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Questions for the Record
Hearing on “Constitutional and Common Sense Steps to Reduce Gun Violence”
Submitted March 30, 2021

QUESTIONS FROM CHAIRMAN DURBIN

1. Please respond to Ms. Swearer’s [testimony](#) regarding H.R. 8 and H.R. 1446.
2. Please discuss how gaps in background check laws affect interstate firearms trafficking.
3. Please elaborate on the importance of state extreme risk protection order laws, particularly when it comes to reducing the high number of gun suicides that occur each year, and the due process protections built into such laws.
4. Please discuss the current state of evidence surrounding defensive gun use and its relationship to gun deaths and injuries.
5. Please discuss proposals to address the intersection of firearms and hate crimes.
6. Please discuss the importance of laws requiring that guns be stored in a manner that prevents unsupervised access by children.
7. Please discuss the risks and dangers posed by ghost guns, as well as steps that would address those risks and dangers.

Responses:

1. No one should be able to buy a gun without passing a background check, which is why we need federal legislation like H.R. 8 and H.R. 1446 to close dangerous loopholes in our laws.

H.R. 8

Ms. Swearer claims H.R. 8 is a low-reward policy because “universal background checks fail to meaningfully address the primary ways in which would-be criminals obtain firearms,” which she claims include “black market gun sales, straw purchases, and informal transfers by friends or family members who likely already know the gun could be used for criminal purposes.” H.R. 8 does, in fact, address exactly those transfers, each of which involve an unlicensed person transferring a firearm to another unlicensed person. H.R. 8 would hold accountable those who fail to conduct background checks for those transfers, with limited exceptions for transfers to close family members, hunting, shooting, and self-defense.

In addition, focusing on the existence of some situations where the bill would not apply is illogical. We do not repeal laws because criminals violate them from time to time. Even if universal background checks will not stop every crime, they will make it more difficult for people prohibited from buying guns to get their hands on weapons that have the potential to inflict injury on themselves or others. Since 1994, background checks have stopped over three million gun sales or transfers to people with felony or domestic violence convictions, people with serious mental illness, and other ineligible individuals. H.R. 8 focuses on the firearm suppliers who do not currently conduct background checks, reducing the easy availability of guns to criminals, which Ms. Swearer acknowledges is a “legitimate concern” which it is “not inherently unreasonable to be concerned about.”

Ms. Swearer claims H.R. 8 “imposes substantial burdens on low-risk transfers,” including sales between family members and gifts among close friends. While some transfers may appear low-risk, one study found that 25% of prisoners who possessed a firearm during their offense obtained it from a family member or friend, or as a gift. As such, H.R. 8 includes reasonable exceptions for situations like hunting, family, and self-defense. The exemption for loans or gifts between family members mirrors existing state universal background check laws and applies broadly to family members. This exception respects the bond and familial culture while also acknowledging that family members still have a responsibility to refuse access to guns to those who they have a reason to believe are likely to misuse them. Family members within this exception are *likely* to know whether they have criminal histories; many are blood relatives, and they may cohabitate together or work together. The exception is carefully circumscribed to ensure that it allows transfers among family members likely to truly know each other, such as siblings. This exception does not extend to distant relatives who are not likely to know each other very well and does not extend to sales (where the desire for profit may override concerns about safety).

Under the language of this exception, if a person has a reason to believe that their family member has a criminal history or intends to use the gun in a crime, the person cannot transfer the gun without a background check. In this way, the language of the exception mirrors another provision already in federal law that makes it unlawful to transfer a gun to anyone when there is a reason to believe the person is not eligible to possess guns. Using Ms. Swearer’s example, if an aunt remarries, the new uncle may not know his new nephew’s background well or the nephew may not know the new uncle’s background well. If there is reason to suspect the new family member has a criminal background, is otherwise ineligible to possess firearms, or they simply do not know about their family member’s eligibility, there should be an abundance of caution taken before giving guns as gifts.

Ms. Swearer provides an example of a “low-risk transfer” involving a neighbor traveling overseas who wants to transfer his firearm to a neighbor he has known for 20 years to

store while he is abroad. She claims the neighbor’s “choices” are limited to “leav[ing] his firearms in an unoccupied home for an extended period of time, legally ced[ing] them to his neighbor, or turn[ing] his neighbor into a felon.” Ms. Swearer fails to consider the firearm storage options at an FFL, in-home storage options including safes with biometric locks or similar locking mechanisms, as well as potential circumstances surrounding the neighbor’s personal life that may make them an inappropriate transferee.

Ms. Swearer claims H.R. 8 serves as a “barrier[] to common life-saving transfers.” The exemption allowing the transfer to “prevent imminent death or great bodily harm” addresses the need to override procedural norms if an individual is in imminent danger from themselves or another. The word “imminent” is used in the law in many contexts to refer to a risk that is close enough in time, or likely to happen in the near future, so that there is a pressing need to override normal procedures. For example, courts will issue an ex parte domestic violence order (an order that lasts until a full hearing) when a domestic violence victim is in “imminent” danger. Normally, a court order has to wait until a full hearing with both parties present, but the court can act in the case of an imminent danger before waiting until the hearing. If a gun owner no longer thinks they should have a gun in their possession, they should go to a gun store to have it properly transferred (i.e., either transfer it to the gun store, or to someone else with a background check) or give it to a close family member for safekeeping as soon as reasonably possible. If there isn’t enough time, this exception already would apply.

Allowing private sellers to sell guns without a background check is letting gun violence happen. In fact, data suggests that individuals who commit crimes with firearms intentionally purchase guns from sellers who aren’t required to run background checks. For example, purchasers from unlicensed sellers on armslist.com, a major online firearms marketplace, were over seven times as likely to have a firearm-prohibiting criminal record than people attempting to buy guns from licensed dealers.¹

Despite Ms. Swearer’s claim, additional background checks would not present a “substantial burden” for unlicensed sellers or potential buyers. There are currently 53,000 firearms dealers licensed by ATF,² all of whom would be authorized to conduct background checks on behalf of unlicensed sellers under this bill. These dealers are not hard to come by—there are nearly twice as many gun dealers as post offices in the United States—and even the most rural states still have substantial numbers of these businesses. In thinly populated Wyoming, for example, there are 528 firearms dealers who could

¹ Everytown for Gun Safety, “Unchecked: An Investigation of the Online Firearm Marketplace,” (Feb. 1, 2021), <https://everytownresearch.org/report/unchecked-an-investigation-of-the-online-firearm-marketplace/>

² Bureau of Alcohol, Tobacco, Firearms and Explosives, “Complete Federal Firearms Listing,” last access September 8, 2022, https://www.atf.gov/firearms/listing-federal-firearms-licensees/complete?field_ffl_date_value%5Bvalue%5D%5Byear%5D=2021&ffl_date_month%5Bvalue%5D%5Bmonth%5D=1.

conduct background checks. In Nebraska, there are 656 such dealers. This network of gun dealers stretches across the country and is easily accessible to any person who wishes to conduct a background check on a potential buyer.

H.R. 1446

The federal “default proceed” rule allows the FBI three business days to conduct and finish their investigation before an FFL may transfer a firearm to the purchaser. Ms. Swearer questions “whether H.R. 1446 provides an appropriate solution to a minimal factor in gun crime.” Specifically, she states that while “extending the three-day limit is often touted as a means of combating mass public shootings, H.R. 1446 would not have prevented a single mass public shooting in recent memory” and “there is little (if any) statistical support for a conclusion that the current limitation [3 business days], even with all its flaws, is a significant force behind other, more common forms of gun-related violence.”

In 2020 and 2021, the current “default proceed” rule resulted in the FBI providing to ATF over 11,500 referrals for retrievals of firearms transferred to prohibited purchasers after the three business days but before a background check cleared.³ Many default proceed cases require extra time and attention precisely because the firearm purchaser has a long record of dangerous red flags; default proceeds are four times more likely to involve a prohibited purchaser than other background checks.⁴ In cases where a sale went through under the default proceed procedure and the FBI was ultimately able to complete a background check, the FBI has reported that more than 5 percent or an estimated 4,000 individuals each year were determined to be legally prohibited from purchasing or possessing a firearm.⁵

Not only were there nearly 12,000 instances in which a firearm was transferred to a prohibited purchaser in 2020 and 2021 but, as a result, ATF had nearly 12,000 referrals for firearms they were tasked with retrieving from individuals prohibited from purchasing firearms. Additional time to investigate a person’s background before a firearm is allowed to be transferred would decrease the number of prohibited purchasers in receipt of firearms, decrease interactions with law enforcement who must retrieve the firearms, and thus allow ATF to use its already limited resources to engage in its other firearm-related responsibilities. H.R. 1446 could accomplish this all without burdening gun

³ Federal Bureau of Investigations, “National Instant Criminal Background Check System Operational Report 2020-2021,” last accessed September 8, 2022, <https://www.fbi.gov/file-repository/nics-2020-2021-operations-report.pdf/view>.

⁴ Everytown Research & Policy, “Undeniable: How Long-Standing Loopholes in the Background Check System Have Been Exacerbated by COVID-19,” last accessed September 8, 2022, <https://everytownresearch.org/report/background-check-loopholes/#the-widening-of-the-charleston-loophole>.

⁵ Ibid.

owners, who in at least 90 percent of cases are processed through NICS within minutes, making H.R. 1446 an appropriate solution to major factors in gun crime and public safety.

Ms. Swearer believes that a “good faith attempt to assist an FBI that is...overwhelmed and overworked...would involve additional funding and manpower.” Giffords agrees that if the background checks system can’t keep up, additional resources are worthwhile, and part of the solution is to provide these agencies with the resources they need to properly conduct background checks on all firearm purchases. However, a “good faith” attempt to assist the FBI would also involve listening to the FBI’s needs. The FBI has recommended extending the three-business-day period to allow agents more time to complete background check investigations and to reduce the number of prohibited purchasers who are able to purchase firearms by default.⁶

Notably, the FBI must sometimes ask state and local officials for more information in order to accurately complete background checks but lacks the authority to ensure that those officials respond in a timely fashion. As a result, funding for the NICS alone may not always be sufficient to ensure the completion of background checks within the three-business-day time period.

Most Americans believe that any person who seeks to lawfully acquire a firearm must pass a background check before obtaining the gun. We do not claim that H.R. 8 and H.R. 1446 will eliminate all gun violence, nor do we claim that these two bills are the answer to every possible scenario. Gun violence is a complex and multifaceted problem which must be addressed with a number of solutions. Strongly enforced, completed universal background checks are a necessary foundation to ensure that all of our gun laws work most effectively.

2. Current federal law requires federal firearms licensees – manufacturers, dealers, and importers – to conduct background checks on gun purchasers but does not require unlicensed gun sellers to do so. As a result, people prohibited from purchasing or possessing firearms, including people convicted of felonies and domestic violence crimes, can easily obtain firearms from unlicensed sellers. Twenty-one states and Washington, DC have extended the background check requirement beyond federal law to at least some gun sales from unlicensed sellers. Of these, 16 states and DC require background checks for all gun sales. Comprehensive background check laws are associated with reduced rates of gun trafficking. However, the effectiveness of background check laws enacted by states is limited by one important fact: people can easily transport guns across state lines after they buy them. State laws vary wildly, and

⁶ U.S. General Accounting Office, Gun Control: Implementation of the National Instant Criminal Background Check System 13 (Feb. 2000), at <http://www.gao.gov/new.items/g100064.pdf>.

gun traffickers move guns far too easily from states without background check laws into states with background check laws. In fact, states without universal background check laws are the sources for crime guns recovered across state lines at a 30% higher rate than states that require background checks on all gun sales.⁷ ATF reports that nearly 60,000 guns are trafficked across state lines every year, often from states without background check requirements to states with background check requirements,⁸ where these guns are possessed by people not legally eligible to possess them. This undermines the effectiveness of those laws.

H.R. 8 would discourage gun trafficking and might prevent many dangerous sales and transfers by unlicensed people from happening altogether. The current loophole allows individuals to sell guns to people who might be prohibited without a background check. If this loophole no longer exists, these individuals might not choose this path. This bill might deter would-be unlicensed gun sellers from entering the secondary market in guns in the first place. Or they might decide not to bother moving forward with selling guns to particular people because they have failed a background check.

3. Extreme risk laws create a process that allows law enforcement agencies, and depending on the jurisdiction, families, household members, and certain key community members to petition a court directly for an extreme risk protection order (ERPO), which temporarily restricts a person's access to guns if they are found to present a significant risk of harming themselves or others. This vital tool saves lives by allowing the people who are most likely to notice when a loved one or community member poses a risk to themselves or others with a firearm to take concrete steps to temporarily disarm the person at risk.

These laws now exist in some form in 19 states and the District of Columbia and save lives while ensuring due process for those who pose serious dangers: researchers have determined that in Connecticut, for every 10 to 20 orders issued, one life was saved.⁹

Laws authorizing ERPOs are a critical tool in helping to prevent gun suicides, which represent 60 percent of gun deaths. Guns are used in only five percent of suicide attempts, but are responsible for over 50 percent of all suicide deaths, because suicides attempted with guns are fatal 85 percent of the time, far more often than suicides

⁷ Daniel W. Webster, Jon S. Vernick, and Maria T. Bulzacchelli, "Effects of State-level Firearm Seller Accountability Policies on Firearm Trafficking," *Journal of Urban Health* 86, no. 4 (2009): 525–537; Daniel W. Webster, Jon S. Vernick, Emma E. McGinty, and Ted Alcorn, "Preventing the Diversion of Guns to Criminals Through Effective Firearm Sales Laws," in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* (Baltimore: The Johns Hopkins University Press, 2013), 109–121.

⁸ "Data & Statistics: Firearm Trace Data". Bureau of Alcohol, Tobacco, Firearms and Explosives. (2020), <https://www.atf.gov/resource-center/data-statistics>.

⁹ Jeffrey W. Swanson et al., "Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides?," *Law and Contemporary Problems* 80, no. 2 (2017): 179-208.

attempted by other means.¹⁰ Put simply, people are more likely to die by suicide if they have easy access to firearms, and far less likely to die by suicide if they do not. For many individuals, this may mean the difference between life and death: nine out of 10 people who survive a suicide attempt do not die by suicide at a later date.¹¹

At a Senate Judiciary hearing about extreme risk laws in March 2019, King County (WA) Senior Deputy Prosecuting Attorney Kimberly Wyatt recounted instances in which Washington state’s ERPO law helped prevent gun suicides, including: a concerned therapist who contacted law enforcement to remove firearms from their suicidal patient and a woman who requested an ERPO for her suicidal partner, who later shared his gratitude that someone had intervened and removed his firearms during that moment of crisis.¹²

Extreme risk laws do not violate due process. Extreme risk laws are designed to temporarily remove firearms from individuals who have demonstrated they are a danger to themselves or others. Due process is fundamental to these laws. They are modeled on states’ domestic violence protection order procedures, which have been utilized across the country for decades and withstood legal challenges.

Due process does not require states to use boilerplate language and a uniform procedure. Courts across the country have repeatedly stressed that due process can take a variety of forms. Due process is a balance of the various interests involved, including the value of additional procedures, the burden they place on the courts and the parties, the government’s interest in the procedure, and the impact of the procedure on the individual. As the D.C. Circuit Court of Appeals has said, “In deciding if the totality of a procedure meets these core requirements of due process, no component of a procedure can be analyzed independently of the others. ... ‘if an agency chooses to go further than is constitutionally demanded with respect to one item, this may afford good reason for diminishing or even eliminating another.’”¹³ In other words, due process may look different in different states. However, all state ERPO laws incorporate certain features to protect due process. More specifically, these laws all:

- Require a court, upon receipt of an application or a request from the individual, to order a hearing to be held within a short period of time.

¹⁰ Giffords Law Center to Prevent Gun Violence, “Confronting the Inevitability Myth: How Data-Driven Gun Policies Save Lives from Suicide,” September 2018: 8, 25, https://giffords.org/wp-content/uploads/2018/09/Giffords-Law-Center-Confronting-The-Inevitability-Myth_9.3.18.pdf.

¹¹ David Owens, Judith Horrocks, and Allan House, “Fatal and Non-fatal Repetition of Self-harm: Systematic Review,” *The British Journal of Psychiatry* 181, no. 3 (2002): 193–199.

¹² Written Testimony of Kimberly Wyatt, Senior Deputy Prosecuting Attorney, King County Prosecuting Attorney’s Office, Hearing Before the United States Senate Committee on the Judiciary, March 26, 2021, <https://www.judiciary.senate.gov/imo/media/doc/Wyatt%20Testimony.pdf>.

¹³ *Gray Panthers v. Schweiker*, 652 F.2d 146, 165 (D.C. Cir. 1980).

- Prohibit the issuance of an extreme risk order at a hearing unless the court has found, by a preponderance of the evidence or higher standard, that the person poses a danger by having access to a firearm.
 - Enable the termination of an extreme risk order and return of the person’s guns as soon as appropriate
 - Prohibit a court from issuing an ex parte extreme risk order unless the court finds probable cause, or a higher standard, to believe that the respondent poses a danger.
 - Prohibit the continuation of an ex parte extreme risk order beyond the time set for a hearing.
4. For most individuals, the benefits of having a gun in the home are far outweighed by the risks associated with gun ownership. Bringing a gun into the home to protect against outside threats introduces new, more likely threats, with firearm access tripling the risk of suicide death and doubling the risk of homicide.¹⁴

Guns brought into the home for self-defense are often stolen and used in crime.¹⁵ On the other side of the equation, people successfully defend themselves with guns in less than 1% of crimes in which there is contact between a perpetrator and a victim.¹⁶ Research indicates that having access to a gun doesn’t better protect people from being injured during a crime more than other protective actions like calling law enforcement or fleeing the scene.¹⁷ In fact, carrying a firearm may increase a victim’s risk of injury when a crime is committed, with one study indicating that people in possession of a gun may be more than four times more likely to be shot in an assault.¹⁸ In other words, when individuals keep guns in their homes, the odds are greater that the gun will kill or injure them, their family members, and any cohabitants than the odds that it will protect them.¹⁹ Thus, these negative consequences of gun ownership are far more common, and more foreseeable, than the use.

¹⁴ Andrew Anglemyer et al., “The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members” *Ann. Intern Med.* vol. 160 (2014):101-110. DOI:10.7326/M13-1301.

¹⁵ David Hemenway, Deborah Azrael, and Matthew Miller, “Whose Guns are Stolen? The Epidemiology of Gun Theft Victims,” *Injury Epidemiology* 4, no. 1 (2017); Anthony Fabio et al., “Gaps Continue in Firearm Surveillance: Evidence from a Large US City Bureau of Police,” *Social Medicine* 10, no. 1 (2016): 13–21.

¹⁶ David Hemenway et al., “The epidemiology of self-defense gun use: evidence from the National Crime Victimization Surveys 2007-2011.” *Preventive Medicine* vol. 79 (2015): 22-7. DOI:10.1016/j.ypmed.2015.03.029

¹⁷ *Ibid.*

¹⁸ Charles C. Branas et al., “Investigating the link between gun possession and gun assault.” *Am. J. Public Health* vol. 99 (Nov. 2009):2034-40. DOI: 10.2105/AJPH.2008.143099.

¹⁹ Arthur L. Kellermann et al., “Injuries and Deaths Due to Firearms in the Home.” *45 J. Trauma* vol. 45 (Aug. 1998):263-7. DOI: 10.1097/00005373-199808000-00010. See also David Hemenway et al., “The relative frequency of offensive and defensive gun uses: results from a national survey.” *Violence and Victims* vol. 15,3 (2000): 257-72.

A wide range of estimates are cited around the number of defensive gun uses in the United States, with data from private surveys often showing estimates many multiples higher than estimates produced from the National Crime Victimization Survey (NCVS).²⁰ The lower estimates from the NCVS are likely more accurate, given that the NCVS relies on a much larger sample size than private surveys. A number of researchers have suggested that the smaller samples used in private surveys may lead to an overestimation of rare events.²¹

Additionally, the high number of defensive gun uses suggested by these smaller surveys far outpace the total number of gun deaths and injuries in this country. Importantly, research shows that most individuals—even individuals who have committed crimes—seek medical care after being shot.²² Current data on the number of people dying from or receiving care for gunshot wound injuries would not support the notion that there are hundreds of thousands or even millions of successful defensive gun uses.²³

The most reputable research on defensive gun use suggests that these events are rare—occurring in less than 1% of crimes where there is contact between the victim and the perpetrator.²⁴ In fact, this research suggests that calling the police or fleeing is more protective than using a gun and that simply doing nothing results in injury about as often as using a gun to defend oneself does.²⁵ Studies strongly suggest that guns are far more likely to be used inappropriately or to cause harm to members of the household than they are to be used to defend someone in the household.²⁶

Finally, researchers have also suggested that it is likely that the majority of reported defensive gun uses on private surveys were probably illegal and contrary to the interests

²⁰ “The Challenges of Defining and Measuring Defensive Gun Use,” RAND Corporation, March 2, 2018, <https://www.rand.org/research/gun-policy/analysis/essays/defensive-gun-use.html>.

²¹ David Hemenway, “Survey Research and Self-defense Gun Use: an Explanation of Extreme Overestimates,” *Journal of Criminal Law & Criminology* 87 (1996); Philip J. Cook, Jens Ludwig, and David Hemenway, “The Gun Debate’s New Mythical Number: How Many Defensive Uses Per Year?,” *Journal of Policy Analysis and Management* 16, no. 3 (1997): 463–469.

²² John P. May, David Hemenway, and Alicia Hall, “Do Criminals Go to the Hospital When They Are Shot?,” *Injury Prevention* 8, no. 3 (2002): 236–238; John P. May et al., “Medical Care Solicitation by Criminals with Gunshot Wound Injuries: a Survey of Washington, DC, Jail Detainees,” *Journal of Trauma and Acute Care Surgery* 48, no. 1 (2000).

²³ David Hemenway, “Survey Research and Self-defense Gun Use: an Explanation of Extreme Overestimates,” *Journal of Criminal Law & Criminology* 87 (1996).

²⁴ David Hemenway, and Sara J. Solnick, “The Epidemiology of Self-defense Gun Use: Evidence from the National Crime Victimization Surveys 2007–2011,” *Preventive Medicine* 79 (2015): 22–27.

²⁵ *Id.*

²⁶ See, e.g., Elissa K. Butler et al., “Risk of Suicide, Homicide, and Unintentional Firearm Deaths in the Home,” *JAMA Internal Medicine* 180, no. 6 (2020): 909–911; Deborah Azrael and David Hemenway, “‘In the Safety of Your Own Home’: Results From a National Survey on Gun Use at Home,” *Social Science & Medicine* 50, no. 2 (2000): 285–291.

of society.²⁷ Researchers in one study asked judges to review descriptions of self-reported self-defense gun use cases, and in a majority of reviewed cases, judges believed the self-defense gun use was probably illegal, even assuming that the defender had a permit to own and carry the gun and that the defender described the event honestly.²⁸

5. Hate and bigotry have motivated some of the deadliest mass shootings in our nation's history. S. 2090, the Disarm Hate Act, introduced by Senator Bob Casey, would prohibit people who have been convicted of a hate crime involving the use or threatened use of a deadly weapon from accessing firearms. Despite a nationwide rise in hate crimes, under current law, only individuals convicted of felony hate crimes are prohibited from purchasing or possessing guns.

Violent extremists and hate groups often use firearms as tools of violence and intimidation. In recent years, mass shootings at a grocery store in Buffalo, New York, three spas in Atlanta, Georgia, a Walmart in El Paso, Texas, a gay nightclub in Orlando, Florida, a historic African-American church in Charleston, South Carolina, a Sikh temple in Oak Creek, Wisconsin, and a college campus in Isla Vista, California, were among the deadliest hate crimes ever committed in the United States, and among the deadliest mass shootings in our nation's history. The disturbing scenes playing out in the streets of Charlottesville, Virginia in the summer of 2017 were yet another instance of the hate that plagues our communities every day.

Between 2010 and 2014, roughly 43,000 hate crimes were committed in the United States involving the use or threatened use of a gun. From 2019 to 2020, there was a 49% increase in hate crimes against Black Americans and a 77% increase in hate crimes against Asian Americans. From 2014 to 2020 the number of active anti-Muslim hate groups has increased three-fold, coinciding with a nearly 200% increase in hate crimes targeting the American Muslim community. The Anti-Defamation League has also reported a "significant, sustained increase in anti-Semitic activity since the start of 2016."

The problem is only getting worse, with 2019 marking the highest level of reported hate crimes in over a decade. According to the FBI, 2019 also saw notably more violent acts of hate than previous years.²⁹

²⁷ David Hemenway, Chloe Shawah, and Elizabeth Lites, "Defensive Gun Use: What Can We Learn from News Reports?," *Injury Epidemiology* 9, no. 1 (2022): 1–10; David Hemenway, Deborah Azrael, and Matthew Miller, "Gun Use in the United States: Results from Two National Surveys," *Injury Prevention* 6, no. 4 (2000): 263–267.

²⁸ David Hemenway, Deborah Azrael, and Matthew Miller, "Gun Use in the United States: Results from Two National Surveys," *Injury Prevention* 6, no. 4 (2000): 263–267.

²⁹ "Hate Crimes," Federal Bureau of Investigation, last accessed January 14, 2021, <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.

The Disarm Hate Act (S. 2090) would act to address this problem by keeping firearms out of the hand of those convicted of misdemeanor hate crimes by prohibiting the purchase, possession, or shipment of a firearm by anyone convicted of a misdemeanor hate crime or who received a hate crime sentence enhancement, and prohibit the sale of firearms to anyone known to have been convicted of a misdemeanor hate crime.

6. Safe storage laws promote responsible gun ownership by requiring gun owners to store their firearms securely, unloaded and locked in a gun safe or using a trigger lock when not in use by the gun owner. These laws seek to prevent unauthorized users, including children, from gaining access to and using firearms and can be helpful in reducing gun suicides, unintentional shootings, and gun theft.

Data indicates that more than half of all gun owners store at least one firearm unsafely without any locking or safe storage measures.³⁰ Nearly a quarter of gun owners report storing all of their firearms in an unlocked location within their home.³¹ An estimated 4.6 million children live in homes with unlocked, loaded guns.³² 73% of children under age 10 living in homes with guns reported knowing the location of their parents' firearms,³³ and 36% admitted they had handled the weapons.³⁴ Many of these children handled guns without the knowledge of their parents and nearly a quarter of parents did not know that their children had handled a gun in their house.³⁵

The American Academy of Pediatrics recommends that firearms be stored unloaded, locked, and separate from ammunition because unsecured firearms in the home pose a great risk to children. Household guns are a major source of weapons used by youth in violence against themselves or others. Between 70 and 90% of guns used in youth suicides, unintentional shootings among children, and school shootings perpetrated by minors are acquired from their own home or the homes of relatives or friends.³⁶

³⁰ Cassandra K. Crifasi, et al., "Storage Practices of US Gun Owners in 2016," *American Journal of Public Health* 108, no. 4 (2018): 532–537.

³¹ *Id.*

³² Deborah Azrael, Joanna Cohen, Carmel Salhi, and Matthew Miller, "Firearm Storage in Gun-owning Households with Children: Results of a 2015 National Survey," *Journal of Urban Health* 95, no. 3 (2018): 295–304.

³³ Frances Baxley and Matthew Miller, "Parental Misperceptions About Children and Firearms," *Archives of Pediatrics & Adolescent Medicine* 160, no. 5 (2006): 542-547.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Renee M. Johnson, et al., "Who Are the Owners of Firearms Used in Adolescent Suicides?," *Suicide and Life-threatening Behavior* 40, no. 6 (2010): 609-611; Guohua Li, et al., "Factors Associated with the Intent of Firearm-related Injuries in Pediatric Trauma Patients," *Archives of Pediatrics & Adolescent Medicine* 150, no. 11 (1996): 1160-1165; John Woodrow Cox and Steven Rich, "'The Gun is Not in the Closet,'" *The Washington Post*, August 1, 2018, <https://wapo.st/2M2HSH6>. See also, Bryan Vossekuil, et al., "The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States," US Secret Service and US

Several studies have shown that the risk of suicide and unintentional shootings among youth increases in homes where guns are kept loaded and/or unlocked. Numerous studies over the past 20 years have found that child access prevention laws can reduce suicide and unintentional gun deaths and injuries among children and teens by up to 54%, with the greatest reductions occurring in states which require safe storage of firearms.³⁷

Safe storage laws help reduce youth gun suicides and unintentional shootings by requiring firearms to be securely, unloaded and locked in a safe, and a reduction in youth gun suicides and other shootings helps prevent further tragedy, including post-traumatic stress disorder, fearfulness, anxiety, and other forms of trauma, as well as decreased academic performance and devastating effects on long-term achievement, and the rippling effects of a student's suicide that results in an increased risk of additional suicidal ideation.

7. Ghost guns are untraceable, “do-it-yourself” firearms assembled from parts or using a 3-D printer. These parts can be obtained without a background check, meaning that firearms can be assembled by unlicensed persons, including people prohibited from possessing guns. They also lack serial numbers and are therefore untraceable by law enforcement if used in a crime. Ghost guns evade all the regulations which apply to the regulated firearms industry.

Ghost gun parts are available to almost anyone, regardless of their eligibility to possess firearms, meaning that people convicted of felonies or domestic violence and others at a high risk of violence can easily assemble them. The alarming proliferation of these weapons is a threat to public safety, including law enforcement. By removing easy access to ghost guns by persons ineligible to possess them, the presence of ghost guns and the number of people in possession of ghost guns, though ineligible, may decrease, making communities and law enforcement safer.

In the traditional manufacturing process, the firearm manufacturer or importer will affix a serial number and markings that identify the manufacturer or importer, make, model, and caliber. Using this information, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) can track firearms from the manufacturer or importer through the

Department of Education, July 2004, <https://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf>; Tawnell D. Hobbs, “Most Guns Used in School Shootings Come From Home,” *The Wall Street Journal*, April 5, 2018, <https://on.wsj.com/2Eydv2f>.

³⁷ Emma C. Hamilton, et al., “Variability of Child Access Prevention Laws and Pediatric Firearm Injuries,” *Journal of Trauma and Acute Care Surgery* 84, no. 4 (2018): 613–619. See also, Peter Cummings, David C. Grossman, Frederick P. Rivara, and Thomas D. Koepsell, “State Gun Safe Storage Laws and Child Mortality Due to Firearms,” *JAMA* 278, no. 13 (1997): 1084–1086; Daniel W. Webster, Jon S. Vernick, April M. Zeoli, and Jennifer A. Manganello, “Association Between Youth-focused Firearm Laws and Youth Suicides,” *JAMA* 292, no. 5 (2004): 594–601; Jeffrey DeSimone, Sara Markowitz, and Jing Xu, “Child Access Prevention Laws and Nonfatal Gun Injuries,” *Southern Economic Journal* 80, no. 1 (2013): 5–25.

distribution chain to the first retail purchaser. ATF works extensively with other law enforcement agencies to trace firearms and obtain valuable investigative leads using this technique—in 2020 alone, ATF conducted more than 490,000 traces.³⁸ Ghost guns avoid this process, since they lack the serial number and other markings crucial to the process.

Untraceable guns can also be created using new manufacturing technologies such as 3D printing, which allow a person to produce a three-dimensional object such as a firearm much in the way that a traditional printer can produce a printed document. A high-quality, easy-to-use model is available for about \$2,500, roughly the cost of a high-end AR-15-style rifle. Entry-level 3D printers are available for under \$200. In 2012, a self-described anarchist developed computer code that would allow anyone with a 3D-printing machine to produce firearm components, including lower receivers, and posted that code on the internet. Firearms built using 3D-printed receivers can be just as deadly as other firearms. An assault rifle assembled using a 3D-printed lower receiver can fire over six hundred rounds—three times the number fired in the Pulse nightclub shooting that left 49 dead and 53 wounded.

Ghost guns are an attractive option for firearm traffickers and people who would otherwise be unable to pass a background check and purchase a firearm, and they have been appearing more frequently in crime. According to a recent report from ATF, law enforcement recovered approximately 5,150 suspected ghost guns (labeled “privately made firearms” or “PMFs” by ATF) on average each year between 2016 and 2020, however, in 2021 this number nearly quadrupled, so that between 2020 and 2021 alone, 19,344 suspected PMFs were recovered.³⁹

Ghost guns have also been used in multiple recent shootings. In 2014 a man who failed a background check and could not legally purchase a gun built an assault rifle from a ghost gun kit, then used it on a rampage at a college campus in Southern California, firing 100 rounds and killing five people.⁴⁰ In 2017 a California man prosecutors described as a “deranged, paranoid killer” who was prohibited from owning a gun and under prosecution for multiple crimes was nevertheless able to kill six people and injure 10 with two assault-style rifles he assembled using parts ordered online.⁴¹ In 2019 a sixteen-year-

³⁸ Bureau of Alcohol, Tobacco, Firearms and Explosives, Fact Sheet - National Tracing Center, (Sept. 2021) <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>.

³⁹ Bureau of Alcohol, Tobacco, Firearms and Explosives, National Firearms Commerce and Trafficking Assessment: Commerce in Firearms 30-44, May 5, 2022, <https://www.atf.gov/firearms/docs/report/national-firearms-commerce-and-trafficking-assessment-firearms-commerce-volume/download>.

⁴⁰ Robert Cavnar, “Santa Monica Shooter Built His Gun From Parts He Bought Online,” Huffington Post, June 15, 2013, https://www.huffingtonpost.com/robert-l-cavnar/santa-monica-shooter-buil_b_3447220.html.

⁴¹ Ray Sanchez, Jason Hanna, and Phil Gast, “Gunman in Northern California Rampage Was Not Supposed to Have Guns,” CNN, November 15, 2017, <http://www.cnn.com/2017/11/15/us/california-tehama-county-shootings/index.html>; Damon Arthur, “Sheriff: Tehama Shooter Built His Own Illegal Guns,” Record Searchlight,

old boy used a self-assembled untraceable firearm in a school shooting in Santa Clarita, CA, killing two students and injuring three others.⁴²

On April 11, 2022, President Biden announced the finalization of the “ghost gun” rule that defines weapons parts kits used to make ghost guns as firearms, which means that those who sell the kits must be licensed, must serialize them and retain records, and must conduct a background check before every sale, providing some much needed limitations on how firearms enter civilian hands without any oversight. This rule will help make it more difficult for people prohibited from purchasing firearms or interested in illegal firearms to access a firearm, potentially decreasing some interactions law enforcement will have in these dangerous situations. Ghost guns, however, still litter our streets with nearly 24,000 ghost guns recovered at crime scenes between 2016 and 2020, and ATF has the authority to address only part of this problem.

S. 1558, the Untraceable Firearms Act, introduced by Senator Richard Blumenthal, would take the ghost gun rule a step further, prohibiting any person from possessing an unserialized firearm while providing a process to serialize those guns and bring them into compliance with the new law, giving ample time to existing ghost gun owners to make the required updates. S. 1558 would also limit the sale of machines programmed specifically to make guns, so that only federally licensed firearms manufacturers can obtain them. A version of this bill passed the House in June as part of the Protecting Our Kids Act, H.R. 7910.

Nothing in the Second Amendment gives Americans the right to own or use 3D printed plastic guns that cannot be detected or guns without serial numbers that cannot be traced by law enforcement,⁴³ and Congress should act accordingly, passing the Untraceable Firearms Act and holding the ATF accountable for the implementation of the ghost gun rule, which went into effect on August 24, 2022.

November 15, 2017, <http://www.redding.com/story/news/2017/11/15/tehama-shooter-built-his-own-illegal-guns/868737001/>.

⁴² Brad Brooks, “California School Shooting Shines Light on Murky ‘Ghost Gun’ World,” Reuters, November 22, 2019, <https://www.reuters.com/article/us-california-shooting-ghostgun/california-school-shooting-shines-light-on-murky-ghost-gun-world-idUSKBN1XW1AL>.

⁴³ *E.g.*, *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010) (rejecting Second Amendment challenge to federal law forbidding the possession of a firearm with an obliterated serial number).

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QUESTIONS FROM RANKING MEMBER GRASSLEY

1. Purchases of firearms soared in 2020, undoubtedly because of an increase of civil unrest throughout cities and other areas across the United States. Is it your position that such concern for civil unrest was unfounded by purchasers of firearms? If so, what is your argument to those gun owners as to why they should disarm?
2. What current federal gun laws could see improvements in execution so as to reduce gun violence and how could such executions be improved?
3. Witnesses Ms. Solomon and Mr. Cheng have raised questions about whether gun control measures which you and your organization support are racist and disproportionately affect communities of color. Do you disagree? If so, please explain.

Responses

1. If more guns made us safer, America would be the safest country in the world: Americans have an estimated 393 million guns.¹ Yet we also have a disproportionate share of gun violence, with more than 45,000 deaths in the year 2020 alone.² And Americans die from gun homicides at 25 times the rate of people in comparable high income countries, including the United Kingdom and France.³ More guns are not the answer. For most individuals, the benefits of having a gun in the home are far outweighed by the risks associated with gun ownership. Bringing a gun into the home to protect against outside threats introduces new, more likely threats, with firearm access tripling the risk of suicide death and doubling the risk of homicide.⁴ Importantly, recent studies have clearly demonstrated that these risks apply not only to the gun owner, but also to the gun owner’s spouse, their children, and anyone else residing in the home.⁵ In fact, guns that are purchased to protect families frequently end up being used by children to unintentionally

¹ Aaron Karp, “Estimating Global Civilian–Held Firearms Numbers,” Small Arms Survey, June 2018,

<http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>

² Kelly Drane, “Surging Gun Violence: Where We Are, How We Got Here, and Where We Go Next,” Giffords Law Center, May 4, 2022, <https://giffords.org/lawcenter/report/surging-gun-violence-where-we-are-how-we-got-here-and-where-we-go/>.

³ Erin Grinshteyn and David Hemenway, "Violent Death Rates in the US Compared to Those of the Other High-income Countries, 2015," *Preventive Medicine* 123 (2019): 20–26.

⁴ Andrew Anglemyer et al., “The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members” *Ann. Intern Med.* vol. 160 (2014):101-110. DOI:10.7326/M13-1301.

⁵ *Id.*; Matthew Miller et al., "Suicide Deaths Among Women in California Living with Handgun Owners vs Those Living with Other Adults in Handgun-free Homes, 2004–2016," *JAMA Psychiatry* 79, no. 6 (2022); David M. Studdert et al., "Homicide Deaths Among Adult Cohabitants of Handgun Owners in California, 2004 to 2016: a Cohort Study," *Annals of Internal Medicine* 175, no. 6 (2022).

shoot themselves, their brothers or sisters, or others;⁶ used in suicides;⁷ and used against women in domestic abuse.⁸ Other guns brought into the home for self-defense are often stolen and used in crime.⁹ On the other side of the equation, people successfully defend themselves with guns in less than 1% of crimes in which there is contact between a perpetrator and a victim.¹⁰ Research indicates that having access to a gun doesn't better protect people from being injured during a crime more than other protective actions like calling law enforcement or fleeing the scene.¹¹ In fact, carrying a firearm may increase a victim's risk of injury when a crime is committed, with one study indicating that people in possession of a gun may be more than four times more likely to be shot in an assault.¹² In other words, when individuals keep guns in their homes, the odds are greater that the gun will kill or injure them, their family members, and any cohabitants than that it will protect them.¹³ Thus, these negative consequences of gun ownership are far more common, and more foreseeable, than the use of guns in any legitimate self-defense or home protection.

2. We are of course not asking responsible, law abiding gun owners to disarm, but everyone practicing or contemplating gun ownership should be aware of the risks and pursuant responsibilities of gun ownership. Federal gun laws prohibit certain groups of people who are at a heightened risk of committing violence against themselves or others from purchasing or possessing firearms.¹⁴ However, there is no standard procedure for the relinquishment of firearms by people who have become prohibited from possessing them. Although people may be prosecuted and incarcerated for violating federal law by illegally

⁶ Douglas J. Wiebe, "Firearms in US Homes as a Risk Factor for Unintentional Gunshot Fatality," *Accident Analysis & Prevention* 35, no. 5 (2003): 711–716. See also, David Hemenway, Catherine Barber, and Matthew Miller, "Unintentional Firearm Deaths: a Comparison of Other–inflicted and Self–inflicted Shootings," *Accident Analysis & Prevention* 42, no. 4 (2010): 1184–1188.

⁷ David M. Studdert et al., "Handgun Ownership and Suicide in California," *New England Journal of Medicine* 382, no. 23 (2020): 2220–2229; Andrew Anglemyer, Tara Horvath, and George Rutherford, "The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: a Systematic Review and Meta-analysis," *Annals of Internal Medicine* 160, no. 2 (2014): 101–110.

⁸ J.C. Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study," *American Journal of Public Health* 93, no.7 (2003): 1089–1097; Kellie R. Lynch, "Female Firepower: Gun Ownership for Self-protection Among Female Intimate Partner Violence Victims," *Violence and Gender* 7, no. 1 (2020): 19–26.

⁹ David Hemenway, Deborah Azrael, and Matthew Miller, "Whose Guns are Stolen? The Epidemiology of Gun Theft Victims," *Injury Epidemiology* 4, no. 1 (2017); Anthony Fabio et al., "Gaps Continue in Firearm Surveillance: Evidence from a Large US City Bureau of Police," *Social Medicine* 10, no. 1 (2016): 13–21.

¹⁰ David Hemenway et al., "The epidemiology of self-defense gun use: evidence from the National Crime Victimization Surveys 2007–2011." *Preventive Medicine* vol. 79 (2015): 22–7. DOI:10.1016/j.ypmed.2015.03.029

¹¹ *Ibid.*

¹² Charles C. Branas et al., "Investigating the link between gun possession and gun assault." *Am. J. Public Health* vol. 99 (Nov. 2009):2034–40. DOI: 10.2105/AJPH.2008.143099.

¹³ Arthur L. Kellermann et al., "Injuries and Deaths Due to Firearms in the Home." *45 J. Trauma* vol. 45 (Aug. 1998):263–7. DOI: 10.1097/00005373-199808000-00010. See also David Hemenway et al., "The relative frequency of offensive and defensive gun uses: results from a national survey." *Violence and Victims* vol. 15,3 (2000): 257–72.

¹⁴ 18 U.S.C. § 922(g).

retaining their firearms after a criminal conviction or other firearm-prohibiting event, neither the Department of Justice nor federal, state, tribal, or local courts or prosecutors generally take action to ensure that people relinquish their firearms when they are convicted of a disqualifying crime or otherwise lose their legal eligibility to possess them. Tens of thousands of people who have become legally prohibited from possessing firearms have failed to surrender their firearms.¹⁵ Only a small number of states, including California, Connecticut, and Nevada, provide clear guidance to defendants and others about how they are to dispose of their guns.¹⁶ Nevada, for example, requires any person who becomes prohibited from possessing firearms after a criminal conviction to relinquish their guns to a designated law enforcement agency, a licensed firearms dealer, or another person approved and designated by the court. The prohibited person must then provide receipts to the court verifying that they relinquished their guns within specified time periods. Making this practice standard across the country would improve compliance with our gun laws and reduce gun violence without contributing to further incarceration.

Federal law also requires federal firearms licensees (FFLs)—firearms manufacturers, importers, and dealers—to obtain a license from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), run background checks on gun buyers, report lost and stolen firearms, and keep records available for use in criminal investigations, among other requirements.¹⁷ Strict adherence to these requirements is necessary to ensure that guns are not trafficked out of the legal market and end up in the wrong hands. Yet, ATF has often been slow to enforce the law against FFLs who engage in criminal activity. In fact, records show that almost all FFLs that have violated the law were allowed to continue operating. According to ATF’s most recent report, ATF noted violations of the law in 48% of the FFL compliance inspections it conducted between 2016 and 2020, including failures to conduct background checks, view buyer’s identification, maintain records of sales, and report multiple sales of handguns.¹⁸ Based on a review of over 2,000 gun dealer inspection reports by *USA Today* and *The Trace*, ATF inspectors found that only about three percent of FFLs cited for violations met ATF’s internal criteria for revocation of their license to sell firearms. After officials downgraded more than half of those revocation recommendations, ultimately only half a percent ended up having their

¹⁵ See Annie Sweeney, Stacy St. Clair, Cecilia Reyes, and Sarah Freishtat, “More than 34,000 Illinoisans Have Lost their Right to Own a Gun. Nearly 80% May Still be Armed,” *The Chicago Tribune*, May 23, 2019, <https://bit.ly/2HQpFqJ>; California Department of Justice, Office of the Attorney General, “APPS 2020: Annual Report to the Legislature,” March 1, 2020, <https://oag.ca.gov/system/files/attachments/press-docs/2020-apps-report.pdf>.

¹⁶ Cal. Penal Code § 29810(a); Conn. Gen. Stat. § 29-36k(a); Nev. Rev. Stat. Ann. § 202.361.

¹⁷ 18 U.S.C. § 922-923.

¹⁸ Bureau of Alcohol, Tobacco, Firearms and Explosives, “National Firearms Commerce and Trafficking Assessment: Commerce in Firearms,” 133, May 5, 2022, <https://www.atf.gov/firearms/docs/report/national-firearms-commerce-and-trafficking-assessment-firearms-commerce-volume/download>.

licenses revoked, meaning that approximately 99% of FFLs found to have violated the law were allowed to stay open.¹⁹ Shutting down all firearms dealers who have willfully violated the law would not only improve execution of our gun laws, it would also reduce gun violence by decreasing the supply of firearms to those who misuse them. ATF should improve its practices so that it will take stronger actions against FFLs whenever they have evidence that they have failed to comply with their legal obligations.

3. We firmly reject the notion that gun safety measures which we support “are racist” or disproportionately affect communities of color in a negative way. On the contrary, our organization supports gun safety measures that recognize and aim to reduce the impact of gun violence on Black and Brown communities, including laws that close background check loopholes, funding for community violence intervention programs, and stronger regulation of gun dealers.

Black and Latino populations make up less than a third of the US population but account for more than three-quarters of gun homicide victims. Victims of community violence are overwhelmingly young people of color, especially young Black men, for whom violence is by far the leading cause of death. Black men make up 52% of all gun homicide victims, despite comprising less than 7% of the population. For these reasons, we support evidence-informed proposals that are likely to reduce gun homicides, such as the funding for community violence intervention programs included in S. 2275, the Break the Cycle of Violence Act. Community based violence intervention programs are designed to interrupt cycles of violence and retaliation, reducing rates of community violence, saving lives. This bill addresses gun violence in the communities most impacted by addressing some of the social determinants of health that lead to gun violence—employment, healthcare, safety.

Giffords acknowledges that currently, the main method for federal law enforcement to fight gun violence has been to prosecute individuals found illegally possessing guns, and this approach does have a disproportionate negative effect on communities of color. In contrast, the Background Check Expansion Act and the Background Check Completion Act aim to address gun violence by closing loopholes in our background check system, so that people at a high risk of violence do not obtain firearms in the first place.

¹⁹ Brian Freskos et al., “The ATF Catches Thousands of Lawbreaking Gun Dealers Every Year. It Shuts Down Very Few,” The Trace, May 26, 2021, <https://www.thetrace.org/2021/05/atf-inspection-report-gun-store-ffl-violation/>. See also Ali Watkins, “When Guns Are Sold Illegally, A.T.F. Is Lenient on Punishment,” New York Times, June 3, 2018, <https://www.nytimes.com/2018/06/03/us/atf-gun-store-violations.html>; Champe Barton, “Their guns fueled Chicago crime. When they broke the law, the ATF went easy,” USA Today, April 11, 2022, <https://www.usatoday.com/story/news/investigations/2022/04/11/chicago-crime-gun-sellers-got-off-easy-years-before-atf/9476759002/>.

The Background Check Expansion Act, S. 529, would penalize the unlicensed seller who fails to conduct a background check. By making it harder for those involved in this cycle to get guns, we help break the cycles of violence caused, in part, by this deadly loophole. S. 529 places the focus on the seller, penalizing the seller/transferor who fails to conduct a firearm transfer through a licensed dealer. The bill would reduce, rather than increase, the criminal justice system’s negative impacts on communities of color, since trafficking through unlicensed gun sellers is one of the main sources of firearms in communities of color.

Similarly, the Background Check Completion Act, S. 591, places the focus on the FFL who fails to wait for the completion of a NICS background check. This bill would eliminate the 3-day “default proceed” loophole, which currently allows FFLs to transfer firearms if, after 3 business days, the National Instant Criminal Background Check System has not completed its background check on the purchaser.

Strengthening America’s gun laws is one important way to save lives from the ongoing gun violence epidemic, but the choice of policies and enforcement of gun laws must be done with an understanding of the pervasive structural racism and implicit biases that affect the criminal legal system. The United States accounts for four percent of the world’s population but a quarter of its prisoners—even as data shows that more incarceration does not reduce crime or make communities safer. Black and Brown Americans are disproportionately targeted and often incarcerated for nonviolent offenses, including illegal gun possession. The notion that simply increasing the number of convictions for illegal gun possession in high-crime areas will improve public safety has led to local and national policy decisions that have disproportionately impacted the lives of people of color and Black men in particular.

In fact, relying so heavily on incarceration can actually worsen public safety by exacerbating the conditions that drive violence, such as poverty, poor access to education, untreated trauma, and a lack of affordable housing.²⁰ As a report from the Vera Institute of Justice notes, incarceration is “neither the most effective way to change people nor the most effective way to keep people safe.”²¹ According to the National Academy of Sciences, “most studies estimate the crime-reducing effect of incarceration to be small and some report that the size of the effect diminishes with the scale of

²⁰ Daniel Kim, “Social determinants of health in relation to firearm-related homicides in the United States: A nationwide multilevel cross-sectional study,” *PLOS Medicine* 16, no. 12 (December 17, 2019), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002978#sec016>.

²¹ Vera Institute of Justice, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*, 2017, <https://www.vera.org/downloads/publications/accounting-for-violence.pdf>.

incarceration.”²²

There is strong evidence that incarceration is criminogenic, meaning that people exiting prison are actually *more* likely to reoffend because of the effects of prison.²³ Improved public safety is the assumed goal of the criminal legal system, yet mounting evidence shows that blunt “tough on crime” policies are simply not achieving that result. The Break the Cycle of Violence Act, the Background Check Expansion Act, and the Background Check Completion Act provide alternative routes to addressing gun violence and public safety without disproportionately negatively affecting people of color.

Neither the Break the Cycle of Violence Act, the Background Check Expansion Act, nor the Background Check Completion Act would have a disproportionately negative impact on communities of color. Indeed, their focus is on addressing the harm caused on the frontend by the lack of resources in communities most impacted by gun violence and by the sellers who demonstrate little to no concern for public safety by potentially selling to individuals who are prohibited from possessing firearms.

²² Jeremy Travis, et al., “The Growth of Incarceration in the United States: Exploring Causes and Consequences,” *National Academies Press*, 2014,

https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs.

²³ David Roodman, “The Impacts of Incarceration on Crime,” *Open Philanthropy Project*, September 25, 2017, <http://dx.doi.org/10.2139/ssrn.3635864>; Francis T. Cullen, et al., “Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science,” *The Prison Journal* 91, no. 3 (2011), DOI: 10.1177/0032885511415224, <https://doi.org/10.1177%2F0032885511415224>.

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QUESTIONS FROM SENATOR LEAHY

1. Thank you for your thoughtful testimony last week. I regret that we did not have enough time to discuss efforts reauthorize the *Violence Against Women Act* and how improvements to that law can save lives. As you know, we are working on the reauthorization of VAWA. I believe we must do more to address the dangerous intersection of domestic violence and firearms. In Vermont specifically, 50 percent of all homicides are domestic violence related. And 55 percent of those domestic violence homicides in Vermont are committed with firearms. Our gun violence epidemic has a clear and deadly link to domestic violence in this country.
 - a. In your written testimony, you noted the importance of the firearms provisions in the VAWA reauthorization passed by the House earlier this month. What are the biggest gaps in current firearms prohibitions that the House’s bill helps to fill? And why is it critical for the Senate to keep those provisions in our VAWA reauthorization effort?

Response:

- a. In March 2021, the House passed H.R. 1620, the reauthorization of the Violence Against Women Act (VAWA). H.R. 1620 would expand the prohibition against gun possession to those who commit violence against a dating partner and those who are convicted of a misdemeanor crime of stalking. This expanded prohibition would fully close the so-called “dating partner loophole,” which allows a person convicted of domestic violence crimes against a dating partner, or subject to a restraining order due to abuse of a dating partner, to be able to access firearms unless they lived with their victim or had a child in common. Nearly half of all intimate partner homicides are committed by dating partners, yet, until recently, federal prohibitions against convicted domestic abusers only applied if the partners are or were married, live or have lived together, or have a child in common. Similarly, while stalking is a strong indicator of future violence and many felony stalking charges are pled down to the misdemeanor level, stalking misdemeanants are not currently prohibited from purchasing or possessing guns.

H.R. 1620 would also expand the gun prohibition for abusers subject to protective orders to include domestic violence protective orders that cover the period before a hearing (known as “ex parte” orders), provided that they are issued in compliance with due process. The time immediately following the issuance of an

ex parte order is the most dangerous for victims of domestic violence, yet current federal law allows abusers to continue to legally purchase and possess firearms.

Despite the House's strong bill, when VAWA was reauthorized in March 2022, as a part of the Fiscal Year 2022 spending bill, it did not address the dating partner loophole, address stalking, and prohibit gun possession by persons subject to ex parte orders.

However, in June 2022, Congress passed and President Biden signed the Bipartisan Safer Communities Act (BSCA), which among other things, prohibits the purchase and possession of firearms for five years by people convicted in any court of a misdemeanor crime of domestic violence against a victim with whom they have or had a current or recent former dating relationship. While this law partially addresses the dating partner loophole, it is limited in its application to dating partners convicted of misdemeanor crimes of domestic violence and it does not address dating partners subject to domestic violence protection orders.

In addition, under the BSCA, a person convicted of a misdemeanor crime of domestic violence against a dating partner is only prohibited from possessing firearms for 5 years, whereas persons convicted of misdemeanor crimes of domestic violence against a spouse or a person they share a child with are subject to a lifetime prohibition. Additionally, under BSCA the prohibition only applies to current and *recent* former dating partners, even though dating partner violence may continue long after a relationship has ended.

The BSCA also does not apply to dating partners subject to domestic violence protection orders. Federal law continues to allow dating partners subject to a protection order that restrains them from abusing a current or former dating partner to possess firearms. Further, federal law still allows those convicted of a misdemeanor crime of stalking and those subject to an ex parte protection order to possess firearms.

The presence of a gun in a domestic violence situation makes it five times more likely the victim will die, and domestic violence assaults involving a gun are 12 times more likely to end in death than assaults with other weapons or physical harm. Because guns and domestic violence are such a deadly mix, Congress must enact the strongest possible laws to address this dangerous nexus, including prohibiting gun possession by persons subject to a domestic violence protection order that restrains them from abusing their dating partner, by persons convicted of a stalking misdemeanor, and by persons subject to ex parte protection orders.

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QUESTIONS FROM SENATOR WHITEHOUSE

1. H.R. 8 would require individuals who purchase guns online, through gun shows, and, in some instances, from private sellers to undergo background checks. H.R. 1446 would increase the amount of time that a licensed firearms dealer must wait to receive a completed background check before transferring a firearm to an unlicensed person from three business days to a minimum of 10 business days.

Would either H.R. 8 or H.R. 1446 prevent someone who is lawfully entitled to purchase a firearm from doing so?

2. According to the ATF, from 2012 to 2016, burglaries and robberies of gun stores increased by 48 percent and 175 percent, respectively.¹ In 2019, 5,603 guns were reported stolen from gun dealers nationwide.² Another 7,212 guns were lost by these dealers.³ Last year, in the last days of May and first week of June alone, there were more than 90 attempted or successful burglaries of gun stores, and more than 1,000 guns were stolen.⁴
 - a. Pharmacies and other places that dispense drugs routinely lock up their merchandise during nonbusiness hours to deter theft. They use alarm systems and self-locking doors. Many of these safety measures are specified in detail by DEA regulations.⁵ Are there similar federal statutes or regulations that govern what steps gun stores must take to minimize the risk of theft? Does the ATF have the authority to tell gun stores to lock their doors?
 - b. The explosives industry is required by law to conduct annual inventory reconciliations to identify lost or missing explosives. Are there similar federal statutes or regulations for gun stores?
 - c. Does the ATF have sufficient authority to take effective action against dealers who fail to comply with the law and/or maintain control over their inventory?

¹ Chelsea Parsons, Eugenio Weigend Vargas, & Rukmani Bhatia, The Center for American Progress, *The Gun Industry in America--The Overlooked Player in a National Crisis* (Aug. 6, 2020), <https://www.americanprogress.org/issues/guns-crime/reports/2020/08/06/488686/gun-industry-america/>.

² *Id.*

³ *Id.*

⁴ Betsy Woodruff Swan, Gun store robberies alarm law enforcement officials, Politico (Jun. 23, 2020), <https://www.politico.com/news/2020/06/23/gun-store-robberies-law-enforcement-336104>.

⁵ *E.g.*, 21 C.F.R. §1301.71-77.

Responses

1. Neither H.R. 8 nor H.R. 1446 prevent someone who is lawfully entitled to purchase a firearm from doing so. Both bills are parts of a comprehensive background check requirement designed to ensure that people who are not lawfully entitled to purchase a firearm do not do so. H.R. 8 would ensure that people who are not lawfully entitled to purchase a firearm do not circumvent the background check requirement by purchasing a firearm from an unlicensed gun seller who is not required to conduct a background check under current federal law. H.R. 1446 would address the dangerous loophole that allows a gun sale to proceed if the background check has not been completed within three business days. More specifically, this bill would ensure that a gun sale does not proceed until the National Instant Criminal Background Check System has had ten business days to determine whether a potentially disqualifying record in fact disqualifies the purchaser from purchasing or possessing a firearm. Individuals who are lawfully entitled to purchase a firearm are routinely approved by the background check system, which has completed over 400 million checks since it was first created.⁶ These two bills would simply ensure that the system is used for every gun sale.

2.
 - a. Federal law does not currently require federally licensed firearms dealers to properly secure their inventory against thefts—including using burglar alarms, surveillance cameras, or secure storage devices—and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) lacks the legal authority to impose such security requirements on these gun dealers. The Firearm Owner Protection Act of 1986 deprived ATF of the authority to independently determine which rules or regulations are “reasonably” necessary to carry out the law, and limited ATF’s authority so that it may issue such rules and regulations “only...as are necessary.”⁷ As a result, there is no federal statute or regulation requiring gun stores to utilize security measures that is similar to the regulations governing pharmacies and other places that sell drugs. ATF lacks even the authority to tell gun stores to lock their doors.

 - b. There is no federal statute or regulation that requires gun stores to conduct annual inventory reconciliations to identify lost or missing firearms. In fact, an appropriations rider that was made permanent in 2013 prevents ATF from requiring FFLs to conduct physical inventories.⁸ That rider reads: “in the current fiscal year and any fiscal year thereafter, no funds made available by this or any other Act shall be expended to promulgate or implement any rule requiring a physical inventory of any business licensed under section 923 of title 18, United States Code.” This means that ATF must conduct its own inventories of FFLs when it

⁶ Federal Bureau of Investigation, 2020-2021 NICS Operations Report, <https://www.fbi.gov/file-repository/nics-2020-2021-operations-report.pdf/view>.

⁷ Pub. L. No. 99-308, 100 Stat. 449, 459 (1986).

⁸ Consolidated and Further Continuing Appropriations Act 2013, Pub. L. No. 113-6, 127 Stat. 198, 248 (2013).

inspects them in order to determine whether any firearms have been lost, stolen, or sold without the proper background check or record-keeping.

c. ATF only has partial authority to take effective action against dealers who fail to comply with the law and/or maintain control over their inventory. Three kinds of authority are relevant to this question: 1) the authority to discipline corrupt or irresponsible dealers; 2) the authority to inspect dealers to detect violations and irresponsible practices; and 3) the authority to issue regulations to ensure that dealers operate responsibly so as to maintain control over their inventory. Each is described below.

1. ATF may revoke the federal firearms license of a firearms dealer who “willfully” violates federal law, including federal regulations.⁹ ATF may also suspend a license for not more than 6 months or revoke a license and may impose on the licensee a civil fine of not more than \$5,000 if the licensee has knowingly transferred a firearm without conducting the required background check.¹⁰ However, the law provides ATF with no authority to impose disciplinary measures, such as license suspensions or civil monetary penalties, on FFLs who recklessly violate the law or fail to maintain control over their inventory through negligence or without violating specific federal or state statutes. Based on interviews with more than half a dozen current and former law enforcement officials and a review of more than 100 inspection reports, the *New York Times* reported in 2018 that supervisors within ATF often routinely overrule decisions to revoke FFL licenses based on violation of the law, because of insufficient evidence that the FFL acted “willfully” in violating the law.¹¹ According to the article, supervisors feel this legal threshold, which can only be met if ATF can prove that the FFL knew they were acting illegally, makes revocations difficult to defend in court.
2. ATF’s actions can only effectively deter FFLs from violating the law if they are able to detect those violations when they occur. However, the Firearms Owner Protection Act (FOPA), which was enacted in 1986, limited ATF’s ability to conduct FFL inspections.¹² Due to FOPA, ATF may conduct only one unannounced inspection of an FFL per year, unless it relates to a specific criminal investigation.¹³ These limitations do not provide ATF with sufficient opportunities to detect FFLs’ violations of the law. The infrequency of these inspections also reduces their ability to effectively deter FFLs from violating the

⁹ 18 U.S.C. § 923(e)

¹⁰ 18 U.S.C. § 922(t)(5).

¹¹ Ali Watkins, “When Guns Are Sold Illegally, A.T.F. Is Lenient on Punishment,” *New York Times*, June 3, 2018, <https://www.nytimes.com/2018/06/03/us/atf-gun-store-violations.html>.

¹² Pub. L. No. 99–308, 100 Stat. 449 (1986).

¹³ 18 U.S.C. § 923(g)(1)(B)(ii)(I).

law, since violations of the law by FFLs rarely attract the attention of law enforcement outside of an inspection. As a result, irresponsible behavior among FFLs is common. FFLs can often sell guns for years without an inspection, allowing violations to go unnoticed and guns to be sold illegally. For example, firearms businesses often fail to ensure that their employees are sufficiently familiar with the background check, record-keeping, and reporting requirements that apply to particular gun sales. When ATF does inspect FFLs, it routinely finds violations. According to ATF's most recent report, ATF noted violations of the law in 48% of the FFL compliance inspections it conducted between 2016 and 2020,¹⁴ suggesting that many FFLs simply do not expect to be caught or punished when they violate the law.

3. As noted above, FOIPA deprived ATF of the authority to independently determine which rules or regulations are “reasonably” necessary to carry out the law, and limited ATF’s authority so that it may issue such rules and regulations “only...as are necessary.”¹⁵ This strict limit on ATF’s rulemaking authority prevents it from creating regulatory standards that would ensure that FFLs maintain appropriate control over their inventory. It also hinders ATF from taking action against those businesses that would be in violation of those standards, such as FFLs with storage practices and protocols that facilitate firearms trafficking by enabling firearms to be easily stolen or removed from the premises without detection. FFLs may also be negligent by allowing straw purchases—illegal purchases by individuals other than the actual buyers, which enable the actual buyers to avoid the background check or record-keeping requirements. ATF has limited authority to issue regulations that may address this problem.

¹⁴ Bureau of Alcohol, Tobacco, Firearms and Explosives, “National Firearms Commerce and Trafficking Assessment: Commerce in Firearms 133,” May 5, 2022, <https://www.atf.gov/firearms/docs/report/national-firearms-commerce-and-trafficking-assessment-firearms-commerce-volume/download>.

¹⁵ Pub. L. No. 99–308, 100 Stat. 449, 459 (1986).

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Submitted March 30, 2021

QUESTIONS FROM SENATOR BOOKER

1. The Break the Cycle of Violence Act would help fund evidence-based street outreach programs that treat gun violence as a communicable disease. Why is it important to treat gun violence as a public health issue?
2. The Break the Cycle of Violence Act would also help fund hospital-based violence intervention programs that provide intensive counseling, peer support, case management, mediation, and social services to patients recovering from gunshot wounds and other violent injuries. Why are these violence intervention programs so important to reduce gun violence?
3. According to a recent FBI report, hate crimes increased by nearly 20 percent during the Trump Administration. The same report also noted that hate-motivated murders—mostly committed by white supremacist extremists—climbed to their highest level in 28 years. Can you explain why it is so important for Congress to act on legislation to reduce gun violence given the increase in white supremacist violence?
4. We know that gun violence disproportionately harms communities of color. Black men’s life expectancy is more than four years shorter than their white peers due to gun violence. Black men also make up 52 percent of all gun homicide victims even though they comprise less than 7 percent of the total population. Law enforcement alone is not going to solve this problem. We need to pass commonsense laws that will help keep guns out of the wrong hands. Is it fair to say that bills like the Break the Cycle of Violence Act, the Background Check Expansion Act, and the Background Check Completion are not only gun violence prevention bills but also racial justice bills? If so, please explain why.

Responses:

1. On average, there are more than 100 gun deaths each day, with more than 45,000 gun deaths reported by the CDC in the year 2020¹ and recent provisional data from the CDC indicating there were nearly 49,000 gun deaths in 2021.² Americans are 25 times more likely to be shot to death than people in other developed nations,³ and annually, firearm

¹ Centers For Disease Control and Prevention, National Center for Health Statistics. Underlying Cause of Death 1999-2020 On CDC Wonder Online Database, Released In 2021. Data Are from The Multiple Cause of Death Files, 1999-2020, As Compiled from Data Provided by the 57 Vital Statistics Jurisdictions Through the Vital Statistics Cooperative Program. Accessed At [Http://Wonder.Cdc.Gov/Ucd-Icd10.Html](http://wonder.cdc.gov/ucd-icd10.html) On Feb 18, 2022.

² Giffords, “A Devastating toll: 2021 CDC Data Shows Record Number of Gun Deaths, Makes Clear the Need for Continued Action to Address Gun Violence in America,” news release, July 14, 2022, <https://giffords.org/press-release/2022/07/2021-cdc-data-shows-record-number-of-gun-deaths/#:~:text=Washington%20DC%20%E2%80%94%20A%20new%20release,by%20more%20than%203%2C500%20deaths.>

³ Erin Grinshteyn and David Hemenway, “Violent Death Rates in the US Compared to Those of the Other High-

related fatalities outnumber those caused by motor vehicle accidents. Today, gun violence is the leading cause of death for children and adolescents,⁴ outpacing deaths from car crashes, drug overdoses, and COVID-19, with youth of color impacted disproportionately relative to their white peers.

Further, consensus on the public health consequences of gun violence exists. In 2016, the nation's largest physicians' group, the American Medical Association (AMA), formally adopted a policy designating gun violence as a public health crisis. As recent as June 2022, the AMA adopted new policies on firearm violence. Additionally, the American Psychiatric Association reported in 2018 that "the majority of Americans (87%) see gun violence as a public health threat, including 77% of Republicans and 96% of Democrats."⁵ Besides the obvious health implications of gunshot wounds, victims and witnesses of gun violence "may experience stress, depression, anxiety, and post-traumatic stress disorder." This reality is amplified by the fact that "[a]n estimated three million children witness a shooting each year."⁶ Exposure to violence has also been linked to other specific health problems that include asthma, heart disease, and babies born underweight.⁷

As if the overwhelming human toll were not enough, shootings have an outsized economic impact, including medical expenses; law enforcement and criminal justice costs; lost income; and pain and suffering. Estimates indicate that gun violence costs this country approximately \$557 billion every year.⁸ Many of these direct costs are shouldered by the American taxpayer. Americans pay more than \$30 million daily to account for the criminal justice investigation, prosecution, and incarceration costs associated with gun violence.⁹ Americans pay an average of \$7.8 million daily to account for the health care costs associated with gun violence. On average, each individual American taxpayer pays nearly \$1,700 annually for this public safety emergency.¹⁰ It is clear from this data that the severity of gun violence has reached crisis proportions similar to those of the opioid crisis.

Income Countries, 2015," *Preventive Medicine* 123, (2019): 20–26.

⁴ Kelly Drane, "Guns Are Now the Leading Cause of Death for American Kids," Giffords, August 2, 2022, <https://giffords.org/blog/2022/08/guns-are-now-the-leading-cause-of-death-for-american-kids/>.

⁵ American Psychiatric Association, "Americans Overwhelmingly See Gun Violence as a Public Health Issue; They Want Congress to Act and CDC to Conduct Research," May 7, 2018, <https://www.psychiatry.org/newsroom/news-releases/americans-overwhelmingly-see-gun-violence-as-a-public-health-issue-they-want-congress-to-act-and-cdc-to-conduct-research>.

⁶ Everytown for Gun Safety, "Fact Sheet: The Impact of Gun Violence on Children and Teens," May 29, 2019, <https://everytownresearch.org/report/the-impact-of-gun-violence-on-children-and-teens/>.

⁷ David Hemenway, "Costs of Firearm Violence: How You Measure Things Matters," in *Social and Economic Costs of Violence: Workshop Summary*, ed. Deepali Patel and Rachel Taylor, (Washington DC: The National Academies Press, 2012), 61, <https://www.nap.edu/read/13254/chapter/1>.

⁸ The Economic Cost of Gun Violence," Everytown for Gun Safety, July 19, 2022 available at <https://everytownresearch.org/report/the-economic-cost-of-gun-violence>

⁹ Ibid.

¹⁰ Ibid.

Furthermore, gun violence has a lasting negative impact on the physical and psychological health of the American people and their communities. Gun violence as a disease of the individual is also very difficult to get rid of. The strongest risk factor for violent injury is a history of previous violent injury, with the chances of injury recidivism as high as 45% within the first five years.¹¹ In fact, a previous violent injury makes future death from violent injury nearly twice as likely. This means that while immediate intervention is necessary to stop the spread of violence, intervening can also have positive preventative benefits far into the future. The death, injury, and other harm caused by gun violence must be addressed, monitored, and combatted like any other public health issue impacting society's health, through research, policy, and funding.

2. Hospital-based violence intervention programs (HVIPs)¹² build off the fact that experiencing violence is a significant risk factor for future exposure to violence.¹³ HVIPs connect violently injured patients with intervention specialists and peer counselors to provide desperately needed services to reduce the patient's risk of retaliation or reinjury. These programs engage victims of violence at the bedside and work with them post-discharge to decrease the likelihood of reinjury or retaliation. This approach has been shown to stop the revolving door of violent injury seen in too many American hospitals and trauma centers.¹⁴ Patients who receive hospital-based violence intervention services are four times less likely to be convicted of a violent crime and four times less likely to be violently injured again than patients who did not receive HVIP services.¹⁵ Through the use of these strategies, since 2012, the City of Oakland, California has cut its annual shootings and homicides nearly in half.¹⁶

Despite the effectiveness of these programs, HVIPs are vastly underfunded, with the federal government allocating a very small amount to support these programs in select cities while the majority of states provide zero funding for violence prevention programs.

3. Violent hate and hate-fueled extremism is a growing threat to public safety. From

¹¹ J. Purtle et. al., "Hospital-based Violence Intervention Programs Save Lives and Money," *J. Trauma Acute Care Surg.* 75, no. 2 (2013): 331–333.

¹² An analysis published in the *Journal of Trauma and Acute Care Surgery* revealed that within the first five years of hospitalization for an assault-related injury, the chances of recidivating are as high as 45% (Purtle et al.). Further research from the Lincoln Medical and Mental Health Center in New York found that 13%–20% of those treated and discharged are killed within the same short time frame. With HVIP services, an evaluation of the San Francisco Wrap Around project demonstrates that patients who received HVIP services were four times less likely to be violently reinjured compared to similar patients without access to HVIP services.

¹³ The Health Alliance for Violence Intervention, last accessed May 10, 2022, <https://www.thehavi.org>.

¹⁴ See, e.g., Carnell Cooper, Dawn M. Eslinger, and Paul D. Stolley, "Hospital-based violence intervention programs work," *J Trauma* 61, no. 3 (2006): 534-540.

¹⁵ Tina L. Cheng, et al., "Effectiveness of a Mentor-Implemented, Violence Prevention Intervention for Assault-Injured Youths Presenting to the Emergency Department: Results of a Randomized Trial," *Pediatrics* 122, no. 5 (2008): 938–946.

¹⁶ Giffords Law Center to Prevent Gun Violence, "A Case Study in Hope: Lessons from Oakland's Remarkable Reduction in Gun Violence," April 2019, <https://giffords.org/wp-content/uploads/2019/05/Giffords-Law-Center-A-Case-Study-in-Hope.pdf>.

armed intimidation at peaceful protests to white supremacist groups storming the United States Capitol, easy access to firearms and hate-fueled individuals are a deadly combination. And the problem is only growing in severity: hate groups are proliferating and hate crimes are becoming more frequent and more frequently violent.

Too often, guns are the tools of violent hate and extremism, including white supremacist violence, facilitating attacks that sow fear throughout entire communities. Guns, themselves, are a powerful tool of intimidation, and even the implied presence of a firearm when combined with a threat can induce fear. Yet, America's dangerously weak gun safety laws make it far too easy for people fueled by violent and hateful ideologies to intimidate, harm, and murder others.¹⁷

Though not every gun safety law could have stopped every massacre, foundational gun safety policies will help protect vulnerable communities from the devastating consequences of violent hate.

For example, we must address deadly loopholes in our federal gun laws that allow individuals convicted of violent hate crimes to purchase and possess guns. In more than half of the states, an individual can buy an unlimited number of military-style weapons from private sellers without a background check and have thousands of rounds of ammunition delivered directly to their house, no questions asked. Research has shown that people who have been convicted of violent hate crimes are likely to continue or escalate their conduct. In their book *Hate Crimes Revisited: America's War on Those Who are Different*, hate crime researchers Jack Levin and Jack McDevitt found that "individuals who commit hate crimes tend to escalate their conduct in order to ensure their message is received by the targeted individual or community."¹⁸

The problem of armed hate and extremism is multifaceted, ranging from firearm intimidation at protests to ideologically driven mass murder. Thus, the policy solutions to address the different aspects of this critical problem vary. Any efforts to address armed hate must be supported by foundational gun safety policies that can then be built upon, including:

- **Universal background checks** to ensure that people attempting to purchase firearms are eligible to possess them; one particularly dangerous loophole in federal law allows thousands of people legally prohibited from possessing

¹⁷ Greg Miller, "Senior counterterrorism official expresses concern about access in U.S. to lethal weaponry," *Washington Post*, December 22, 2017, https://www.washingtonpost.com/world/national-security/senior-counterterrorism-official-expresses-concern-about-access-in-us-to-lethal-weaponry/2017/12/21/dad95cce-e664-11e7-833f-155031558ff4_story.html.

¹⁸ Chelsea Parsons and Eugenio Weigend Vargas, "Hate and Guns: a Terrifying Combination," Center for American Progress, 2016, <https://www.americanprogress.org/issues/guns-crime/reports/2016/02/24/131670/hate-and-guns-a-terrifyingcombination/>.

firearms to purchase them each year before their background checks are completed.

- **Military-style weapon and large-capacity magazine regulations** that more thoroughly regulate civilian access to military-style weapons that enable individuals to shoot or kill large numbers of people.
- **Extreme risk protection order laws**, which allow for the temporary removal of firearms from people found by a court to pose an imminent risk of serious violence.
- **Laws that prohibit guns on government property and at civic events** such as protests, demonstrations, meetings of legislative bodies, and elections.
- **“Disarm Hate” laws** which prohibit firearm access for people who have been convicted of misdemeanor hate crimes which involve the use, or threatened use, of violence or deadly weapons.

Our nation’s weak gun laws, which allow individuals fueled by violent and hateful ideologies easy access to firearms, put members of vulnerable communities—like the 10 Black Americans murdered at a Buffalo grocery store—in grave danger.

4. The Break the Cycle of Violence Act, the Background Check Expansion Act, and the Background Check Completion Act aim to address gun violence through approaches that do not further disproportionately negatively impact communities of color, including relying on mass incarceration and interactions with other aspects of the criminal legal system.

Gun violence takes a devastating toll on communities across the U.S., with communities of color suffering more acutely from everyday acts of gun violence. This particular kind of violence is part of a deadly cycle: research indicates that up to 45 percent of patients in urban hospitals who are treated for injuries like gunshots were violently reinjured within five years. Studies also indicate that people who are victimized by gun violence are also at increased risk of retaliating and becoming perpetrators of violence.

In many of the nation’s most disadvantaged, low-income neighborhoods, gun violence is a tragic fact of everyday life. This threat is particularly acute for Black and Brown Americans, who make up less than a third of the total population but account for nearly three-quarters of all gun homicide victims. In the U.S., Black children are 10 times more likely to be killed in a gun homicide than white children and gun violence is the leading cause of death for Black children.

Strengthening America’s gun laws is one important way to save lives from the ongoing gun violence epidemic, but the choice of policies and enforcement of gun laws must be done with an understanding of the pervasive structural racism and

implicit biases that affect the criminal legal system. The United States accounts for four percent of the world’s population but a quarter of its prisoners—even as data shows that more incarceration does not reduce crime or make communities safer. Black and Brown Americans are disproportionately targeted and often incarcerated for nonviolent offenses, including illegal gun possession. The notion that simply increasing the number of convictions for illegal gun possession in high-crime areas will improve public safety has led to local and national policy decisions that have disproportionately impacted the lives of people of color and Black men in particular.

For example, relying so heavily on incarceration can actually worsen public safety by exacerbating the conditions that drive violence, such as poverty, poor access to education, untreated trauma, and a lack of affordable housing.¹⁹ As a report from the Vera Institute of Justice notes, incarceration is “neither the most effective way to change people nor the most effective way to keep people safe.”²⁰ According to the National Academy of Sciences, “most studies estimate the crime-reducing effect of incarceration to be small and some report that the size of the effect diminishes with the scale of incarceration.”²¹

There is strong evidence that incarceration is criminogenic, meaning that people exiting prison are actually *more* likely to reoffend because of the effects of prison.²² Improved public safety is the assumed goal of the criminal legal system, yet mounting evidence shows that blunt “tough on crime” policies are simply not achieving that result. The Break the Cycle of Violence Act, the Background Check Expansion Act, and the Background Check Completion Act provide alternative routes to addressing gun violence and public safety without disproportionately negatively affecting people of color.

The Break the Cycle of Violence Act, S. 2275 (Booker), would invest in effective community based violence intervention programs that are designed to interrupt cycles of violence and retaliation, reduce rates of community violence, and provide jobs to opportunity youth. This bill would address gun violence in the communities most impacted by addressing some of the social determinants of health that lead to gun violence—employment, healthcare, and safety.

¹⁹ Daniel Kim, “Social determinants of health in relation to firearm-related homicides in the United States: A nationwide multilevel cross-sectional study,” *PLOS Medicine* 16, no. 12 (December 17, 2019), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002978#sec016>.

²⁰ Vera Institute of Justice, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*, 2017, <https://www.vera.org/downloads/publications/accounting-for-violence.pdf>.

²¹ Jeremy Travis, et al., “The Growth of Incarceration in the United States: Exploring Causes and Consequences,” *National Academies Press*, 2014, https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs.

²² David Roodman, “The Impacts of Incarceration on Crime,” *Open Philanthropy Project*, September 25, 2017, <http://dx.doi.org/10.2139/ssrn.3635864>; Francis T. Cullen, et al., “Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science,” *The Prison Journal* 91, no. 3 (2011), DOI: 10.1177/0032885511415224, <https://doi.org/10.1177%2F0032885511415224>.

The Background Check Expansion Act, S. 529 (Murphy), on the other hand, would place the focus on the seller, penalizing the seller/transferor who fails to conduct a firearm transfer through a licensed dealer. The Background Check Expansion Act would reduce, rather than increase, the criminal justice system's negative impacts on communities of color. Trafficking through unlicensed gun sellers is one of the main sources of firearms in communities of color. However, currently, the main method for federal law enforcement to fight gun violence is to prosecute individuals found illegally possessing guns. This approach has a disproportionate negative effect on communities of color. Instead, the Background Check Expansion Act would penalize the unlicensed seller who fails to conduct a background check. By making it harder for those involved in this cycle to get guns, we help break the cycles of violence caused, in part, by this deadly loophole.

Similarly, the Background Check Completion Act, S. 591 (Blumenthal), would place the focus on the federal firearms licensee (FFL) who fails to wait for the completion of a NICS background check. This bill would eliminate the 3-day "default proceed" loophole, which currently allows FFLs to transfer firearms if, after 3 business days, the National Instant Criminal Background Check System has not completed its background check on the purchaser.

It is indeed fair to say that these bills are not only gun violence prevention bills but also racial justice bills. These bills focus on addressing the epidemic by addressing the harm caused on the frontend by the lack of resources in communities most impacted by gun violence and by the sellers who demonstrate little to no concern for public safety by potentially selling weapons to individuals who are prohibited from possessing firearms.

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QUESTIONS FROM SENATOR GRAHAM

1. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported a 70 percent increase in the number of federal firearm licensee (FFL) burglaries and a 266 percent increase in the number of FFL robberies from 2013 to 2017. In 2017, 8,129 firearms were taken in FFL burglaries and robberies. In 2018, South Carolina FFLs reported that 193 firearms were stolen during burglaries and robberies. Last Congress, I introduced the FFL Protection Act to help address the rapid increase in the number of “smash-and-grab” thefts targeted at federally licensed gun dealers. The FFL Protection Act is designed to discourage “smash-and-grabs” and make it more costly for criminals who target FFLs by 1) increasing the statutory maximum penalty from 10 to 20 years for knowingly stealing a firearm from an FFL; 2) imposing a mandatory minimum sentence of 3 years for burglary from a FFL and 5 years for robbery from a FFL; and 3) criminalizing the attempted theft of a firearm from a licensed importer, manufacturer, dealer, or collector
 - a. How do you perceive the threat of weapons acquired by criminals from “smash-and-grabs” circulating on the streets?
 - b. Do you believe mandatory minimum sentences would help stop the illegal dissemination of such guns?
 - c. Does the Giffords Law Center support such legislation? Why or why not?

Responses

- a. Weapons acquired by criminals from “smash-and-grab” thefts at federally licensed gun dealers and circulating on the streets pose a grave threat to public safety. Federal firearms licensees reported 4,060 firearms stolen during calendar year 2021 alone.¹ These firearms pose a serious risk to public safety because they have been diverted from legal commerce, with no record of the owner and no background check conducted. If those guns are recovered after use in a crime, they cannot properly be traced, leaving law enforcement without a valuable lead in the investigation and identification of the perpetrator. These guns are therefore attractive to criminals who want to escape accountability for their crimes. Even one stolen gun can destroy many lives: one gun stolen from an FFL in Chicago was used to shoot 24 individuals – two fatally – in 27

¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, “Federal Firearms Licensee Theft/Loss Report - 2021” <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2021>.

separate shootings over the course of less than two years.² These firearms also threaten public safety because FFLs often fail to report them to ATF. During inspections, ATF often identifies firearms that have been lost or stolen but not properly reported. If law enforcement is not aware that firearms have been lost or stolen, they cannot act to recover those firearms before they are used in a crime.

- b. No, sufficient evidence does not exist to indicate that mandatory minimum sentences would help stop the illegal dissemination of such guns. In 2016, the National Institute of Justice wrote “Increasing the severity of punishment does little to deter crime ... partly because criminals know little about the sanctions for specific crimes.”³ New research supports this concept, by showing that many populations prone to crime, such as young men, do not consider consequences far in the future. Another 2009 study compared the impact of incarceration on future criminal behavior with those who served no prison time. They found that incarceration has a null or increased criminal effect on future behavior.⁴ In fact, there is strong evidence that incarceration is criminogenic, meaning that people exiting prison are actually more likely to reoffend because of the effects of prison.⁵ People who re-enter society after spending time in prison face numerous obstacles, including the social stigma, difficulties in accessing rights and benefits like employment, higher education, voting, vocational certification, and housing.⁶ These obstacles, which increase the longer the prison term, can lead individuals to reoffend. In fact, research shows that policies that enforce the certainty of punishment are more effective at deterring criminal behavior than longer sentences.⁷
- c. Giffords supports the criminalization of attempted thefts from FFLs but does not support increases in penalties or mandatory minimums for behavior that is already criminalized, since the evidence indicates that these penalties would not be an effective way to address the problem of burglaries of federal licensed gun dealers and would have a negative

² Jeremy Gorner, et al., “A gun was stolen from a small shop in Wisconsin. Officials have linked it to 27 shootings in Chicago,” Chicago Tribune, Sept. 21, 2021, <https://www.chicagotribune.com/news/criminal-justice/ct-stolen-gun-multiple-crimes-chicago-20210921-aiqhedigtgnhrbnikogk26vgdgu-story.html>.

³ National Institute of Justice, “Five Things About Deterrence,” (2016) <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

⁴ Californians for Safety and Justice, Repairing the Road to Redemption in California, May 2018, https://safeandjust.org/wp-content/uploads/CSJ_SecondChances-ONLINE-May14.pdf.

⁵ David Roodman, “The Impacts of Incarceration on Crime,” Open Philanthropy Project, September 25, 2017, <http://dx.doi.org/10.2139/ssrn.3635864>; Francis T. Cullen, et al., “Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science,” The Prison Journal 91, no. 3 (2011), DOI: 10.1177/0032885511415224, <https://doi.org/10.1177%2F0032885511415224>.

⁶ Samuel Peterson et al., “Law Enforcement Approaches for Reducing Gun Violence,” Rand Corp. (April 22, 2020) <https://www.rand.org/research/gun-policy/analysis/essays/law-enforcement-approaches-for-reducing-gun-violence.html>.

⁷ Samuel Peterson et al., “Law Enforcement Approaches for Reducing Gun Violence,” Rand Corp. (April 22, 2020) <https://www.rand.org/research/gun-policy/analysis/essays/law-enforcement-approaches-for-reducing-gun-violence.html>.

effect on already marginalized communities. As noted above, increasing prison sentences has not been shown to have a deterrent effect on future criminal behavior. A better approach would be to require gun dealers to utilize stronger security measures to prevent firearms in their inventories from being stolen, i.e., to “harden” gun stores so that it is more difficult for would-be criminals to obtain firearms from them. Federal law does not currently require federally licensed firearms dealers to properly secure their inventory against thefts, using burglar alarms, surveillance cameras, or secure storage devices, and ATF lacks the legal authority to impose such security requirements on these gun dealers. In this way, gun dealers differ from businesses that sell other dangerous products, like pharmacies.⁸ Even banks have stricter security requirements.⁹ Congress must close these gaps in the law in order to reduce the threat posed by stolen guns.

⁸ E.g., 21 C.F.R. § 1301.71-77.

⁹ 12 U.S.C. § 1882.