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Legislative Testimony

“The Gun Violence Epidemic: A Public Health Crisis”
Hearing before the U.S. Senate Committee on the Judiciary
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Amy E. Swearer
Senior Legal Fellow, Edwin Meese III Center for Legal and Judicial Studies
The Heritage Foundation

Chairman Durbin, Ranking Member Graham, and distinguished Senators,

My name is Amy Swearer, and I am a Senior Legal Fellow in the Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies.¹ My areas of scholarship and study include, among other things, the Second Amendment, school safety, and the intersection of gun violence and mental health. I was a primary author of Heritage's recent e-booklet, *The Essential Second Amendment*, and run the organization's Defensive Gun Use Database.

If this introduction sounds familiar, it is because I am no stranger to most of you. In the last several years, I have testified before this body and other congressional bodies numerous times. In fact, in preparing this testimony, it struck me that I could just as easily copy and paste significant portions of those previous testimonies into this submission.

The reason for this is simple—we are, for all intents and purposes, having what is basically the same hearing on gun violence over and over and over again.

Yes, to be fair, you have styled it in a number of new and creative ways. You have couched gun violence as an economic problem,² as a domestic violence problem,³ and as a Supreme Court problem.⁴ You have narrowed the scope down to the impact of gun violence on the nation's children⁵ and to its manifestation as mass public violence.⁶ You have limited the discussion of potential solutions to gun violence to specific proposals like universal background checks⁷ and banning certain cosmetic features.⁸ You have even taken a field trip to Chicago to look very

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² See Amy Swearer, *What Economists Can't Tell You About the Costs of Gun Violence*, Testimony before the U.S. Congress Joint Economic Committee (July 20, 2022), <https://www.heritage.org/firearms/report/what-economists-cant-tell-you-about-the-costs-gun-violence>.

³ See Amy Swearer, Statement Submitted to the U.S. Senate Subcommittee on the Constitution for hearing titled Stop Gun Violence: The Jackson-Elia Domestic Violence Survivor Protection Act (May 17, 2022), <https://www.heritage.org/testimony/defensive-gun-use-the-context-intimate-partner-domestic-violence>.

⁴ See Amy Swearer, *Protecting Public Safety After New York State Rifle & Pistol Ass'n v. Bruen*, Testimony before the U.S. Senate Committee on the Judiciary (March 15, 2023), <https://www.heritage.org/testimony/bruen-promotes-public-safety-far-more-the-unconstitutional-gun-laws-it-threatens-1>.

⁵ See Amy Swearer, *Protecting America's Children from Gun Violence*, Testimony before the U.S. Senate Committee on the Judiciary (June 15, 2022), <https://www.heritage.org/testimony/the-kids-are-not-alright-not-the-reasons-you-think>.

⁶ See Amy Swearer, *We Have Effective Gun Violence Solutions. You Just Won't Listen.*, Testimony before the U.S. House of Representatives Committee on Oversight and Reform (June 8, 2022), <https://www.heritage.org/testimony/the-kids-are-not-alright-not-the-reasons-you-think>.

⁷ See Amy Swearer, *Constitutional and Commonsense Steps to Reduce Gun Violence*, Testimony before the U.S. Senate Committee on the Judiciary (March 23, 2021), <https://www.judiciary.senate.gov/imo/media/doc/Swearer%20Testimony.pdf>.

⁸ See Amy Swearer, *Protecting America From Assault Weapons*, Testimony before the U.S. House of Representatives Committee on the Judiciary (September 25, 2019), <https://www.heritage.org/testimony/protecting-america-assault-weapons>.

specifically at gun crime in the Windy City.⁹ And in all of these hearings, my testimony has consistently addressed the same underlying realities of gun violence, rebutted the same arguments in favor of gun control, and called Congress' attention to same potential avenues for meaningfully saving lives without running afoul of the Constitution or risking serious unintended consequences. The reason for this consistency is that, for all of the reframing of the issue of gun violence, we are still just having the same conversation about the same problems, which have not changed.

And here we are, yet again, at a hearing called at the last minute for the Tuesday after the Thanksgiving holiday, seeking to deconstruct the same problem of gun violence under yet another slightly different framework. This time, it is "Gun Violence: The Epidemic," and our framework for considering gun violence is the lens of Public Health. Respectfully, I am almost forced to ask the question, "Why?"

Put aside for the moment that this specific framing of gun violence in epidemiological terms stems from very cynical attempts by gun control advocates to make a losing issue slightly more palatable to unsuspecting dupes.¹⁰ Put aside that the end goal of those primarily responsible for pushing this framing is not to add some new and valuable component to how we understand the discussion, but to use new "public health crisis" language to justify the same restrictive gun control measures we have considered at every other hearing.¹¹ Put aside, too, that the public health lens is of pretty limited usefulness when it comes to actually understanding and addressing a problem that stems most significantly from a lack of enforcement on the criminal justice side of the equation, and not from a general lack of insight into how violence affects health.¹²

⁹ See Amy Swearer, *No Quick Fixes: Debunking the Illusion of Easy Answers and Simple Solutions to Recent, Unprecedented Spikes in Gun Violence*, Testimony before the U.S. Senate Committee on the Judiciary (December 13, 2021), <https://www.heritage.org/testimony/no-quick-fixes-debunking-the-illusion-easy-answers-and-simple-solutions-recent>.

¹⁰ Don B. Kates et al., *Guns and Public Health: Epidemic of Violence or Pandemic of Propaganda?*, 62 TENN. L. REV. 513, 517 (Spring 1995).

¹¹ *Id.* This cynicism is not assuaged by myriad efforts by gun control advocates in recent years to use "public health crisis" arguments as thinly veiled (and sometimes even fully transparent) attempts to side-step the Second Amendment and implement grotesquely unconstitutional restrictions on the right to keep and bear arms. For example, during the COVID-19 pandemic, some states deemed gun stores as "non-essential" and ordered them shuttered, depriving citizens who did not already possess guns of any ability to exercise their constitutional rights for extended periods of time. Howard Slugh, *The Coronavirus Pandemic Is No Excuse to Close Gun Stores*, National Review (Apr. 21, 2020), <https://www.nationalreview.com/2020/04/coronavirus-crisis-second-amendment-closing-gun-stores-unconstitutional/>; *McDougall v. County of Ventura*, No. 20-56220 (9th Cir., Jan. 20, 2022), https://d3n8a8pro7vhmx.cloudfront.net/firearmspolicycoalition/pages/5604/attachments/original/1642706843/McDougall_v_Ventura_County_Opinion.pdf?1642706843. More recently, the Governor of New Mexico was met with overwhelmingly bipartisan criticism for attempting to use the pretense of a "public health emergency" to unilaterally suspend the right of ordinary citizens to bear arms in public in major New Mexico cities. It is unclear, however, the extent to which some of that criticism was derived from a genuine concern for the Second Amendment and rational gun policy, and how much was derived merely from embarrassment that the Governor dared to "say the quiet part out loud" when she asserted the power to override the Constitution whenever she believes her actions further the interest of public health. Amy Swearer, *5 Things to Know About New Mexico Governor's Insanely Unconstitutional Gun Control Order*, Heritage Found. (Sept. 25, 2023), <https://www.heritage.org/second-amendment/commentary/5-things-know-about-new-mexico-governors-insanely-unconstitutional-gun>.

¹² To be clear, "public health" is not synonymous with the healthcare profession. According to the American Public Health Association, "public health" is a "science-based, evidence-backed field" that "promotes and protects the

If we take the issue of gun violence seriously from a public health framework—if we stretch the definition of public health to the broadest possible conception and decide in good faith that this framework is the one through which gun violence is best addressed—nothing has changed. Changing the framework through which we view the problem does not fundamentally change the nature or reality of the problem. It does not change our constitutional limitations for addressing the problem. It does not suddenly make ineffective approaches to solving the problem any less ineffective. It might change the starting point of that conversation and the route we take to flesh out these same complexities. It might change the precise language that we use when talking about the problem or solutions. But changing the title of this hearing and bringing in doctors and public health experts instead of mass shooting victims or police chiefs does not alter the roots of the problem or add to what Congress can realistically do to address it.¹³

So I hope you will forgive me if my testimony sounds familiar. I have very little new information to add to what I have previously stated—though the sheer breadth of this framing perhaps allows me to present all of my assorted prior testimonies into one document.

I. An Overview of the Very Complex Reality of Gun Violence

Violence, both with and without firearms, is a complex phenomenon that has no clear causal relationship to rates of gun ownership or the relative “strength” of gun laws restricting or burdening lawful possession. The majority of gun deaths are suicides, which inherently raise broader concerns about mental health. Criminal gun violence is largely driven not by lawful gun owners, but by a small subset of repeat violent offenders who are already prohibited from lawfully possessing firearms. Public policies that fail to address this reality are significantly related to recent increases in violent crime across the nation. Despite the significant role mass public shootings play in national conversations on gun violence, they are by far one of the least common mechanisms of gun violence. Finally, lawful gun owners play a significant and often underappreciated role in furthering public safety, and therefore also in furthering public health.

A. Understanding Criminal Gun Violence

Human violence, with or without firearms, is a complex and poorly understood phenomenon, and anyone who claims otherwise is either ill-informed or acting in bad faith. During the 20th century, the United States experienced two significant violent crime waves, including one that

health of all people and their communities” by focusing, apparently, on everything—and therefore, in reality, on nothing. It is so broad as to include such diverse things as tracking communicable diseases, setting worker safety standards, addressing climate change, advocating for any laws that “keep people safe,” and (literally) racism. *What Is Public Health?*, AM. PUB. HEALTH ASS’N (last accessed Nov. 26, 2023), <https://www.apha.org/what-is-public-health>.

¹³ This is certainly not to denigrate health professionals, or to suggest that they have nothing to add to conversation about gun violence. The specific expertise of doctors and nurses with respect to the broad and complex issue of gun policy is, however, limited to areas overlapping with the actual provision of healthcare itself—the technical aspects of how to effectively treat gunshot wounds, best practices for counseling patients on mental health and access to lethal means, and policies restricting their ability to provide care, etc. These are incredibly important aspects of the overall conversation. They do not, unfortunately, appear to be the aspects of the gun violence conversation that Congress is interested in discussing, either in this hearing or in any other hearing.

began building during the late 1960s and reached its peak in the early 1990s.¹⁴ After hitting historical highs in 1992, however, violent crime rates began a decades-long national decline.¹⁵ By 2014, national homicide rates had dropped by 50 percent, while important measures like non-fatal firearm crime had dropped to just one-sixth of the rates seen two decades earlier.¹⁶ In more recent years, there have been occasional (but largely localized) hiccups in this broader trend. These have been driven in many cases by the election of so-called “progressive” prosecutors and the local implementation of pro-criminal, anti-victim policies that undermined the rule of law.¹⁷ In every city with a rogue prosecutor during this time, crime rates exploded.¹⁸ Meanwhile, the United States as a whole continued its 30-year trend of stable, low rates of violent victimization.

Beginning in the summer of 2020, something—or some series of things—abruptly destabilized the overall public safety even further in major cities around the nation, including in many (but not all) cities with traditional “law and order” prosecutors. A broad swath of urban areas around the United States were wracked by a rapid, significant, and sustained increase in certain types of violent crime, including homicides, non-fatal shootings, and carjackings.¹⁹ While there is some evidence that these spikes in violent crime may be slowing in some areas with respect to some categories of crime, on the whole, the violence has continued largely unabated for more than three years.²⁰

¹⁴ See BARRY LATZER, *THE MYTH OF OVERPUNISHMENT: A DEFENSE OF THE AMERICAN JUSTICE SYSTEM AND A PROPOSAL TO REDUCE INCARCERATION WHILE PROTECTING THE PUBLIC*, 73–84 (2022). See also Alexia Cooper & Erica L. Smith, *Homicide Trends in the United States, 1980–2008*, Bureau of Justice Statistics NCJ 236018 (Nov. 2011), <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf>; National Center for Health Statistics, *Homicide in the United States, 1950–1964*, Public Health Service Publication No. 1000–Series 20–No. 6 (Oct. 1967), https://www.cdc.gov/nchs/data/series/sr_20/sr20_006acc.pdf; A. Joan Klebba, *Homicide Trends In The United States, 1900–74*, 90 *Pub. Health Reps.* 195 (May–June 1975), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1435670/pdf/pubhealthrep00160-0005.pdf>. For an in-depth overview of 20th-century violent crime trends in the United States, see BARRY LATZER, *THE RISE AND FALL OF VIOLENT CRIME IN AMERICA* (2016).

¹⁵ See sources *supra* note 14.

¹⁶ See Jens Manuel Krogstad, *Gun Homicides Steady After Decline in ‘90s; Suicide Rate Edges Up*, Pew Research Ctr (Oct. 21, 2015), <https://www.pewresearch.org/fact-tank/2015/10/21/gun-homicides-steady-after-decline-in-90s-suicide-rate-edges-up/>; Jennifer L. Truman & Lynn Langton, *Criminal Victimization, 2013*, Bureau of Justice Statistics NCJ 247648 (Revised Sept. 19, 2014), <https://bjs.ojp.gov/content/pub/pdf/cv13.pdf>.

¹⁷ See CHARLES STIMSON & ZACK SMITH, *ROGUE PROSECUTORS: HOW RADICAL SOROS LAWYERS ARE DESTROYING AMERICA’S COMMUNITIES* (2023).

¹⁸ *Id.*

¹⁹ See, e.g., Richard Rosenfeld et al., *Pandemic, Social Unrest, and Crime in U.S. Cities: 2020 Year-End Update*, Council on Criminal Justice (Jan. 2021), https://build.neoninspire.com/counciloncj/wp-content/uploads/sites/96/2021/07/Year-End-Crime-Update_Designed.pdf; Richard Rosenfeld et al., *Pandemic, Social Unrest, and Crime in U.S. Cities: Mid-Year 2022 Update*, Council on Criminal Justice (July 2022), https://www.researchgate.net/publication/362568187_Pandemic_Social_Unrest_and_Crime_in_US_Cities_Mid-Year_2022_update.

²⁰ See Ernesto Lopez et al., *Crime Trends in U.S. Cities: Mid-Year 2023 Update*, Council on Criminal Justice (July 2023), <https://counciloncj.org/mid-year-2023-crime-trends/>. However, recent changes to the FBI’s crime reporting system have resulted in fewer agencies reporting relevant crime data. While more agencies appear to be participating, there are still significant gaps. Weihua Lei & Jamiles Lartey, *The Problem With The FBI’s Missing Crime Data*, The Marshall Project (Oct. 8, 2022), <https://www.themarshallproject.org/2022/10/08/the-problem-with-the-fbi-s-missing-crime-data>. For example, the FBI’s data in its most recent report, covering 2022, “shows assaults in Chicago dropped by nearly 80 percent since 2020—a possibility, however encouraging, that Chicago Police data disclaims.” Ames Grawert, *Analyzing the FBI’s National Crime Data on 2022—With an Eye Toward 2023 Trends*,

During this same time period, lawful gun sales have skyrocketed, and the number of first-time gun owners has grown in unprecedented ways.²¹ Unsurprisingly, many politicians and gun control advocates pointed to the simultaneous trends in lawful gun sales and violent crime as evidence that the former was to blame for the latter. The available evidence, however, does not support that conclusion. On the contrary, it is far more likely that the same factors driving the surge in violent crime are also driving increased lawful gun sales—and that the increased violence is itself a factor driving more law-abiding Americans to buy firearms for self-defense. It is therefore not only unnecessary to impose stricter gun laws as a means of combating violent crime, but the imposition of such laws would likely prove entirely unhelpful. It may even have the unintended consequence of exacerbating violent crime by lessening the protective impact lawful gun owners have on crime rates.

There are numerous indications that broad measures of lawful gun ownership are not causally related to violent crime rates. For example, during the 1990s and early 2000s, violent crime and homicide rates in the United States plummeted—and then remained relatively stable at these new low rates for the next 15 years.²² During that same time, the number of guns per capita increased by about 50 percent.²³ Urban areas, meanwhile, routinely experience far greater problems with violent crime than do rural areas, even though they tend to have far lower rates of lawful gun ownership.²⁴ The most methodologically sound studies on gun ownership and gun violence “consistently find no support for the hypothesis” that higher gun ownership rates cause higher crime rates.²⁵ This is true even when looking at correlations between gun ownership and gun violence, specifically, as opposed to all measures of violence.²⁶

Brennan Center for Justice (Oct. 18, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/analyzing-fbis-national-crime-data-2022-eye-toward-2023-trends>.

²¹ Matthew Miller et al., *Firearm Purchasing During the COVID-19 Pandemic: Results from the 2021 National Firearms Survey*, *Annals Internal Med.* (Feb. 2022), <https://www.acpjournals.org/doi/10.7326/M21-3423>; John K. Roman, *One in Five American Households Purchased a Gun During the Pandemic*, NORC (March 24, 2022), <https://www.norc.org/NewsEventsPublications/PressReleases/Pages/one-in-five-american-households-purchased-a-gun-during-the-pandemic.aspx>.

²² See Crime Data Explorer Interactive Tool, Trend of Violent Crime from 1992 to 2019, Federal Bureau of Investigation (last accessed Nov. 26, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.

²³ Compare D’vera Cohn et al., *Gun Homicide Rate Down 49% Since 1993 Peak; Public Unaware*, Pew Research Ctr (May 7, 2013), <https://www.pewresearch.org/social-trends/2013/05/07/gun-homicide-rate-down-49-since-1993-peak-public-unaware/> with Christopher Ingraham, *There Are Now More Guns Than People In The United States*, *Wash. Post* (Oct. 5, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/10/05/guns-in-the-united-states-one-for-every-man-woman-and-child-and-then-some/>.

²⁴ Compare Tom W. Smith & Jaesok Son, *Trends in Gun Ownership in the United States, 1972–2014*, NORC at Table 4 (Mar. 2015), https://www.norc.org/PDFs/GSS%20Reports/GSS_Trends%20in%20Gun%20Ownership_US_1972-2014.pdf with Jeffrey H. Anderson, *Criminal Neglect*, *City Journal* (Oct. 4, 2022), <https://www.city-journal.org/violent-crime-in-cities-on-the-rise#:~:text=According%20to%20the%20NCVS%2C%20violent,the%20rate%20in%20rural%20areas>.

²⁵ Gary Kleck, *The Impact of Gun Ownership Rates on Crime Rates: A Methodological Review of the Evidence*, 43 *J. CRIM. JUSTICE* 40 (2015).

²⁶ Julia P. Schleimer et al., *Firearm Purchasing and Firearm Violence During the Coronavirus Pandemic in the United States: A Cross-Section Study*, 8 *INJURY EPIDEMIOLOGY* 1 (2021); Paul G. Cassell, *Explaining the Recent Homicide Spikes in U.S. Cities: The “Minneapolis Effect” and the Decline in Proactive Policing*, 33 *FED. SENT’G REP.* 83 (Dec. 2020) (last revised May 4, 2021, as University of Utah College of Law Research Paper No. 377). An

The lack of a clear causal link between lawful gun ownership and violent crime rates is unsurprising—lawful gun owners have never been the primary facilitators of gun crime. Of course, in any given year, a small number of lawful gun owners will commit crimes with their firearms, but the overwhelming majority of America’s tens of millions of gun owners will never constitute a danger to themselves or others.

On the contrary, the best available evidence suggests that a small number of serial offenders commit the majority of violent crimes, and that many of these serial offenders are already legally prohibited from possessing the firearms they use to perpetrate their crimes.²⁷ Consider, for example, a recent report analyzing gun violence in Washington, DC, which concluded that 60 percent to 70 percent of all gun violence in the nation’s capital in any given year is tightly concentrated in a group of 500 “very high risk” individuals, almost all of whom have significant prior or ongoing interactions with the District’s criminal justice system.²⁸ Almost half of all homicide suspects in DC have been previously incarcerated, while more than one in four were on active probation or parole supervision.²⁹ According to the report, “most victims and suspects with prior criminal offenses had been arrested about 11 times for about 13 different offenses by the time of the homicide” in which they were involved—not including juvenile arrests.³⁰

Washington, DC, is not an outlier. An analysis of more than 2,200 individuals arrested for shootings in Philadelphia since 2015 produced similar results: Forty percent of suspects had a prior felony conviction, 52 percent had a prior felony charge, and 76 percent had at least one prior arrest.³¹ One in five of the suspects had a pending court case at the time of his or her arrest for a shooting.³² The same is true of recent analyses of homicide and shooting suspects in Indianapolis, Portland, Knoxville, and San Francisco.³³ In other words, the trend holds true

additional study found that while 28 states saw significantly higher risk of gun violence during the pandemic compared to the same time pre-pandemic, 22 states did not experience a statistically significant higher risk—including states like Florida and South Carolina, which at the same time set record numbers for gun sales and traditionally receive poor gun control law ratings from advocacy groups. Compare Paddy Ssentongo et al., *Gun Violence Incidence During the COVID-19 Pandemic Is Higher Than Before the Pandemic in the United States*, SCI. REPORTS NO. 20654 (Oct. 2021), <https://www.nature.com/articles/s41598-021-98813-z>, with Julius Whigham II, *Gun Background Checks Down in Florida But Still Ahead Of Pre-COVID Years, State Data Shows*, PALM BEACH POST (updated 11:05 a.m. ET Oct. 18, 2021), <https://www.palmbeachpost.com/story/news/local/2021/10/18/florida-gun-background-checks-concealed-carry-permit-renewal-firearms-supply-problems/5791342001/>.

²⁷ See, e.g., Natalie N. Martinez et al., *Ravenous Wolves Revisited: A Systematic Review of Offending Concentration*, 6 CRIME SCI. 10 (2017), <https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-017-0072-2>.

²⁸ Nat’l Inst. Crim. Just. Reform, *Gun Violence Problem Analysis Summary Report: Washington, D.C.* 9 [Dec. 2021], https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/release_content/attachments/DC%20Gun%20Violence%20Problem%20Analysis%20Summary%20Report.pdf.

²⁹ *Id.* at 4.

³⁰ *Id.* 4–5.

³¹ PHILA. CITY COUNCIL COMM. ON PUB. SAFETY, 100 SHOOTING REVIEW COMMITTEE REPORT 34 (2022), <https://phlcouncil.com/wp-content/uploads/2022/01/100-Shooting-Review-complete.pdf>.

³² *Id.*

³³ NAT’ L INST. FOR CRIM. JUST. REFORM, INDIANAPOLIS GUN VIOLENCE PROBLEM ANALYSIS: SUMMARY REPORT (2021), <https://www.wishtv.com/wp-content/uploads/2021/08/Indianapolis-Gun-Violence-Problem-Analysis-Summary-Narrative.pdf>; PORTLAND HOMICIDE PROBLEM ANALYSIS 2019–2021, PORTLAND POLICE BUREAU (2022), <https://www.portland.gov/sites/default/files/2022/2022-pdx-problem-analysis-public-version.pdf>; CITY OF KNOXVILLE OFF. OF CMTY. SAFETY, KNOXVILLE GUN VIOLENCE PROBLEM ANALYSIS: 2019–2021 (2022),

across the nation, irrespective of an array of factors like geography, demographics, and politics—the bulk of criminal gun violence falls on the shoulders of a small and predictable subset of the population who could not have been in lawful possession of any of the firearms they used to commit their crimes.

These analyses of known gun violence perpetrators are consistent with studies on the efforts of law enforcement to trace so-called crime guns. In cases in which the possessor of a crime gun can be successfully identified, that possessor is rarely the original lawful possessor of the firearm, based upon the record at the last initial point of purchase that was generated for, and which are maintained by, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).³⁴

These findings are also consistent with a comprehensive 2019 Department of Justice survey of state and federal prisoners who possessed guns during their offenses, which provides additional evidence that perpetrators of criminal gun violence are not commonly in *lawful* possession of legally obtained firearms.³⁵ The survey found that 90 percent of prisoners who possessed a gun during their offenses did not obtain the weapon from a retail source, where they would have been required to undergo a criminal background check under federal law.³⁶ A plurality—43 percent—obtained their guns “off the street” or through an “underground market,” while another 6 percent obtained them by theft. Meanwhile, 25 percent obtained guns from a friend or family member, either through purchase, loan, or gift, and there is good reason to believe that a significant percentage of these would constitute illegal transfers to prohibited persons.³⁷ Moreover, it is entirely possible—in fact, almost certain—that at least some of the small minority of respondents who initially obtained a firearm through a retail source and were presumably in lawful possession at the time of purchase later became prohibited possessors, but evaded efforts to have those firearms removed from their possession by law enforcement.³⁸

As indicated above, there is substantial evidence that policing strategies and politically motivated bail and prosecutorial changes play significant roles in violence trends and are likely exacerbating (if not directly causing) this recent unprecedented spike in violent crime. With respect to policing strategies, beginning in the summer of 2020, police departments around the nation suddenly and significantly altered the ways in which they deployed resources and

https://cdn5-hosted.civicleve.com/UserFiles/Servers/Server_109478/File/CommunitySafety/KPD_GVPA_Public.pdf; Understanding Serious Gun Violence in San Francisco 2017–2020, S.F. Police Dept. (Mar. 4, 2021), https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/PoliceCommission031021-CPSC%20SFPD_ProbAnalysisExecSummary.pdf.

³⁴ CITY OF CHI. OFF. OF THE MAYOR, GUN TRACE REPORT (2017), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf>; Megan E. Collins et al., A Comparative Analysis of Crime Guns, 5 RUSSELL SAGE FOUND. J. SOCIAL SCIS. 96 (2017).

³⁵ Mariel Alper & Lauren Glaze, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016*, U.S. DEPARTMENT OF JUSTICE NCJ 251776 (Jan. 2019), <https://bjs.ojp.gov/content/pub/pdf/suficspi16.pdf>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* More than 170 million Americans live in states that require some form of background check for all or most private transfers. However, studies show that compliance with these background checks is incredibly low. Gary Kleck, *Compliance With Universal Background Check Gun Laws*, 44 J. CRIME & JUST. 414 (Sept. 2020), <https://www.tandfonline.com/doi/abs/10.1080/0735648X.2020.1815555>; Lisa Hepburn et al., *Firearm Background Checks in States With and Without Background Check Laws*, 62 AM. J. PREV. MED. 227 (2021), <https://pubmed.ncbi.nlm.nih.gov/34706846/>.

interacted with communities as a result of COVID-19-related necessities, widespread civil unrest, and high-profile, anti-police sentiment.³⁹ These changes very likely played—and continue to play—a role in the ability of impacted police departments to deter criminal acts, investigate violent crimes, and bring the perpetrators of those crimes to justice before they can reoffend. Moreover, widespread social unrest and the proliferation of anti-police sentiment measurably shifted the deployment of police resources and led to unconscious (or perhaps entirely conscious) changes in policing styles.⁴⁰ Because proactive, officer-initiated law enforcement is precisely the type of policing designed to disrupt patterns of violence, its sudden scaling back was bound to have devastating consequences for gun violence. Worse, it coincided in many cities with “defunding” measures, the cutting of vacant job openings, higher rates of retirement or quitting, and lower recruitment rates to fill the emptying ranks.⁴¹

Nearly three years later, we continue to experience the detrimental effects. The modern consensus, based on decades of studies, is that the certainty and celerity of punishment are likely far more important than severity when it comes to deterring criminal activity.⁴² In other words, if criminals know they are unlikely to face any consequences, they are far more likely to continue committing crimes even if the severity of the potential consequences is significantly increased. On the other hand, sufficiently increasing the likelihood that offenders will face swift but moderate punishments is far more likely to actually deter criminal activity in the first place than simply increasing potential sentences for criminals who are unlikely to ever actually face such a sentence.

³⁹ Consider the slew of problems faced by officers during the height of the pandemic, when many departments found themselves demolished by the virus itself. At one point in the spring of 2020, nearly 20 percent of NYPD’s uniformed workforce was out sick or in quarantine, with many other major police departments facing similar shortages. Madeline Holcombe, *12 NYPD Members Have Died From Suspected Cases of Coronavirus and Nearly 20% of Its Uniformed Workforce Is Out Sick*, CNN (Updated 10:25 AM ET, Tue. Apr. 7, 2020). Almost overnight, police forces around the country began taking steps to minimize interactions with civilians. See Josiah Bates, *Police Departments, Sheriffs’ Offices Across the U.S. Grapple With COVID-19’s Impact on Public Safety—And Their Own*, TIME (Apr. 2, 2020), <https://time.com/5812833/coronavirus-police-departments/>; Wesley G. Jennings & Nicholas M. Perez, *The Immediate Impact of COVID-19 on Law Enforcement in the United States*, AM. J. CRIM. JUST. E-PUB (June 6, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7275851/>. This not only hampered proactive policing efforts, but also brought community-policing tactics and trust-building outreach initiatives to a screeching halt. At the same time, in many cities, officers were diverted to the enforcement of COVID-19-related social-distancing and closure orders.

⁴⁰ See Paul G. Cassell, *Explaining the Recent Homicide Spikes in U.S. Cities: The “Minneapolis Effect” and the Decline in Proactive Policing*, 33 FED. SENT’G REP. 83 (Dec. 2020) (last revised May 4, 2021, as University of Utah College of Law Research Paper No. 377).

⁴¹ Zusha Elinson, *Cities Reverse Defunding the Police Amid Rising Crime*, WALL ST. J. (May 26, 2021), <https://www.wsj.com/articles/cities-reverse-defunding-the-police-amid-rising-crime-11622066307>; Sam Levin, *These US Cities Defunded Police: “We’re Transferring Money to the Community”*, THE GUARDIAN (Mar. 11, 2021), [https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community#:~:text=Minneapolis%20is%20using%20police%20cuts,impacts%20of%20their%20new%20budgets; Mitch Smith, As Applications Fall, Police Departments Lure Recruits With Bonuses and Attention, N.Y. TIMES \(Dec. 25, 2022\), https://www.nytimes.com/2022/12/25/us/police-officer-recruits.html](https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community#:~:text=Minneapolis%20is%20using%20police%20cuts,impacts%20of%20their%20new%20budgets; Mitch Smith, As Applications Fall, Police Departments Lure Recruits With Bonuses and Attention, N.Y. TIMES (Dec. 25, 2022), https://www.nytimes.com/2022/12/25/us/police-officer-recruits.html).

⁴² Mark Kleiman & Beau Kilmer, *The Dynamics of Deterrence*, 106 PROC. NAT’L ACAD. SCI. 14230–5 (2009); Daniel S. Nagin, *Deterrence in the Twenty-First Century*, in CRIME AND JUST. IN AM. 205–06 (Michael Tonry, ed., 2013); Martin Killias et al., *The Effects of Increasing the Certainty of Punishment: A Field Experiment On Public Transportation*, 6 Eur. J. Crim. 387 (2009), <https://psycnet.apa.org/record/2009-11446-001>; JAMES Q. WILSON, THINKING ABOUT CRIME 118–19 (rev. ed. 1983); JAMES Q. WILSON & RICHARD J. HERRNSTEIN, CRIME AND HUMAN NATURE 49–56, 416–21 (1985); John J. DiIulio, Jr., *Help Wanted: Economists, Crime and Public Policy*, 10 J. ECON. PERSP. 3, 16–17 (1996).

In a nation that is already significantly under-policed compared to the rest of the developed world,⁴³ and where criminals are already substantially more likely to escape punishment, changes that further decrease the certainty and celerity of punishment—for example, by reducing the number of police officers available to investigate crimes, detailing offenses for which prosecutors will no longer seek meaningful punishment (or seek to prosecute such offenses at all), and delaying the imposition of sanctions for extended periods of time due to COVID-19-related courtroom procedures—will have drastic effects on the willingness of would-be offenders to engage in criminal activity.

Police departments are still demoralized, understaffed, and struggling to keep up with increased levels of crime.⁴⁴ Witnesses who do not believe that the police will be able to keep them safe from retaliation are also less likely to cooperate with investigations, exacerbating the problems of unsolved crimes in which criminals are not held accountable and underscoring the potential impact of lowered levels of trust between police departments and the communities they serve.

Violence also begets more violence—like a viral pandemic, once a cycle of retaliatory violence begins, it is increasingly hard to stop its spread.⁴⁵ This seems to be particularly true during periods of significant, acute, and widespread increases in violence, though we do not yet fully understand why and under what conditions this snowball effect occurs.⁴⁶ Moreover, it is clear that gang-related violence tends to be more “contagious” than non-gang-related violence.⁴⁷ Proactive types of policing—like, for example, “hot spot” policing—seem to be some of the best means of combating violence, gang-related or otherwise.⁴⁸ These are also the very types of police activity that were most significantly impacted by, and restricted because of, widespread changes in recent years.

Additionally, there is ample reason to believe that the toxic combinations of progressive prosecutorial practices and overly lenient bail reform in major American cities played an integral role in creating—and continue to play a role in maintaining—the “perfect storm” for unchecked violence. While some of these changes pre-date the rise in violent crime, so do their negative

⁴³ Christopher Lewis & Adaner Usmani, *The Injustice of Under-Policing in America*, 85 AM. J. LAW & EQUALITY 85 (2022), https://direct.mit.edu/ajle/article/doi/10.1162/ajle_a_00030/112647/THE-INJUSTICE-OF-UNDER-POLICING-IN-AMERICA1.

⁴⁴ See, e.g., Ryan Young et al., “*We Need Them Desperately*”: US Police Departments Struggle With Crucial Staffing Shortages, CNN (Updated July 20, 2022), <https://www.cnn.com/2022/07/19/us/police-staffing-shortages-recruitment/index.html>.

⁴⁵ Ben Green et al., *Modeling Contagion Through Social Networks to Explain and Predict Gunshot Violence in Chicago, 2006 to 2014*, 117 J. AMN. MED. ASS’N INTERN. MED. 326 (2017) (concluding that gun violence in Chicago “follows an epidemic-like process of social contagion that is transmitted through networks of people by social interactions”); P. Jeffrey Brantingham et al., *Is the Recent Surge in Violence in American Cities Due to Contagion?*, 76 J. CRIM. JUST. (2021), <http://paleo.sscnet.ucla.edu/BrantinghamCarterEtAl-JCJ-2021-Contagion.pdf?s%3Fs%3Fs> (finding that in the four cities examined showed, the contagious spread of violence played at least some role in the surge in violence, even if other factors appear to be at play).

⁴⁶ Yinzhi Shen & Patrick Sharkey, *When and Where Does Violence Beget Violence?*, 165 PREV. MED. (Dec. 2022), <https://www.sciencedirect.com/science/article/pii/S009174352200233X> (suggesting that violence builds upon itself most significantly during periods of sharp change).

⁴⁷ P. Jeffrey Brantingham et al., *Is Gang Violent Crime More Contagious Than Non-Gang Violent Crime?*, J. QUANTITATIVE CRIM. (2021), <https://par.nsf.gov/servlets/purl/10282717>.

⁴⁸ See Joshua C. Hinkle et al., *Problem-Oriented Policing for Reducing Crime and Disorder: An Updated Systematic Review and Meta-Analysis*, 16 CAMPBELL SYSTEMATIC REVIEWS (June 2020).

consequences.⁴⁹ For example, after Cook County, Illinois, which includes Chicago, implemented new bail policies in 2017, 45 percent more defendants released on bail were charged with committing new crimes, while 33 percent more were charged with committing new violent crimes.⁵⁰ One local media outlet found that, based on publicly available information alone, in 2021, 62 individuals were arrested for killing, attempting to kill, or shooting someone while released on felony bail in Cook County, affecting 111 victims.⁵¹

The problem is clearly not limited to Chicago. In 2020, New York made significant changes to its bail policies and implemented a slew of progressive criminal justice “reforms.” By 2022, New York City experienced a more than 30 percent increase in the number of violent felonies committed every month by individuals released on bail.⁵² Meanwhile, another recent study has estimated that progressive “de-prosecution” tactics are responsible for 70 excess homicides a year in Baltimore, 74 excess homicides a year in Philadelphia, and a staggering 169 excess homicides a year in Chicago.⁵³ As noted earlier, American law enforcement has comparatively low clearance rates, and in most cases, perpetrators of violent crimes will not be held accountable. This also means that, for purposes of analyzing violent reoffending, there is no real way of assessing how many of these uncleared crimes were, in fact, committed by individuals released on felony bail who re-offended but were never caught. Given the plethora of data showing that most gun violence is perpetrated by a statistically small subset of repeat offenders, and that recent violent behavior is a good predictor of future violent behavior, it is almost certain that analyses of known felony bail violations significantly undercount the rates at which many of these individuals actually reoffend while on bail.

B. Gun Suicide

Suicidality, like criminality, is both incredibly complex and not fully understood.⁵⁴ Unlike criminality and violence, suicide is necessarily and inextricably linked to broader mental health

⁴⁹ Charles Stimson et al., *The Blue City Murder Problem*, HERITAGE FOUNDATION LEGAL MEMORANDUM NO. 315 (Nov. 4, 2022), <https://www.heritage.org/crime-and-justice/report/the-blue-city-murder-problem>.

⁵⁰ Paul Cassell & Richard Fowles, *Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois*, S.J. QUINNEY COLL. OF L. RSCH. PAPER NO. 349 (Feb. 19, 2020), <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1189&context=scholarship>.

⁵¹ See table, #31: Anti-Violence Worker, Who’s Also A 9-Time Felon, Shot Himself in the Butt at a Bucktown Gas Station While on Felony Bail, CWB Chicago (Aug. 25, 2022), <https://cwbchicago.com/2022/08/31-anti-violence-worker-whos-also-a-9-time-felon-shot-himself-in-the-butt-at-a-bucktown-gas-station-while-on-felony-bail-prosecutors-say.html>; #62: Convicted Felon, On Bail For Gun Case, Tried To Kill 2 Chicago Cops on Christmas Eve, CWB Chicago (Dec. 26, 2021), <https://cwbchicago.com/2021/12/62-convicted-felon-on-bail-for-gun-case-tried-to-kill-2-chicago-cops-on-christmas-eve-prosecutors-say.html>.

⁵² Jim Quinn, *More Criminals, More Crime: Measuring the Public Safety Impact of New York’s 2019 Bail Law*, MANHATTAN INST. POL’Y PAPER (July 2022), <https://media4.manhattan-institute.org/sites/default/files/Measuring-the-Public-Safety-Impact-of-New-Yorks-2019-Bail-Law.pdf>.

⁵³ Thomas P. Hogan, *De-Prosecution and Death: A Synthetic Control Analysis of the Impact of De-Prosecution on Homicides*, 21 CRIMINOLOGY & PUB. POL’Y 489 (Aug. 2022); Thomas P. Hogan, *De-Prosecution and Death: A Cordial Reply to Kaplan, Naddeo & Scott* (Aug. 23, 2022), <https://thogan.substack.com/p/de-prosecution-and-death>.

⁵⁴ Various factors are known or suspected to be associated with individual suicidality and variations in comparative suicide rates. These include everything from intravenous drug use, divorce rates, and population density, to general measures of social capital, social fragmentation rates, unemployment rates, and alcohol abuse. See Danielle

concerns. Perhaps the most substantial overlap between lawful gun owners and gun violence occurs in the space of gun suicide. Gun suicides account for a majority of all gun deaths every year. And yet, given that just under half of all suicides involve the use of a firearm, it makes little sense from a public health perspective to pathologize that specific mechanism.⁵⁵ And yet, that is precisely what many gun control advocates do, focusing only on gun suicide rates instead of suicide rates, more broadly. Analyses of the latter show that the relationship between guns and suicide is far more complex than proponents of many restrictive gun laws care to admit, and that the relationship between most of their proposed gun laws and the overall public safety is, at best, uncertain and limited.⁵⁶

While United States has a comparatively high rate of gun suicide, its overall age-standardized suicide rate is slightly lower than the European average, slightly higher than the average for countries that are members of the Organization for Economic Cooperation and Development, and is far lower than several countries with incredibly restrictive gun laws.⁵⁷ Importantly, it is not that gun ownership in and of itself increases the risk of suicide, but rather that individuals who are suicidal are far more likely to fatally harm themselves if they have ready access to lethal means, including (but certainly not limited to) firearms.⁵⁸

C. Unintentional Gun Deaths and Injuries

Unintentional shootings accounted for less than 1 percent of all gun deaths in 2021. Even in terms of all accidental deaths, unintentional gun discharges are simply not a significant driving force—in 2021, less than one half of one percent of all accidental deaths were due to firearms.⁵⁹ Importantly, these accidental deaths and injuries have been declining for decades.⁶⁰ For adults in

Steelesmith et al., *Contextual Factors Associated With County-Level Suicide Rates in the United States, 1999 to 2016* (September 6, 2019), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2749451>.

;Carolyn Crist, *Contextual Factors Are Associated With Suicide Mortality in the Americas* (March 6, 2023), <https://www.medscape.com/viewarticle/989127?form=fpf>.

;Sayanti Mukherjee & Zhiyuan Wei, *Suicide Disparities Across Metropolitan Areas in the US: A Comparative Assessment of Socio-Environmental Factors Using a Data-Driven Predictive Approach* (November 24, 2021), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0258824>.

⁵⁵ Suicide Data and Statistics, Centers for Disease Control and Prevention (last accessed Nov. 27, 2023), <https://www.cdc.gov/suicide/suicide-data-statistics.html>.

⁵⁶ See generally, Amy Swearer, *Answering Policymakers' Most Common Questions (And Debunking Their Most Common Misconceptions) About Gun Violence*, HERITAGE FOUND. LEGAL MEMORANDUM at Part I, B (March 3, 2023), <https://www.heritage.org/firearms/report/answering-policymakers-most-common-questions-and-debunking-their-most-common>.

⁵⁷ See Death Rate from Suicides, 1990 to 2019, Our World in Data (last visited July 17, 2022), <https://ourworldindata.org/grapher/suicide-death-rates?tab=chart&country=USA~GBR~European+Region+%28WHO%29~OECD+Countries~BEL~KOR~JPN~LTU~DEU>; This is consistent with findings that gun prevalence, while associated with increases in gun suicide rates, is not associated with increases in overall suicide rates. See Gary Kleck, *Macro-Level Research on the Effect of Firearms Prevalence on Suicide Rates: A Systematic Review and New Evidence*, Social Science Quarterly (2019), <https://www.hoplophobia.info/wp-content/uploads/2015/08/2019-The-Effect-of-Firearms-Prevalence-on-Suicide-Rates.pdf>.

⁵⁸ Eric W. Fleegler, *Our Limited Knowledge of Youth Suicide Risk and Firearm Access*, JAMA Network (Oct. 8, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2784797>.

⁵⁹ Jennifer Mascia, *How Often Are Guns Involved in Accidental Deaths?*, The Trace (Dec. 9, 2022), <https://www.thetrace.org/2022/12/accidental-shootings-cdc-data-children/>.

⁶⁰ Sara J. Solnick & David Hemenway, *Unintentional Firearm Deaths in the United States 2005—2015*, 6 *Injury Epidemiology* (Oct. 14, 2019), <https://injejournal.biomedcentral.com/articles/10.1186/s40621-019-0220-0>.

particular, the recent consumption of alcohol appears to play a role in a significant percentage of accidental firearm deaths.⁶¹ Roughly one-in-five accidental firearm deaths is related to the act of hunting, occurring either during the hunt itself, or while setting out for or returning from the hunt.⁶²

Unintentional firearm injuries resulting in a hospital visit are far more common than unintentional firearm deaths, but are still far less common than other types of unintentional injuries—such as those from falls or “cutting or piercing”—resulting in a hospital visit.⁶³ Unintentional gun deaths and injuries are dwarfed by unintentional drug overdoses.⁶⁴

II. Understanding The Benefits of Lawful Gun Ownership

As I have noted in previous testimony before this committee, gun control advocates routinely downplay the important role armed self-defense plays with respect to overall public safety. The capacity of lawful gun ownership to promote human flourishing and add protective value is, indeed, one of the reasons that gun violence generally does not fit well within any model (public health or otherwise) that seeks to denigrate gun ownership as either an infectious disease or a “social ill” on par with smoking tobacco. Moreover, the constitutionally protected nature of the right to keep and bear arms means that many regulatory frameworks that might work in other contexts would be wholly inappropriate with respect to restricting or burdening individual gun possession.

Contrary to modern claims by many gun control advocates, the Second Amendment is not primarily concerned with protecting Americans’ ability to hunt or shoot recreationally. Rather, the right to keep and bear arms is centered on the natural right of self-defense, giving “teeth” to the promises of liberty and ensuring that attempts to reduce our natural rights to dead letters may be met with meaningful resistance.⁶⁵

The most common way in which the need for armed self-defense manifests itself in the lives of ordinary Americans is in the context of individual self-defense against crime, when the government cannot be present in the moment of need to protect life, liberty, and property. And armed self-defense in this context is, indeed, very common. According to a 2013 report by the Centers for Disease Control and Prevention, almost every major study on defensive gun uses has concluded that Americans use their firearms defensively somewhere between 500,000 and several

⁶¹ *Id.*

⁶² *Id.*

⁶³ See CDC, Initial Injury-Related Visits to Hospital Emergency Departments, by Sex, Age, and Intent and Mechanism of Injury: United States, Average Annual, Selected Years 2005–2006 Through 2017–2018, <https://www.cdc.gov/nchs/data/hus/2020-2021/InjEdVis.pdf>.

;Anis Davoudi & Lindsey Woodworth, The Burden of Firearm Injuries on the Hospital System, 2000–2020 (March 1, 2023), <https://injepijournal.biomedcentral.com/articles/10.1186/s40621-023-00420-1>.

⁶⁴ Merianne Rose Spencer et al., *Estimates of Drug Overdoses Involving Fentanyl, Methamphetamine, Cocaine, Heroin, and Oxycodone: United States, 2021*, NATIONAL CENTER FOR HEALTH STATISTICS REPORT NO. 27 (May 2023), <https://www.cdc.gov/nchs/data/vsrr/vsrr027.pdf>.

⁶⁵ See generally, THE HERITAGE FOUNDATION, THE ESSENTIAL SECOND AMENDMENT (2022), https://www.heritage.org/sites/default/files/2023-01/TheEssentialSecondAmmendment_Ebook.pdf.

million times every year.⁶⁶ In 2021, the most comprehensive survey of gun owners and gun use ever conducted reinforced these earlier studies, estimating an average of just over 1.6 million annual defensive gun uses.⁶⁷ Importantly, this latest analysis reveals that, unlike criminal gun uses which are disproportionately perpetrated by a small subset of repeat offenders, defensive gun uses are quite common amongst the broader population of lawful gun owners—approximately one-third of all gun owners reported having used a firearm to defend themselves or their property.⁶⁸

Not only are armed civilians better able to resist criminal activity when it occurs, but according to criminals themselves, knowing that potential victims might be armed effectively deters many crimes from happening in the first place. According to one survey of imprisoned felons, roughly one-third reported being “scared off, shot at, wounded or captured by an armed victim,” while 40 percent admitted that they had refrained from attempting to commit a crime out of fear that the victim was armed.⁶⁹ Well over half of the surveyed felons acknowledged that they would not attack a victim they knew was armed, and almost three-quarters agreed that “one reason burglars avoid houses where people are at home is that they fear being shot.”⁷⁰ Importantly, the study also found that felons from states with the greatest relative number of privately owned firearms registered the highest levels of concern about confronting an armed victim.⁷¹

This is consistent with the conclusions of a study that analyzed the effect of a Memphis newspaper listing all Tennessee residents with a handgun carry permit in a publicly accessible database, locating them within their five-digit zip code. The database received more than a million views in 2009.⁷² The study’s authors concluded that, in the months following a newspaper article that dramatically increased online traffic to the database, zip codes with higher densities of carry permit holders experienced a 20 percent relative decrease in burglaries compared to zip codes with lower densities of carry permit holders.⁷³

International data, too, seems to indicate that criminals generally consider the likelihood of armed resistance and adapt their behavior accordingly. According to one study, only about 13 percent of burglaries in the United States take place when the occupants are home, a rate far lower than in many other developed countries like Canada, Great Britain, and the Netherlands, where gun laws are far more restrictive and private gun ownership is far less common.⁷⁴ Because these “hot burglaries” are far more likely to result in an assault against a victim than are burglaries of unoccupied homes, it is relatively easy to predict—as several researchers have—that the lower percentage of hot burglaries in the United States results in over half a million fewer assaults every

⁶⁶ CTRS. FOR DISEASE CONTROL AND PREVENTION, PRIORITIES FOR RESEARCH TO REDUCE THE THREAT OF FIREARM-RELATED VIOLENCE 15 (2013), <https://www.nap.edu/read/18319/chapter/3#15>.

⁶⁷ William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned*, Georgetown McDonough School of Business Research Paper No. 4109494 (last revised Sept. 28, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4109494.

⁶⁸ *Id.*

⁶⁹ James D. Wright & Peter H. Rossi, *The Armed Criminal in America: A Survey of Incarcerated Felons*, NAT’L INST. OF JUSTICE 26 (July 1985), <https://www.ojp.gov/pdffiles1/Photocopy/97099NCJRS.pdf>.

⁷⁰ *Id.* at 27.

⁷¹ *Id.*

⁷² Alessandro Acquisti & Catherine Tucker, *Guns, Privacy, and Crime*, NAT’L BUREAU OF ECON. RESEARCH WORKING PAPER NO. 29940 (April 2022), <https://www.nber.org/papers/w29940>.

⁷³ *Id.*

⁷⁴ David B. Kopel, *Lawyers, Guns, and Burglars*, 43 ARIZ. L. REV. 345 (2001).

year than would otherwise occur if the percentage of hot burglaries was on par with these other countries, saving the nation billions of dollars in avoided crime costs and an untold number of lives.⁷⁵ While these studies looked specifically at burglaries, which by definition do not occur in public, it should be presumed that the same protective effects of gun ownership extend (at least to some extent) to the public sphere based on the same logic—most criminals seek to avoid armed resistance and in many cases will be deterred from attacking victims in a public place if those victims are likely to be armed.

III. Most Common Proposals for Stricter Gun Control Are Constitutionally Problematic and Are Not Actually Designed to Meaningfully Address Any Subset of Gun Violence

Despite the clear evidence that ordinary lawful gun owners are not the driving force behind gun crime, and that suicidality is a far more complex phenomenon than general access to firearms, gun control advocates nonetheless continue promoting gun laws that are based in those assumptions. I am under no illusions that reframing the issue as a “public health crisis” will lead those advocates to promote alternative frameworks. Therefore, it is worth reviewing how many commonly advocated gun control laws suffer from serious design flaws, failing to meaningfully address any subset of gun violence. Unfortunately, they often simultaneously suffer from constitutional concerns and likely have the unintended consequence (or, cynically, the absolutely intended consequence) of undermining the natural right of armed self-defense.

A. Punitive Public Carry Laws

Even after the Supreme Court struck down one of the most restrictive frameworks for public carry in *New York State Rifle & Pistol Association v. Bruen*, some states have gone to great lengths to thumb their noses at the right of ordinary citizens to carry firearms in public for self-defense, passing legal frameworks that in theory allow some method of obtaining a carry permit, but that in practice are spitefully restrictive to the point of effectively eliminating the right.

As evidence above, lawful gun owners are not a driving force behind criminal gun violence. This is particularly true of concealed carry permit holders, who as a group are one of the most law-abiding segments of society. Analyses of available state-level data routinely shows that they are, in fact, significantly less likely to be convicted of firearms-related violations than are police officers, who under federal law are exempt from most state-level gun laws (including those regulating public carry), including while they are off-duty.⁷⁶ This is not to suggest that law

⁷⁵ *Id.* Importantly, these dollar amounts likely increase significantly when accounting for inflation.

⁷⁶ See John Lott, *Concealed Carry Permit Holders Across the United States: 2022*, CRIME RESEARCH PREVENTION CTR. at 42-42 (Oct. 31, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4279137. The available evidence also indicates that permit holders are convicted of felonies and misdemeanors of any kind significantly less often compared to law enforcement officers. John Lott, *Concealed Carry Permit Holders Across the United States: 2022*, CRIME RESEARCH PREVENTION CTR. at 33-36 (Aug. 14, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3233904. Nevertheless, the Law Enforcement Officers Safety Act (LEOSA) effectively authorizes off-duty and retired law enforcement officers to carry concealed firearms in public, in any state, subject only to certain federal restrictions. See 18 U.S.C. §§ 926B-C; *FAQ On Amendments to the Law Enforcement Officers Safety Act*,

enforcement officers are prone to committing weapons offense—quite the opposite, it highlights just how little the public has to fear from an increase in concealed carry permit holders.

It is little wonder that the most methodologically sound studies on the issue routinely find that more permissive public carry schemes do not lead to more violent crime.⁷⁷ To the extent that any studies do show a relationship between public carry frameworks and violent crime, there still exists no logical causal mechanism to explain how more permissive public carry laws would conceivably cause that violent crime. The only crimes that could logically be the result of permissive public carry laws are those (1) carried out with firearms (2) in public places (3) by a person lawfully carrying that firearm under the permissive framework (4) who would not otherwise have been highly motivated to commit the same crime regardless of whether state laws prohibited him or her from carrying in public. Most crimes (in fact, the vast majority of crimes) do not fit within those parameters. And, again, concealed carry permit holders are overwhelmingly law-abiding and rarely commit *any* crimes, much less gun crimes in public spaces that were facilitated by their carry permits in the sense that permit holder committed a crime of opportunity during the normal course of his or her otherwise lawful public carry. Moreover, to the extent that permit holders sometimes do commit these types of crimes, it is equally true that they are sometimes stopped by other armed citizens whose ability to defend themselves and others is owed directly to the more permissive public carry framework.⁷⁸

Indeed, gun violence rates plummeted between the early 1990s and late 2010s, even as the national momentum shifted dramatically toward more permissive public carry schemes.⁷⁹ Not a single state that voluntarily moved to a more permissive framework has chosen to return to its more restrictive laws. Since most individuals who own guns or carry them in public do so out of concern for their own safety, it is far more likely (and the available evidence certainly suggests) that any causal mechanism works the opposite way—increases in violent crime tend to cause states to move toward less restrictive frameworks so that law-abiding citizens may better defend themselves in public, and not the other way around.

NRA Explore (last accessed Mar. 11, 2023), <https://le.nra.org/understanding-leosa/frequently-asked-questions/>. Meanwhile, concealed carry permit holders wishing to carry in another state are reliant on state-level reciprocity agreements or must apply for a non-resident's permit in the state in which they wish to carry. Often, the most gun-restrictive states either do not recognize the permits of the vast majority of other states, and in many cases effectively do not authorize non-residents to obtain permits. In any case, concealed carry permit holders who cross state lines are subject to a complex and complicated web of restrictions that can change even between individual counties and cities. *See generally*, Concealed Carry Reciprocity Map & Gun Laws by State, USCCA (last accessed Mar. 11, 2023), https://www.usconcealedcarry.com/resources/ccw_reciprocity_map/.

⁷⁷ See William English, *The Right to Carry Has Not Increased Violent Crime: Improving an Old Debate Through Better Data on Permit Growth Over Time*, GEORGETOWN MCDONOUGH SCHOOL OF BUSINESS RESEARCH PAPER NO. 3887151 (last revised Jan. 11, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887151.

⁷⁸ See, e.g., Jameson Cook, *Man Bound Over On Attempted Murder for Warren Police Mini-Station Shooting*, Macomb Daily (Updated Jan. 19, 2022), <https://www.macombdaily.com/2022/01/19/man-bound-over-on-attempted-murder-for-warren-police-mini-station-shooting/>.

⁷⁹ See Jens Manuel Krogstad, *Gun Homicides Steady After Decline in '90s; Suicide Rate Edges Up*, PEW RESEARCH Ctr (Oct. 21, 2015), <https://www.pewresearch.org/fact-tank/2015/10/21/gun-homicides-steady-after-decline-in-90s-suicide-rate-edges-up/>; Jennifer L. Truman & Lynn Langton, *Criminal Victimization, 2013*, BUREAU OF JUSTICE STATISTICS NCJ 247648 (Revised Sept. 19, 2014), <https://bjs.ojp.gov/content/pub/pdf/cv13.pdf>; David Kopel, *Growth Chart of Right to Carry*, WASH. POST (Feb. 17, 2014), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/02/17/growth-chart-of-right-to-carry/>.

The simple reality is that people are routinely victimized by violent crime outside of the home, and therefore have an ongoing need to be able to defend themselves with firearms in public spaces. According to the 2021 National Firearms Survey, while many of these defensive gun uses occur in or around the gun owner's home, 14 percent (or approximately 224,000) occurred either in public or in a third-party residence.⁸⁰ The number of defensive gun uses outside of the home has likely been kept artificially low by overly restrictive public carry schemes like the one struck down in *Bruen*, precisely because these laws all but ensured that tens of millions of ordinary, law-abiding adults would never have the option of lawful armed self-defense in public spaces.

Armed civilians also play a significant but underacknowledged role in stopping active shooters, including those bent on acts of mass public violence. Between 2014 and 2021, armed citizens successfully stopped 51 percent of active shooters who carried out attacks in public places that allowed civilians to lawfully carry their own firearms for self-defense.⁸¹ In none of those incidents did the armed citizen injure innocent bystanders.⁸²

Moreover, restrictive public carry licensing requirements have devastating effects from a criminal justice standpoint. As a coalition Black defense attorneys highlighted in an amicus brief in support of the petitioners in *Bruen*, restrictive public carry requirements effectively criminalized the exercise of fundamental rights, in particular for poor and non-white Americans.⁸³ It was almost impossible for them to obtain a license to carry because licensing officials almost always determined that they lacked proper cause or sufficiently good moral character. And yet, because many still nonetheless truly felt a need to protect themselves with firearms in public despite government assessments to the contrary, or because they simply could not afford the often-prohibitive fees the government requires, thousands of New Yorkers were prosecuted every year as felons for possessing guns without licenses.⁸⁴ Nearly all of them were ethnic minorities.⁸⁵ In many cases, this is the only crime they were ever alleged to have committed. Now, at the very least, there is some method for ordinary peaceable New Yorkers to exercise their fundamental rights in a non-criminal manner.

Unfortunately, even shall-issue states sometimes make it too difficult for ordinary, law-abiding citizens to obtain and carry firearms in public, resulting in the same criminal justice problems. A recent study from Loyola University on arrests for illegal gun possession in Cook County helps to demonstrate the punitive effect of Illinois' burdensome process for obtaining a concealed carry permit.⁸⁶ A significant percentage of individuals arrested for illegal firearm possession are

⁸⁰ *Id.* at 14.

⁸¹ John R. Lott, *Massive Errors in FBI'S Active Shooting Reports Regarding Cases Where Civilians Stop Attacks*, CRIME RESEARCH PREVENTION CENTER (Oct. 3, 2022), <https://crimeresearch.org/2022/10/massive-errors-in-fbis-active-shooting-reports-regarding-cases-where-civilians-stop-attacks-instead-of-4-4-the-correct-number-is-at-least-34-4-in-2021-it-is-at-least-49-1-excluding-gun-free-zone/>.

⁸² *Id.*

⁸³ Brief of the Black Attorneys of Legal Aid, et al., in Support of Petitioners, *New York State Rifle & Pistol Ass'n v. Bruen*, https://www.supremecourt.gov/DocketPDF/20/20-843/184718/20210723101034102_20-843%20Amici%20Brief%20revised%20cover.pdf.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ David E. Olson et al., *Arrests in Cook County for Illegal Possession of a Firearm*, RESEARCH BRIEF, LOYOLA UNIVERSITY CENTER FOR CRIMINAL JUSTICE RESEARCH, POLICY, AND PRACTICE (Dec. 2020), <https://www.luc.edu/media/lucedu/ccj/pdfs/CookCountygunpossessionbulletindecember2020.pdf>.

not otherwise prohibited from possessing guns and are not accused of using their gun in a violent manner or in furtherance of a crime.⁸⁷ Their sole offense was a failure to obtain a concealed carry permit, something that under Illinois law they—as non-prohibited persons—could in theory obtain. The question is why individuals who want to carry in public and would actually qualify for the permit to do so nonetheless fail to obtain one. The answer seems to be, in large part, that obtaining a carry permit in Illinois will cost hundreds of dollars, require a working knowledge of the legal process, and impose serious time and logistical burdens.

B. Bans on So-Called “Assault Weapons”

There is no standard definition of “assault weapon,” but the phrase generally refers to a semi-automatic rifle with a detachable magazine and one or more of a handful of common cosmetic features, such as a pistol grip, forward grip, barrel shroud, collapsing or folding stock, or threaded barrel.⁸⁸ Despite purposeful attempts by gun control advocates to conflate these guns in the public mind with machine guns and select-fire assault rifles, semi-automatic rifles with pistol grips and barrel shrouds are functionally identical to all other semi-automatic rifles.⁸⁹

Despite claims by gun control activists that these weapons are particularly deadly, the characteristics that distinguish them from “non-assault weapon” are not related to any measure of lethality, like muzzle velocity, caliber, or rate of fire.

More importantly, these weapons are already not the type of weapon driving any type of gun violence. During the past decade, rifles of any kind were known to be used in only 3 percent to 4 percent of homicides, without any clarity on how many of those rifles were “assault weapons” compared to other types of “non-assault” rifles.⁹⁰ The average American is, in fact, several times more likely to be stabbed to death than he or she is to be shot to death with a rifle of any kind,

⁸⁷ *Id.*

⁸⁸ For an extensive analysis of these features, see generally STEPHEN P. HALBROOK, AMERICA’S RIFLE: THE CASE FOR THE AR-15 (2022).

⁸⁹ The widespread confusion many laymen have about the differences between automatic “machine guns,” select-fire “assault rifles,” and semi-automatic “assault-style” rifles is perhaps one of the most profound problems underlying the national conversation on firearms policy. Automatic, select-fire, and semi-automatic firearms are all autoloading, meaning that once a round is fired, the internal mechanics of the gun will automatically load the next round into the chamber without additional manual action by the shooter. A “machine gun” is an automatic firearm, meaning that it is designed to fire bullets continuously for as long as the trigger is depressed. A semi-automatic firearm, on the other hand, requires the shooter to manually pull the trigger to fire each individual round. A select-fire rifle—categorized as an “assault rifle” under federal law—is capable of quickly switching back and forth between automatic fire, semi-automatic fire, or a “burst” mode in which one trigger pull will automatically fire a predetermined number of bullets (usually two or three). Automatic and select-fire guns both therefore typically have a much faster rate of fire than do semi-automatic firearms. The civilian possession of both machine guns and select-fire guns is heavily regulated under the National Firearms Act of 1936 and the Firearm Owners’ Protection Act of 1986, and civilians without a special dealer’s license may not purchase or possess any such weapon manufactured after 1986. While gun control advocates will refer to certain semi-automatic firearms as “assault-style” rifles or “assault weapons” simply because they have similar external appearances to assault rifles, they are functionally distinct. Meanwhile, adding a pistol grip or barrel shroud to a semi-automatic rifle does not suddenly change its rate of fire or alter the internal mechanics to make it a machine gun or assault rifle, just as removing those features from an actual machine gun or assault rifle do not turn the firearm into a semi-automatic one.

⁹⁰ FBI Crime Data Explorer, Murder Victims by Weapon (last accessed Sept. 26, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/shr>.

pistol-gripped or otherwise.⁹¹ Handguns are by far the weapon of choice for perpetrators of non-fatal firearm crimes, as well.⁹²

Even if enforcement were immediate and total, such that no criminal could ever again access a pistol-gripped semi-automatic rifle, most crimes (in fact, virtually all crimes) could just as easily and effectively be carried out with a ban-compliant firearm of the same caliber.⁹³ It is little wonder, then, the official government report on the 1994 federal assault weapons ban—which expired in 2004—determined that “[s]hould it be renewed, the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement. [Assault weapons] were rarely used in gun crimes even before the ban.”⁹⁴

Assault weapon bans are even less of a practical solution when it comes to the majority of gun deaths, which are suicides. First, as with criminal gun violence, the overwhelming majority of gun suicides are carried out with handguns, not long guns.⁹⁵ Of those suicides carried out with long guns, the majority involve shotguns as opposed to rifles of any kind.⁹⁶ To the limited extent that AR-15 type platforms are used during suicides, their use as opposed to the use of handguns is largely irrelevant—the same end will be achieved through the use of virtually any alternative firearm of an equivalent caliber.

Indeed, the primary concern raised by advocates of banning so-called assault weapons is related to the least common type of firearm violence—mass public shootings, which account for a fraction of a percent of all gun homicides every year, although they certainly garner a lot of attention for understandable reasons. Gun control advocates, politicians, and the media routinely characterize semi-automatic rifles, specifically the AR-15, as the “weapon of choice” for mass public shooters. This is far from an accurate depiction of the facts.⁹⁷ Of 82 mass public shootings that occurred between 2012 and 2022, 38 involved shooters who used handguns alone while only 17 involved shooters who used rifles alone.⁹⁸ Even if this analysis includes the 19 mass public

⁹¹ *Id.*

⁹² FBI Crime Data Explorer, Type of Weapon Involved by Offense (last accessed Sept. 26, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.

⁹³ See generally, Gary Kleck, *Did Australia’s Ban on Semiauto Firearms Really Reduce Violence? A Critique of the Chapman et al. (2016) Study* (Jan. 12, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3086324.

⁹⁴ Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994–2003* (June 2004), <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>. For a general summary of logical problems presented by claims that more restrictive bans decreased mass shootings, suicides, or homicides in Australia during this same time, see Gary Kleck, *Did Australia’s Ban on Semiauto Firearms Really Reduce Violence? A Critique of the Chapman et al. (2016) Study* (Jan. 12, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3086324.

⁹⁵ See Thomas Hanlon et al., *Type of Firearm Used in Suicides: Findings From 13 States in the National Violent Death Reporting System, 2005–2015* (June 18, 2019), [https://www.jahonline.org/article/S1054-139X\(19\)301740/pdf](https://www.jahonline.org/article/S1054-139X(19)301740/pdf).

⁹⁶ *Id.*

⁹⁷ Compare annual mass public shooting deaths in Mark Follman et al., *US Mass Shootings, 1982–2022: Data From Mother Jones’ Investigation*, Mother Jones (Updated Oct. 26, 2023), <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/> with annual homicide and gun homicide deaths in Homicide Offense Characteristics, FBI Crime Data Explorer (last accessed Jan. 18, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.

⁹⁸ Follman, *supra* note 97.

shootings in which the perpetrator possessed a combination of firearms including a rifle, most mass public shootings still would not involve the use of a rifle.⁹⁹

To the extent that semi-automatic rifles are utilized by mass shooters, it is because they are popular among all Americans, the vast majority of whom will never use them for any unlawful purpose, much less a mass shooting.¹⁰⁰ Moreover, some of the deadliest mass public shootings in United States history have been carried out with nothing more than handguns. This includes the worst school shooting in U.S. history at Virginia Tech in 2006, where the shooter was able to fire 174 rounds in roughly 11 minutes, killing 30 people and wounding 17 others with nothing more than common, relatively low-caliber handguns.¹⁰¹ Similarly, in 1991, a shooter at a Luby's Cafeteria in Killeen, Texas, fatally shot 23 people and wounded another 19 with two handguns.¹⁰²

The reality is that, even if all would-be mass public shooters were successfully diverted to the use of “non-assault weapons,” it would likely have no meaningful impact on their ability to kill large numbers of unarmed civilians. Although many gun control advocates seem to believe—or at least appear to convey to their respective audiences—that banning “assault weapons” would mean banning the use of all semi-automatic rifles or firearms chambered in common rifle calibers, such that would-be mass shooters would be limited to the use of handguns, this is simply a fiction. With only a few arguable exceptions, such as the 2018 Las Vegas shooting, the type of firearm was not a major factor in the ability of mass shooters to cause significant casualties, particularly compared to other important factors such as the time the shooter remained unopposed by a meaningful response.¹⁰³ This is because both “assault weapons” and “non-

⁹⁹ The remaining mass public shootings involved either shotguns alone, or a combination of handguns and shotguns.

¹⁰⁰ See English, *supra* note 67, at 33–34. Importantly, owners of these rifles widely report owning them for perfectly lawful purposes, including home defense, participation in competitive shooting sports, hunting, and recreational target shooting. *Id.*

¹⁰¹ The shooter used a .22 caliber Walther P22 and a 9mm Glock 10. VA. TECH. REVIEW PANEL, MASS SHOOTINGS AT VIRGINIA TECH: ADDENDUM TO THE REPORT OF THE REVIEW PANEL 30–A (Nov. 2009), <https://scholar.lib.vt.edu/u/prevail/docs/April16ReportRev20091204.pdf>.

¹⁰² See Thomas C. Hayes, *Gunman Kills 22 and Himself in Texas Cafeteria*, N.Y. Times (Oct. 17, 1991), <https://www.nytimes.com/1991/10/17/us/gunman-kills-22-and-himself-in-texas-cafeteria.html>; Paula Chin, *A Texas Massacre*, People Magazine (Nov. 4, 1991), <https://people.com/archive/a-texas-massacre-vol-36-no-17/>.

¹⁰³ For in-depth information on the Las Vegas shooting, see GENERALLY LVMPD CRIMINAL INVESTIGATIVE REPORT OF THE 1 OCTOBER MASS CASUALTY SHOOTING, LAS VEGAS METROPOLITAN POLICE DEPARTMENT (Aug. 3, 2018), https://www.lvmpd.com/en-us/Documents/1-October-FIT-Criminal-Investigative-Report-FINAL_080318.pdf.

The Las Vegas shooting is an outlier amongst modern mass public shootings for several reasons, most notably in that the shooter operated from a fixed “sniper’s nest” position. The factor that most obviously impacted the casualty count in this shooting was not the shooter’s use of a pistol-gripped rifle, but his use of a bump stock device, which significantly increased his rate of fire. There is at least a facially plausible argument that the shooter’s use of foregrips and pistol grips enabled him to better hit his targets from a distance of almost 500 yards than if his firearms did not have such features. However, there are several problems with this argument. First, the shooter does not appear to have been pinpointing specific victims, but rather attempting to fire as many rounds as possible at the general mass of concertgoers. Given that his target was comprised of thousands of potential victims packed tightly together in a large, open space, any potential slight decrease in accuracy rendered by the use of a “featureless” rifle would likely have resulted not in fewer casualties, but merely a different set of casualties. Second, while it is still unclear which of the shooter’s dozens of firearms were actually used that night, many of them were attached with bipods—common devices for hunting and marksmanship that allow the shooter to rest the front end of the firearm in a stable and elevated position. The use of these devices—which are not features of “assault weapons”—would have

assault weapons” are functionally the exact same firearms and expel the exact same caliber of bullets with the exact same muzzle velocity, impacting the victim’s body in the exact same manner.

Finally, proponents of this policy also generally assume a type of widespread compliance that would be entirely unprecedented, as well as law enforcement capabilities far beyond those of already overwhelmed American police departments operating within normal constitutional constraints. In reality, otherwise law-abiding and peaceable Americans routinely show themselves largely unwilling to comply with laws that require them, for completely arbitrary reasons, to register, surrender, or destroy personal property.¹⁰⁴

There are, of course, serious constitutional problems with bans on these so-called assault weapons. While the Supreme Court has never reviewed a challenge to bans on the civilian possession of so-called assault weapons, including the federal prohibition on new sales of such weapons between 1994 and 2004, it is difficult to see how a court could uphold these while also remaining faithful to *Heller v. District of Columbia*¹⁰⁵ and *New York Rifle & Pistol Association v. Bruen*.¹⁰⁶ In *Heller*, the Court reasoned that the Second Amendment’s protections are not limited only to those arms in existence at the time of ratification, but “extends, prima facie, to all instruments that constitute bearable arms.”¹⁰⁷ While “dangerous and unusual” arms may fall outside of the Amendment’s scope, it certainly covers small arms (in that instance, handguns) that are “typically possessed by law-abiding citizens for lawful purposes,” like self-defense.¹⁰⁸

Semi-automatic rifles—with or without the cosmetic features decried by gun control advocates as being “military-style”—are the exact type of bearable small arms whose civilian possession is protected by the Second Amendment.¹⁰⁹ Tens of millions of Americans own these firearms for the same reasons that police departments across the country now routinely issue them to their peace officers, who are, by definition, not authorized to wage offensive warfare or “kill as many people as possible in the shortest amount of time.” In short, they are incredibly useful tools against criminal threats that commonly arise in a civilian context. And, importantly, after *Bruen*, it is difficult to see how modern bans on firearms that “traditionally have been widely accepted

provided far more stability from the shooter’s “sniper’s nest” vantage point than would a foregrip or pistol grip. Moreover, from such a position, there are a variety of methods the shooter could have used with a featureless rifle to stabilize the firearm even without a bipod or foregrip, such as resting the forestock on a bag or chairback.

¹⁰⁴ Stephen Gutowski, ATF Says a Quarter Million Guns Registered Under Pistol-Brace Ban, *The Reload* (June 2, 2023), <https://thereload.com/atf-says-a-quarter-million-guns-registered-under-pistol-brace-rule/>; Jeremy Gerner, With Less Than 6 Weeks Before Deadline, 3,400 Gun Owners Have Registered Guns Covered by State Ban, *Chicago Tribune* (November 24, 2023), <https://www.chicagotribune.com/politics/ct-illinois-gun-ban-registration-update-20231124-25fryiwbuffvxcob2napmzoge4-story.html>.

¹⁰⁵ 554 U.S. 570 (2008).

¹⁰⁶ 597 U.S. ____ (2022).

¹⁰⁷ *Heller*, 554 U.S. 570, at 582.

¹⁰⁸ *Id.* at 625–30.

¹⁰⁹ According to the most comprehensive survey of gun owners ever undertaken, as of 2021, 30 percent of gun owners—almost 25 million Americans—reported owning or having owned an AR-15 or similar type of rifle. William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned*, Georgetown McDonough School of Business Research Paper No. 4109494 at 33 (last revised Sept. 28, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4109494. As many as 44 million such rifles are currently in civilian hands. *Id.*

as lawful possessions” are consistent with the nation’s historical tradition of firearms regulation.¹¹⁰

The characteristics that make a weapon an “assault weapon” make them particularly suitable for self-defense against criminal threats in a civilian context. Civilians can and do routinely use them to great effect in self-defense scenarios.¹¹¹ These features exist for the purpose of making the firearm safer to operate and easier to fire in a more accurate manner. For instance, barrel shrouds are a component of “assault weapons” that protect the operator’s hand by partially or completely covering the rifle barrel, which can often become hot enough to cause serious burns after as little usage as shooting through one standard magazine at a range.¹¹² The protective function of the barrel shroud is so fundamental to its existence that recently proposed legislation to ban its use defined the feature as: “a shroud that is attached to, or partially or completely encircles, the barrel of a firearm so that the shroud protects the user of the firearm from heat generated by the barrel.”¹¹³ And yet, despite the fact that the entire function of a barrel shroud is to protect lawful users from injury during lawful use, gun control advocates routinely point to this feature as something that must be banned because it also protects unlawful users from injury.¹¹⁴

C. Magazine Capacity Limits

Often demanded hand-in-glove with bans on certain semi-automatic rifles are bans on the possession of “high-capacity magazines.” As with the term “assault weapon,” the term “high-capacity magazine” is an arbitrary and flexible one created by gun control advocates to frame the national conversation in a manner advantageous for their policy goals.

Even assuming that it is practical as a matter of policy to confiscate the tens of millions of these magazines already owned by law-abiding citizens—while somehow eliminating any means of replacement for would-be criminals—limiting magazine capacity is unlikely to meaningfully impact gun violence rates, specifically, or public safety more broadly.

¹¹⁰ See *Staples v. United States*, 511 U.S. 600, 612 (1994).

¹¹¹ Media-verified defensive gun uses often do not include specific information on the type of weapon used, much less clearly distinguish between various types of rifles. However, it is abundantly clear that civilians, just like law enforcement officers, can and do rely on these weapons for self-defense. See, e.g., Joseph Erickson, *3 Charged by SLED in Williamsburg County Shooting*, ABC 4 NEWS (Dec. 9, 2022), <https://abcnews4.com/news/local/3-charged-by-sled-in-williamsburg-county-shooting-kingstree-sc-south-carolina-state-law-enforcement-division-jomareon-epps-davonte-antwan-green-terell-jermaine-graham-wciv>; Emma Colton, *Florida Sheriff Says Man Will ‘Absolutely Not’ Face Charges For Defending Home With ‘AK-47-Style’ Gun*, FOX NEWS (July 13, 2022), <https://www.foxnews.com/us/florida-sheriff-says-man-absolutely-not-face-charges-defending-home-ak-47-style-gun>; Thomas Mates, *Man Arrested After Shootout in Melbourne Neighborhood*, CLICK ORLANDO (Apr. 20, 2022), http://thf-legal.s3.amazonaws.com/DGU/April%202022/04.08.22_Melbourne_FL.pdf.

¹¹² See Dennis P. Chapman, *Features and Lawful Common Uses of Semi-Automatic Rifles*, Working Paper, at 63–68 (last revised Aug. 29, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3436512.

¹¹³ Assault Weapons Ban of 2013, S. 150, 113th Cong. § 2(b)(38) (2013).

¹¹⁴ See Chapman, *supra* note 112, at 37–38; E. Gregory Wallace, “Assault Weapons” Myths, 43 S. Ill. U. L.J. 193, 211–212 (2018).

Most gun crimes are not targeted shooting attempts, but rather robberies and aggravated assaults in which the perpetrator brandishes—but does not fire—the gun.¹¹⁵ Even with respect to the minority of gun crimes in which perpetrators fire their weapon, it is not at all clear that magazine capacity limits offer meaningful benefits. Only a small percentage of homicides involve two or more victims, which are the types of crimes most likely to require an offender to fire more than 10 rounds.¹¹⁶ Unsurprisingly, an official analysis of the 1994 federal law prohibiting their sale concluded that there was “no evidence of reductions in multiple-victim gun homicides or multiple-gunshot wound victimizations” as a result of the prohibition.¹¹⁷ This is hardly surprising, given that the “banned...magazines were used in only a modest fraction of gun crimes before the law.”¹¹⁸ Moreover, later analyses have determined that the proportion of all multiple-victim homicides actually increased slightly during the first half of the federal ban, before stabilizing around 2000 and remaining consistently around 4.5 percent until 2008, when the most recent report was apparently published.¹¹⁹

Unsurprisingly, proponents of magazine capacity limitations have increasingly turned away from arguments that these laws will lower crime rates, generally, and instead focus on their alleged impact on the least common type of gun violence—mass public shootings.¹²⁰ One of the most popular arguments raised in favor of limiting magazine capacity for civilians is that mass public shooters may use so-called “high capacity” capacity magazines to inflict higher numbers of casualties, namely by decreasing the number of times they need to reload. Again, even assuming widespread compliance and effective enforcement, limiting magazine capacity is unlikely to meaningfully lower casualty rates in mass public shootings. First, mass public shooters can (and routinely do) work around these limitations by bringing several firearms and extra loaded magazines, easily replacing expended magazines within seconds.¹²¹ Moreover, an analysis of data

¹¹⁵ See GRACE KENA & JENNIFER L. TRUMAN, TRENDS AND PATTERNS IN FIREARM VIOLENCE, 1993–2018, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT NCJ 251663 (Apr. 2022), <https://bjs.ojp.gov/content/pub/pdf/tpfv9318.pdf>. There are far more non-fatal firearm victimizations than firearm homicides every year. Between 2014 and 2018, only 9 percent of all non-fatal firearm victimizations involved an offender who actually fired a weapon, and only 2 percent resulted a victim being shot. *Id.* at 10.

¹¹⁶ Alexia Cooper & Erica L. Smith, *Homicide Trends in the United States, 1980–2008, Annual Rates for 2009 and 2010*, BUREAU OF JUSTICE STATISTICS NCJ 236018 at 24 (Nov. 2011), <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf>. Of course, offenders may fire more than 10 rounds in a single-victim homicide, but it is far more likely in such cases that rounds 11 and above were “overkill” and not necessary to offender’s ability to kill the victim.

¹¹⁷ Christopher Koper & Jeffrey Roth, *The Impact of the 1994 Federal Assault Weapon Ban on Gun Violence Outcomes: An Assessment of Multiple Outcome Measures and Some Lessons for Policy Evaluation*, 17 J. Quantitative Criminology 33 (2001).

¹¹⁸ *Id.*

¹¹⁹ Alexia Cooper & Erica L. Smith, *Homicide Trends in the United States, 1980–2008, Annual Rates for 2009 and 2010*, BUREAU OF JUSTICE STATISTICS NCJ 236018 at 24 (Nov. 2011), <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf>.

¹²⁰ Compare annual mass public shooting deaths in Mark Follman et al., *US Mass Shootings, 1982–2022: Data From Mother Jones’ Investigation*, Mother Jones (Updated Nov. 23, 2022), <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/> with annual homicide and gun homicide deaths in Homicide Offense Characteristics, FBI Crime Data Explorer (last accessed Jan. 18, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.

¹²¹ Roughly half of mass public shootings between 2012 and 2022 involved perpetrators who possessed more than one firearm while carrying out their crimes. See Follman, *supra* note **Error! Bookmark not defined.** Even if magazine capacity laws are taken to the most extreme and entirely prohibit the use of detachable magazines, mass

from mass public shootings shows that most perpetrators do not actually use magazines capable of holding more than 10 rounds, and that regardless, mass public shooters typically do not fire at a fast enough rate for casualty counts to be attributed to magazine capacity.¹²² This conclusion is supported by the findings of various panels analyzing the effect of magazine capacity for individual mass shootings, as well as by the reality that high casualty counts have occurred during shootings where only “limited-capacity” magazines were used.¹²³

When it comes to preventing suicides—again, the majority of gun deaths in any given year—magazine capacity limits are even less suitable as an intervention mechanism. Only one round is necessary for a suicidal person to carry out his or her destructive plan with a firearm.

From a constitutional standpoint, magazine capacity limitations suffer from the same general problems as bans on certain types of semi-automatic weapons—they are neither uncommon nor is there a historical tradition of imposing restrictions on magazine capacity. Magazines capable of holding more than 10 rounds have been in common use by civilians since the late 19th century and for many decades have been the factory standard for a variety of commonly owned handgun and rifle models.¹²⁴ Far from being rooted in some historical tradition of regulation, the first laws even remotely resembling modern bans on large-capacity magazines did not arise until the 1930s—and two of the three were repealed within decades.¹²⁵ Even today, magazine capacity limits exist in only a minority of states, most of which did not impose those limitations until the 21st century.¹²⁶ It is therefore incredibly difficult to see how any court could uphold such modern bans while remaining faithful to *Heller* and *Bruen*.

Where magazine capacity limits are unlikely to meaningfully impact the ability of criminals, mass shooters, and suicidal individuals to carry out destructive ends, they are substantially likely to undermine the practical ability of peaceable citizens to defend themselves in scenarios where the need for armed self-defense is most acute, such as when they are outnumbered, outgunned, or

public shooters or other criminals could still quickly reload a fixed magazine by using pre-loaded stripper or *en bloc* clips. Or, as was the case in the 2022 mass public shooting at a supermarket in Buffalo, New York, “compliant” non-detachable low-capacity magazines can easily and quickly be illegally modified by would-be mass shooters with access to the internet and a screwdriver. Joshua Eaton, *YouTube Videos That Taught Buffalo Suspect to Modify His Gun Are Still Online*, NBC News (Updated May 20, 2022), <https://www.nbcnews.com/tech/internet/buffalo-shooting-shooter-payton-gendron-video-youtube-gun-rna29709>.

¹²² Gary Kleck, *Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkages*, 17 Justice Research & Pol’y (2016).

¹²³ VA. TECH. REVIEW PANEL, MASS SHOOTINGS AT VIRGINIA TECH: ADDENDUM TO THE REPORT OF THE REVIEW PANEL 30–A (Nov. 2009), <https://scholar.lib.vt.edu/prevail/docs/April16ReportRev20091204.pdf>. The worst school shooting in U.S. history—at Virginia Tech in 2009—was carried out by an individual using two handguns and 19 extra magazines with capacities of 10 and 15 rounds. *Id.* In 1967, a gunman perched in a clock tower killed 17 at the University of Texas while primarily shooting a bolt-action hunting rifle that had, at maximum, a 5-round magazine. In 2018, a gunman at Santa Fe High School in Texas killed 10 with only a shotgun and revolver—and would almost certainly have killed far more but-for the quick interventions of armed school resource officers.

¹²⁴ See David B. Kopel, *The History of Firearms Magazines and Magazine Prohibitions*, 78 Albany L. Rev. 849 (2015).

¹²⁵ *Id.* at 864–66.

¹²⁶ In fact, of the 13 states that currently impose some form of magazine capacity restriction, 5 enacted those laws within the last two years. See generally Large Capacity Magazines, Giffords (last accessed Nov. 23, 2023), <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/large-capacity-magazines/>.

otherwise placed at a tactical disadvantage.¹²⁷ These scenarios of tactical disadvantage are almost certainly more common for peaceable citizens than for criminals, who have the upper hand in planning and executing their crimes. Unlike law-abiding citizens, who must reactively defend themselves whenever and under whatever circumstances they are victimized, criminals can (and often do) wait for (or even create) the most advantageous circumstances. For example, a significant percentage of homicides, robberies, and other violent crimes involve multiple offenders.¹²⁸ Multiple-offender homicides, in particular, are becoming increasingly common, with roughly one out of every five homicides in 2008 involving multiple offenders.¹²⁹

The importance of magazine capacity to lawful self-defense is arguably conceded by the fact that laws limiting magazine capacity universally exempt law enforcement officers, often including in their off-duty capacity and with their personal firearms.¹³⁰ Law enforcement officers in the United States are peace officers acting in a civilian context, and generally speaking respond to the same criminal threats first faced by the peaceable citizens who called them for assistance in the first place. The circumstances under which they may use deadly force largely parallel the laws of self-defense for civilians. While off-duty, their powers of arrest and investigation are, in many cases, based solely on the rights of citizens' arrest possessed by all other members of society. And while most civilian defensive gun uses do not involve any rounds being fired, much less more than ten rounds being fired, the same is true of police-involved shootings.¹³¹ To whatever extent, then, that standard capacity magazines are useful for law enforcement officers, they are equally useful for civilians who face those same threats.

¹²⁷ Amy Swearer, *If You Can't Beat 'Em, Lie About 'Em: How Gun Control Advocates Twist Heritage's Defensive Gun Use Database in the "Large-Capacity" Magazine Debate*, Heritage Found. Legal Memorandum No. 331 (May 17, 2023), <https://www.heritage.org/firearms/report/if-you-cant-beat-em-lie-about-em-how-gun-control-advocates-twist-heritages>.

¹²⁸ Alexia Cooper & Erica L. Smith, *Homicide Trends in the United States, 1980–2008*, Bureau of Justice Statistics NCJ 236018 at 24 (Nov. 2011), <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf>; Erika Harrell, *Violent Victimization Committed by Strangers, 1993–2010*, Bureau of Justice Statistics NCJ 239424 at 8 (Dec. 2012), <https://bjs.ojp.gov/content/pub/pdf/vvcs9310.pdf>; Grace Kena & Alexandra Thompson, *Hate Crime Victimization, 2005–2019*, Bureau of Justice Statistics NCJ 300954 at 5 (Sept. 2021), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf.

¹²⁹ Alexia Cooper & Erica L. Smith, *Homicide Trends in the United States, 1980–2008*, Bureau of Justice Statistics NCJ 236018 at 24 (Nov. 2011), <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf>. As the report itself acknowledges, this is likely an underestimation because the number of offenders was assumed to be only one for the 30.8 percent of homicides involving an unknown number of offenders. *Id.* at 35.

¹³⁰ Studies of police-involved shootings routinely show that most officers will never fire their gun at a suspect during the course of their duty, and that of those encounters in which shots are fired, most involved far fewer than 10 rounds fired by an individual officer. Darrel W. Stephens, Nat'l Police Found., *Officer Involved Shootings: Incident Executive Summary 3* (2019), https://www.policinginstitute.org/wp-content/uploads/2019/05/1.-OIS_incident_exec_summary_8.28.19.pdf. Nonetheless, law enforcement officers are universally exempt from magazine capacity limits, including in their off-duty capacity with their personal firearms. While no study has yet captured with any clarity the percentage of civilian defensive gun uses in which more than 10 rounds are fired, such instances clearly do occur.

¹³¹ In a recent analysis of 1180 officers who fired their service weapon during an on-duty shooting, only one out of ten officers fired more 11 or more rounds. More than half fired 3 or fewer rounds. Darrel W. Stephens, *Officer Involved Shootings: Incident Executive Summary*, National Police Foundation (2019), https://www.policinginstitute.org/wp-content/uploads/2019/05/1.-OIS_incident_exec_summary_8.28.19.pdf

D. Universal Background Checks

Most people agree that it is both constitutional and reasonable to prohibit certain individuals from possessing firearms because they have demonstrated a high risk of danger to themselves or others. Federal law reflects this consensus by barring convicted felons and those with histories of serious mental health problems from legally purchasing or possessing firearms unless their civil rights have been restored.

In 1993, Congress strengthened the means of enforcing these prohibitions by establishing the National Instant Criminal Background Check System (NICS) index and requiring that Federal Firearms Licensees (FFLs) request FBI background checks through this index on all prospective firearm purchasers. Moreover, any person or entity “engage[d] in the business of...dealing in firearms” and who regularly sells firearms for profit must go through the arduous process of obtaining a federal firearms license.¹³²

Under current federal law, then, it does not matter whether the gun sale or transfer takes place at a gun show, in a brick-and-mortar store, or over the Internet. The vast majority of lawful gun transfers require a background check. The only time federal law does not mandate a background check is when a non-FFL sells or transfers a gun to a resident of the same state. Even then, it is unlawful for a person to sell or transfer a gun to anyone he or she “know[s] or [has] reasonable cause to believe” is prohibited from possessing that firearm. Importantly, part of the reason for this limited exception for the background check mandate is that only FFLs can request NICS background checks. Private citizens cannot simply call the FBI and easily determine the status of prospective buyers.

As a practical matter, universal background checks have a very low ceiling for potential crime reduction. Even in a best-case scenario where everyone willing to abide by the law does so, universal background checks fail to meaningfully address the primary ways in which would-be criminals obtain firearms. Most gun crimes are committed by individuals who bypass existing background check laws through illegal or illegitimate channels, not through lawful private intrastate transfers. Most individuals who are already willing to sell to known felons, engage in straw purchasing, or deal in black market firearms are unlikely to be dissuaded from continuing to do so simply because their conduct would be considered doubly illegal.

Moreover, while most lawful gun owners looking to sell their firearms would presumably abide by requirements to pay a third-party FFL to conduct the transfer, the risk of consequences for those who do not would be minimal, at best. This is because, as a practical matter, law enforcement officers only discover evidence for such an unlawful transfer after they have recovered a firearm, connected it to criminal activity or a suicide that has already occurred, and determined that the firearm was intentionally transferred to a prohibited person without a background check (as opposed to having been lost by or stolen from the previous owner). Studies

¹³² See generally Federal Bureau of Investigation, About NICS (last accessed Nov. 23, 2023), <https://www.fbi.gov/services/cjis/nics/about-nics>; Amy Swearer, *Let Us Reason Together: A More Effective, Less Partisan Approach to Gun-Related Violence*, 44 SIU L. J. 1, 18–19 (2019), https://law.siu.edu/_common/documents/law-journal/articles%20-%202019/fall-2019/1---Swearer-jr.pdf.

routinely show that universal background checks, in and of themselves, have no effect on crime or suicide rates.¹³³

The methodology of universal background checks is particularly flawed with respect to stopping mass public shooters, though for slightly different reasons. Unlike other criminal acts of gun violence, which are overwhelmingly perpetrated by people who obtain firearms through illicit channels precisely because they cannot obtain them through legal ones, the problem with would-be mass public shooters is not that they circumvent background checks to obtain their weapons. It is, rather, that these shooters—with very few exceptions—are not prohibited from possessing firearms, often despite significant evidence that they are a danger to themselves or others.¹³⁴ They rarely obtain their firearms through lawful private intrastate transfers, and even if such transfers required a background check, most of them are perfectly capable of passing that check.¹³⁵

Despite this low-reward reality, universal background check bills—including many of the ones considered by this very body in recent years—seemingly go out of their way to impose heavy burdens on law-abiding gun owners making common, low-risk transfers, or temporary transfers. Perhaps worse, they have been written in ways that deter gun owners from taking some of the most commonsense, responsible, and even life-saving measures with their firearms. The fact that these bills keep getting traction without these very real concerns being addressed only underscores a very real fear by many gun owners that universal background checks will be used as the gateway to a de facto national gun registry.

¹³³ See, e.g., Alvaro Castillo-Carniglia et al., *California's Comprehensive Background Check and Misdemeanor Violence Prohibition Policies and Firearm Mortality*, 30 ANNALS OF EPIDEMIOLOGY 50 (Feb. 2019), <https://www.sciencedirect.com/science/article/abs/pii/S1047279718306161> (concluding that these policies were not associated with changes in firearm homicides in California, that changes in firearm suicides were similar to changes in non-firearm suicides, and that these findings in California are consistent with other recent evaluations of extended background check policies); Rose Kagawa et al., *Repeal of Comprehensive Background Check Policies and Firearm Homicide and Suicide*, 29 EPIDEMIOLOGY 494 (July 2018), <https://pubmed.ncbi.nlm.nih.gov/29613872/> (finding no evidence of an association between the repeal of comprehensive background check policies and firearm homicide and suicide rates in Indiana and Tennessee).

¹³⁴ Database of Mass Shootings in the United States, 1966–February 2020[Interactive Tool], The Violence Project (updated March 2021), <https://www.theviolenceproject.org/mass-shooter-database/> (showing that 80 percent of 172 mass shooters studied between 1966 and 2020 showed “signs of crisis” prior to their crimes, but that only 18 percent were known to have illegally purchased at least one of their firearms)

¹³⁵ Violence Project, *supra* note 134 (showing that only 7 of 172 mass shooters studied over a 44-year period obtained their firearms through lawful private transfers). Notably, in one of those cases, the individual who sold the firearms via intrastate private sale pled guilty to being an unlicensed gun dealer and should have obtained a Federal Firearms License, which would have required him to conduct a background check on the prohibited buyer. Press Release, Office of the United States Attorney for the Northern District of Texas, *Man Who Sold Midland/Odessa Shooter AR-15 Used In Massacre Sentenced for Unlicensed Firearms Dealing* (Jan. 7, 2021), <https://www.justice.gov/usao-ndtx/pr/man-who-sold-midlandodessa-shooter-ar-15-used-massacre-sentenced-unlicensed-firearms>.

E. Waiting Periods

According to the RAND Corporation, evidence that waiting periods reduce either overall suicide rates or firearm homicide rates is limited, at best.¹³⁶ Additionally, even where some studies purport to find a connection between waiting periods and decreases in certain types of gun violence, there is little plausible causal nexus between the waiting period and the alleged decrease. Recall, again, that most criminal gun violence is perpetrated by individuals who do not obtain their firearms through lawful channels and for whom mandatory waiting periods have no practical effect on their ability to obtain a firearm for immediate use.

The best available evidence indicates that most acts of criminal gun violence are not committed by individuals in lawful possession of a recently purchased gun. According to the ATF, the national average “time-to-crime”—that is, the time between when the gun was last known to have been purchased and when it was used in a crime—for guns traced from crime scenes in 2020 was just over seven years.¹³⁷ While the ATF apparently does not collect or publish data on how many firearms are used to commit crimes within 10 days of a lawful purchase, the majority of recovered crime guns have a time-to-crime of more than three months.¹³⁸

The lack of a logical causal mechanism linking waiting periods and decreases in any subset of gun violence is particularly acute in states that only require a waiting period for certain types of firearms, such as handguns, as any homicidal or suicidal individual would nonetheless have immediate access to other types of firearms. Additionally, some states that do not impose waiting periods nonetheless require would-be gun buyers to first obtain either a gun purchase permit or a gun owner’s license, both of which act as barriers to “impulse” gun purchases in the exact same manner as waiting periods. Nebraska, for example, requires would-be handgun buyers to apply for and receive a Firearm Purchase Permit, the process for which involves the applicant delivering the paperwork in-person to his or her local sheriff’s department and then waiting up to three weeks for the permit to be delivered via mail.¹³⁹ This applies to handgun purchases both from licensed dealers and private sellers. Any studies purporting to show a causal connection between waiting periods and reduced gun violence rates must be capable of explaining why that causal connection would not also exist for states that require gun licenses prior to purchase or must account for such laws in the original analysis.

Advocates of waiting periods also have yet to explain why or how any beneficial impact of delaying firearm purchases would extend beyond first-time buyers. If an individual already has

¹³⁶ See *Effects of Waiting Periods on Suicide*, RAND Corp. (updated Jan. 10, 2023), <https://www.rand.org/research/gun-policy/analysis/waiting-periods/suicide.html>; *Effects of Waiting Periods on Violent Crime*, RAND Corp. (Updated Jan. 10, 2023), <https://www.rand.org/research/gun-policy/analysis/waiting-periods/violent-crime.html>. It is unclear why evidence would suggest that waiting periods decrease total homicides but not firearm homicides, and logic suggests an alternative explanation is necessary. In one study, the decrease in total homicides was based only on a slight reduction in intimate partner deaths and was only associated with waiting periods between two to seven days. There is no rational explanation for why longer waiting periods would not also have the same effect. The more reasonable explanation is, once again, that the decline was attributable to other factors.

¹³⁷ See *Time-to-Crime—Firearms Recovered and Traced in the United States and Territories*, Firearms Trace Data—2020 (last accessed Sept. 8, 2022), <https://www.atf.gov/resource-center/firearms-trace-data-2020>.

¹³⁸ *Id.*

¹³⁹ NEB. REV. STAT. § 69–2304–05; *Firearm Purchase Permit*, LANCASTER COUNTY SHERIFF’S OFFICE (Last visited Nov. 26, 2023), <https://www.lancaster.ne.gov/375/Firearm-Purchase-Permit>.

access to a firearm, any “cooling off” period would not apply with respect to the weapons already in his or her possession, and there are few contexts in which a person bent on violence might reasonably delay a criminal act simply because he or she does not have ready access to a second or third firearm.

While some mass public shooters have procured their firearms shortly before their attacks, most such shooters plan their crimes weeks, sometimes even months, in advance and bring multiple firearms purchased over an extended period of time.¹⁴⁰ They are highly motivated to commit these acts of mass murder, and it is unclear how the implementation of a waiting period would plausibly act as either a deterrent or an effective “cooling off” period.

Even given these problems of establishing a logical causal nexus, it is possible that waiting periods may slightly reduce rates of some subsets of gun violence carried out by individuals who do not already own guns. However, any potential benefit must then be balanced with the potential cost to the overwhelming majority of lawful gun purchasers, who were never at risk of harming themselves or others with their guns during the waiting period. These waiting periods can be acutely problematic at the precise times when the exercise of the right to keep and bear arms is most important—for example, during times of sudden civil unrest or when an abusive former dating partner begins making threats. Additionally, it is unclear how waiting periods—which are overwhelmingly a modern restriction imposed even today by only a minority of states—are consistent with the nation’s historical tradition of firearms regulation.

F. Depriving Young Adults of Their Second Amendment Rights

Particularly on the heels on mass public shootings involving young adults, gun control advocates commonly propose some variation of the idea that Americans under the age of 21 should have their Second Amendment rights further restricted, either by prohibiting future purchases of some or all long guns (federal law already prohibits licensed gun dealers from selling handguns to those under 21), or by outright banning young adults from possessing firearms under most circumstances. It appears that the primary motivation behind this prohibition is the shocking nature of a handful of mass public shootings carried out by young adults in recent years. Put aside, once again, the fact that these shootings account for a fraction of a percent of all gun deaths. Even if the goal is simply to address mass public shootings due to their outsized impact

¹⁴⁰ Federal Bureau of Investigation, *A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013*, at 12–13 (June 2018), <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view> (finding that most active shooters plan their attacks for at least one week in advance of the shooting); James Silver & Jason R. Silva, *A Sequence Analysis of Behaviors and Experiences of the Deadliest Public Mass Shooters*, 37 J. INTERPERSONAL VIOLENCE (Apr. 18, 2022), <https://journals.sagepub.com/doi/10.1177/08862605221078818> (finding that firearms acquisition is often one of the earliest planning behaviors and precedes other decisions such as when and where to attack, suggesting that there is not yet at that point a concrete plan from which the would-be shooter may conceivably “cool off” or “rethink”); Jason R. Silva & Emily A. Greene-Colozzi, *What We Know About Foiled and Failed Mass School Shootings*, ROCKEFELLER INST. POL’Y BRIEF (Aug. 2022), <https://rockinst.org/wp-content/uploads/2022/08/Failed-Foiled-School-Shootings.pdf>.

on the national psyche, most of those shootings are not carried out by individuals under the age of 21.¹⁴¹

Moreover, from a practical perspective, while young adults are statistically more likely than older adults to engage in criminal behaviors, they are also more likely to be victims of violent crime.¹⁴² To the extent that such laws limit the ability of young adults to engage in criminal behavior, they also limit the ability of the most vulnerable population of adults to engage in the core exercise of the Second Amendment—self-defense.¹⁴³ And it seems far from likely that young adults bent on crime would be meaningfully prevented from accessing firearms, given the prevalence of handgun-related homicides committed by young offenders despite federal prohibitions on handgun sales to those under 21.

These individuals are in all other respects legal adults who, as full-fledged members of the American public, are endowed with all the rights and duties of citizenship. They can vote, serve on juries, sign legally binding contracts, and marry without permission. They may be drafted into the armed forces or called upon for state militia service. They are held fully accountable before the law for criminal actions, up to and including execution. There is, quite simply, little constitutional basis for divesting all law-abiding young adults of a fundamental constitutional right (or even for limiting their exercise of that right), solely because a small minority of their peers might commit crimes with those firearms.

G. Mandatory “Safe Storage” Requirements

Another common proposal is that of mandatory “safe storage” requirements for gun owners with juveniles in their homes. At their core, these laws seek to address a common theme among juvenile gun deaths—juvenile access to family firearms, which plays a role in both juvenile suicides and accidental deaths or injuries that result from juveniles handling firearms without supervision. Importantly, a person does not become more or less suicidal, or more or less prone to violence, based on mere access to a firearm. However, when individuals who are already suicidal or prone to violence have access to a firearm, it increases the likelihood they will be able to seriously harm themselves or others.

From a fundamental level, the federal government does not have either the constitutional authority to pass such laws or the practical capacity to enforce safe storage requirements. As with “true” federal red flag laws, the federal government lacks the general police power reserved to the states under the 10th Amendment, as well as any general police force to ensure these laws are followed. Even at a state level, pre-emptive enforcement is a practical impossibility. Even in an

¹⁴¹ The Mother Jones Mass Shooting Database records 51 mass public shootings in the nearly six years since the 2018 school shooting in Parkland, Florida, that re-invigorated calls to further disarm young adults. Only 8 involved perpetrators under the age of 21. Of those, however, 3 were under the age of 18 and therefore could not lawfully purchase firearms.

¹⁴² See, e.g., FBI Crime Data Explorer, All Violent Crime Offender v. Victim Demographics (last accessed Nov. 27, 2023), <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/crime-trend>.

¹⁴³ See Craig A. Perkins, *Age Patterns of Victims in Serious Violent Crime*, Bureau of Justice Statistics Special Report NCJ-162031 (July 1997), <https://www.bjs.gov/content/pub/pdf/apvsvc.pdf>; Sofi Sinozich & Lynn Langton, *Rape and Sexual Assault Victimization Among College-Age Females, 1995–2013*, Bureau of Justice Statistics Special Report NCJ 248471 (Dec. 2014), <https://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf>.

absurd (and blatantly unconstitutional) scenario where law enforcement officers could go door-to-door conducting mass warrantless searches for violations, the negative criminal justice implications of having their parents arrested would far outweigh any potential benefit to at-risk children.

These laws also suffer from practical problems, namely, that they may not actually work nearly as well as proponents suggest. While “child access prevention laws are associated with lower fatality rates among younger children,” they “may not alter the risk among older youth” who are far more likely to experience suicidality or engage in criminal behaviors.¹⁴⁴ At the same time, many gun owners teach their children principles of marksmanship, gun safety, and responsible gun ownership from an early age, and those juveniles—especially older ones—routinely access family firearms to save lives.¹⁴⁵ Moreover, these laws can seriously delay the ability of lawful gun owners to access loaded firearms in an emergency, with devastating consequences.¹⁴⁶ Additionally, it is unclear what, if any, potential benefits these laws would have with respect to preventing adult suicides and accidental gunshot wounds, or accidental gunshot wounds associated with adults mishandling firearms and unintentionally harming children.

IV. How to Save Lives

On the one hand, many of the best possible pathways for violence prevention, interruption, and intervention involve areas where the Constitution does not empower the federal government to

¹⁴⁴ Eric W. Fleegler, *Our Limited Knowledge of Youth Suicide Risk and Firearm Access*, JAMA Network (October 8, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2784797>.

¹⁴⁵ See, e.g., *Shooting Death Rule Justifiable After Juvenile Shoots Back At Intruder*, WLXT News 19 (Feb. 8, 2022), <https://www.wltx.com/article/news/local/shooting-death-ruled-justifiable-juvenile-shoots-back-intruder/101-555af968-f223-4860-826a-00c490af33b3>; *Video Shows 14-Year-Old Open Fire On Robbery Suspect in Family's Philly Pizza Shop*, WPVI-TV ABC 6 (Dec. 16, 2021), <https://6abc.com/teenager-shoots-suspect-philadelphia-pizza-shop-robbery-spring-garden-street-bolds/11347225/>; *La Porte Juvenile Shoots Family Member To Death To Prevent Assault*, ABC 13 (Sept. 18, 2021), <https://abc13.com/juvenile-shoots-family-member-to-death-11000-block-of-deaf-smith-road-deadly-shooting-protects-from-assault/11029782/>; Kaelan Deese, *12-Year-Old Boy Defending Mother Fatally Shoots Armed Home Intruder*, Yahoo News (July 9, 2021), <https://www.yahoo.com/video/12-old-boy-defending-mother-190300013.html>; Janelle Griffith, *12-Year-Old Boy Fatally Shoots Intruder Who Tried to Rob Grandmother, Family Says*, NBC News (Feb. 15, 2021), <https://www.nbcnews.com/news/us-news/12-year-old-boy-fatally-shoots-intruder-who-tried-rob-n1257955>; Emma Colton, *Teenager Opens Fire On Three Armed Men After Attempted Burglary, Killing One*, WASHINGTON EXAMINER (March 24, 2020), <https://www.washingtonexaminer.com/news/teenager-opens-fire-on-three-armed-men-after-attempted-burglary-killing-one>; Laura Gutschke, *Brown County 13-Year-Old Shoots Man Assaulting Teen's Grandmother*, Abilene News Reporter (Jan. 27, 2020), <https://www.reporternews.com/story/news/crime/2020/01/27/brown-county-13-year-old-shoots-man-assaulting-teens-grandmother/4591841002/>; *With 12-Year-Old Daughter's Help, Salina Man Fends Off Intruder*, KWCH 12 (Sept. 20, 2019), <https://www.kwch.com/content/news/With-12-year-old-daughters-help-Salina-man-fends-off-intruder-560936071.html>; John Lowe, *14-Year-Old Girl Fires Gun To Save Sisters From Intruder*, WSAZ 3 (Aug. 7, 2019), <https://www.wsaz.com/content/news/Teenager-saves-sisters-from-intruder-526277011.html>.

¹⁴⁶ As just one example, Stephen Willeford's attempt to stop the Sutherland Springs church shooter in 2017 was hindered by the time it took him to unlock his safe and load several rounds into an empty magazine. When he did get up to confront the shooter, the first thing he did was ask his wife to load more ammo and bring it to him. Willeford's ensuing confrontation with the shooter caused him to stop attacking those inside the church and ultimately led to him fleeing the area. Michael J. Mooney, *The Hero of Sutherland Springs Shooting Is Still Reckoning With What Happened That Day*, Texas Monthly (Nov. 2018), <https://www.texasmonthly.com/articles/stephen-willeford-sutherland-springs-mass-murder/>.

act. The Constitution leaves the states—not Congress—with the general police powers. This does not, however, mean that the federal government must sit on its hands.

A. Stop Releasing Violent Criminals Right Back into Their Communities

While Congress does not have the general police power, it nonetheless has room to act with respect to the abysmal lack of criminal enforcement at a state and local level.

First, Congress can start right here in the District of Columbia, one of the most violent jurisdictions in the nation, where it actually does have some direct control and oversight. My colleague, Cully Stimson, a former military trial judge and Assistant United States Attorney in the D.C. U.S. Attorney's office, recently testified before a House Judiciary Subcommittee on this very issue, and I commend his testimony to this Committee, as well.¹⁴⁷ His primary recommendations for immediate action, with which I fully agree, are that Congress should: (1) reform the District's criminal code to make it more effective in protecting the public and incapacitating violent criminals; (2) review and respond to troubling decisions by the District Court for the District of Columbia, which place restrictions on law enforcement authorities and prosecutors by misreading holdings of the United States Supreme Court; (3) consider stripping the D.C. Office of the Attorney General of the power to handle all criminal cases and giving that responsibility to the D.C. United States Attorney's Office, and; (4) federalize the D.C. crime lab.¹⁴⁸

Outside of the context of Washington, D.C., Congress can push federal officials to pursue federal charges, as appropriate, in cases where local authorities steadfastly decline to prosecute violent offenders under state law. Congress can also work to secure our national borders, and in the process help stem the tide of illegal narcotics that are flowing across them. There is a clear and significant connection between drug trafficking and serious violent crime.

B. Start Taking People Seriously When They Threaten to Commit Mass Violence

Again, this is largely a state and local issue, but there are still areas where Congress can and should act. Perhaps one of the best starting points is ensuring that the nation's military branches are properly dealing with members who threaten mass violence, including reporting disqualifying records to relevant civilian authorities.

Last month's tragic mass public shooting in Lewiston, Maine, by an Army reservist known to suffer from serious mental health issues was, unfortunately, not the first instance in which relevant mental health records were not shared with civilian authorities. This was also the case in the 2017 mass public shooting in Sutherland Springs, Texas. Congress can help ensure, however, that it is the last time this happens.

¹⁴⁷ See Charles Stimson, Victims of Violent Crime in the District of Columbia, Testimony before the U.S. House Committee on the Judiciary, Subcommittee on Crime and Federal Government Surveillance (October 12, 2023), <https://www.heritage.org/crime-and-justice/report/victims-violent-crime-the-district-columbia>.

¹⁴⁸ *Id.*

C. Shift Federal Agencies' Focus to Violent Criminals, Not Peaceable Americans

Instead of increasing ATF's budget for compliance with recent unnecessary and comparatively low-value policy changes targeted peaceable citizens, force ATF to prioritize the most effective aspects of the agency's mission—crime-gun tracing and assisting state and local entities with tackling black market gun sales by bad faith actors. Statutorily repeal ATF's pistol brace rule, which is an expansive recharacterization of federal law and unnecessarily focuses the agency's attention on millions of peaceable gun owners who do not pose a threat to public safety. Expressly override ATF's zero-tolerance approach insofar as it requires revocation of licenses for initial offenses that have not historically warranted such extreme action.¹⁴⁹

D. Increase Social Capital by Promoting Economic Growth and Family Stability

There is a plethora of evidence that social capital is inextricably linked to gun violence, whether that gun violence is related to suicide or criminal activity.¹⁵⁰ Communities with higher levels of social capital are also less likely to be victimized by mass public shooters.¹⁵¹ Many aspects of rebuilding civil society and increasing social capital inherently involve private voluntary associations, and Americans are often better served by government "getting out of the way."¹⁵² From a federal policy perspective, one important way of addressing social capital concerns is through promoting economic growth and employment, which increases family stability and individual connectedness through the workplace.¹⁵³ As many of my colleagues at the Heritage Foundation have pointed out, there are plenty of specific, concrete measures Congress can take to ease the crushing effects of inflation on American families and provide a stable economy, which would promote family stability and lower the risks of suicide and crime associated with increased economic stress, divorce, and poverty.¹⁵⁴ There are also steps Congress can take to

¹⁴⁹ See Amy Swearer, ATF's Assault on the Second Amendment: When Is Enough Enough?, Testimony before the U.S. House Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs and Subcommittee on Crime and Federal Government Surveillance (March 23, 2023), <https://www.heritage.org/testimony/atf-struggles-prove-its-priority-stopping-gun-crime-not-furthering-gun-control-agenda>.

¹⁵⁰ Joint Economic Committee Republicans, An Overview of Social Capital in American Society (June 2021), https://www.jec.senate.gov/public/_cache/files/8cb559c4-3764-4706-9009-b4d8565ec820/scp-volume-1-digital-final.pdf; Nathan Daniel Lucia Smith & Ichiro Kawachi, *State-Level Social Capital and Suicide Mortality in the 50 U.S. States*, 120 SOCIAL SCIENCE & MED. 269 (2014), <http://faculty.washington.edu/matsueda/courses/590/Readings/Smith%20and%20Kawachi%202014%20suicide.pdf>; Matthew D. Moore & Nicholas L. Recker, *Social Capital, Type of Crime, and Social Control*, 62 J. RESEARCH IN CRIME & DELINQUENCY 728 (2013), https://www.researchgate.net/publication/265727202_Social_Capital_Type_of_Crime_and_Social_Control.

¹⁵¹ Roy Kwon & Joseph F. Cabrera, *Social Integration and Mass Shootings in U.S. Counties*, 42 J. Crime & Justice 121 (2019).

¹⁵² See, e.g., Joint Economic Committee Republicans, A Policy Agenda for Social Capital (Dec. 2021), https://www.jec.senate.gov/public/_cache/files/f8fba06-cfc6-48da-9369-db9906710e9b/a-policy-agenda-for-social-capital.pdf.

¹⁵³ *Id.*

¹⁵⁴ Daren Bakst et al., *Inflation: Policymakers Should Stop Driving It and Start Fighting It*, Heritage Foundation Special Report No. 252 (Jan. 20, 2022), <https://www.heritage.org/markets-and-finance/report/inflation-policymakers-should-stop-driving-it-and-start-fighting-it>.

promote financial stability in working families, offer more educational opportunities that families control, and increase wages through pro-jobs tax policies.¹⁵⁵

E. Additional Opportunities for Federal Intervention

- **Invest in School Choice.** School choice reduces the costs associated with gun violence in the short and medium term by helping students escape communities where bullying, gang-related violence, and other forms of school violence are common. Especially for at-risk males, persistently attending private schools through school voucher programs lowers their risks of participating in or being arrested for criminal behaviors.¹⁵⁶ The ability of parents to remove their children more easily from schools where they are bullied or face violent threats also helps alleviate the increased risks of suicide that come with those realities.¹⁵⁷ In the long run, better educational opportunities increase social capital, thereby decreasing the likelihood that an individual will either commit or be victimized by acts of gun violence.
- **Expand Access To—And Choices In—Health Care.** Expand access to alternative healthcare options and give low-income Americans a choice in their own healthcare—including their mental healthcare.¹⁵⁸ This includes refusing to underwrite anti-competitive state healthcare policies that raise the costs of healthcare—including mental healthcare—and reduce options for patients.¹⁵⁹
- **Work With—Not Against—Lawful Gun Owners.** Promote and encourage safe storage practices and responsible gun ownership without pre-emptively criminalizing gun owners for making reasonable decisions or inhibiting their ability to immediately respond to violent threats.

¹⁵⁵ Marie Fishpaw et al., *Being A Parent Is Hard Enough: It's Time for Congress to Help Families Thrive*, HERITAGE FOUNDATION BACKGROUNDER NO. 3647 <https://www.heritage.org/marriage-and-family/report/being-parent-hard-enough-its-time-congress-help-families-thrive>.

¹⁵⁶ Corey DeAngelis & Patrick J. Wolf, *The School Choice Voucher: A “Get Out of Jail Free” Card?*, EDRE Working Paper 2016-03 (Mar. 8, 2016), <http://www.uaedreform.org/downloads/2016/03/the-school-choice-voucher-a-get-out-of-jail-card.pdf>; M. Danish Shakeel, *Can Private Schools Improve School Climate? Evidence From A Nationally Representative Sample*, 12 J. OF SCHOOL CHOICE 426 (Aug. 8, 2018), <https://www.tandfonline.com/doi/abs/10.1080/15582159.2018.1490383>; Andrew McEachin et al., *Social Returns to Private Choice? Effects of Charter Schools on Behavioral Outcomes, Arrests, and Civic Participation*, EdWorking Paper No. 19-90 (2020), <https://www.edworkingpapers.com/ai19-90>.

¹⁵⁷ Jonathan Butcher & Chloe Shoemaker, *Youth Mental Health Crisis Gives More Urgency To School Choice Movement*, Heritage Foundation (Mar. 31, 2021), <https://www.heritage.org/education/commentary/youth-mental-health-crisis-gives-more-urgency-school-choice-movement>; Corey A. DeAngelis & Angela K. Dills, *The Effects of School Choice on Mental Health, 32 School Effectiveness & School Improvement* 326 (Dec. 3, 2020), <https://www.tandfonline.com/doi/abs/10.1080/09243453.2020.1846569?journalCode=nses20>; Editorial Board, *School Choice: Better Than Prozac*, WSJ (Dec. 17, 2020), <https://www.wsj.com/articles/school-choice-better-than-prozac-11608248279>.

¹⁵⁸ See generally, NO CHOICE, NO EXIT, THE HERITAGE FOUNDATION (2020), https://thf_media.s3.amazonaws.com/2020/no-choice-no-exit.pdf; *Issue: Health Care Reform*, Heritage Foundation [last accessed Nov. 26, 2023], <https://www.heritage.org/health-care-reform>.

¹⁵⁹ See *id.*

V. Conclusion:

Nothing of the problems or solutions I have outlined above are new. That is because nothing about the reality of gun violence has changed since the last time we were here discussing the exact same topic with a slightly different hook.

Do not misunderstand me—I am happy to come back as many times as you wish and explain these same realities. I will draft as many written submissions as requested and I will respond to the same questions and rebut the same arguments for as many times as it takes to be not just heard but understood and believed.

I will do it because it matters. In the time it will take to conduct this hearing, roughly eight Americans will be murdered, nearly twice as many Americans will kill themselves, and countless others will have been violently victimized.¹⁶⁰ Many of these tragedies will involve firearms. This sad reality is antithetical to human flourishing, to the rule of law, and to civil society. It is a problem worth understanding accurately and addressing meaningfully.

I will therefore gladly repeat my testimony as often as it takes for Congress—as well as state and local authorities—to suspend this ongoing obsession with imposing restrictive gun control laws on peaceable citizens, and take appropriate and constitutional action to combat the nation’s violent crime and mental health crises.

I once again look forward to your questions.

¹⁶⁰ Based on 2021 homicide and suicide totals, the last year for which relatively complete data is available from the CDC, and assuming an average hearing length of three hours.