The notion of ‘adequate advancement’ in Article 1, paragraph 4, implies goal-directed programmes which have the objective of alleviating and remedying disparities in the enjoyment of human rights and fundamental freedoms affecting particular groups and individuals, protecting them from discrimination. Such disparities include but are not confined to persistent or structural disparities and de facto inequalities resulting from the circumstances of history that continue to deny to vulnerable groups and individuals the advantages essential for the full development of the human personality. *Id.* ¶ 22 (emphasis added).

See also, e.g., The International Movement Against All Forms of Discrimination and Racism, *Best practices, achievements and challenges of the International Convention on the Elimination of All Forms of Racial Discrimination*, ¶ 8, (Nov. 26, 2015). <http://imadr.org/bestpractices-achievements-challenges-icerd-cerd88-2015-ws/> (stating that “the General Recommendation can guide [States] to withdraw [reservations on article 4] and protect *vulnerable populations* from hate speech while guaranteeing those freedoms.”) (emphasis added).

⁵⁸⁹ ICERD, *supra* note 567, art. 2(c).

⁵⁹⁰ CERD General Recommendation XX, *supra* note 585.

⁵⁹¹ “*Stand Your Ground*” Laws, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/stand-your-ground-laws/.

⁵⁹² Ackermann et al., *Race, Law, and Health*, *supra* note 146.

⁵⁹³ *Id.*

⁵⁹⁴ This was made in reference to non-citizens, but it stands to reason that it could also apply to racial groups. Committee on the Elimination of Racial Discrimination, General Recommendation XXX on discrimination against non-citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004) (emphasis added).

“presumed victims of racial discrimination are not required to show that there was discriminatory intent against them” so long as the outcome has a discriminatory effect.⁵⁹⁵ CERD has already observed that

the proliferation of “Stand Your Ground” laws, which are used to circumvent the limits of legitimate self-defence, in violation of the State party’s duty to protect life, ... have a disproportionate and discriminatory impact on members of racial and ethnic minorities (arts. 2, 5 (b) and 6).⁵⁹⁶

Under ICERD, the U.S. government has an obligation to review and amend or nullify these laws.⁵⁹⁷

149. Under article 7, States Parties are required to “adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups [...]”⁵⁹⁸ There is strong evidence of racial bias in firearm injury and death tolls, especially in deaths by U.S. police officers and individuals acting under Stand Your Ground Laws.⁵⁹⁹ As such, the U.S. government is obligated to implement measures to combat the prejudices behind this. This could include training and education, in particular racial bias and de-escalation trainings among officers of the law.⁶⁰⁰ States Parties must ensure that “law enforcement officials who exercise police powers” do not violate ICERD and such officials “should receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origins.”⁶⁰¹
150. U.S. obligations are triggered under ICERD even when the gun violence is perpetrated by non-State actors. This is explicitly noted in certain articles, such as article 5(b), which states that States Parties must guarantee the “right to security of person and protection by the State against violence or bodily harm, *whether inflicted by government officials or by any individual group or*

⁵⁹⁵ Laurent Gabre Gabaroum v. France, Opinion adopted by the Committee under article 14 of the Convention concerning communication No. 52/2012, ¶ 7.2, U.N. Doc. CERD/C/89/D/52/2012 (June 8, 2016) (citing V.S. v. Slovakia, ¶ 7.4, U.N. Doc. CERD/C/88/D/56/2014 (Jan. 6, 2016)).

⁵⁹⁶ CERD, Concluding Observations 2014, *supra* note 578, ¶ 16.

⁵⁹⁷ ICERD, *supra* note 567, art. 2(c): “Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.” *Id.*

⁵⁹⁸ *Id.* art. 7.

⁵⁹⁹ *See supra* ¶¶ 27-28.

⁶⁰⁰ *See* ICERD, *supra* note 567, art. 2(1). State Parties must ensure that “all public authorities and public institutions, national and local, will not engage in any practice of racial discrimination.” *Id.*

⁶⁰¹ Committee on the Elimination of Racial Discrimination, General recommendation XIII on the training of law enforcement officials in the protection of human rights, U.N. Doc. A/48/18 at 113 (1994), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 203 (2003).

*institution.*⁶⁰² The Committee has implied on several occasions that the State is not released of its obligations when the discriminatory harm occurs by a private actor.⁶⁰³ Moreover, the Committee states that “[t]o the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.”⁶⁰⁴

E. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

151. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)⁶⁰⁵ was adopted by the U.N. General Assembly in 1984 and came into force in 1987.⁶⁰⁶ It was designed to address and prevent acts of torture and cruel, inhuman, or degrading treatment or punishment (“ill-treatment”) and requires States Parties to take effective measures to prevent such treatment on their territory. The prohibition against both torture and ill-treatment is absolute and its prevention is a non-derogable measure.⁶⁰⁷ The United States signed UNCAT on April 18, 1988 and ratified it on October 21, 1994. It attached several reservations, understandings, and declarations to its ratification, including a non-self-executing clause.⁶⁰⁸

⁶⁰² ICERD, *supra* note 567, art. 5(b).

⁶⁰³ *See, e.g.*, Committee on the Elimination of Racial Discrimination, General recommendation XIX on article 3 of the Convention, The prevention, prohibition and eradication of racial segregation and apartheid (Forty-seventh session, 1995), U.N. Doc. A/50/18 at 140 (1995), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI\GEN\1\Rev.6 at 208 (2003).

The Committee observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. [...] The Committee therefore affirms that a condition of racial segregation can also arise without any initiative or direct involvement of the public authorities. It invites states to [...] work for the eradication of any negative consequences that ensue. *Id.*

See also Mahali Dawas and Yousef Shava v. Denmark, Opinion adopted by the Committee at its eightieth session, 13 February to 9 March 2012, Communication No. 46/2009, ¶ 7.3, U.N. Doc. CERD/C/78/DR/45/2009 (Apr. 2, 2012).

The Committee considers that the State party cannot disclaim its responsibility, since the head teacher of a public school, although being a separate legal entity, has the remit to select school personnel in the context of the exercise of a public service. *Id.*

⁶⁰⁴ CERD General Recommendation XX, *supra* note 585.

⁶⁰⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 16, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter *Torture Convention*].

⁶⁰⁶ United Nations Treaty Collection, Status of Treaties, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en#1 (last visited May 30, 2018).

⁶⁰⁷ CAT General Comment No. 2, *infra* note 617, ¶ 3.

⁶⁰⁸ U.S. reservations, declarations, and understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990).

i. The Committee Against Torture

152. The Committee against Torture is established by article 17 of the UNCAT to monitor State compliance with the Convention. The Committee has numerous avenues for intervention with States Parties.
153. UNCAT article 20 grants the Committee against Torture the possibility to undertake inquiries upon receiving reliable information that torture is being “systematically practiced in the territory of a State party.”⁶⁰⁹ The Committee against Torture is one of only two U.N. human rights treaty-bodies granted this power.⁶¹⁰ Under article 22, the Committee may also consider individuals complaints or communications from individuals who believe their rights under the Convention have been violated by a State Party.⁶¹¹ The United States does not recognize the Committee’s jurisdiction over a claim by an individual party.⁶¹²
154. UNCAT article 19 establishes a regular reporting system for States Parties, similar to other human rights Committees and treaty bodies.⁶¹³ During these reviews, States Parties are obligated to submit reports on its compliance with the treaty and measures it has taken to implement it domestically. During a State review, members of civil society are invited to submit information to the Committee prior to reporting and typically suggest specific questions for the Committee to ask States Parties representatives. As the conclusion of a State review, the Committee makes recommendations in the form of *Concluding Observations*.
155. The United States submitted its last report to the Committee in 2013. *Concluding Observations* were issued in November 2014. Neither gun violence generally nor the mental and psychological impacts of gun violence and mass shootings were addressed by the U.S. Report or the Committee’s *Concluding Observations*. However, the family of Michael Brown, an unarmed black teenager shot and killed by a police officer in Ferguson, Missouri, submitted a statement that highlighted the issue of the use of deadly force by police officers against African Americans and other non-white U.S. communities.⁶¹⁴

⁶⁰⁹ Torture Convention, *supra* note 605, art. 20; *see also* OHCHR, *Inquires*, www.ohchr.org/EN/HRBodies/Petitions/Pages/InquiryProcedures.aspx.

⁶¹⁰ The other is the Committee on the Elimination of Discrimination Against Women. *Id.*

⁶¹¹ Torture Convention, *supra* note 605, art. 22.

⁶¹² U.S. reservations, declarations, and understandings, UNCAT, *supra* note 608.

[T]he United States declares, pursuant to article 21, paragraph 1, of the Convention, that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. It is the understanding of the United States that, pursuant to the above-mentioned article, such communications shall be accepted and processed only if they come from a State Party which has made a similar declaration. *Id.*

⁶¹³ Torture Convention, *supra* note 605, art. 29. The United States submitted its last report on August 12, 2013 and followed up on the Committee’s recommendations with another report on Nov. 27 2015. These reports are available at www.state.gov/j/drl/rls/c59007.htm.

⁶¹⁴ *Written Statement of the Police Shooting of Michael brown and the Ensuing Police Violence Against Protesters in Ferguson, Missouri*, Family of Michael Brown, HandsUpUnited, Organization for Black Struggle (OBS), & Missourians Organizing for Reform and Empowerment (MORE) (2014).

156. Although the Committee against Torture has not made recommendations to the United States related to gun violence, it has considered the issue in its review of other countries and expressed the view that “strict national firearm control measures are necessary.”⁶¹⁵ After examining the irregularities in the approval of firearm licenses in Guyana, whereby licenses were allegedly granted indiscriminately, resulting in the transferred firearms being used to commit offences prohibited by the Convention against Torture, the Committee recommended that Guyana “strengthen the administrative measures to control the indiscriminate issuance of firearms licences, ensuring that the process of application for firearms is streamlined and that the Firearm Regulations are applied uniformly and amended where necessary.”⁶¹⁶

ii. UNCAT Obligations & U.S. Gun Violence

157. The U.S. government’s failure to adopt reasonable measures to decrease gun violence and the resulting psychological trauma inflicted on its citizens may violate UNCAT in several respects. Specifically, the failure of the government to protect Americans in the face of repeated mass shootings and high levels of gun-related deaths has fostered a climate of fear, caused severe emotional distress, and resulted in significant psychological trauma that may amount to cruel, inhuman, or degrading treatment (hereinafter “ill treatment”)⁶¹⁷ under article 16 of the UNCAT.

158. Although the physical and mental health consequences of the U.S. gun violence crisis generally, and of frequent mass shootings in particular, are severe, they likely do not qualify as torture under article 1 of the Convention. Article 1 provides:

‘Torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.⁶¹⁸

⁶¹⁵ See U.N. Human Rights Council, Human rights and the regulation of civilian acquisition, possession and use of firearms, U.N. Doc. A/HRC/32/21, ¶ 31 (Apr. 15, 2016).

⁶¹⁶ Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee Against Torture – Guyana, U.N. Doc. CAT/C/GUY/CO/1, ¶ 7 (Dec. 7, 2006).

⁶¹⁷ This Submission uses ‘ill-treatment’ to mean ‘cruel, inhuman or degrading treatment’ under article 16 of the Convention against Torture, in line with international practice and that of the Committee against Torture. See, e.g., Committee against Torture, General Comment No. 2, Implementation of article 2 by States Parties, ¶ 3, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008) [hereinafter CAT General Comment No. 2].

⁶¹⁸ Torture Convention, *supra* note 605, art. 1.

159. U.S. gun violence is unlikely to amount to torture under the Convention because, as a whole, gun violence in the United States is not carried out for one of the impermissible purposes. Moreover, the physiological trauma caused by gun violence is not inflicted “intentionally” as the word is commonly interpreted in the context of article 1.⁶¹⁹
160. However, article 16 does seem to apply. This provision states, in pertinent part:
- Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁶²⁰
161. The climate of fear and the sense of hopelessness that pervades U.S. society, particularly in the wake of mass shootings, may amount to ill-treatment under article 16. Harm does not have to be physical to qualify as torture or ill-treatment under the Convention. Indeed, article 1 explains that the pain or suffering can be “physical or mental”⁶²¹ and the CAT has affirmed that “anguish and distress,” particularly when met with indifference by authorities to assist or reduce the harm, can amount to an article 16 violation.⁶²² Moreover, the CAT defines the victim of an act of torture or ill-treatment as “persons who have individually or collectively suffered harm, including physical or *mental injury*, *emotional suffering*, economic loss or *substantial impairment of their fundamental rights*, through acts or omissions that constitute violations of the Convention.”⁶²³ Mass shootings that take place in schools, movie theaters, and churches and at political rallies, concerts, and other public places not only cause severe physical and mental injury and emotional suffering of those directly involved, but result in collective harm. These increasingly frequent occurrences, and indeed gun violence in the United States more generally, lead to the substantial impairment of fundamental rights, as they generate anxiety in individuals who are attempting to go about their regular routines, attend schools, and participate in the cultural life of society.⁶²⁴

⁶¹⁹ See Oona Hathaway et al., *Tortured Reason: The Intent to Torture Under International and Domestic Law*, 52 VA. J. INT’L L. 791, 823-829 (2012).

⁶²⁰ Torture Convention, *supra* note 605, art. 16.

⁶²¹ *Id.* art. 1.

⁶²² Larez v. Bolivarian Republic of Venezuela, Decisions of the Committee against Torture, Communication No. 456/2011, ¶ 6.10, U.N. Doc. CAT/C/54/D/456/2011 (June 26, 2015).

The Committee notes that the enforced disappearance of Mr. Guerrero Larez caused anguish and distress for the complainants and that the authorities were indifferent to their efforts to ascertain his whereabouts and fate. The authors have never received an adequate account of the circumstances of his alleged death or escape, nor have his bodily remains been released to them. In the absence of a satisfactory explanation from the State party, the Committee considers that the facts reveal a violation of article 16 of the Convention in relation to the complainants. *Id.*

⁶²³ Committee against Torture, General Comment No. 3, Implementation of article 14 by States Parties, ¶ 3, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012) (emphasis added) [hereinafter CAT General Comment No. 3].

⁶²⁴ This argument was also put forth by the U.N. High Commissioner for Human Rights. See *supra* Section V(B).

162. The Convention imposes an obligation on States Parties not to commit torture and ill-treatment. At the same time, it imposes positive obligations requiring States to take effective steps to avoid cruel, inhuman, and degrading treatment.⁶²⁵ Article 2 of the Convention obligates the United States to take affirmative measures to prevent ill-treatment, including the physical and psychological trauma caused by gun violence.⁶²⁶ The obligation to prevent under the Convention is expansive, and must be implemented by States Parties in various ways, including legislation, regulation, and effective enforcement.⁶²⁷ Specifically, the CAT has found that States Parties are obligated to “eliminate any legal or other obstacles that impede the eradication” of ill-treatment and “take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented.”⁶²⁸ In regards to the United States, such measures should, at a minimum, include reasonable legislative measures that are proven to reduce gun violence. Given the frequency with which gun violence occurs in the United States and the almost weekly occurrence of school shootings, the United States has failed to take effective measures to prevent this harm.
163. Under the Convention and its Commentary, direct State action is not required to qualify gross mistreatment as either torture or ill-treatment. Moreover, the obligation to prevent ill-treatment includes preventing qualifying acts committed by private persons or non-state actors, as the Committee has often noted.⁶²⁹ For this reason, although more than 98% of U.S. shootings are carried out by non-State actors,⁶³⁰ the State’s responsibility may be engaged. The CAT has explained that a State’s failure “to exercise due diligence to intervene [and] stop” torture actually facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, and, as such, “the State’s indifference or inaction provides a form of encouragement and/or de facto permission,” triggering State

⁶²⁵ Torture Convention, *supra* note 605, art. 16.

⁶²⁶ *Id.* art. 2 (“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”).

⁶²⁷ Article 2 of the Convention obliges states to reinforce the prohibition against torture through legislative, among other, means. The Committee has said that the measures to prevent torture must also be applied to prevent ill-treatment. CAT General Comment No. 2, *supra* note 617, ¶¶ 2-3.

Article 2, paragraph 1, obliges each State to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it. [...] The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) under article 16, paragraph 1, are indivisible, interdependent, and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. [...] the measures to prevent torture must be applied to prevent ill-treatment. *Id.*

⁶²⁸ *Id.* ¶ 4.

⁶²⁹ *See, e.g.*, Hajrizi Dzemajl et al. v. Yugoslavia, Decisions of the Committee against Torture, Complaint No. 161/2000, ¶ 9.6, U.N. Doc. CAT/C/29/D/161/2000 (Dec. 2, 2000); *see also* Committee against Torture, Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), ¶ 6, U.N. Doc. CAT/C/51/4, (Dec. 16, 2013) (The obligation to prevent applies in “contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.”).

⁶³⁰ CDC Reporting System, *supra* note 2.

responsibility under the Convention.⁶³¹ State responsibility is further engaged when the State knows or ought to know that a person is at risk of impermissible violence by a non-State actor and yet fails to take reasonable measures to protect the vulnerable person. In terms of the gun violence crisis, the United States not only fails to proactively protect its citizens generally, and its student population in particular, but it facilitates the abuse by repealing laws that could keep violent weapons out of the hands of potential shooters⁶³² and by failing to adequately respond to the survivors' needs.

164. The Committee has emphasized the obligation to prohibit, prevent, and redress ill-treatment “in all contexts of custody or control, for example, in [...] schools, institutions that engage in the care of children [...] and other institutions as well as contexts where *the failure of the state to intervene encourages and enhances the danger of privately inflicted harm.*”⁶³³ In its 2015 Decision in *Larez v. Bolivarian Republic of Venezuela*, the Committee found that Venezuela was responsible for failing, under article 2, to prevent prisoner-on-prisoner violence that amounted to ill-treatment in a state-run penitentiary.⁶³⁴ Similarly, the United States has a specific obligation to ensure that children at school, especially in State-run academic institutions that children are required by law to attend, are not in danger of gun violence as a result of the government's failure to intervene effectively.
165. Finally, under article 14, States must ensure that victims of both torture and ill-treatment obtain full and effective redress,⁶³⁵ one form of which is “guarantees of non-repetition.”⁶³⁶ One measure the Committee has found to be relevant to a guarantee of non-repetition is “reviewing and reforming laws contributing to or allowing torture or ill-treatment.”⁶³⁷ By refusing to adopt reasonable legislation that could reduce the likelihood of future school and mass shootings, as the Parkland students and others have requested, the United States is failing to fulfill the redress obligation.⁶³⁸

⁶³¹ General Comment No. 2, *supra* note 617, ¶ 18. The Committee notes that it has applied this reasoning to “States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.” *Id.*

⁶³² *See, e.g., supra* Section III(D).

⁶³³ General Comment No. 2, *supra* note 617, ¶ 15 (emphasis added).

⁶³⁴ *Larez v. Bolivarian Republic of Venezuela*, *supra* note 622.

⁶³⁵ *Hajrizi Dzemajl et al. v. Yugoslavia*, *supra* note 629, ¶ 9.6 (“The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision.”).

⁶³⁶ CAT General Comment No. 3, *supra* note 623, ¶ 6.

⁶³⁷ *Id.* ¶ 8. The Committee also notes that “guarantees of non-repetition offer important potential for the transformation of social relations that may be the underlying causes of violence and may include, but are not limited to, amending relevant laws...” *Id.*

⁶³⁸ The Committee makes clear that a State’s obligation to provide redress to victims of ill-treatment is not eliminated just because the ill-treatment is caused by a non-state actor, “[w]here State authorities or others acting in their official capacity [...] know or have reasonable grounds to believe that acts of torture or ill-treatment have been committed by non-State officials or private actors and failed to exercise due diligence to prevent...” *Id.* ¶ 7.

166. The Committee against Torture can, and has, made reference to the decision of other human rights instruments and bodies, including the Human Rights Committee,⁶³⁹ to aid its interpretation and implementation of the Convention. These instruments all point in the same direction: the gun violence crisis in the United States is depriving U.S. citizens of their human rights.

F. OAS Charter and the American Declaration on the Rights and Duties of Man

167. The Organization of American States (OAS) was established April 30, 1948 for the purposes of regional solidarity and cooperation among its member states. The Inter-American Commission on Human Rights (IACHR) is a principal and autonomous organ of the OAS. It was created by the OAS in 1959 and its mission is to promote and protect human rights in the Americas.
168. As the Commission noted in *Saldano v. United States*, the United States has been a member of the OAS since June 19, 1951, the date upon which it deposited its instrument of ratification of the Organization of American States (OAS) Charter.⁶⁴⁰ For this reason, it is required to respect and guarantee the rights protected in the OAS Charter and the American Declaration of the Rights and Duties of Man.

i. The IACHR Addresses U.S. Gun Violence

169. The Inter-American Commission on Human Rights has expressed deep concern over the issue of gun violence in the United States and encouraged the State to redress gun violence in multiple press statements over the past two years.⁶⁴¹ The U.S. gun violence crisis is of concern to the Commission not only because it impacts the rights of U.S. citizens that are protected by the OAS Charter and American Declaration of the Rights and Duties of Man, and as such fall under the mandate of the Commission, but also because of its impact elsewhere in the Americas.
170. The Commission has emphasized the need for the U.S. government to adopt effective gun control measures, such as the “effective background checks, and psychological testings, as well as other effective measures on license and registration requirements, such as restricting assault weapons –such as the AR-15-style rifle.”⁶⁴² IACHR Commissioner Margarete May

⁶³⁹ See, e.g., Hammouche v. Algeria, Decision of the Committee against Torture, Communication No. 376/2009, n. 16, U.N. Doc. CAT/C/51/D/376/2009, (Nov. 8, 2013) (citing the jurisprudence of the Human Rights Committee in *Andreu v. Colombia*, Communication No. 563/1993).

⁶⁴⁰ Victor Saldano v. United States, Case 12.254, Inter-Am. Comm’n H.R., Report No. 24/17, OEA/Ser.L/V/161, doc. 31 rev. ¶ 76 (2017).

⁶⁴¹ Press Release No. 076/16, Organization of American States, *LACHR Condemns Mass Shooting at a Gay Bar in the United States* (June 14, 2016), http://www.oas.org/en/iachr/media_center/preleases/2016/076.asp; *LACHR Condemns Mass Shooting in the United States*, Press Release No. 154/17 (Oct. 6, 2017), http://www.oas.org/en/iachr/media_center/PReleases/2017/154.asp; Press Release No. 182/17, Organization of American States, *LACHR Condemns Mass Shooting in United States and Calls on the State to Adopt Measures to Prevent Future Tragedies* (Nov. 16, 2017), http://www.oas.org/en/iachr/media_center/PReleases/2017/182.asp.

⁶⁴² OAS, *LACHR Condemns Mass Shooting at a Gay Bar in the United States*, *supra* note 641.

Macaulay, Rapporteur for the United States, has emphasized that mass shootings in the United States are preventable. She recently observed:

[i]mmediate Congressional action on this issue to reform gun laws in the United States and prevent further slaughter is urgent. ... we call on the State to lift the ban on government financing of studies of the causes of gun violence, and to prioritize studies of the links between domestic and other interpersonal violence and gun violence in order to formulate evidence-based policy that will effectively protect the US population, including women, children, and families.⁶⁴³

The Commission has also highlighted the importance of heading “red flags” and urged “the State to undertake systematic studies of these phenomena in order to formulate effective policy to prevent future gun violence.”⁶⁴⁴

171. The Commission held a hearing in February 2018 on the “Regulation of Gun Sales and Social Violence in the United States,” where the Harris Institute was one of four organizations invited to present testimony.⁶⁴⁵
172. Through joint recommendations,⁶⁴⁶ the Harris Institute urged the Commission to hold a thematic hearing with survivors, families of victims, and representatives of impacted communities, pertaining not just to the crisis in the United States, but elsewhere in the Americas, and to prepare a study on U.S. gun violence with a special focus on school shootings. The recommendations also required that the Commission urge the United States to become a party to the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, and the American Convention on Human Rights. Finally, the recommendations requested that the Commission urge the United States to adopt international best practices with respect to the sale and regulation of firearms, including those detailed *infra* Section VI(A).

ii. Obligations under the OAS Charter and the American Declaration and U.S. Gun Violence

173. Under Article I of the American Declaration, “Every human being has the right to life, liberty and the security of his person.”⁶⁴⁷ This right is non-derogable.⁶⁴⁸ With an average of 101 deaths every day, the United States is arguably failing to protect this right.⁶⁴⁹

⁶⁴³ OAS, *LACHR Condemns Mass Shooting in United States and Calls on the State to Adopt Measures to Prevent Future Tragedies*, *supra* note 641.

⁶⁴⁴ *Id.*

⁶⁴⁵ The other organizations were: the Center for American Progress, Igarapé Institute, and Amnesty International.

⁶⁴⁶ Written Statement of the Harris Institute for the Hearing on “Regulation of Gun Sales and Social Violence in the United States,” Inter-American Commission on Human Rights, 167th Extraordinary Period of Sessions (Feb. 27, 2018), [http://law.wustl.edu/harris/documents/2017-2018/InterAmericanCommissionHearingFebruary272018\(FINAL\).pdf](http://law.wustl.edu/harris/documents/2017-2018/InterAmericanCommissionHearingFebruary272018(FINAL).pdf).

⁶⁴⁷ American Declaration of the Rights and Duties of Man, art. 1, May 2, 1948 [hereinafter American Declaration].

174. The American Declaration also protects the right to an education.⁶⁵⁰ The IACHR has previously held that “according to the child’s right to special protection embodied in Article 19 of the American Convention [...] in relation to the obligation to ensure progressive development contained in Article 26 of the American Convention, the State must provide free primary education to all children *in an appropriate environment* and in the *conditions necessary to ensure their full intellectual development*.”⁶⁵¹ With an average of about one school shooting each week, the United States is not fulfilling this obligation.
175. The U.S. gun violence crisis also implicates other rights guaranteed by the Declaration. The climate of fear and the sense of hopelessness that pervades U.S. society, particularly in the wake of mass shootings affects “the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress,”⁶⁵² the freedom of opinion and expression,⁶⁵³ the right to health.⁶⁵⁴ Mass shootings and generalized gun violence that takes place in movie theaters, at concerts, in newsrooms, at political rallies, and in public places generate anxiety in individuals who are attempting to exercise their rights. When a State does not protect the human rights of its citizens, it falls short of its OAS obligations.⁶⁵⁵
176. Although more than 98% of U.S. shootings are perpetrated by non-State actors,⁶⁵⁶ this may nevertheless engage the State’s responsibility, as the Commission has often noted.⁶⁵⁷ The jurisprudence of the Inter-American Court of Human Rights takes this view as well.⁶⁵⁸

⁶⁴⁸ See Michael Domingues v. United States, Case 12.285, Inter-Am. Comm’n H.R., Report No. 62/02, ¶ 85 (2002) (finding that a *jus cogens* norm can be non-derogable, even if a State has not signed a treaty explicitly protecting such a norm); Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), Advisory Opinion OC-3/83, Inter-Am. Ct. H.R. (ser. A) No. 3, ¶ 61 (Sept. 8, 1983) (“Article 27 of the Convention allows the States Parties to suspend, in time of war, public danger, or other emergency that threatens their independence or security, the obligations they assumed by ratifying the Convention, provided that in doing so they do not suspend or derogate from certain basic or essential rights, *among them the right to life* guaranteed by Article 4.”) (emphasis added).

⁶⁴⁹ CDC Reporting System, *supra* note 2.

⁶⁵⁰ American Declaration, *supra* note 647 *m* art. XII.

⁶⁵¹ Yean and Bosico Girls v. The Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 185 (Sept. 8, 2005) (emphasis added) (finding that the Dominican Republic violated the rights of the child victim by obstructing her opportunity to attend day school with children her age by denying her a birth certificate, thereby forcing her to attend night classes with individuals over the age of 18).

⁶⁵² American Declaration, *supra* note 647, art. XIII.

⁶⁵³ *Id.* art. IV..

⁶⁵⁴ *Id.* art. XI.

⁶⁵⁵ See, e.g., González et al. (Campo Algodonero) v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 181 (Nov. 16, 2009) (finding a failure on the part of a State to act with due diligence to protect an OAS right); Velásquez-Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No.4, ¶ 156-60 (July 29, 1998) (finding that States have a responsibility to protect one’s citizens and prevent the violation of human rights).

⁶⁵⁶ CDC Reporting System, *supra* note 2.

177. The Commission can, and has, used other human rights instruments like the ICCPR to aid in its interpretation and implementation of the Declaration as it is “necessary to consider the provisions of the American Declaration in the broader context of both the inter-American and international human rights systems.”⁶⁵⁹ These instruments all suggest that the United States is failing its obligations to protect U.S. citizens from the human rights violations caused by the U.S. gun violence crisis.

G. The World Health Organization

i. About the World Health Organization

178. The World Health Organization (WHO) is a specialized agency of the United Nations established on April 7, 1948 to direct and coordinate international health within in the U.N. system.⁶⁶⁰ The objective of the WHO is the “attainment by all peoples of the highest possible level of health.”⁶⁶¹ The United States became a WHO Member upon ratification of the WHO Constitution on June 14, 1948.⁶⁶²
179. The work of the WHO is carried out by the World Health Assembly (Health Assembly), an Executive Board, and the Secretariat.⁶⁶³ The World Health Assembly is the decision-making body of the WHO and focuses on the health agenda as dictated by the Executive Board.⁶⁶⁴ The Executive Board considers the agendas to be voted on by the World Health Assembly. The WHO has also used its article 44 powers⁶⁶⁵ to establish an America’s office of the WHO in the District of Columbia. This office is mandated to coordinate efforts on special issues relevant to the region.

⁶⁵⁷ See, e.g., Jessica Lenahan (Gonzalez) et al. v. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, OEA/Ser.L/V/II, doc. 69 rev. ¶ 128 (2011) (finding that the State has an obligation to “prevent and respond to the actions of non-state actors and private persons.”).

⁶⁵⁸ See, e.g., González et al. (Campo Algodonero) v. Mexico, *supra* note 655.

⁶⁵⁹ Undocumented Workers (United States of America), Case 12.834, Inter-Am. Comm’n H.R., Report No. 50/16, OEA/Ser.L/V/II.159 Doc. 59, ¶ 68 (2016).

⁶⁶⁰ The World Health Organization achieves this by providing leadership and engaging in partnerships, shaping research agendas and assisting with the spread of knowledge, setting norms and standards, articulating ethical and evidence based policy positions, providing technical support, and monitoring health trends. See World Health Organization, Executive Board, Eleventh general programme of work. 2006-2015: Report by the Secretariat, ¶ 172, EB117/16 (Dec. 12, 2005), <http://www.who.int/iris/handle/10665/20611>.

⁶⁶¹ Constitution of the World Health Organization, art. 1, Jul. 22, 1946, 14 U.N.T.S. 185 [hereinafter WHO Constitution].

⁶⁶² United Nations Treaty Collection/ Constitution of the World Health Organization, treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-1&chapter=9&lang=en.

⁶⁶³ WHO Constitution, *supra* note 661, art. 9.

⁶⁶⁴ Governance of the WHO, <http://www.who.int/about/governance/en/> WORLD HEALTH ORGANIZATION. The function of the Assembly is to determine the policies of the Organization, appoint the Director-General, supervise financial policies, and review and approve the proposed Programme budget.

⁶⁶⁵ WHO Constitution, *supra* note 661, art. 44.

180. To effectuate its objectives, the WHO and its bodies are equipped with the ability to propose conventions, agreements, and regulations, and make recommendations,⁶⁶⁶ convene conferences,⁶⁶⁷ and coordinate with other agencies and organizations.⁶⁶⁸ While there is no individual complaint procedure before the WHO as there is for some human rights Committees or treaty-bodies, non-State actors can engage with the WHO by attending the World Health Assembly in Geneva, Switzerland, individuals and/or groups may encourage the publication through the *Bulletin* of the WHO to bring attention to specific health issues.

ii. The WHO's Limited Work on Gun Violence

181. The work of the WHO to tackle gun violence is limited. Previous formal mentions of gun violence by the WHO are sporadic and often consequential to the organization's work on other public health issues. For example, the WHO's 2002 *World Report on Violence and Health* acknowledged that effective interventions were indeed especially available in the area of gun-related violence.⁶⁶⁹ Guns were also mentioned in the 2004 report *The Economic Dimensions of Interpersonal Violence*,⁶⁷⁰ in which the WHO points out the high financial cost to individuals and society of gun violence in the United States⁶⁷¹ and states "[i]n the USA, where more than 30 000 people die annually from firearms injuries, there is no question that the overall toll of gun violence is very high."⁶⁷² The WHO also names guns as a major concern in the 2009 series briefing *Violence Prevention the evidence: guns, knives and pesticides reducing access to lethal means*.⁶⁷³

182. In 2001, the WHO released a report on Small Arms and Global Health⁶⁷⁴ as a contribution to the U.N. Conference on Illicit Trade in Small Arms and Light Weapons. This is not a formal WHO publication. This report notes that violence is an important global health

⁶⁶⁶ *Id.* art. 2(k).

⁶⁶⁷ *Id.* art. 41.

⁶⁶⁸ *Id.* arts. 2(h), 69, 70, 71, and 72.

⁶⁶⁹ World Health Organization, *World Report on Violence and Health* (2002), http://www.who.int/violence_injury_prevention/violence/world_report/en/summary_en.pdf.

⁶⁷⁰ World Health Organization, *The Economic Dimensions of Interpersonal Violence* (2004), <http://apps.who.int/iris/bitstream/handle/10665/42944/9241591609.pdf;jsessionid=3B4CA5494F24039E16E71F5C4B347FCC?sequence=1>.

⁶⁷¹ *Id.* at x. "Gun violence - which includes suicides - has alone been calculated at \$155 billion annually in the USA, with lifetime medical treatment costs per victim ranging from \$37 000 to \$42 000."

⁶⁷² *Id.* at 25. The WHO added that "[g]un violence - which includes suicides - has alone been calculated at \$155 billion annually in the USA, with lifetime medical treatment costs per victim ranging from \$37,000 to \$42,000 and that "[s]everal studies in the USA showed that from 56% to 80% of the costs of care for gun and stabbing injuries are either directly paid by public financing or are not paid at all - in which case they are absorbed by the government and society in the form of uncompensated care financing and overall higher payment rates." The WHO noted that the implementation of a gun registration law in Canada cost \$70 million, in comparison with a total annual cost of \$5.6 billion for firearm-related injuries in that country. *Id.*

⁶⁷³ World Health Organization, *Violence Prevention the evidence: guns, knives and pesticides reducing access to lethal mean* (2009), http://www.who.int/mental_health/prevention/suicide/vip_pesticides.pdf.

⁶⁷⁴ World Health Organization, *Small Arms and Global Health* (2001), http://apps.who.int/iris/bitstream/handle/10665/66838/WHO_NMH_VIP_01.1.pdf?sequence=1.

problem that is largely preventable, and states that this, “taken together with the considerable body of research that confirms the burden of death and injury related to firearms, explains why the World Health Organization (WHO) is concerned about the illicit trade in small arms.”⁶⁷⁵ Significantly, this report deemed the easy availability of firearms to be a main risk factor for small arms violence and homicide.⁶⁷⁶ It suggests, as a preventative measure at the country level, that “efforts to reduce the promotion and use of availability of firearms should be encouraged, with increased industry regulation to prevent criminals accessing weapons and to protect children from the ill-effects of firearms availability.”⁶⁷⁷

183. This report also emphasized the need to control and limit the global trade in arms.⁶⁷⁸ It is now over a decade and a half old and appears to be the last main publication by a WHO body focused on the topic of gun violence, albeit as a non-official publication.

iii. U.S. Gun Violence as a Public Health Crisis within the WHO’s Mandate

184. The WHO defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”⁶⁷⁹ The preamble of the WHO Constitution states that “the enjoyment of the highest attainable standard of health is one of the *fundamental rights of every human being*.”⁶⁸⁰ The right to health is also contained in other treaties and declarations which the United States has signed and/or ratified, including the International Covenant on Economic, Social, and Cultural Rights,⁶⁸¹ ICERD,⁶⁸² the Convention on the Rights of the Child,⁶⁸³ and the Universal Declaration of Human Rights.⁶⁸⁴
185. The U.S. government has a clear and broad obligation to protect the health and well-being of its citizens. Under the Preamble of the WHO Constitution, “[g]overnments have a responsibility for the health of their peoples which can be fulfilled only by the provision of

⁶⁷⁵ *Id.* at 1.

⁶⁷⁶ *Id.* at 11.

⁶⁷⁷ *Id.* at 20.

⁶⁷⁸ *Id.*

⁶⁷⁹ WHO Constitution, *supra* note 661, preamble.

⁶⁸⁰ *Id.* preamble.

⁶⁸¹ International Covenant on Economic, Social and Cultural Rights art. 12(1), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3. “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” *Id.* The United States signed ECOSOC Sep. 28, 1966, but has not ratified it. United Nations Treaty Collection/International Covenant on Economic, Social and Cultural Rights, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-3&chapter=4&clang=_en.

⁶⁸² ICERD, *supra* note 567, art. 5(e)iv: “The right to public health, medical care, social security and social services.”

⁶⁸³ Convention on the Rights of the Child art. 24(1), Nov. 20, 1989, 1577 U.N.T.S. 3. “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health.” *Id.* The United States signed the CRC on Feb. 16, 1995 but has not ratified it. United Nations Treaty Collection/ Convention on the Rights of the Child, treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en.

⁶⁸⁴ Universal Declaration of Human Rights art. 25(1), G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948). “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.” *Id.*

adequate health and social measures.”⁶⁸⁵ While the responsibility of achieving health goals is left in the hands of Member governments,⁶⁸⁶ the WHO is instrumental in setting health agendas, standards, and directing research and policy towards particular problems that have a great impact on health and well-being.

186. To achieve its objective, article 2 of the WHO Constitution authorizes the WHO
- a. to act as the directing and co-ordinating authority on international health work;
....
 - h. to promote, in co-operation with other specialized agencies where necessary, the prevention of accidental injuries;
....
 - q. provide information, counsel and assistance in the field of health;
 - r. assist in developing an informed public opinion among all peoples on matters of health;
....
 - v. generally to take all necessary action to attain the objective of the Organization.⁶⁸⁷
187. Gun violence in the United States is a serious public health issue that falls within the competence of the WHO.⁶⁸⁸ In addition to causing over 34,000 deaths and 100,000 non-fatal injuries each year and widespread mental and psychological harm, firearm violence substantially contributes to years of life lost⁶⁸⁹ amongst the U.S. population and to disability and premature death among youth⁶⁹⁰ – important indicators of health. Furthermore, U.S. gun laws and the proliferation of civilian firearms have resulted in serious public health consequences in countries to which U.S. firearms are exported.⁶⁹¹ Although the WHO recognizes violence as a global health crisis and has acknowledged the danger of firearms – mostly within the context of other public health concerns – it has not formally recognized gun-violence as a public health crisis worthy of separate consideration or passed a formal

⁶⁸⁵ WHO Constitution, *supra* note 661, preamble.

⁶⁸⁶ Governments are responsible for fulfilling the provision of adequate health and social measures. *Id.* This also demands the informed opinion and active cooperation of member states. This becomes particularly relevant when we begin to discuss the limitations and cuts put in place by Congress into research on guns and their impact on health.

⁶⁸⁷ WHO Constitution, *supra* note 661, art. 2 (a), (h), (q), (r), (v).

⁶⁸⁸ See, e.g., Amy Roeder, *A Public Health Approach to Stemming Gun Violence*, HARV. SCH. PUB. HEALTH (Oct. 4, 2017), www.hsph.harvard.edu/news/features/public-health-gun-violence-vegas/.

⁶⁸⁹ Years of life lost means premature mortality by considering each death in terms of the number of years that person could otherwise have lived. It is a useful metric for comparing the burden of injuries and diseases and, as such, setting health policy priorities and strategies. See *supra* note 117.

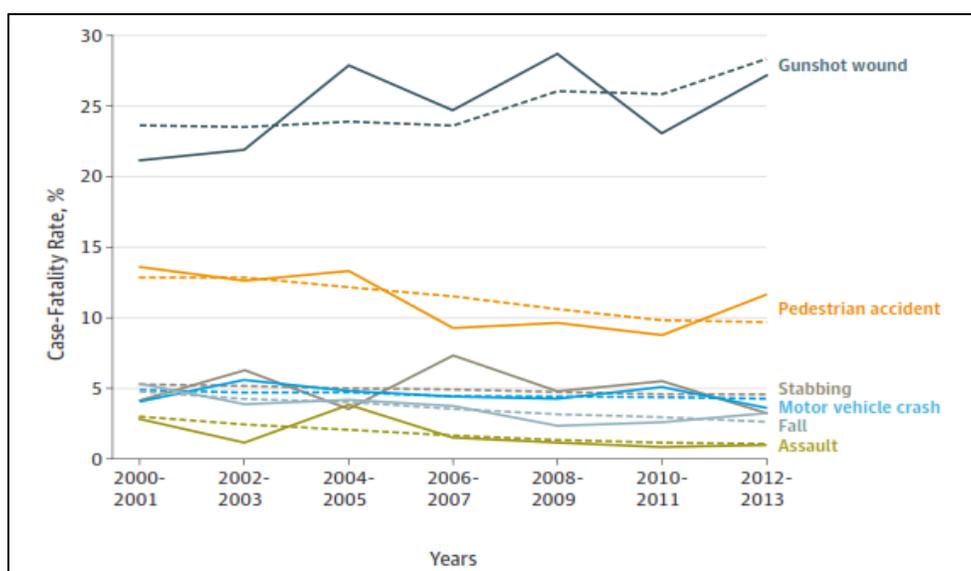
⁶⁹⁰ See *supra* ¶¶ 13-14.

⁶⁹¹ See *supra* Section II(C).

resolution to this effect.⁶⁹² Labeling it as such may help establish more effective approaches to handling the crisis.

188. Although the American Medical Association (AMA)⁶⁹³ adopted a policy calling gun violence “a public health crisis” in 2016 and voiced support for gun control measures,⁶⁹⁴ it has received little support from lawmakers in this effort. It adopted additional recommendations in June 2018,⁶⁹⁵ calling for an assault weapons ban, legislation requiring licensing and safety courses for gun owners, and mandatory firearm registration. The new policy recommendations explicitly denounce the idea of arming teachers as a solution.⁶⁹⁶ The AMA characterized the U.S. gun violence crisis as being as “menacing as a lethal infectious disease.”⁶⁹⁷

Figure 13: In-Hospital Case-Fatality Rates by Traumatic Injury Type⁶⁹⁸



189. Unlike public health issues such as smoking and car safety, which have been addressed by regulation, there has been no serious movement on a legislative level to effectively tackle gun violence. Guns are one of the only sources of death in the United States for which the

⁶⁹² Moreover, firearm violence does not appear on the WHO’s indexed list of health topics, although things such as “intimate partner and sexual violence” does. See World Health Organization, *Health Topics*, <http://www.who.int/health-topics/#G>.

⁶⁹³ The American Medical Association is the largest physicians’ group in the United States.

⁶⁹⁴ Kimberly Leonard, *American Medical Association Calls Gun Violence a Public Health Crisis*, U.S. NEWS (June 14, 2016), www.usnews.com/news/articles/2016-06-14/ama-calls-gun-violence-a-public-health-crisis.

⁶⁹⁵ See Associated Press, *Frustrated American Medical Association Adopts Sweeping Policies Aimed at Gun Violence*, NBC NEWS (Jun. 13, 2018), www.nbcnews.com/news/us-news/frustrated-american-medical-association-adopts-sweeping-policies-cut-gun-violence-n882681.

⁶⁹⁶ *Id.*

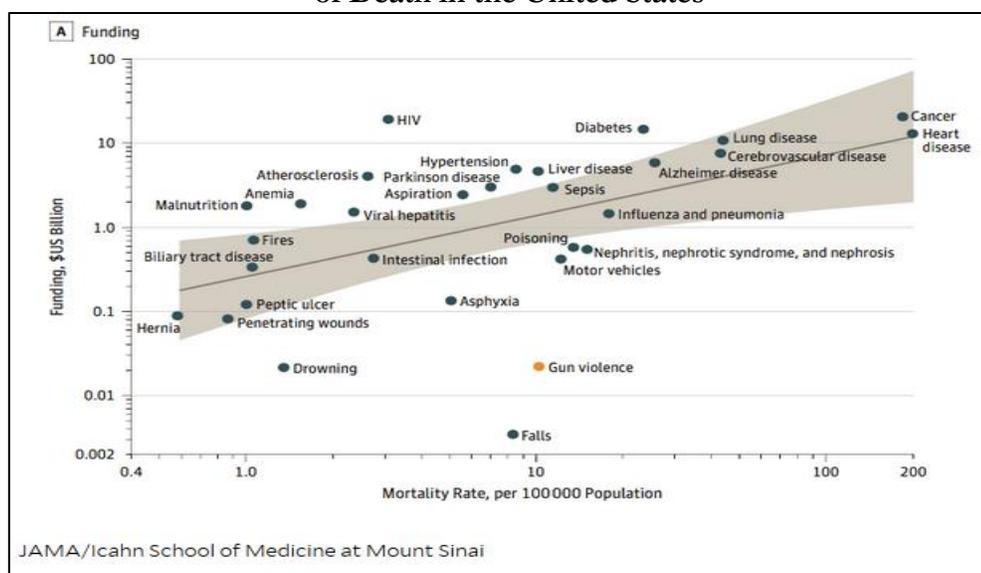
⁶⁹⁷ *Id.*

⁶⁹⁸ *Id.*

fatality rate has not decreased in recent years.⁶⁹⁹ As seen in Figure 13, one study found that it is one of the only traumatic injuries for which fatality rates have actually *increased* over time.⁷⁰⁰

190. As Figure 14 demonstrates, whereas many diseases and traumatic injuries that lead to a comparably small loss of life are the subject of well-funded research projects and grants, gun violence, which generally has more significant public health implications, lags far behind. Americans are 128 times more likely to die from gun violence than from terrorism, and black Americans living in an urban area are nearly 500 times more likely to be killed by a gun than a terrorist.⁷⁰¹ Yet the public resources directed towards these two problems are vastly different.⁷⁰² From a public health perspective, the U.S. government ought to direct more resources to this crisis.

Figure 14: Mortality Rate vs. Funding and Publication Volume for 30 Leading Causes of Death in the United States⁷⁰³



⁶⁹⁹ See, e.g., Angela Sauaia et al., *Fatality and Severity of Firearm Injuries in a Denver Trauma Center, 2000-2013*, 315 JAMA 2465 (June 2016) (finding in a 13-year period at a trauma center in Denver that in-hospital death rates from firearm injuries had increased “contrary to every other trauma mechanism”); *Vital Statistics Rapid Release: Quarterly Provisional Estimates*, CTR. FOR DISEASE CONTROL & PREVENTION (last updated Sept. 4, 2018), www.cdc.gov/nchs/nvss/vsrr/mortality-dashboard.htm# (showing firearms-injuries related deaths increased in 2017, while cancer and liver disease have decreased); Sy Mukherjee, *What’s Killing Americans? These 2 Things, According to a New CDC Report*, FORTUNE MAGAZINE (Nov. 3, 2107), <http://fortune.com/2017/11/03/american-deaths-drugs-guns-cdc/> (explaining that although cancer and heart disease are United States’ two biggest killers, the rates of death from both have declined, while deaths from gun violence has increased).

⁷⁰⁰ Sauaia et al., *supra* note 699. This increased in fatalities is hypothesized to be in part due to changes in the types of firearms and ammunition in circulation, but largely because of the lack of research.

⁷⁰¹ Pahn, *supra* note 114.

⁷⁰² See, e.g., Benjamin Haas, *Gun Violence Deserves as Robust a Response as Terrorism*, JUSTSECURITY (Oct. 8, 2017), www.justsecurity.org/45753/gun-violence-deserves-robust-response-terrorism/.

⁷⁰³ Niall McCarthy, *Does Gun Violence Get Enough Federal Funding*, STATISTA (Mar. 5, 2018), www.statista.com/chart/13126/does-gun-violence-get-enough-federal-research-funding/.

191. Under article 2(n), one of the WHO’s functions is to “foster activities in the field of mental health, especially those affecting the harmony of human relations.”⁷⁰⁴ Moreover, the WHO defines health to include mental well-being.⁷⁰⁵ It is well-established that gun violence results in high rates of mental and physiological harm for both its direct victims and the U.S. population more broadly.⁷⁰⁶
192. Suicide is a public health issue which has also been widely addressed by the WHO.⁷⁰⁷ Guns and suicide in the United States are intrinsically linked: the use of a gun in a suicide attempt makes it nearly 90% fatal and easy availability of firearms is correlated with higher suicide.⁷⁰⁸ Studies have demonstrated a strong association between gun ownership and gun homicide or suicide at the individual level,⁷⁰⁹ household level,⁷¹⁰ and population level.⁷¹¹ As such, the WHO should direct its resources and attention to this issue.
193. The WHO also has a special mandate to protect and promote the health, welfare, and development of children. The preamble of the WHO Constitution declares that the “[h]ealthy development of the child is of basic importance,” and article 2(l) tasks the WHO with promoting “child health and welfare.”⁷¹² As such, it should be especially concerned about the high rates of firearm suicide, accidental death, and gun homicides – in particular in the context of domestic violence – that occur against children in the United States, especially since many of these could be prevented by common sense gun laws, such as safe storage requirements and the elimination of loopholes that allow many domestic abusers to possess guns.
194. One of the primary functions of the WHO under article 2(h) is “to promote...the prevention of accidental injuries”⁷¹³ Accidental firearm deaths account for 6% of childhood firearm deaths⁷¹⁴ and is one of the top seven causes of all unintentional childhood deaths for

⁷⁰⁴ WHO Constitution, *supra* note 661, art. 2(n).

⁷⁰⁵ *Id.* preamble.

⁷⁰⁶ *See supra* Section II(E).

⁷⁰⁷ For example, on this topic the WHO supported numerous publications and booklets on preventing suicide, hosts webinars, and provides valuable public data on this topic. *See, e.g.*, World Health Organization, *WHO’s Preventing suicide: a community engagement toolkit* (Sept. 10, 2018), http://www.who.int/mental_health/suicide-prevention/en/.

⁷⁰⁸ *See supra* ¶ 17.

⁷⁰⁹ *See* Garen J. Wintemute et al., *Mortality Among Recent Purchasers of Handguns*, 341 *NEW ENG. J. MED.* 1583 (1999).

⁷¹⁰ *See* Kellermann et al., *Suicide in the Home in Relation to Gun Ownership*, *supra* note 82.

⁷¹¹ *See* Matthew Miller et al., *Firearm Availability and Suicide, Homicide, and Unintentional Firearm Deaths Among Women*, 79 *J. URBAN HEALTH* 26 (2002); Siegel & Rothman, *supra* note 446. *Firearm Ownership and Suicide Rates Among US Men and Women, 1981–2013*, 106 *AM. J. PUBLIC HEALTH* 1316 (2016).

⁷¹² WHO Constitution, *supra* note 661, art. 2(l); *see also id.*, preamble, “Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development.”

⁷¹³ *Id.* art. 2(h).

⁷¹⁴ Fowler, *Childhood Firearm Injuries in the United States*, *supra* note 54.

ages 1-14.⁷¹⁵ Studies have found that having a gun in the home *increases* the probability of accidental death significantly.⁷¹⁶ Safe storage and gun locking devices could reduce these unnecessary deaths significantly.⁷¹⁷

195. Two other primary functions of the WHO under article 2 are to “promote and conduct research in the field of health”⁷¹⁸ and “promote improved standards of teaching and training in the health, medical, and related professions.”⁷¹⁹ As such, the WHO should be concerned about the effect of U.S. regulations such as the Dickey Amendment which have limit the ability of the CDC – the United States’ health protection agency – to research gun violence.

VI. ACTIONS TO BE TAKEN

A. General Domestic Recommendations

196. There are a variety of non-exhaustive legislative actions the United States federal and state governments should immediately take:
- a. **Require comprehensive background checks for the purchase and ownership of all firearms.** Eliminate the private gun transaction loophole and implement stricter and universal background checks for the purchase of firearms, regardless of the seller;
 - b. **Adopt legislation requiring a license for the possession and purchase of any type of firearm.** Licenses should be required for the purchaser regardless of if the seller is a licensed dealer or not. Licensing should require, at the minimum, a background check, including of mental health history, safety training, a practical test of firearm skill and safe handling, and a written knowledge test. Licenses should have limitations on the duration of validity and require a new background check and re-testing for renewal. License holders should also be required to obtain an additional permit for the purchase of handguns, which should be limited in duration and allow only one handgun per permit;
 - c. **Adopt legislation requiring the licensure of all firearm sellers.** Firearm sellers should be required to keep careful records of all sales and inventory of firearms *and* ammunition and to submit these records to law enforcement and the ATF. Sellers should be required to report suspicious buying activity (i.e. over a certain quantity by an individual within a short time period) immediately to law enforcement. Law enforcement and/or ATF agents should be required and permitted to conduct regular compliance inspections of dealers and to maintain a centralized database of firearm and ammunition sales;

⁷¹⁵ CDC Reporting System, *supra* note 2, www.cdc.gov/injury/images/lc-charts/leading_causes_of_death_highlighting_unintentional_2016_1040w800h.gif.

⁷¹⁶ *See, e.g.,* Wiebe, *Homicide and Suicide Risk*, *supra* note 82; Wiebe, *Firearms in US Homes as a Risk Factor*, *supra* note 104.

⁷¹⁷ *See supra* Section III(D)(iii), ¶ 76.

⁷¹⁸ WHO Constitution, *supra* note 661, art. 2(n).

⁷¹⁹ *Id.* art. 2(o).

- d. **Adopt restrictions on the sale and possession of high-capacity and assault weapons** such as the AR-15 style rifle used in the Parkland school shooting, which greatly increase the fatality of shootings;
 - e. **Adopt legislation banning the sale and possession of bump stocks**, a gun accessory that modifies a semi-automatic firearm to make it easier to fire rounds quickly, and which was used by the gunman in the Las Vegas shooting, the deadliest mass shooting in U.S. history;
 - f. **Adopt legislation requiring the safe storage of firearms in homes with children and dangerous persons** to prevent individuals like the Santa Fe High School shooter from acquiring firearms and committing mass shootings;
 - g. **Require private individuals to promptly report stolen guns** to help reduce illegal firearm tracking and keep guns out of the hands of criminals;
 - h. **Enact a federal “Red Flag Bill” allowing for extreme risk protection orders** to temporarily remove access to firearms from individuals at immediate risk to themselves or others;
 - i. **Prohibit domestic abusers from buying and possessing guns by closing the loopholes in the Lautenberg Amendment**, which allows abusers in dating (not married) relationships, convicted stalkers, and those with temporary restraining orders to buy and own firearms;
 - j. **Repeal the Dickey Amendment, effectively banning CDC funding for gun-related research**, and provide sufficient funding and resources for research on firearm safety and gun violence prevention;
 - k. **Repeal the Tiahrt Amendments and remove the restrictions placed on ATF** which limit its ability to effectively do its job;
 - l. **Reject the proposed “Concealed Carry Reciprocity Act”** and instead encourage states to follow the lead of those jurisdictions that have been successful at adopting stricter gun control laws;
 - m. **Support local violence prevention and intervention programs** that are proven to reduce gun violence;
 - n. **Prohibit SYG Laws** that allow private citizens to deprive others of life and disproportionately harm African Americans;
 - o. **Require implicit bias and de-escalation trainings** for all law enforcement officers to reduce the discriminatory impact of police shootings on African Americans and other minority groups;
 - p. **Reject the proposed new rules on firearms exports** which have the potential to exacerbate gun violence and human rights abuses abroad.
197. These measures would be constitutional under *Heller* and are proved to be effective. Similar gun control measures have been shown to reduce firearm deaths and injuries and nearly eliminate mass shootings in other countries where they have been implemented. Studies in

the United States have also shown that the incidence of gun violence drops following the adoption of sensible gun regulations.

198. These recommendations are consistent with the recommendations made by many of the leading organizations in this field, including the Brady Campaign to Prevent Gun Violence, Giffords Law Center to Prevent Gun Violence, and Everytown for Gun Safety.

B. Recommendations to Bring the United States into Compliance With its International Treaty Obligations

199. To bring the United States into compliance with its international legal obligations and promote and enhance the international human rights framework and the international legal framework governing the sale of firearms, the United States should:
- a. **Join the 96 countries which have ratified or acceded to the Arms Trade Treaty (ATT)**, which the United States signed on September 25, 2014. Article 6 of this treaty prohibits arms exports to States that use firearms in the commission of crimes against humanity and Article 7 prohibits the export of firearms to States where the arms could undermine peace and security. The U.S. firearm trade to multiple countries, including neighboring Mexico, violates these treaty provisions;
 - b. **Become a party to the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (CIFTA)** which 31 of the 34 American States have ratified;
 - c. **Become a party to the American Convention on Human Rights.** The United States is the only one of the twenty-one founding members of the OAS not to have become a party to this fundamental human rights treaty.
 - d. **Ratify the First Optional Protocol to the ICCPR**, which has 116 States Parties;
 - e. **Rejoin the UN Human Rights Council**, which the United States, under the direction of the Trump Administration, withdrew from in June 2018;
 - f. **Ratify the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition** (generally known as the Firearms Protocol (FP)), adopted by the United Nations General Assembly in May 2001, and which supplements the United Nations Convention against Transnational Organized Crime (UNTOC);
 - g. **Ratify the Convention on the Rights of the Child**, which has 196 States Parties. The United States and Somalia are the only countries which are not a party to this treaty;
 - h. **Withdraw reservations to key human rights treaties**, including the ICCPR, ICERD, and UNCAT;
 - i. **Comply with the reporting obligations of the ICCPR (article 40), ICERD (article 9), and UNCAT (article 19).** Currently, the United States is one year late in

submitting its report to CERD and two years late on its reporting obligations to the CAT. The United States has a history of delayed reporting to these human rights bodies;

- j. **Inform the U.S. public of the relevant complaint mechanisms available under each human rights treaty.**

This list is non-exhaustive and is consistent with recommendations made by a variety of other organizations, including the human rights bodies themselves.

C. Possible Remedies Through International Organizations

200. A finding by an international human rights body that the U.S. government has failed to act reasonably to halt the gun violence crisis, in violation of its treaty obligations, could be particularly persuasive. Although Human Rights Council and treaty body decisions are not binding upon the U.S. government as a formal matter, they would command great respect and have the potential to influence domestic policy and even the interpretation of law.⁷²⁰

i. *Human Rights Council*

201. The next Universal Periodic Review of the United States by the HRC is scheduled for the 36th Session of the Human Rights Council during April - May 2020. The tentative deadline for Civil Society, NGOs, and Other Stakeholders to submit written contributions is September 19, 2019. The tentative deadline for the United States to submit its State Report is February 2020; however it is unclear if the government will comply with its obligation.

ii. *The Human Rights Committee*

202. In its *Concluding Observations* at the last periodic review of the United States, which occurred in 2014, the Committee expressed concern “about the continuing high numbers of gun-related deaths and injuries and the disparate impact of gun violence on minorities, women and children” and “the proliferation of such laws which are used to circumvent the limits of legitimate self-defence.”⁷²¹ The Committee also expressed concern about “the still high number of fatal shootings by certain police forces.”⁷²²
203. The next reporting cycle for the United States begins during Session 125 in 2019, at which time the United States’ initial report will be due. Civil society organizations were invited to submit information to the Committee by January 14, 2019. It is unclear if the current administration will comply with its reporting obligations.⁷²³

⁷²⁰ See, e.g., *United States v. Duarte-Acero*, 208 F.3d 1282, 1287 (11th Cir. 2000) (citing the U.N. Human Rights Committee’s views, as persuasive in interpreting an ambiguous provision of a treaty).

⁷²¹ Human Rights Committee, *Concluding Observations 2014*, *supra* note 517, ¶ 10.

⁷²² *Id.* ¶ 11.

⁷²³ It is common for the United States to be delayed in its reporting obligations. For example, during its last reporting cycle, the U.S. Report was due on August 1, 2010. It was submitted a year and a half later on December 30, 2011. See UNOHC, *Reporting status for United States of America*, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=USA&Lang=EN.

204. The United States is not a party to the Optional Protocol, meaning no private party in the United States has standing to bring a complaint before the Human Rights Committee. However, the United States is subject to the interstate complaint procedure, and it is possible that the export of firearms and gun violence that the United States has enabled to other American States may entitle another State, such as Mexico, to bring a complaint for the loss of life U.S. firearm policies and laws have caused its own citizens.

iii. Committee on the Elimination of Racial Discrimination

205. The United States has not made an article 14 declaration and as such does not recognize the jurisdiction of the Committee to hear individual complaints.⁷²⁴ Another State could bring a complaint to the Committee alleging that the United States was not fulfilling its obligations under the Convention and articles 11-13 allows for the establishment of an *ad hoc* Conciliation Commission to resolve the dispute. However, it is unclear what State is affected by the discriminatory effects of the U.S. gun violence crisis to the extent that it would have standing to bring a complaint.

206. The last U.S. report was submitted to CERD in 2013 and *Concluding Observations* were issued in August 2014, in which CERD expressed concern “at the high number of gun-related deaths and injuries which disproportionately affect members of racial and ethnic minorities, particularly African Americans.”⁷²⁵

207. The United States was due to submit their last report by a November 2017 deadline. This submission was supposed to include the combined 10th-12th Period Reports. As of December 2018, this report has not been submitted. The U.S. Department of State is responsible for drafting the U.S.’s State report and assembling the delegation to attend the review.

iv. Committee against Torture

208. The United States does not recognize the jurisdiction of the Committee over a claim by an individual party,⁷²⁶ so that is not an avenue that can be pursued with the Committee regarding U.S. gun violence.

209. Under article 20, the Committee can undertake an independent inquiry.⁷²⁷ The gravity of the gun violence crisis, in light of frequent mass and school shootings and international

⁷²⁴ See United Nations Treaty Collection, *supra* note 568.

⁷²⁵ CERD, *Concluding Observations* 2014, *supra* note 578, ¶ 16.

⁷²⁶ U.S. reservations, declarations, and understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990).

[T]he United States declares, pursuant to article 21, paragraph 1, of the Convention, that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. It is the understanding of the United States that, pursuant to the above-mentioned article, such communications shall be accepted and processed only if they come from a State Party which has made a similar declaration. *Id.*

⁷²⁷ Torture Convention, *supra* note 605, art. 20; see also OHCHR, Inquires, www.ohchr.org/EN/HRBodies/Petitions/Pages/InquiryProcedures.aspx.

attention, may possibly be enough to trigger an inquiry by the Committee, but a deeper investigation into the topics of past inquiries is necessary for a more educated evaluation.

210. The next review of the United States will be scheduled once the United States submits its Sixth report to the Committee. This Report is due by the United States in 2018. A *List of Issues Prior Reporting on the United States* was already adopted at the Committee against Torture’s November-December 2016 session and the United States will be scheduled for review only upon receipt of their report.

v. Inter-American Commission on Human Rights

211. There are numerous avenues for States and individuals to approach the Commission with human rights concerns. The Commission can also take independent action, as it did when it held the February 2018 hearing on the “Regulation of Gun Sales and Social Violence in the United States.”
212. The IACHR can entertain individual petitions against States. To be admissible before the Commission, one must have exhausted all legal remedies. The two parties, the petitioner and the State, are then required to try for “friendly settlement.” If this fails, the petitioner then presents a brief on the merits to which the State replies with a brief. At this stage, the Commission will also accept amicus briefs and can request a public hearing, which are available online. The Commission then issues a decision on the merits with instructions for the State on how to comply with its obligations in the given matter. If a State is found to not comply with these recommendations, the Commission’s decision becomes publically available.
213. This raises the possibility of an individual in the United States who has been directly impacted by the U.S. failure to protect against gun violence could petition the Commission. The potential influence of an IACHR decision, both in terms of the conversation around an issue and even on domestic legislation, has already been demonstrated. The petition of *Lenaban*⁷²⁸ for example, was an individual petition against the United States that resulted in a recommendation of legislative change, among other things. Similarly, the Commission ruled in 1987 that the United States was in violation of international human rights law by permitting the executions of two individuals sentenced to death for crimes committed as juveniles.⁷²⁹ Subsequently, the juvenile death penalty was struck down by the U.S. Supreme Court on similar grounds.⁷³⁰
214. There is also the possibility of an individual from *another* country that has been affected by the United States’ lax gun laws, such as in Latin and South America, filing an individual petition against the United States.
215. Although the United States generally replies to decisions from the Commission as not legally binding, they still can have tremendous influence. If the United States does not comply with

⁷²⁸ *Lenaba et al. v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11 (2011).

⁷²⁹ *James Terry Roach & Jay Pinkerton v. United States*, Case 9647, Inter-Am. Comm’n H.R., Resolution No. 3/87 (1987).

⁷³⁰ *Roper v. Simmons*, 543 U.S. 551 (2005).

Commission instructions, the decision would become public, creating the opportunity for media coverage and public pressure.

216. The Inter-American Court on Human Rights, another arm of the OAS system, is empowered to hear petitions from States. As such, it might be possible for another State that has been affected by the U.S. gun violence crisis, such as Mexico or a Caribbean Island State,⁷³¹ to request an ‘advisory opinion’ from the Court. This would most likely be related to the failure of the United States to properly regulate firearms and firearm dealers, which has allowed from the illegal trafficking of firearms.
217. The Commission has previously highlighted the importance of heading “red flags” and urged the United States “to undertake systematic studies of these phenomena in order to formulate effective policy to prevent future gun violence.”⁷³² As such, the loopholes in federal law that allow domestic abusers to acquire and possess guns and the lack of a federal red-flag law should be matters to consider bringing before the Commission.

vi. World Health Organization (WHO)

218. In line with its mandate and the significant impact gun violence has on health, the WHO must be urged to take action as it has the other major health crises of the past century. A first step for the WHO would be to formally declare gun violence a global public health crisis.
219. Because gun violence falls within the competence of the WHO,⁷³³ this gives rise to a number of capabilities available to the WHO and its bodies, including those under articles 19, 23, and 41. Under article 19,

The Health Assembly shall have authority to adopt conventions or agreements with respect to any matter within the competence of the Organization. A two-thirds vote of the Health Assembly shall be required for the adoption of such conventions or agreements, which shall come into force for each Member when accepted by it in accordance with its constitutional processes.⁷³⁴

Article 23 also grants the Health Assembly “authority to make recommendations to Members with respect to any matter within the competence of the Organization.”⁷³⁵ Furthermore, article 41 instructs that either the “Health Assembly or [Executive] Board may convene local, general, technical or other special conferences to consider any matter within the competence of the Organization.”⁷³⁶

⁷³¹ See *supra* Section II(D).

⁷³² OAS, *LACHR Condemns Mass Shooting in United States and Calls on the State to Adopt Measures*, *supra* note 641.

⁷³³ See *supra* ¶¶ 184-195.

⁷³⁴ WHO Constitution, *supra* note 661, art. 19.

⁷³⁵ *Id.* art. 23.

⁷³⁶ *Id.* art. 41.

220. The WHO's actions on other public health crisis offers a model for what they could do in regards to the gun violence crisis. For example, the WHO recently released guidance on responsible reporting on suicide, armed with research that media reports about suicide can either enhance or weaken suicide prevention efforts.⁷³⁷ Similarly, it is suggested that media reporting on mass shooters may likely have an impact on copycat shooters. As such, the WHO should consider research and guidelines on media reporting regarding shooters, as is being proposed by prominent experts.⁷³⁸
221. A comparison between the gun violence crisis and the WHO's handling of the global tobacco crisis is a useful analogy. Like gun manufacturing, tobacco is an enormous industry in the United States. In 2016, the U.S. tobacco market size was \$100.3 billion dollars⁷³⁹ and the same year, the firearm and ammunition industry was estimated at \$51.3 billion.⁷⁴⁰ The industries are also related in other ways: they have a strong influence in politics, they result in high rates of death and debilitating conditions, and the impact and spread of each product is complicated by cross-border effects and trade. Nevertheless, the WHO took on tobacco as a health concern with great results. Indeed, the WHO Framework Convention on Tobacco Control⁷⁴¹ is the first treaty negotiated under the auspices of the WHO, in response to the global tobacco epidemic.⁷⁴² The treaty was opened for signature in June 2003 and entered into force February 27, 2005; it now has 168 Signatories, making it "one of the most widely embraced treaties in UN history."⁷⁴³ Furthermore, the U.S. government eventually reversed course and, recognizing the danger to health tobacco had on its population, placed strict regulations on the industry. Regulations included legislation restricting tobacco advertising, limits on where individuals can smoke in public places, rules on the chemicals added to cigarettes, and regulations on who can buy and use tobacco products. The result has been a significant decline in the percentage of the population who smokes and accountability within the industry for the dangerous products they create.
222. As discussed previously, the WHO only sporadically comments on firearm violence, typically as consequential to its work on other public health issues.⁷⁴⁴ An un-official WHO report

⁷³⁷ World Health Organization, *Preventing suicide: a resource for media professionals - update 2017* (2017), http://www.who.int/mental_health/suicide-prevention/resource_booklet_2017/en/.

⁷³⁸ See No Notoriety, nonotriety.com/ (a campaign to help reduce tragedies by changing reporting and media practices around violence events like mass shootings, including by limiting the use of the shooters name and image); see also Jaclyn Schildkraut, *The Media Should Stop Making School Shooters Famous*, Vox (Mar. 31, 2018), www.vox.com/the-big-idea/2018/2/22/17041382/school-shooting-media-coverage-perpetrator-parkland.

⁷³⁹ U.S. *Tobacco Market Size, Share & Trends Analysis Report by Product Type (Cigarettes, Smoking Tobacco, Smokeless Tobacco, Cigars & Cigarillos), Competitive Landscape and Segment Forecasts, 2018-2025*, GRAND VIEW RESEARCH (Apr. 2018), www.grandviewresearch.com/industry-analysis/us-tobacco-market/methodology.

⁷⁴⁰ Jade Moldae, *Facing a Softened Market, Industry has Case for Optimism*, SHOOTING INDUSTRY (2017), <https://shootingindustry.com/u-s-firearms-industry-2017/>.

⁷⁴¹ Framework Convention on Tobacco Control (signed 21 May 2003, entered into force 27 February 2005) 2302 UNTS 166.

⁷⁴² World Health Organization, *WHO Framework Convention on Tobacco Control* (2005), <http://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf?sequence=1>.

⁷⁴³ *Id.* at vi.

⁷⁴⁴ See *supra* ¶ 181.

submitted to the U.N. Conference on Illicit Trade in Small Arms and Light Weapons in 2001 *appears* to be the last WHO publication focused on gun-violence. As such, it would be influential for the WHO to dedicate an issue of the *Bulletin* to global gun violence concerns. The *Bulletin* is one of the world's leading health journals and is published by the WHO.⁷⁴⁵

VII. CONCLUSION

223. Since 2013, an average of about one school shooting each week and one mass shooting each day has taken place in the United States. Nearly 3 million children witness a firearm shooting each year and more than 215,000 students (excluding college and university students) have suffered from a shooting at their school since the Columbine shooting in 1999.
224. The effect of lax federal gun control laws combined with the heterogeneity of state gun laws exposes U.S. citizens to a high risk of gun violence and death. A majority of Americans support of the gun control measures which have been shown to reduce gun violence in other countries or jurisdictions – 90% of non-gun owners *and* 84% of gun-owners support requiring a universal background check system for all gun sales and 84% of non-gun owners and 60% of gun-owners support a licensing requirement for gun ownership.⁷⁴⁶
225. Yet three months after the Parkland shooting, another mass school shooting occurred, carried out by a seventeen-year-old student who used his father's gun to kill ten people and injure another thirteen at his high school in Santa Fe, Texas. Within a few months, eleven congregants were killed in a mass shooting at the Tree of Life Synagogue in Pennsylvania and twelve people were killed at a mass shooting at Borderline Bar and Grille in California, not to mention the thousands of others who lost their lives in daily gun violence and the communities affected.
226. Even after the Supreme Court's 2008 decision in *Heller*, the adoption of effective federal and state gun control laws is constitutional but federal and state laws on the regulation and sale of firearms remain inadequate to protect the U.S. population from continued harm. Rather than taking affirmative action to prevent gun violence and provide resources for the effective enforcement of current laws, the U.S. government has decreased protection for its population by relaxing its laws and creating roadblocks for the agencies tasked with enforcing gun regulations.
227. Gun violence in America has reached crisis proportions, and the fact that our schools and streets have become theaters of violence deserves immediate attention. Given the frequency with which gun violence now occurs in the United States, the U.S. failure to adopt effective measures, including legislation, violates its human rights obligations.

⁷⁴⁵ See World Health Organization *The Bulletin*, www.who.int/bulletin/en/.

⁷⁴⁶ Barry et al., *supra* note 31. This study also found that 67.2% of the overall population and 75% of non-gun-owners supported a law requiring that “a person lock up the guns in the home when not in use to prevent handling by children or teenagers without adult supervision” and that 71% of gun-owners and 78% of non-gun owners support requiring a mandatory minimum sentence of two years in prison for a person convicted of selling a gun to someone who cannot legally have one.

Annex 1: Glossary of Terms

1. AR-15 style assault rifles

There is no definitive definition of an “assault rifle.” The federal government usually uses this term to refer to “a military-style weapon capable of firing multiple rounds, either semi-automatic or a fully automatic firearm.”⁷⁴⁷

The term “AR-15 style assault rifle” is used to reference to rifles made by various different manufactures that have generally the same capabilities as the AR-15 rifle. The AR-15 stands for the Armalite rifle, named after the company that developed the weapon. It was first used during the Vietnam War and is the civilian counter-part to the military’s M-16. The AR-15 was included in the Assault Weapons Ban. It is semi-automatic — the user needs to pull the trigger to fire each shot. “The AR was designed for quick reloading in combat situations, and it can fire dozens of rounds in seconds. The butt of the rifle, or the stock, has a large internal spring that absorbs the shock of each firing. The low recoil makes it easier to shoot and is more accurate than earlier military weapons. It can also be easily customized by adding scopes, lasers and more.”⁷⁴⁸

The gun industry pushes back on the use of the “assault rifle” to refer to guns available to civilians, such as the AR-15, arguing that assault weapons, by definition has “select-fire capabilities” and are fully automatic.⁷⁴⁹ Because automatic weapons have been restricted from civilian ownership since 1934, groups such as the NRA and National Shooting Sports Foundation typically reject this terminology being applied to AR-15 style rifles.

2. Bump stocks

A bump stock (or ‘bump fire stock’) is a device that is designed to attach to a semi-automatic firearm and accelerate its rate of fire to mimic that of a fully automatic machine gun. It replaces the gun’s standard stock and, by “bumping” back and forth, enables the gun to fire shots in rapid succession.⁷⁵⁰ As opposed to one’s finger pulling the trigger for each shot, the device “throws” the trigger against one’s finger, allowing the recoil of the firearm to propel the trigger. Bump stocks do not technically convert a firearm to an automatic firearm, although it does functionally simulate automatic fire. Prior to the Parkland shooting, only two states – California and Massachusetts – had state laws prohibiting bump stocks.⁷⁵¹ Eight

⁷⁴⁷ Jeff Daniels, *Definition of what’s Actually an ‘Assault Weapon’ is a Highly Contentious Issue*, CNBC (Feb. 21, 2018), www.cnbc.com/2018/02/21/definition-of-whats-an-assault-weapon-is-a-very-contentious-issue.html.

⁷⁴⁸ See Lindsay & Kerr, *supra* note 17; Julie Vitkovskaya & Patrick Martin, *4 Basic Questions about the AR-15*, WASH. POST (Feb. 16, 2018), www.washingtonpost.com/news/checkpoint/wp/2018/02/15/4-basic-questions-about-the-ar-15/?utm_term=.c8d987d78991.

⁷⁴⁹ See, e.g., *Modern Sporting Rifle Facts*, National Shooting Sports Foundation, www.nssf.org/msr/; “*Assault Weapons*” and “*Large*” *Magazines*, National Rifle Association, www.nraila.org/get-the-facts/assault-weapons-large-magazines/.

⁷⁵⁰ See Larry Buchanan et al., *What is a Bump Stock and How Does it Work?*, NYTIMES (Feb. 20, 2018), www.nytimes.com/interactive/2017/10/04/us/bump-stock-las-vegas-gun.html.

⁷⁵¹ See *State Legislative Toolkit: Addressing Bump Stocks*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/state-legislative-toolkit-addressing-bump-stocks/.

additional states have passed bump stocks bans since.⁷⁵² Currently, federal law does not ban bump stocks. However, in March 2018, the Justice Department proposed a federal law that would classify bump stocks as “machine guns” and in effect, ban them. The Trump administration recently announced that the ban will soon be enacted.⁷⁵³ Polling shows that a majority of Americans support a bump stock ban.⁷⁵⁴

3. Child access prevention (CAP) laws

Child access prevention (CAP) laws are designed to hold adults accountable for intentionally or negligently allowing children to have unsupervised access to firearms. While twenty-seven states and the District of Columbia have some form of CAP law, twenty-three states remain without any CAP law, and there is no comparable federal law.⁷⁵⁵ State CAP laws vary widely in form. The strictest form imposes criminal penalties for negligent storage regardless of whether the child accesses the firearm⁷⁵⁶ while other states impose criminal liability when intentional, knowing, or reckless providing firearms to children.⁷⁵⁷

A number of studies have demonstrated the effectiveness of CAP laws in reducing firearm-related deaths or injuries in children. States with CAP laws are found to have lower rates of unintentional firearm deaths,⁷⁵⁸ suicide,⁷⁵⁹ and nonfatal firearm injuries in children.⁷⁶⁰ However, other experts point out that not only are child access prevention laws difficult to enforce, but they are typically used after it is too late; that is, they are only enforced after a tragedy has occurred by a child accessing an adult’s firearms.

For the difference between child access prevention laws and safe storage laws, *see* Safe Storage.

⁷⁵² *See Pressure Leads to Progress*, *supra* note 276.

⁷⁵³ *See* Renae Reints, *Trump Says Federal Ban on Bump Stocks is in its ‘Final Stages’*, FORTUNE (Oct. 1, 2018), <http://fortune.com/2018/10/01/trump-bump-stock-ban/>.

⁷⁵⁴ Margot Sanger-Katz & Quoc Trung Bui, *A Bump Stock Ban Is Popular With the Public. But Experts Have Their Doubts*, N.Y. TIMES (Oct. 12, 2017), www.nytimes.com/interactive/2017/10/12/upshot/a-bump-stock-ban-is-popular-but-experts-have-their-doubts.html (finding that a bump stock ban was supported by 72% of registered voters in a survey conducted following the Las Vegas shooting; this includes 68% support from Republicans and 79% support from Democrats); Asma Khalid, *NPR Poll: After Parkland, Number of Americans Who Want Gun Restrictions Grows* (Mar. 2, 2018), www.npr.org/2018/03/02/589849342/npr-poll-after-parkland-number-of-americans-who-want-gun-restrictions-grows (finding that 81% of Americans support a ban on bump stocks following the Parkland shooting).

⁷⁵⁵ *See generally Child Access Prevention*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/child-consumer-safety/child-access-prevention/#state>.

⁷⁵⁶ Mass. Gen. Laws Ch. 140, § 131L.

⁷⁵⁷ Ind. Code Ann. § 35-47-10-6; Mo. Stat. Ann. § 571.060; Nev. Rev. Stat. Ann. § 202.300; Okla. Stat. Ann. § 1273; Utah Ann. Code § 76-10-509.6.

⁷⁵⁸ Peter Cummings et al., *State Gun Safe Storage Laws and Child Mortality Due to Firearms*, 278 JAMA 1084 (1997).

⁷⁵⁹ Webster et al., *Association Between Youth-Focused Firearm Laws & Youth Suicides*, *supra* note 384.

⁷⁶⁰ Jeff DeSimone et al., *Child Access Prevention Laws and Nonfatal Gun Injuries*, 80 SOUTHERN ECON. J. 5(2013).

4. Extreme risk protection orders

See Red Flag Bills.

5. Firearm license (includes: permit to purchase, registration, and certificates)

A firearm license generally refers to a government-issued license or permit to purchase or own a firearm. There is no federal law requiring a license to purchase or possess firearms. Thirteen states and the District of Columbia have some form of firearm licensing requirements,⁷⁶¹ although the laws vary widely in what is required, including in terms of a background check, mental health records review, safety trainings or exams, and waiting periods. Additionally, there is significant variation regarding how many guns can be purchased with each license or permit and its duration of validity. Finally, the type of guns these laws apply to vary; of these fourteen jurisdictions with some form of licensing law, the laws in seven of the states only applies to handguns, leaving other types of firearms outside the scope of the licensing or permit requirements.⁷⁶²

Broadly, there are four types of firearm license laws: 1) “license-to-own”; 2) “permit-to-purchase”; 3) firearm safety certificate; and 4) registration.

“License-to-own” laws, enacted by Illinois,⁷⁶³ Massachusetts,⁷⁶⁴ and New York,⁷⁶⁵ require individuals to hold a license in order to legally *own* a firearm. Of these three states, only Massachusetts requires prospective license holders to complete safety training. The type of firearm the law applies to and duration of a license also varies by state. In Massachusetts, the license to own law applies to all firearms *and* ammunition devices and the license is valid for six years. Illinois’s law applies to all types of firearms and is valid for ten years, whereas New York’s law only applies to hand guns and is valid for 5 years.

“Permit-to-purchase” (PTP) laws require the prospective gun buyer to obtain a license or permit in order to *purchase* at least some types of firearms. PTP laws are in place in ten states.⁷⁶⁶ Only five⁷⁶⁷ of these ten states require passing safety training or an exam to obtain a permit. The validity of these permits also varies widely. For example, while Massachusetts’s PTP law on handguns limits the validity of the permit to ten days and one handgun per

⁷⁶¹ *See generally* *Licensing*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/gun-owner-responsibilities/licensing.

⁷⁶² The seven states are Iowa, Maryland, Michigan, Nebraska, New York, North Carolina, and Rhode Island. Of these states, only Maryland and Rhode Island require safety training to obtain a license or permit for firearms. *Id.*

⁷⁶³ 430 Ill. Comp. Stat. 65/1 – 65/15a.

⁷⁶⁴ Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E, 131P.

⁷⁶⁵ N.Y. Penal Law §§ 400.00 – 400.01.

⁷⁶⁶ The ten states are: Connecticut, Hawaii, Iowa, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, North Carolina, and Rhode Island. *Licensing*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, *supra* note 761.

⁷⁶⁷ The five states are: Connecticut, Hawaii (only required for handguns, not for long guns), Maryland, Massachusetts, and Rhode Island. *Id.*

permit, Maryland's⁷⁶⁸ permits are valid for ten years without limits on the number of firearms purchased and a PTP for a long gun in New Jersey⁷⁶⁹ is valid 'so long as eligible.'⁷⁷⁰

Only one state – California⁷⁷¹ – requires a firearm safety certificate prior to purchasing any firearm as a form of firearm licensing. Under this form of licensing, applications must complete required safety training and the certificate is valid for five years. It does not impose a limitation on the number of firearms that can be purchased.

The District of Columbia⁷⁷² is the only jurisdiction in the United States that uses registration as a form of licensing. D.C.'s law applies to all types of firearms and requires individuals to complete safety training. Certificates are valid for three years and while there is no limit on the number of firearms purchased during this period, a person may not register more than one handgun in D.C. during any 30-day period.

6. Gun Dealer License

The ATF issues eleven types of Federal Firearms Licenses, including “Dealer in Firearms Other than Destruction Devices” and “pawnbroker in Firearms other than Destructive Devices).⁷⁷³ According to ATF data, in December 2017, there were currently 134,853 total active firearms dealers' licenses across the United States.⁷⁷⁴ Under the Gun Control Act of 1968, it is unlawful for anyone except a licensed dealer to engage in the business of dealing firearms.⁷⁷⁵ However, the definition of “engaged in business” excludes “a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms”⁷⁷⁶ Therefore, “private sellers” who are not “engaged in business” are exempt from a federal firearms license requirement; it is estimated that 40% of gun sales in the U.S. occur through private transaction without a federal license.⁷⁷⁷

7. High-Capacity magazine

Also known as a large capacity ammunition magazine, a high-capacity magazine is any detachable ammunition storage or feeding device which holds ten more rounds of

⁷⁶⁸ Md. Code Ann. Pub. Safety § 5-117.1. 2013 Md. SB 281 (Approved by the Governor May 16, 2013).

⁷⁶⁹ N.J. Stat. Ann. § 2C:58-3.

⁷⁷⁰ *Id.*

⁷⁷¹ Cal. Penal Code §§ 16370, 16670, 26840-26859, 31610-31700.

⁷⁷² D. C. Code Ann. §§ 7-2502.01 – 7-2502.10; D.C. Mun. Regs. tit. 24, D.C. Mun. Regs. tit. 24, §§ 2311 – 2320.

⁷⁷³ Listing of Federal Firearms Licensees (FFLs) - 2017, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, www.atf.gov/firearms/listing-federal-firearms-licensees-ffls-2017, (accessed Oct. 15, 2018).

⁷⁷⁴ *Report of Active Firearms Licenses - License Type by State Statistics*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (Dec. 11, 2017), www.atf.gov/firearms/docs/undefined/ffltypebystate12112017pdf/download.

⁷⁷⁵ 18 U.S.C. § 922(a)(1)(A).

⁷⁷⁶ 18 U.S.C. § 921(a)(21)(C).

⁷⁷⁷ Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Dep't of Justice, National Institute of Justice Research in Brief 6-7 (May 1997), www.ncjrs.gov/pdffiles/165476.pdf.

ammunition.⁷⁷⁸ This type of magazine enhances a firearm so that it may fire more rounds without reloading.⁷⁷⁹ Firearms must be specially manufactured in order to accept high-capacity magazines; before the 1980s, revolvers which did not accept more than six rounds of ammunition were the most commonly manufactured handgun, after, “the firearms industry began mass producing semiautomatic pistols,” which may hold high-capacity magazines.⁷⁸⁰ The standard high-capacity magazine holds thirty bullets; the “drum magazine” style of high-capacity magazine used in the July, 2012 Aurora, Colorado theater shooting, in which seventy people were shot within ninety seconds, could hold 100 rounds.⁷⁸¹

8. Mass Shooting

Under U.S. federal law, “mass *killings*” mean “three or more *killings* in a single incident” under the Investigative Assistance for Violent Crimes Act of 2012.⁷⁸² The FBI defines mass *murder* as “four or more victims” slain, in one event, in one location – not including the offender(s).⁷⁸³ Federal law does not formally define “mass *shooting*,” the colloquial term used in public discourse. However, the Congressional Research Service defines “mass shooting” as a “multiple homicide incident in which four or more victims are murdered with firearms...within one event, and in one or more locations relatively near one another.”⁷⁸⁴ A “mass public shooting” is “a multiple homicide incident in which four or more victims are murdered with firearms...within one event, in one or more public locations, such as a workplace, school, restaurant, house of worship, neighborhood, or other public setting.”⁷⁸⁵ As the Congressional Research Service report notes, the national dialogue on gun violence focuses upon mass public shootings, but mass murders involving domestic violence and gang and drug-related shootings occur frequently as well. Organizations compiling gun violence use some variant of this definition; some include “domestic, gang, and drug-related shootings” whilst others exclude them.⁷⁸⁶

9. National Rifle Association (NRA)

The NRA, which was founded in 1871, is known as one of the most effective and powerful lobby organizations in the United States. Although today the organization lobbies, raises

⁷⁷⁸ Brief for Law Center to Prevent Gun Violence & Cleveland School Remembers as Amicus Curiae at 3, *Fyock v. Sunnyvale*, No. 14-15408 (9th Cir. Jun. 24, 2014).

⁷⁷⁹ *Id.* at 9.

⁷⁸⁰ *Id.* at 9-10.

⁷⁸¹ Patrik Jonsson, *Gun Debate 101: Time to Ban High-Capacity Magazines?*, THE CHRISTIAN SCIENCE MONITOR (Jan. 16, 2013), www.csmonitor.com/USA/Politics/DC-Decoder/2013/0116/Gun-debate-101-Time-to-ban-high-capacity-magazines.

⁷⁸² Investigative Assistance for Violent Crimes Act of 2012 § 2(a)(2)(i)(I), Pub. L. No. 112-265, 126 Stat. 2435 (2013), www.congress.gov/112/plaws/publ265/PLAW-112publ265.pdf.

⁷⁸³ See William J. Krouse & Daniel J. Richardson, *Mass Murder with Firearms: Incidents and Victims, 1999-2013*, CONGRESSIONAL RESEARCH SERVICE 2 (July 30, 2015), fas.org/sgp/crs/misc/R44126.pdf.

⁷⁸⁴ *Id.*

⁷⁸⁵ *Id.* at 3.

⁷⁸⁶ See generally GUN VIOLENCE ARCHIVE, <http://www.gunviolencearchive.org/>.

money, and organizes large campaigns to block any law or policy that restricts access to guns, for its first 100 years, the NRA was primarily known for promoting the safe and proper use of firearms. It used to support and work with the government on the implementation of reasonable gun control laws, such as requirements for state-level permits for concealed weapons and gun dealer registration with the government. It was not until a power struggle within the NRA in the 1970s, and a change in leadership, that the NRA began to strictly oppose all forms of gun control and aggressively lobby in Congress and state legislatures. Using its massive influence and large financial campaign contributions, the NRA is often credited with helping some politicians win election or for causing the defeat of others that they viewed as a threat. Often, a negative NRA report about a candidate can end the career of a Republican lawmaker.⁷⁸⁷

10. Open-Carry

“Open carry” is the practice of openly carrying firearms in plain view in public spaces.⁷⁸⁸ There is no specific federal law against open carry; although, some state rules may not apply to federal government property. Only three states prohibit open carry for either handguns or long guns; two states do not allow open carry for handguns, while another three states do not allow open carry for long guns.⁷⁸⁹ Fifteen states require a license or permit for open carry for handguns only; five states also restrict open carry for long guns, but these restrictions may not include licensing requirements.⁷⁹⁰ Twenty-four states do not have open carry laws.

11. Permit to purchase

See Firearm License.

12. Red flag bills

Red-flag bills are designed to temporarily keep guns out of the hands of dangerous individuals. These laws typically empower law enforcement officers to petition a court to issue an “extreme risk protection order” to temporarily prohibit an individual from having or buying firearms if they exhibit signs that they could pose a danger to themselves or others. In some instances, a family member or other person can petition the court. Although the bills vary, generally a court can order two types of orders. ‘Final orders’ can last for up to a year and can only be issued after notice and an opportunity for the person in question to be heard and respond to evidence that they are a risk.⁷⁹¹ ‘Temporary orders,’ on the other hand, can be issued before a full hearing is held if there is clear evidence that an immediate order

⁷⁸⁷ See Ron Elving, *The NRA Wasn't Always Against Gun Restrictions*, NPR (Oct. 10, 2017), www.npr.org/2017/10/10/556578593/the-nra-wasnt-always-against-gun-restrictions.

⁷⁸⁸ *Open Carry*, GIFFORDS LAW CTR.TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/open-carry/.

⁷⁸⁹ *Id.*

⁷⁹⁰ *Id.*

⁷⁹¹ *Red Flag Laws: Helping Prevent Mass Shootings*, EVERYTOWN FOR GUN SAFETY (July 16, 2018).

restricting the person's access to firearms is necessary to prevent immediate danger. Temporary orders generally last between 14 and 21 days.⁷⁹²

There is no federal red-flag bill. Prior to the Parkland shooting, only two states had some form of this law in place; currently 14 states⁷⁹³ have red-flag laws in place. A further 29 states⁷⁹⁴ and the District of Columbia have considered Red Flag legislation over the past year.⁷⁹⁵

13. Registration

See Firearm License.

14. Safe Storage (including secure storage, gun locking devices, safe storage laws)

Safe storage laws require gun owners to keep their firearms in such a manner that only the intended owner can use them and/or that children or other prohibited persons cannot access them.⁷⁹⁶ These laws are intended to prevent tragedies such as suicides, accidental shootings by children who either think the gun is a toy or are handling it without supervision, gun thefts that lead to further crime, or dangerous persons who use some else's gun to commit mass shootings, such as is the case in the Santa Fe High School shooting. A national survey found that a majority of Americans – 67.2 % of respondents – support laws that would require gun owners to lock their guns up at home, when not in use, to prevent children from handling them without proper supervision.⁷⁹⁷

Safe storage options vary. Possibilities may include storing firearms in a locked container or firearm safe when not carried on the lawful owner's person or equipping the gun with a tamper-resistant mechanical locking device.

Federal law does not require gun owners to safely store their guns.⁷⁹⁸ Massachusetts is the only state to require that all firearms are stored with a lock in place; California, Connecticut and New York have laws requiring guns to be kept locked in some circumstances.⁷⁹⁹ Eleven states⁸⁰⁰ require that licensed dealers either provide or offer a gun lock with some firearm

⁷⁹² *Id.*

⁷⁹³ These states are: California, Connecticut, Delaware, Florida, Illinois, Indiana, Maryland, Massachusetts, Oregon, Vermont, and Washington.

⁷⁹⁴ These states are: Alabama, Alaska, Arizona, Colorado, Delaware, Florida, Hawaii, Iowa, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Vermont, and Wisconsin.

⁷⁹⁵ *Id.*

⁷⁹⁶ *Safe Storage*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/child-consumer-safety/safe-storage/>.

⁷⁹⁷ Barry et al., *supra* note 31.

⁷⁹⁸ *See supra* ¶ 58.

⁷⁹⁹ *Supra* note 275.

⁸⁰⁰ These states are: California, Connecticut, Illinois, Maryland, Massachusetts, Michigan, New Jersey, new York, Ohio, Pennsylvania, and Rhode Island.

sales – many laws limit this to handgun sales only – and four of those states⁸⁰¹ require locks to accompany some private firearm sales.⁸⁰²

Similarly, there is no federal law setting standards or approving of firearm locks. Five states – California, Connecticut, Maryland, Massachusetts, and New York, require that gun locks meet certain standards or be approved by a supervising person such a colonel of the state police force.⁸⁰³

15. Stand-Your-Ground (SYG) Laws

Stand-Your-Ground (SYG) laws provide that “a person has the right to expect absolute safety in a place they have a right to be, and may use deadly force to repel an unlawful intruder.”⁸⁰⁴ It stems from the common law “castle doctrine” which establishes that a person has no duty to retreat in their home (or “castle”) and may use reasonable force, including deadly force, to defend his or her property or person. SYG laws expand the castle doctrine to allow a person to use deadly force for self-defense in public.⁸⁰⁵ There are no federal SYG laws, but twenty-eight states⁸⁰⁶ have enacted SYG laws. While, until 2005, Utah and Florida were the only two states that had SYG laws, since 2005, twenty-six additional states have enacted SYG laws.⁸⁰⁷ A 2017 JAMA study showed that Florida’s SYG law was associated with a 32% increase in firearm homicide.⁸⁰⁸ In addition, a study found that when a homicide attacker is white and victim is black, it is 281% more likely for the homicide to be found justified than when the victim is white.⁸⁰⁹

16. Universal Background Check

The universal background check requires background checks for all firearm sales or permits regardless of whether the firearm dealer is licensed or not. Under federal law, only licensed

⁸⁰¹ These states are: California, Connecticut, Massachusetts, and New Jersey.

⁸⁰² *Safe Storage*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, *supra* note 796.

⁸⁰³ *Id.*

⁸⁰⁴ *Dawkins v. State*, 252 P.3d 214, 217 (Okla. 2011).

⁸⁰⁵ *See generally*, American Bar Association, *National Task Force on Stand Your Ground Laws – Report and Recommendations* (Sept. 2015), www.americanbar.org/content/dam/aba/images/diversity/SYG_Report_Book.pdf; *see also* Ackermann et al., *Race, Law, and Health*, *supra* note 146.

⁸⁰⁶ The twenty-eight state are: Alabama, Alaska, Arizona, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin. *See “Stand Your Ground” Laws*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/stand-your-ground-laws/. The majority of these states have adopted Stand Your Ground laws legislatively; others have adopted them in practice. Three of these states limit Stand Your Ground to only when a person is within their vehicle.

⁸⁰⁷ *Id.*

⁸⁰⁸ David K. Humphreys et al., *Evaluating the Impact of Florida’s “Stand Your Ground” Self-defense Law on Homicide and Suicide by Firearm: An Interrupted Time Series Study*, 177 JAMA INTERN MED. 44 (2017).

⁸⁰⁹ John Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, URBAN INSTITUTE (July 2013), <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.

firearms dealers must perform background checks on firearm purchasers through the national instant criminal background check system.⁸¹⁰ No federal law mandates background checks for private sales.

Eleven states—California, Colorado, Connecticut, Delaware, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington—and the District of Columbia have the most comprehensive form of universal background check requiring background checks for all sale and transfer of all classes of firearms at the point of sale. Maryland and Pennsylvania require universal background checks for handguns only. Instead of a background check at the point of sale, eight states prohibit private firearms dealers from selling firearms to purchasers without a state license or permit and require a background check for those licenses or permits. Hawaii, Illinois, Massachusetts, and New Jersey require licenses or permits for all classes of firearm purchases while Iowa, Michigan, Nebraska, and North Carolina require them only for handgun purchases.⁸¹¹

A number of studies⁸¹² and the example of numerous states⁸¹³ have demonstrated that background check requirements are associated with reduced firearm-related violence. A majority of Americans, including gun owners, support a universal background check requirement for all gun sales.⁸¹⁴

⁸¹⁰ Gun Control Act of 1968, 18 U.S.C. § 922(t).

⁸¹¹ See GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, *Universal Background Checks*, lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks.

⁸¹² See EVERYTOWN FOR GUN SAFETY, *State Background Check Requirements: Mass Shootings* (Nov. 12, 2015), <http://everytownresearch.org/state-background-check-requirements-mass-shootings/>; Igor Volsky, *This New Study Proves That Background Checks Save Lives*, THINK PROGRESS (Feb. 15, 2014), <http://thinkprogress.org/justice/2014/02/15/3297141/study-proves-background-checks-save-lives/>; Anestis et al., *Suicide Rates and State Laws*, *supra* note 330.

⁸¹³ For example, Missouri's 2007 repeal of its permit-to-purchase law, which had required permits conditioned on background checks for all handgun purchasers since 1921, was found to be associated with a 25% increase in firearm homicide through 2012 despite a decline in national murder rate during this period. Webster et al., *Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides*, *supra* note 303. In contrast, Connecticut's 1995 implementation of permit-to-purchase law for handgun purchase has been associated with a 40% decrease in the state's firearm homicide. Rudolph, *supra* note 340.

⁸¹⁴ Barry et al., *supra* note 31.